17.0169.03004

Sixty-fifth Legislative Assembly of North Dakota

## FIRST ENGROSSMENT

## **ENGROSSED HOUSE BILL NO. 1341**

Introduced by

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Representative Rick C. Becker

1	A BILL for an A	ct to amend and re	eenact subsections 3	and 7 of se	ction 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; and to provide a penalty.

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

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

- 3. <u>a.</u> For second or subsequent <u>offendersoffenses</u>, in addition to any other penalty imposed under this section, <u>aif the</u> person who violates this chapter, <u>except a person who manufactures</u>, <u>delivers</u>, <u>or possesses with the intent to manufacture or deliver marijuana</u>, <u>was at least twenty-one years of age at the time of the offense</u>, and <u>delivered a controlled substance to a person under the age of eighteen</u>, <u>the person</u> is subject to, and the court shall impose, <u>the following-penalties to run consecutively to any other sentence imposed:</u>
  - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing 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 or a public career and technical education school is subject to an eight-year term of imprisonment.
  - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to a term of imprisonment forof at least eightfour years which is to run consecutively to any other sentence imposed.

- 1 <u>b.</u> It is not a defense that the defendant did not know the age of a person protected under this subdivision <u>a</u>.
  - <u>The penalty in subdivision a does not apply to a person who manufactures,</u>
    <u>delivers, or possesses with the intent to manufacture or deliver marijuana.</u>

**SECTION 2. 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 A misdemeanor for a first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. 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, unless the offense involves one ounce [28.35 grams] or less of marijuana. Any person who violates this subsection regarding possession of one ounce [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

**SECTION 3. 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 was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in or, on, or within one thousand feet [300.48 meters]three hundred feet [91.4 meters] of, the real property comprising a child care or preschool facility, a public or private elementary or secondary school, or a

1		publ	ic car	eer and technical education school, or a public or private college or
2		university;		
3	<del>b.</del>	Thethe defendant was at least sixteentwenty-one years of age at the time of the		
4		offense, and the offense involved the delivery of a controlled substance to a		
5		minor;		
6	e <u>b</u> .	The offense involved:		
7		(1) Fifty grams or more of a mixture or substance containing a detectable		
8			amo	unt of heroin;
9		(2) Fifty grams or more of a mixture or substance containing a detectable		
10			amount of:	
11			(a)	Coca leaves, except coca leaves and extracts of coca leaves from
12				which cocaine, ecgonine, and derivatives of ecgonine or their salts
13				have been removed;
14			(b)	Cocaine, its salts, optical and geometric isomers, and salts of
15				isomers;
16			(c)	Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
17			(d)	Any compound, mixture, or preparation that contains any quantity of
18				any of the substance referred to in subparagraphs a through c;
19		(3)	Five	grams or more of a mixture or substance described in paragraph 2
20			whic	n contains cocaine base;
21		(4)	Ten (	grams or more of phencyclidine or one hundred grams or more of a
22			mixtu	ure or substance containing a detectable amount of phencyclidine;
23		(5)	One	gram, one hundred dosage units, or one-half liquid ounce or more of a
24			mixtu	are or substance containing a detectable amount of lysergic acid
25			dieth	ylamide;
26		(6)	Forty	grams or more of a mixture or substance containing a detectable
27			amo	unt of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten
28			gram	s or more of a mixture or substance containing a detectable amount of
29			any a	analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
30		(7)	Fifty	grams or more of a mixture or substance containing a detectable
31			amoi	unt of methamphetamine;

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1	(8) Ten	grams, one hundred dosage units, or one-half liquid ounce or more of a
2	mix	cure or substance containing a detectable amount of
3	3,4-	methylenedioxy-N-methylamphetamine, C11H15NO2;
4	(9) One	hundred dosage units or one-half liquid ounce of a mixture or
5	sub	stance containing a detectable amount of gamma-hydroxybutyrate or
6	gan	ma-butyrolactone or 1,4 butanediol or any substance that is an analog
7	of g	amma-hydroxybutyrate;
8	(10) One	hundred dosage units or one-half liquid ounce of a mixture or
9	sub	stance containing a detectable amount of flunitrazepam; or
10	(11) Five	hundred grams or more of marijuana; or
11	d <u>c</u> . The defe	ndant had a firearm in the defendant's actual possession at the time of
12	the offens	se.