

SENATE BILL NO. 2444

Introduced by

Senators G. Nelson, Lyson, C. Nelson

Representatives Carlisle, DeKrey, Mahoney

1 A BILL for an Act to create and enact section 19-03.1-22.1, a new subsection to section
2 19-03.1-37, and chapter 19-03.4 of the North Dakota Century Code, relating to volatile
3 chemicals and drug paraphernalia; to amend and reenact subsection 1 of section 15.1-24-05,
4 subsection 7 of section 19-03.1-23, section 19-03.1-23.2, subsection 6 of section 19-03.1-36,
5 and subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to drug
6 offenses; to repeal section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota Century
7 Code, relating to volatile chemicals and drug paraphernalia; and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 15.1-24-05 of the 1999
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 1. A law enforcement agency shall notify a school principal in writing if the agency
12 has probable cause to believe that a student enrolled in the school has violated
13 section 5-01-08, ~~19-03.1-23~~, chapter 19-03.1, chapter 19-03.2, chapter 19-03.4,
14 section 39-08-01, or section 39-08-18. The law enforcement agency shall provide
15 the notice within two weeks of an incident.

16 **SECTION 2.** Section 19-03.1-22.1 of the North Dakota Century Code is created and
17 enacted as follows:

18 **19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions -**
19 **Penalty.** An individual is guilty of a class B misdemeanor if that individual intentionally inhales
20 the vapors of a volatile chemical in a manner designed to affect the individual's central nervous
21 system; to create or induce a condition of intoxication, hallucination, or elation; or to distort,
22 disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This
23 section does not apply to inhalations specifically prescribed for medical, dental, or optometric

1 treatment purposes or to controlled substances described in this chapter. For the purposes of
2 this section, "volatile chemical" includes the following chemicals or their isomers:

- 3 1. Acetone.
- 4 2. Aliphatic hydrocarbons.
- 5 3. Amyl nitrite.
- 6 4. Butane.
- 7 5. Butyl nitrite.
- 8 6. Carbon tetrachloride.
- 9 7. Chlorinated hydrocarbons.
- 10 8. Chlorofluorocarbons.
- 11 9. Chloroform.
- 12 10. Cyclohexane.
- 13 11. Diethyl ether.
- 14 12. Ethyl acetate.
- 15 13. Fluorocarbon.
- 16 14. Glycol ether inter solvent.
- 17 15. Glycol ether solvent.
- 18 16. Hexane.
- 19 17. Ketone solvent.
- 20 18. Methanol.
- 21 19. Methyl cellosolve acetate.
- 22 20. Methyl ethyl ketone.
- 23 21. Methyl isobutyl ketone.
- 24 22. Nitrous oxide.
- 25 23. Petroleum distillate.
- 26 24. Toluene.
- 27 25. Trichloroethane.
- 28 26. Trichloroethylene.
- 29 27. Xylol or xylene.

30 **SECTION 3. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the 1999
31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 7. A person who violates this chapter or chapter 19-03.4 must undergo a drug
2 addiction evaluation by an appropriate licensed addiction treatment program. The
3 evaluation must indicate the prospects for rehabilitation and whether addiction
4 treatment is required. The evaluation must be submitted to the court for
5 consideration when imposing punishment for a felony violation of this chapter or
6 chapter 19-03.4, and may be submitted before or after the imposing of punishment
7 for a misdemeanor violation of this chapter or chapter 19-03.4.

8 **SECTION 4. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code
9 is amended and reenacted as follows:

10 **19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended**

11 **sentence limited.** Whenever a mandatory term of imprisonment is prescribed as a penalty for
12 violation of this chapter, the court may not defer imposition of sentence, nor may the court
13 suspend any part of a specified mandatory term, either at the time of or after the imposition of
14 the sentence, unless the court first finds that the offense was the defendant's first violation of
15 this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating
16 circumstances exist which justify a suspension. The court shall announce the circumstances
17 that justify a suspension in open court when sentence is imposed and recite these
18 circumstances in the sentence or order suspending part of the sentence.

19 **SECTION 5. AMENDMENT.** Subsection 6 of section 19-03.1-36 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 6. Controlled substances as defined in this chapter and imitation controlled
22 substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or
23 offered for sale in violation of this chapter and drug paraphernalia as defined in
24 chapter ~~42.1-31.4~~ 19-03.4 are contraband and must be seized and summarily
25 forfeited to the state. Controlled substances as defined in this chapter and
26 imitation controlled substances as defined in chapter 19-03.2, which are seized or
27 come into the possession of the state and drug paraphernalia as defined in chapter
28 ~~42.1-31.4~~ 19-03.4, the owners of which are unknown, are contraband and must be
29 summarily forfeited to the state.

30 **SECTION 6. AMENDMENT.** Subsection 4 of section 19-03.1-37 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 4. In all prosecutions under this chapter, chapter 19-03.2, or chapter ~~12-1-31.1~~
2 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of
3 the analytical report signed by the state toxicologist, or the toxicologist's designee,
4 or the director of the forensic sciences division of the state department of health, or
5 the director's designee, must be accepted as prima facie evidence of the results of
6 the analytical findings.

7 **SECTION 7.** A new subsection to section 19-03.1-37 of the North Dakota Century Code
8 is created and enacted as follows:

9 In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state
10 is not required to prove or establish that a conspirator knew the other person to the
11 agreement intended to deliver or possess with intent to deliver a controlled
12 substance, an imitation controlled substance, or drug paraphernalia to a third
13 person.

14 **SECTION 8.** Chapter 19-03.4 of the North Dakota Century Code is created and
15 enacted as follows:

16 **19-03.4-01. Definition - Drug paraphernalia.** In this chapter, unless the context
17 otherwise requires, "drug paraphernalia" means all equipment, products, and materials of any
18 kind which are used, intended for use, or designed for use in planting, propagating, cultivating,
19 growing, harvesting, manufacturing, compounding, converting, producing, processing,
20 preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting,
21 ingesting, inhaling, or otherwise introducing into the human body a controlled substance in
22 violation of chapter 19-03.1. The term includes:

- 23 1. Kits used, intended for use, or designed for use in planting, propagating,
24 cultivating, growing, or harvesting of any species of plant which is a controlled
25 substance or from which a controlled substance can be derived.
26 2. Kits used, intended for use, or designed for use in manufacturing, compounding,
27 converting, producing, processing, or preparing controlled substances.
28 3. Isomerization devices used, intended for use, or designed for use in increasing the
29 potency of any species of plant which is a controlled substance.
30 4. Testing equipment used, intended for use, or designed for use in identifying or in
31 analyzing the strength, effectiveness, or purity of controlled substances.

- 1 5. Scales and balances used, intended for use, or designed for use in weighing or
2 measuring controlled substances.
- 3 6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and
4 lactose, used, intended for use, or designed for use in cutting controlled
5 substances.
- 6 7. Separation gins and sifters used, intended for use, or designed for use in removing
7 twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- 8 8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended
9 for use, or designed for use in compounding, manufacturing, producing,
10 processing, or preparing controlled substances.
- 11 9. Capsules, balloons, envelopes, and other containers used, intended for use, or
12 designed for use in packaging small quantities of controlled substances.
- 13 10. Containers and other objects used, intended for use, or designed for use in storing
14 or concealing controlled substances or products or materials used or intended for
15 use in manufacturing, producing, processing, or preparing controlled substances.
- 16 11. Hypodermic syringes, needles, and other objects used, intended for use, or
17 designed for use in parenterally injecting controlled substances into the human
18 body.
- 19 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or
20 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human
21 body including:
 - 22 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
23 screens, permanent screens, hashish heads, or punctured metal bowls.
 - 24 b. Water pipes.
 - 25 c. Carburetion tubes and devices.
 - 26 d. Smoking and carburetion masks.
 - 27 e. Objects, sometimes commonly referred to as roach clips, used to hold burning
28 material, for example, a marijuana cigarette, that has become too small or too
29 short to be held in the hand.
 - 30 f. Miniature cocaine spoons and cocaine vials.
 - 31 g. Chamber pipes.

1 h. Carburetor pipes.

2 i. Electric pipes.

3 j. Air-driven pipes.

4 k. Chillums.

5 l. Bongs.

6 m. Ice pipes or chillers.

7 13. Ingredients or components to be used or intended or designed to be used in
8 manufacturing, producing, processing, preparing, testing, or analyzing, whether or
9 not otherwise lawfully obtained, including anhydrous ammonia, nonprescription
10 medications, or lawfully dispensed controlled substances.

11 **19-03.4-02. Drug paraphernalia - Guidelines.** In determining whether an object is
12 drug paraphernalia, a court or other authority shall consider, in addition to all other logically
13 relevant factors:

14 1. Statements by an owner or by anyone in control of the object concerning its use.

15 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under
16 any state or federal law relating to any controlled substance.

17 3. The proximity of the object, in time and space, to a direct violation of chapter
18 19-03.1.

19 4. The proximity of the object to controlled substances.

20 5. The existence of any residue of controlled substances on the object.

21 6. Direct or circumstantial evidence of the intent of an owner, or of any person in
22 control of the object, to deliver the object to another person whom the owner or
23 person in control of the object knows, or should reasonably know, intends to use
24 the object to facilitate a violation of chapter 19-03.1. The innocence of an owner,
25 or of any person in control of the object, as to a direct violation of chapter 19-03.1
26 may not prevent a finding that the object is intended or designed for use as drug
27 paraphernalia.

28 7. Instructions, oral or written, provided with the object concerning the object's use.

29 8. Descriptive materials accompanying the object which explain or depict the object's
30 use.

31 9. National and local advertising concerning the object's use.

- 1 10. The manner in which the object is displayed for sale.
- 2 11. Whether the owner, or anyone in control of the object, is a legitimate supplier of
3 like or related items to the community, for example, a licensed distributor or dealer
4 of tobacco products.
- 5 12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the
6 total sales of the business enterprise.
- 7 13. The existence and scope of legitimate uses for the object in the community.
- 8 14. Expert testimony concerning the object's use.
- 9 15. The actual or constructive possession by the owner or by a person in control of the
10 object or the presence in a vehicle or structure where the object is located of
11 written instructions, directions, or recipes to be used, or intended or designed to be
12 used, in manufacturing, producing, processing, preparing, testing, or analyzing a
13 controlled substance.

14 **19-03.4-03. Unlawful possession of drug paraphernalia.** A person may not use or
15 possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest,
16 manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store,
17 contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled
18 substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C
19 felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture,
20 compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a
21 controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.
22 Otherwise, a violation of this section is a class A misdemeanor.

23 **19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia.** A person
24 may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug
25 paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will
26 be used to plant, propogate, cultivate, grow, harvest, manufacture, compound, convert,
27 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
28 inhale, or otherwise introduce into the human body a controlled substance in violation of
29 chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug
30 paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test,
31 inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in

1 schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A
2 misdemeanor.

3 **19-03.4-05. Unlawful delivery of drug paraphernalia to a minor.** A person eighteen
4 years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person
5 under eighteen years of age who is at least three years the deliverer's junior. Any person
6 violating this section is guilty of a class C felony.

7 **19-03.4-06. Unlawful advertisement of drug paraphernalia.** A person may not place
8 an advertisement in any newspaper, magazine, handbill, or other publication if that person
9 knows or should reasonably know that the purpose of the advertisement, in whole or in part, is
10 to promote the sale of objects designed or intended for use as drug paraphernalia. Any person
11 violating this section is guilty of a class A misdemeanor.

12 **SECTION 9. REPEAL.** Section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota
13 Century Code are repealed.