

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 336 & 606

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

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:

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

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

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

- 23 (1) acetorphine;
24 (2) acetyldihydrocodeine;
25 (3) benzylmorphine;

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

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

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

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);

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

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

17 (k) 5-(1,1-dimethylheptyl)-2-(3-
18 hydroxycyclohexyl)-phenol;

19 (20) 3,4-methylenedioxyethcathinone;

20 (21) 3,4-methylenedioxyprovalerone;

21 (22) 4-methylmethcathinone;

22 (23) 4-methoxymethcathinone;

23 (24) 3-fluoromethcathinone; and

24 (25) 4-fluoromethcathinone;

25 D. the enumeration of peyote as a controlled

1 substance does not apply to the use of peyote in bona fide
 2 religious ceremonies by a bona fide religious organization, and
 3 members of the organization so using peyote are exempt from
 4 registration. Any person who manufactures peyote for or
 5 distributes peyote to the organization or its members shall
 6 comply with the federal Comprehensive Drug Abuse Prevention and
 7 Control Act of 1970 and all other requirements of law;

8 E. the enumeration of marijuana,
 9 tetrahydrocannabinols or chemical derivatives of
 10 tetrahydrocannabinol as Schedule I controlled substances does
 11 not apply to the use of marijuana, tetrahydrocannabinols or
 12 chemical derivatives of tetrahydrocannabinol by certified
 13 patients pursuant to the Controlled Substances Therapeutic
 14 Research Act or by qualified patients pursuant to the
 15 provisions of the Lynn and Erin Compassionate Use Act; and

16 F. controlled substances added to Schedule I by
 17 rule adopted by the board pursuant to Section 30-31-3 NMSA
 18 1978."

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

21 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
 22 DISTRIBUTION PROHIBITED.--

23 A. Except as authorized by the Controlled
 24 Substances Act, it is unlawful for a person to intentionally
 25 distribute or possess with intent to distribute a controlled

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1 substance or a controlled substance analog except a substance
2 enumerated in Schedule I or II that is a narcotic drug, a
3 controlled substance analog of a controlled substance
4 enumerated in Schedule I or II that is a narcotic drug or
5 methamphetamine, its salts, isomers and salts of isomers. A
6 person who violates this subsection with respect to:

7 (1) marijuana or synthetic cannabinoids is:

8 (a) for the first offense, guilty of a
9 fourth 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 third 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 third degree felony and shall
18 be sentenced pursuant to the provisions of Section 31-18-15
19 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 second
23 degree felony and shall be sentenced pursuant to the provisions
24 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, a controlled substance analog of a controlled
5 substance enumerated in Schedule I or II that is a narcotic
6 drug or methamphetamine, its salts, isomers and salts of
7 isomers, is:

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

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

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

21 B. It is unlawful for a person to distribute gamma
22 hydroxybutyric acid or flunitrazepam to another person without
23 that person's knowledge and with intent to commit a crime
24 against that person, including criminal sexual penetration.
25 For the purposes of this subsection, "without that person's

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1 knowledge" means the person is unaware that a substance with
2 the ability to alter that person's ability to appraise conduct
3 or to decline participation in or communicate unwillingness to
4 participate in conduct is being distributed to that person.

5 Any person who violates this subsection is:

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

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

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

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

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

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

4 (1) marijuana or synthetic cannabinoids is:

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

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

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

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

21 (2) any other controlled substance enumerated in
22 Schedule I, II, III or IV or a controlled substance analog of a
23 controlled substance enumerated in Schedule I, II, III or IV
24 except a substance enumerated in Schedule I or II that is a
25 narcotic drug, a controlled substance analog of a controlled

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1 substance enumerated in Schedule I or II that is a narcotic
2 drug or methamphetamine, its salts, isomers and salts of
3 isomers, is:

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

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

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

15 (4) the intentional creation, delivery or
16 possession with the intent to deliver:

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

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

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1 than one year, or both.

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

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

9 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
10 PROHIBITED.--

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

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

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

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1 shall be punished by a fine of not less than one hundred
2 dollars (\$100) or more than one thousand dollars (\$1,000) or by
3 imprisonment for a definite term less than one year, or both;

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

10 (3) eight ounces or more of marijuana or
11 synthetic cannabinoids is guilty of a fourth degree felony and
12 shall be sentenced pursuant to the provisions of Section
13 31-18-15 NMSA 1978.

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

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1 (1) synthetic cannabinoids;

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

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

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

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

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

25 ~~[E. Any]~~ F. Except for a minor as defined in

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1 Subsection C of this section, a person who violates Subsection
2 A of this section while within a posted drug-free school zone,
3 excluding private property residentially zoned or used
4 primarily as a residence and excluding ~~any~~ a person in or on
5 a motor vehicle in transit through the posted drug-free school
6 zone, with respect to:

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

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

19 (3) eight ounces or more of marijuana or
20 synthetic cannabinoids is guilty of a third degree felony and
21 shall be sentenced pursuant to the provisions of Section
22 31-18-15 NMSA 1978;

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

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

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

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

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~~[bracketed material] = delete~~