

SENATE BILL NO. 2096
with House Amendments
SENATE BILL NO. 2096

Sixty-eighth
Legislative Assembly
of North Dakota

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, section 4.1-59-09 of the North Dakota Century
5 Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth
6 legislative assembly, and subparagraph a of paragraph 2 of subdivision m of subsection 5 of
7 section 19-03.1-05 of the North Dakota Century Code, relating to definitions, prohibited acts by
8 licensees, schedule I controlled substances tetrahydrocannabinols, and bonding requirements
9 for grain buyers; and to provide a penalty.

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

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

13 **4.1-18.1-01. Definitions.**

- 14 1. "Broad spectrum" means hemp extract or hemp commodity or product containing
15 naturally occurring hemp-derived cannabinoids, terpenes, and other naturally
16 occurring compounds, but where tetrahydrocannabinol has been removed to
17 nondetectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol
18 level not to exceed an amount determined by the commissioner.
- 19 2. "Chemically derived cannabinoid" means a chemical substance created by a chemical
20 reaction that changes the molecular structure of any chemical substance derived from
21 the plant cannabis. The term does not include cannabinoids produced by
22 decarboxylation from a naturally occurring cannabinoid acid without the use of a
23 chemical catalyst.

1 3. "Full spectrum" means hemp extract or hemp commodity or product containing
2 naturally occurring hemp-derived cannabinoids, terpenes, and other naturally
3 occurring compounds, processed without intentional complete removal of any
4 compound and without the addition of isolated cannabinoids, with a total
5 tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

6 4. "Hemp" means the plant cannabis sativa L. and any part of the plant, including the
7 seeds and ~~all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of~~
8 ~~isomers~~ flowers, whether growing or not, with a total tetrahydrocannabinol
9 concentration in an amount determined by the commissioner. The term does not
10 include ~~any hemp extract, commodity or product using hemp which exceeds the~~
11 ~~allowable amount of total tetrahydrocannabinol determined by the commissioner, or a~~
12 hemp substance or product prohibited by this chapter.

13 2-5. "Hemp commodity or product" means a product made from hemp or hemp extract,
14 including cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seeds,
15 seed meal, and seed oil for consumption, a hemp tincture, and a hemp topical.

16 a. The term includes:

17 (1) Hemp processed through retting or other processing such that it is a
18 suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber
19 materials;

20 (2) Hemp seed processed such that it is incapable of germination and
21 processed such that is suitable for human consumption;

22 (3) Hemp seed pressed or otherwise processed into oil;

23 (4) Cannabidiol, also known as CBD, products and cannabigerol, also known
24 as CBG, including broad spectrum, full spectrum, and isolate products, with
25 a total tetrahydrocannabinol level not to exceed an amount determined by
26 the commissioner; and

27 (5) A hemp commodity or product approved in writing by the agriculture
28 commissioner.

29 b. The term does not include:

30 (1) Hemp that has been chopped, separated, or dried for purposes of transfer
31 or storage;

- 1 (2) A chemical compound extracted from hemp used to formulate, process, or
2 otherwise make an inhalant;
- 3 (3) A product containing delta-8 tetrahydrocannabinol, also known as delta-8
4 THC;
- 5 (4) A product containing chemically derived cannabinoids. Including:
6 (a) Tetrahydrocannabinol acetate, also known as THC-O-Acetate and
7 THC-O;
8 (b) Hexahydrocannabinol, also known as HHC; and
9 (c) Tetrahydrocannabiphorol, also known as THCP; or
- 10 (5) A psychotropic hemp commodity or product disapproved in writing by the
11 commissioner.
- 12 4. "Hemp extract" means a concentrate or extract obtained by separating cannabinoids
13 from hemp by a mechanical, chemical, or other process. The term does not include
14 hemp seed pressed or otherwise processed into oil.
- 15 5. "Hemp tincture" means a solution that may not exceed thirty milliliters consisting of:
16 a. At least twenty-five percent of non-denatured alcohol, in addition to a hemp
17 extract, and other ingredients intended for human consumption or ingestion; or
18 b. Glycerin or plant-based oil and hemp extract, and is intended for human
19 consumption or ingestion.
- 20 6. "Hemp topical" means a hemp commodity or product intended to be applied to the skin
21 or hair. The maximum concentration or amount of total tetrahydrocannabinol permitted
22 in a hemp topical is fifty milligrams per container.
- 23 7. "Isolate" means hemp extract or hemp commodity or product comprised of a single
24 cannabinoid compound.
- 25 8. "Tetrahydrocannabinol" means delta-9 tetrahydrocannabinol and any structural,
26 optical, or geometric isomers of tetrahydrocannabinol, including:
27 a. Delta-7 tetrahydrocannabinol;
28 b. Delta-8 tetrahydrocannabinol; and/or
29 c. Delta-10 tetrahydrocannabinol.

1 ~~3-9.~~ "Total tetrahydrocannabinol" means the sum of the percentage, by weight, of
2 tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths
3 plus the percentage of weight of tetrahydrocannabinol.

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

6 **4.1-18.1-01.1. Administrative rules.**

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

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

12 **4.1-18.1-04.3. Prohibited acts - Licensee.**

13 A licensee may not:

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

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

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

- 26 1. A person may only sell hemp and hemp commodities or products allowed under this
27 chapter. All hemp and hemp commodities or products must undergo testing and report
28 in a certificate of analysis and in the product label the testing results of the total
29 tetrahydrocannabinol concentration amount. The certificate of analysis must be made
30 available to the commissioner upon request.

- 1 2. A person may not sell hemp, or hemp commodities or products that contain chemically
2 derived cannabinoids or delta-8 tetrahydrocannabinol.
- 3 3. All other cannabis- or hemp-derived products that are not allowable hemp
4 commodities or products under this chapter must be regulated in accordance with
5 chapter 19-24.1.
- 6 4. All hemp commodities or products sold pursuant to this section must comply with all
7 product labeling rules as mandated by the Food, Drug, and Cosmetic Act [21 U.S.C. 9
8 et seq.] and related administrative rules, both the Act and rules incorporated by
9 reference.
- 10 5. Under the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.], incorporated by
11 reference, non-food and drug administration approved hemp-derived products may not
12 be sold as dietary supplements, food or beverage products, or marketed with medical
13 claims.

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

16 **Powers of commissioner.**

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

- 19 1. Require the person to file, on forms the commissioner prescribes, a statement or
20 report in writing, under oath or otherwise, of all the facts and circumstances
21 concerning the creation, sale, distribution, or advertisement of the hemp commodity or
22 product by the person, as well as other data;
- 23 2. Examine under oath the person in connection with the creation, sale, distribution, or
24 advertisement of any hemp commodity or product;
- 25 3. Examine any merchandise or sample, record, book, document, account, or paper
26 concerning the creation, sale, distribution, or advertisement of hemp commodity or
27 product by the person; and
- 28 4. Pursuant to an order of a district court, seize and retain any merchandise or sample,
29 record, book, document, account, paper, or other evidence as authorized by the order.

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

1 **Subpoena - Hearing.**

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

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

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

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

- 12 1. Granting injunctive relief, restraining the creation, sale, distribution, or advertisement
13 of any hemp commodity or product merchandise by a person;
- 14 2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or
15 limited liability company created by or under the laws of this state or revoking or
16 suspending the certificate of authority to do business in this state of a foreign
17 corporation or limited liability company or revoking or suspending any other licenses,
18 permits, or certificates issued pursuant to law to a person which are used to violate
19 this chapter; and
- 20 3. Granting such other relief as may be required.

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

23 **Assurance of voluntary compliance.**

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

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

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

- 3 1. If the commissioner reasonably suspects a person is about to engage in, has engaged
4 in, or is engaging in a practice in violation of this chapter, the commissioner may seek
5 and obtain in an action in a district court an injunction enjoining the person from
6 engaging in the violation, continuing the violation, or doing any act in furtherance of
7 the violation after proper notice to the person. The notice must state generally the
8 relief sought and be served at least ten days before the hearing of the action.
- 9 2. If the commissioner reasonably suspects a person is about to engage in, has engaged
10 in, or is engaging in a violation of this chapter, and the person is about to conceal
11 assets that may have been acquired in violating this chapter, conceal oneself, or leave
12 the state, the commissioner may apply to the district court, ex parte, for an order
13 appointing a receiver of the assets of the person.
- 14 3. Upon a showing made by affidavit or other evidence that shows reasonable grounds
15 the person is about to engage in, has engaged in, or is engaging in a violation of this
16 chapter and the person is about to conceal assets that may have been acquired in
17 violating this chapter, conceal oneself, or leave the state, the court shall order the
18 appointment of a receiver to receive the assets of the person. From the received
19 assets, the court may make an order or judgment necessary to restore to another
20 person who has suffered damages due to another person violating this chapter any
21 money or property.
- 22 4. If the commissioner reasonably suspects a person is about to engage in, has engaged
23 in, or is engaging in a violation of this chapter, or by an order of the commissioner
24 issued under this chapter, the commissioner, without notice and hearing, may issue a
25 cease and desist order.
- 26 a. In addition to any other remedy authorized by this chapter, the commissioner may
27 impose by order and collect a civil penalty against a person found in an
28 adjudicative proceeding to have violated a cease and desist order issued
29 pursuant to this section, in an amount not more than five thousand dollars for
30 each violation.

- 1 b. The person may request a hearing before the commissioner if a written request is
2 made within ten days after the receipt of the order. Unless otherwise specifically
3 provided, an adjudicative proceeding under this section must be conducted in
4 accordance with chapter 28-32.
- 5 c. If the commissioner prevails in an adjudicative proceeding pursuant to this
6 section, the commissioner may assess the nonprevailing person for all
7 adjudicative proceeding and hearing costs, including reasonable attorney's fees,
8 investigation expenses, costs, and other expenses of the investigation and
9 action.

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

12 **Powers of receiver.**

- 13 1. When a receiver is appointed by the court pursuant to this chapter, the receiver may
14 sue for, collect, receive, or take into possession all the goods and chattels, rights and
15 credits, moneys and effects, lands and tenements, books, records, documents,
16 papers, choses in action, bills, notes, and property of every description, derived by
17 means of a violation of this chapter, including property with which the property has
18 been commingled if it cannot be identified in kind because of the commingling, and
19 sell, convey, and assign the property and hold and dispose of the proceeds under the
20 direction of the court.
- 21 2. A person who has suffered damages due to another person violating this chapter and
22 submits proof to the satisfaction of the court that the person has in fact been damaged
23 may participate with general creditors in the distribution of the assets to the extent the
24 person has sustained losses. The court has jurisdiction of all questions arising in these
25 proceedings and may make orders and judgments as necessary.

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

28 **Costs recoverable.**

- 29 If the commissioner prevails in an action brought to district court under this chapter, the
30 court shall award the commissioner reasonable attorney's fees, investigation expenses, costs,
31 and other expenses associated with the action. All attorney's fees, investigation expenses,

1 costs, and other expenses received by the commissioner under this section must be deposited
2 into the attorney general's general operating fund.

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

5 **Civil penalties.**

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

11 **SECTION 13. AMENDMENT.** Section 4.1-59-09 of the North Dakota Century Code, as
12 created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative
13 assembly, is amended and reenacted as follows:

14 **4.1-59-09. Bond filed by grain buyer.**

- 15 1. Before a license is effective for a grain buyer under this chapter, the applicant for the
16 license shall file a bond with the commissioner which must:
- 17 a. Be in a sum not less than one hundred thousand dollars.
 - 18 b. Be continuous, unless the corporate surety by certified mail notifies the licensee
19 and the commissioner the surety bond will be canceled ninety days after receipt
20 of the notice of cancellation.
 - 21 c. Run to this state for the benefit of all persons selling grain to or through the grain
22 buyer.
 - 23 d. Be conditioned:
 - 24 (1) For the faithful performance of the licensee's duties as a grain buyer.
 - 25 (2) For compliance with the provisions of law and the rules of the commissioner
26 relating to the purchase of grain by the commissioner monthly.
 - 27 e. Be for the specific purpose of:
 - 28 (1) Protecting the sellers of grain.
 - 29 (2) Covering the costs incurred by the commissioner in the administration of the
30 licensee's insolvency.

- 1 f. Not accrue to the benefit of any person entering a credit-sale contract with a
2 grain buyer.
- 3 2. The aggregate liability of the surety under a bond does not accumulate for each
4 successive annual license renewal period during which the bond is in force but, for
5 losses during any annual license renewal period, is limited in the aggregate to the
6 bond amount stated or changed by appropriate endorsement or rider.
- 7 3. The commissioner shall set the amount of the bond and may require an increase in
8 the amount of a bond as the commissioner deems necessary to accomplish the
9 purposes of this section.
- 10 4. The amount of the bond for a grain buyer must be based on the dollar value of the
11 grain purchased, solicited, or merchandised.
- 12 5. A grain buyer shall report purchases, solicitations, and merchandising agreements to
13 the commissioner monthly.
- 14 6. The surety on the bond must be a corporate surety company, approved by the
15 commissioner and authorized to do business within the state. The commissioner may
16 accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu
17 of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument,
18 or a personal surety bond properly will protect the holders of outstanding receipts.

19 **SECTION 14. AMENDMENT.** Subparagraph a of paragraph 2 of subdivision m of
20 subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and
21 reenacted as follows:

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