

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1341

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to amend and reenact subsections 3 and 7 of section 19-03.1-23 and
2 subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the
3 elimination of enhanced penalties for manufacturing, delivering, or possessing controlled
4 substances near schools.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 19-03.1-23 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty
9 imposed under this section, ~~aif the person who violates this chapter, except a~~
10 ~~person who manufactures, delivers, or possesses with the intent to manufacture~~
11 ~~or deliver marijuana, was at least twenty-one years of age at the time of the~~
12 ~~offense, and delivered a controlled substance to a person under the age of~~
13 ~~eighteen, the person~~ is subject to, and the court shall impose, ~~the following~~
14 ~~penalties to run consecutively to any other sentence imposed:~~

15 a. Any person, ~~eighteen years of age or older, who violates this section by willfully~~
16 ~~manufacturing, delivering, or possessing with intent to manufacture or deliver a~~
17 ~~controlled substance in or on, or within one thousand feet [300.48 meters] of the~~
18 ~~real property comprising a public or private elementary or secondary school or a~~
19 ~~public career and technical education school is subject to an eight year term of~~
20 ~~imprisonment.~~

21 b. ~~If the defendant was at least twenty-one years of age at the time of the offense,~~
22 ~~and delivered a controlled substance to a person under the age of eighteen, the~~
23 ~~defendant must be sentenced to a term of imprisonment for~~ at least eight years
24 which is to run consecutively to any other sentence imposed.

- 1 **b.** It is not a defense that the defendant did not know the age of a person protected
2 under ~~this~~ subdivision **a.**
- 3 **c.** The penalty in subdivision a does not apply to a person who manufactures,
4 delivers, or possesses with the intent to manufacture or deliver marijuana.

5 **SECTION 2. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

20 **SECTION 3. AMENDMENT.** Subsection 1 of section 19-03.1-23.1 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 1. A person who violates section 19-03.1-23 is subject to the penalties provided in
23 subsection 2 if:
- 24 a. The offense involved the manufacture, delivery, or possession, with intent to
25 manufacture or deliver a controlled substance in or on, ~~or within one thousand-~~
26 ~~feet~~ ~~[300.48 meters]~~ of, the real property comprising a child care or preschool
27 facility, public or private elementary or secondary school, ~~public career and-~~
28 ~~technical education school, or a public or private college or university;~~
- 29 b. ~~The~~ the defendant was at least ~~sixteen~~ twenty-one years of age at the time of the
30 offense, and the offense involved the delivery of a controlled substance to a
31 minor;

- 1 eb. The offense involved:
- 2 (1) Fifty grams or more of a mixture or substance containing a detectable
- 3 amount of heroin;
- 4 (2) Fifty grams or more of a mixture or substance containing a detectable
- 5 amount of:
- 6 (a) Coca leaves, except coca leaves and extracts of coca leaves from
- 7 which cocaine, ecgonine, and derivatives of ecgonine or their salts
- 8 have been removed;
- 9 (b) Cocaine, its salts, optical and geometric isomers, and salts of
- 10 isomers;
- 11 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- 12 (d) Any compound, mixture, or preparation that contains any quantity of
- 13 any of the substance referred to in subparagraphs a through c;
- 14 (3) Five grams or more of a mixture or substance described in paragraph 2
- 15 which contains cocaine base;
- 16 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
- 17 mixture or substance containing a detectable amount of phencyclidine;
- 18 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
- 19 mixture or substance containing a detectable amount of lysergic acid
- 20 diethylamide;
- 21 (6) Forty grams or more of a mixture or substance containing a detectable
- 22 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten
- 23 grams or more of a mixture or substance containing a detectable amount of
- 24 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- 25 (7) Fifty grams or more of a mixture or substance containing a detectable
- 26 amount of methamphetamine;
- 27 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
- 28 mixture or substance containing a detectable amount of
- 29 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- 30 (9) One hundred dosage units or one-half liquid ounce of a mixture or
- 31 substance containing a detectable amount of gamma-hydroxybutyrate or

- 1 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
2 of gamma-hydroxybutyrate;
3 (10) One hundred dosage units or one-half liquid ounce of a mixture or
4 substance containing a detectable amount of flunitrazepam; or
5 (11) Five hundred grams or more of marijuana; or
6 ec. The defendant had a firearm in the defendant's actual possession at the time of
7 the offense.