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HOUSE BILL 176

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONTROLLED SUBSTANCES; REVISING THE CRIMINAL  
OFFENSE OF TRAFFICKING CONTROLLED SUBSTANCES TO INCLUDE A  
METHAMPHETAMINE, ITS SALTS, ISOMERS AND SALTS OF ISOMERS;  
AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-31-20 NMSA 1978 (being Laws 1972,  
Chapter 84, Section 20, as amended) is amended to read:

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

A. As used in the Controlled Substances Act,  
"traffic" means [the]:

(1) the manufacture of [~~any~~] a controlled  
substance enumerated in Schedules I through V or [~~any~~] a  
controlled substance analog as defined in Subsection W of

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1 Section 30-31-2 NMSA 1978;

2 (2) distribution, sale, barter or giving away  
3 of [~~any~~]:

4 (a) a controlled substance enumerated in  
5 Schedule I or II that is a narcotic drug; [~~or~~]

6 (b) a controlled substance analog of a  
7 controlled substance enumerated in Schedule I or II that is a  
8 narcotic drug; or

9 (c) a methamphetamine, its salts,  
10 isomers and salts of isomers; or

11 (3) possession with intent to distribute [~~any~~]  
12 of:

13 (a) a controlled substance enumerated in  
14 Schedule I or II that is a narcotic drug; [~~or~~]

15 (b) a controlled substance analog of a  
16 controlled substance enumerated in Schedule I or II that is a  
17 narcotic drug; or

18 (c) a methamphetamine, its salts,  
19 isomers and salts of isomers.

20 B. Except as authorized by the Controlled  
21 Substances Act, it is unlawful for [~~any~~] a person to  
22 intentionally traffic. [~~Any~~] A person who violates this  
23 subsection is:

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

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

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

5 C. ~~[Any]~~ A person who knowingly violates Subsection  
6 B of this section within a drug-free school zone, excluding  
7 private property residentially zoned or used primarily as a  
8 residence, is guilty of a first degree felony and shall be  
9 sentenced pursuant to the provisions of Section 31-18-15 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 ~~[any]~~ a person to  
17 intentionally distribute or possess with intent to distribute a  
18 controlled substance or a controlled substance analog, except a  
19 substance enumerated in Schedule I or II that is a narcotic  
20 drug, ~~[or]~~ a controlled substance analog of a controlled  
21 substance enumerated in Schedule I or II that is a narcotic  
22 drug or a methamphetamine, its salts, isomers and salts of  
23 isomers. ~~[Any]~~ A person who violates this subsection with  
24 respect to:

25 (1) marijuana is:

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

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

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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; and

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; and

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 misdemeanor  
11 and shall be punished by a fine of not less than one hundred  
12 dollars (\$100) or more than five hundred dollars (\$500) or by  
13 imprisonment for a definite term not less than one hundred  
14 eighty days but less than one year, or both.

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

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

24 (2) a counterfeit substance enumerated in  
25 Schedule V is guilty of a petty misdemeanor and shall be

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1 punished by a fine of not more than one hundred dollars (\$100)  
2 or by imprisonment for a definite term not to exceed six  
3 months, or both.

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

8 (1) marijuana is:

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

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

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

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

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1 (2) any other controlled substance enumerated  
2 in Schedule I, II, III or IV or a controlled substance analog  
3 of a controlled substance enumerated in Schedule I, II, III or  
4 IV, except a substance enumerated in Schedule I or II that is a  
5 narcotic drug, ~~[or]~~ a controlled substance analog of a  
6 controlled substance ~~[enumerated]~~ enumerated in Schedule I or  
7 II that is a narcotic drug or a methamphetamine, its salts,  
8 isomers and salts of isomers, is:

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

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

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

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

23 (a) a counterfeit substance enumerated  
24 in Schedule I, II, III or IV is guilty of a third degree felony  
25 and shall be sentenced pursuant to the provisions of Section

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1 31-18-15 NMSA 1978; and

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

8 D. Notwithstanding the provisions of Subsection A  
9 of this section, distribution of a small amount of marijuana  
10 for no remuneration shall be treated as provided in Paragraph  
11 [~~(3)~~] (1) of Subsection B of Section 30-31-23 NMSA 1978. "

12 Section 3. EFFECTIVE DATE. --The effective date of the  
13 provisions of this act is July 1, 2003.

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