

HOUSE BILL NO. 1340

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to amend and reenact section 19-03.1-22.3, subsections 1 and 7 of section
2 19-03.1-23, section 19-03.1-23.1, subsection 3 of section 19-03.4-03, section 19-03.4-04, and
3 subsection 29 of section 40-05-02, related to manufacturing, delivering, inhaling, ingesting, and
4 possessing marijuana and using and possessing marijuana paraphernalia; and to provide a
5 penalty.

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

7 **SECTION 1. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

- 10 1. Except as provided in subsection 2, a person who intentionally ingests, inhales, or
11 otherwise takes into the body a controlled substance, unless the substance was
12 obtained directly from a practitioner or pursuant to a valid prescription or order of a
13 practitioner while acting in the course of the practitioner's professional practice, is
14 guilty of a class A misdemeanor.
- 15 2. A person who intentionally ingests, inhales, or otherwise takes into the body
16 marijuana, unless the marijuana was obtained directly from a practitioner or pursuant
17 to a valid prescription or order of a practitioner while acting in the course of a
18 practitioner's professional practice, is guilty of an infraction.
- 19 3. The venue for a violation of this section exists in either the jurisdiction in which the
20 controlled substance was ingested, inhaled, or otherwise taken into the body or the
21 jurisdiction in which the controlled substance was detected in the body of the accused.

22 **SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-23 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 1 1. Except as authorized by this chapter, it is unlawful for any person to willfully, as
2 defined in section 12.1-02-02, manufacture, deliver, or possess with intent to
3 manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a
4 controlled substance by means of the internet, but any person who violates section
5 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who
6 violates this subsection with respect to:
- 7 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
8 methamphetamine, is guilty of a class A felony and must be sentenced:
- 9 (1) For a second offense, to imprisonment for at least five years.
10 (2) For a third or subsequent offense, to imprisonment for twenty years.
- 11 b. ~~Any~~Except for marijuana, other controlled substance classified in schedule I, II, or
12 III, or a controlled substance analog is guilty of a class B felony. ~~Except for a~~
13 ~~person who manufactures, delivers, or possesses with the intent to manufacture~~
14 ~~or deliver marijuana, any~~Any person found guilty under this subdivision must be
15 sentenced:
- 16 (1) For a second offense, to imprisonment for at least three years.
17 (2) For a third or subsequent offense, to imprisonment for ten years.
- 18 c. A substance classified in schedule IV, is guilty of a class C felony and must be
19 sentenced:
- 20 (1) For a second offense, to imprisonment for at least six months.
21 (2) For a third offense, to imprisonment for at least one year.
22 (3) For a fourth or subsequent offense, to imprisonment for five years.
- 23 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 24 e. Marijuana, is guilty of an infraction.

25 **SECTION 3. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a
28 controlled substance or a controlled substance analog unless the substance was
29 obtained directly from, or pursuant to, a valid prescription or order of a practitioner
30 while acting in the course of the practitioner's professional practice, or except as
31 otherwise authorized by this chapter, but any person who violates section 12-46-24 or

1 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided
2 in this subsection, any person who violates this subsection is guilty of a class C felony.
3 If, at the time of the offense the person is in or on, or within one thousand feet [300.48
4 meters] of the real property comprising a public or private elementary or secondary
5 school or a public career and technical education school, the person is guilty of a
6 class B felony, unless the offense involves ~~one ounce [28.35 grams] or less of~~
7 marijuana. Any person who violates this subsection regarding possession of ~~one~~
8 ~~ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor or an~~
9 infraction.

10 **SECTION 4. AMENDMENT.** Section 19-03.1-23.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

- 13 1. A person who violates section 19-03.1-23 is subject to the penalties provided in
14 subsection 2 if:
- 15 a. The offense involved the manufacture, delivery, or possession, with intent to
16 manufacture or deliver a controlled substance in or on, or within one thousand
17 feet [300.48 meters] of, the real property comprising a child care or preschool
18 facility, public or private elementary or secondary school, public career and
19 technical education school, or a public or private college or university;
 - 20 b. The defendant was at least sixteen years of age at the time of the offense and
21 the offense involved the delivery of a controlled substance to a minor;
 - 22 c. The offense involved:
 - 23 (1) Fifty grams or more of a mixture or substance containing a detectable
24 amount of heroin;
 - 25 (2) Fifty grams or more of a mixture or substance containing a detectable
26 amount of:
 - 27 (a) Coca leaves, except coca leaves and extracts of coca leaves from
28 which cocaine, ecgonine, and derivatives of ecgonine or their salts
29 have been removed;
 - 30 (b) Cocaine, its salts, optical and geometric isomers, and salts of
31 isomers;

- 1 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
2 (d) Any compound, mixture, or preparation that contains any quantity of
3 any of the substance referred to in subparagraphs a through c;
- 4 (3) Five grams or more of a mixture or substance described in paragraph 2
5 which contains cocaine base;
- 6 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
7 mixture or substance containing a detectable amount of phencyclidine;
- 8 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
9 mixture or substance containing a detectable amount of lysergic acid
10 diethylamide;
- 11 (6) Forty grams or more of a mixture or substance containing a detectable
12 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten
13 grams or more of a mixture or substance containing a detectable amount of
14 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
- 15 (7) Fifty grams or more of a mixture or substance containing a detectable
16 amount of methamphetamine;
- 17 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
18 mixture or substance containing a detectable amount of
19 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- 20 (9) One hundred dosage units or one-half liquid ounce of a mixture or
21 substance containing a detectable amount of gamma-hydroxybutyrate or
22 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
23 of gamma-hydroxybutyrate;
- 24 (10) One hundred dosage units or one-half liquid ounce of a mixture or
25 substance containing a detectable amount of flunitrazepam; or
- 26 (11) Five hundred grams or more of marijuana; or
- 27 d. The defendant had a firearm in the defendant's actual possession at the time of
28 the offense.
- 29 2. The offense is:
- 30 a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A
31 felony.

- 1 b. A class A felony if the violation of section 19-03.1-23 is designated as a class B
2 felony.
- 3 c. A class B felony if the violation of section 19-03.1-23 is designated as a class C
4 felony.
- 5 d. A class C felony if the violation of section 19-03.1-23 is designated as a class A
6 misdemeanor.
- 7 e. A class A misdemeanor if the violation of section 19-03.1-23 is designated as a
8 class B misdemeanor.
- 9 f. A class B misdemeanor if the violation of section 19-03.1-23 is an infraction.

10 **SECTION 5. AMENDMENT.** Subsection 3 of section 19-03.4-03 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 3. A person may not use or possess with intent to use drug paraphernalia to plant,
13 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
14 process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in
15 violation of chapter 19-03.1. A person violating this subsection is guilty of ~~a class A~~
16 ~~misdemeanor~~ an infraction.

17 **SECTION 6. AMENDMENT.** Section 19-03.4-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.**

20 A person may not deliver, possess with intent to deliver, or manufacture with intent to
21 deliver, drug paraphernalia, if that person knows or should reasonably know that the drug
22 paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture,
23 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain,
24 conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled
25 substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C
26 felony if the drug paraphernalia will be used to manufacture, compound, convert, produce,
27 process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than
28 marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this
29 section is ~~a class A misdemeanor~~ an infraction.

30 **SECTION 7. AMENDMENT.** Subsection 29 of section 40-05-02 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 29. Marijuana possession. To prohibit by ordinance any person, except a person operating
2 a motor vehicle, from possessing ~~not more than one-half ounce [14.175 grams]~~ of
3 marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to
4 prescribe the punishment, provided the penalty assessed is consistent with section
5 19-03.1-22.3 and subsections 1 and 7 of section 19-03.1-23 and is subject to
6 subsection 49 of section 19-03.1-23.