SENATE BILL 94

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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AN ACT

RELATING TO AGRICULTURE; PROVIDING FOR LICENSING THE GROWING, SELLING AND PROCESSING OF INDUSTRIAL HEMP; ESTABLISHING FEES; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Industrial Hemp Farming Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND PURPOSE.--

A. Industrial hemp is a suitable crop for New Mexico, and its production will contribute to the future viability of New Mexico agriculture.

B. Allowing industrial hemp production will provide farmers an opportunity to sell their products to a marketplace

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that pays them a reasonable rate of return for their labor and capital investments. Farmers in Canada report a rate of return of eight hundred dollars ($800) per acre for the crop.

C. The infrastructure needed to process industrial hemp will result in increased business opportunities and new jobs in communities.

D. As a food crop, industrial hemp seeds and oil produced from the seeds have high nutritional value, including healthy fats and protein.

E. As a fiber crop, industrial hemp can be used in the manufacture of products such as clothing, building supplies and animal bedding.

F. As a fuel crop, industrial hemp seeds can be processed into biodiesel, and stalks can be pelletized or flaked for burning or processed for cellulosic ethanol. Industrial hemp also expands opportunities for on-farm renewable energy production.

G. The production of industrial hemp can play a useful agronomic role in farm land management as part of a crop rotation system.

H. In addition to being an efficient photosynthesizer for converting the greenhouse gases carbon dioxide and carbon monoxide to oxygen, industrial hemp is fast-growing and drought-tolerant, making it suitable for the arid southwest.

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I. The purpose of the Industrial Hemp Farming Act is to establish policy and procedures for growing industrial hemp in New Mexico so that farmers and other businesses in the New Mexico agricultural industry can take advantage of this market opportunity.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the Industrial Hemp Farming Act:

A. "grower" means a licensed industrial hemp grower; and

B. "industrial hemp" means any plant that produces not more than three-tenths of one percent of delta-9-tetrahydrocannabinol per weighted unit of flowering tops and leaves and has a delta-9-tetrahydrocannabinol concentration of not more than one percent on a dry weight basis.

SECTION 4. [NEW MATERIAL] ADMINISTRATIVE DISCOVERY PROCESS TO DETERMINE RULES TO ENCOURAGE GROWTH AND SALES OF INDUSTRIAL HEMP--ADMINISTRATION.--The New Mexico department of agriculture shall:

A. monitor the initial phase of research and development necessary to ensure a viable and legal industrial hemp industry in the state; and

B. ensure the participation by and inclusion of individual farmers, agricultural cooperatives and businesses in the rulemaking process.

SECTION 5. [NEW MATERIAL] IMPLEMENTATION--FEES.--

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A. A person or business planning to grow and sell industrial hemp seed or industrial hemp fiber shall obtain a grower's license by submitting an application to the New Mexico department of agriculture containing the following:

(1) the name and address of the applicant;

(2) the location and legal description of the land to be used for the production of industrial hemp and the name and address of the person holding title to the land on which the industrial hemp will be planted;

(3) any other information required for completion of a nationwide criminal background check; and

(4) a nonrefundable application or renewal fee of no more than one hundred fifty dollars ($150).

B. A grower shall maintain records showing:

(1) the origin of the seed purchased and planted;

(2) the quantity of the seed purchased and planted;

(3) the amount of industrial hemp harvested and sold; and

(4) buyers and recipients of the industrial hemp plants, fiber and seed.

C. The New Mexico department of agriculture shall help to ensure availability of seed. The department shall:

(1) maintain an authorized list of certified

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seed sources for industrial hemp;

(2) certify industrial hemp seed obtained from other sources;

(3) maintain a list of growers and processors for whom seed has been provided; and

(4) maintain a list of growers and processors.

D. The New Mexico department of agriculture may collaborate with individual farmers, agricultural cooperatives or businesses to establish an industrial hemp seed bank and provide seed for a fee that does not exceed ten percent more than the cost of the seed to growers upon request.

E. The New Mexico department of agriculture may enter into joint powers agreements with an Indian nation, tribe or pueblo to share information, to provide technical assistance and to generally cooperate with the Indian nation, tribe or pueblo to facilitate the production of industrial hemp on tribal land.

F. The New Mexico department of agriculture may revoke or suspend a license of a grower if there is substantial evidence of violations of the provisions of the Industrial Hemp Farming Act or rules adopted pursuant to that act. The department shall impose fines subsequent to the implementation of the Industrial Hemp Farming Act.

G. Fees collected pursuant to this section are appropriated to the New Mexico department of agriculture to

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carry out the provisions of the Industrial Hemp Farming Act.

SECTION 6. [NEW MATERIAL] DEPARTMENT OF PUBLIC SAFETY--DUTIES AND POWERS.--The department of public safety:

A. shall conduct background checks on applicants requesting licenses upon request by the New Mexico department of agriculture;

B. shall inspect growing fields and processing facilities upon verifiable evidence that a designated industrial hemp field is unlicensed and is in violation of the Industrial Hemp Farming Act;

C. shall train law enforcement officers to identify industrial hemp;

D. shall inform the New Mexico department of agriculture of any criminal offenses regarding the growing or processing of industrial hemp; and

E. may enter into joint powers agreements with an Indian nation, tribe or pueblo to share information, to provide technical assistance and to generally cooperate with the Indian nation, tribe or pueblo to facilitate the production of industrial hemp on tribal land.

SECTION 7. [NEW MATERIAL] COOPERATION BETWEEN AGENCIES.--The New Mexico department of agriculture and the department of public safety shall cooperate fully with one another to implement and enforce the provisions of the Industrial Hemp Farming Act.

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SECTION 8. [NEW MATERIAL] PENALTY.--A person who fraudulently obtains a license pursuant to the Industrial Hemp Farming Act or violates the provisions of the license is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

SECTION 9. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances 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. It 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 narcotic and dangerous drug section of the criminal division 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 rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name,

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imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

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" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices

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or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or 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:

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

(2) by a practitioner, or 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;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt,

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derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination or any variety of the species sativa of the genus Cannabis that produces not more than three-tenths of one percent of delta-9-tetrahydrocannabinol per weighted unit of flowering tops and leaves and has a delta-9-tetrahydrocannabinol concentration of not more than one percent on a dry weight basis;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all

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parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person

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licensed or certified 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 a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of the person's professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating,

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growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled

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substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise

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introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone

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in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "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 the following:

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(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 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;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's

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licensing board, between the practitioner and the patient."

SECTION 10. APPROPRIATION.--

A. One hundred fifty thousand dollars ($150,000) is appropriated from the general fund for expenditure in fiscal year 2016 in the following amounts for the following purposes:

(1) one hundred thousand dollars ($100,000) to the board of regents of New Mexico state university to establish and maintain databases, a seed bank and a seed certification program pursuant to the Industrial Hemp Farming Act; and

(2) fifty thousand dollars ($50,000) to the department of public safety to train law enforcement officers to identify industrial hemp and to implement a law enforcement program regarding the growth, sale and processing of industrial hemp pursuant to the Industrial Hemp Farming Act.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2016 shall revert to the general fund.

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.

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