

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1346

Introduced by

Representatives Thoreson, Horter, Kingsbury

Senators Flakoll, Klein, O'Connell

1 A BILL for an Act to amend and reenact section 19-03.4-08 of the North Dakota Century Code,  
2 relating to retail sale of a methamphetamine precursor drug; and to provide a penalty.

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

4 **SECTION 1. AMENDMENT.** Section 19-03.4-08 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **19-03.4-08. Retail or over-the-counter sale of methamphetamine precursor**  
7 **drugs - Penalty.**

- 8 1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:
- 9 a. Sales in packages containing not more than a total of ~~three~~ two grams of one  
10 or more methamphetamine precursor drugs, calculated in terms of ephedrine  
11 HCl and pseudoephedrine HCl; and
- 12 b. Sales in blister packs, each blister containing not more than two dosage units,  
13 or when the use of blister packs is technically infeasible, sales in unit dose  
14 packets or pouches.
- 15 2. A person may not deliver in a single over-the-counter sale more than two  
16 packages of a methamphetamine precursor drug or a combination of  
17 methamphetamine precursor drugs.
- 18 3. When offering a methamphetamine precursor drug for retail sale, a person shall do  
19 at least one of the following:
- 20 a. Maintain continuous recorded video surveillance of the portion of the  
21 premises where the methamphetamine precursor drug is displayed for sale  
22 and place signs or placards giving notice to the public of the surveillance;
- 23 b. Place the methamphetamine precursor drug behind a counter or other barrier  
24 accessible only to the person making the sale of the drug;

- 1           c. Place the methamphetamine precursor drug in the line of sight of the person  
2           making the sale of the drug;
- 3           d. Display only one package of any brand or type of a methamphetamine  
4           precursor drug for purchase in an area accessible to the public; or
- 5           e. Require, obtain, and make a written record of the identification of the person  
6           purchasing the methamphetamine precursor drug. The identification must  
7           consist of a document issued by a government agency as described in  
8           subdivisions a and b of subsection 5.
- 9           4. A person may not deliver in an over-the-counter sale a methamphetamine  
10          precursor drug to a person under the age of eighteen years.
- 11         ~~4.~~ 5. It is a prima facie case of a violation of subsection ~~3~~ 4 if the person making the  
12          sale did not require and obtain proof of age from the purchaser, unless from the  
13          purchaser's outward appearance the person would reasonably presume the  
14          purchaser to be twenty-five years of age or older. "Proof of age" means a  
15          document issued by a governmental agency which:
- 16                 a. Contains a description of the person or a photograph of the person, or both,  
17                 and gives the person's date of birth; and
- 18                 b. Includes a passport, military identification card, or driver's license.
- 19         ~~5.~~ 6. It is an affirmative defense to a violation of subsection ~~3~~ 4 if:
- 20                 a. The person making the sale required and obtained proof of age from the  
21                 purchaser;
- 22                 b. The purchaser falsely represented the purchaser's proof of age by use of a  
23                 false, forged, or altered document;
- 24                 c. The appearance of the purchaser was such that an ordinary and prudent  
25                 person would believe the purchaser to be at least eighteen years of age; and
- 26                 d. The sale was made in good faith and in reliance upon the appearance and  
27                 representation of proof of age of the purchaser.
- 28         ~~6.~~ 7. This section does not apply to pediatric products labeled pursuant to federal  
29          regulation primarily intended for administration to children under twelve years of  
30          age according to label instructions or to a product that the state board of  
31          pharmacy, upon application of a manufacturer, exempts from this section because

1           the product has been formulated in such a way as to effectively prevent the  
2           conversion of the active ingredient into methamphetamine, or its salts or  
3           precursors.

4       ~~7.~~ 8. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A  
5       person who willfully violates subsection 2 ~~or~~, 3, or 4 is guilty of an infraction.

6       ~~8.~~ 9. A person who is the owner, operator, or manager of the retail outlet or who is the  
7       supervisor of the employee or agent committing a violation of this section of the  
8       outlet where methamphetamine precursor drugs are available for sale is not  
9       subject to the penalties of this section if the person:

10       a. Did not have prior knowledge of, participate in, or direct the employee or  
11       agent to commit, the violation of this section; and

12       b. Documents that the employee or agent, at the time of initial employment and  
13       each calendar year thereafter, participated in a training program approved by  
14       the attorney general providing the employee or agent with information  
15       regarding the state and federal regulations governing the sale, possession,  
16       and packaging of such drugs.

17       The approval of the training program by the attorney general is not subject to  
18       chapter 28-32.

19       ~~9.~~ 10. A political subdivision, including a home rule city or county, may not enact any  
20       ordinance relating to the sale by a retail distributor of over-the-counter products  
21       containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing  
22       ordinance is void.