

2013 HOUSE JUDICIARY

HB 1133

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1133
January 21, 2013
17434

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

North Dakota Century Code relating to controlled substance analogs; and to provide a penalty.

Minutes:

Testimony 1,2,3

Chairman Koppelman: Opens

Rep Larson: Define an analog. Working with Attorney Generals Office and we have some amendments to this bill that will be proposed. (Please see testimony 1)

Wayne Stenehjem: Supports HB 1133, asks Julie Lawyer from the Attorney Generals Office to play a recording from an individual that is on one of substances.

Julie Lawyer, Attorney Generals Office: Goes through Testimony 1.

Rep Kretschmar: Who would determine is the substance is similar? Doctor, Scientist, Courts???

Julie: State crime lab.

Chairman Koppelman: How will the change in language affect the court of law?

Julie: This language was taken from the Federal statute that is in place now that was utilized to charge the individuals that were on these types of substances in Grand Forks and East Grand Forks children. About 26 states have an analog statute and that language is what they use. It has been challenged in Courts but has upheld.

Scott Davis, Indian Affairs: Supports HB 1133

Sandy Thompson, Program Administrator of West Central Human Service Center: Neutral testimony. (Please see testimony 3)

Rep Brabandt: How long can it be detected?

Sandy: We really don't know, the chemical make- up is ever changing.

Chairman Koppelman: Another question for Julie. Are there products out there that are being used for synthetics that are a necessity, not just bath salts?

Julie: Only if the chemical make-up would be substantially similar to that of a scheduled 1 or 2 substance.

Chairman Koppelman: Would this statute capture, say what was referred to quite some time ago, sniffing paint?

Julie: no

Rep Boehning: How will this stop online buying, I can get it from California right now.

Julie: We cannot initial stop it from coming in from other states, but when we do discover the distributor we can still go after them for violating ND law.

Rep Boehning: If you can't get it here, you can from China.

Julie: That is true but we do our best to get the source.

Rep Hanson: What are the border state laws?

Julie: I don't have that right in front of me, don't know specifics.

Chairman Koppelman: Does this seem to be a regional problem?

Julie: It is a nationwide problem.

Chairman Koppelman: Are other states cooperative if the source/distribution is found in another state? Extraditing?

Julie: Yes, we work with Federal agencies.

Rep Brabandt: About how many shops in the state?

Julie: I have a list, it was about a dozen.

Mark Hardy, PharmD, Assistant Executive Director of the North Dakota State Board of Pharmacy: Testimony 3.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1133
Job 17623
DATE January 23, 2013

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to controlled substance analogs; and to provide a penalty.

Minutes:

Chairman Kim Koppelman: Chairman Koppelman stated the hearing was closed already but the family from Grand Forks was given the opportunity to present since they could not be present for the original hearing on HB 1133.

Rep. Diane Larson: Introduced Mr. and Mrs. Bjork the parents of Christian from Grand Forks to better understand the problem of synthetic drugs in the state.

Debbie Bjork: She stated Christian Bjork was her son and died June 11, 2012 at the age of 18 from ingesting a synthetic drug. She stated the night after her son's death a 17 year old died from ingesting the same drug and from the same drug dealer. She testified about Christian, his growing up in the family and the grief they are experiencing. Christian offered to give an acquaintance a ride on the night of his death and took him to a house he had not been to before. This individual had a long criminal history but they did not know as the offenses occurred when he was a minor. There was also a warrant out for this individuals arrest that night. The police found drugs and drug paraphernalia and a pay-owe sheet in the home the next day. The case is being federally prosecuted and there have been 12 arrests so far. All of them have plead guilty so far. This was done by a small group of college students brining industrial grade chemicals from a firm in Houston, Texas. They were producing and circulating synthetic drugs the drugs for money. They were distributing marijuana, cocaine, ecstasy pills, and acid. The target group was the young teens and young adults. Delivery methods was mixing the drugs with melted chocolate or diluting it with a stabilizing agent and putting it on blotter paper. These drugs raise your heartbeat, body temperature, and blood pressure to unsustainable levels. Witnesses at the scene said Christian asked for help as he didn't feel well. When those at that home started acting irrationally they were kicked out of the home as the mother of one of them was home. Christian went to the house next door for help they did not come to the door. He was vomiting and screaming before he died. None of the adults at this home have ever been charged. Christian's autopsy revealed he had ingested two drugs, although he was told it was a pure extract of mushrooms and would be harmless. The 17 year old who died the next night died under similar circumstances. There were other teens there, a parent was home, he acted irrationally he was screaming, vomiting and banging his head and no called for help for him. Four other criminals were recently arrested in Houston, Texas as they were bringing these chemicals from China, Asia and Europe. She asked the language in the law be broad enough to cover further analogs variations of these drugs. She said there is trip videos posted on line which shows how it looks when you are high, how much to take, when to take it and who to take it with. She asked for support in this law to help protect other young lives.

Mr. Bjork: He stated until June 11 the community was unaware of the drugs available that can kill. Christian licked his finger and put it on his tongue, it was enough to cover the tip of a ballpoint pen but enough to kill him. He discussed conversations he had with his children regarding drugs and life lessons. He discussed the impact of the drugs on the streets and the number of people it has impacted.

Chairman Kim Koppelman: Invited the family to stay at the committee hearing for further discussion.

Rep. Larson: Made a motion to accept the amendments.

Rep. Boehing: Second the motion.

Rep. Diane Larson: Explained the proposed amendments.

Voice vote on the amendments carried.

Rep. Larson: Made a motion of do pass on HB 1133.

Rep. Hogan: seconds the motion.

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Rep. Lois Delmore: will carry the bill to the floor.

Chairman Kim Koppelman: Closed the hearing.

January 24, 2013

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, line 1, after "A BILL" replace the remainder of the bill with "to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to controlled substance analogs; to amend and reenact subsection 7 of section 12-44.1-21, subsection 7 of section 12-47-21, subsection 5 of section 12-46-24, section 19-03.1-01, subdivision b of subsection 1 of section 19-03.1-23, and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to controlled substance analogs; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, e-mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, e-mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 2. AMENDMENT. Subsection 5 of section 12-46-24 of the North Dakota Century Code is amended and reenacted as follows:

5. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~.

SECTION 3. AMENDMENT. Subsection 7 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~. As used in this section, "willfully" is as

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defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 4. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
 - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "Controlled substance analog":
 - a. Means a substance:

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(1) With a chemical structure substantially similar to the chemical structure of a schedule I or II controlled substance; or

(2) That is used:

(a) To affect the individual's central nervous system;

(b) To create or induce a condition of intoxication, hallucination, or elation; or

(c) To distort, disturb, or change the individual's eyesight, thinking process, balance, or coordination in a substantially similar manner as a schedule I or II controlled substance.

b. Does not include an alcoholic beverage.

8. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

8-9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.

9-10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10-11. "Dispenser" means a practitioner who dispenses.

11-12. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

12-13. "Distributor" means a person who distributes.

13-14. "Drug" means:

- a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;
- b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
- c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
- d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.

14-15. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every

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compound, manufacture, salt, derivative, mixture, or preparation of the resin.

~~45~~.16. "Immediate precursor" means a substance:

- a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
- b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
- c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

~~46~~.17. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
- b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~47~~.18. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~48~~.19. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
- c. Opium poppy and poppy straw.

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- d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- ~~19-20.~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.
- ~~20-21.~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- ~~21-22.~~ "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.
- ~~22-23.~~ "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- ~~23-24.~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- ~~24-25.~~ "Practitioner" means:
- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.
 - b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- ~~25-26.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- ~~26-27.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.
- ~~27-28.~~ "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

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- ~~28-29.~~ "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.
- ~~29-30.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 5. AMENDMENT. Subdivision b of subsection 1 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

- b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B 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.

SECTION 6. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

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

Controlled substance analog use - Venue for violation - Penalty.

1. The use of controlled substance analog includes the ingestion, inhalation, absorption, or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C felony, unless the individual obtains the analog

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directly from a practitioner or pursuant to a valid prescription or order of a practitioner.

2. The venue for a violation under this section exists in the jurisdiction in which the substance was used or in which the substance was detected.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-23-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1133

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Larson Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote - Carried.

Date: 1-23-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1133

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Delmore

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1133: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1133 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to controlled substance analogs; to amend and reenact subsection 7 of section 12-44.1-21, subsection 7 of section 12-47-21, subsection 5 of section 12-46-24, section 19-03.1-01, subdivision b of subsection 1 of section 19-03.1-23, and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to controlled substance analogs; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communication device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, e-mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, e-mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 2. AMENDMENT. Subsection 5 of section 12-46-24 of the North Dakota Century Code is amended and reenacted as follows:

5. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~.

SECTION 3. AMENDMENT. Subsection 7 of section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

7. As used in this section, "controlled substance" is as defined in ~~subsection 6 of section 19-03.1-01~~ and includes counterfeit substances as defined in ~~subsection 7 of section 19-03.1-01~~. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing. As used in this section, a wireless electronic communications device includes a cellular telephone, personal digital assistant, pager, mobile broadband card, internet router, digital camera, two-way radio, modem, or any other electronic device capable of wireless transmission, reception, interception, or storage of oral communications, text, electronic

mail, video or photograph images, data signals, or radio communications, and also includes a component of a wireless electronic device, regardless whether the component itself is able to transmit, store, or receive oral communications, text, electronic mail, video or photograph images, data signals, or radio communications. A wireless electronic communications device does not include a medically prescribed device or any other device approved by the department.

SECTION 4. AMENDMENT. Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions.

As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
 - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.
7. "Controlled substance analog":
 - a. Means a substance:
 - (1) With a chemical structure substantially similar to the chemical structure of a schedule I or II controlled substance; or
 - (2) That is used:
 - (a) To affect the individual's central nervous system;
 - (b) To create or induce a condition of intoxication, hallucination, or elation; or
 - (c) To distort, disturb, or change the individual's eyesight, thinking process, balance, or coordination in a substantially similar manner as a schedule I or II controlled substance.

- b. Does not include an alcoholic beverage.
8. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- 8-9. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
- 9-10. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- 10-11. "Dispenser" means a practitioner who dispenses.
- 11-12. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- 12-13. "Distributor" means a person who distributes.
- 13-14. "Drug" means:
- a. Substances recognized as drugs in the official United States pharmacopeia national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;
 - b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
 - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
 - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
- 14-15. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.
- 15-16. "Immediate precursor" means a substance:
- a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
 - b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
 - c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.
- 16-17. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either

directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
- b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~17-18.~~ "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~18-19.~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
- c. Opium poppy and poppy straw.
- d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~19-20.~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.

~~20-21.~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.

~~21-22.~~ "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.

- ~~22-23.~~ "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- ~~23-24.~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- ~~24-25.~~ "Practitioner" means:
- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.
 - b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- ~~25-26.~~ "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- ~~26-27.~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.
- ~~27-28.~~ "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.
- ~~28-29.~~ "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States.
- ~~29-30.~~ "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

SECTION 5. AMENDMENT. Subdivision b of subsection 1 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

- b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B 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.

SECTION 6. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony. If, at the time of the offense the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

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

Controlled substance analog use - Venue for violation - Penalty.

1. The use of controlled substance analog includes the ingestion, inhalation, absorption, or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C felony, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner.
2. The venue for a violation under this section exists in the jurisdiction in which the substance was used or in which the substance was detected.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2013 SENATE JUDICIARY

HB 1133

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1133
3/13/2013
Job #19828

☐ Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to controlled substance analogs

Senator David Hogue - Chairman

Representative Diane Larson - District 30 - Introduces the bill. See written testimony. **(1)** Senator Grabinger asks her about HB1070 and if it didn't go far enough. Rep. Larson explains that 1070 addressed all of the analogs we are aware of to this point. She says this bill broadens that to not have to be something that is specifically listed in there and to be able to capture those things where they can make those chemical changes in order to sell bath salts and incense to mimic other controlled drugs. She adds that 1070 is very important because it specifically lists out those things that are identified and are illegal. Rep. Larson says they have been selling these substances in ND as legal substances until we get them listed on the controlled substance list.

Wayne Stenehjem - Attorney General - Mr. Stenehjem says this is an enormous problem and the drugs are in a constant state of change. He says it is not uncommon that several new drugs are identified every week. He explains the challenge this is to the lab. He relates that since we passed 1070 last week the crime lab says there are six potential new substances that crime labs across the country are becoming aware of. He points out that this bill is designed and intended to be a catch all, those things not specifically listed by chemical name, by chemical compound contained in HB1070. He passes around an example of some of the confiscated packages. He gives the committee a handout **(2)** and explains the handout. He suggests the committee wait about a week before acting to see if the crime lab can find out if those additional substances that just became aware of are listed in 1070 or can be amended into this bill. He urges a do pass on this bill. Senator Hogue asks the Attorney General if there is a parallel federal provision. Mr. Stenehjem says that every state is struggling with trying to come up with a way to deal with all the constantly changing substances as is the federal government.

Debbie Bjerk - Grand Forks - Relates her story on the death of her son from a synthetic drug overdose.

Keith Bjerk - Grand Forks - Mr. Bjerk speaks of his son Christian and the impact of his death on the family.

Dr. Matthew Zimny - ER Physician - Representing him-self - Dr. Zimny explains the effects of these drugs, some suicidal some homicidal. Senator Hogue asks him about the demographic that he sees from this. Dr. Zimny replies generally young people but not all. He adds that when they come into the ER the physicians need to figure out what they took and then sedate them to get them to calm down and do what they can to prevent some of the secondary effects from the overdose. He said because these chemicals are untested and not used for anything they don't know how much it takes to do xyz. Senator Grabinger asks if these are addictive drugs to which Dr. Zimny replies they don't know because they are new and don't have years of data to know what they do or don't. He speculates they are addictive.

Jackson Lofgren - Assistant States Attorney, Morton County - Urges a do pass. He relays his experience in dealing with these people.

Opposition - none

Neutral

Sandy Thompson - Program Administrator for West Central Human Service Center for the Department of Human Services. - See written testimony **(3)**

Close the hearing on HB1133

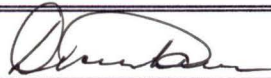
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1133
3/26/2013
Job #20500

☐ Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Hogue proposes an amendment to the bill (1). He explains that it is a definition of a controlled substance analog. He says the amendment is the federal statute. He goes on to explain that the Attorney General likes this because it has been used and litigated. He relays that the concept of the bill is to include substances that are illegal but also to have a law that is a catch all that can keep up with those that are manufacturing controlled substances. Senator Berry explains to the committee schedule one and two controlled substances.

Senator Nelson moves the amendment, 13.0414.03001
Senator Sitte seconded

Verbal vote - all yes

Senator Sitte moves a do pass as amended
Senator Nelson seconded

Discussion

Committee discusses the wording of alcohol beverage. Senator Armstrong says alcohol does not fit into the controlled substance definition.

Vote - 7 yes, 0 no

Senator Hogue will carry



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1133

Page 1, line 1, after "BILL" insert "for an Act"

Page 3, replace lines 18 through 29 with:

"7. "Controlled substance analog":

- a. Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II and:
 - (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
- b. Does not include:
 - (1) A controlled substance;
 - (2) Any substance for which there is an approved new drug application;
 - (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug and Cosmetic Act [21 U.S.C 355] to the extent conduct with respect to the substance is pursuant to the exemption; or
 - (4) Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance."

Renumber accordingly

Date: 3/26/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1133

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0414.03001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Nelson Seconded By S Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	1		Senator Carolyn Nelson	1	
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) 1 No 0

Absent Verbal - all yes

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/26/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1133

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Little Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	<input checked="" type="checkbox"/>		Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson	<input checked="" type="checkbox"/>				
Senator Spencer Berry	<input checked="" type="checkbox"/>				
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent _____

Floor Assignment S. Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1133, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1133 was placed on the Sixth order on the calendar.

Page 1, line 1, after "BILL" insert "for an Act"

Page 3, replace lines 18 through 29 with:

"7. "Controlled substance analog":

- a. Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II and:
 - (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
- b. Does not include:
 - (1) A controlled substance;
 - (2) Any substance for which there is an approved new drug application;
 - (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug and Cosmetic Act [21 U.S.C 355] to the extent conduct with respect to the substance is pursuant to the exemption; or
 - (4) Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1133

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1133
JOB # 21165
Date April 16, 2013

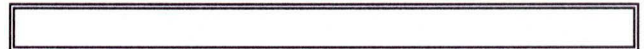
☒ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to control substance analogs; to provide a penalty; and to declare an emergency.

Minutes:



Members present: Rep. Kretschmar, chairman; Rep. Larson, Rep. Delmore; Senator Armstrong, Senator Sitte, Senator Nelson.

Rep. Bill Kretschmar: Opened the Conference Committee on HB 1133. Please explain the Senate amendments.

Sen. Armstrong: Explained the Senate amendments and definitions. Subsection 7: Bottom of page 3, and page 4 lines 1-7.

Rep. Diane Larson: All of the language that the Legislative Council and I came up with the Attorney General they deleted all that language to describe what an analog is. During the Senate hearing the chairman asked what other states use. The Senate deleted our language and put in the language from the controlled substance analog for the federal statute. This controlled substance act went into effect in 1994. My concern was with number 4 part of the amendment, as I don't think it is a stretch that people are putting on labels on bath salt and incense; they are using that same language not for human consumption. Assuming these drug dealers that are selling those synthetic drugs that we are identifying here are specifically using that language to try to get around this law so my major concern with the amendments is that number 4 out of their exclusions under B that says does not include.

Sen. Armstrong: I agree.

Rep. Diane Larson: In reading some of the information Julie Lawyer had provide, she states there are three other states have adopted language the language exactly but there are other states that have adopted variations that are substantially similar and many of them have deleted this number 4 because this came up after this language was put into place.

Rep. Bill Kretschmar: In our original House bill what did they say about number 4?

Rep. Diane Larson: We don't have it. They deleted all of our language and replaced it with the federal language.

Rep. Lois Delmore: Made a motion to take out number 4 and acceding to the rest of the Senate amendments. Are you comfortable with that?

Rep. Diane Larson: I challenge you to read number 3 and tell me what it means because I don't understand it. Other than that yes.

Sen. Armstrong: It is written in federal ease but it actually makes sense because it has the investigational use for that individual and it sites to the federal code. It is a good exemption because of where it sites to; it is a bad exemption because I can't imagine a 19 year old kid pulling 505 cosmetics to get high.

Rep. Diane Larson: Although I don't like the verbiage in the federal drug code I second Rep. Delmore's motion.

Rep. Kretschmar: We have a motion is just to remove lines 6 & 7 on page 4.

Roll call vote: 6 Yes 0 No 0 Absent

Motion Made by Sen. Larson; Seconded by Senator Armstrong for the Senate receded from the Senate amendments and amend as follows to remove lines 6 & 7 on page 4.

Roll Call Vote: 6 Yes 0 No 0 Absent

April 16, 2013

VR
4/16/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1133

That the Senate recede from its amendments as printed on pages 1152 and 1153 of the House Journal and page 901 and 902 of the Senate Journal and that Engrossed House Bill No. 1133 be amended as follows:

Page 3, line 19, after "substance" insert "the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a schedule I or II and"

Page 3, line 20, remove "With a chemical structure substantially similar to the chemical structure of a"

Page 3, line 21, replace "schedule I or II controlled substance" with "Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II"

Page 3, line 22, remove "That is used:"

Page 3, replace lines 23 through 28 with "With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II."

Page 3, line 29, replace "an alcoholic beverage." with ":

- (1) A controlled substance;
- (2) Any substance for which there is an approved new drug application; or
- (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] to the extent conduct with respect to the substance is pursuant to the exemption."

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 1133 as (re) engrossed

Date: 4-16-13

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☒ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1152 - 1153

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Delmore Seconded by: Rep. Larson

Representatives	Y	N	Yes	No		Senators	Y	N	Yes	No
Rep. Kretschmar	/		/			Sen. Armstrong	/		/	
Rep. Larson	/		/			Sen. Sitte	/		/	
Rep. Delmore	/		/			Sen. Nelson	/		/	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment Vote on amending

Removes lines 6 + 7 on page 4.

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 1133 as (re) engrossed

Date: 4-16-13

Roll Call Vote #: 2

- Action Taken**
- ☐ HOUSE accede to Senate amendments
 - ☐ HOUSE accede to Senate amendments and further amend
 - ☐ SENATE recede from Senate amendments
 - ☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1152 - 1153

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Larson Seconded by: Sen. Armstrong

Representatives				Yes	No		Senators				Yes	No
<u>Rep. Kutschmar</u>				✓			<u>Sen. Armstrong</u>				✓	
<u>Rep. Larson</u>				✓			<u>Sen. Sitte</u>				✓	
<u>Rep. Delmore</u>				✓			<u>Sen. Nelson</u>				✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Remove lines 6 & 7 on page 4.

REPORT OF CONFERENCE COMMITTEE

HB 1133, as engrossed: Your conference committee (Sens. Armstrong, Sitte, Nelson and Reps. Kretschmar, Larson, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1152-1153, adopt amendments as follows, and place HB 1133 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1152 and 1153 of the House Journal and page 901 and 902 of the Senate Journal and that Engrossed House Bill No. 1133 be amended as follows:

Page 3, line 19, after "substance" insert "the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a schedule I or II and"

Page 3, line 20, remove "With a chemical structure substantially similar to the chemical structure of a"

Page 3, line 21, replace "schedule I or II controlled substance" with "Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II"

Page 3, line 22, remove "That is used:"

Page 3, replace lines 23 through 28 with "With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II."

Page 3, line 29, replace "an alcoholic beverage." with ":

- (1) A controlled substance;
- (2) Any substance for which there is an approved new drug application; or
- (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] to the extent conduct with respect to the substance is pursuant to the exemption."

Renumber accordingly

Engrossed HB 1133 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1133

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, line 1, replace "three" with "one"

Page 1, line 2, after "Code," insert "and amend and reenact 19-03.1-23 of the North Dakota Century Code"

Page 1, line 2, after "analog;" remove "and"

Page 1, line 2, after "penalty" insert "; and to declare an emergency"

Page 1, replace lines 7 through 13 with:

"A controlled substance analog is

1. A substance with a chemical structure substantially similar to the chemical structure of a schedule I or II controlled substance, or
2. A substance that is used
 - a. to affect the individual's central nervous system;
 - b. to create or induce a condition of intoxication, hallucination, or elation; or
 - c. to distort, disturb or change the individual's eyesight, thinking process, balance or coordination in substantially similar manner as a schedule I or II controlled substance. An alcoholic beverage is not a controlled substance analog.

Page 1, remove lines 21 through 24

Page 2, replace lines 1 through 3 with:

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

- b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, is guilty of a class B 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.

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

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid

prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class C felony. If, at the time of the offense, the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Sandy Thompson
(2)

**Testimony
HB 1133 – Department of Human Services
Judiciary Committee
Representative Koppelman, Chairman
January 21, 2013**

Chairman Koppelman, members of the Judiciary Committee, I am Sandy Thompson, Program Administrator of West Central Human Service Center (WCHSC) for the Department of Human Services (DHS). I am submitting this testimony to provide you an overview of the experiences the youth and adults (and their families) of WCHSC have experienced when using synthetic marijuana and bath salts.

Synthetics

Synthetic marijuana and bath salts are sometimes both referred to as "synthetics." Synthetic marijuana provides the user effects similar to that of marijuana. It is most commonly smoked. It is marketed under several different names to include Diablo, Pure Evil, Demon, and Bizarro.

Bath salts provide the user effects similar to that of amphetamines or methamphetamines. Bath salts can be smoked, snorted, swallowed or injected. Bath salts have been marketed under the names of Vanilla Sky, Pure Ivory, and Meow Meow.

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Common effects of synthetic marijuana and bath salts

Common effects from the use of synthetics can include a rapid heart rate, increase in blood pressure, panic attacks, seizure, confusion, and hallucinations. The families of known synthetics users have identified that they have observed their loved ones become paranoid, exhibit erratic and bizarre behavior, and even become violent.

Consumer experiences

Consumers of WCHSC, and their family members, have suffered greatly and experienced much fear as a result of the use of synthetics. I have compiled a few examples of these experiences as told to us by consumers.

One evening the parents of a young man felt that their son was acting abnormal. Suspecting that he ingested some type of chemical, they took him to the emergency room of their local hospital. While there, the young man became quite agitated and was medicated. The young man admitted he had smoked synthetic marijuana. The health professionals at the hospital did what they could to calm him down so that he could be released to home with his parents. The family returned to their home at 2:00 am. The parents told the young man that they would speak to him about the night's events in the morning and that he was expected to get up for school in the morning. The next morning the son came to the kitchen table and looked at his father and said "who are you?" The father was obviously confused. Both parents were surprised to find out that the young man had smoked synthetic marijuana again that morning before coming to the kitchen table for breakfast. The young man had no memory of being at the emergency room the night before.

A young female smoked synthetic marijuana at a house party. She became quite agitated and took off all of her clothes. The police were called and she was found naked in the home of the people who were hosting the party.

A young man smoked synthetic marijuana during his lunch break from school while driving in his car. He began to hallucinate and parked the vehicle. He was found sitting on the sidewalk in the downtown area of his community. He was awake and conscious but his speech was slurred and he could not tell concerned citizens who he was. The local police were called. The parents and the police believe that the young man parked his car when he began hallucinating. The young man recalls "running and running" but was not sure why he was running. It took the local police nearly 12 hours to find the young man's vehicle which was parked about five blocks from where the youth was found.

An adult male who was a student at a local college is known to have put bath salts in a beverage and drink it. A fellow student observed the young man to look "zoned out." The young man had slurred speech and his speech was hard to understand. He was observed to be sitting in a chair in the classroom and drooling from his mouth.

On Friday January 18, 2013, I had the privilege of talking with an adult male who was willing to share his story and experience with synthetic marijuana. He admits that he has struggled with the use of many substances including synthetic marijuana. He reports that he had been smoking synthetic marijuana daily, multiple times per day, for two years. He admits to mostly using Diablo, Pure Evil, and Bizarro. His daily cost to use was about \$90 per day. Initially he was able to fund his use through wages earned from his

employment. However, when his use interfered with his employment he then stole items from stores and sold them or pawned personal possessions. He states that when he first began to smoke synthetic marijuana he would get an "adrenaline rush" that was enjoyable to him but it did not last long. He admits that he would go to the gym to work out because he had a lot of energy from his use and that he would go into the men's locker room several times during his workout to smoke more of the chemical to keep his energy level up. Not long after, he states that he no longer got the adrenaline rush from using, but that he would become severely intoxicated "like nothing else I have ever tried." He admits to having passed out from his extensive smoking, becoming frustrated with himself as he knew he was slurring his speech, and that he could not find the words he wanted to use when speaking to others. He has experienced hallucinations. At first, the hallucinations began as "whispering noises" in his ear. He thought the whispers may in fact have been from the devil. As his use progressed to multiple times per day his paranoia led him to believe that he may be the devil. He has had experiences where he has become so irritated and agitated with family members that he has ripped hair out of his head, banged his head on countertops, and exhibited violence toward a family member. He recently lost a relationship with his girlfriend related to his use. He discontinued his use of synthetic marijuana in late November 2012 because the drug was no longer readily available to him. He experienced what he calls withdrawal symptoms for nearly 30 days. The most pronounced symptoms were extreme sweating, increased heart rate, extreme memory problems, and panic attacks. This young man has a desire to return to college but fears that he has done so much damage to his body and brain that he may not be able realize that dream.

Challenges for treatment providers

Since the chemical makeup of synthetics is ever changing, it is difficult, if not impossible, to detect them via urine analysis, commonly referred to as urine drug screens.

There are no current research studies that can assist treatment providers in knowing exactly what the short term or long term effects are from the use of synthetics.

Consumers who seek behavioral health services may need additional attention when completing reading or written assignments due to problems with concentration, memory or comprehension.

Despite the challenges, we have observed youth and adults accept treatment services and enter into recovery from their substance use.

This concludes my testimony. I would be happy to answer any questions that you may have.



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BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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Mark J. Hardy, PharmD, R.Ph.
Assistant Executive Director
Howard C. Anderson, Jr, R.Ph.
Executive Director

House Bill No 1133 – Controlled Substance Analogs

House Judiciary Committee - Prairie Room
9:40 AM -Monday – January 21, 2013

Chairman Koppelman, members of the House Judiciary Committee, for the record I am Mark J. Hardy, PharmD, Assistant Executive Director of the North Dakota State Board of Pharmacy. I appreciate the opportunity to be here to speak to you.

The Board of Pharmacy supports the efforts of HB1133. We feel as the language, including modifications if needed, will provide a good framework for any potential new changes to get around the Board of Pharmacy's scheduling bill HB1070 which we feel is as comprehensive of a bill as there is in the United States. These two bills would provide the strongest laws in the nation to address the synthetic drug epidemic.

Thank you for your time and your efforts in this important matter.

Mr. Chairman and members of the Senate Judiciary, for the record, my name is Diane Larson, Representative from District 30 in Bismarck. When not serving in the Legislature, I am a youth worker at the Bismarck Police Department. This bill came about because when I went to ask my chief at the time, Keith Witt, permission to run for the legislature, the first thing he said was to do something about synthetics. We were having more and more problems with this dangerous problem. Police find people on this poison to be belligerent, irrational, even psychotic and often in physical distress. In fact, after I told him that I would do what I could about it, 6 months later 2 young men in Grand Forks died from using a synthetic drug. The parents of one of the young men that died, Christian Bjerk, is here to testify today.

Synthetics in regard to Controlled Substances are commonly referred to as bath salts or incense.

HB 1133 is a companion bill to HB 1070 which is the Pharmaceutical Bill regarding this issue. HB 1070 adds new sections and compounds to controlled substances and this bill, 1133 adds a definition of an analog and provides a penalty for using the analogs and declares an emergency. Webster's Dictionary defines analog as "something analogous or similar to something else".

We currently have laws against the use of synthetic drugs because of their danger. What drug pushers are doing is changing a chemical component in the scheduled drug to get outside the law and sell these products as legal substances. States are making these substances illegal as quickly as they can, but there seems to be no end to the ingenuity of these criminals and they change the chemical structures faster than we can legislate them.

Therefore, when I asked Legislative Counsel to draft this legislation for me Mr. Dawson suggested that I use the analog definition to address possible future variations to the chemical structures. I asked him to use language to describe the effects that they are trying to achieve when using them similar to what is used to define the inhalant legislation, because that legislation doesn't depend on what the chemical is, only what the intent is when using it.

You will see on page 3, section 7 the description of an analog describing what the drug is used for, and that it is similar to a scheduled controlled substance.

On page 8 of the bill is the penalty portion which is the same penalty as for using the actual scheduled drug. We have found that these drugs are even more dangerous than the drugs that they claim to replace.

This is a dangerous problem for our communities and we have requested an emergency clause in order to try to be ahead of the "entrepreneurs" who, just to make a profit put our citizens at risk.

Mr. Chairman and members of the committee I request a Do Pass recommendation from you. Thank you.

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Top 25 Report for Selected States

Date Range 1-2008 to 12-2008 (by Completion Date)

Summary by Item Summary

Lab Type State

Description	Total	Percent
CANNABIS	3491	72.28
METHAMPHETAMINE	532	11.01
COCAINE	314	6.5
HYDROCODONE	62	1.28
HEROIN	56	1.16
OXYCODONE	54	1.12
MORPHINE	25	0.52
HYDROMORPHONE	24	0.5
METHADONE	23	0.48
AMPHETAMINE	22	0.46
ALPRAZOLAM	20	0.41
ACETAMINOPHEN	19	0.39
DIAZEPAM	16	0.33
DIMETHYLSULFONE	13	0.27
METHYLPHENIDATE	12	0.25
EPHEDRINE	10	0.21
CLONAZEPAM	10	0.21
TRAMADOL	10	0.21
3,4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA)	7	0.14
LORAZEPAM	7	0.14
QUETIAPINE	7	0.14
TRAZODONE	7	0.14
DEXTROPROPOXYPHENE	6	0.12
CYCLOBENZAPRINE	6	0.12
3,4-METHYLENEDIOXYAMPHETAMINE (MDA)	5	0.1
Total Top 25 Drugs	4758	98.49
Total of All Drugs	4830	

Top 25 Report for Selected States

Date Range 1-2012 to 11-2012 (by Completion Date)

Summary by Item Summary

Lab Type State

Description	Total	Percent
CANNABIS	4432	47.53
METHAMPHETAMINE	1437	15.41
AM-2201 (1-(5-FLUOROPENTYL)-3-(1-NAPHTHOYL)INDOLE)	247	2.65
XLR-11 (1-(5-FLUOROPENTYL-1H-3-YL)(2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE)	243	2.61
DIMETHYLSULFONE	218	2.34
COCAINE	209	2.24
AKB48 (N-(1-ADAMANTYL)-1-PENTYL-1H-INDAZOLE-3-CARBOXAMIDE)	178	1.91
UR-144 ((1-PENTYLINDOL-3-YL)-(2,2,3,3-TETRAMETHYLCYCLOPROPYL)METHANONE)	156	1.67
ACETAMINOPHEN	129	1.38
URB754 (6-METHYL-2-[(4-METHYLPHENYL)AMINO]-1-BENZOXAZIN-4-ONE)	117	1.25
HYDROCODONE	111	1.19
OXYCODONE	110	1.18
MAM-2201 (1-(5-FLUOROPENTYL)-3-(4-METHYL-1-NAPHTHOYL)INDOLE)	103	1.1
JWH-122 (1-PENTYL-3-(4-METHYL-1-NAPHTHOYL)INDOLE)	93	1
JWH-018 (1-PENTYL-3-(1-NAPHTHOYL)INDOLE)	65	0.7
N,N-DIALLYL-5-METHOXYTRYPTAMINE (5-MEO-DALT)	64	0.69
MORPHINE	61	0.65
ALPRAZOLAM	60	0.64
URB-602 (CYCLOHEXYL BIPHENYL-3-YLCARBAMATE)	59	0.63
AMPHETAMINE	45	0.48
CLONAZEPAM	41	0.44
PHENYLIMIDOTHIAZOLE ISOMER UNDETERMINED	41	0.44
CAFFEINE	39	0.42
JWH-210 (1-PENTYL-3-(4-ETHYL-1-NAPHTHOYL)INDOLE)	39	0.42
HYDROMORPHONE	37	0.4
Total Top 25 Drugs	8334	89.37
Total of All Drugs	9325	

Testimony
HB 1133 – Department of Human Services
Judiciary Committee
Senator Hogue, Chairman
March 13, 2013

Senator Hogue, members of the Judiciary Committee, I am Sandy Thompson, Program Administrator of West Central Human Service Center (WCHSC) for the Department of Human Services (DHS). I am submitting this testimony to provide you an overview of the experiences the youth and adults (and their families) of WCHSC have experienced when using synthetic marijuana and bath salts.

Synthetics

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13.0414.03001
Title.

Prepared by the Legislative Council staff for
Senator Hogue

March 18, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1133

Page 1, line 1, after "BILL" insert "for an Act"

Page 3, replace lines 18 through 29 with:

"7. "Controlled substance analog":

- a. Means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II and:
 - (1) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system which is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
 - (2) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.
- b. Does not include:
 - (1) A controlled substance;
 - (2) Any substance for which there is an approved new drug application;
 - (3) With respect to a particular individual, any substance, if an exemption is in effect for investigational use, for that individual, under section 505 of the federal Food, Drug and Cosmetic Act [21 U.S.C 355] to the extent conduct with respect to the substance is pursuant to the exemption; or
 - (4) Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance."

Renumber accordingly