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F I S C A L I M P A C T R E P O R T

SPONSOR Armstrong, D. **ORIGINAL DATE** 02/22/17 **LAST UPDATED** 03/13/17 **HB** 351/aHCPAC

SHORT TITLE Define & Schedule Cannabidiol **SB**

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		None	None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB365
Relates to HB144, HB280, SB6
Conflicts with HB166 and SB278

SOURCES OF INFORMATION

LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)
Department of Health (DOH)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 351 amends the definition of a Schedule V drug to include a prescription drug approved by the Food and Drug Administration (FDA) that contains cannabidiol.

Synopsis of Bill

House Bill 351 proposes to amend the Controlled Substance Act to add the definition of a cannabidiol.

This bill provides the scientific makeup of cannabidiol, excludes cannabidiol from the definition

of marijuana if it is in a drug approved by the Federal Food and Drug Administration and includes it as a Schedule V drug if it is in a drug approved by the Federal Food and Drug Administration. Those who are approved for the substance cannabidiol are required to provide identification at the pharmacy to prevent excessive distribution.

SIGNIFICANT ISSUES

The bill makes cannabidiol a Schedule V drug. The Drug Enforcement Administration (DEA) defines a Schedule V drugs as substances or chemicals with a lower potential for abuse than Schedule IV drugs. Schedule V drugs include preparations containing limited quantities of certain narcotics generally used for antidiarrheal, antitussive and analgesic purposes (e.g., Robitussin AC).

According to the Administrative Office of the Courts (AOC), penalties for a Schedule V drug are

- **Section 30-31-20, Trafficking**: defined to include the manufacture of a Schedule V controlled substance. Penalties include second degree felony for first offense; first degree felony for second or subsequent offense; first degree felony for knowingly trafficking in a drug-free school zone.
- **Section 30-31-21, Distribution to a minor**: no penalty as not included in the definition of marijuana when in a drug approved by the FDA and penalties only extend to Schedule I, II, III and IV substances.
- **Section 30-31-22, Distribution**: misdemeanor penalty, fine of not less than $100 or more than $500 or by imprisonment for a definite term not less than 180 days but less than one year, or both; fourth degree felony if within drug-free school zone.
- **Section 30-31-23, Possession**: no penalty for Schedule V drug.

As of December 2016, the DEA has cannabidiol (CBD) classified as a Schedule I drug even though in March 2016 the FDA reported 13 states had statutes recognizing CBD for medical purposes.

The Department of Health (DOH) reports DEA added marijuana extracts to the list of prohibited controlled substances identified in Schedule I. It commented that the designation includes cannabidiol (CBD), regardless of whether it is combined with other cannabinoids.

DOH suggests that several sections of the bill state that "cannabidiol is a drug approved by the federal food and drug administration." However, cannabidiol is not approved by the FDA, and cannabis and cannabis-derived products are deemed "contaminants" for purposes of FDA food standards. The New Mexico Environment Department (NMED) has expressed that cannabis derived products are deemed prohibited contaminants under FDA food standards and cannot be used in a licensed bakery or other food service setting that is regulated by the NMED. For this reason, manufacturers that have been approved by NMDOH to manufacture cannabis-derived products in the Medical Cannabis Program are prohibited from manufacturing those products in kitchens and other locations that are utilized for manufacturing other products. Moreover, the FDA has expressed that it has not approved "any drug product containing or derived from botanical marijuana", and that CBD products "are not approved by FDA for the diagnosis, cure, mitigation, treatment, or prevention of any disease."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB351 duplicates SB365
HB351 relates to HB144, HB280, SB6 Industrial Hemp Research Rules,
HB351 conflicts with HB166 Exempt Hemp from Controlled Substances, SB278 Cannabis Revenue & Freedom Act

OTHER SUBSTANTIVE ISSUES

The National Institute of Health National Center for Biotechnology Information defines a cannabidiol as a phytocannabinoid derived from cannabis species, which is devoid of psychoactive activity, with analgesic, anti-inflammatory, antineoplastic and chemopreventive activities.

Under this bill, a person would be required to have a prescription to use a CBD since this bill makes it a Schedule V drug.

The FDA website's frequently asked questions (FAQ) section gives the example of one pharmaceutical company making a drug product containing cannabidiol for seizure disorder and notes that it has made two previous determinations that substantial clinical investigations have been authorized for and/or instituted about cannabidiol and provides links to two clinical trials.

ABS/al