

HOUSE BILL 334

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

INTRODUCED BY

Javier Martínez

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CONTROLLED SUBSTANCES; CREATING THE CANNABIS RESEARCH ACT; ALLOWING AND REGULATING THE PRODUCTION, TESTING, MANUFACTURING AND TRANSPORT OF CANNABIS AND CANNABIS PRODUCTS FOR RESEARCH PURPOSES; CREATING THE CANNABIS CONTROL DIVISION IN THE REGULATION AND LICENSING DEPARTMENT AND PROVIDING POWERS AND DUTIES; CREATING THE CANNABIS RESEARCH REGULATION FUND; CREATING EXEMPTIONS FROM PROSECUTION UNDER THE CONTROLLED SUBSTANCES ACT; PROVIDING FOR THE IMPOSITION OF FEES; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through HCEDC→11←HCEDC HCEDC→10←HCEDC of this act may be cited as the "Cannabis Research Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Cannabis Research Act:

A. "cannabis":

(1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent as measured using a HCEDC→post-carboxylation←HCEDC HCEDC→post-decarboxylation←HCEDC method and based on percentage dry weight, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

(a) the mature stalks of the plant; 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

(b) the weight of any other ingredient combined with cannabis to prepare topical or oral

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administrations, food, drink or another product;

B. "cannabis extract" means a product obtained by separating resins from cannabis by solvent extraction using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol or carbon dioxide;

C. "cannabis product" means a product that contains cannabis or cannabis extracts, including edible or topical products that may also contain other ingredients;

D. "cannabis research laboratory" means a facility, including a post-secondary educational institution, that is licensed by the division to produce cannabis, manufacture cannabis products or possess or transport cannabis or cannabis products from a person authorized to sell cannabis or cannabis products pursuant to state law for the purpose of studying and researching cannabis production or the characteristics, uses and safety of cannabis, cannabinoids, other components of cannabis or cannabis products;

E. "department" means the regulation and licensing department;

F. "director" means the director of the division;

G. "division" means the cannabis control division of the department;

H. "licensee" means a person or post-secondary educational institution licensed pursuant to the Cannabis

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Research Act;

I. "licensee representative" means an owner, director, officer, manager, employee, agent, post-secondary educational institution staff or other representative of a licensee, to the extent that person acts in a representative capacity;

J. "local jurisdiction" means a municipality, a home rule municipality or a county;

K. "manufacture" means to prepare a cannabis product;

L. "person" means an individual or a firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver or any other legal or commercial entity; and

M. "produce" or "production" means any activity involving the cultivation of cannabis.

**SECTION 3. [NEW MATERIAL] CANNABIS CONTROL DIVISION--
DUTIES--RULEMAKING--LICENSING.--**

A. The "cannabis control division" is created in the regulation and licensing department.

B. The division shall regulate and administer and may set and collect fees and civil monetary penalties in connection with the administration of the Cannabis Research Act; provided that the division shall not impose a fee or

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monetary penalty on a post-secondary educational institution.

C. Not later than January 1, 2021, the division shall promulgate rules necessary for the division to carry out its duties as provided in the Cannabis Research Act, including:

(1) procedures for the issuance, renewal, suspension and revocation of a cannabis research laboratory license;

(2) the amounts of fees; provided that the fees shall not exceed the cost of administering and enforcing the Cannabis Research Act;

(3) qualifications for licensure that are directly and demonstrably related to the operation of a cannabis research laboratory;

(4) security requirements for a cannabis research laboratory, including with respect to the transport of cannabis or cannabis products in the state; HCEDC→and←HCEDC

(5) requirements related to:

(a) inspection and monitoring of a cannabis research laboratory; HCEDC→and←HCEDC

(b) a cannabis research laboratory's recordkeeping and tracking of cannabis from seed through use or sale as permitted by state or federal law HCEDC→.←HCEDC

HCEDC→; and←HCEDC

HCEDC→(c) accreditation as the division

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deems appropriate; and

(6) rules that require that a cannabis research laboratory facility include a structure that is designed to enable year-round plant growth and equipped to recycle carbon dioxide expelled in exhaust gases generated by natural gas boilers for use by growing crops. ←HCEDC

D. The division shall deposit all fees collected pursuant to the Cannabis Research Act in the cannabis research regulation fund.

E. The division shall deny an application for a license or renewal if:

(1) the applicant's application does not include all information required by the division;

HCEDC → or ← HCEDC

HCEDC → ~~(2) the applicant does not demonstrate:~~

~~(a) continuous residency in New Mexico for at least two years prior to the date on which the person submits a license application, or if an applicant is an entity, ←HCEDC HCEDC → that all persons owning at least a ten percent interest in the entity are continuous residents in New Mexico for at least two years prior to the date on which the entity submits its license application; or~~

~~(b) that the person currently owns, and has owned for at least two years prior to the date on which the~~

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~~applicant submits the application, a structure located in the state that is designed to enable year-round plant growth and equipped to recycle carbon dioxide expelled in exhaust gases generated by natural gas boilers for use by growing crops; provided that the person has obtained accreditation required by the division; or~~ ←HCEDC

HCEDC → (3) ←HCEDC HCEDC → (2) ←HCEDC the applicant or a person owning at least a ten percent interest in the applicant's entity has been convicted of an offense that is substantially related to the qualifications, functions or duties of the applicant entity's business.

F. For the purposes of this section:

(1) the following are considered substantially related to the qualifications, functions or duties of a person seeking a license:

(a) a felony conviction involving fraud, deceit or embezzlement;

(b) a felony conviction for hiring, employing or otherwise using a person younger than eighteen years of age to: 1) prepare for sale, transport or carry a controlled substance; or 2) sell, give away or offer to sell a controlled substance to any person; and

(c) any other offense as determined by the division, except as provided in Paragraph (2) of this

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subsection; and

(2) a conviction for which the related sentence, including any term of probation or parole, is completed for the possession, use, manufacture, distribution or dispensing or the possession with the intent to manufacture, distribute or dispense a controlled substance is not considered substantially related to the qualifications, functions or duties of a person seeking a license and shall not be the sole ground on which an application is denied.

HCEDC→~~G. A person may demonstrate continuous residency by providing to the division the following indicating at least two years residency in the state:~~

~~(1) a current license, permit or identification card issued by the motor vehicle division of the taxation and revenue department;~~

~~(2) proof of voter registration;~~

~~(3) evidence that the person has a voluntary, principal or primary place of abode of self in the state to which the person, whenever absent, has the bona fide intention of returning, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person, the following circumstances relating to the person may be considered: business pursuits, employment, income sources, marital status, residence of parents, spouse and children, if~~

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~~any, leaseholds, situs of personal and real property or motor vehicle registration; or~~

~~(4) other reasonable evidence as determined by the division.~~ ← HCEDC

HCEDC → ~~H~~ ← HCEDC HCEDC → ~~G~~ ← HCEDC. Any person aggrieved by an action taken by the division pursuant to this section may request and receive a hearing for the purpose of reviewing the action. To obtain a hearing, the aggrieved person shall file a request for a hearing with the division within thirty days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of shall be final with no further right to review, either administratively or by a court. Hearings shall be conducted in accordance with the provisions of the Uniform Licensing Act.

HCEDC → ~~I~~ ← HCEDC HCEDC → ~~H~~ ← HCEDC. The provisions of Subsections HCEDC → ~~E through G~~ ← HCEDC HCEDC → ~~E and F~~ ← HCEDC of this section do not apply to a post-secondary educational institution licensed pursuant to the Cannabis Research Act.

SECTION 4. [NEW MATERIAL] LICENSEES--SANCTIONS--CIVIL PENALTY.--

A. Any violation of a provision of the Cannabis Research Act or a rule adopted by the division by a licensee is grounds for disciplinary action. The division may:

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(1) suspend or revoke a license;
(2) impose any intermediate sanction
established by rule;
(3) impose a directed plan of correction; or
(4) assess a civil monetary penalty
established by rule; provided that a civil monetary penalty
shall not exceed a total of ten thousand dollars (\$10,000) per
violation, and penalties and interest recovered pursuant to the
Cannabis Research Act on behalf of the state shall be remitted
to the state treasurer for deposit into the current school
fund.

B. The division shall adopt and promulgate rules
specifying the criteria for imposition of any intermediate
sanction and civil monetary penalty.

C. A licensee is liable for the reasonable costs of
a directed plan of correction.

D. The provisions of this section do not apply to a
post-secondary educational institution licensed pursuant to the
Cannabis Research Act; provided that the division may suspend
or revoke the license of a post-secondary educational
institution for any violation of a provision of the Cannabis
Research Act or a rule adopted by the division.

SECTION 5. [NEW MATERIAL] LOCAL CONTROL.--

A. A local jurisdiction may adopt reasonable time,

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place and manner rules that do not conflict with the Cannabis Research Act.

B. A local jurisdiction shall not:

(1) prevent transportation of cannabis or cannabis products on public roads by a licensee that transports cannabis or cannabis products in compliance with the Cannabis Research Act; or

(2) completely prohibit conduct authorized pursuant to the Cannabis Research Act.

SECTION 6. [NEW MATERIAL] LICENSEE PROTECTIONS.--

A. Conduct by a licensee or a licensee representative that is allowed pursuant to a license and conduct by a person who allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is lawful, not a violation of state or local law and is not a basis for seizure or forfeiture of any property or assets under state or local law.

B. A state agency or a local jurisdiction shall not impose a criminal, civil or administrative penalty on a licensee or a licensee representative or on a person who allows property to be used by a licensee or a licensee representative pursuant to a license solely for conduct allowed pursuant to a license.

SECTION 7. [NEW MATERIAL] DISTRIBUTION AND TRANSPORT.--

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The Cannabis Research Act shall not be construed to authorize a licensee to transport or distribute, or cause to be transported or distributed, cannabis or cannabis products outside the state, unless authorized by federal law.

SECTION 8. [NEW MATERIAL] CONTRACTS.--A contract entered into by a licensee or a licensee representative for conduct allowed pursuant to a license or entered into by a person who allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license shall not be deemed unenforceable on the basis that the conduct allowed pursuant to the license involves cannabis or cannabis products.

SECTION 9. [NEW MATERIAL] PROVISION OF PROFESSIONAL SERVICES.--An accountant, insurance agent, real estate agent, security guard or other person engaged in a profession subject to state licensure shall not be subject to disciplinary action by a professional association, state professional board or state licensing entity because the professional provides professional services or assistance to persons in connection with activity that the professional reasonably believes complies with the Cannabis Research Act and rules promulgated pursuant to that act.

HCEDC → ~~SECTION 10. [NEW MATERIAL] WRIT OF MANDAMUS.--An affected person may commence a legal action for a writ of~~

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~~mandamus to compel the division to perform its duties pursuant to the Cannabis Research Act.~~ ←HCEDC

SECTION HCEDC→11←HCEDC HCEDC→10←HCEDC. [NEW MATERIAL]
CANNABIS RESEARCH REGULATION FUND.--The "cannabis research regulation fund" is created as a nonreverting fund in the state treasury. The fund consists of fees collected by the division pursuant to the Cannabis Research Act, appropriations, gifts, grants and donations. The division shall administer the fund, and money in the fund is subject to appropriation by the legislature to the division. Money in the fund shall be used to carry out the provisions of the Cannabis Research Act and shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director or the director's authorized representative.

SECTION HCEDC→12←HCEDC HCEDC→11←HCEDC. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--The "regulation and licensing department" is created in the executive branch. The department shall not be a cabinet department. The department shall consist of but not be limited to the following divisions:

- A. the administrative services division;
- B. the construction industries division;
- C. the financial institutions division;

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- D. the securities division;
- E. the manufactured housing division; [~~and~~]
- F. the alcoholic beverage control division; and
- G. the cannabis control division."

SECTION HCEDC→13←HCEDC HCEDC→12←HCEDC. 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;

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- (11) clonitazene;
- (12) dextromoramide;
- (13) dextrorphan;
- (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) levophenacymorphan;
- (29) morpheridine;
- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;

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- (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) hydromorphanol;

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- (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;

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(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-(morpholinyl)ethyl)
-3-(1-naphthoyl)indole;
(b) 1-butyl-3-(1-naphthoyl)indole;
(c) 1-hexyl-3-(1-naphthoyl)indole;
(d) 1-pentyl-3-(1-naphthoyl)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;

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(g) 6aR,10aR)-9-(hydroxymethyl)
-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
10a-tetrahydrobenzo[c]chromen-1-ol);

(h) dexanabinol, (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-methylenedioxy methcathinone;

(21) 3,4-methylenedioxy pyrovalerone;

(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

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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) hemp pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(2) cultivation of hemp by persons pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(3) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols with concentrations of up to five percent as measured using a post-decarboxylation method and based on percentage dry weight, possessed by a person in connection with the cultivation, transportation, testing, researching, manufacturing or other processing of the plant Cannabis sativa L., or any part of the plant whether growing or not, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state

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university on behalf of the New Mexico department of agriculture or the department of environment;

(4) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols in any concentration possessed by a person in connection with the extraction of tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment;

(5) 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; [ø]

(6) marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols in any concentration possessed by a person in connection with the cultivation, transportation, testing, manufacturing or other processing of the plant Cannabis sativa L., or any part of the

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plant whether growing or not, if authorized pursuant to rules promulgated by the cannabis control division of the regulation and licensing department pursuant to the Cannabis Research Act; or

[~~(6)~~] (7) the use, dispensing, possession, prescribing, storage or transport of a prescription drug that the United States food and drug administration has approved and that contains marijuana, a tetrahydrocannabinol derivative or a chemical derivative of tetrahydrocannabinol; and

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

SECTION HCEDC→14←HCEDC HCEDC→13←HCEDC. EFFECTIVE DATE.-
-The effective date of the provisions of this act is July 1, 2020.