SENATE BILL 3

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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FOR THE WATER AND NATURAL RESOURCES COMMITTEE AND
THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76
NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO
DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON
INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW
MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

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

SECTION 1. A new section of Chapter 76 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] INDUSTRIAL HEMP RESEARCH--NEW MEXICO
DEPARTMENT OF AGRICULTURE.--

A. As used in this section, "industrial hemp" means
the plant Cannabis sativa L. and any part of the plant, whether
growing or not, containing a delta-9-tetrahydrocannabinol
concentration of no more than three-tenths percent on a dry

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weight basis.

B. The intent of this section is to bring New Mexico into compliance with federal law.

C. Notwithstanding any other provision of law to the contrary, the New Mexico department of agriculture shall issue licenses pursuant to rules enacted under Subsection D of this section to grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research.

D. The director of the New Mexico department of agriculture shall adopt rules to establish and carry out the provisions of this section, including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, fees not to exceed program costs and compliance processes. An institution of higher education, person or business that plans to grow industrial hemp seed or industrial hemp fiber shall obtain a grower’s license by submitting an application to the New Mexico department of agriculture pursuant to promulgated rules.

E. A person who holds a license issued pursuant to this section may grow industrial hemp for commercial or research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research.

F. New Mexico state university shall establish a
"New Mexico industrial hemp research and development fund". The fund consists of fees collected by the New Mexico department of agriculture for administration of the industrial hemp research and development program, donations, grants and income earned from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The New Mexico department of agriculture shall administer the fund, and money in the fund is subject to appropriation by the legislature to the New Mexico department of agriculture to conduct related programs. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the New Mexico department of agriculture or the director's authorized representative."

SECTION 2. 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,
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
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, 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 the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths 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 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 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,
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 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
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 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:

(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;

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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 licensing board, between the practitioner and the patient."

SECTION 3. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;
(2) allylprodine;
(3) alphacetylmethadol;
(4) alphameprodine;
(5) alphamethadol;
(6) benzethidine;
(7) betacetylmethadol;
(8) betameprodine;
(9) betamethadol;
(10) betaprodine;
(11) clonitazene;
(12) dextromoramide;
(13) dextorphan;
(14) diampromide;
(15) diethylthiambutene;
(16) dimenoxadol;
(17) dimepheptanol;
(18) dimethylthiambutene;
(19) dioxaphetyl butyrate;
(20) dipipanone;
(21) ethylmethylthiambutene;
(22) etonitazene;
(23) etoxeridine;
(24) furethidine;
(25) hydroxypethidine;
(26) ketobemidone;
(27) levomoramide;
(28) levophenacylmorphan;
(29) morpheridine;
(30) noracymethadol;
(31) norlevorphanol;
(32) normethadone;
(33) norpipanone;
(34) phenadoxone;
(35) phenampromide;
(36) phenomorphan;
(37) phenoperidine;
(38) piritramide;
(39) proheptazine;
(40) properidine;
(41) racemoramide; and
(42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) acetorphine;
(2) acetyldihydrocodeine;
(3) benzylmorphine;
(4) codeine methylbromide;
(5) codeine-N-oxide;
(6) cyprenorphine;
(7) desomorphine;
(8) dihydromorphine;
(9) etorphine;
(10) heroin;
(11) hydromorphinol;
(12) methyldesorphine;
(13) methyldihydromorphine;
(14) morphine methylbromide;
(15) morphine methylsulfonate;
(16) morphine-N-oxide;
(17) myrophine;
(18) nicocodeine;
(19) nicomorphine;
(20) normorphine;
(21) pholcodine; and
(22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;
(2) 5-methoxy-3,4-methylenedioxy amphetamine;
(3) 3,4,5-trimethoxy amphetamine;
(4) bufotenine;
(5) diethyltryptamine;
(6) dimethyltryptamine;
(7) 4-methyl-2,5-dimethoxy amphetamine;
(8) ibogaine;
(9) lysergic acid diethylamide;
(10) marijuana;
(11) mescaline;
(12) peyote, except as otherwise provided in
the Controlled Substances Act;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) psilocybin;
(16) psilocyn;
(17) tetrahydrocannabinols;
(18) hashish;
(19) synthetic cannabinoids, including:
   (a) 1-[2-(4-(morpholynyl)ethyl]-3-(1-
       naphthoyl)indole;
   (b) 1-butyl-3-(1-napthoyl)indole;
   (c) 1-hexyl-3-(1-napthoyl)indole;
   (d) 1-pentyl-3-(1-napthoyl)indole;
   (e) 1-pentyl-3-(2-methoxyphenylacetyl)
       indole;
   (f) cannabicyclohexanol (CP 47, 497 and
       homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
       -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
       1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
       (g) 6aR,10aR)-9-(hydroxymethyl)
       -6,6-dimethyl-3-(2-methyoctan-2-yl)-6a,7,10,
10a-tetrahydrobenzo[c]chromen-1-ol;

(h) dexamabinol, (6aS,10aS)

-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)

-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl)

indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl)

-1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
cyclohexyl)-phenol;

(20) 3,4-methylenedioxymethcathinone;

(21) 3,4-methylenedioxyxpyrovalerone;

(22) 4-methylmethcathinone;

(23) 4-methoxymethcathinone;

(24) 3-fluoromethcathinone; and

(25) 4-fluoromethcathinone;

D. the enumeration of peyote as a controlled

substance does not apply to the use of peyote in bona fide

religious ceremonies by a bona fide religious organization, and

members of the organization so using peyote are exempt from

registration. Any person who manufactures peyote for or

distributes peyote to the organization or its members shall

comply with the federal Comprehensive Drug Abuse Prevention and

Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana,
tetrahydrocannabinols or chemical derivatives of
tetrahydrocannabinol as Schedule I controlled substances does
not apply to:

(1) cultivation of industrial hemp by
qualified entities pursuant to rules adopted by the New Mexico
department of agriculture; or

(2) the use of marijuana,
tetrahydrocannabinols or chemical derivatives of
tetrahydrocannabinol by certified patients pursuant to the
Controlled Substances Therapeutic Research Act or by qualified
patients pursuant to the provisions of the Lynn and Erin
Compassionate Use Act; and

F. controlled substances added to Schedule I by
rule adopted by the board pursuant to Section 30-31-3 NMSA
1978."