

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2251  
(Senators Olafson, Nodland, Triplett)  
(Representatives Conklin, Maragos, Rohr)

AN ACT to amend and reenact subsection 1 of section 19-03.1-23 and subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to manufacture, delivery, or possession with intent to manufacture or deliver controlled substances.

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

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

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
  - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least five years.
    - (2) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III; is guilty of a class B felony, ~~except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony.~~ Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a second offense, to imprisonment for at least three years.
    - (2) For a third or subsequent offense, to imprisonment for ten years.
  - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
    - (1) For a second offense, to imprisonment for at least six months.
    - (2) For a third offense, to imprisonment for at least one year.
    - (3) For a fourth or subsequent offense, to imprisonment for five years.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense involved the manufacture or distribution of, delivery, or possession, with intent to manufacture or deliver a controlled substance in or on, or within one thousand

feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public career and technical education school, or a public or private college or university;

- b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor;
- c. The offense involved:
  - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
  - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
    - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
    - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
    - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
    - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
  - (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
  - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
  - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
  - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
  - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
  - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine,  $C_{11}H_{15}NO_2$ ;
  - (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
  - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
  - (11) Five hundred grams or more of marijuana; or
- d. The defendant had a firearm in the defendant's actual possession at the time of the offense.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2251.

Senate Vote:    Yeas 46            Nays 0            Absent 1

House Vote:    Yeas 92            Nays 0            Absent 2

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State