

## PROPOSED STATUTORY INITIATED MEASURE

The text of this proposed initiated measure was received from an outside source. The role of the North Dakota Legislative Council in preparing this document was to conduct a form and style review in accordance with North Dakota Legislative Council drafting guidelines and to correct inconsistencies and cross references throughout.

**SECTION 1.** Subdivision yy of subsection 2 of section 12-60-24 the North Dakota Century Code is created and enacted as follows:

yy. The marijuana control commission for each licensure applicant.

**SECTION 2. AMENDMENT.** Subsection 1 of section 12-60.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual may file a petition to seal a criminal record if:
  - a. The individual pled guilty to or was found guilty of a misdemeanor offense and the individual has not been charged with a new crime for at least three years from the date of release from incarceration, parole, or probation; ~~or~~
  - b. The individual pled guilty to or was found guilty of a felony offense and the individual has not been charged with a new crime for at least five years from the date of release from incarceration, parole, or probation; or
  - c. The individual pled guilty to or was found guilty of a misdemeanor offense involving marijuana and the individual has not been charged with a new marijuana crime for at least one year from the date of release from incarceration, parole, or probation.

**SECTION 3.** A new subsection to section 12-60.1-04 of the North Dakota Century Code is created and enacted as follows:

If the petition solely involves a misdemeanor marijuana crime, the court shall grant the petition unless doing so would result in a manifest injustice.

**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 the chemical structure of which is substantially similar to the chemical structure of a controlled substance in a 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; 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.
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.
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.
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.
11. "Dispenser" means a practitioner who dispenses.

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

13. "Distributor" means a person who distributes.

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.

~~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.~~

~~16.~~15. "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.

~~17.~~16. "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.

- ~~18.~~ "Marijuana" means all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. 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, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term marijuana does not include hemp as defined in title 4.1.
- ~~19.~~17. "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.
- ~~20.~~18. "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.
- ~~21.~~19. "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- ~~22.~~20. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.
- ~~23.~~21. "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.
- ~~24.~~22. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- ~~25.~~23. "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.

~~26-24.~~ 24. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~27-25.~~ 25. "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.

~~28-26.~~ 26. "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.

~~29-27.~~ 27. "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.

~~30-28.~~ 28. "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.** Subdivisions a through n of subsection 5 of section 19-03.1-05 of the North Dakota Century Code are amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. Alpha-methyltryptamine.
  - c. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).
  - d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alphamethyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
  - e. ~~Hashish.~~

- f. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).
- g.f. Lysergic acid diethylamide.
- h. ~~Marijuana.~~
- i.g. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- j.h. Peyote (all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
- k.i. N-ethyl-3-piperidyl benzilate.
- l.j. N-methyl-3-piperidyl benzilate.
- m.k. Psilocybin.
- n. ~~Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant; excluding tetrahydrocannabinols found in hemp as defined in title 4.1; such as the following:~~
  - (1) ~~Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.~~
  - (2) ~~Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.~~
  - (3) ~~Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.~~~~(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)~~

**SECTION 6. AMENDMENT.** Subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
  - b. "Child" means an individual who is under the age of eighteen years.
  - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include ~~less than one-half ounce of~~ marijuana.
  - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.

- e. "Prescription" means the same as that term is described in section 19-03.1-22.
- f. "Vulnerable adult" means a vulnerable adult as the term is defined in section 50-25.2-01.

**SECTION 7. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

1. ~~Except as provided in subsection 2, a~~A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana.
2. ~~A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.~~
3. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

**SECTION 8. AMENDMENT.** Subsections 2, 7, and 9 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 ~~or 4~~ of section 19-03.4-03 may not be considered a prior offense under subsection 1.
7. a. 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.
  - b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
  - c. If, at the time of the offense the person is in or on 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 marijuana.
  - d. ~~A person who violates this subsection by possessing:~~
    - (1) ~~Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.~~

~~(2) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.~~

~~(3) More than 500 grams of marijuana is guilty of a class A misdemeanor.~~

- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
  - f.e. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
  - g.f. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
  - h.g. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
  - i.h. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within ~~two years~~one year of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

**SECTION 9. AMENDMENT.** Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

- 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, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a



public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;

b. The offense involved:

- (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
- (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
  - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers;
  - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C<sub>11</sub>H<sub>15</sub>NO<sub>2</sub>;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate; or
- (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or

~~(11) Five hundred grams or more of marijuana; or~~

c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

2. The offense is:
  - a. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
  - b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
  - c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

**SECTION 10. AMENDMENT.** Subsections 7 and 12 of section 19-03.4-01 of the North Dakota Century Code are amended and reenacted as follows:

7. Separation gins and sifters used, intended for use, or designed for use in removing ~~twigs and seeds~~objects from, or in otherwise cleaning or refining, ~~marijuana~~a controlled substance.
12. Objects used, intended for use, or designed for ~~use in ingesting,~~ inhaling, or otherwise introducing ~~marijuana,~~ cocaine, ~~hashish,~~ or ~~hashish oil~~ into the human body, including:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, ~~hashish heads,~~ or punctured metal bowls.
  - b. Water pipes.
  - c. Carburetion tubes and devices.
  - d. Smoking and carburetion masks.
  - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, ~~for example, a marijuana cigarette,~~ that has become too small or too short to be held in the hand.
  - f. Miniature cocaine spoons and cocaine vials.
  - g. Chamber pipes.
  - h. Carburetor pipes.
  - i. Electric pipes.
  - j. Air-driven pipes.
  - k. Chillums.
  - l. Bongs.
  - m. Ice pipes or chillers.

**SECTION 11. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of chapter 19-03.1. A person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.
3. ~~A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, or repack marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.~~
4. ~~A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or possess with the intent to use drug paraphernalia to store or contain marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of an infraction.~~
5. A person sentenced to the legal and physical custody of the department of corrections and rehabilitation under this section may be placed in a drug and alcohol treatment program as designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the person from imprisonment to begin any court-ordered period of probation. If the person is not subject to court-ordered probation, the court may order the person to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
- 6.4. Probation under this section may include placement in another facility, treatment program, or drug court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

**SECTION 12. AMENDMENT.** Section 29-29-21 of the North Dakota Century Code is amended and reenacted as follows:

**29-29-21. Temporary questioning of persons in public places - Search for weapons.**

A peace officer may stop any person abroad in a public place whom the officer reasonably suspects is committing, has committed, or is about to commit:

1. Any felony.
2. A misdemeanor relating to the possession of a concealed or dangerous weapon or weapons.
3. Burglary or unlawful entry.
4. A violation of any provision relating to possession of ~~marijuana or of~~ narcotic, hallucinogenic, depressant, or stimulant drugs.

The peace officer may demand of such person the person's name, address, and an explanation of the person's actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that the officer is in danger of life or limb, the officer may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing, the possession of which may constitute a crime, the officer may take and keep it until the completion of the questioning, at which time the officer shall either return it, if lawfully possessed, or arrest such person.

**SECTION 13.** Chapter 19-24.2 of the North Dakota Century Code is created and enacted as follows:

**19-24.2-01. Definitions.**

1. "Advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation, by visual, oral, or written means, to induce any person to patronize a particular retail marijuana establishment or to purchase particular retail marijuana or a retail marijuana product. "Advertising" includes marketing but does not include packaging and labeling. "Advertising" proposes a commercial transaction or otherwise constitutes commercial speech.
2. "Applicant" means a person that has submitted an application for licensure as a retail marijuana establishment under this chapter which was accepted by the commission for review but has not been approved or denied by the commission.
3. "Batch" means a specific quantity of cannabis harvested during a specified time period from a specified cultivation area.
4. "Batch number" means any distinct group or combination of numbers, letters, or symbols assigned by a retail marijuana cultivation facility or retail marijuana product manufacturing facility to a specific harvest batch or production batch of retail marijuana.
5. "Board" means the cannabis advisory board.
6. "Cannabis" means marijuana.
7. "Child-resistant" means special packaging:
  - a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly;
  - b. Opaque so the product cannot be seen from outside the packaging; and
  - c. Closeable for any product intended for more than a single use or containing multiple servings.
8. "Commission" means the marijuana control commission.
9. "Container" means the sealed package in which retail marijuana or a retail marijuana product is placed for sale to a consumer which has been labeled according to the requirements provided in this chapter.

10. "Edible retail marijuana product" means any retail marijuana product intended to be consumed orally, including any type of food, drink, or pill.
11. "Final agency order" means an order of the commission issued in accordance with this chapter and chapter 28-32 in response to a review of the initial decision and any exceptions filed or at the conclusion of the declaratory order process.
12. "Flowering marijuana plant" means the gametophytic or reproductive state of cannabis in which the plant is in a light cycle intended to produce flowers, trichomes, and cannabinoids characteristic of marijuana.
13. "Good cause", for purposes of denial of an initial license application or denial of a renewal or reinstatement of a license application, means:
  - a. The licensee or applicant has violated, does not meet, or has failed to comply with this chapter, any rules adopted under this chapter, or any supplemental relevant state or local law, rule, or regulation; or
  - b. The licensee or applicant has failed to comply with any special terms, consent decree, or conditions that were placed upon the license pursuant to an order of the commission or the relevant municipality.
14. "Harvest batch" means a batch of processed retail marijuana that is uniform in strain, cultivated using the same herbicides, pesticides, and fungicides, and harvested at the same time.
15. "Identity statement" means the name of the business as commonly known and used in advertising.
16. "Immature plant" means a nonflowering retail marijuana plant that is taller than twenty-four inches [60.96 centimeters] and is wider than eighteen inches [45.72 centimeters].
17. "Initial decision" means a decision of a hearing officer after a licensing, disciplinary, or administrative hearing.
18. "Law enforcement officer" means "law enforcement officer" or "peace officer" as defined in section 12.1-01-04.
19. "Licensed premises" means the premises specified in an application for a license under this chapter which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, consume, or test retail marijuana in accordance with the provisions of this chapter and rules adopted pursuant to this chapter.
20. "Licensee" means a person licensed under this chapter or, in the case of a holder of an occupational license, an individual licensed under this chapter.
21. "Limited access area" means a building, room, or other contiguous area on the licensed premises where retail marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale under control of the licensee.

22. "Marijuana" means all parts of the plant of the genus cannabis whether growing or dry; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant or the resin extracted from the plant, including cannabis concentrate. "Marijuana" does not include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or any ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or any other product.
23. "Marijuana accessories" means equipment, products, devices, or materials of any kind intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the body.
24. "Marijuana establishment" means any type of licensed marijuana-related business.
25. "Marijuana extraction" means the process of extracting marijuana with solvents or gases.
26. "Mother plant" means a plant used solely by a cultivator for the taking of seedling cuttings.
27. "Occupational license" means a license granted to an individual by the commission.
28. "Owner" means a person whose beneficial interest in a retail marijuana establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a retail marijuana establishment, and has a controlling interest in a retail marijuana establishment.
29. "Plant canopy" means the area upon the licensed premises dedicated to live plant cultivation, including maintaining mother plants, propagating plants from seed to plant tissue, or cloning and maintaining a vegetative or flowering area. "Plant canopy" does not include spaces for storage of fertilizers, pesticides, or other products, quarantine areas, office space, walkways, work areas, and other similar areas.
30. "Production batch" means a group of retail marijuana products created from a production run of retail marijuana products.
31. "Propagation" means the reproduction of retail marijuana plants by seeds, cuttings, or grafting.
32. "Registered dispensary" means a dispensary formed in accordance with chapter 19-24.1.
33. "Restricted access area" means a designated and secure area within the licensed premises in a retail marijuana store where retail marijuana and retail marijuana products are sold, possessed, and displayed for sale, and where individuals under twenty-one years of age are not permitted.
34. "Retail marijuana" means cannabis that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

35. "Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package retail marijuana and sell retail marijuana to retail marijuana establishments.
36. "Retail marijuana establishment" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility, or a retail marijuana testing facility.
37. "Retail marijuana product" means concentrated retail marijuana and retail marijuana products composed of retail marijuana and other ingredients and intended for use or consumption, including edible products, ointments, and tinctures.
38. "Retail marijuana products manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare, and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities and retail marijuana stores.
39. "Retail marijuana testing facility" means an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.
40. "Sample" means any retail marijuana or retail marijuana product provided for testing or research purposes to a retail marijuana testing facility by a retail marijuana establishment.
41. "Seedling" means a nonflowering retail marijuana plant that is no taller than twenty-four inches [60.96 centimeters] and is no wider than eighteen inches [45.72 centimeters].
42. "Universal symbol" means the image established by the commission and made available to licensees through the commission's website for indicating retail marijuana or a retail marijuana product is within a container.
43. "Unreasonably impracticable" means the measures necessary to comply with the rules require such a high investment of risk, money, time, or any other resource or asset that the operation of a retail marijuana establishment is not worth being carried out in practice by a reasonably prudent business person.

#### **19-24.2-02. Personal use of marijuana.**

Except as otherwise provided in this chapter, an individual who is at least twenty-one years of age may:

1. Use, possess, or transport marijuana accessories and up to two ounces [56.70 grams] of prepared marijuana;
2. Give away, or otherwise transfer without consideration, up to one ounce [28.35 grams] of marijuana, of which only five grams of marijuana may be in the form of marijuana concentrate, if the transfer is not advertised or promoted in public and the transfer is to an individual who is twenty-one years of age or older; and
3. Assist another individual who is twenty-one years of age or older in any of the acts described in this section.

#### **19-24.2-03. Marijuana possession - Restrictions.**

1. For purposes of this section:

- a. "Open container" means the seal of the package containing marijuana or marijuana products is broken or the contents of the package have been partially removed or consumed.
  - b. "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area readily accessible to the driver or passenger while in a seated position. "Passenger area" does not include a motor vehicle's trunk, locked glove compartment, or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.
2. Except as otherwise provided by law, an individual under the influence of marijuana may not operate a motor vehicle.
3. a. An individual may not possess:
- (1) Marijuana in a motor vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state; or
  - (2) An open container of marijuana or marijuana products in the passenger area of a motor vehicle.
- b. An individual who violates this subsection is subject to a civil penalty not to exceed five hundred dollars.
4. a. Except as otherwise provided in chapter 19-24.1, an individual under twenty-one years of age may not:
- (1) Use marijuana;
  - (2) Enter any licensed premises; or
  - (3) Manufacture, attempt to manufacture, purchase, attempt to purchase, consume, be under the influence of, be in possession of, or furnish money to any person for the purchase of marijuana or marijuana accessories.
- b. A violation of this subsection is punishable in the same manner as provided in section 5-01-08.
5. An individual who knowingly delivers marijuana to another individual who is under twenty-one years of age or to an incompetent or an obviously intoxicated individual is guilty of a class A misdemeanor. A violation of this subsection is punishable in the same manner as provided in section 5-01-09.
6. An individual who knowingly delivers marijuana for consideration to another individual who is at least twenty-one years of age in violation of this chapter is guilty of:
- a. A class B misdemeanor, for delivery less than one ounce [28.35 grams].
  - b. A class A misdemeanor, for delivery of more than one ounce [28.35 grams].
7. Except as otherwise provided in this chapter, a person may not cultivate or process marijuana plants. A person that violates this subsection is subject to a civil penalty not to



exceed five hundred dollars and forfeiture of the marijuana. A person that violates this subsection is not subject to any other form of criminal or civil punishment or disqualification solely for this conduct.

8. If an individual secures the individual's marijuana and marijuana products in an enclosed and locked container, an individual may possess more than one ounce [28.35 grams] of marijuana or marijuana products within the individual's place of residence. An individual who violates this subsection is subject to a civil penalty not to exceed one hundred dollars and forfeiture of the marijuana.

#### **19-24.2-04. Marijuana extraction - Restriction.**

1. Only a marijuana entity acting in compliance with this chapter and other regulations may perform solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, food-grade alcohol, or food-grade oil.
2. A person may not extract compounds from marijuana using ethanol in the presence or vicinity of an open flame.
3. A person who violates this section is guilty of a class A misdemeanor.

#### **19-24.2-05. Public consumption.**

1. An individual may not consume marijuana in a public place or smoke marijuana where smoking tobacco is prohibited.
2. An individual who violates this section is subject to a civil penalty not to exceed one hundred dollars and forfeiture of the marijuana. An individual who violates this section is not subject to any other form of criminal or civil punishment or disqualification solely for this conduct.
3. This section does not apply to an individual who consumes marijuana or marijuana products in a designated area of a marijuana establishment located in a city or town that has voted to allow consumption on the premises where sold and may not be construed to limit the medical use of marijuana.

#### **19-24.2-06. Consumption at retail marijuana establishments.**

An individual may not consume retail marijuana or retail marijuana products in a retail marijuana establishment. A retail marijuana establishment may not allow retail marijuana or retail marijuana products to be consumed upon the licensed premises.

#### **19-24.2-07. Employment.**

This chapter does not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and does not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.

#### **19-24.2-08. Negligent conduct.**

This chapter may not be construed to amend existing penalties for conduct involving the performance of a task while impaired by marijuana which would constitute negligence or

professional malpractice and this chapter does not prevent the imposition of any civil, criminal, or other penalty for such conduct.

**19-24.2-09. Relation to medical marijuana.**

This chapter may not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary pursuant to chapter 19-24.1.

**19-24.2-10. Marijuana control commission.**

1. The governor shall appoint three members to serve on the marijuana control commission. The commission has general supervision, licensing authority, and sole regulatory authority over the conduct of business at marijuana establishments. The commission includes the following members:
  - a. One commissioner; and
  - b. Two associate commissioners.
2. No more than two members of the commission may be of the same political party.
3. The commissioner shall serve a term concurrent with the term of the governor and the associate commissioners shall serve a term of three years. Any vacancy occurring for any reason other than the expiration of a term must be filled for the unexpired term in the same manner as the original appointment. The commissioner and associate commissioners may not serve more than three terms.
4. The governor shall appoint members of the commission based on their experience or expertise in public health, social justice, the regulation of business or consumer commodities, the production and distribution of marijuana and marijuana products, and law enforcement.
5. The commissioner shall serve as chair and preside over all official activities of the commission.
6. Upon providing a member with a written statement of the charges and an opportunity to be heard, the governor may remove any member for neglect of duty, misconduct, or malfeasance in office.
7. Two members constitute a quorum for conducting business of the commission. A vacancy may not impair the ability of the remaining members to exercise the duties of the commission.
8. The commission may hire staff as may be necessary for the performance of its duties.
9. The commissioner may appoint a chief investigator and other investigators to enforce or cause to be enforced the penalties provided by law against a marijuana establishment that violates the law.

**19-24.2-11. Marijuana advisory board.**

1. The governor may create a marijuana advisory board to assist the commission and make recommendations relating to the regulation of marijuana and marijuana accessories.
2. If created, the governor shall appoint the following members:
  - a. Two experts in marijuana cultivation;

- b. Two experts in marijuana retailing;
  - c. One expert in marijuana product manufacturing;
  - d. One expert in marijuana testing;
  - e. One individual who represents marijuana retail customers;
  - f. One expert in public health;
  - g. One expert in social welfare or social justice; and
  - h. One licensed attorney with experience providing legal services to marijuana establishments.
3. Each member of the board shall serve a term of two years.
4. Members of the board may not be compensated or considered state employees but are entitled to reimbursement from the marijuana control commission for travel and lodging at the same rate as provided for state officers and employees.
5. The board shall meet at the discretion of the commission.
6. A majority of the members of the board present and voting constitutes a quorum.
7. The marijuana advisory board shall:
- a. Advise the commission on marijuana cultivation, processing, manufacture, transport, distribution, testing, and sale;
  - b. Consider all matters submitted to the marijuana advisory board by the commission;
  - c. On its own initiative, recommend to the commission guidelines, rules, and regulations the board considers important or necessary; and
  - d. Advise on the preparation of regulations to effectuate this chapter.

**19-24.2-12. Rulemaking authority.**

Within nine months of the effective date of this chapter, the commission shall adopt rules in accordance with chapter 28-32 for the proper regulation and control of the cultivation, manufacture, distribution, sale, and testing of retail marijuana and retail marijuana products and for the enforcement of this chapter and shall adopt amended rules, special rules, and findings as necessary. The rules must address:

- 1. The hearing of contested state license denials at a public hearing, employing full due process, including the subpoena power, the taking of oaths, the calling of witnesses, and the maintaining of the confidentiality of customer records. Rules must be made for the conduct of appeal hearings following license actions, including the denial of a license renewal or of an initial license and license revocation and suspension, and hearings contesting the imposition of a fine.
- 2. The development of forms, licenses, identification cards, and applications as necessary for the administration of this chapter or of any of the rules adopted under this chapter.

3. The preparation and transmission annually, in the form and manner prescribed by this chapter, of a report to the legislative assembly and governor accounting for the efficient discharge of all responsibilities assigned by law or rule to the commission.
4. Procedures consistent with this chapter for the issuance, renewal, suspension, and revocation of licenses to operate retail marijuana establishments.
5. Limits on the concentration of tetrahydrocannabinol and other cannabinoids per serving in any retail marijuana product.
6. Qualifications for licensure, including the requirement for a fingerprint-based criminal history record check for all owners, officers, managers, employees, and other support staff of entities licensed pursuant to this chapter.
7. Security requirements for any licensed premises under this chapter, including, at a minimum, lighting, physical security, alarm requirements, and other minimum procedures for internal control as determined necessary by the commission to properly administer and enforce this chapter, including reporting requirements for changes, alterations, or modifications to the licensed premises. Security requirements may not be unreasonably impracticable.
8. Securing and recording permission for a local fire department or the state fire marshal to conduct an annual fire inspection of a retail marijuana cultivation facility.

**19-24.2-13. Independent testing - Certification program.**

1. Within nine months of the effective date of this chapter, the commission shall establish a retail marijuana and retail marijuana products independent testing and certification program. The program must require licensees to test retail marijuana and retail marijuana products to ensure, at a minimum, products sold for human consumption do not contain contaminants hazardous to the health of an individual and to ensure correct labeling. The establishment of an independent testing and certification program does not affect the adoption of rules or the implementation of cultivation, production, and sale of retail marijuana and retail marijuana products.
2. Testing must include analysis for residual solvents, poisons, toxins, harmful chemicals, dangerous molds and mildew, harmful microbes such as escherichia coli, salmonella, and pesticides.
3. If test results indicate the presence of quantities of any substance determined to be hazardous to the health of an individual in any product, the product must be quarantined immediately and the commission must be notified. The products also must be documented and properly destroyed.
4. Testing must verify tetrahydrocannabinol potency representations for correct labeling.

**19-24.2-14. Labeling - Health and safety requirements - Training.**

1. Labeling requirements for the sale of retail marijuana and retail marijuana products include:
  - a. The license number of the retail marijuana cultivation facility license.

- b. The license number of the retail marijuana store license.
  - c. An identity statement and a universal symbol.
  - d. The batch number.
  - e. A net weight statement.
  - f. Tetrahydrocannabinol potency and the potency of other cannabinoids or other chemicals, including cannabidiol, as determined relevant by the commission.
  - g. Warning labels.
  - h. Solvents used in marijuana extraction.
  - i. Amount of tetrahydrocannabinol per serving and the number of servings per package for retail marijuana products.
  - j. A list of ingredients and possible allergens for retail marijuana products.
  - k. A recommended use date or expiration date for retail marijuana products.
  - l. A nutritional fact panel for edible retail marijuana products.
2. Packaging for retail marijuana and retail marijuana products must be child-resistant and may not contain imagery designed to make the product more appealing to children.
3. The commission shall adopt health and safety rules and standards for the manufacture of retail marijuana products and the cultivation of retail marijuana which must include:
- a. Limitations on the display of retail marijuana and retail marijuana products;
  - b. Regulation of the storage of, warehouses for, and transportation of retail marijuana and retail marijuana products; and
  - c. Sanitary requirements for retail marijuana establishments, including sanitary requirements for the preparation of retail marijuana products.
4. The commission shall adopt rules and processes for training local jurisdictions and law enforcement officers on the law, including the requirements for inspections, investigations, searches, seizures, forfeitures, and additional activities as necessary.

**19-24.2-15. Identification cards.**

- 1. The commission shall adopt rules detailing the format and information required for individual identification cards for owners, officers, managers, contractors, employees, and other support staff of entities licensed pursuant to this chapter, including a criminal history record check as may be required by the commission before issuing an identification card.
- 2. The commission shall specify the forms of photo identification a retail marijuana store may accept when verifying a sale, including government-issued identification cards.
- 3. The commission shall develop procedures for license renewal, reinstatement, initial licensure, and the payment of licensing fees, as well as other matters necessary for the fair, impartial, and comprehensive administration of this chapter.

**19-24.2-16. License application - Issuance - Regulation.**

1. An application for licensure of a marijuana establishment under this chapter must be submitted to the commission on forms prepared and furnished by the commission and must include information required by the commission, including:
  - a. The name and address of the applicant; and
  - b. The names and addresses of the applicant's officers, directors, or managers.
2. The following provisions govern the qualifications for licensure as a retail marijuana establishment:
  - a. An applicant must be at least twenty-one years of age.
  - b. If an applicant is a corporation, all members of the board of the corporation must comply with this chapter.
  - c. A person who has been convicted of a disqualifying drug offense may not be a licensee. For purposes of this subdivision, "disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for five years or more. "Disqualifying drug offense" does not include an offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed at least ten years before application for licensure or an offense that consisted of conduct permitted under this chapter.
  - d. A person who has had a license for a retail marijuana establishment revoked may not be a licensee.
  - e. A sheriff, deputy sheriff, police officer, prosecuting officer, an officer or employee of the commission, or a municipality is ineligible to become a licensee.
3. The commission shall investigate all applicants for compliance with this chapter before issuing a license.
4. Each application must be verified by oath or affirmation of the applicant.
5. Upon completion of the applicable criminal history record check associated with the application, the commission may issue a license to an applicant pursuant to this section. The license is conditioned upon municipal approval and an applicant is prohibited from operating a retail marijuana establishment without commission and municipal approval. If an application is not approved by the municipality, the commission shall revoke the license.
6. A person is not qualified to conduct licensed activities until the required annual fee has been paid.
7. During an investigation into the qualifications of an applicant or a licensee, the commission and municipality may access criminal history record information furnished by a law enforcement agency, subject to any restrictions imposed by the agency. If the commission or municipality considers the applicant's criminal history record, the commission or municipality also shall consider any information provided by the applicant regarding the criminal history record, including evidence of rehabilitation, character references, and

educational achievements, especially those items pertaining to the time between the applicant's last criminal conviction and the consideration of the application for a license.

8. An applicant shall submit a set of fingerprints and personal history information relating to the applicant's qualifications for a license at the time of filing an application for issuance of a retail marijuana establishment license. The commission or municipality shall submit the fingerprints to the bureau of criminal investigation for completion of a criminal history record check under section 12-60-24. The commission may acquire a name-based criminal history record check for an applicant or a licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. An applicant who previously has submitted fingerprints for state licensing purposes may request the fingerprints on file be used. The commission shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a license under this chapter. The commission or municipality may verify any of the information an applicant is required to submit.
9. The following provisions govern applications for and issuance of a retail marijuana establishment license.
- a. An applicant shall file an application in the form required by the commission for the type of license sought, along with the application fee as set by the commission.
- b. Except for a person licensed as a retail marijuana testing facility, an applicant may apply for and be granted more than one type of license. The commission shall begin accepting and processing applications within thirty days after the adoption of rules under this chapter. If after ninety days the applications do not meet the maximum square footage allotment set by this chapter, the commission may begin accepting and processing applications from all other qualified applicants.
- c. Within ninety days of the date of receipt of an application, the commission shall issue or renew a license to operate a retail marijuana establishment to an applicant that meets the requirements of the commission, which must include a review of the site plan, operating plan, and relevant experience in the marijuana industry in the state. The commission may reject an application if:
- (1) The commission finds the applicant is not in compliance with this section or rules adopted by the commission;
  - (2) The commission is notified by the relevant municipality that the applicant is not in compliance with an ordinance, rule, or regulation in effect at the time of application;  
or
  - (3) The number of retail marijuana establishments allowed in the municipality has been limited pursuant to local ordinance or is limited by this chapter and the commission

has licensed the maximum number of retail marijuana establishments allowed in the municipality for the class of license the applicant is seeking.

- d. If granting a license for a retail marijuana establishment to a licensee that already operates the same type of retail establishment would prevent a new qualified applicant from receiving a license, the commission may not grant an additional license to the existing licensee.
10. The commission may not limit the total number of retail marijuana stores in the state.
  11. A municipality may regulate the number, location, and operation of retail marijuana establishments and may prohibit the operation of retail marijuana establishments within the jurisdiction of the municipality.
  12. The commission may establish limitations on retail marijuana cultivation by:
    - a. Placing or modifying a limit on the number of licenses issued. When placing or modifying the limits, the commission shall consider the reasonable availability of new licenses after a limit is placed or modified.
    - b. Placing or modifying a limit on the amount of production permitted by a retail marijuana cultivation facility license or class of licenses based a reasonable metric or set of metrics, including previous months' sales, pending sales, or other reasonable metrics as determined by the commission.
  13. License fees collected under this chapter, after deducting any amounts remitted to municipalities under section 19-24.2-29, must be remitted to the state treasurer for deposit in the marijuana regulation fund.

#### **19-24.2-17. Marijuana cultivation facilities.**

1. Unless the commission determines a greater size is necessary to ensure adequate supply, the amount of space approved for marijuana cultivation at retail marijuana cultivation facilities is limited to eight hundred thousand square feet [74322.43 square meters] of plant canopy.
2. An applicant shall designate on the applicant's operating plan the size category of the licensed premises and the amount of actual square footage that will be designated as plant canopy.
3. The commission shall license two types of retail marijuana cultivation facilities:
  - a. Facilities with three thousand square feet [278.71 square meters] or less of plant canopy; and
  - b. Facilities with more than three thousand square feet [278.71 square meters] of plant canopy.
4. The commission shall license marijuana cultivation at retail marijuana cultivation facilities by unit blocks of ten feet [3.05 meters] by ten feet [3.05 meters] or one hundred square feet [9.29 square meters] of plant canopy with forty percent of all licenses issued going to



licensees of thirty unit blocks or fewer. The maximum amount of unit blocks allowed to a single licensee is three hundred.

5. An applicant that applies for a retail marijuana cultivation facility license for a facility with more than three thousand square feet [278.71 square meters] of plant canopy and is not licensed by the commission, may be considered for a license for a facility with three thousand square feet [278.71 square meters] or less of plant canopy.
6. No more than six retail marijuana cultivation facilities or more than three hundred unit blocks of plant canopy may be located on the same parcel of property.
7. If fifty percent or less of the unit blocks a facility is authorized to cultivate are not used by the end of the first year of operation, the commission may reduce the number of unit blocks a retail marijuana cultivation facility is authorized to cultivate.
8. The commission may not approve an application for the issuance of a license pursuant to this chapter:
  - a. If the application for the license concerns a location that is the same as or within one thousand feet [304.8 meters] of a location for which, within the two years immediately preceding the date of the application, the commission denied an application for the same class of license due to the nature of the use or other concern related to the location; or
  - b. Until it is established the applicant is in or will be entitled to possession of the licensed premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises.

#### **19-24.2-18. Classes of licenses - License provisions.**

For the purpose of regulating the cultivation, manufacture, distribution, sale, and testing of retail marijuana and retail marijuana products, the commission may issue and grant a license from one or more of the following classes:

1. Retail marijuana establishment license.
2. Retail marijuana cultivation facility license.
3. Retail marijuana products manufacturing facility license.
4. Retail marijuana testing facility license.
5. Occupational license and registration for owners, managers, operators, employees, contractors, and other support staff employed at, working in, or having access to restricted access areas of the licensed premises, as determined by the commission.

#### **19-24.2-19. Retail marijuana establishment.**

1. A retail marijuana establishment licensee shall collect sales tax at the rate provided in section 57-39.2-02.1 and excise tax at the rate provided in section 19-24.2-33 on all retail sales made at a retail marijuana establishment.
2. A retail marijuana establishment:

- a. May only sell retail marijuana, retail marijuana products, marijuana accessories, and nonconsumable product.
  - b. May not sell or give away any consumable product, including cigarettes, alcohol, and edible products that do not contain marijuana, including sodas, candies, and baked goods. Automatic dispensing machines that contain retail marijuana and retail marijuana products are prohibited.
  - c. A retail marijuana store licensee shall track all retail marijuana and retail marijuana products from the point transferred from a retail marijuana cultivation facility or retail marijuana products manufacturing facility to the point of sale.
3. An individual must be at least twenty-one years of age to make a purchase in a retail marijuana establishment.
  4. The employee of a retail marijuana establishment making a sale shall verify the purchaser has a valid government-issued identification card, or other acceptable identification, proving the purchaser is at least twenty-one years of age. If an individual under twenty-one years of age presents a fraudulent proof of age, any action relying on the fraudulent proof of age may not be grounds for the revocation or suspension of a license issued under this chapter.
  5. The commission shall adopt rules to prohibit certain signs, marketing, and advertising, including a prohibition on mass-market campaigns that have a high likelihood of reaching individuals under twenty-one years of age. The prohibitions may include:
    - a. A prohibition on health or physical benefit claims in advertising, merchandising, and packaging;
    - b. A prohibition on unsolicited advertising on the internet;
    - c. A prohibition on opt-in marketing that does not permit an easy and permanent opt-out feature; and
    - d. Unless the marketing is a mobile device application installed on the device by the owner of the device who is at least twenty-one years of age and includes a permanent and easy opt-out feature, a prohibition on marketing directed toward location-based devices, including cellular phones.
  6. A retail marijuana product may not contain an additive designed to make the product more appealing to children.
  7. Notwithstanding any other provision of law, sales of retail marijuana and retail marijuana products are not exempt from state sales tax.
  8. This chapter may not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment. A law enforcement agency may run a statewide criminal history record check of a licensee, or employee of a licensee, during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

9. Retail marijuana and retail marijuana products may be transported between a licensed retail marijuana establishment, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities.

**19-24.2-20. Retail marijuana cultivation facility license.**

1. The commission shall create a statewide licensure class system for retail marijuana cultivation facilities.
2. A retail marijuana cultivation facility licensee may cultivate retail marijuana for sale and distribution only to licensed retail marijuana establishments, retail marijuana products manufacturing facilities, and other retail marijuana cultivation facilities.
3. A retail marijuana cultivation facility may have a retail marijuana establishment if it is located on the same licensed premises as the retail marijuana cultivation facility. If the retail marijuana cultivation facility chooses the option to have a retail marijuana establishment, the facility must meet all requirements set by the commission and municipality in which it is located. A retail marijuana establishment located on the licensed premises of a retail marijuana cultivation facility does not count against any municipal limits on the number of retail marijuana establishments.
4. A retail marijuana cultivation facility shall track the marijuana it cultivates from seed or immature plant to wholesale purchase. The commission may not adopt rules that are unreasonably impracticable concerning the tracking of marijuana from seed or immature plant to wholesale purchase.
5. A retail marijuana cultivation facility may provide, except as required by this chapter, a sample of its products to a retail marijuana testing facility for testing and research purposes. A retail marijuana cultivation facility shall maintain a record of what was provided to the retail marijuana testing facility, the identity of the retail marijuana testing facility, and the testing results.
6. Retail marijuana may be transported between a licensed retail marijuana cultivation facility and retail marijuana establishments, other retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities.

**19-24.2-21. Retail marijuana products manufacturing facility license.**

1. A retail marijuana products manufacturing facility licensee is permitted to manufacture retail marijuana products under this chapter.
2. If a retail marijuana products manufacturing facility obtains a retail marijuana cultivation facility license, the retail marijuana products manufacturing facility may cultivate retail marijuana, or a retail marijuana products manufacturing facility may purchase retail marijuana from a licensed retail marijuana cultivation facility. A retail marijuana products manufacturing facility licensee shall track all retail marijuana from the point the marijuana is transferred from a retail marijuana cultivation facility or the point when the marijuana is

delivered to the retail marijuana products manufacturing facility from a licensed retail marijuana cultivation facility, to the point of transfer to a licensed retail marijuana establishment or retail marijuana testing facility.

3. A retail marijuana products manufacturing facility licensee may not:
  - a. Add marijuana to a food product that holds a trademark to the food product's name. This subdivision does not apply to a retail marijuana products manufacturing facility licensee using a trademarked food product when the licensee uses the product as a component or as part of a recipe and the licensee does not state or advertise to the consumer that the final retail marijuana product contains a trademarked food product;
  - b. Intentionally or knowingly label or package a retail marijuana product in a manner that would cause a reasonable consumer confusion as to whether the retail marijuana product was a trademarked food product;
  - c. Label or package a product in a manner that violates any federal trademark law or regulation; or
  - d. Include harmful additives in any retail marijuana product, including ingredients that are toxic, designed to make the product more addictive, designed to make the product more appealing to children, or misleading to consumers.
4. Retail marijuana products must be prepared on licensed premises used exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and prepared using equipment that is used exclusively for the manufacture and preparation of retail marijuana and retail marijuana products.
5. All licensed premises in which retail marijuana products are manufactured must meet the sanitary standards for retail marijuana product preparation adopted pursuant to this chapter and must be licensed as commercial kitchens by the state department of health.
6. Retail marijuana products must be packaged, sealed, and conspicuously labeled in compliance with this chapter and any rules adopted pursuant to this chapter.
7. A retail marijuana products manufacturing facility licensee may provide a sample of the licensee's products to a licensed retail marijuana testing facility pursuant to this chapter for testing and research purposes. A retail marijuana products manufacturing facility licensee shall maintain a record of what was provided to the retail marijuana testing facility, the identity of the testing facility, and the results of the testing.
8. A retail marijuana products manufacturing facility licensee may list ingredients and compatibility with dietary practices on an edible retail marijuana product.
9. All retail marijuana products that require refrigeration to prevent spoilage must be stored and transported in a refrigerated environment.
10. This chapter may not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment. A law enforcement agency

may run a criminal history record check of a licensee or employee of a licensee during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

11. Retail marijuana products may be transported between a licensed retail marijuana products manufacturing facility and retail marijuana establishments, other retail marijuana products manufacturing facilities, and retail marijuana testing facilities.

**19-24.2-22. Retail marijuana testing facility license.**

1. A retail marijuana testing facility license may be issued to a person that performs testing and research on retail marijuana.
2. The retail marijuana testing facility may develop and test retail marijuana products.
3. The commission shall adopt rules related to acceptable testing and research practices, including testing, standards, quality control analysis, equipment certification and calibration, chemical identification, and other practices used in bona fide research methods.
4. A person that has an interest in a retail marijuana testing facility license may not have an interest in a registered dispensary, licensed retail marijuana establishment, a licensed retail marijuana cultivation facility, a licensed retail marijuana products manufacturing facility, or serve as a registered caregiver.
5. A person that has an interest in a registered dispensary, a licensed retail marijuana establishment, a licensed retail marijuana cultivation facility, a licensed retail marijuana products manufacturing facility, or serves as a registered caregiver may not have an interest in a facility that has a retail marijuana testing facility license. For purposes of this section, "interest" includes an ownership interest or partial ownership interest or any other type of financial interest.
6. Retail marijuana and retail marijuana products may be transported between the licensed retail marijuana testing facility and retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana establishments.

**19-24.2-23. Inspection of books and records.**

1. Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which must be open at all times during business hours for the inspection and examination by the commission or its duly authorized representatives.
2. The commission may require a licensee to furnish any information necessary for the proper administration of this chapter and may require an audit, at the expense of the licensee, of accounts and records by an auditor to be selected by the commission.
3. The licensed premises, including storage, where retail marijuana or retail marijuana products are stored, cultivated, sold, dispensed, or tested, are subject to inspection by the state or the municipality in which the licensed premises are located and by the investigators of the state or municipality during all business hours and other times of apparent activity for the purpose of inspection or investigation. Access must be granted during business hours for examination

of inventory or books and records required to be kept by a licensee. If part of the licensed premises consists of a locked area, the licensee shall make the locked area available for inspection.

4. Each licensee shall retain all books and records necessary to show all the business transactions for a period comprising the current tax year and the two tax years immediately preceding the current tax year.

#### **19-24.2-24. Product pricing.**

This chapter may not be construed as granting to the commission the power to fix prices for retail marijuana or retail marijuana products.

#### **19-24.2-25. Licensing.**

1. The commission shall determine license fees in a manner that is not unreasonably impracticable.
2. All licenses under this chapter are effective for one year from the date of issuance.
3. The following provisions govern license renewals:
  - a. The commission shall notify the licensee ninety days before the expiration date of the license by first class mail at the licensee's address of record with the commission.
  - b. A licensee may apply for a renewal of an existing license at least thirty days before the date of expiration. Upon receipt of an application for renewal of an existing license and any applicable fees, the commission, within seven days, shall submit a copy of the application to the appropriate municipality to determine whether the application complies with all local restrictions on renewal of licenses.
  - c. The commission may not accept an application for renewal of a license after the date of expiration. If the applicant has filed a timely renewal application with the municipality, the commission may extend the expiration date of the license and accept a late application. The commission authority or the municipality, subject to the requirements of this chapter and based upon reasonable grounds, may waive the thirty-day time requirements set forth in subdivision b.
  - d. Notwithstanding subdivision a, a licensee whose license has been expired for less than ninety days may file a late renewal application and a nonrefundable late application fee of five hundred dollars to the commission. Unless the commission summarily suspends the licensee's license pursuant to this chapter or rules adopted pursuant to this chapter, a licensee who files a late renewal application and pays the fee may continue to operate until the commission takes final action to approve or deny the licensee's late renewal application.
  - e. The commission may administratively extend the expiration date of a license and accept a later application for renewal of a license.
  - f. The commission, for good cause, may elect to not renew a license.

4. The commission may revoke or not renew any license if the commission determines the licensed premises have been inactive, without good cause, for at least one year.
5. The commission shall require a complete disclosure of all persons having a financial interest, and the extent of such interest, in each license issued under this chapter. This subsection is intended to prohibit and prevent the control of a retail marijuana establishment, retail marijuana cultivation facility, and retail marijuana products manufacturing facility by a person or party other than the persons licensed under this chapter.
6. The commission may deny approval of a license application for good cause. Upon denial of a license application, the commission shall inform the applicant of the basis for denial and the right to appeal the denial in a hearing.
7. A retail marijuana establishment shall notify the commission of the name, address, and date of birth of an owner, officer, manager, or employee before the new owner, officer, manager, or employee begins managing, owning, or associating with the establishment. The owner, officer, manager, or employee must pass a criminal history record check as required by the commission and obtain the required identification card before being associated with, managing, owning, or working at the establishment.
8. Each license issued under this chapter is separate and distinct. A person may not exercise any of the privileges granted under a license other than the license that the person holds and a licensee may not allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.
9. A licensee shall possess and maintain possession of the licensed premises identified in the license by ownership, lease, rental, or other arrangement for possession of the premises at all times.
10. A license must specify the date of issuance, the period of licensure, the name of the licensee, and the premises licensed. A licensee conspicuously shall place the license at all times on the licensed premises.
11. In computing any time prescribed by this chapter, the day of the act, event, or default from which the designated time begins to run is not included. Saturdays, Sundays, and holidays are counted as any other day except any documents due to be submitted to state or local government on a date that falls on a Saturday, Sunday, or holiday are due on the next business day.
12. A licensee shall report each transfer or change of financial interest in the license to the commission and appropriate municipality and receive approval before any transfer or change under this chapter.
13. Upon permission from the commission and municipality where the marijuana retail establishment proposes to move the permanent location of a licensed premises, a licensee

may move the permanent location of licensed premises to any other place in the state. Upon receipt of an application for change of location, the commission, within seven days, shall submit a copy of the application to the municipality to determine whether the transfer complies with all local restrictions on change of location. In permitting a change of location, the municipality where the retail marijuana establishment proposes to relocate shall consider all reasonable restrictions that are or may be placed upon the new location by the governing board of the municipality. Any change in location must be in accordance with all requirements of this chapter and rules adopted pursuant to this chapter.

**19-24.2-26. Disciplinary actions.**

1. In addition to any other penalty prescribed by this chapter or rules adopted pursuant to this chapter, the commission, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee must be afforded an opportunity to be heard, may fine a licensee or suspend or revoke a license issued by the commission for a violation by the licensee, or by any of the agents or employees of the licensee, of this chapter or any of the rules adopted pursuant to this chapter or of any of the terms, conditions, or provisions of the license issued by the commission. The commission may administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary for a hearing the commission is authorized to conduct.
2. The commission shall provide notice of suspension, revocation, fine, or other sanction. Notice of the hearing required by this subsection must be mailed to the licensee at the address contained in the license and, if different, at the last address furnished to the commission by the licensee. Except in the case of a summary suspension, a suspension may not be for a period longer than six months. If a license is suspended or revoked, a portion of the fees paid must be retained by the commission.
3. When a decision of the commission suspending a license for fourteen days or fewer becomes final, the licensee, before the operative date of the suspension, may petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the commission may stay the proposed suspension and cause an investigation to be made that the commission considers desirable and may grant the petition upon a determination:
  - a. Public welfare would not be impaired by permitting the licensee to operate during the period set for suspension and the payment of the fine will achieve the desired disciplinary purposes; and
  - b. The books and records of the licensee are kept in such a manner that the loss of sales the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.



4. A fine imposed under this section may not be less than five hundred dollars or more than twenty thousand dollars. Payment of a fine must be in the form of cash, certified check, or cashier's check made payable to the commission.
5. Upon payment of the fine pursuant to this section, the commission shall enter its order permanently staying the imposition of the suspension. Fines paid to the commission pursuant to this subsection must be transmitted to the state treasurer for deposit in the marijuana regulation fund.
6. In connection with a petition pursuant to this section, the authority of the commission is limited to the granting of stays as are necessary for the commission to complete its investigation and make its findings and if the commission makes findings to justify the granting of an order to permanently stay the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.
7. If the commission does not make the findings required in this section and does not order the suspension permanently stayed, the suspension goes into effect on the operative date set by the commission.
8. Before January fifteenth of each year, the commission shall compile a report of the preceding year's actions in which fines, suspensions, or revocations were imposed. The commission shall include this information in its annual report to the legislative assembly and governor.

**19-24.2-27. Disposition of unauthorized retail marijuana or retail marijuana products -**

**Related materials.**

1. This section applies in addition to any criminal, civil, or administrative penalties and in addition to any other penalties prescribed by this chapter or any rules adopted pursuant to this chapter.
2. Every licensee is deemed, by virtue of applying for, holding, or renewing that licensee's license, to have expressly consented to the procedures set forth in this section.
3. If the commission issues a final agency order imposing a disciplinary action against a licensee pursuant to this chapter, in addition to any other remedies, the commission's final agency order may specify that some or all of the licensee's marijuana or marijuana products is not retail marijuana or a retail marijuana product and is an illegal controlled substance. The order also may specify the licensee loses any ownership interest in any of the marijuana or marijuana products even if the marijuana or marijuana products previously qualified as retail marijuana or a retail marijuana product. The final agency order may direct the destruction of any retail marijuana and marijuana products. The authorized destruction may include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana products.
4. If an investigation of a retail marijuana establishment is commenced, a state's attorney or the attorney general shall notify the commission. If the commission receives notification of an

investigation from a state's attorney or the attorney general, the commission may not destroy any retail marijuana or marijuana products from the retail marijuana establishment until the destruction is approved by the state's attorney or the attorney general.

5. A state or local agency may not be required to cultivate or care for any retail marijuana or retail marijuana products belonging to or seized from a licensee. A state or local agency is not authorized to sell marijuana, retail or otherwise.

#### **19-24.2-28. Judicial review.**

Final agency actions by the commission are subject to judicial review pursuant to chapter 28-32.

#### **19-24.2-29. Local licensing.**

1. A municipality may regulate the location and operation of retail marijuana establishments.
2. A municipality may adopt and enforce regulations for retail marijuana establishments which are at least as restrictive as the provisions of this chapter and any rule adopted under this chapter. This chapter does not prohibit the registered voters of a municipality from calling for a vote on any regulations adopted by a municipal body.
3. A retail marijuana establishment may not operate until the retail marijuana establishment is licensed by the commission and approved by the municipality in which the retail establishment is located. If an application is denied by the municipality, the licensee has ninety days to locate and obtain legal interest in another property in a municipality that approves of the retail marijuana establishment before the license is revoked.
4. Within seven days of the commission receiving an application for original licensing or renewal of an existing license for a retail marijuana establishment, the commission shall provide a copy of the application and fifty percent of the licensing fee to the municipality in which the establishment is to be located. The municipality shall determine whether the application complies with local land use regulations and any other restrictions on time, place, manner, and the number of marijuana businesses within the municipality. The municipality shall inform the commission whether the application complies with the local land use ordinance and other local restrictions.
5. A municipality may impose a separate local licensing requirement as a part of its restrictions on time, place, manner, and the number of marijuana businesses. A municipality may decline to impose any local licensing requirements and, within fourteen business days, shall notify the commission of an approval or denial of an application.
6. If a municipality issues local licenses for a retail marijuana establishment, a public hearing on the application may be scheduled. If the municipality schedules a hearing, notice of the hearing must be published at least ten days before the hearing.
7. If a municipality does not issue local licenses, the municipality may give notice of the state application by posting a sign in a conspicuous place on the premises identified in the

application and by publication in a newspaper of general circulation in the county in which the premises are located.

#### **19-24.2-30. Transfer of ownership.**

1. Except as otherwise provided in this section, a license granted under this chapter is not transferable.
2. Upon receipt of an application for transfer of ownership, the commission, within seven days, shall submit a copy of the application to the appropriate municipality to determine whether the transfer complies with any local restriction on transfer of ownership. In determining whether to permit a transfer of ownership, the commission shall consider only the requirements of this chapter, rules adopted by the state licensing authority, and any other local restrictions. The municipality may hold a hearing on the application for transfer of ownership. Any transfer of ownership hearing by the commission must be held in compliance with the requirements specified for a municipality in this chapter.

#### **19-24.2-31. Limitations - License to sell retail marijuana or retail marijuana products.**

Except as otherwise provided in this chapter, a person licensed pursuant to this chapter may not:

1. Display signs that are inconsistent with local laws or regulations;
2. Use advertising material that is misleading, deceptive, or false, or designed to appeal to an individual under twenty-one years of age;
3. Have in the individual's possession or upon the licensed premises any marijuana that is not permitted;
4. Sell retail marijuana or retail marijuana products to an individual under twenty-one years of age;
5. Sell retail marijuana or retail marijuana products without checking the individual's identification for proof of age;
6. Have on the licensed premises any retail marijuana, retail marijuana products, or marijuana paraphernalia that shows evidence of the retail marijuana having been consumed or partially consumed; or
7. Transfer ownership or abandon the licensed premises or otherwise cease operation without notifying the commission and appropriate municipality at least forty-eight hours in advance and without accounting for and forfeiting to the commission for destruction all marijuana and products containing marijuana.

#### **19-24.2-32. Criminal penalty.**

Except as otherwise provided in this chapter:

1. A person who violates this chapter by possessing:
  - a. Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.

- b. At least one-half ounce [14.175 grams] but not more than five hundred grams of marijuana is guilty of a class B misdemeanor.
- c. More than five hundred grams of marijuana is guilty of a class A misdemeanor.
- 2. A person who violates this chapter by possessing five hundred grams or more of marijuana during a school-sponsored activity or during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, within intent to manufacture or deliver marijuana in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of marijuana to a minor is guilty of a class C felony.
- 3. A person who violates this chapter by using or possessing with the intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, or repack marijuana is guilty of a class A misdemeanor.
- 4. A person who violates this chapter by using or possesses with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or possesses with the intent to use drug paraphernalia to store or contain marijuana is guilty of an infraction.

**19-24.2-33. Excise tax imposed - Retail marijuana - Retail marijuana products.**

- 1. An excise tax of ten percent is imposed on the sales price for all sales of retail marijuana and retail marijuana products at the point of final sale at a retail marijuana establishment, with the exception of marijuana sold pursuant to chapter 19-24.1.
- 2. On or before the last day of each month, the owner of a retail marijuana establishment shall file with the tax commissioner, on a form prescribed by the tax commissioner, a return together with the payment of the excise tax due under this section.
- 3. The return must report all sales of retail marijuana and retail marijuana products within the state from the retail marijuana establishment during the preceding calendar month. A retail marijuana establishment shall keep a complete and accurate record at its principal place of business to substantiate all receipts and sales of retail marijuana and retail marijuana products.
- 4. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The penalty must be paid to the tax commissioner. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty.

5. The owner of a retail marijuana establishment shall allow the tax commissioner access to licensing information necessary for the collection of sales, excise, and income tax from the licensee.
6. Monthly sales and excise tax returns and reports must be retained by the licensee and made available for inspection by an agent of the commission.
7. Any person aggrieved because of any action or decision of the tax commissioner under this section has the right to a hearing by the tax commissioner and the right to appeal from the decision of the tax commissioner on the hearing in accordance with chapter 28-32.
8. The commission shall adopt rules to address the nonpayment of excise tax, penalties, or interest due under this chapter, which may include the permanent revocation of the licensee's retail marijuana establishment license.
9. Excise tax, penalties, and interest collected by the tax commissioner under this section must be transmitted to the state treasurer at the end of each month for deposit in the marijuana regulation fund.

**19-24.2-34. Marijuana regulation fund - Continuing appropriation - Allocations.**

1. The marijuana regulation fund is a special fund in the state treasury. The fund consists of all moneys deposited in the fund under this chapter.
2. Moneys in the fund may be spent by the commission pursuant to legislative appropriations for the commission's operations.
3. Excluding the amounts appropriated to the commission under subsection 2, moneys deposited in the fund during a biennium are appropriated to the state treasurer on a continuing basis for allocations as follows:
  - a. Ten percent to the welfare special operating fund to support addiction treatment services;
  - b. Ten percent to the foundation aid stabilization fund;
  - c. Ten percent to the legacy fund;
  - d. Ten percent to the state park fund;
  - e. Ten percent to the workforce enhancement fund for workforce development; and
  - f. Fifty percent to the general fund.

**19-24.2-35. Failure to act.**

Notwithstanding any other provision of law, if the commission fails to adopt rules necessary for the implementation of this chapter within nine months of the effective date of this chapter, each medical marijuana treatment center may begin to possess, cultivate, process, manufacture, package, purchase, or otherwise obtain and test marijuana and marijuana products and may deliver, sell, or otherwise transfer marijuana to any individual who is at least twenty-one years of age until the commission adopts the regulations necessary for implementation of this chapter and begins to issue licenses to operate marijuana establishments.