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HOUSE BILL 214

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

INTRODUCED BY

Derrick J. Lente

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; CREATING THE HEMP SERVICE SANITATION FUND.

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

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

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1 offer or furnish to another person with or without  
2 consideration a hemp product that does not meet the standards  
3 established pursuant to Subsection C of this section.

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

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

11 "[NEW MATERIAL] PENALTIES.--

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

17 B. Whenever, on the basis of any information, the  
18 department of environment determines that a person has  
19 violated, is violating or threatens to violate any provision of  
20 Section 76-24-8 or 76-24-9 NMSA 1978 or any rule, regulation or  
21 permit condition adopted and promulgated thereunder, the  
22 department may:

23 (1) issue a compliance order stating with  
24 reasonable specificity the nature of the violation or  
25 threatened violation, requiring compliance immediately or

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1 within a specified time period, or assess a civil penalty for  
2 any past or current violation, or both; or

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

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

14 D. An order issued pursuant to this section shall  
15 become final unless, no later than thirty days after the order  
16 is served, the person named in the order submits a written  
17 request to the department of environment for a hearing. Upon  
18 request, the secretary of environment shall conduct a hearing.  
19 The secretary shall appoint an independent hearing officer to  
20 preside over the hearing. The hearing officer shall make and  
21 preserve a complete record of the proceedings and forward a  
22 recommendation based on the record to the secretary, who shall  
23 make the final decision.

24 E. Penalties collected pursuant to violations of  
25 rules, regulations or permit conditions shall be deposited in

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1 the general fund for credit to the current school fund."

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

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

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

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

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

12 D. "hemp" means the plant Cannabis sativa L. and  
13 any part of that plant, including seeds and all derivatives,  
14 extracts, cannabinoids, isomers, acids, salts and salts of  
15 isomers, whether growing or not, with a THC concentration of  
16 not more than three-tenths percent on a dry weight basis;

17 ~~E. "hemp-derived material" means any material~~  
18 ~~containing THC in any concentration derived from Cannabis~~  
19 ~~sativa L. through any activity authorized pursuant to the Hemp~~  
20 ~~Manufacturing Act;~~

21 ~~F.]~~ E. "hemp extract" means oil and extracts  
22 derived from [hemp] Cannabis sativa L. containing THC in any  
23 concentration through any activity authorized pursuant to the  
24 Hemp Manufacturing Act, including cannabidiol, cannabidiolic  
25 acid and other identified and non-identified compounds intended

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1 for human ingestion or inhalation;

2 [G.] F. "hemp finished product" means a hemp  
3 product that is intended for retail sale for human ingestion or  
4 inhalation and containing hemp or hemp extracts [~~that includes~~  
5 ~~food, food additives and herbs for human use, including~~  
6 ~~consumption~~] that has a THC [~~content~~] concentration of not more  
7 than three-tenths percent;

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

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

15 I. "hemp producer" means a person that cultivates  
16 and harvests hemp and includes a person that cultivates hemp  
17 plants for transfer to other hemp producers;

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

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

24 K. "manifest" means a form used for identifying the  
25 quantity, composition, origin, routing and destination of

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1 [hemp-derived materials] hemp extract during transportation;  
2 and

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

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

8 "76-24-8. HEMP MANUFACTURERS--PERMITS--RULES--  
9 REQUIREMENTS--HEMP SERVICE SANITATION FUND CREATED.--

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

16 B. A person shall not extract, process or engage in  
17 other manufacturing activities regarding hemp, including  
18 manufacturing [~~intermediate hemp-derived products~~] hemp extract  
19 and hemp finished products for human ingestion or inhalation  
20 without a permit issued by the department of environment or a  
21 license issued pursuant to Subsection C of Section [~~8 of the~~  
22 ~~Hemp Manufacturing Act~~] 76-24-10 NMSA 1978.

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

25 (1) procedures for the issuance, denial,

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

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

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

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

14 (5) fees not to exceed [~~the lesser of~~] one  
15 thousand dollars (\$1,000) [~~or the cost of administration of a~~  
16 ~~permit issued pursuant to this section~~].

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

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

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1 F. ~~[Fees collected pursuant to this section shall~~  
2 ~~be deposited in the food service sanitation fund.]~~ The "hemp  
3 service sanitation fund" is created in the state treasury. The  
4 fund consists of fees collected by the department of  
5 environment pursuant to this section, appropriations, gifts,  
6 grants and donations. The department of environment shall  
7 administer the fund for the purpose of paying the costs of  
8 administering regulations promulgated by the environmental  
9 improvement board to carry out the provisions of the Hemp  
10 Manufacturing Act. Any unexpended or unencumbered balance or  
11 income earned from the money in the fund remaining at the end  
12 of a fiscal year shall not revert to the general fund.  
13 Disbursements from the fund shall be by warrant drawn by the  
14 secretary of finance and administration pursuant to vouchers  
15 signed by the secretary of environment or the secretary's  
16 designee.

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

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

22 "76-24-9. TRANSPORTING HEMP, ~~[AND HEMP-DERIVED MATERIALS]~~  
23 HEMP EXTRACT AND HEMP FINISHED PRODUCTS--HARVEST CERTIFICATE--  
24 MANIFEST--RULES--REQUIREMENTS.--

25 A. A person shall not transport hemp unless during

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1 such transportation the person has in the person's immediate  
2 possession a harvest certificate for that hemp provided by the  
3 licensed grower.

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

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

18 D. A person that transports [~~hemp-derived materials~~  
19 ~~or food additive hemp finished products intended for human~~  
20 ~~consumption by eating or drinking~~] hemp extract or hemp  
21 finished product shall be subject to the provisions of the Food  
22 Service Sanitation Act and the New Mexico Food Act.

23 E. Transporting hemp without a harvest certificate  
24 or [~~hemp-derived material~~] hemp extract without a [~~harvest~~  
25 ~~certificate~~] manifest shall constitute a petty misdemeanor,

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1 punishable by a fine of up to five hundred dollars (\$500).

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

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

16 SECTION 6. Section 76-24-10 NMSA 1978 (being Laws 2019,  
17 Chapter 116, Section 8) is amended to read:

18 "76-24-10. INDIAN NATIONS, TRIBES AND PUEBLOS--NO STATE  
19 REGULATION--COOPERATIVE OR JOINT POWERS AGREEMENTS--RECOGNITION  
20 OF TRIBALLY ISSUED LICENSES.--

21 A. The state acknowledges that federally recognized  
22 Indian nations, tribes and pueblos located wholly or partially  
23 within New Mexico may, pursuant to Section 10113 of the federal  
24 Agriculture Improvement Act of 2018, and as a matter of their  
25 inherent tribal sovereignty, develop their own plans for the

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1 regulation of the production of hemp on their own tribal lands,  
2 and that those plans shall be developed in compliance with the  
3 federal Agriculture Improvement Act of 2018.

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

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

25 SECTION 7. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2020.

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