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HOUSE BILL 394

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Ron Godbey

AN ACT

RELATING TO CONTROLLED SUBSTANCES; INCREASING PENALTIES.

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) manufacture of any controlled substance enumerated in Schedules I through V or any controlled substance analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

(2) distribution, sale, barter or giving away of any controlled substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog

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1 of a controlled substance enumerated in Schedule I or II that  
2 is a narcotic drug; or

3 (3) possession with intent to distribute any  
4 controlled substance enumerated in Schedule I or II that is a  
5 narcotic drug or controlled substance analog of a controlled  
6 substance enumerated in Schedule I or II that is a narcotic  
7 drug.

8 B. Except as authorized by the Controlled  
9 Substances Act, it is unlawful for any person to  
10 intentionally traffic. Any person who violates this  
11 subsection is

12 [~~(1) for the first offense~~] guilty of a  
13 [~~second~~] first degree felony and shall be sentenced pursuant  
14 to the provisions of Section 31-18-15 NMSA 1978 [~~and~~

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

18 C. Any person who knowingly violates Subsection B  
19 of this section within a drug-free school zone, excluding  
20 private property residentially zoned or used primarily as a  
21 residence, is guilty of a [~~first degree~~] capital felony and  
22 shall be sentenced pursuant to the provisions of Section  
23 [~~31-18-15~~] 31-18-14 NMSA 1978."

24 Section 2. Section 30-31-21 NMSA 1978 (being Laws 1972,  
25 Chapter 84, Section 21, as amended) is amended to read:

"30-31-21. DISTRIBUTION TO A MINOR.--Except as  
authorized by the Controlled Substances Act, no person who is

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1 eight years of age or older shall intentionally distribute  
2 a controlled substance to a person under the age of eighteen  
3 years. Any person who violates this section with respect to:

4 A. marijuana is:

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

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

12 B. any other controlled substance enumerated in  
13 ~~[Schedules]~~ Schedule I, II, III or IV or a controlled  
14 substance analog of any controlled substance enumerated in  
15 Schedule I, II, III or IV is:

16 (1) for the first offense, guilty of a  
17 ~~[second]~~ first degree felony and shall be sentenced pursuant  
18 to the provisions of Section 31-18-15 NMSA 1978; and

19 (2) for the second and subsequent offenses,  
20 guilty of a ~~[first-degree]~~ capital felony and shall be  
21 sentenced pursuant to the provisions of Section ~~[31-18-15]~~  
22 31-18-14 NMSA 1978."

23 Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,  
24 Chapter 84, Section 22, as amended) is amended to read:

25 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--  
DISTRIBUTION PROHIBITED.--

A. Except as authorized by the Controlled

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1 Substances Act, it is unlawful for any person to  
2 intentionally distribute or possess with intent to distribute  
3 a controlled substance or a controlled substance analog  
4 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 in Schedule I or II that is a  
7 narcotic drug. Any person who violates this subsection with  
8 respect to:

9 (1) marijuana is:

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

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

17 (c) for the first offense, if more than  
18 one hundred pounds is possessed with intent to distribute or  
19 distributed or both, guilty of a ~~[third]~~ second degree felony  
20 and shall be sentenced pursuant to the provisions of Section  
21 31-18-15 NMSA 1978; and

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

(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  
3 or IV except a substance enumerated in Schedule I or II that  
4 is a narcotic drug or a controlled substance analog of a  
5 controlled substance enumerated in Schedule I or II that is a  
6 narcotic drug, is:

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

10 (b) for the second and subsequent offenses,  
11 guilty of a [~~second~~] first degree felony and shall be  
12 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
13 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. Except as authorized by the Controlled  
22 Substances Act, it is unlawful for any person to  
23 intentionally create or deliver, or possess with intent to  
24 deliver, a counterfeit substance. Any person who violates  
25 this subsection with respect to:

(1) a counterfeit substance enumerated in  
Schedule I, II, III or IV is guilty of a [~~fourth~~] third

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

3 (2) a counterfeit substance enumerated in  
4 Schedule V is guilty of a [~~petty~~] misdemeanor and shall be  
5 [~~punished by a fine of not more than one hundred dollars~~  
6 (~~\$100~~) or by imprisonment for a definite term not to exceed  
7 ~~six months, or both~~] sentenced pursuant to Section 31-19-1  
8 NMSA 1978.

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

13 (1) marijuana is:  
14 (a) for the first offense, guilty of a  
15 [~~third~~] second degree felony and shall be sentenced pursuant  
16 to the provisions of Section 31-18-15 NMSA 1978;

17 (b) for the second and subsequent offenses,  
18 guilty of a [~~second~~] first degree felony and shall be  
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
20 1978;

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

(d) for the second and subsequent offenses,  
if more than one hundred pounds is possessed with intent to

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1 distribute or distributed or both, guilty of a [~~first degree~~]  
2 capital felony and shall be sentenced pursuant to the  
3 provisions of Section [~~31-18-15~~] 31-18-14 NMSA 1978;

4 (2) any other controlled substance enumerated  
5 in Schedule I, II, III or IV or a controlled substance analog  
6 of a controlled substance enumerated in Schedule I, II, III  
7 or IV except a substance enumerated in Schedule I or II that  
8 is a narcotic drug or a controlled substance analog of a  
9 controlled substance [~~enumerated~~] enumerated in Schedule I or  
10 II that is a narcotic drug, is:

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

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

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

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

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

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

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

11 Section 4. Section 30-31-25 NMSA 1978 (being Laws 1972,  
12 Chapter 84, Section 25, as amended) is amended to read:

13 "30-31-25. CONTROLLED SUBSTANCES--PROHIBITED ACTS.--

14 A. It is unlawful for any person:

15 (1) who is a registrant to distribute a  
16 controlled substance classified in [~~Schedules~~] Schedule I or  
17 II, except pursuant to an order form as required by Section  
18 30-31-17 NMSA 1978;

19 (2) to intentionally use in the course of the  
20 manufacture or distribution of a controlled substance a  
21 registration number which is fictitious, revoked, suspended  
22 or issued to another person;

23 (3) to intentionally acquire or obtain or  
24 attempt to acquire or obtain possession of a controlled  
25 substance by misrepresentation, fraud, forgery, deception or  
subterfuge;

(4) to intentionally furnish false or



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1 fraudulent material information in, or omit any material  
2 information from, any application, report or other document  
3 required to be kept or filed under the Controlled Substances  
4 Act, or any record required to be kept by that act; or  
5 (5) to intentionally make, distribute or  
6 possess any punch, die, plate, stone or other thing designed  
7 to print, imprint or reproduce the trademark, trade name or  
8 other identifying mark, imprint or device of another or any  
9 likeness of any of the foregoing, upon any drug or container  
10 or labeling thereof so as to render the drug a counterfeit  
11 substance.

12 B. Any person who violates this section is guilty  
13 of a [~~fourth~~] third degree felony and shall be sentenced  
14 pursuant to the provisions of Section 31-18-15 NMSA 1978."