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AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED  
SUBSTANCES ACT; MAKING IT A CRIME TO POSSESS AND DISTRIBUTE  
SYNTHETIC CANNABINOIDS AND CERTAIN OTHER SYNTHETIC DRUGS;  
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:

- (1) acetylmethadol;
- (2) allylprodine;
- (3) alphacetylmethadol;
- (4) alphameprodine;
- (5) alphasmethadol;
- (6) benzethidine;
- (7) betacetylmethadol;
- (8) betameprodine;
- (9) betamethadol;

- 1 (10) betaprodine;
- 2 (11) clonitazene;
- 3 (12) dextromoramide;
- 4 (13) dextrorphan;
- 5 (14) diampromide;
- 6 (15) diethylthiambutene;
- 7 (16) dimenoxadol;
- 8 (17) dimepheptanol;
- 9 (18) dimethylthiambutene;
- 10 (19) dioxaphetyl butyrate;
- 11 (20) dipipanone;
- 12 (21) ethylmethylthiambutene;
- 13 (22) etonitazene;
- 14 (23) etoxeridine;
- 15 (24) furethidine;
- 16 (25) hydroxypethidine;
- 17 (26) ketobemidone;
- 18 (27) levomoramide;
- 19 (28) levophenacylmorphane;
- 20 (29) morpheridine;
- 21 (30) noracymethadol;
- 22 (31) norlevorphanol;
- 23 (32) normethadone;
- 24 (33) norpipanone;
- 25 (34) phenadoxone;

- 1 (35) phenampromide;
- 2 (36) phenomorphan;
- 3 (37) phenoperidine;
- 4 (38) piritramide;
- 5 (39) proheptazine;
- 6 (40) properidine;
- 7 (41) racemoramide; and
- 8 (42) trimeperidine;

9 B. any of the following opium derivatives, their  
10 salts, isomers and salts of isomers, unless specifically  
11 exempted, whenever the existence of these salts, isomers and  
12 salts of isomers is possible within the specific chemical  
13 designation:

- 14 (1) acetorphine;
- 15 (2) acetyldihydrocodeine;
- 16 (3) benzylmorphine;
- 17 (4) codeine methylbromide;
- 18 (5) codeine-N-oxide;
- 19 (6) cyprenorphine;
- 20 (7) desomorphine;
- 21 (8) dihydromorphine;
- 22 (9) etorphine;
- 23 (10) heroin;
- 24 (11) hydromorphanol;
- 25 (12) methyldesorphine;

- 1 (13) methyldihydromorphine;
- 2 (14) morphine methylbromide;
- 3 (15) morphine methylsulfonate;
- 4 (16) morphine-N-oxide;
- 5 (17) myrophine;
- 6 (18) nicocodeine;
- 7 (19) nicomorphine;
- 8 (20) normorphine;
- 9 (21) pholcodine; and
- 10 (22) thebacon;

11 C. any material, compound, mixture or preparation  
12 that contains any quantity of the following hallucinogenic  
13 substances, their salts, isomers and salts of isomers, unless  
14 specifically exempted, whenever the existence of these salts,  
15 isomers and salts of isomers is possible within the specific  
16 chemical designation:

- 17 (1) 3,4-methylenedioxy amphetamine;
- 18 (2) 5-methoxy-3,4-methylenedioxy  
19 amphetamine;
- 20 (3) 3,4,5-trimethoxy amphetamine;
- 21 (4) bufotenine;
- 22 (5) diethyltryptamine;
- 23 (6) dimethyltryptamine;
- 24 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 25 (8) ibogaine;

1 (9) lysergic acid diethylamide;  
2 (10) marijuana;  
3 (11) mescaline;  
4 (12) peyote, except as otherwise provided in  
5 the Controlled Substances Act;

6 (13) N-ethyl-3-piperidyl benzilate;

7 (14) N-methyl-3-piperidyl benzilate;

8 (15) psilocybin;

9 (16) psilocyn;

10 (17) tetrahydrocannabinols;

11 (18) hashish;

12 (19) synthetic cannabinoids, including:

13 (a) 1-[2-(4-(morpholinyl)ethyl)  
14 -3-(1-naphthoyl)indole;

15 (b) 1-butyl-3-(1-naphthoyl)indole;

16 (c) 1-hexyl-3-(1-naphthoyl)indole;

17 (d) 1-pentyl-3-(1-naphthoyl)indole;

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

20 (f) cannabicyclohexanol (CP 47, 497 and  
21 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)

22 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,  
23 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

24 (g) 6aR,10aR)-9-(hydroxymethyl)  
25 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,

1 10a-tetrahydrobenzo[c]chromen-1-ol);

2 (h) dexanabinol, (6aS,10aS)  
3 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)  
4 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

5 (i) 1-pentyl-3-(4-chloro naphthoyl)  
6 indole;

7 (j) (2-methyl-1-propyl-1H-indol-3-yl)  
8 -1-naphthalenyl-methanone; and

9 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy  
10 cyclohexyl)-phenol;

11 (20) 3,4-methylenedioxymethcathinone;

12 (21) 3,4-methylenedioxyprovalerone;

13 (22) 4-methylmethcathinone;

14 (23) 4-methoxymethcathinone;

15 (24) 3-fluoromethcathinone; and

16 (25) 4-fluoromethcathinone;

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

25 E. the enumeration of marijuana,

1 tetrahydrocannabinols or chemical derivatives of  
2 tetrahydrocannabinol as Schedule I controlled substances does  
3 not apply to the use of marijuana, tetrahydrocannabinols or  
4 chemical derivatives of tetrahydrocannabinol by certified  
5 patients pursuant to the Controlled Substances Therapeutic  
6 Research Act or by qualified patients pursuant to the  
7 provisions of the Lynn and Erin Compassionate Use Act; and

8 F. controlled substances added to Schedule I by  
9 rule adopted by the board pursuant to Section 30-31-3 NMSA  
10 1978."

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

13 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--  
14 DISTRIBUTION PROHIBITED.--

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

24 (1) marijuana or synthetic cannabinoids is:

25 (a) for the first offense, guilty of a

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

3 (b) for the second and subsequent  
4 offenses, guilty of a third degree felony and shall be  
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
6 1978;

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

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

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

25 (a) for the first offense, guilty of a SB 134  
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1 third degree felony and shall be sentenced pursuant to the  
2 provisions of Section 31-18-15 NMSA 1978; and

3 (b) for the second and subsequent  
4 offenses, guilty of a second degree felony and shall be  
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
6 1978; and

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

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

25 (1) for the first offense, guilty of a

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

3 (2) for the second and subsequent  
4 offenses, guilty of a second degree felony and shall be  
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
6 1978.

7 C. Except as authorized by the Controlled  
8 Substances Act, it is unlawful for a person to intentionally  
9 create or deliver, or possess with intent to deliver, a  
10 counterfeit substance. A person who violates this subsection  
11 with respect to:

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

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

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

24 (1) marijuana or synthetic cannabinoids  
25 is:

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

4 (b) for the second and subsequent  
5 offenses, guilty of a second degree felony and shall be  
6 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
7 1978;

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

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

18 (2) any other controlled substance  
19 enumerated in Schedule I, II, III or IV or a controlled  
20 substance analog of a controlled substance enumerated in  
21 Schedule I, II, III or IV except a substance enumerated in  
22 Schedule I or II that is a narcotic drug, a controlled  
23 substance analog of a controlled substance enumerated in  
24 Schedule I or II that is a narcotic drug or methamphetamine,  
25 its salts, isomers and salts of isomers, is:

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

4 (b) for the second and subsequent  
5 offenses, guilty of a first degree felony and shall be  
6 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
7 1978;

8 (3) a controlled substance enumerated in  
9 Schedule V or a controlled substance analog of a controlled  
10 substance enumerated in Schedule V is guilty of a fourth  
11 degree felony and shall be sentenced pursuant to the  
12 provisions of Section 31-18-15 NMSA 1978; and

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

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

19 (b) a counterfeit substance enumerated  
20 in Schedule V is guilty of a misdemeanor and shall be  
21 punished by a fine of not less than one hundred dollars  
22 (\$100) nor more than five hundred dollars (\$500) or by  
23 imprisonment for a definite term not less than one hundred  
24 eighty days but less than one year, or both.

25 E. Notwithstanding the provisions of Subsection A

1 of this section, distribution of a small amount of marijuana  
2 or synthetic cannabinoids for no remuneration shall be  
3 treated as provided in Paragraph (1) of Subsection B of  
4 Section 30-31-23 NMSA 1978."

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

7 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION  
8 PROHIBITED.--

9 A. It is unlawful for a person intentionally to  
10 possess a controlled substance unless the substance was  
11 obtained pursuant to a valid prescription or order of a  
12 practitioner while acting in the course of professional  
13 practice or except as otherwise authorized by the Controlled  
14 Substances Act. It is unlawful for a person intentionally to  
15 possess a controlled substance analog.

16 B. A person who violates this section with respect  
17 to:

18 (1) one ounce or less of marijuana or  
19 synthetic cannabinoids is, for the first offense, guilty of a  
20 petty misdemeanor and shall be punished by a fine of not less  
21 than fifty dollars (\$50.00) or more than one hundred dollars  
22 (\$100) and by imprisonment for not more than fifteen days,  
23 and, for the second and subsequent offenses, guilty of a  
24 misdemeanor and shall be punished by a fine of not less than  
25 one hundred dollars (\$100) or more than one thousand dollars

1 (\$1,000) or by imprisonment for a definite term less than one  
2 year, or both;

3 (2) more than one ounce and less than  
4 eight ounces of marijuana or synthetic cannabinoids is guilty  
5 of a misdemeanor and shall be punished by a fine of not less  
6 than one hundred dollars (\$100) or more than one thousand  
7 dollars (\$1,000) or by imprisonment for a definite term less  
8 than one year, or both; or

9 (3) eight ounces or more of marijuana or  
10 synthetic cannabinoids is guilty of a fourth degree felony  
11 and shall be sentenced pursuant to the provisions of Section  
12 31-18-15 NMSA 1978.

13 C. A minor who violates this section with respect  
14 to the substances listed in this subsection is guilty of a  
15 petty misdemeanor and, notwithstanding the provisions of  
16 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by  
17 a fine not to exceed one hundred dollars (\$100) or  
18 forty-eight hours of community service. For the third or  
19 subsequent violation by a minor of this section with respect  
20 to those substances, the provisions of Section 32A-2-19 NMSA  
21 1978 shall govern punishment of the minor. As used in this  
22 subsection, "minor" means a person who is less than eighteen  
23 years of age. The provisions of this subsection apply to the  
24 following substances:

25 (1) synthetic cannabinoids;

1                   (2) any of the substances listed in  
2 Paragraphs (20) through (25) of Subsection C of Section  
3 30-31-6 NMSA 1978; or

4                   (3) a substance added to Schedule I by a  
5 rule of the board adopted on or after the effective date of  
6 this 2011 act if the board determines that the  
7 pharmacological effect of the substance, the risk to the  
8 public health by abuse of the substance and the potential of  
9 the substance to produce psychic or physiological dependence  
10 liability is similar to the substances described in Paragraph  
11 (1) or (2) of this subsection.

12                 D. Except for those substances listed in Subsection  
13 E of this section, a person who violates this section with  
14 respect to any amount of any controlled substance enumerated  
15 in Schedule I, II, III or IV or a controlled substance analog  
16 of a substance enumerated in Schedule I, II, III or IV is  
17 guilty of a misdemeanor and shall be punished by a fine of  
18 not less than five hundred dollars (\$500) or more than one  
19 thousand dollars (\$1,000) or by imprisonment for a definite  
20 term less than one year, or both.

21                 E. A person who violates this section with respect  
22 to phencyclidine as enumerated in Schedule III or a  
23 controlled substance analog of phencyclidine;  
24 methamphetamine, its salts, isomers or salts of isomers as  
25 enumerated in Schedule II or a controlled substance analog of

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

24 F. Except for a minor as defined in Subsection C of  
25 this section, a person who violates Subsection A of this

1 section while within a posted drug-free school zone,  
2 excluding private property residentially zoned or used  
3 primarily as a residence and excluding a person in or on a  
4 motor vehicle in transit through the posted drug-free school  
5 zone, with respect to:

6 (1) one ounce or less of marijuana or  
7 synthetic cannabinoids is, for the first offense, guilty of a  
8 misdemeanor and shall be punished by a fine of not less than  
9 one hundred dollars (\$100) or more than one thousand dollars  
10 (\$1,000) or by imprisonment for a definite term less than one  
11 year, or both, and for the second or subsequent offense, is  
12 guilty of a fourth degree felony and shall be sentenced  
13 pursuant to the provisions of Section 31-18-15 NMSA 1978;

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

18 (3) eight ounces or more of marijuana or  
19 synthetic cannabinoids is guilty of a third degree felony and  
20 shall be sentenced pursuant to the provisions of Section  
21 31-18-15 NMSA 1978;

22 (4) any amount of any other controlled  
23 substance enumerated in Schedule I, II, III or IV or a  
24 controlled substance analog of a substance enumerated in  
25 Schedule I, II, III or IV, except phencyclidine as enumerated

1 in Schedule III, a narcotic drug enumerated in Schedule I or  
2 II or a controlled substance analog of a narcotic drug  
3 enumerated in Schedule I or II, is guilty of a fourth degree  
4 felony and shall be sentenced pursuant to the provisions of  
5 Section 31-18-15 NMSA 1978; and

6 (5) phencyclidine as enumerated in  
7 Schedule III, a narcotic drug enumerated in Schedule I or II,  
8 a controlled substance analog of phencyclidine or a  
9 controlled substance analog of a narcotic drug enumerated in  
10 Schedule I or II is guilty of a third degree felony and shall  
11 be sentenced pursuant to the provisions of Section 31-18-15  
12 NMSA 1978."

13 SECTION 4. EMERGENCY.--It is necessary for the public  
14 peace, health and safety that this act take effect  
15 immediately.

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