

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 111

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO DRUG PRECURSORS; PROVIDING THE BOARD OF PHARMACY
WITH AUTHORITY TO ADD CERTAIN SUBSTANCES TO THE LIST OF DRUG
PRECURSORS; REVISING THE FEE THAT THE BOARD MAY CHARGE FOR THE
LICENSING AND CONTROL OF DRUG PRECURSORS; INCREASING PENALTIES;
AMENDING SECTIONS OF THE DRUG PRECURSOR ACT.

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

Section 1. Section 30-31B-1 NMSA 1978 (being Laws 1989,
Chapter 177, Section 1) is amended to read:

"30-31B-1. SHORT TITLE.--~~[Sections 1 through 18 of this
act]~~ Chapter 30, Article 31B NMSA 1978 may be cited as the
"Drug Precursor Act"."

Section 2. Section 30-31B-2 NMSA 1978 (being Laws 1989,
Chapter 177, Section 2) is amended to read:

"30-31B-2. DEFINITIONS.--As used in the Drug Precursor

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underscored material = new
[bracketed material] = delete

1 Act:

2 A. "administer" means the direct application of a
3 controlled substance by any means to the body of a patient or
4 research subject by a practitioner or his agent;

5 B. "agent" includes an authorized person who acts
6 on behalf of a manufacturer, distributor or dispenser. "Agent"
7 does not include a common or contract carrier, public
8 warehouseman or employee of the carrier or warehouseman;

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

10 D. "bureau" means the bureau of narcotics and
11 dangerous drugs of the United States department of justice or
12 its successor agency;

13 E. "controlled substance" means a drug or substance
14 listed in Schedules I through V of the Controlled Substances
15 Act or regulations adopted thereto;

16 F. "controlled substance analog" means a substance
17 other than a controlled substance that has a chemical structure
18 substantially similar to that of a controlled substance in
19 Schedule I, II, III, IV or V or which was specifically designed
20 to produce effects substantially similar to that of controlled
21 substances in Schedule I, II, III, IV or V. Examples of
22 chemical classes in which controlled substance analogs are
23 found include, but are not limited to, the following:

24 (1) phenethylamines;

25 (2) N-substituted piperidines;

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- 1 (3) morphinans;
2 (4) ecogonines;
3 (5) quinazolinones;
4 (6) substituted indoles; and
5 (7) arylcycloalkylamines.

6 Specifically excluded from the definition of "controlled
7 substance analog" are those substances which are generally
8 recognized as safe and effective within the meaning of the
9 Federal Food, Drug and Cosmetic Act or have been manufactured,
10 distributed or possessed in conformance with the provisions of
11 an approved new drug application or an exemption for
12 investigational use within the meaning of Section 505 of the
13 Federal Food, Drug and Cosmetic Act;

14 G. "deliver" means the actual, constructive or
15 attempted transfer from one person to another of a controlled
16 substance or controlled substance analog, whether or not there
17 is an agency relationship;

18 H. "dispense" means to deliver a controlled
19 substance to an ultimate user or research subject pursuant to
20 the lawful order of a practitioner, including the
21 administering, prescribing, packaging, labeling or compounding
22 necessary to prepare the controlled substance for that
23 delivery;

24 I. "dispenser" means a practitioner who dispenses
25 and includes hospitals, pharmacies and clinics where controlled

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1 substances are dispensed;

2 J. "distribute" means to deliver other than by
3 administering or dispensing a controlled substance or
4 controlled substance analog;

5 K. "drug" means substances recognized as drugs in
6 the official United States pharmacopoeia, official homeopathic
7 pharmacopoeia of the United States, official national formulary
8 or any respective supplement to these publications. "Drug"
9 does not include devices or their components, parts or
10 accessories;

11 L. "drug precursor" means any substance, material,
12 compound, mixture or preparation listed in Section [~~3 of the~~
13 ~~Drug Precursor Act~~] 30-31B-3 NMSA 1978 or regulations adopted
14 thereto or any of their salts or isomers. "Drug precursor"
15 specifically excludes those substances, materials, compounds,
16 mixtures or preparations which are prepared for dispensing
17 pursuant to a prescription or over-the-counter distribution as
18 a substance which is generally recognized as safe and effective
19 within the meaning of the Federal Food, Drug and Cosmetic Act
20 or have been manufactured, distributed or possessed in
21 conformance with the provisions of an approved new drug
22 application or an exemption for investigational use within the
23 meaning of Section 505 of the Federal Food, Drug and Cosmetic
24 Act, unless the board makes the findings required pursuant to
25 Subsection B of Section 30-31B-4 NMSA 1978;

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1 M. "immediate precursor" means a substance which is
2 a compound commonly used or produced primarily as an immediate
3 chemical intermediary used in the manufacture of a controlled
4 substance, the control of which is necessary to prevent,
5 curtail or limit the manufacture of controlled substances;

6 N. "license" means a license issued by the board to
7 manufacture, possess, transfer or transport a drug precursor;

8 O. "manufacture" means the production, preparation,
9 compounding, conversion or processing of a drug precursor by
10 extraction from substances of natural origin, independently by
11 means of chemical synthesis or by a combination of extraction
12 and chemical synthesis and includes any packaging or
13 repackaging of the substance or labeling or relabeling of its
14 container, except that this term does not include the
15 preparation or compounding of a controlled substance by a
16 practitioner:

17 (1) as an incident to his administering or
18 dispensing of a controlled substance in the course of his
19 professional practice; or

20 (2) by his agent under his supervision for the
21 purpose of or as an incident to research, teaching or chemical
22 analysis and not for sale;

23 P. "person" includes an individual, sole
24 proprietorship, partnership, corporation, association, the
25 state or any political subdivision of the state or other legal

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1 entity;

2 Q. "possession" means to actively or constructively
3 exercise dominion over;

4 R. "practitioner" means a physician, dentist,
5 veterinarian or other person licensed to prescribe and
6 administer drugs which are subject to the Controlled Substances
7 Act;

8 S. "prescription" means an order given individually
9 for the person for whom is prescribed a controlled substance,
10 either directly from the prescriber to the pharmacist or
11 indirectly by means of a written order signed by the prescriber
12 and in accordance with the Controlled Substances Act or
13 regulations adopted thereto; and

14 T. "transfer" means the sale, possession with
15 intent to sell, barter or giving away of a [~~controlled~~
16 ~~substance~~] drug precursor."

17 Section 3. Section 30-31B-4 NMSA 1978 (being Laws 1989,
18 Chapter 177, Section 4) is amended to read:

19 "30-31B-4. DUTY TO ADMINISTER.--

20 A. The board shall administer the Drug Precursor
21 Act and by regulation may add substances to the list of drug
22 precursors enumerated in Section [~~3 of the Drug Precursor Act~~]
23 30-31B-3 NMSA 1978. The board shall promulgate regulations
24 pursuant to the procedures of the Uniform Licensing Act.

25 B. In determining whether to add to the list of

1 drug precursors a substance, material, compound, mixture or
2 preparation that is generally recognized as safe and effective
3 within the meaning of the Federal Food, Drug and Cosmetic Act
4 or that has been manufactured, distributed or possessed in
5 conformance with the provisions of an approved new drug
6 application or an exemption for investigational use within the
7 meaning of Section 505 of the Federal Food, Drug and Cosmetic
8 Act, the board shall consider:

9 (1) whether the substance, material, compound,
10 mixture or preparation is:

11 (a) a source of a substance already
12 controlled under the Controlled Substances Act; or

13 (b) subject to being easily converted to
14 an immediate precursor of a substance already controlled under
15 the Controlled Substances Act;

16 (2) the relative ease by which use of the
17 substance, material, compound, mixture or preparation can
18 facilitate the manufacture of a controlled substance;

19 (3) legitimate uses that would be unduly
20 hampered by listing the substance, material, compound, mixture
21 or preparation as a drug precursor;

22 (4) whether the substance, material, compound,
23 mixture or preparation is formulated to effectively prevent its
24 conversion into an immediate precursor of a substance already
25 controlled under the Controlled Substances Act; and

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1 (5) any other factors relevant to and
2 consistent with the public health and safety.

3 [A.] C. In determining whether a substance,
4 material, compound, mixture or preparation should be added to
5 the list of drug precursors, the board shall consider:

6 (1) whether the substance, material, compound,
7 mixture or preparation is an immediate precursor of a substance
8 already controlled under the Controlled Substances Act;

9 (2) the relative ease by which use of the
10 substance, material, compound, mixture or preparation can
11 facilitate the manufacture of a controlled substance;

12 (3) legitimate uses which would be unduly
13 hampered by listing the substance, material, compound, mixture
14 or preparation as a drug precursor; and

15 (4) any other factors relevant to and
16 consistent with the public health and safety.

17 [B.] D. After considering the factors enumerated in
18 [~~Subsection A~~] Subsection B or C of this section, the board
19 shall make findings and issue regulations listing the
20 substance, material, compound, mixture or preparation as a drug
21 precursor if it finds that the substance, material, compound,
22 mixture or preparation has a significant potential for use in
23 the manufacture of controlled substances.

24 [G.] E. If the board designates a substance,
25 material, compound, mixture or preparation as a drug precursor,

underscored material = new
[bracketed material] = delete

1 then substances, materials, compounds, mixtures or preparations
 2 which are precursors of the drug precursor so designated shall
 3 not be subject to control solely because they are precursors of
 4 a drug precursor.

5 ~~[D.]~~ F. If any substance, material, compound,
 6 mixture or preparation is designated as controlled under
 7 federal law and notice is given to the board, the board may, by
 8 regulation, similarly control the substance under the Drug
 9 Precursor Act after providing for a hearing pursuant to the
 10 Uniform Licensing Act.

11 ~~[E.]~~ G. Authority to control under this section
 12 does not extend to distilled spirits, wine, malt beverages,
 13 tobacco or pesticides as defined in the Pesticide Control Act."

14 Section 4. Section 30-31B-6 NMSA 1978 (being Laws 1989,
 15 Chapter 177, Section 6) is amended to read:

16 "30-31B-6. REGULATIONS.--

17 A. The board may promulgate regulations and charge
 18 reasonable fees relating to the licensing and control of the
 19 manufacture, possession, transfer and transportation of drug
 20 precursors ~~[which]~~. The fees shall not be ~~[less]~~ more than two
 21 hundred fifty dollars (\$250) per license for a wholesaler's
 22 license, a distributor's license or a manufacturer's license.
 23 The fees shall not be more than fifty dollars (\$50.00) per
 24 license for a retail distributor's license, when the retail
 25 distributor has ten or more employees. The fees shall not be

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1 more than twenty-five dollars (\$25.00) per license for a retail
2 distributor's license, when the retail distributor has fewer
3 than ten employees.

4 [A.] B. Every person who manufactures, possesses,
5 transfers or transports any drug precursor or who proposes to
6 engage in the manufacture, possession, transfer or
7 transportation of any drug precursor [~~must~~] shall obtain,
8 annually, a license issued by the board.

9 [B.] C. Persons licensed by the board to
10 manufacture, possess, transfer or transport drug precursors may
11 manufacture, possess, transfer or transport those substances to
12 the extent authorized by their license and in conformity with
13 the other provisions of the Drug Precursor Act.

14 [C.] D. The following persons need not be licensed
15 under the Drug Precursor Act and may lawfully possess drug
16 precursors:

17 (1) physicians;

18 (2) an agent of any licensed manufacturer of
19 any drug precursor if he is acting in the usual course of his
20 principal's business or employment;

21 (3) an employee of a licensed common or
22 contract carrier or licensed warehouseman whose possession of
23 any drug precursor is in the usual course of the licensed
24 common or contract carrier or licensed warehouseman's business;

25 [~~or~~]

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1 (4) a student enrolled in a ~~college~~
 2 chemistry class for credit; provided, however, that the
 3 student's use of the drug precursor is for a bona fide
 4 educational purpose and that the chemistry department of the
 5 educational institution otherwise possesses all the necessary
 6 licenses required by the board;

7 (5) a consumer who uses a drug precursor for
 8 its intended purpose and who does not use the drug precursor to
 9 manufacture a substance controlled under the Controlled
 10 Substances Act;

11 (6) a pharmacy, an agent or employee of a
 12 pharmacy or a contractor for a pharmacy;

13 (7) a pharmacist, an agent or employee of a
 14 pharmacist or a contractor for a pharmacist; or

15 (8) an agent or employee of a licensed retail
 16 establishment or a contractor for a licensed retail
 17 establishment.

18 ~~[D.]~~ E. The board may waive by regulation the
 19 requirement for licensing of certain manufacturers if it is
 20 consistent with the public health and safety.

21 ~~[E.]~~ F. The board may inspect the establishment of
 22 a licensee or applicant for license in accordance with the
 23 board's regulations."

24 Section 5. Section 30-31B-12 NMSA 1978 (being Laws 1989,
 25 Chapter 177, Section 12) is amended to read:

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1 "30-31B-12. DRUG PRECURSORS--PROHIBITED ACTS--
2 PENALTIES.--

3 A. It is unlawful for any person:

4 (1) to transfer drug precursors except to an
5 authorized licensee;

6 (2) to intentionally use in the course of the
7 manufacture or transfer of a drug precursor a license number
8 which is fictitious, revoked, suspended or issued to another
9 person;

10 (3) to intentionally acquire or obtain, or
11 attempt to acquire or obtain, possession of a drug precursor by
12 misrepresentation, fraud, forgery, deception or subterfuge;

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

18 (5) who is a licensee to intentionally
19 manufacture a drug precursor not authorized by his license or
20 to intentionally transfer a drug precursor not authorized by
21 his license to another licensee or authorized person;

22 (6) to intentionally refuse or fail to make,
23 keep or furnish any record, notification, order form,
24 statement, invoice or information required under the Drug
25 Precursor Act;

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1 (7) to intentionally refuse an entry into any
 2 premises for any inspection authorized by the Drug Precursor
 3 Act; or

4 (8) to manufacture, possess, transfer or
 5 transport a drug precursor without the appropriate license or
 6 in violation of any rule or regulation of the board.

7 B. Any person who violates any provision of this
 8 section is [~~(1) for the first offense~~] guilty of a
 9 [~~misdemeanor~~] fourth degree felony and shall be sentenced
 10 pursuant to the provisions of Section [~~31-19-1 NMSA 1978~~]
 11 31-18-15 NMSA 1978

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

15 [~~(3) for the third or subsequent offense,~~
 16 ~~guilty of a third degree felony and shall be sentenced pursuant~~
 17 ~~to the provisions of Section 31-18-15 NMSA 1978].~~

18 C. When a person owns or operates a retail
 19 establishment where drug precursors are sold by an employee in
 20 violation of the provisions of this section, it is an
 21 affirmative defense to a prosecution of that owner or operator
 22 if he furnishes documentation that he provided the employee
 23 with a training program regarding state and federal laws and
 24 regulations regarding drug precursors; provided that, if the
 25 owner or operator knew or should have known of the employee's

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1 violation, the owner or operator shall also be in violation of
2 the provisions of this section."

3 Section 6. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2004.