

SANTA FE COUNTY

443779

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

ORDINANCE NUMBER 1982-4

INTRODUCED BY

Rudy R. Fernandez

Jake D. Martinez

Samuel J. Garcia

AN ORDINANCE

PROHIBITING THE MANUFACTURE AND DISTRIBUTION OF IMITATION CONTROLLED
SUBSTANCES: ESTABLISHING A PENALTY FOR VIOLATIONS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
SANTA FE.

Section 1. Definitions

A. "Controlled substance" means a substance as defined in Section
30-31-2(E), N.M.S.A., 1978;

B. "Distribute" means the transfer, delivery, or dispensing to
another of an imitation controlled substance;

C. "Imitation controlled substance" means a substance that is not
a controlled substance, but which by overall dosage unit appearance,
including color, shape, size and markings, or by representations made
would lead a reasonable person to believe that the substance is a
controlled substance. In those rare cases when the appearance of the

1 dosage unit is not reasonably sufficient to establish that the sub-
2 stance is an imitation controlled substance, for example; in the case
3 of powder or liquid, the court or authority concerned should consider,
4 in addition to all other logically relevant factors, the following fac-
5 tors as related to "representations made" in determining whether the
6 substance is an imitation controlled substance;

7 1. statements made by an owner or by anyone else in control
8 of the substance concerning the nature of the substance of its use or
9 effect;

10 2. statements made to the recipient that the substance may
11 be resold for consideration greatly in excess of the market value of
12 the ingredients;

13 3. whether the substance is packaged in a manner normally
14 used for illicit controlled substances;

15 4. evasive tactics or actions utilized by the owner or per-
16 son in control of the substance to avoid detection by law enforcement
17 authorities;

18 5. prior convictions, if any, of the owner, or anyone in
19 control of the object, under state or federal law related to controlled
20 ed substances or fraud, provided that this factor alone shall not be
21 sufficient to support a conviction under this Ordinance, and

22 6. whether the physical appearance of the substance is sub-
23 stantially identical to a controlled substance.

24 D. "Manufacture" means the production, preparation, compounding,
25 processing, encapsulating, tableting, packaging, or repackaging or
26 labeling or relabeling of an imitation controlled substance.

27 Section 2. Manufacture Distribution of Imitation Controlled Sub-
28 stance. It is unlawful for any person to, knowingly or under circum-

1 stances where a person reasonably should know, manufacture, distribute,
2 or possess with intent to distribute an imitation controlled substance.
3 Any person who violates the provisions of this section is guilty of a
4 misdemeanor and upon conviction shall be punished by a fine of not more
5 than three hundred dollars (\$300.00), or imprisoned for not more than
6 ninety (90) days, or both.

7 Section 3. **Defenses.** In any prosecution for unlawful distribu-
8 tion or possession with intent to distribute of an imitation controlled
9 substance, it is no defense that the defendant believed the imitation
10 controlled substance to be a controlled substance.

11 Section 4. **Immunity.** No criminal liability shall be imposed by
12 this ordinance on any person who may lawfully manufacture or distribute
13 controlled substances under Section 30-31-12 N.M.S.A., 1978, who manu-
14 factures, distributes, or possess with intent to distribute an imita-
15 tion controlled substance for use as a placebo by a registered practi-
16 tioner in the course of professional practice or research.

17 Section 5. **Severability Clause.** If any provision of this ordi-
18 nance or the application thereof to any person or circumstance is held
19 invalid, the invalidity does not affect other provisions or applica-
20 tions of the ordinance which can be given effect without the invalid
21 provision or application, and to this end the provisions of this ordi-
22 nance are severable.

23 Section 6. **Effective Date and Publication.** This ordinance shall
24 become effective thirty (30) days after approval by the Board of County
25 Commissioners.

26 PASSED, APPROVED, AND ADOPTED, this 6th day of July,
27 1982.

28

443732

SANTA FE COUNTY

Samuel J. Garcia
Samuel J. Garcia, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

This ordinance was recorded in the Santa Fe County Ordinance Book on
July 7, 1982 in book no. *443*, pages *779* through
780. This ordinance shall take effect thirty (30) days after the
date of recording.

ATTEST:

Carolina R. Gonzales
By *mte*
COUNTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Wendell Hall
COUNTY ATTORNEY



STATE OF NEW MEXICO)
COUNTY OF SANTA FE) SS
I attest my Hand and Seal of Office
CAROLINA R. GONZALES
County Clerk, Santa Fe County, N.M.

498,983
I hereby certify that this instrument was filed
for record on the *7* day of *July* A.D.,
1982 at *4:33* o'clock *P.*M.
and was duly recorded in book *443*
page *779-782* of the records of Santa Fe County.
Wendell Hall
County Attorney