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HOUSE BILL 336

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

INTRODUCED BY

Zachary J. Cook

AN ACT

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

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) 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 the practitioner's agent;

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

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

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

4 D. "bureau" means the narcotic and dangerous drug
5 section of the criminal division of the United States
6 department of justice, or its successor agency;

7 E. "controlled substance" means a drug or substance
8 listed in Schedules I through V of the Controlled Substances
9 Act or rules 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 controlled
3 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 United
10 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, preparation,
18 compounding, conversion or processing of a controlled substance
19 or controlled substance analog by extraction from substances of
20 natural origin or independently by means of chemical synthesis
21 or by a combination of extraction and chemical synthesis and
22 includes any packaging or repackaging of the substance or
23 labeling or relabeling of its container, except that this term
24 does not include the preparation or compounding of a controlled
25 substance:

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

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

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

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

25 (1) opium and opiate and any salt, compound,

1 derivative or preparation of opium or opiate;

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

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

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

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

23 Q. "person" means an individual, partnership,
24 corporation, association, institution, political subdivision,
25 government agency or other legal entity;

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1 R. "practitioner" means a physician, certified
2 advanced practice chiropractic physician, doctor of oriental
3 medicine, dentist, physician assistant, certified nurse
4 practitioner, clinical nurse specialist, certified nurse-
5 midwife, prescribing psychologist, veterinarian, euthanasia
6 technician, pharmacist, pharmacist clinician or other person
7 licensed or certified to prescribe and administer drugs that
8 are subject to the Controlled Substances Act;

9 S. "prescription" means an order given individually
10 for the person for whom is prescribed a controlled substance,
11 either directly from a licensed practitioner or the
12 practitioner's agent to the pharmacist, including by means of
13 electronic transmission, or indirectly by means of a written
14 order signed by the prescriber, bearing the name and address of
15 the prescriber, the prescriber's license classification, the
16 name and address of the patient, the name and quantity of the
17 drug prescribed, directions for use and the date of issue and
18 in accordance with the Controlled Substances Act or rules
19 adopted thereto;

20 T. "Salvia divinorum" means an herb belonging to
21 the Lamiaceae family, genus Salvia, species divinorum, all
22 parts of the plant presently classified as Salvia divinorum or
23 Salvinorum A, whether growing or not, the seeds of the plant,
24 an extract from a part of the plant and every compound,
25 manufacture, salt, derivative, mixture or preparation of that

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1 plant, its seeds or extracts;

2 ~~[F.]~~ U. "scientific investigator" means a person
3 registered to conduct research with controlled substances in
4 the course of the person's professional practice or research
5 and includes analytical laboratories;

6 ~~[H.]~~ V. "ultimate user" means a person who lawfully
7 possesses a controlled substance for the person's own use or
8 for the use of a member of the person's household or for
9 administering to an animal under the care, custody and control
10 of the person or by a member of the person's household;

11 ~~[V.]~~ W. "drug paraphernalia" means all equipment,
12 products and materials of any kind that are used, intended for
13 use or designed for use in planting, propagating, cultivating,
14 growing, harvesting, manufacturing, compounding, converting,
15 producing, processing, preparing, testing, analyzing,
16 packaging, repackaging, storing, containing, concealing,
17 injecting, ingesting, inhaling or otherwise introducing into
18 the human body a controlled substance or controlled substance
19 analog in violation of the Controlled Substances Act. It
20 includes:

21 (1) kits used, intended for use or designed
22 for use in planting, propagating, cultivating, growing or
23 harvesting any species of plant that is a controlled substance
24 or controlled substance analog or from which a controlled
25 substance can be derived;

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1 (2) kits used, intended for use or designed
2 for use in manufacturing, compounding, converting, producing,
3 processing or preparing controlled substances or controlled
4 substance analogs;

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

8 (4) testing equipment used, intended for use
9 or designed for use in identifying or in analyzing the
10 strength, effectiveness or purity of controlled substances or
11 controlled substance analogs;

12 (5) scales or balances used, intended for use
13 or designed for use in weighing or measuring controlled
14 substances or controlled substance analogs;

15 (6) diluents and adulterants, such as quinine
16 hydrochloride, mannitol, mannite dextrose and lactose, used,
17 intended for use or designed for use in cutting controlled
18 substances or controlled substance analogs;

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

22 (8) blenders, bowls, containers, spoons and
23 mixing devices used, intended for use or designed for use in
24 compounding controlled substances or controlled substance
25 analogs;

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1 (9) capsules, balloons, envelopes and other
2 containers used, intended for use or designed for use in
3 packaging small quantities of controlled substances or
4 controlled substance analogs;

5 (10) containers and other objects used,
6 intended for use or designed for use in storing or concealing
7 controlled substances or controlled substance analogs;

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

12 (12) objects used, intended for use or
13 designed for use in ingesting, inhaling or otherwise
14 introducing marijuana, cocaine, hashish or hashish oil into the
15 human body, such as:

16 (a) metal, wooden, acrylic, glass,
17 stone, plastic or ceramic pipes, with or without screens,
18 permanent screens, hashish heads or punctured metal bowls;

19 (b) water pipes;

20 (c) carburetion tubes and devices;

21 (d) smoking and carburetion masks;

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

25 (f) miniature cocaine spoons and cocaine

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1 vials;

2 (g) chamber pipes;

3 (h) carburetor pipes;

4 (i) electric pipes;

5 (j) air-driven pipes;

6 (k) chilams;

7 (l) bonges; or

8 (m) ice pipes or chillers; and

9 (13) in determining whether an object is drug
10 paraphernalia, a court or other authority should consider, in
11 addition to all other logically relevant factors, the
12 following:

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

15 (b) the proximity of the object, in time
16 and space, to a direct violation of the Controlled Substances
17 Act or any other law relating to controlled substances or
18 controlled substance analogs;

19 (c) the proximity of the object to
20 controlled substances or controlled substance analogs;

21 (d) the existence of any residue of a
22 controlled substance or controlled substance analog on the
23 object;

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

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1 (f) descriptive materials accompanying
2 the object that explain or depict its use;

3 (g) the manner in which the object is
4 displayed for sale; and

5 (h) expert testimony concerning its use;

6 [~~W.~~] X. "controlled substance analog" means a
7 substance other than a controlled substance that has a chemical
8 structure substantially similar to that of a controlled
9 substance in Schedule I, II, III, IV or V or that was
10 specifically designed to produce effects substantially similar
11 to that of controlled substances in Schedule I, II, III, IV or
12 V. Examples of chemical classes in which controlled substance
13 analogs are found include the following:

- 14 (1) phenethylamines;
- 15 (2) N-substituted piperidines;
- 16 (3) morphinans;
- 17 (4) ecgonines;
- 18 (5) quinazolinones;
- 19 (6) substituted indoles; and
- 20 (7) arylcycloalkylamines.

21 Specifically excluded from the definition of "controlled
22 substance analog" are those substances that are generally
23 recognized as safe and effective within the meaning of the
24 Federal Food, Drug and Cosmetic Act or have been manufactured,
25 distributed or possessed in conformance with the provisions of

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1 an approved new drug application or an exemption for
2 investigational use within the meaning of Section 505 of the
3 Federal Food, Drug and Cosmetic Act;

4 [~~X.~~] Y. "human consumption" includes application,
5 injection, inhalation, ingestion or any other manner of
6 introduction;

7 [~~Y.~~] Z. "drug-free school zone" means a public
8 school, parochial school or private school or property that is
9 used for a public, parochial or private school purpose and the
10 area within one thousand feet of the school property line, but
11 it does not mean any post-secondary school; and

12 [~~Z.~~] AA. "valid practitioner-patient relationship"
13 means a professional relationship, as defined by the
14 practitioner's licensing board, between the practitioner and
15 the patient."

16 SECTION 2. Section 30-31-6 NMSA 1978 (being Laws 1972,
17 Chapter 84, Section 6, as amended) is amended to read:

18 "30-31-6. SCHEDULE I.--The following controlled
19 substances are included in Schedule I:

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

25 (1) acetylmethadol;

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

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

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

- 22 (1) acetorphine;
- 23 (2) acetyldihydrocodeine;
- 24 (3) benzylmorphine;
- 25 (4) codeine methylbromide;

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

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

- 25 (1) 3,4-methylenedioxy amphetamine;

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- 1 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 2 (3) 3,4,5-trimethoxy amphetamine;
- 3 (4) bufotenine;
- 4 (5) diethyltryptamine;
- 5 (6) dimethyltryptamine;
- 6 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 7 (8) ibogaine;
- 8 (9) lysergic acid diethylamide;
- 9 (10) marijuana;
- 10 (11) mescaline;
- 11 (12) peyote, except as otherwise provided in
- 12 the Controlled Substances Act;
- 13 (13) N-ethyl-3-piperidyl benzilate;
- 14 (14) N-methyl-3-piperidyl benzilate;
- 15 (15) psilocybin;
- 16 (16) psilocyn;
- 17 (17) tetrahydrocannabinols; [~~and~~]
- 18 (18) hashish;
- 19 (19) Salvia divinorum; and
- 20 (20) 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 3. 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, Salvia divinorum or synthetic
21 cannabinoids is:

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

25 (b) for the second and subsequent

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

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

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

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

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

25 (b) for the second and subsequent offenses,

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

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

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

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

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

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1 C. Except as authorized by the Controlled Substances
2 Act, it is unlawful for a person to intentionally create or
3 deliver, or possess with intent to deliver, a counterfeit
4 substance. A person who violates this subsection with respect
5 to:

6 (1) a counterfeit substance enumerated in
7 Schedule I, II, III or IV is guilty of a fourth degree felony
8 and shall be sentenced pursuant to the provisions of Section
9 31-18-15 NMSA 1978; and

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

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

18 (1) marijuana, Salvia divinorum or synthetic
19 cannabinoids is:

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

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

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

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

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

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

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

25 (3) a controlled substance enumerated in

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

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

7 (a) a counterfeit substance enumerated in
8 Schedule I, II, III or IV is guilty of a third degree felony
9 and shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978; and

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

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

22 SECTION 4. Section 30-31-23 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 23, as amended) is amended to read:

24 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
25 PROHIBITED.--

.184030.2

underscored material = new
[bracketed material] = delete

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

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

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

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

.184030.2

underscored material = new
[bracketed material] = delete

1 (3) eight ounces or more of marijuana, Salvia
2 divinorum or synthetic cannabinoids is guilty of a fourth
3 degree felony and shall be sentenced pursuant to the provisions
4 of Section 31-18-15 NMSA 1978.

5 C. Except for those substances listed in Subsection D
6 of this section, [~~any~~] a person who violates this section with
7 respect to any amount of any controlled substance enumerated in
8 Schedule I, II, III or IV or a controlled substance analog of a
9 substance enumerated in Schedule I, II, III or IV is guilty of
10 a misdemeanor and shall be punished by a fine of not less than
11 five hundred dollars (\$500) or more than one thousand dollars
12 (\$1,000) or by imprisonment for a definite term less than one
13 year, or both.

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

.184030.2

underscored material = new
[bracketed material] = delete

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

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

23 (1) one ounce or less of marijuana, Salvia
24 divinorum or synthetic cannabinoids is, for the first offense,
25 guilty of a misdemeanor and shall be punished by a fine of not

.184030.2

underscored material = new
[bracketed material] = delete

1 less than one hundred dollars (\$100) or more than one thousand
2 dollars (\$1,000) or by imprisonment for a definite term less
3 than one year, or both, and for the second or subsequent
4 offense, is guilty of a fourth degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978;

7 (2) more than one ounce and less than eight
8 ounces of marijuana, Salvia divinorum or synthetic cannabinoids
9 is guilty of a fourth degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA 1978;

11 (3) eight ounces or more of marijuana, Salvia
12 divinorum or synthetic cannabinoids is guilty of a third degree
13 felony and shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978;

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

23 (5) phencyclidine as enumerated in Schedule III,
24 a narcotic drug enumerated in Schedule I or II, a controlled
25 substance analog of phencyclidine or a controlled substance

.184030.2

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

1 analog of a narcotic drug enumerated in Schedule I or II is
2 guilty of a third degree felony and shall be sentenced pursuant
3 to the provisions of Section 31-18-15 NMSA 1978."

4 SECTION 5. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.