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SENATE BILL 134

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED
SUBSTANCES ACT; MAKING IT A CRIME TO POSSESS AND DISTRIBUTE
SYNTHETIC CANNABINOIDS; PROVIDING PENALTIES; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-31-6 NMSA 1978 (being Laws 1972,
Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled
substances are included in Schedule I:

A. any of the following opiates, including their
isomers, esters, ethers, salts, and salts of isomers, esters
and ethers, unless specifically exempted, whenever the
existence of these isomers, esters, ethers and salts is
possible within the specific chemical designation:

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- 1 (1) acetylmethadol;
- 2 (2) allylprodine;
- 3 (3) alphacetylmethadol;
- 4 (4) alphameprodine;
- 5 (5) alphamethadol;
- 6 (6) benzethidine;
- 7 (7) betacetylmethadol;
- 8 (8) betameprodine;
- 9 (9) betamethadol;
- 10 (10) betaprodine;
- 11 (11) clonitazene;
- 12 (12) dextromoramide;
- 13 (13) dextrorphan;
- 14 (14) diampromide;
- 15 (15) diethylthiambutene;
- 16 (16) dimenoxadol;
- 17 (17) dimepheptanol;
- 18 (18) dimethylthiambutene;
- 19 (19) dioxaphetyl butyrate;
- 20 (20) dipipanone;
- 21 (21) ethylmethylthiambutene;
- 22 (22) etonitazene;
- 23 (23) etoxeridine;
- 24 (24) furethidine;
- 25 (25) hydroxypethidine;

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- 1 (26) ketobemidone;
- 2 (27) levomoramide;
- 3 (28) levophenacylmorphan;
- 4 (29) morpheridine;
- 5 (30) noracymethadol;
- 6 (31) norlevorphanol;
- 7 (32) normethadone;
- 8 (33) norpipanone;
- 9 (34) phenadoxone;
- 10 (35) phenampromide;
- 11 (36) phenomorphan;
- 12 (37) phenoperidine;
- 13 (38) piritramide;
- 14 (39) proheptazine;
- 15 (40) properidine;
- 16 (41) racemoramide; and
- 17 (42) trimeperidine;

18 B. any of the following opium derivatives, their
19 salts, isomers and salts of isomers, unless specifically
20 exempted, whenever the existence of these salts, isomers and
21 salts of isomers is possible within the specific chemical
22 designation:

- 23 (1) acetorphine;
- 24 (2) acetyldihydrocodeine;
- 25 (3) benzylmorphine;

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- 1 (4) codeine methylbromide;
- 2 (5) codeine-N-oxide;
- 3 (6) cyprenorphine;
- 4 (7) desomorphine;
- 5 (8) dihydromorphine;
- 6 (9) etorphine;
- 7 (10) heroin;
- 8 (11) hydromorphinol;
- 9 (12) methyldesorphine;
- 10 (13) methyldihydromorphine;
- 11 (14) morphine methylbromide;
- 12 (15) morphine methylsulfonate;
- 13 (16) morphine-N-oxide;
- 14 (17) myrophine;
- 15 (18) nicocodeine;
- 16 (19) nicomorphine;
- 17 (20) normorphine;
- 18 (21) pholcodine; and
- 19 (22) thebacon;

20 C. any material, compound, mixture or preparation
21 that contains any quantity of the following hallucinogenic
22 substances, their salts, isomers and salts of isomers, unless
23 specifically exempted, whenever the existence of these salts,
24 isomers and salts of isomers is possible within the specific
25 chemical designation:

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- 1 (1) 3,4-methylenedioxy amphetamine;
- 2 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 3 (3) 3,4,5-trimethoxy amphetamine;
- 4 (4) bufotenine;
- 5 (5) diethyltryptamine;
- 6 (6) dimethyltryptamine;
- 7 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 8 (8) ibogaine;
- 9 (9) lysergic acid diethylamide;
- 10 (10) marijuana;
- 11 (11) mescaline;
- 12 (12) peyote, except as otherwise provided in
- 13 the Controlled Substances Act;
- 14 (13) N-ethyl-3-piperidyl benzilate;
- 15 (14) N-methyl-3-piperidyl benzilate;
- 16 (15) psilocybin;
- 17 (16) psilocyn;
- 18 (17) tetrahydrocannabinols; [~~and~~]
- 19 (18) hashish; and
- 20 (19) synthetic cannabinoids, including:
- 21 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
- 22 naphthoyl)indole];
- 23 (b) 1-butyl-3-(1-naphthoyl)indole;
- 24 (c) 1-hexyl-3-(1-naphthoyl)indole;
- 25 (d) 1-pentyl-3-(1-naphthoyl)indole;

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1 (e) 1-pentyl-3-(2-
2 methoxyphenylacetyl)indole;

3 (f) cannabicyclohexanol (CP 47, 497 and
4 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-
5 hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-
6 dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

7 (g) 6aR,10aR)-9-(hydroxymethyl)-6,6-
8 dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]
9 chromen-1-ol); and

10 (h) dexanabinol, (6aS,10aS)-9-
11 (hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-
12 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

13 D. the enumeration of peyote as a controlled
14 substance does not apply to the use of peyote in bona fide
15 religious ceremonies by a bona fide religious organization, and
16 members of the organization so using peyote are exempt from
17 registration. Any person who manufactures peyote for or
18 distributes peyote to the organization or its members shall
19 comply with the federal Comprehensive Drug Abuse Prevention and
20 Control Act of 1970 and all other requirements of law;

21 E. the enumeration of marijuana,
22 tetrahydrocannabinols or chemical derivatives of
23 tetrahydrocannabinol as Schedule I controlled substances does
24 not apply to the use of marijuana, tetrahydrocannabinols or
25 chemical derivatives of tetrahydrocannabinol by certified

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1 patients pursuant to the Controlled Substances Therapeutic
2 Research Act or by qualified patients pursuant to the
3 provisions of the Lynn and Erin Compassionate Use Act; and

4 F. controlled substances added to Schedule I by
5 rule adopted by the board pursuant to Section 30-31-3 NMSA
6 1978."

7 SECTION 2. Section 30-31-22 NMSA 1978 (being Laws 1972,
8 Chapter 84, Section 22, as amended) is amended to read:

9 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
10 DISTRIBUTION PROHIBITED.--

11 A. Except as authorized by the Controlled
12 Substances Act, it is unlawful for a person to intentionally
13 distribute or possess with intent to distribute a controlled
14 substance or a controlled substance analog except a substance
15 enumerated in Schedule I or II that is a narcotic drug, a
16 controlled substance analog of a controlled substance
17 enumerated in Schedule I or II that is a narcotic drug or
18 methamphetamine, its salts, isomers and salts of isomers. A
19 person who violates this subsection with respect to:

20 (1) marijuana or synthetic cannabinoids is:

21 (a) for the first offense, guilty of a
22 fourth degree felony and shall be sentenced pursuant to the
23 provisions of Section 31-18-15 NMSA 1978;

24 (b) for the second and subsequent
25 offenses, guilty of a third degree felony and shall be

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1 sentenced pursuant to the provisions of Section 31-18-15 NMSA
2 1978;

3 (c) for the first offense, if more than
4 one hundred pounds is possessed with intent to distribute or
5 distributed or both, guilty of a third degree felony and shall
6 be sentenced pursuant to the provisions of Section 31-18-15
7 NMSA 1978; and

8 (d) for the second and subsequent
9 offenses, if more than one hundred pounds is possessed with
10 intent to distribute or distributed or both, guilty of a second
11 degree felony and shall be sentenced pursuant to the provisions
12 of Section 31-18-15 NMSA 1978;

13 (2) any other controlled substance enumerated
14 in Schedule I, II, III or IV or a controlled substance analog
15 of a controlled substance enumerated in Schedule I, II, III or
16 IV except a substance enumerated in Schedule I or II that is a
17 narcotic drug, a controlled substance analog of a controlled
18 substance enumerated in Schedule I or II that is a narcotic
19 drug or methamphetamine, its salts, isomers and salts of
20 isomers, is:

21 (a) for the first offense, guilty of a third
22 degree felony and shall be sentenced pursuant to the provisions
23 of Section 31-18-15 NMSA 1978; and

24 (b) for the second and subsequent offenses,
25 guilty of a second degree felony and shall be sentenced

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1 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

2 (3) a controlled substance enumerated in
3 Schedule V or a controlled substance analog of a controlled
4 substance enumerated in Schedule V is guilty of a misdemeanor
5 and shall be punished by a fine of not less than one hundred
6 dollars (\$100) or more than five hundred dollars (\$500) or by
7 imprisonment for a definite term not less than one hundred
8 eighty days but less than one year, or both.

9 B. It is unlawful for a person to distribute gamma
10 hydroxybutyric acid or flunitrazepam to another person without
11 that person's knowledge and with intent to commit a crime
12 against that person, including criminal sexual penetration.
13 For the purposes of this subsection, "without that person's
14 knowledge" means the person is unaware that a substance with
15 the ability to alter that person's ability to appraise conduct
16 or to decline participation in or communicate unwillingness to
17 participate in conduct is being distributed to that person.
18 Any person who violates this subsection is:

19 (1) for the first offense, guilty of a third
20 degree felony and shall be sentenced pursuant to the provisions
21 of Section 31-18-15 NMSA 1978; and

22 (2) for the second and subsequent offenses,
23 guilty of a second degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978.

25 C. Except as authorized by the Controlled Substances

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1 Act, it is unlawful for a person to intentionally create or
2 deliver, or possess with intent to deliver, a counterfeit
3 substance. A person who violates this subsection with respect
4 to:

5 (1) a counterfeit substance enumerated in
6 Schedule I, II, III or IV is guilty of a fourth degree felony
7 and shall be sentenced pursuant to the provisions of Section
8 31-18-15 NMSA 1978; and

9 (2) a counterfeit substance enumerated in
10 Schedule V is guilty of a petty misdemeanor and shall be
11 punished by a fine of not more than one hundred dollars (\$100)
12 or by imprisonment for a definite term not to exceed six
13 months, or both.

14 D. A person who knowingly violates Subsection A or C
15 of this section while within a drug-free school zone with
16 respect to:

17 (1) marijuana or synthetic cannabinoids is:

18 (a) for the first offense, guilty of a third
19 degree felony and shall be sentenced pursuant to the provisions
20 of Section 31-18-15 NMSA 1978;

21 (b) for the second and subsequent offenses,
22 guilty of a second degree felony and shall be sentenced
23 pursuant to the provisions of Section 31-18-15 NMSA 1978;

24 (c) for the first offense, if more than one
25 hundred pounds is possessed with intent to distribute or

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1 distributed or both, guilty of a second degree felony and shall
2 be sentenced pursuant to the provisions of Section 31-18-15
3 NMSA 1978; and

4 (d) for the second and subsequent offenses,
5 if more than one hundred pounds is possessed with intent to
6 distribute or distributed or both, guilty of a first degree
7 felony and shall be sentenced pursuant to the provisions of
8 Section 31-18-15 NMSA 1978;

9 (2) any other controlled substance enumerated in
10 Schedule I, II, III or IV or a controlled substance analog of a
11 controlled substance enumerated in Schedule I, II, III or IV
12 except a substance enumerated in Schedule I or II that is a
13 narcotic drug, a controlled substance analog of a controlled
14 substance enumerated in Schedule I or II that is a narcotic
15 drug or methamphetamine, its salts, isomers and salts of
16 isomers, is:

17 (a) for the first offense, guilty of a
18 second degree felony and shall be sentenced pursuant to the
19 provisions of Section 31-18-15 NMSA 1978; and

20 (b) for the second and subsequent offenses,
21 guilty of a first degree felony and shall be sentenced pursuant
22 to the provisions of Section 31-18-15 NMSA 1978;

23 (3) a controlled substance enumerated in
24 Schedule V or a controlled substance analog of a controlled
25 substance enumerated in Schedule V is guilty of a fourth degree

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1 felony and shall be sentenced pursuant to the provisions of
2 Section 31-18-15 NMSA 1978; and

3 (4) the intentional creation, delivery or
4 possession with the intent to deliver:

5 (a) a counterfeit substance enumerated in
6 Schedule I, II, III or IV is guilty of a third degree felony
7 and shall be sentenced pursuant to the provisions of Section
8 31-18-15 NMSA 1978; and

9 (b) a counterfeit substance enumerated in
10 Schedule V is guilty of a misdemeanor and shall be punished by
11 a fine of not less than one hundred dollars (\$100) nor more
12 than five hundred dollars (\$500) or by imprisonment for a
13 definite term not less than one hundred eighty days but less
14 than one year, or both.

15 E. Notwithstanding the provisions of Subsection A of
16 this section, distribution of a small amount of marijuana or
17 synthetic cannabinoids for no remuneration shall be treated as
18 provided in Paragraph (1) of Subsection B of Section 30-31-23
19 NMSA 1978."

20 SECTION 3. Section 30-31-23 NMSA 1978 (being Laws 1972,
21 Chapter 84, Section 23, as amended) is amended to read:

22 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
23 PROHIBITED.--

24 A. It is unlawful for ~~any~~ a person intentionally to
25 possess a controlled substance unless the substance was

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1 obtained pursuant to a valid prescription or order of a
2 practitioner while acting in the course of [~~his~~] professional
3 practice or except as otherwise authorized by the Controlled
4 Substances Act. It is unlawful for [~~any~~] a person
5 intentionally to possess a controlled substance analog.

6 B. [~~Any~~] A person who violates this section with
7 respect to:

8 (1) one ounce or less of marijuana or synthetic
9 cannabinoids is, for the first offense, guilty of a petty
10 misdemeanor and shall be punished by a fine of not less than
11 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
12 and by imprisonment for not more than fifteen days, and, for
13 the second and subsequent offenses, guilty of a misdemeanor and
14 shall be punished by a fine of not less than one hundred
15 dollars (\$100) or more than one thousand dollars (\$1,000) or by
16 imprisonment for a definite term less than one year, or both;

17 (2) more than one ounce and less than eight
18 ounces of marijuana or synthetic cannabinoids is guilty of a
19 misdemeanor and shall be punished by a fine of not less than
20 one hundred dollars (\$100) or more than one thousand dollars
21 (\$1,000) or by imprisonment for a definite term less than one
22 year, or both; or

23 (3) eight ounces or more of marijuana or
24 synthetic cannabinoids is guilty of a fourth degree felony and
25 shall be sentenced pursuant to the provisions of Section

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1 31-18-15 NMSA 1978.

2 C. Except for those substances listed in Subsection D
3 of this section, ~~[any]~~ a person who violates this section with
4 respect to any amount of any controlled substance enumerated in
5 Schedule I, II, III or IV or a controlled substance analog of a
6 substance enumerated in Schedule I, II, III or IV is guilty of
7 a misdemeanor and shall be punished by a fine of not less than
8 five hundred dollars (\$500) or more than one thousand dollars
9 (\$1,000) or by imprisonment for a definite term less than one
10 year, or both.

11 D. ~~[Any]~~ A person who violates this section with
12 respect to phencyclidine as enumerated in Schedule III or a
13 controlled substance analog of phencyclidine; methamphetamine,
14 its salts, isomers or salts of isomers as enumerated in
15 Schedule II or a controlled substance analog of
16 methamphetamine, its salts, isomers or salts of isomers;
17 flunitrazepam, its salts, isomers or salts of isomers as
18 enumerated in Schedule I or a controlled substance analog of
19 flunitrazepam, including naturally occurring metabolites, its
20 salts, isomers or salts of isomers; gamma hydroxybutyric acid
21 and any chemical compound that is metabolically converted to
22 gamma hydroxybutyric acid, its salts, isomers or salts of
23 isomers as enumerated in Schedule I or a controlled substance
24 analog of gamma hydroxybutyric acid, its salts, isomers or
25 salts of isomers; gamma butyrolactone and any chemical compound

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1 that is metabolically converted to gamma hydroxybutyric acid,
2 its salts, isomers or salts of isomers as enumerated in
3 Schedule I or a controlled substance analog of gamma
4 butyrolactone, its salts, isomers or salts of isomers; 1-4
5 butane diol and any chemical compound that is metabolically
6 converted to gamma hydroxybutyric acid, its salts, isomers or
7 salts of isomers as enumerated in Schedule I or a controlled
8 substance analog of 1-4 butane diol, its salts, isomers or
9 salts of isomers; or a narcotic drug enumerated in Schedule I
10 or II or a controlled substance analog of a narcotic drug
11 enumerated in Schedule I or II is guilty of a fourth degree
12 felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978.

14 E. ~~[Any]~~ A person who violates Subsection A of this
15 section while within a posted drug-free school zone, excluding
16 private property residentially zoned or used primarily as a
17 residence and excluding ~~[any]~~ a person in or on a motor vehicle
18 in transit through the posted drug-free school zone, with
19 respect to:

20 (1) one ounce or less of marijuana or synthetic
21 cannabinoids is, for the first offense, guilty of a misdemeanor
22 and shall be punished by a fine of not less than one hundred
23 dollars (\$100) or more than one thousand dollars (\$1,000) or by
24 imprisonment for a definite term less than one year, or both,
25 and for the second or subsequent offense, is guilty of a fourth

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1 degree felony and shall be sentenced pursuant to the provisions
2 of Section 31-18-15 NMSA 1978;

3 (2) more than one ounce and less than eight
4 ounces of marijuana or synthetic cannabinoids is guilty of a
5 fourth degree felony and shall be sentenced pursuant to the
6 provisions of Section 31-18-15 NMSA 1978;

7 (3) eight ounces or more of marijuana or
8 synthetic cannabinoids is guilty of a third degree felony and
9 shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978;

11 (4) any amount of any other controlled substance
12 enumerated in Schedule I, II, III or IV or a controlled
13 substance analog of a substance enumerated in Schedule I, II,
14 III or IV, except phencyclidine as enumerated in Schedule III,
15 a narcotic drug enumerated in Schedule I or II or a controlled
16 substance analog of a narcotic drug enumerated in Schedule I or
17 II, is guilty of a fourth degree felony and shall be sentenced
18 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

19 (5) phencyclidine as enumerated in Schedule III,
20 a narcotic drug enumerated in Schedule I or II, a controlled
21 substance analog of phencyclidine or a controlled substance
22 analog of a narcotic drug enumerated in Schedule I or II is
23 guilty of a third degree felony and shall be sentenced pursuant
24 to the provisions of Section 31-18-15 NMSA 1978."

25 SECTION 4. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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