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BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECREASING PENALTIES FOR
POSSESSION OF MARIJUANA.

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

SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

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

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

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underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 B. A person who violates this section with respect
2 to:

3 (1) one ounce or less of marijuana is not
4 subject to any penalty or fine;

5 (2) more than one ounce and up to four ounces
6 of marijuana is subject to a civil penalty of up to one hundred
7 dollars (\$100);

8 (3) more than four ounces and less than eight
9 ounces of marijuana, is subject to a civil penalty of up to
10 five hundred dollars (\$500); or

11 (4) eight ounces or more of marijuana is
12 guilty of a misdemeanor and shall be punished by a fine of up
13 to one thousand dollars (\$1,000).

14 [B-] C. A person who violates this section with
15 respect to:

16 (1) one ounce or less of [~~marijuana or~~]
17 synthetic cannabinoids is, for the first offense, guilty of a
18 petty misdemeanor and shall be punished by a fine of not less
19 than fifty dollars (\$50.00) or more than one hundred dollars
20 (\$100) and by imprisonment for not more than fifteen days, and,
21 for the second and subsequent offenses, 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 (2) more than one ounce and less than eight

underscored material = new
[bracketed material] = delete

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

6 (3) eight ounces or more of [~~marijuana or~~]
7 synthetic cannabinoids is guilty of a fourth degree felony and
8 shall be sentenced pursuant to the provisions of Section
9 31-18-15 NMSA 1978.

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

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

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1 (3) a substance added to Schedule I by a rule
2 of the board adopted on or after [~~the effective date of this~~]
3 March 31, 2011 [~~act~~] if the board determines that the
4 pharmacological effect of the substance, the risk to the public
5 health by abuse of the substance and the potential of the
6 substance to produce psychic or physiological dependence
7 liability is similar to the substances described in Paragraph
8 (1) or (2) of this subsection.

9 [~~D-~~] E. Except for those substances listed in
10 Subsection [~~E~~] F of this section, a person who violates this
11 section with respect to any amount of any 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 is guilty of a misdemeanor and shall be punished by a
15 fine of not less than five hundred dollars (\$500) or more than
16 one thousand dollars (\$1,000) or by imprisonment for a definite
17 term less than one year, or both.

18 [~~E-~~] F. A person who violates this section with
19 respect to phencyclidine as enumerated in Schedule III or a
20 controlled substance analog of phencyclidine; methamphetamine,
21 its salts, isomers or salts of isomers as enumerated in
22 Schedule II or a controlled substance analog of
23 methamphetamine, its salts, isomers or salts of isomers;
24 flunitrazepam, its salts, isomers or salts of isomers as
25 enumerated in Schedule I or a controlled substance analog of

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

21 ~~[F-]~~ G. Except for a minor as defined in Subsection
22 ~~[G]~~ D of this section, a person who violates Subsection A of
23 this section while within a posted drug-free school zone,
24 excluding private property residentially zoned or used
25 primarily as a residence and excluding a person in or on a

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underscoring material = new
~~[bracketed material] = delete~~

1 motor vehicle in transit through the posted drug-free school
2 zone, with respect to:

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

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

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

19 (4) any amount of any other controlled
20 substance enumerated in Schedule I, II, III or IV or a
21 controlled substance analog of a substance enumerated in
22 Schedule I, II, III or IV, except phencyclidine as enumerated
23 in Schedule III, a narcotic drug enumerated in Schedule I or II
24 or a controlled substance analog of a narcotic drug enumerated
25 in Schedule I or II, is guilty of a fourth degree felony and

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

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

9 SECTION 2. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2013.