

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact a new section to chapter 19-03.1 ~~and~~ section  
2 19-03.1-23.6, and a new section to chapter 50-06 of the North Dakota Century Code, relating to  
3 a special penalty for death or injury through distribution of illegal drugs ~~and~~ fentanyl reporting,  
4 and an opioid settlement fund; to provide a penalty; and to provide an appropriation.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Distribution of illegal drugs - Special penalty for death or injury.**

9 1. As used in this section:

- 10 a. "Consume" means to inject, ingest, or inhale a controlled substance.
- 11 b. "Controlled substance" includes derivatives or analogs to a scheduled controlled  
12 substance.
- 13 c. "Injury" means an overdose that puts an individual's life at immediate risk.
- 14 d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to  
15 supply or deliver a controlled substance.
- 16 2. An individual is guilty of causing death or injury by distributing a controlled substance if  
17 the individual willfully supplies another to deliver a controlled substance to an  
18 individual who consumes the controlled substance and that individual dies or is injured  
19 from overdosing after consuming a portion of the controlled substance.
- 20 a. A violation of this section is a class A felony.
- 21 b. This section does not limit a conviction under chapter 12.1-16, but an individual  
22 may not be found guilty of this section and an offense under chapter 12.1-16 if  
23 the conduct arises out of the same course of conduct.

- 1       3. Venue for an offense under this section is in the county where the death or injury  
2       occurred or any county where the controlled substance was directly or  
3       indirectly obtained by the deceased or injured individual.
- 4       a. An individual may not be convicted in more than one county for the death or  
5       injury of the same individual who overdosed on a controlled substance.
- 6       b. Notwithstanding chapter 29-03, an individual outside the state may be  
7       prosecuted within the state under this section.
- 8       c. The charging document for a violation of this section must list an overt act in  
9       which the individual engaged to violate this section.
- 10      d. Injury or death by an overdose may be proven by direct or circumstantial  
11      evidence.
- 12      4. An individual may not be charged under this section if the individual supplied or  
13      administered a controlled substance as part of a medical procedure or the individual  
14      was in a lawful position to dispense a medication prescription.
- 15      a. An individual may not be charged under this section if the individual complied  
16      with section 19-3.1-23.4.
- 17      b. It is not a defense to this section that the deceased or injured individual had other  
18      controlled substances or alcohol in the individual's system which the defendant  
19      did not supply at the time of an overdose.

20       **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and  
21 enacted as follows:

22       **19-03.1-23.6. Fentanyl reporting - Report to legislative management.**

- 23       1. As used in this section:
- 24       a. "Health care provider" means a person licensed or certified by the state to  
25       provide health care services. The term includes emergency service personnel, a  
26       medical hospital, and a medical clinic.
- 27       b. "Law enforcement agency" means a nonfederal public agency authorized by law  
28       or by a government agency or branch to enforce the law and to conduct or  
29       engage in investigations or prosecutions for violations of law. The term includes a  
30       multijurisdictional task force.

- 1       2. Annually, a law enforcement agency and a health care provider shall provide to the  
2       attorney general a completed case report form for every death the agency or the  
3       provider encounters which is caused by, suspected to have been caused by, or is  
4       related to fentanyl consumption.
- 5       a. The data and report compiled under this section are open records.  
6       b. The attorney general may require the reporting of additional information not  
7       specified in this section. The attorney general shall develop standard forms,  
8       processes, and deadlines for annual submission of fentanyl data by law  
9       enforcement agencies and health care providers.
- 10      c. If a law enforcement agency or health care provider fails to file a report within  
11      thirty days after the report is due, the attorney general may compel compliance  
12      by any means until the report is filed.
- 13      d. By November first of each year, the attorney general shall submit to the  
14      legislative management and the governor a written report summarizing the  
15      number of deaths that occurred in the state caused by or related to fentanyl  
16      consumption during the preceding calendar year. The attorney general shall  
17      make the report available on the attorney general's website.

18       **SECTION 3.** A new section to chapter 50-06 of the North Dakota Century Code is created  
19 and enacted as follows:

20       **Opioid settlement fund.**

21       There is created in the state treasury an opioid settlement fund. The fund consists of opioid  
22 litigation funds received by the state. Moneys received by the state as a result of opioid litigation  
23 must be deposited in the fund. Moneys in the fund may be used as authorized by legislative  
24 appropriation. The legislative assembly shall consult with the governor in determining the use of  
25 the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand,  
26 or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or  
27 distribution of opioids in this state or other alleged illegal actions that contributed to the  
28 excessive use of opioids.

29       **SECTION 4. APPROPRIATION - ~~ATTORNEY GENERAL~~DEPARTMENT OF HEALTH**  
30 **AND HUMAN SERVICES - FENTANYL AWARENESS EXPANSION.** There is appropriated out  
31 of any moneys from ~~opioid-related lawsuit settlement proceeds~~the opioid settlement fund, not

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1 otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, to  
2 the ~~attorney general~~department of health and human services for the purpose of providing and  
3 expanding statewide awareness of the fentanyl drug and overdose epidemic, for the biennium  
4 beginning July 1, 2023, and ending June 30, 2025.