

HOUSE BILL 267

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC SAFETY; ENACTING THE CONTINUING DRUG ENTERPRISE ACT; ENHANCING THE PENALTIES FOR CERTAIN CONTROLLED SUBSTANCE-RELATED ACTIVITIES IN THE RACKETEERING ACT.

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

SECTION 1. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Continuing Drug Enterprise Act"."

SECTION 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Continuing Drug Enterprise Act:

A. "continuing drug enterprise" means an ongoing series of violations that are knowingly undertaken by a person

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1 in the course of an ongoing criminal conspiracy with five or
2 more people;

3 B. "ongoing series of violations" means three or
4 more separate serious felony drug offenses, at least two of
5 which were committed within three years of each other and all
6 of which were committed after the effective date of the
7 Continuing Drug Enterprise Act;

8 C. "organizer" means a person who organizes,
9 supervises or manages a continuing drug enterprise and who
10 obtains substantial income or resources from the person's role
11 in the continuing drug enterprise; and

12 D. "serious felony drug offense" means conduct
13 punishable as felony trafficking in controlled substances
14 pursuant to Section 30-31-20 NMSA 1978 or felony distribution
15 of controlled substances pursuant to Section 30-31-22 NMSA
16 1978, or any equivalent crime committed in another state or any
17 equivalent crime committed contrary to federal law, except for
18 conduct punishable for involving felony trafficking or felony
19 distribution of marijuana, tetrahydrocannabinol or chemical
20 derivatives of tetrahydrocannabinol."

21 SECTION 3. A new section of the Criminal Code is enacted
22 to read:

23 "[NEW MATERIAL] PROHIBITED ACTIVITIES--CRIMINAL
24 PENALTIES--APPLICABILITY OF OTHER CIVIL AND CRIMINAL LAWS.--

25 A. It is unlawful for a person to commit a serious

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1 felony drug offense that is part of a continuing drug
2 enterprise while that person is an organizer of that continuing
3 drug enterprise. For purposes of determining whether someone
4 is an organizer of a continuing drug enterprise, the jury, or a
5 judge if the jury has been waived by a defendant, shall
6 consider the following:

7 (1) the defendant's exercise of decision-
8 making authority in the continuing drug enterprise;

9 (2) the nature and scope of the illegal
10 activity of the continuing drug enterprise and the defendant's
11 degree of control and authority over those in the continuing
12 drug enterprise;

13 (3) the nature of the defendant's
14 participation in the commission of serious felony drug
15 offenses;

16 (4) the degree of participation in planning or
17 organizing the serious felony drug offenses;

18 (5) the recruitment of accomplices;

19 (6) the nature of the defendant's rights to
20 the profits of the continuing drug enterprise or any property
21 accumulated in the course of the continuing drug enterprise;

22 (7) the acquisition of substantial income or
23 resources from the defendant's role in the continuing drug
24 enterprise; and

25 (8) any other information that demonstrates

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1 the defendant's ability and control over the operation of the
2 continuing drug enterprise.

3 B. Notwithstanding the provisions of Section
4 30-28-2 NMSA 1978, a person who violates Subsection A of this
5 section is guilty of a first degree felony.

6 C. Nothing contained in the Continuing Drug
7 Enterprise Act precludes civil or criminal remedies provided by
8 the Racketeering Act or the Controlled Substances Act or by any
9 other New Mexico law. Those remedies are in addition to and
10 not in lieu of remedies provided in the Continuing Drug
11 Enterprise Act."

12 SECTION 4. A new section of the Criminal Code is enacted
13 to read:

14 "[NEW MATERIAL] ENFORCEMENT AUTHORITY.--The attorney
15 general and the district attorneys of New Mexico shall each
16 have authority to enforce the provisions of the Continuing Drug
17 Enterprise Act by initiating investigations, assisting grand
18 juries, obtaining indictments, filing information and
19 complaints and prosecuting criminal cases."

20 SECTION 5. Section 30-42-4 NMSA 1978 (being Laws 1980,
21 Chapter 40, Section 4, as amended) is amended to read:

22 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES.--

23 A. It is unlawful for a person who has received
24 proceeds derived, directly or indirectly, from a pattern of
25 racketeering activity in which the person has participated, to

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1 use or invest, directly or indirectly, any part of the proceeds
2 or the proceeds derived from the investment or use in the
3 acquisition of an interest in, or the establishment or
4 operation of, an enterprise. Whoever violates this subsection
5 is guilty of a second degree felony; provided that the person
6 is guilty of a first degree felony if the racketeering activity
7 includes an act that is chargeable or indictable as:

8 (1) trafficking in controlled substances
9 pursuant to Section 30-31-20 NMSA 1978, except trafficking of
10 marijuana, tetrahydrocannabinol or chemical derivatives of
11 tetrahydrocannabinol;

12 (2) distribution of controlled substances or
13 controlled substance analogs pursuant to Section 30-31-21 NMSA
14 1978; or

15 (3) distribution of controlled substances or
16 controlled substance analogs pursuant to Section 30-31-22 NMSA
17 1978, except distribution of marijuana, tetrahydrocannabinol or
18 chemical derivatives of tetrahydrocannabinol.

19 B. It is unlawful for a person to engage in a
20 pattern of racketeering activity in order to acquire or
21 maintain, directly or indirectly, an interest in or control of
22 an enterprise. Whoever violates this subsection is guilty of a
23 second degree felony; provided that the person is guilty of a
24 first degree felony if the racketeering activity includes an
25 act that is chargeable or indictable as:

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1 (1) trafficking in controlled substances
2 pursuant to Section 30-31-20 NMSA 1978, except trafficking of
3 marijuana, tetrahydrocannabinol or chemical derivatives of
4 tetrahydrocannabinol;

5 (2) distribution of controlled substances or
6 controlled substance analogs pursuant to Section 30-31-21 NMSA
7 1978; or

8 (3) distribution of controlled substances or
9 controlled substance analogs pursuant to Section 30-31-22 NMSA
10 1978, except distribution of marijuana, tetrahydrocannabinol or
11 chemical derivatives of tetrahydrocannabinol.

12 C. It is unlawful for a person employed by or
13 associated with an enterprise to conduct or participate,
14 directly or indirectly, in the conduct of the enterprise's
15 affairs by engaging in a pattern of racketeering activity.
16 Whoever violates this subsection is guilty of a second degree
17 felony; provided that the person is guilty of a first degree
18 felony if the racketeering activity includes an act that is
19 chargeable or indictable as:

20 (1) trafficking in controlled substances
21 pursuant to Section 30-31-20 NMSA 1978, except trafficking of
22 marijuana, tetrahydrocannabinol or chemical derivatives of
23 tetrahydrocannabinol;

24 (2) distribution of controlled substances or
25 controlled substance analogs pursuant to Section 30-31-21 NMSA

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1 1978; or

2 (3) distribution of controlled substances or
3 controlled substance analogs pursuant to Section 30-31-22 NMSA
4 1978, except distribution of marijuana, tetrahydrocannabinol or
5 chemical derivatives of tetrahydrocannabinol.

6 D. It is unlawful for a person to conspire to
7 violate the provisions of Subsections A through C of this
8 section. Whoever violates this subsection is guilty of a third
9 degree felony; provided that the person is guilty of a first
10 degree felony if the racketeering activity includes an act that
11 is chargeable or indictable as:

12 (1) trafficking in controlled substances
13 pursuant to Section 30-31-20 NMSA 1978, except trafficking of
14 marijuana, tetrahydrocannabinol or chemical derivatives of
15 tetrahydrocannabinol;

16 (2) distribution of controlled substances or
17 controlled substance analogs pursuant to Section 30-31-21 NMSA
18 1978; or

19 (3) distribution of controlled substances or
20 controlled substance analogs pursuant to Section 30-31-22 NMSA
21 1978, except distribution of marijuana, tetrahydrocannabinol or
22 chemical derivatives of tetrahydrocannabinol.

23 E. Whoever is convicted of a violation of
24 Subsection A, B, C or D of this section in addition to the
25 prescribed penalties shall forfeit to the state of New Mexico:

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(1) any interest acquired or maintained in violation of the Racketeering Act; and

(2) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over an enterprise that the person has established, operated, controlled, conducted or participated in the conduct of in violation of the Racketeering Act.

F. The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property described in Subsection E of this section."