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HOUSE BILL 412

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

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

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

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

9 B. Except as authorized by the Controlled
10 Substances Act, it is unlawful for any person to intentionally
11 traffic. Any person who violates this 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 felony and shall be
22 sentenced pursuant to the provisions of Section 31-18-15 NMSA
23 1978, and a term of imprisonment of not less than nine years
24 of the sentence shall not be suspended, deferred or taken
25 under advisement. "

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

3 "30-31-21. DISTRIBUTION TO A MINOR. -- Except as
4 authorized by the Controlled Substances Act, no person who is
5 eighteen years of age or older shall intentionally distribute
6 a controlled substance to a person under the age of eighteen
7 years. Any person who violates this section with respect to:

8 A. marijuana is:

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

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

16 B. any other controlled substance enumerated in
17 [~~Schedules~~] Schedule I, II, III or IV or a controlled
18 substance analog of any controlled substance enumerated in
19 Schedule I, II, III or IV is

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

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

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

3 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
4 DISTRIBUTION PROHIBITED. --

5 A. Except as authorized by the Controlled
6 Substances Act, it is unlawful for any person to intentionally
7 distribute or possess with intent to distribute a controlled
8 substance or a controlled substance analog except a substance
9 enumerated in Schedule I or II that is a narcotic drug or a
10 controlled substance analog of a controlled substance
11 enumerated in Schedule I or II that is a narcotic drug. Any
12 person who violates this subsection with respect to:

13 (1) marijuana is:

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

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

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

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

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

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

20 (3) a controlled substance enumerated in
21 Schedule V or a controlled substance analog of a controlled
22 substance enumerated in Schedule V is guilty of a misdemeanor
23 and shall be punished by a fine of not less than one hundred
24 dollars (\$100) or more than five hundred dollars (\$500) or by
25 imprisonment for a definite term not less than one hundred

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1 eighty days but less than one year, or both.

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

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

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

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

21 (1) marijuana is:

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

25 (b) for the second and subsequent

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

4 (c) [~~for the first offense~~] if more
5 than one hundred pounds is possessed with intent to distribute
6 or distributed or both, guilty of a [~~second~~] first degree
7 felony and shall be sentenced pursuant to the provisions of
8 Section 31-18-15 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 first~~
12 ~~degree felony and shall be sentenced pursuant to the~~
13 ~~provisions 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 or a controlled substance analog of a controlled
19 substance [~~enumerated~~] enumerated in Schedule I or II that is
20 a narcotic drug, is:

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

24 (b) for the second and subsequent
25 offenses, guilty of a first degree felony and shall be

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1 sentenced pursuant to the provisions of Section 31-18-15 NMSA
2 1978;

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 fourth
6 degree felony and shall be sentenced pursuant to the
7 provisions of Section 31-18-15 NMSA 1978; and

8 (4) the intentional creation, delivery or
9 possession with the intent to deliver:

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

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

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

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

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1 "30-31-25. CONTROLLED SUBSTANCES-- PROHIBITED ACTS. --

2 A. It is unlawful for any person:

3 (1) who is a registrant to distribute a
4 controlled substance classified in [~~Schedules~~] Schedule I or
5 II, except pursuant to an order form as required by Section
6 30-31-17 NMSA 1978;

7 (2) to intentionally use in the course of the
8 manufacture or distribution of a controlled substance a
9 registration number which is fictitious, revoked, suspended or
10 issued to another person;

11 (3) to intentionally acquire or obtain or
12 attempt to acquire or obtain possession of a controlled
13 substance by misrepresentation, fraud, forgery, deception or
14 subterfuge;

15 (4) to intentionally furnish false or
16 fraudulent material information in, or omit any material
17 information from, any application, report or other document
18 required to be kept or filed under the Controlled Substances
19 Act, or any record required to be kept by that act; or

20 (5) to intentionally make, distribute or
21 possess any punch, die, plate, stone or other thing designed
22 to print, imprint or reproduce the trademark, trade name or
23 other identifying mark, imprint or device of another or any
24 likeness of any of the foregoing, upon any drug or container
25 or labeling thereof so as to render the drug a counterfeit

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substance.

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

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