

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: March 3, 2025

Check all that apply:

Bill Number: HB346

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Romero, Rep.
Derrick J. Lente

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Hemp Products & Synthetic
Cannabinoids

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This is a Committee Substitute Bill for the Original HB 346. It made very few changes, essentially only to emphasize that the Environment Department will continue to have responsibility to promulgate rules, even for the new section on hemp retailers, until July 1, 2025, and that these rules will remain in effect until the environmental improvement board repeals or replaces them. This is in keeping with the “emergency” nature of this rule, in that it will go into effect prior to the new fiscal year.

This bill changes the regulations surrounding the trade in hemp (low THC cannabis sativa), to include certain hemp products that may not be covered by which is not covered by the 2018 federal Farm Bill, legalizing hemp, defined as Cannabis sativa containing less than 0.3% THC, defined specifically as delta 9-THC (THC has numerous isomers, or very similar molecules). Most notably, it bans the manufacturing and sale of semi-synthetic and synthetic cannabinoids, including delta 8-THC, excluded from the federal calculation of THC content, but may not be much different in effect from delta 9-THC. In addition, the bill provides for new regulations for hemp retailers, and specifies “hemp finished product” as a product intended for inhalation or ingestion (so, you wouldn’t need a permit to sell a hemp t-shirt, for instance.)

Section 1: Amends Section 76-24-4 NMSA 1978, which is the definitional section of the Hemp Manufacturing Act.

Adds a new Subsection “D”, defining “consumer” as someone who takes possession of a finished hemp product, other than for resale, and is not a hemp manufacturer or producer. Changes the old subsection “D” to “E” accordingly.

Merges the new Subsection “E” (old subsection “D”) with the old subsection “E,” to specify that “hemp” can have a concentration of THC of less than 0.3% “or a concentration allowed by federal law, whichever is greater.”

Amends Subsection “F”, and states that “hemp extract” includes not just oils but extracts derived from hemp, and specifies that it can have THC in any concentration.

Amends Subsection “G” and specifies that a “hemp finished product” is intended for human

ingestion or inhalation and is intended to be provided to consumers.

Amends Subsection “H,” the definition of “hemp manufacturer,” replacing “intermediate hemp derived products,” with “hemp extract.”

Deletes the old Subsection “J,” defining “intermediate hemp derived product”

Adds a new Subsection “J” defines “hemp retailer” as one who provides hemp finished products to consumers.

Adds a new Subsection “K,” defining ingestion in a fairly common sense manner. Converts old Subsection “K” to “L.”

Adds a new Subsection “M,” defining “semi synthetic cannabinoid” as a product of a chemical reaction, other than simple decarboxylation accomplished solely by means of heat and light, that converts a cannabinoid extracted from Cannabis sativa (aka marijuana plant, “weed,” “ganja”, etc.) into a different cannabinoid. Note: Delta-8 THC, produced from natural cannabidiol (“CBD”) using an acid catalyst, would be considered a semi-synthetic cannabinoid.

Adds a new Subsection “N,” defining “synthetic cannabinoid” as a “cannabinoid-like compound,” produced solely by chemical synthesis, not derived from any cannabinoid extracted from Cannabis sativa (not semi synthetic), and not produced by decarboxylation of of the carboxylic acid form of natural cannabinoids.

Converts the old Subsection “L,” defining THC, to Subsection “O.”

Section 2: Amends 76-24-8, concerning Rules and Permitting for “Hemp Manufacturers.”

Makes some stylistic changes to Subsection “A” and replaces “intermediate hemp derived products,” which is no longer defined in the statute, with “hemp extract.” This replacement is carried out throughout the section.

Amends Subsection “B” to carve out an exception, as described in a new Subsection “I” for food products made from hemp seeds to the permitting requirement for hemp manufacturers, and replace “intermediate hemp derived products” with “hemp extract.”

Amends Subsection “C” to change the authority responsible for adopting rules (promulgating regulations). Currently, the department of environment has this authority, the proposed bill replaces the department with the environmental improvement board. **Substitute Bill notes that the Department of Environment shall promulgate these rules until July 1, 2025, and does not mention the Environmental Improvement Board**

Creates a new Subsection “D” to note that Rules adopted prior to July 1, 2025 by the environment depart will remain in effect until the environmental improvement board adopt its rules. Reletters the old Subsections “D” through “G” as “E” through “H” accordingly. **Substitute Bill also includes a Subsection “D,” which notes that the Environmental Improvement Board will take over rulemaking on July 1, 2025, but rules promulgated by the Environment Department will remain in effect until repealed or amended.**

Creates a new Subsection “I” exempting food items made from hemp seeds from the section, and clarifies that they will be regulated by food safety statutory provisions.

Creates a new Subsection “J” preventing hemp finished products from containing more than 0.3% THC “or a concentration allowed by federal law, whichever is greater.”

Creates a new Subsection “K” preventing hemp manufacturers from receiving, possessing, advertising, or selling semi-synthetic or synthetic cannabinoids. This would presumably include delta 8 THC.

Section 3: this Section amends Section 76-24-9 regarding transporting hemp, hemp extract or hemp finished products.

Amends Subsection “B”, replacing “hemp derived materials” with “hemp extract.”

Amends Subsection “C” to specify “hemp extract” instead of “hemp derived materials.”

Amends Subsection “D” regarding applicability of food safety statutes to persons transporting hemp products intended for human consumption. The amendments exempt personal use.

Amends Subsection “E” to delete “hemp derived material.”

Amends Subsection “G” to delete “hemp derived material.”

Section 4: This Section amends Section 76-24-10, governing cooperative and joint powers agreements with Indian tribes and pueblos regarding the production of hemp.

Amends Subsections “B” and “C” to replace “hemp derived material” with “hemp extract.”

Section 5: Creates a new section of the Hemp Manufacturing Act to govern hemp retailers.

Section 5A: Empowers the environmental improvement board to adopt rules for hemp retailers, regarding requirements for products, labeling, facilities, inspection, and other aspects of the hemp retail business, as well as procedures for hearings and appeals.

The Substitute Bill does not mention the environmental improvement board. Rather, it notes that the Department of Environment shall promulgate these rules until July 1, 2025.

Section 5B: Notes that rules pertaining to hemp retailers promulgated before July 1, 2025 shall remain in effect until the environmental improvement board adopts rules.

The Substitute Bill provides for the environmental improvement board to take over rulemaking as of July 1, 2025, but states that rules made by the department of environment would stay in effect until repealed or amended.

Section 5C: Prevents hemp retailers from receiving, possessing, or selling hemp finished products with greater than 0.3% THC “or a concentration allowed by federal law, whichever is greater.” Prevents retailers from receiving, possessing, or selling hemp finished products containing semi-synthetic or synthetic cannabinoids.”

Section 5D: Prevents a person from acting as a hemp retailer without meeting the requirements of the section and associated rules.

Section 6: Creates a new section of the Hemp Manufacturing Act, regarding penalties.

Section 6A: Violation of the Hemp Manufacturing Act or associated rule is guilty of a petty misdemeanor.

Section 6B: Department of environment can issue a compliance order or commence a civil action in district court for appropriate relief (including injunctions) if it determines, on the basis of any information, that a person has violated Sections 76-24-8 or -9 (manufacturing and transportation regulatory statute, or Section 5 above (retailer regulatory statute), or associated rules.

Section 6C: A compliance order may include suspension or revocation of a permit and a penalty of up to \$1,000 per violation.

Section 7: This is an emergency bill to take effect immediately.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The significant issues in the original bill remain in the substitute, as stated below

Under the federal Farm Bill, “state and Tribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp or put in place policies that are less restrictive.” *Bio Gen, L.L.C. v. Sanders*, 690 F. Supp. 3d 927, 933 (E.D. Ark. 2023). The proposed bill HB346 places more stringent restrictions on hemp than does the 2018 Farm Bill. The proposed bill does not substantially change the federal definition of “hemp,” so it should be acceptable. While it does ban the manufacture or sale of synthetic and semi-synthetic cannabinoids, including delta-8 THC, this is acceptable, as more restrictive regulations are allowed.

In addition, the bill allows for hemp extracts with greater than 0.3% THC. While this may technically violate federal law, it is less of a concern, because the initial plant and the finished product is not permitted to have more than 0.3% THC by dry weight, and the bill authorizes the promulgation of rules for disposal of more concentrated extracts.

The other issue with the bill is that the statute also regulates transportation. The Farm Bill, and potentially the Dormant Commerce Clause prevents the prohibition of the shipment of hemp through the state. While the bill limits the ban on synthetic and semi-synthetic cannabinoids to manufacture and sale, it is reasonable to be concerned that transportation of hemp extracts or hemp finished products through New Mexico would be hampered if the hemp is tested and found to contain synthetic or semi synthetic cannabinoids. It might be a good idea to include some language in the section on transportation to clarify that the transportation of synthetic and semi-synthetic cannabinoids through New Mexico will not be impeded.

The bill is somewhat vague when it discusses cannabinoids. The term “cannabinoid” does not have a good definition, and one should be included, and it cannot simply be an “a chemical found in cannabis,” as, like any plants, cannabis contains substances that are not cannabinoids.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

The administrative implications of the original bill remain in the substitute as stated below:

The Office of the Attorney General provides legal counsel to the Environmental Improvement Board. With the mandate to adopt new rules through the rule-making authority granted by HB 214, OAG attorney resources will likely be needed to assist with this role and responsibility of the Environmental Improvement Board.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None apparent

TECHNICAL ISSUES

None apparent

OTHER SUBSTANTIVE ISSUES

None apparent

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS