HOUSE BILL 630

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO DRUG PRECURSORS; PROVIDING THAT CERTAIN SUBSTANCES SHALL BE DEEMED "DRUG PRECURSORS" WHEN BEING USED OR WHEN INTENDED TO BE USED FOR THE UNLAWFUL MANUFACTURE OF A CONTROLLED SUBSTANCE.

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

Section 1. Section 30-31B-2 NMSA 1978 (being Laws 1989, Chapter 177, Section 2, as amended) is amended to read:

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

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. "Agent"

does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

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

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

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

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled

underscored material = new
[~~bracketed material~~] = delete

substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

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

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

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

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

K. "drug" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic

underscored material = new
[~~bracketed material~~] = delete

pharmacopoeia of the United States, official national formulary or any respective supplement to these publications. "Drug" does not include devices or their components, parts or accessories;

L. "drug precursor" means a substance, material, compound, mixture or preparation listed in Section 30-31B-3 NMSA 1978 or regulations adopted thereto or any of their salts or isomers. "Drug precursor" specifically excludes those substances, materials, compounds, mixtures or preparations that:

(1) are prepared for dispensing pursuant to a prescription or over-the-counter distribution as a substance that is generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act, unless the substance, material, compound, mixture or preparation is being used or is possessed with the intent of being used for the unlawful manufacture of a controlled substance; or

(2) have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act, unless the board makes the findings required pursuant to Subsection B of Section 30-31B-4 NMSA 1978;

M. "immediate precursor" means a substance that is a compound commonly used or produced primarily as an immediate

underscored material = new
[bracketed material] = delete

chemical intermediary used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit the manufacture of controlled substances;

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

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

(1) as an incident to the practitioner's administering or dispensing of a controlled substance in the course of professional practice; or

(2) by the practitioner's agent under the practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

P. "person" includes an individual, sole proprietorship, partnership, corporation, association, the state or a political subdivision of the state or other legal entity;

Q. "possession" means to actively or constructively

underscored material = new
[~~bracketed material~~] = delete

exercise dominion over;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, dentist, veterinarian or other person licensed to prescribe and administer drugs that are subject to the Controlled Substances Act;

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

T. "transfer" means the sale, possession with intent to sell, barter or giving away of a drug precursor."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

underscored material = new
[~~bracketed material~~] = delete