

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED 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 amend and reenact section 19-03.1-23.4 of the North Dakota
5 Century Code, relating to overdose prevention and immunity; and to provide a penalty; ~~and to~~
6 ~~provide an appropriation.~~

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

8 **SECTION 1. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **19-03.1-23.4. Overdose prevention and immunity.**

11 An individual is immune from criminal prosecution under sections 19-03.1-22.1,
12 19-03.1-22.3, and 19-03.1-22.5, subsection 7 of section 19-03.1-23, section 2 of this Act,
13 subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual seeks
14 medical assistance for another individual in need of emergency medical assistance due to a
15 drug overdose. To receive immunity under this section, the individual receiving immunity must
16 have remained on the scene until assistance arrived, cooperated with the medical treatment of
17 the reported drug overdosed individual, and the overdosed individual must have been in a
18 condition a layperson would reasonably believe to be a drug overdose requiring immediate
19 medical assistance. Neither the individual who experiences a drug-related overdose and is in
20 need of emergency medical assistance nor the cooperating individual seeking medical
21 assistance may be charged or prosecuted for the criminal offenses listed in this section or for
22 the sharing of controlled substances among those present. Immunity from prosecution under
23 this section does not apply unless the evidence for the charge or prosecution was obtained as a
24 result of the drug-related overdose and the need for emergency medical assistance. Good faith

1 does not include seeking medical assistance during the course of the execution of an arrest
2 warrant or search warrant or during a lawful search.

3 **SECTION 2.** A new section to chapter 19-03.1 of the North Dakota Century Code is created
4 and enacted as follows:

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

6 1. As used in this section:

7 a. "Consume" means to inject, ingest, or inhale a controlled substance.

8 b. "Controlled substance" includes derivatives or analogs to a scheduled controlled
9 substance.

10 c. "Injury" means an overdose that puts an individual's life at immediate risk.

11 d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to
12 supply or deliver a controlled substance.

13 2. An individual is guilty of causing death or injury by distributing a controlled substance if
14 the individual willfully ~~supplies another to deliver a controlled substance to an~~
15 ~~individual who consumes the controlled substance and that~~delivers a controlled
16 ~~substance, or supplies another to deliver or consume a controlled substance, and an~~
17 individual dies or is injured from overdosing after consuming a portion of ~~the~~that
18 controlled substance.

19 a. A violation of this section is a class A felony.

20 b. This section does not limit a conviction under chapter 12.1-16, but an individual
21 may not be found guilty of this section and an offense under chapter 12.1-16 if
22 the conduct arises out of the same course of conduct.

23 3. Venue for an offense under this section is in the county where the death or injury
24 occurred or any county where the controlled substance was directly or
25 indirectly obtained by the deceased or injured individual.

26 a. An individual may not be convicted in more than one county for the death or
27 injury of the same individual who overdosed on a controlled substance.

28 b. Notwithstanding chapter 29-03, an individual outside the state may be
29 prosecuted within the state under this section.

30 c. The charging document for a violation of this section must list an overt act in
31 which the individual engaged to violate this section.

- 1 d. Injury or death by an overdose may be proven by direct or circumstantial
2 evidence.
- 3 4. An individual may not be charged under this section if the individual supplied or
4 administered a controlled substance as part of a medical procedure or the individual
5 was in a lawful position to dispense a medication prescription.
- 6 a. An individual may not be charged under this section if the individual complied
7 with section 19-3.1-23.4.
- 8 b. It is not a defense to this section that the deceased or injured individual had other
9 controlled substances or alcohol in the individual's system which the defendant
10 did not supply at the time of an overdose.

11 **SECTION 3.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
12 enacted as follows:

13 **19-03.1-23.6. Fentanyl reporting - Report to legislative management.**

14 ~~1. As used in this section:~~

- 15 ~~a. "Health care provider" means a person licensed or certified by the state to~~
16 ~~provide health care services. The term includes emergency service personnel, a~~
17 ~~medical hospital, and a medical clinic.~~
- 18 ~~b. "Law enforcement agency" means a nonfederal public agency authorized by law~~
19 ~~or by a government agency or branch to enforce the law and to conduct or~~
20 ~~engage in investigations or prosecutions for violations of law. The term includes a~~
21 ~~multijurisdictional task force.~~
- 22 ~~2. Annually, a law enforcement agency and a health care provider shall provide to the~~
23 ~~attorney general a completed case report form for every death the agency or the~~
24 ~~provider encounters which is caused by, suspected to have been caused by, or is~~
25 ~~related to fentanyl consumption.~~
- 26 ~~a. The data and report compiled under this section are open records.~~
- 27 ~~b. The attorney general may require the reporting of additional information not~~
28 ~~specified in this section. The attorney general shall develop standard forms,~~
29 ~~processes, and deadlines for annual submission of fentanyl data by law~~
30 ~~enforcement agencies and health care providers.~~

1 ~~_____ c. If a law enforcement agency or health care provider fails to file a report within~~
2 ~~thirty days after the report is due, the attorney general may compel compliance~~
3 ~~by any means until the report is filed.~~

4 ~~_____ d. By November first of each year, the attorney general~~ department of health and
5 ~~human services shall submit to the legislative management and the governor a written report~~
6 ~~summarizing the number of deaths that occurred in the state caused by or related to fentanyl~~
7 ~~consumption during the preceding calendar year. The attorney general shall make the report~~
8 ~~available on the attorney general's website.~~

9 ~~_____ SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is created~~
10 ~~and enacted as follows:~~

11 ~~_____ Opioid settlement fund.~~

12 ~~_____ There is created in the state treasury an opioid settlement fund. The fund consists of opioid~~
13 ~~litigation funds received by the state. Moneys received by the state as a result of opioid litigation~~
14 ~~must be deposited in the fund. Moneys in the fund may be used as authorized by legislative~~
15 ~~appropriation. The legislative assembly shall consult with the governor in determining the use of~~
16 ~~the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand,~~
17 ~~or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or~~
18 ~~distribution of opioids in this state or other alleged illegal actions that contributed to the~~
19 ~~excessive use of opioids.~~

20 ~~_____ SECTION 4. APPROPRIATION -- DEPARTMENT OF HEALTH AND HUMAN SERVICES --~~
21 ~~FENTANYL AWARENESS EXPANSION. There is appropriated out of any moneys from the~~
22 ~~opioid settlement fund, not otherwise appropriated, the sum of \$1,500,000, or so much of the~~
23 ~~sum as may be necessary, to the department of health and human services for the purpose of~~
24 ~~providing and expanding statewide awareness of the fentanyl drug and overdose epidemic, for~~
25 ~~the biennium beginning July 1, 2023, and ending June 30, 2025.~~