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SENATE BILL 583

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

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING AND ENACTING
SECTIONS OF THE CONTROLLED SUBSTANCES ACT TO RECLASSIFY
DIHYDROCODEINE AS A SCHEDULE II CONTROLLED SUBSTANCE IN CERTAIN
COMBINATIONS; REQUIRING PATIENTS TO DISCLOSE CONCURRENT
PRESCRIBED USE OF CONTROLLED SUBSTANCES WHEN SEEKING A
PRESCRIPTION FOR A CONTROLLED SUBSTANCE; MANDATING TAMPER-
RESISTANT PRESCRIPTIONS FOR CONTROLLED SUBSTANCES; PRESCRIBING
PENALTIES.

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

SECTION 1. Section 30-31-8 NMSA 1978 (being Laws 1972,
Chapter 84, Section 8, as amended) is amended to read:

"30-31-8. SCHEDULE III.--The following controlled
substances are included in Schedule III:

A. any material, compound, mixture or preparation

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1 containing limited quantities of any substance having a
2 stimulant effect on the central nervous system [~~which~~] that is
3 controlled and listed in Schedule II;

4 B. unless listed in another schedule, any material,
5 compound, mixture or preparation [~~which~~] that contains any
6 quantity of the following substances having a potential for
7 abuse associated with a depressant effect on the central
8 nervous system:

9 (1) any substance [~~which~~] that contains any
10 quantity of a derivative of barbituric acid, or any salt of a
11 derivative of barbituric acid, except those substances [~~which~~]
12 that are specifically listed in another schedule;

13 (2) chlorhexadol;

14 (3) glutethimide;

15 (4) lysergic acid;

16 (5) lysergic acid amide;

17 (6) methyprylon;

18 (7) phencyclidine;

19 (8) sulfondiethylmethane;

20 (9) sulfonethylmethane; or

21 (10) sulfonmethane;

22 C. nalorphine;

23 D. any material, compound, mixture or preparation
24 containing limited quantities of any of the following narcotic
25 drugs, or any salts thereof:

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1 (1) not more than one and eight-tenths grams
2 of codeine, or any of its salts, per one hundred milliliters or
3 not more than ninety milligrams per dosage unit, with an equal
4 or greater quantity of an isoquinoline alkaloid of opium;

5 (2) not more than one and eight-tenths grams
6 of codeine, or any of its salts, per one hundred milliliters or
7 not more than ninety milligrams per dosage unit, with one or
8 more active, non-narcotic ingredients in recognized therapeutic
9 amounts;

10 ~~[(3) not more than three hundred milligrams of~~
11 ~~dihydrocodeinone, or any of its salts, per one hundred~~
12 ~~milliliters or not more than fifteen milligrams per dosage~~
13 ~~unit, with a fourfold or greater quantity of an isoquinoline~~
14 ~~alkaloid of opium;~~

15 ~~(4) not more than three hundred milligrams of~~
16 ~~dihydrocodeinone, or any of its salts, per one hundred~~
17 ~~milliliters or not more than fifteen milligrams per dosage~~
18 ~~unit, with one or more active, non-narcotic ingredients in~~
19 ~~recognized therapeutic amounts;~~

20 ~~(5) not more than one and eight-tenths grams~~
21 ~~of dihydrocodeine, or any of its salts, per one hundred~~
22 ~~milliliters or not more than ninety milligrams per dosage unit,~~
23 ~~with one or more active, non-narcotic ingredients in recognized~~
24 ~~therapeutic amounts;~~

25 ~~(6)]~~ (3) not more than three hundred

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1 milligrams of ethylmorphine, or any of its salts, per one
2 hundred milliliters or not more than fifteen milligrams per
3 dosage unit, with one or more active non-narcotic ingredients
4 in recognized therapeutic amounts;

5 ~~[(7)]~~ (4) not more than five hundred
6 milligrams of opium per one hundred milliliters or per one
7 hundred grams, or not more than twenty-five milligrams per
8 dosage unit, with one or more active, nonnarcotic ingredients
9 in recognized therapeutic amounts; or

10 ~~[(8)]~~ (5) not more than fifty milligrams of
11 morphine, or any of its salts, per one hundred milliliters or
12 per one hundred grams with one or more active, non-narcotic
13 ingredients in recognized therapeutic amounts;

14 E. controlled substances added to Schedule III by
15 rule adopted by the board pursuant to Section 30-31-3 NMSA
16 1978; and

17 F. the board may exempt by regulation any compound,
18 mixture or preparation containing any stimulant or depressant
19 substance listed in Subsections A and B of this section from
20 the application of any part of the Controlled Substances Act if
21 the compound, mixture or preparation contains any active
22 medicinal ingredients not having a stimulant or depressant
23 effect on the central nervous system and if the admixtures are
24 included in combinations, quantity, proportion or concentration
25 that vitiate the potential for abuse of the substances ~~[which]~~

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1 that have a stimulant or depressant effect on the central
2 nervous system."

3 SECTION 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
4 Chapter 84, Section 23, as amended) is amended to read:

5 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION PROHIBITED--
6 REQUIRED DISCLOSURES.--

7 A. It is unlawful for a person intentionally to:

8 (1) possess a controlled substance unless the
9 substance was obtained pursuant to a valid prescription or
10 order of a practitioner while acting in the course of
11 professional practice or except as otherwise authorized by the
12 Controlled Substances Act; [~~It is unlawful for a person~~
13 ~~intentionally to~~]

14 (2) possess a controlled substance analog; or

15 (3) withhold information regarding concurrent
16 prescribed use of a controlled substance when a patient is
17 seeking a prescription for a controlled substance. Information
18 related to the prescribing, administering and dispensing of
19 controlled substances shall be reported to a state or other
20 public health or law enforcement agency pursuant to rule or by
21 request in a manner that conforms to state and federal privacy
22 laws.

23 B. A person who violates this section with respect
24 to:

25 (1) one ounce or less of marijuana or

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1 synthetic cannabinoids is, for the first offense, guilty of a
2 petty misdemeanor and shall be punished by a fine of not less
3 than fifty dollars (\$50.00) or more than one hundred dollars
4 (\$100) and by imprisonment for not more than fifteen days, and,
5 for the second and subsequent offenses, guilty of a misdemeanor
6 and shall be punished by a fine of not less than one hundred
7 dollars (\$100) or more than one thousand dollars (\$1,000) or by
8 imprisonment for a definite term less than one year, or both;

9 (2) more than one ounce and less than eight
10 ounces of marijuana or synthetic cannabinoids is guilty of a
11 misdemeanor and shall be punished by a fine of not less than
12 one hundred dollars (\$100) or more than one thousand dollars
13 (\$1,000) or by imprisonment for a definite term less than one
14 year, or both; or

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

19 C. A minor who violates this section with respect
20 to the substances listed in this subsection is guilty of a
21 petty misdemeanor and, notwithstanding the provisions of
22 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
23 fine not to exceed one hundred dollars (\$100) or forty-eight
24 hours of community service. For the third or subsequent
25 violation by a minor of this section with respect to those

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1 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
2 govern punishment of the minor. As used in this subsection,
3 "minor" means a person who is less than eighteen years of age.
4 The provisions of this subsection apply to the following
5 substances:

- 6 (1) synthetic cannabinoids;
- 7 (2) any of the substances listed in Paragraphs
8 (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978;
9 or
- 10 (3) a substance added to Schedule I by a rule
11 of the board adopted on or after [~~the effective date of this~~
12 March 31, 2011 ~~act~~] if the board determines that the
13 pharmacological effect of the substance, the risk to the public
14 health by abuse of the substance and the potential of the
15 substance to produce psychic or physiological dependence
16 liability is similar to the substances described in Paragraph
17 (1) or (2) of this subsection.

18 D. Except for those substances listed in Subsection
19 E of this section, a person who violates this section with
20 respect to any amount of any controlled substance enumerated in
21 Schedule I, II, III or IV or a controlled substance analog of a
22 substance enumerated in Schedule I, II, III or IV is guilty of
23 a misdemeanor and shall be punished by a fine of not less than
24 five hundred dollars (\$500) or more than one thousand dollars
25 (\$1,000) or by imprisonment for a definite term less than one

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1 year, or both.

2 E. A person who violates this section with respect
3 to phencyclidine as enumerated in Schedule III or a controlled
4 substance analog of phencyclidine; methamphetamine, its salts,
5 isomers or salts of isomers as enumerated in Schedule II or a
6 controlled substance analog of methamphetamine, its salts,
7 isomers or salts of isomers; flunitrazepam, its salts, isomers
8 or salts of isomers as enumerated in Schedule I or a controlled
9 substance analog of flunitrazepam, including naturally
10 occurring metabolites, its salts, isomers or salts of isomers;
11 gamma hydroxybutyric acid and any chemical compound that is
12 metabolically converted to gamma hydroxybutyric acid, its
13 salts, isomers or salts of isomers as enumerated in Schedule I
14 or a controlled substance analog of gamma hydroxybutyric acid,
15 its salts, isomers or salts of isomers; gamma butyrolactone and
16 any chemical compound that is metabolically converted to gamma
17 hydroxybutyric acid, its salts, isomers or salts of isomers as
18 enumerated in Schedule I or a controlled substance analog of
19 gamma butyrolactone, its salts, isomers or salts of isomers;
20 1-4 butane diol and any chemical compound that is metabolically
21 converted to gamma hydroxybutyric acid, its salts, isomers or
22 salts of isomers as enumerated in Schedule I or a controlled
23 substance analog of 1-4 butane diol, its salts, isomers or
24 salts of isomers; or a narcotic drug enumerated in Schedule I
25 or II or a controlled substance analog of a narcotic drug

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

4 F. Except for a minor as defined in Subsection C of
5 this section, a person who violates Subsection A of this
6 section while within a posted drug-free school zone, excluding
7 private property residentially zoned or used primarily as a
8 residence and excluding a person in or on a motor vehicle in
9 transit through the posted drug-free school zone, with respect
10 to:

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

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

23 (3) eight ounces or more of marijuana or
24 synthetic cannabinoids is guilty of a third degree felony and
25 shall be sentenced pursuant to the provisions of Section

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1 31-18-15 NMSA 1978;

2 (4) any amount of any other controlled
3 substance enumerated in Schedule I, II, III or IV or a
4 controlled substance analog of a substance enumerated in
5 Schedule I, II, III or IV, except phencyclidine as enumerated
6 in Schedule III, a narcotic drug enumerated in Schedule I or II
7 or a controlled substance analog of a narcotic drug enumerated
8 in Schedule I or II, is guilty of a fourth degree felony and
9 shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978; and

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

17 G. A person who violates the provisions of
18 Paragraph (3) of Subsection A of this section is guilty of a
19 fourth degree felony and shall be sentenced in accordance with
20 the provisions of Section 31-18-15 NMSA 1978."

21 SECTION 3. A new section of the Controlled Substances Act
22 is enacted to read:

23 "[NEW MATERIAL] CONTROLLED SUBSTANCES--TAMPER-RESISTANT
24 PRESCRIBING.--

25 A. A practitioner shall:

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1 (1) issue prescriptions for controlled
2 substances exclusively through tamper-resistant prescription
3 forms; and

4 (2) employ reasonable safeguards to ensure
5 against theft or unauthorized use of prescriptions for
6 controlled substances.

7 B. If a hard copy of a prescription for a
8 controlled substance is given directly to a patient, the
9 prescription shall be manually signed and provided on a
10 tamper-resistant prescription form as defined in Subsection D
11 of this section.

12 C. By July 1, 2014, the board shall adopt and
13 promulgate rules that set forth the features of tamper-
14 resistant prescription forms that comply with the provisions of
15 Subsection D of this section.

16 D. For the purposes of this section, "tamper-
17 resistant prescription form" means:

18 (1) a pad or paper that has been approved for
19 use in accordance with rules that the board has adopted and
20 that has one or more industry-recognized features designed to
21 prevent:

22 (a) unauthorized copying of a completed
23 or blank prescription form;

24 (b) the erasure or modification of
25 information written on the prescription form by the

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1 practitioner; and

2 (c) the use of counterfeit prescription
3 forms; or

4 (2) an electronic medium that meets industry-
5 recognized standards for being tamper-resistant and for
6 preventing unauthorized access to the electronic prescription."

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