

Introduced by

Agriculture and Veterans Affairs Committee

(At the request of the Agriculture Commissioner)

1 A BILL for an Act to create and enact section 4.1-18.1-01.1 and nine new sections to chapter  
2 4.1-18.1 of the North Dakota Century Code, relating to administrative rules, hemp commodities  
3 or products, powers of the commissioner, and civil enforcement remedies; to amend and  
4 reenact sections 4.1-18.1-01 and 4.1-18.1-04.3, subparagraph a of paragraph 2 of  
5 subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code, relating  
6 to definitions, prohibited acts by licensees, schedule I controlled substances  
7 tetrahydrocannabinols; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 4.1-18.1-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **4.1-18.1-01. Definitions.**

- 12 1. "Hemp" means the plant cannabis sativa L. and any part of the plant, including the  
13 seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of  
14 isomers flowers, whether growing or not, with a total tetrahydrocannabinol  
15 concentration in an amount determined by the commissioner. The term does not  
16 include any hemp extract, commodity or product using hemp which exceeds the  
17 allowable amount of total tetrahydrocannabinol determined by the commissioner, or a  
18 hemp substance or product prohibited by this chapter.
- 19 2. "Hemp commodity or product" means a product made from hemp, including cloth,  
20 cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seeds, seed meal, and  
21 seed oil for consumption, a hemp tincture, and a hemp topical.
- 22 a. The term includes:

- 1           (1) Hemp processed through retting or other processing such that it is a  
2                     suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber  
3                     materials;
- 4           (2) Hemp seed processed such that it is incapable of germination and  
5                     processed such that is suitable for human consumption;
- 6           (3) Hemp seed pressed or otherwise processed into oil; and
- 7           (4) A hemp commodity or product approved in writing by the agriculture  
8                     commissioner.
- 9           b. The term does not include:
- 10           (1) Hemp that has been chopped, separated, or dried for purposes of transfer  
11                     or storage;
- 12           (2) Hemp extract;
- 13           (3) A chemical compound extracted from hemp used to formulate, process, or  
14                     otherwise make an inhalant, edible, or combustible;
- 15           (4) A product containing chemically derived cannabinoids. Including:
- 16                     (a) Delta-8 tetrahydrocannabinol, also known as delta-8 THC;
- 17                     (b) Tetrahydrocannabinol acetate, also known as THC-O-Acetate and  
18                     THC-O;
- 19                     (c) Hexahydrocannabinol, also known as HHC; and
- 20                     (d) Tetrahydrocannabiphorol, also known as THCP; or
- 21           (5) A psychotropic hemp commodity or product disapproved in writing by the  
22                     commissioner.
- 23           3. "Hemp extract" means a concentrate or extract obtained by separating cannabinoids  
24                     from hemp by a mechanical, chemical, or other process. The term does not include  
25                     hemp seed pressed or otherwise processed into oil.
- 26           4. "Hemp topical" means a hemp commodity or product intended to be applied to the skin  
27                     or hair. The maximum concentration or amount of total tetrahydrocannabinol permitted  
28                     in a hemp topical is fifty milligrams per container.
- 29           5. "Tetrahydrocannabinol" means delta-9 tetrahydrocannabinol and any structural,  
30                     optical, or geometric isomers of tetrahydrocannabinol, including:
- 31           a. Delta-7 tetrahydrocannabinol;

1           b.   Delta-8 tetrahydrocannabinol; ~~and/or~~

2           c.   Delta-10 tetrahydrocannabinol.

3           6.   "Hemp tincture" means a solution consisting of a mixture created from a hemp extract  
4           and other ingredients. A container holding a hemp tincture may not exceed thirty  
5           milliliters. The maximum concentration or amount of total tetrahydrocannabinol  
6           permitted in a hemp tincture is fifty milligrams per container.

7           ~~3-7.~~ "Total tetrahydrocannabinol" means the sum of the percentage, by weight, of  
8           tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths  
9           plus the percentage of weight of tetrahydrocannabinol.

10          **SECTION 2.** Section 4.1-18.1-01.1 of the North Dakota Century Code is created and  
11          enacted as follows:

12          **4.1-18.1-01.1. Administrative rules.**

13          The commissioner may adopt and amend rules consistent with this chapter governing the  
14          sale, distribution, testing, labeling, and regulation of hemp and hemp commodities or products,  
15          and substances and products prohibited by this chapter.

16          **SECTION 3. AMENDMENT.** Section 4.1-18.1-04.3 of the North Dakota Century Code is  
17          amended and reenacted as follows:

18          **4.1-18.1-04.3. Prohibited acts - Licensee.**

19          A licensee may not:

- 20          1.   ~~Engage in the isomerization of cannabinoids to create isomers of~~  
21           ~~tetrahydrocannabinol, including delta-8, delta-9, and delta-10~~  
22           ~~tetrahydrocannabinol~~Chemically modify or convert a hemp extract, or engage in any  
23           process that converts cannabidiol into delta-9, delta-8, delta-10-tetrahydrocannabinol,  
24           or other tetrahydrocannabinol isomers, analogs, or derivatives; and  
25          2.   ~~Sell or distribute hemp or hemp commodities or products that contain chemically~~  
26           ~~derived cannabinoids or were created using the isomerization of cannabinoids to~~  
27           ~~create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10~~  
28           ~~tetrahydrocannabinol~~by chemically modifying or converting a hemp extract.

29          **SECTION 4.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
30          and enacted as follows:

1        **Hemp commodities or products- Allowable products- Retailers.**

- 2        1. A person may only sell hemp and hemp commodities or products allowed under this  
3        chapter. All hemp and hemp commodities or products must undergo testing and report  
4        in a certificate of analysis and in the product label the testing results of the total  
5        tetrahydrocannabinol concentration amount. The certificate of analysis must be made  
6        available to the commissioner upon request.
- 7        2. A person may not sell hemp, or hemp commodities or products that contain chemically  
8        derived cannabinoids.
- 9        3. All other cannabis- or hemp-derived products that are not allowable hemp  
10       commodities or products under this chapter must be regulated in accordance with  
11       chapter 19-24.1.
- 12       4. All hemp commodities or products sold pursuant to this section must comply with all  
13       product labeling rules as mandated by the Food, Drug, and Cosmetic Act [21 U.S.C. 9  
14       et seq.] and related administrative rules, both the Act and rules incorporated by  
15       reference.
- 16       5. Under the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.], incorporated by  
17       reference, non-food and drug administration approved hemp-derived products may not  
18       be sold as dietary supplements, food or beverage products, or marketed with medical  
19       claims.

20       **SECTION 5.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
21 and enacted as follows:

22        **Powers of commissioner.**

23        If the commissioner reasonably suspects a person is about to engage in, has engaged in, or  
24 is engaging in, a violation of this chapter, the commissioner may:

- 25        1. Require the person to file, on forms the commissioner prescribes, a statement or  
26        report in writing, under oath or otherwise, of all the facts and circumstances  
27        concerning the creation, sale, distribution, or advertisement of the hemp commodity or  
28        product by the person, as well as other data;
- 29        2. Examine under oath the person in connection with the creation, sale, distribution, or  
30        advertisement of any hemp commodity or product;

1       3. Examine any merchandise or sample, record, book, document, account, or paper  
2           concerning the creation, sale, distribution, or advertisement of hemp commodity or  
3           product by the person; and

4       4. Pursuant to an order of a district court, seize and retain any merchandise or sample,  
5           record, book, document, account, paper, or other evidence as authorized by the order.

6       **SECTION 6.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
7 and enacted as follows:

8       **Subpoena - Hearing.**

9       To regulate compliance with this chapter, the commissioner, in addition to other powers  
10 conferred upon the commissioner by this chapter, may issue subpoenas to any person,  
11 administer an oath or affirmation to any person, and conduct hearings in aid of any investigation  
12 or inquiry.

13       **SECTION 7.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
14 and enacted as follows:

15       **Failure to supply information or obey subpoena.**

16       If a person fails or refuses to file any statement or report requested by the commissioner, or  
17 obey any subpoena issued by the commissioner, the commissioner may, after notice, apply to a  
18 district court and request an order:

19       1. Granting injunctive relief, restraining the creation, sale, distribution, or advertisement  
20           of any hemp commodity or product merchandise by a person;

21       2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or  
22           limited liability company created by or under the laws of this state or revoking or  
23           suspending the certificate of authority to do business in this state of a foreign  
24           corporation or limited liability company or revoking or suspending any other licenses,  
25           permits, or certificates issued pursuant to law to a person which are used to violate  
26           this chapter; and

27       3. Granting such other relief as may be required.

28       **SECTION 8.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
29 and enacted as follows:

1        **Assurance of voluntary compliance.**

2        The commissioner may accept an assurance of voluntary compliance for an act or practice  
3 the commissioner determines may be in violation of this chapter, from any person the  
4 commissioner alleges is about to engage in, engaging in, or has engaged in the violation. The  
5 assurance of voluntary compliance must be in writing and must be filed with and is subject to  
6 the approval of the district court of the county in which the alleged violator resides or has as a  
7 principal place of business, conducts business, or in Burleigh County.

8        **SECTION 9.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created  
9 and enacted as follows:

10        **Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil**  
11 **penalties - Costs recoverable in adjudicative proceedings.**

- 12        1. If the commissioner reasonably suspects a person is about to engage in, has engaged  
13 in, or is engaging in a practice in violation of this chapter, the commissioner may seek  
14 and obtain in an action in a district court an injunction enjoining the person from  
15 engaging in the violation, continuing the violation, or doing any act in furtherance of  
16 the violation after proper notice to the person. The notice must state generally the  
17 relief sought and be served at least ten days before the hearing of the action.
- 18        2. If the commissioner reasonably suspects a person is about to engage in, has engaged  
19 in, or is engaging in a violation of this chapter, and the person is about to conceal  
20 assets that may have been acquired in violating this chapter, conceal oneself, or leave  
21 the state, the commissioner may apply to the district court, ex parte, for an order  
22 appointing a receiver of the assets of the person.
- 23        3. Upon a showing made by affidavit or other evidence that shows reasonable grounds  
24 the person is about to engage in, has engaged in, or is engaging in a violation of this  
25 chapter and the person is about to conceal assets that may have been acquired in  
26 violating this chapter, conceal oneself, or leave the state, the court shall order the  
27 appointment of a receiver to receive the assets of the person. From the received  
28 assets, the court may make an order or judgment necessary to restore to another  
29 person who has suffered damages due to another person violating this chapter any  
30 money or property.

- 1       4. If the commissioner reasonably suspects a person is about to engage in, has engaged  
2       in, or is engaging in a violation of this chapter, or by an order of the commissioner  
3       issued under this chapter, the commissioner, without notice and hearing, may issue a  
4       cease and desist order.
- 5       a. In addition to any other remedy authorized by this chapter, the commissioner may  
6       impose by order and collect a civil penalty against a person found in an  
7       adjudicative proceeding to have violated a cease and desist order issued  
8       pursuant to this section, in an amount not more than five thousand dollars for  
9       each violation.
- 10      b. The person may request a hearing before the commissioner if a written request is  
11      made within ten days after the receipt of the order. Unless otherwise specifically  
12      provided, an adjudicative proceeding under this section must be conducted in  
13      accordance with chapter 28-32.
- 14      c. If the commissioner prevails in an adjudicative proceeding pursuant to this  
15      section, the commissioner may assess the nonprevailing person for all  
16      adjudicative proceeding and hearing costs, including reasonable attorney's fees,  
17      investigation expenses, costs, and other expenses of the investigation and  
18      action.

19       **SECTION 10.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is  
20 created and enacted as follows:

21       **Powers of receiver.**

- 22      1. When a receiver is appointed by the court pursuant to this chapter, the receiver may  
23      sue for, collect, receive, or take into possession all the goods and chattels, rights and  
24      credits, moneys and effects, lands and tenements, books, records, documents,  
25      papers, choses in action, bills, notes, and property of every description, derived by  
26      means of a violation of this chapter, including property with which the property has  
27      been commingled if it cannot be identified in kind because of the commingling, and  
28      sell, convey, and assign the property and hold and dispose of the proceeds under the  
29      direction of the court.
- 30      2. A person who has suffered damages due to another person violating this chapter and  
31      submits proof to the satisfaction of the court that the person has in fact been damaged

1           may participate with general creditors in the distribution of the assets to the extent the  
2           person has sustained losses. The court has jurisdiction of all questions arising in these  
3           proceedings and may make orders and judgments as necessary.

4           **SECTION 11.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is  
5 created and enacted as follows:

6           **Costs recoverable.**

7           If the commissioner prevails in an action brought to district court under this chapter, the  
8 court shall award the commissioner reasonable attorney's fees, investigation expenses, costs,  
9 and other expenses associated with the action. All attorney's fees, investigation expenses,  
10 costs, and other expenses received by the commissioner under this section must be deposited  
11 into the commissioner's general operating fund for use in regulating compliance with this  
12 chapter.

13           **SECTION 12.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is  
14 created and enacted as follows:

15           **Civil penalties.**

16           The court may assess for the benefit of the state a civil penalty of not more than five  
17 thousand dollars for each violation of this chapter. The penalty provided in this section is in  
18 addition to those remedies otherwise provided by this chapter. The penalty must be awarded to  
19 the commissioner and deposited into the commissioner's general operating fund for use in  
20 regulating compliance with this chapter.

21           **SECTION 13. AMENDMENT.** Subparagraph a of paragraph 2 of subdivision m of  
22 subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and  
23 reenacted as follows:

24                   (a) The allowable amount of total tetrahydrocannabinol found in hemp or  
25                   an allowed hemp commodity or product as defined in chapter  
26                   4.1-18.1; or