

HOUSE BILL 88

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Derrick J. Lente

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HEMP; AUTHORIZING THE ENVIRONMENTAL IMPROVEMENT BOARD TO REGULATE THE DISTRIBUTION AND SALE OF FINISHED HEMP PRODUCTS; CREATING PENALTIES FOR VIOLATIONS OF REGULATIONS PROMULGATED BY THE ENVIRONMENTAL IMPROVEMENT BOARD; ADDING AND CLARIFYING DEFINITIONS; MAKING TECHNICAL AND CONFORMING CHANGES.

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

.218542.2SAAIC February 10, 2021 (3:36pm)

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SECTION 1. A new section of the Hemp Manufacturing Act is enacted to read:

"[NEW MATERIAL] HEMP DISTRIBUTORS AND HEMP RETAILERS--
RULES--REQUIREMENTS.--

A. The department of environment shall enforce the regulations issued pursuant to Subsection C of this section.

B. A hemp distributor and hemp retailer shall not offer or furnish to another person with or without consideration a hemp product that does not meet the standards established pursuant to Subsection C of this section.

C. The environmental improvement board shall promulgate regulations regarding the distribution and sale of hemp finished products in this state, including minimum standards for product safety, product description, THC concentration, storage requirements and recordkeeping."

SECTION 2. A new section of the Hemp Manufacturing Act is enacted to read:

"[NEW MATERIAL] PENALTIES.--

A. A person who violates a regulation adopted by the environmental improvement board pursuant to the Hemp Manufacturing Act is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the department of environment determines that a person has violated, is violating or threatens to violate any provision of

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Section 76-24-8 or 76-24-9 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the department may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period, or assess a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department of environment. Any penalty assessed in the order shall not exceed five thousand dollars (\$5,000) for each violation per day. In assessing a penalty, the secretary of environment shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the department of environment for a hearing. Upon request, the secretary of environment shall conduct a hearing. The secretary shall appoint an independent hearing officer to

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preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward a recommendation based on the record to the secretary, who shall make the final decision.

E. Penalties collected pursuant to violations of rules, regulations or permit conditions shall be deposited in the general fund for credit to the current school fund."

SECTION 3. Section 76-24-4 NMSA 1978 (being Laws 2019, Chapter 116, Section 2) is amended to read:

"76-24-4. DEFINITIONS.--As used in the Hemp Manufacturing Act:

A. "board" means the board of regents of New Mexico state university;

B. "breeder" means a person who conducts research to develop new hemp varieties;

C. "Cannabis sativa L." means the plant Cannabis sativa L. and any part of the plant, whether growing or not;

D. "hemp" means the plant Cannabis sativa L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration of not more than three-tenths percent HAWC→on a dry weight basis←HAWC HAWC→or a concentration allowed by federal law, whichever is greater, based on dry weight←HAWC ;

[E. "~~hemp-derived material~~" means any material

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~~containing THC in any concentration derived from Cannabis sativa L. through any activity authorized pursuant to the Hemp Manufacturing Act;~~

F.] E. "hemp extract" means oil and extracts derived from [~~hemp~~] Cannabis sativa L. containing THC in any concentration through any activity authorized pursuant to the Hemp Manufacturing Act, including cannabidiol, cannabidiolic acid and other identified and non-identified compounds intended for HAWC→human ingestion or inhalation←HAWC HAWC→use in a hemp finished product←HAWC ;

[G.] F. "hemp finished product" means a hemp product that is intended for retail sale for human ingestion or inhalation and containing hemp or hemp extracts [~~that includes food, food additives and herbs for human use, including consumption~~] that has a THC [~~content~~] concentration of not more than three-tenths percent HAWC→or a concentration allowed by federal law, whichever is greater, based on dry weight←HAWC ;

G. "hemp distributor" means a person that provides hemp finished products to other business entities;

H. "hemp manufacturer" means a person that extracts, processes or engages in other manufacturing activities regarding hemp, including manufacturing [~~intermediate hemp-derived products~~] hemp extract and hemp finished products for human ingestion or inhalation;

I. "hemp producer" means a person that cultivates

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and harvests hemp and includes a person that cultivates hemp plants for transfer to other hemp producers;

~~[J. "intermediate hemp-derived product" means oil and extracts, including cannabidiol, cannabidiolic acid and other identified and non-identified compounds derived from hemp;]~~

J. "hemp retailer" means a person that provides hemp finished products directly to consumers;

K. "manifest" means a form used for identifying the quantity, composition, origin, routing and destination of ~~[hemp-derived materials]~~ hemp extract during transportation; and

L. "THC" means delta-9-tetrahydrocannabinol as measured using a post-decarboxylation method and based on percentage dry weight."

SECTION 4. Section 76-24-8 NMSA 1978 (being Laws 2019, Chapter 116, Section 6, as amended) is amended to read:

"76-24-8. HEMP MANUFACTURERS--PERMITS--RULES--REQUIREMENTS.--

A. The department of environment shall issue permits pursuant to rules issued under Subsection C of this section to extract, process or engage in other manufacturing activities regarding hemp, including manufacturing ~~[intermediate hemp-derived products]~~ hemp extract and hemp finished products for human ingestion or inhalation.

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B. HAWC → ~~A~~ ← HAWC HAWC → **Except as specified in Subsection H of this section,** ~~a~~ ← HAWC person shall not extract, process or engage in other manufacturing activities regarding hemp, including manufacturing [~~intermediate hemp-derived products~~] hemp extract and hemp finished products for human ingestion or inhalation without a permit issued by the department of environment or a license issued pursuant to Subsection C of Section 76-24-10 NMSA 1978.

C. The [~~department of environment~~] environmental improvement board shall adopt rules that include:

(1) procedures for the issuance, denial, renewal, suspension and revocation of a permit issued by the department of environment to manufacture hemp products, including permit terms and procedures for appeal of a denial, suspension or revocation that include notice and opportunity for a hearing;

(2) qualifications for permitting that include health, sanitation, safety and security;

(3) proficiency standards and requirements for storage, recordkeeping and inspections;

(4) requiring, and providing a process for, the use or disposal of [~~hemp-derived material~~] hemp extract and hemp finished products containing THC levels of more than three-tenths percent; and

(5) fees not to exceed [~~the lesser of one~~

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~~thousand dollars (\$1,000) or the cost of administration of a permit issued pursuant to this section]~~ two thousand dollars (\$2,000).

D. A hemp manufacturer that produces [~~intermediate hemp-derived products~~] hemp extract or hemp finished products intended for human [~~consumption by eating or drinking~~] ingestion or inhalation are subject to the provisions of the Food Service Sanitation Act and the New Mexico Food Act.

E. Hemp finished products produced by a hemp manufacturer holding a permit issued pursuant to this section shall not be deemed adulterated as that term is used in the Food Service Sanitation Act and the New Mexico Food Act.

F. Fees collected pursuant to this section shall be deposited in the environmental health fund.

G. A permit issued pursuant to this section does not relieve the holder of the permit of the responsibility to obtain other licenses or permits as required by law.

HAWC→"~~"~~←HAWC

HAWC→**H. A person engaged in the manufacturing or use of hemp seed or hemp seed derivatives for products intended for human food is not subject to the provisions of this section but shall be subject to the provisions of the Food Service Sanitation Act and the New Mexico Food Act."**←HAWC

SECTION 5. Section 76-24-9 NMSA 1978 (being Laws 2019, Chapter 116, Section 7) is amended to read:

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"76-24-9. TRANSPORTING HEMP, [~~AND HEMP-DERIVED MATERIALS~~]
HEMP EXTRACT AND HEMP FINISHED PRODUCTS--HARVEST CERTIFICATE--
MANIFEST--RULES--REQUIREMENTS.--

A. A person shall not transport hemp unless during such transportation the person has in the person's immediate possession a harvest certificate for that hemp provided by the licensed grower.

B. A person shall not transport [~~hemp-derived materials~~] hemp extract unless during such transportation the person has in the person's immediate possession a manifest issued by a person licensed pursuant to the Hemp Manufacturing Act or other applicable law.

C. The department of environment shall establish a manifest system and any other reasonable means necessary to ensure that [~~hemp-derived materials~~] hemp extract originating from a person permitted pursuant to Section [~~6 of the Hemp Manufacturing Act are~~] 76-24-8 NMSA 1978 is identifiable during transport and that the [~~materials are~~] hemp extract is transported only between persons licensed, permitted or otherwise authorized to possess [~~hemp-derived materials~~] hemp extract pursuant to the Hemp Manufacturing Act or other applicable law.

D. HAWC→~~A person that transports~~←HAWC [~~hemp-derived materials or food additive hemp finished products intended for human consumption by eating or drinking~~] HAWC→hemp

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~~extract or hemp finished products~~←HAWC HAWC→Except for a person who transports hemp extract or hemp finished products for personal use, the transportation of hemp extract or hemp finished products intended for human ingestion or inhalation←HAWC shall be subject to the provisions of the Food Service Sanitation Act and the New Mexico Food Act.

E. Transporting hemp without a harvest certificate or ~~[hemp-derived material]~~ hemp extract without a ~~[harvest certificate]~~ manifest shall constitute a petty misdemeanor, punishable by a fine of up to five hundred dollars (\$500).

F. Product in excess of eight ounces that has the appearance of hemp and is in the possession of a person suspected of violating the provisions of Subsection E of this section may be seized by a law enforcement agency until such time as the agency is able to identify the product, in cooperation with the department of environment or the New Mexico department of agriculture, but for no longer than five days.

G. As used in this section, "harvest certificate" means a certificate, license, permit or other document issued pursuant to rules adopted under the Hemp Manufacturing Act for use during transportation of hemp ~~[or hemp-derived material]~~, whether in the possession of a person or electronically verified by a law enforcement agency."

SECTION 6. Section 76-24-10 NMSA 1978 (being Laws 2019, .218542.2SAAIC February 10, 2021 (3:36pm)

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Chapter 116, Section 8) is amended to read:

"76-24-10. INDIAN NATIONS, TRIBES AND PUEBLOS--NO STATE REGULATION--COOPERATIVE OR JOINT POWERS AGREEMENTS--RECOGNITION OF TRIBALLY ISSUED LICENSES.--

A. The state acknowledges that federally recognized Indian nations, tribes and pueblos located wholly or partially within New Mexico may, pursuant to Section 10113 of the federal Agriculture Improvement Act of 2018, and as a matter of their inherent tribal sovereignty, develop their own plans for the regulation of the production of hemp on their own tribal lands, and that those plans shall be developed in compliance with the federal Agriculture Improvement Act of 2018.

B. The New Mexico department of agriculture and the department of environment may enter into cooperative agreements or joint powers agreements with federally recognized Indian nations, tribes and pueblos located wholly or partially within New Mexico that seek the state's assistance in developing hemp production plans that are acceptable to the director of the New Mexico department of agriculture and the department of environment, or in the regulation of hemp production on tribal lands, or in the testing of hemp plants for THC, or the transportation of hemp or [~~hemp-derived material~~] hemp extract or hemp finished products; provided that no such agreement shall purport to give the state any jurisdiction over any such activities or material on tribal lands.

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C. A cooperative agreement or joint powers agreement may include provisions recognizing a tribally issued license that authorizes manufacturing on tribal lands, including the extraction, processing or engaging in other manufacturing activities regarding hemp, including manufacturing [~~intermediate hemp-derived products~~] hemp extract and hemp finished products under Section [~~6 of the Hemp Manufacturing Act~~] 76-24-8 NMSA 1978."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.