

HOUSE BILL NO. 1420

Introduced by

Representatives Dockter, Becker, Mitskog, Mock, Porter, Roers Jones, M. Ruby

Senator Meyer

1 A BILL for an Act to create and enact chapter 19-24.3 of the North Dakota Century Code,
2 relating to the personal use of marijuana; to amend and reenact subsection 1 of section
3 19-03.1-22.2, subsection 7 of section 19-03.1-23, subsection 4 of section 19-03.4-03,
4 subsection 1 of section 39-20-01, section 39-20-14, and subsection 12 of section 65-05-08 of
5 the North Dakota Century Code, relating to the legalization of marijuana; to provide a statement
6 of legislative intent; to provide for a legislative management report; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 19-03.1-22.2 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. For purposes of this section:

- 11 a. "Chemical substance" means a substance intended to be used as a precursor in
12 the manufacture of a controlled substance or any other chemical intended to be
13 used in the manufacture of a controlled substance. Intent under this subsection
14 may be demonstrated by the substance's use, quantity, manner of storage, or
15 proximity to other precursors or to manufacturing equipment.
- 16 b. "Child" means an individual who is under the age of eighteen years.
- 17 c. "Controlled substance" means the same as that term is defined in section
18 19-03.1-01, except the term does not include less than ~~one-half~~ one ounce [28.35
19 grams] of marijuana.
- 20 d. "Drug paraphernalia" means the same as that term is defined in section
21 19-03.4-01.
- 22 e. "Prescription" means the same as that term is described in section 19-03.1-22.
- 23 f. "Vulnerable adult" means a vulnerable adult as the term is defined in section
24 50-25.2-01.

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

- 3 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
4 a controlled substance or a controlled substance analog unless the substance
5 was obtained directly from, or pursuant to, a valid prescription or order of a
6 practitioner while acting in the course of the practitioner's professional practice, or
7 except as otherwise authorized by this chapter, but any person who violates
8 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- 9 b. Except as otherwise provided in this subsection, any person who violates this
10 subsection is guilty of a class A misdemeanor for the first offense under this
11 subsection and a class C felony for a second or subsequent offense under this
12 subsection.
- 13 c. If, at the time of the offense the person is in or on the real property comprising a
14 public or private elementary or secondary school or a public career and technical
15 education school, the person is guilty of a class B felony, unless the offense
16 involves marijuana.
- 17 d. A person who violates this subsection by possessing:
- 18 (1) ~~Marijuana in an amount of less than one-half~~More than one ounce
19 [~~14.175~~28.35 grams] but not more than one and one-half ounce [~~42.524~~
20 grams] of marijuana is guilty of an infraction.
- 21 (2) ~~At least~~More than one and one-half ounce [~~14.175~~42.524 grams] but not
22 more than 500 grams of marijuana is guilty of a class B misdemeanor.
- 23 (3) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- 24 e. If an individual is sentenced to the legal and physical custody of the department
25 of corrections and rehabilitation under this subsection, the department may place
26 the individual in a drug and alcohol treatment program designated by the
27 department. Upon the successful completion of the drug and alcohol treatment
28 program, the department shall release the individual from imprisonment to begin
29 any court-ordered period of probation.

- 1 f. If the individual is not subject to any court-ordered probation, the court shall order
2 the individual to serve the remainder of the sentence of imprisonment on
3 supervised probation subject to the terms and conditions imposed by the court.
- 4 g. Probation under this subsection may include placement in another facility,
5 treatment program, or drug court. If an individual is placed in another facility or
6 treatment program upon release from imprisonment, the remainder of the
7 sentence must be considered as time spent in custody.
- 8 h. An individual incarcerated under this subsection as a result of a second probation
9 revocation is not eligible for release from imprisonment upon the successful
10 completion of treatment.
- 11 i. A person who violates this subsection regarding possession of five or fewer
12 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
13 controlled substance analog is guilty of a class A misdemeanor.

14 **SECTION 3. AMENDMENT.** Subsection 4 of section 19-03.4-03 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 4. A person under twenty-one years of age may not use or possess with the intent to use
17 drug paraphernalia to ingest, inhale, or otherwise introduce into the human body
18 marijuana or possess with the intent to use drug paraphernalia to store or contain
19 marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of
20 an infraction.

21 **SECTION 4.** Chapter 19-24.3 of the North Dakota Century Code is created and enacted as
22 follows:

23 **19-24.3-01. Definitions.**

24 As used in this chapter, unless the context indicates otherwise:

- 25 1. "Allowable amount" means the quantity of edible marijuana products an individual may
26 purchase during a single transaction, as determined by the health council.
- 27 2. "Compassion center" means a manufacturing facility or dispensary.
- 28 3. "Department" means the state department of health.
- 29 4. "Dispensary" means an entity registered by the department as a compassion center
30 authorized to sell marijuana and edible marijuana products.

- 1 5. "Edible marijuana product" means a marijuana product intended to be consumed
2 orally, including any type of food, drink, or pill.
- 3 6. "Manufacturing facility" means an entity registered by the department as a compassion
4 center authorized to produce, process, and sell marijuana and edible marijuana
5 products to a dispensary.
- 6 7. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant;
7 the resin extracted from any part of the plant; and every compound, manufacture, salt,
8 derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin
9 extracted from any part of the plant. The term marijuana does not include hemp as
10 defined in section 4.1-18.1-01.
- 11 8. "Marijuana paraphernalia" means any equipment, product, or material of any kind
12 used, intended for use, or designed for use in planting, propagating, cultivating,
13 growing, harvesting, manufacturing, compounding, converting, producing, processing,
14 preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing,
15 ingesting, inhaling, or otherwise introducing marijuana into the human body.
- 16 9. "Maximum concentration or amount of tetrahydrocannabinol" means the total amount
17 of tetrahydrocannabinol and tetrahydrocannabinolic acid in an edible marijuana
18 product as determined by the health council.
- 19 10. "Producing", "produce", or "production" means the same as defined in
20 section 19-24.1-01.

21 **19-24.3-02. Marijuana - Edible marijuana products - Rules.**

- 22 1. The department shall implement the sale of marijuana and edible marijuana products
23 under this chapter, including the production, processing, sale, and dispensing of
24 marijuana and edible marijuana products.
- 25 2. Except as otherwise authorized in this chapter, a person may not sell, cultivate,
26 possess, transport, dispense, or use marijuana unless the person is authorized to do
27 so as a compassion center or is otherwise authorized by rule adopted under this
28 chapter.
- 29 3. The health council shall adopt rules as necessary for the implementation and
30 administration of this chapter, including the allowable maximum concentration or
31 amount of tetrahydrocannabinol in an edible marijuana product, the production of

1 marijuana and edible marijuana products, transportation and storage of marijuana and
2 edible marijuana products, advertising, packaging and labeling, standards for testing
3 facilities, inventory management, and accurate recordkeeping.

4 4. The health council may adopt rules regarding the operation and governance of
5 additional categories of compassion centers, including the registration of additional
6 compassion centers in the state.

7 5. Except as otherwise provided in section 19-24.1-12, the health council shall license
8 additional compassion centers for purposes of implementing this chapter.

9 6. The department shall utilize compassion centers registered under chapter 19-24.1 to
10 implement this chapter.

11 **19-24.3-03. Personal use of marijuana.**

12 1. Except as otherwise provided in this chapter, an individual who is at least twenty-one
13 years of age may use, possess, or transport up to one ounce [28.35 grams] of
14 marijuana or the allowable amount of edible marijuana products.

15 2. Notwithstanding section 19-03.4-03, an individual may possess marijuana
16 paraphernalia to store, contain, or use marijuana and edible marijuana products as
17 authorized under this chapter.

18 **19-24.3-04. Compassion centers - Authority - Operation.**

19 1. Notwithstanding sections 19-03.1-23, 19-03.4-03, and 19-24.1-20, during a single
20 transaction, a dispensary may dispense up to one ounce [28.35 grams] of marijuana
21 or edible marijuana products to an individual who is at least twenty-one years of age.

22 2. Notwithstanding sections 19-03.1-23, 19-03.4-03, and 19-03.4-04, a manufacturing
23 facility may grow an amount of marijuana sufficient to meet the demands of the public.

24 3. The health council shall adopt rules regulating the growth and sale of marijuana and
25 edible marijuana products under this section.

26 **19-24.3-05. Possession - Motor vehicle - Restriction - Penalty.**

27 1. An individual may not possess an open container of marijuana in a motor vehicle upon
28 a highway or upon a public or private area to which the public has a right of access for
29 vehicular use in this state.

30 2. An individual who violates this section is guilty of an infraction punishable by a fine of
31 up to fifty dollars.

1 **19-24.3-06. Packaging - Labeling.**

2 Any marijuana or edible marijuana product sold at a dispensary under this chapter must be
3 packaged in opaque, resealable, child-resistant packaging. The packaging must be designed or
4 constructed to be difficult for children under five years of age to open.

5 **19-24.3-07. Restriction.**

6 1. This chapter may not be construed to limit any privileges or rights of a qualifying
7 patient or designated caregiver under chapter 19-24.1.

8 2. This chapter does not require:

9 a. A government medical assistance program or private insurer to reimburse a
10 person for costs associated with the use of marijuana;

11 b. A person in lawful possession of property to allow a guest, client, customer, or
12 other visitor to possess or consume marijuana or edible marijuana products on or
13 in that property; or

14 c. A landlord to allow production or processing on rental property.

15 2. This chapter does not prohibit an employer from disciplining an employee for
16 possessing or consuming marijuana in the workplace or for working while under the
17 influence of marijuana.

18 **19-24.3-08. Limitations.**

19 This chapter does not authorize a person to engage in, and does not prevent the imposition
20 of any civil liability or criminal liability or other penalties for engaging in the following conduct:

21 1. Undertaking an activity under the influence of marijuana if doing so would constitute
22 negligence or professional malpractice.

23 2. Possessing or consuming marijuana or edible marijuana products:

24 a. On a school bus or school van that is used for school purposes;

25 b. On the grounds of any public or private school;

26 c. At any location while a public or private school sanctioned event is occurring at
27 that location;

28 d. On the grounds of a correctional facility; or

29 e. On the grounds of a child care facility or licensed home day care.

30 3. Undertaking any activity prohibited by section 23-12-09, 23-12-10, 23-12-10.2,
31 23-12-10.4, 23-12-10.5, or 23-12-11.

1 4. Using a combustible delivery form of marijuana under this chapter if the smoke would
2 be inhaled by an individual who is under twenty-one years of age.

3 5. Operating, navigating, or being in actual physical control of a motor vehicle, aircraft,
4 train, or motorboat, while under the influence of marijuana.

5 **SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-01 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 1. Any individual who operates a motor vehicle on a highway or on public or private
8 areas to which the public has a right of access for vehicular use in this state is deemed
9 to have given consent, and shall consent, subject to the provisions of this chapter, to a
10 chemical test, or tests, of the blood, breath, ~~saliva~~oral fluid, or urine for the purpose of
11 determining the alcohol concentration or presence of other drugs, or combination
12 thereof, in the individual's blood, breath, ~~saliva~~oral fluid, or urine. As used in this
13 chapter, the word "drug" means any drug or substance or combination of drugs or
14 substances which renders an individual incapable of safely driving, and the words
15 "chemical test" or "chemical analysis" mean any test to determine the alcohol
16 concentration or presence of other drugs, or combination thereof, in the individual's
17 blood, breath, or urine, approved by the director of the state crime laboratory or the
18 director's designee under this chapter.

19 **SECTION 6. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-20-14. Screening tests.**

22 1. Any individual who operates a motor vehicle upon the public highways of this state is
23 deemed to have given consent to submit to an onsite screening test or tests of the
24 individual's breath or oral fluid for the purpose of estimating the alcohol concentration
25 or presence of drugs or substances in the individual's breath or oral fluid upon the
26 request of a law enforcement officer who has reason to believe that the individual
27 committed a moving traffic violation or a violation under section 39-08-01 or an
28 equivalent offense, or was involved in a traffic accident as a driver, and in conjunction
29 with the violation or the accident the officer has, through the officer's observations,
30 formulated an opinion that the individual's body contains alcohol or other drugs or
31 substances that render the individual incapable of safely operating a motor vehicle.

- 1 2. An individual may not be required to submit to a screening test or tests of breath or
2 oral fluid while at a hospital as a patient if the medical practitioner in immediate charge
3 of the individual's case is not first notified of the proposal to make the requirement, or
4 objects to the test or tests on the ground that such would be prejudicial to the proper
5 care or treatment of the patient.
- 6 3. The screening test or tests must be performed by an enforcement officer certified as a
7 chemical test operator by the director of the state crime laboratory or the director's
8 designee and according to methods and with devices approved by the director of the
9 state crime laboratory or the director's designee. The results of such screening test
10 must be used only for determining whether or not a further test shall be given under
11 the provisions of section 39-20-01. The officer shall inform the individual that North
12 Dakota law requires the individual to take the screening test to determine whether the
13 individual is under the influence of alcohol or other drugs or substances and that
14 refusal of the individual to submit to a screening test may result in a revocation for at
15 least one hundred eighty days and up to three years of that individual's driving
16 privileges. If such individual refuses to submit to such screening test or tests, none
17 may be given, but such refusal is admissible in a court proceeding if the individual was
18 arrested in violation of section 39-08-01 and did not take any additional chemical tests
19 requested by the law enforcement officer. Such refusal is sufficient cause to revoke
20 such individual's license or permit to drive in the same manner as provided in section
21 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as
22 provided in section 39-20-06 must be available.
- 23 4. The director must not revoke an individual's driving privileges for refusing to submit to
24 a screening test requested under this section if the individual provides a sufficient
25 breath, blood, oral fluid, or urine sample for a chemical test requested under section
26 39-20-01 for the same incident.
- 27 5. No provisions of this section may supersede any provisions of chapter 39-20, nor may
28 any provision of chapter 39-20 be construed to supersede this section except as
29 provided herein.
- 30 6. For the purposes of this section, "chemical test operator" means an individual certified
31 by the director of the state crime laboratory or the director's designee as qualified to

1 perform analysis for alcohol or other drugs or substances in an individual's blood,
2 breath, oral fluid, or urine.

3 **SECTION 7. AMENDMENT.** Subsection 12 of section 65-05-08 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 12. The organization may not pay wage loss benefits if the wage loss is related to the use
6 or presence of medical marijuana, edible marijuana products, or personal use of
7 marijuana.

8 **SECTION 8. LEGISLATIVE INTENT - RULEMAKING.** It is the intent of the sixty-seventh
9 legislative assembly that the health council adopt any rules necessary to implement the sale of
10 marijuana and edible marijuana products for personal use in the state by February 1, 2022.

11 **SECTION 9. ATTORNEY GENERAL - REPORT TO LEGISLATIVE MANAGEMENT.** The
12 attorney general shall provide a report to the legislative management during the 2021-22 interim
13 regarding any inconsistencies in criminal penalties as a result of the passage of this Act.