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SENATE BILL 394

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTIONS OF THE
NMSA 1978 TO CREATE A DRUG-FREE RESIDENTIAL ZONE.

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

Section 1. Section 30-31-2 NMSA 1978 (being Laws 1972,
Chapter 84, Section 2, as amended by Laws 1997, Chapter 244,
Section 2 and also by Laws 1997, Chapter 253, Section 3) is
amended to read:

"30-31-2. DEFINITIONS. -- As used in the Controlled
Substances Act:

A. "administer" means the direct application of a
controlled substance by any means to the body of a patient or
research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts
on behalf of a manufacturer, distributor or dispenser. It

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1 does not include a common or contract carrier, public
2 warehouseman or employee of the carrier or warehouseman;

3 C. "board" means the board of pharmacy;

4 D. "bureau" means the bureau of narcotics and
5 dangerous drugs, United States department of justice, or its
6 successor agency;

7 E. "controlled substance" means a drug or
8 substance listed in Schedules I through V of the Controlled
9 Substances Act or regulations adopted thereto;

10 F. "counterfeit substance" means a controlled
11 substance that bears the unauthorized trademark, trade name,
12 imprint, number, device or other identifying mark or likeness
13 of a manufacturer, distributor or dispenser other than the
14 person who in fact manufactured, distributed or dispensed the
15 controlled substance;

16 G. "deliver" means the actual, constructive or
17 attempted transfer from one person to another of a controlled
18 substance or controlled substance analog, whether or not there
19 is an agency relationship;

20 H. "dispense" means to deliver a controlled
21 substance to an ultimate user or research subject pursuant to
22 the lawful order of a practitioner, including the
23 administering, prescribing, packaging, labeling or compounding
24 necessary to prepare the controlled substance for that
25 delivery;

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1 I. "dispenser" means a practitioner who dispenses
2 and includes hospitals, pharmacies and clinics where
3 controlled substances are dispensed;

4 J. "distribute" means to deliver other than by
5 administering or dispensing a controlled substance or
6 controlled substance analog;

7 K. "drug" or "substance" means substances
8 recognized as drugs in the official United States
9 pharmacopoeia, official homeopathic pharmacopoeia of the
10 United States or official national formulary or any respective
11 supplement to those publications. It does not include devices
12 or their components, parts or accessories;

13 L. "hashish" means the resin extracted from any
14 part of marijuana, whether growing or not, and every compound,
15 manufacture, salt, derivative, mixture or preparation of such
16 resins;

17 M "manufacture" means the production,
18 preparation, compounding, conversion or processing of a
19 controlled substance or controlled substance analog by
20 extraction from substances of natural origin or independently
21 by means of chemical synthesis or by a combination of
22 extraction and chemical synthesis and includes any packaging
23 or repackaging of the substance or labeling or relabeling of
24 its container, except that this term does not include the
25 preparation or compounding of a controlled substance:

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1 (1) by a practitioner as an incident to his
2 administering or dispensing of a controlled substance in the
3 course of his professional practice; or

4 (2) by a practitioner, or by his agent under
5 his supervision, for the purpose of or as an incident to
6 research, teaching or chemical analysis and not for sale;

7 N. "marijuana" means all parts of the plant
8 Cannabis, including any and all varieties, species and
9 subspecies of the genus Cannabis, whether growing or not, the
10 seeds thereof and every compound, manufacture, salt,
11 derivative, mixture or preparation of the plant or its seeds.
12 It does not include the mature stalks of the plant, hashish,
13 tetrahydrocannabinols extracted or isolated from marijuana,
14 fiber produced from the stalks, oil or cake made from the
15 seeds of the plant, any other compound, manufacture, salt,
16 derivative, mixture or preparation of the mature stalks,
17 fiber, oil or cake, or the sterilized seed of the plant that
18 is incapable of germination;

19 0. "narcotic drug" means any of the following,
20 whether produced directly or indirectly by extraction from
21 substances of vegetable origin or independently by means of
22 chemical synthesis or by a combination of extraction and
23 chemical synthesis:

24 (1) opium and opiate and any salt, compound,
25 derivative or preparation of opium or opiate;

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1 (2) any salt, compound, isomer, derivative or
2 preparation that is a chemical equivalent of any of the
3 substances referred to in Paragraph (1) of this subsection,
4 except the isoquinoline alkaloids of opium;

5 (3) opium poppy and poppy straw, including
6 all parts of the plant of the species *Papaver somniferum* L.
7 except its seeds; or

8 (4) coca leaves and any salt, compound,
9 derivative or preparation of coca leaves, any salt, compound,
10 isomer, derivative or preparation that is a chemical
11 equivalent of any of these substances except decocainized coca
12 leaves or extractions of coca leaves that do not contain
13 cocaine or ecgonine;

14 P. "opiate" means any substance having an
15 addiction-forming or addiction-sustaining liability similar to
16 morphine or being capable of conversion into a drug having
17 addiction-forming or addiction-sustaining liability. "Opiate"
18 does not include, unless specifically designated as controlled
19 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
20 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
21 "Opiate" does include its racemic and levorotatory forms;

22 Q. "person" includes a partnership, corporation,
23 association, institution, political subdivision, government
24 agency or other legal entity;

25 R. "practitioner" means a physician, dentist,

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1 certified nurse practitioner, clinical nurse specialist,
2 doctor of oriental medicine, certified nurse-midwife,
3 veterinarian or other person licensed or certified to
4 prescribe and administer drugs that are subject to the
5 Controlled Substances Act;

6 S. "prescription" means an order given
7 individually for the person for whom is prescribed a
8 controlled substance, either directly from the prescriber to
9 the pharmacist or indirectly by means of a written order
10 signed by the prescriber, in accordance with the Controlled
11 Substances Act or regulations adopted thereto;

12 T. "scientific investigator" means a person
13 registered to conduct research with controlled substances in
14 the course of his professional practice or research and
15 includes analytical laboratories;

16 U. "ultimate user" means a person who lawfully
17 possesses a controlled substance for his own use or for the
18 use of a member of his household or for administering to an
19 animal under the care, custody and control of the person or by
20 a member of his household;

21 V. "drug paraphernalia" means all equipment,
22 products and materials of any kind that are used, intended for
23 use or designed for use in planting, propagating, cultivating,
24 growing, harvesting, manufacturing, compounding, converting,
25 producing, processing, preparing, testing, analyzing,

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1 packaging, repackaging, storing, containing, concealing,
2 injecting, ingesting, inhaling or otherwise introducing into
3 the human body a controlled substance or controlled substance
4 analog in violation of the Controlled Substances Act. It
5 includes:

6 (1) kits used, intended for use or designed
7 for use in planting, propagating, cultivating, growing or
8 harvesting any species of plant that is a controlled substance
9 or controlled substance analog or from which a controlled
10 substance can be derived;

11 (2) kits used, intended for use or designed
12 for use in manufacturing, compounding, converting, producing,
13 processing or preparing controlled substances or controlled
14 substance analogs;

15 (3) isomerization devices used, intended for
16 use or designed for use in increasing the potency of any
17 species of plant that is a controlled substance;

18 (4) testing equipment used, intended for use
19 or designed for use in identifying or in analyzing the
20 strength, effectiveness or purity of controlled substances or
21 controlled substance analogs;

22 (5) scales or balances used, intended for use
23 or designed for use in weighing or measuring controlled
24 substances or controlled substance analogs;

25 (6) diluents and adulterants, such as quinine

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1 hydrochloride, mannitol, mannite dextrose and lactose, used,
2 intended for use or designed for use in cutting controlled
3 substances or controlled substance analogs;

4 (7) separation gins and sifters used,
5 intended for use or designed for use in removing twigs and
6 seeds from, or in otherwise cleaning and refining, marijuana;

7 (8) blenders, bowls, containers, spoons and
8 mixing devices used, intended for use or designed for use in
9 compounding controlled substances or controlled substance
10 analogs;

11 (9) capsules, balloons, envelopes and other
12 containers used, intended for use or designed for use in
13 packaging small quantities of controlled substances or
14 controlled substance analogs;

15 (10) containers and other objects used,
16 intended for use or designed for use in storing or concealing
17 controlled substances or controlled substance analogs;

18 (11) hypodermic syringes, needles and other
19 objects used, intended for use or designed for use in
20 parenterally injecting controlled substances or controlled
21 substance analogs into the human body;

22 (12) objects used, intended for use or
23 designed for use in ingesting, inhaling or otherwise
24 introducing marijuana, cocaine, hashish or hashish oil into
25 the human body, such as:

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1 (a) metal, wooden, acrylic, glass,
2 stone, plastic or ceramic pipes, with or without screens,
3 permanent screens, hashish heads or punctured metal bowls;

4 (b) water pipes;

5 (c) carburetion tubes and devices;

6 (d) smoking and carburetion masks;

7 (e) roach clips, meaning objects used
8 to hold burning material, such as a marijuana cigarette, that
9 has become too small to hold in the hand;

10 (f) miniature cocaine spoons and
11 cocaine vials;

12 (g) chamber pipes;

13 (h) carburetor pipes;

14 (i) electric pipes;

15 (j) air-driven pipes;

16 (k) chilams;

17 (l) bongs; or

18 (m) ice pipes or chillers; and

19 (13) in determining whether an object is drug
20 paraphernalia, a court or other authority should consider, in
21 addition to all other logically relevant factors, the
22 following:

23 (a) statements by the owner or by
24 anyone in control of the object concerning its use;

25 (b) the proximity of the object, in

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1 time and space, to a direct violation of the Controlled
2 Substances Act or any other law relating to controlled
3 substances or controlled substance analogs;

4 (c) the proximity of the object to
5 controlled substances or controlled substance analogs;

6 (d) the existence of any residue of a
7 controlled substance or controlled substance analog on the
8 object;

9 (e) instructions, written or oral,
10 provided with the object concerning its use;

11 (f) descriptive materials accompanying
12 the object that explain or depict its use;

13 (g) the manner in which the object is
14 displayed for sale; and

15 (h) expert testimony concerning its
16 use;

17 W. "controlled substance analog" means a substance
18 other than a controlled substance that has a chemical
19 structure substantially similar to that of a controlled
20 substance in Schedule I, II, III, IV or V or that was
21 specifically designed to produce effects substantially similar
22 to that of controlled substances in Schedule I, II, III, IV or
23 V. Examples of chemical classes in which controlled substance
24 analogs are found include the following:

25 (1) phenethylamines;

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- 1 (2) N- substituted piperidines;
- 2 (3) morphinans;
- 3 (4) ecgonines;
- 4 (5) quinazolines;
- 5 (6) substituted indoles; and
- 6 (7) arylcycloalkylamines.

7 Specifically excluded from the definition of "controlled
8 substance analog" are those substances that are generally
9 recognized as safe and effective within the meaning of the
10 Federal Food, Drug and Cosmetic Act or have been manufactured,
11 distributed or possessed in conformance with the provisions of
12 an approved new drug application or an exemption for
13 investigational use within the meaning of Section 505 of the
14 Federal Food, Drug and Cosmetic Act;

15 X. "human consumption" includes application,
16 injection, inhalation, ingestion or any other manner of
17 introduction; [~~whatsoever; and~~]

18 Y. "drug-free school zone" means [~~any~~] a public or
19 private school or property [~~that is~~] used for [~~public~~] school
20 purposes and the area within one thousand feet of the school
21 property line [~~but it does not mean any post-secondary~~
22 ~~school~~]; and

23 Z. "drug-free residential zone" means a dwelling
24 designed and used as a residence, including manufactured
25 homes, condominiums and apartments, and the area within one

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1 thousand feet of the exterior boundary of the dwelling."

2 Section 2. Section 30-31-20 NMSA 1978 (being Laws 1972,
3 Chapter 84, Section 20, as amended) is amended to read:

4 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
5 VIOLATION.--

6 A. As used in the Controlled Substances Act,
7 "traffic" means the:

8 (1) manufacture of any controlled substance
9 enumerated in Schedules I through V or any controlled
10 substance analog as defined in Subsection W of Section 30-31-2
11 NMSA 1978;

12 (2) distribution, sale, barter or giving away
13 of any controlled substance enumerated in Schedule I or II
14 that is a narcotic drug or a controlled substance analog of a
15 controlled substance enumerated in Schedule I or II that is a
16 narcotic drug; or

17 (3) possession with intent to distribute any
18 controlled substance enumerated in Schedule I or II that is a
19 narcotic drug or controlled substance analog of a controlled
20 substance enumerated in Schedule I or II that is a narcotic
21 drug.

22 B. Except as authorized by the Controlled
23 Substances Act, it is unlawful for any person to intentionally
24 traffic. Any person who violates this subsection is:

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

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1 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 offenses,
4 guilty of a first degree felony and shall be sentenced
5 pursuant to the provisions of Section 31-18-15 NMSA 1978.

6 C. Any person who knowingly violates Subsection B
7 of this section within a drug-free school zone, [~~excluding~~
8 ~~private property residentially zoned or used primarily as a~~
9 ~~residence~~] or a drug-free residential zone, is guilty of a
10 first degree felony and shall be sentenced pursuant to the
11 provisions of Section 31-18-15 NMSA 1978. "

12 Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,
13 Chapter 84, Section 22, as amended) is amended to read:

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

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

24 (1) marijuana is:

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

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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 shall
10 be sentenced pursuant to the provisions of Section 31-18-15
11 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 or
20 IV except a substance enumerated in Schedule I or II that is a
21 narcotic drug or a controlled substance analog of a controlled
22 substance enumerated in Schedule I or II that is a narcotic
23 drug, is:

24 (a) for the first offense, guilty of a
25 third degree felony and shall be sentenced pursuant to the

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

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

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

13 B. Except as authorized by the Controlled
14 Substances Act, it is unlawful for any person to intentionally
15 create or deliver, or possess with intent to deliver, a
16 counterfeit substance. Any person who violates this
17 subsection with respect to:

18 (1) a counterfeit substance enumerated in
19 Schedule I, II, III or IV is guilty of a fourth degree felony
20 and shall be sentenced pursuant to the provisions of Section
21 31-18-15 NMSA 1978; and

22 (2) a counterfeit substance enumerated in
23 Schedule V is guilty of a petty misdemeanor and shall be
24 punished by a fine of not more than one hundred dollars (\$100)
25 or by imprisonment for a definite term not to exceed six

1 months, or both.

2 C. Any person who knowingly violates Subsection A
3 or B of this section while within a drug-free school zone,
4 [~~excluding private property residentially zoned or used~~
5 ~~primarily as a residence~~] or a drug-free residential zone,
6 with respect to:

7 (1) marijuana is:

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

11 (b) for the second and subsequent
12 offenses, guilty of a second degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978;

15 (c) for the first offense, if more than
16 one hundred pounds is possessed with intent to distribute or
17 distributed or both, guilty of a second degree felony and
18 shall be sentenced pursuant to the provisions of Section
19 31-18-15 NMSA 1978; and

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

25 (2) any other controlled substance enumerated

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1 in Schedule I, II, III or IV or a controlled substance analog
2 of a controlled substance enumerated in Schedule I, II, III or
3 IV except a substance enumerated in Schedule I or II that is a
4 narcotic drug or a controlled substance analog of a controlled
5 substance [~~enumerated~~] enumerated in Schedule I or II that is
6 a narcotic drug, is:

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

10 (b) for the second and subsequent
11 offenses, guilty of a first degree felony and shall be
12 sentenced pursuant to the provisions of Section 31-18-15 NMSA
13 1978;

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

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

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

25 (b) a counterfeit substance enumerated

1 in Schedule V is guilty of a misdemeanor and shall be punished
2 by a fine of not less than one hundred dollars (\$100) nor more
3 than five hundred dollars (\$500) or by imprisonment for a
4 definite term not less than one hundred eighty days but less
5 than one year, or both.

6 D. Notwithstanding the provisions of Subsection A
7 of this section, distribution of a small amount of marijuana
8 for no remuneration shall be treated as provided in Paragraph
9 [~~3~~] (1) of Subsection B of Section 30-31-23 NMSA 1978. "

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