HOUSE BILL 211

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

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AN ACT

RELATING TO CONTROLLED SUBSTANCES; INCLUDING PSEUDOEPHEDRINE AS A CONTROLLED SUBSTANCE; ALLOWING ONLY LICENSED PHARMACISTS, INTERNS OR TECHNICIANS TO SELL PSEUDOEPHEDRINE; PROVIDING LIMITATIONS ON THE PURCHASE OF PSEUDOEPHEDRINE.

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

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

"30-31-3. DUTY TO ADMINISTER.--

A. The board shall administer the Controlled Substances Act and may add by regulation substances to the list of substances enumerated in Schedules I through IV pursuant to the procedures of the Uniform Licensing Act. In determining whether a substance has the potential for abuse, the board shall consider the following:

(1) the actual or relative abuse of the substance;

(2) the scientific evidence of the pharmacological effect of the substance, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration and significance of abuse;

(6) the risk to the public health; and

(7) the potential of the substance to produce psychic or physiological dependence liability.

B. After considering the factors enumerated in Subsection A of this section, the board shall make findings and issue regulations controlling the substance if it finds the substance has a potential for abuse.

C. If any substance is designated as a controlled substance under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Controlled Substances Act after providing for a hearing pursuant to the Uniform Licensing Act.

D. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, tobacco or pesticides as defined in the Pesticide Control Act.

[~~E. The board shall exclude any nonnarcotic~~

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~~substance from a schedule if such substance may, under Section 61-11-22 NMSA 1978, be lawfully sold over the counter without a prescription.~~]"

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

"30-31-10. SCHEDULE V.--

A. The following controlled substances are included in Schedule V:

[~~A.~~] (1) any compound, mixture or preparation [~~containing~~] that contains the following limited quantities of any of the following narcotic drugs, [~~which~~] and that also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

[~~(1)~~] (a) not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams;

[~~(2)~~] (b) not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;

[~~(3)~~] (c) not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;

[~~(4)~~] (d) not more than two and five-

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tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or

[~~(5)~~] (e) not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(2) any compound, mixture or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. A compound, mixture or preparation as specified in this paragraph shall be dispensed, sold or distributed only by a licensed pharmacist or pharmacist intern or a registered pharmacy technician. A person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the person;

(b) sign a written log, receipt or other program or mechanism indicating the date of the transaction, name of the person, driver's license number or government-issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; and

(c) be limited to no more than nine grams of any product, mixture or preparation within a thirty-day period;

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provided that this limit shall not apply to a quantity of such product, mixture or preparation dispensed pursuant to a valid prescription.

B. The board may by regulation exempt any compound, mixture or preparation containing any depressant or stimulant substance enumerated in Schedules III, IV or V from the application of the Controlled Substances Act if:

(1) the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and

(2) such ingredients are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the nervous system.

C. The board may, by rule, exempt a product containing pseudoephedrine from Schedule V if the board determines that the product is formulated as to effectively prevent the conversion of pseudoephedrine into methamphetamine."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

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