

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 110

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONTROLLED SUBSTANCES; REVISING THE CRIMINAL
OFFENSE OF TRAFFICKING CONTROLLED SUBSTANCES TO INCLUDE
METHAMPHETAMINE, ITS SALTS AND ISOMERS.

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

underscored material = new
[bracketed material] = delete

1 (2) the distribution, sale, barter or giving
2 away of ~~[any]~~:

3 (a) a controlled substance enumerated in
4 Schedule I or II that is a narcotic drug; ~~[or]~~

5 (b) a controlled substance analog of a
6 controlled substance enumerated in Schedule I or II that is a
7 narcotic drug; or

8 (c) a methamphetamine, its salts,
9 isomers and salts of isomers; or

10 (3) the possession with intent to distribute
11 ~~[any]~~:

12 (a) a controlled substance enumerated in
13 Schedule I or II that is a narcotic drug; ~~[or]~~

14 (b) a controlled substance analog of a
15 controlled substance enumerated in Schedule I or II that is a
16 narcotic drug; or

17 (c) a methamphetamine, its salts,
18 isomers and salts of isomers.

19 B. Except as authorized by the Controlled
20 Substances Act, it is unlawful for ~~[any]~~ a person to
21 intentionally traffic. ~~[Any]~~ A person who violates this
22 subsection is:

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

. 153889. 1

underscored material = new
[bracketed material] = delete

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

4 C. ~~Any~~ A person who knowingly violates Subsection
5 B of this section within a drug-free school zone, excluding
6 private property residentially zoned or used primarily as a
7 residence, is guilty of a first degree felony and shall be
8 sentenced pursuant to the provisions of Section 31-18-15 NMSA
9 1978. "

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

12 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
13 DISTRIBUTION PROHIBITED. --

14 A. Except as authorized by the Controlled
15 Substances Act, it is unlawful for ~~any~~ a person to
16 intentionally distribute or possess with intent to distribute a
17 controlled substance or a controlled substance analog, except a
18 substance enumerated in Schedule I or II that is a narcotic
19 drug, ~~or~~ a controlled substance analog of a controlled
20 substance enumerated in Schedule I or II that is a narcotic
21 drug or a methamphetamine, its salts, isomers and salts of
22 isomers. ~~Any~~ A person who violates this subsection with
23 respect to:

24 (1) marijuana is:

25 (a) for the first offense, guilty of a

underscored material = new
[bracketed material] = delete

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

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

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

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

17 (2) any other controlled substance enumerated in
18 Schedule I, II, III or IV or a controlled substance analog of a
19 controlled substance enumerated in Schedule I, II, III or IV,
20 except a substance enumerated in Schedule I or II that is a
21 narcotic drug, [~~or~~] a controlled substance analog of a
22 controlled substance enumerated in Schedule I or II that is a
23 narcotic drug or a methamphetamine, its salts, isomers and
24 salts of isomers, is:

25 (a) for the first offense, guilty of a third

underscored material = new
[bracketed material] = delete

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

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

6 (3) a controlled substance enumerated in
7 Schedule V or a controlled substance analog of a controlled
8 substance enumerated in Schedule V is guilty of a misdemeanor
9 and shall be punished by a fine of not less than one hundred
10 dollars (\$100) or more than five hundred dollars (\$500) or by
11 imprisonment for a definite term not less than one hundred
12 eighty days but less than one year, or both.

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

18 (1) a counterfeit substance enumerated in
19 Schedule I, II, III or IV is guilty of a fourth degree felony
20 and shall be sentenced pursuant to the provisions of Section
21 31-18-15 NMSA 1978; and

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

. 153889. 1

underscored material = new
[bracketed material] = delete

1 months, or both.

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

6 (1) marijuana is:

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

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

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

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

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

underscored material = new
[bracketed material] = delete

1 except a substance enumerated in Schedule I or II that is a
2 narcotic drug, ~~[or]~~ a controlled substance analog of a
3 controlled substance ~~[enumerated]~~ enumerated in Schedule I or
4 II that is a narcotic drug or a methamphetamine, its salts,
5 isomers and salts of isomers, is:

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

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

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

17 (4) the intentional creation, delivery or
18 possession with the intent to deliver:

19 (a) a counterfeit substance enumerated in
20 Schedule I, II, III or IV is guilty of a third degree felony
21 and shall be sentenced pursuant to the provisions of Section
22 31-18-15 NMSA 1978; and

23 (b) a counterfeit substance enumerated in
24 Schedule V is guilty of a misdemeanor and shall be punished by
25 a fine of not less than one hundred dollars (\$100) nor more

. 153889. 1

1 than five hundred dollars (\$500) or by imprisonment for a
2 definite term not less than one hundred eighty days but less
3 than one year, or both.

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

8 Section 3. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2005.