

HOUSE BILL 166

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Rick Little

AN ACT

RELATING TO CONTROLLED SUBSTANCES; EXEMPTING HEMP FROM THE  
DEFINITION OF "MARIJUANA" UNDER THE CONTROLLED SUBSTANCES ACT.

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

**SECTION 1.** Section 30-31-2 NMSA 1978 (being Laws 1972,  
Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled  
Substances Act:

A. "administer" means the direct application of a  
controlled substance by any means to the body of a patient or  
research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts  
on behalf of a manufacturer, distributor or dispenser. It does  
not include a common or contract carrier, public  
warehouseperson or employee of the carrier or warehouseperson;

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1 C. "board" means the board of pharmacy;

2 D. "bureau" means the narcotic and dangerous drug  
3 section of the criminal division of the United States  
4 department of justice, or its successor agency;

5 E. "controlled substance" means a drug or substance  
6 listed in Schedules I through V of the Controlled Substances  
7 Act or rules adopted thereto;

8 F. "counterfeit substance" means a controlled  
9 substance that bears the unauthorized trademark, trade name,  
10 imprint, number, device or other identifying mark or likeness  
11 of a manufacturer, distributor or dispenser other than the  
12 person who in fact manufactured, distributed or dispensed the  
13 controlled substance;

14 G. "deliver" means the actual, constructive or  
15 attempted transfer from one person to another of a controlled  
16 substance or controlled substance analog, whether or not there  
17 is an agency relationship;

18 H. "dispense" means to deliver a controlled  
19 substance to an ultimate user or research subject pursuant to  
20 the lawful order of a practitioner, including the  
21 administering, prescribing, packaging, labeling or compounding  
22 necessary to prepare the controlled substance for that  
23 delivery;

24 I. "dispenser" means a practitioner who dispenses  
25 and includes hospitals, pharmacies and clinics where controlled

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1 substances are dispensed;

2 J. "distribute" means to deliver other than by  
3 administering or dispensing a controlled substance or  
4 controlled substance analog;

5 K. "drug" or "substance" means substances  
6 recognized as drugs in the official United States  
7 pharmacopoeia, official homeopathic pharmacopoeia of the United  
8 States or official national formulary or any respective  
9 supplement to those publications. It does not include devices  
10 or their components, parts or accessories;

11 L. "hashish" means the resin extracted from any  
12 part of marijuana, whether growing or not, and every compound,  
13 manufacture, salt, derivative, mixture or preparation of such  
14 resins;

15 M. "manufacture" means the production, preparation,  
16 compounding, conversion or processing of a controlled substance  
17 or controlled substance analog by extraction from substances of  
18 natural origin or independently by means of chemical synthesis  
19 or by a combination of extraction and chemical synthesis and  
20 includes any packaging or repackaging of the substance or  
21 labeling or relabeling of its container, except that this term  
22 does not include the preparation or compounding of a controlled  
23 substance:

24 (1) by a practitioner as an incident to  
25 administering or dispensing a controlled substance in the

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1 course of the practitioner's professional practice; or

2 (2) by a practitioner, or by the  
3 practitioner's agent under the practitioner's supervision, for  
4 the purpose of or as an incident to research, teaching or  
5 chemical analysis and not for sale;

6 N. "marijuana" means all parts of the plant  
7 cannabis, including any and all varieties, species and  
8 subspecies of the genus Cannabis, whether growing or not, the  
9 seeds thereof and every compound, manufacture, salt,  
10 derivative, mixture or preparation of the plant or its seeds.  
11 It does not include the mature stalks of the plant, hashish,  
12 tetrahydrocannabinols extracted or isolated from marijuana,  
13 fiber produced from the stalks, oil or cake made from the seeds  
14 of the plant, any other compound, manufacture, salt,  
15 derivative, mixture or preparation of the mature stalks, fiber,  
16 oil or cake or the sterilized seed of the plant that is  
17 incapable of germination; or the plant Cannabis sativa L. and  
18 any part of the plant, whether growing or not, with a delta-9-  
19 tetrahydrocannabinol concentration of not more than three-  
20 tenths percent on a dry weight basis, the seeds thereof and  
21 every compound, manufacture, salt, derivative, mixture or  
22 preparation of the plant or its seeds;

23 O. "narcotic drug" means any of the following,  
24 whether produced directly or indirectly by extraction from  
25 substances of vegetable origin or independently by means of

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1 chemical synthesis or by a combination of extraction and  
2 chemical synthesis:

3 (1) opium and opiate and any salt, compound,  
4 derivative or preparation of opium or opiate;

5 (2) any salt, compound, isomer, derivative or  
6 preparation that is a chemical equivalent of any of the  
7 substances referred to in Paragraph (1) of this subsection,  
8 except the isoquinoline alkaloids of opium;

9 (3) opium poppy and poppy straw, including all  
10 parts of the plant of the species *Papaver somniferum* L. except  
11 its seeds; or

12 (4) coca leaves and any salt, compound,  
13 derivative or preparation of coca leaves, any salt, compound,  
14 isomer, derivative or preparation that is a chemical equivalent  
15 of any of these substances except decocainized coca leaves or  
16 extractions of coca leaves that do not contain cocaine or  
17 ecgonine;

18 P. "opiate" means any substance having an  
19 addiction-forming or addiction-sustaining liability similar to  
20 morphine or being capable of conversion into a drug having  
21 addiction-forming or addiction-sustaining liability. "Opiate"  
22 does not include, unless specifically designated as controlled  
23 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of  
24 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.  
25 "Opiate" does include its racemic and levorotatory forms;

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1           Q. "person" means an individual, partnership,  
2 corporation, association, institution, political subdivision,  
3 government agency or other legal entity;

4           R. "practitioner" means a physician, certified  
5 advanced practice chiropractic physician, doctor of oriental  
6 medicine, dentist, physician assistant, certified nurse  
7 practitioner, clinical nurse specialist, certified nurse-  
8 midwife, prescribing psychologist, veterinarian, euthanasia  
9 technician, pharmacist, pharmacist clinician or other person  
10 licensed or certified to prescribe and administer drugs that  
11 are subject to the Controlled Substances Act;

12           S. "prescription" means an order given individually  
13 for the person for whom is prescribed a controlled substance,  
14 either directly from a licensed practitioner or the  
15 practitioner's agent to the pharmacist, including by means of  
16 electronic transmission, or indirectly by means of a written  
17 order signed by the prescriber, bearing the name and address of  
18 the prescriber, the prescriber's license classification, the  
19 name and address of the patient, the name and quantity of the  
20 drug prescribed, directions for use and the date of issue and  
21 in accordance with the Controlled Substances Act or rules  
22 adopted thereto;

23           T. "scientific investigator" means a person  
24 registered to conduct research with controlled substances in  
25 the course of the person's professional practice or research

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1 and includes analytical laboratories;

2 U. "ultimate user" means a person who lawfully  
3 possesses a controlled substance for the person's own use or  
4 for the use of a member of the person's household or for  
5 administering to an animal under the care, custody and control  
6 of the person or by a member of the person's household;

7 V. "drug paraphernalia" means all equipment,  
8 products and materials of any kind that are used, intended for  
9 use or designed for use in planting, propagating, cultivating,  
10 growing, harvesting, manufacturing, compounding, converting,  
11 producing, processing, preparing, testing, analyzing,  
12 packaging, repackaging, storing, containing, concealing,  
13 injecting, ingesting, inhaling or otherwise introducing into  
14 the human body a controlled substance or controlled substance  
15 analog in violation of the Controlled Substances Act. It  
16 includes:

17 (1) kits used, intended for use or designed  
18 for use in planting, propagating, cultivating, growing or  
19 harvesting any species of plant that is a controlled substance  
20 or controlled substance analog or from which a controlled  
21 substance can be derived;

22 (2) kits used, intended for use or designed  
23 for use in manufacturing, compounding, converting, producing,  
24 processing or preparing controlled substances or controlled  
25 substance analogs;

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1 (3) isomerization devices used, intended for  
2 use or designed for use in increasing the potency of any  
3 species of plant that is a controlled substance;

4 (4) testing equipment used, intended for use  
5 or designed for use in identifying or in analyzing the  
6 strength, effectiveness or purity of controlled substances or  
7 controlled substance analogs;

8 (5) scales or balances used, intended for use  
9 or designed for use in weighing or measuring controlled  
10 substances or controlled substance analogs;

11 (6) diluents and adulterants, such as quinine  
12 hydrochloride, mannitol, mannite dextrose and lactose, used,  
13 intended for use or designed for use in cutting controlled  
14 substances or controlled substance analogs;

15 (7) separation gins and sifters used, intended  
16 for use or designed for use in removing twigs and seeds from,  
17 or in otherwise cleaning and refining, marijuana;

18 (8) blenders, bowls, containers, spoons and  
19 mixing devices used, intended for use or designed for use in  
20 compounding controlled substances or controlled substance  
21 analogs;

22 (9) capsules, balloons, envelopes and other  
23 containers used, intended for use or designed for use in  
24 packaging small quantities of controlled substances or  
25 controlled substance analogs;

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1 (10) containers and other objects used,  
2 intended for use or designed for use in storing or concealing  
3 controlled substances or controlled substance analogs;

4 (11) hypodermic syringes, needles and other  
5 objects used, intended for use or designed for use in  
6 parenterally injecting controlled substances or controlled  
7 substance analogs into the human body;

8 (12) objects used, intended for use or  
9 designed for use in ingesting, inhaling or otherwise  
10 introducing marijuana, cocaine, hashish or hashish oil into the  
11 human body, such as:

12 (a) metal, wooden, acrylic, glass,  
13 stone, plastic or ceramic pipes, with or without screens,  
14 permanent screens, hashish heads or punctured metal bowls;

15 (b) water pipes;

16 (c) carburetion tubes and devices;

17 (d) smoking and carburetion masks;

18 (e) roach clips, meaning objects used to  
19 hold burning material, such as a marijuana cigarette, that has  
20 become too small to hold in the hand;

21 (f) miniature cocaine spoons and cocaine  
22 vials;

23 (g) chamber pipes;

24 (h) carburetor pipes;

25 (i) electric pipes;

- 1 (j) air-driven pipes;
- 2 (k) chillers;
- 3 (l) bongs; or
- 4 (m) ice pipes or chillers; and
- 5 (13) in determining whether an object is drug
- 6 paraphernalia, a court or other authority should consider, in
- 7 addition to all other logically relevant factors, the
- 8 following:
- 9 (a) statements by the owner or by anyone
- 10 in control of the object concerning its use;
- 11 (b) the proximity of the object, in time
- 12 and space, to a direct violation of the Controlled Substances
- 13 Act or any other law relating to controlled substances or
- 14 controlled substance analogs;
- 15 (c) the proximity of the object to
- 16 controlled substances or controlled substance analogs;
- 17 (d) the existence of any residue of a
- 18 controlled substance or controlled substance analog on the
- 19 object;
- 20 (e) instructions, written or oral,
- 21 provided with the object concerning its use;
- 22 (f) descriptive materials accompanying
- 23 the object that explain or depict its use;
- 24 (g) the manner in which the object is
- 25 displayed for sale; and

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1 (h) expert testimony concerning its use;

2 W. "controlled substance analog" means a substance  
3 other than a controlled substance that has a chemical structure  
4 substantially similar to that of a controlled substance in  
5 Schedule I, II, III, IV or V or that was specifically designed  
6 to produce effects substantially similar to that of controlled  
7 substances in Schedule I, II, III, IV or V. Examples of  
8 chemical classes in which controlled substance analogs are  
9 found include the following:

- 10 (1) phenethylamines;
- 11 (2) N-substituted piperidines;
- 12 (3) morphinans;
- 13 (4) ecgonines;
- 14 (5) quinazolinones;
- 15 (6) substituted indoles; and
- 16 (7) arylcycloalkylamines.

17 Specifically excluded from the definition of "controlled  
18 substance analog" are those substances that are generally  
19 recognized as safe and effective within the meaning of the  
20 Federal Food, Drug, and Cosmetic Act or have been manufactured,  
21 distributed or possessed in conformance with the provisions of  
22 an approved new drug application or an exemption for  
23 investigational use within the meaning of Section 505 of the  
24 Federal Food, Drug, and Cosmetic Act;

25 X. "human consumption" includes application,

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1 injection, inhalation, ingestion or any other manner of  
2 introduction;

3 Y. "drug-free school zone" means a public school,  
4 parochial school or private school or property that is used for  
5 a public, parochial or private school purpose and the area  
6 within one thousand feet of the school property line, but it  
7 does not mean any post-secondary school; and

8 Z. "valid practitioner-patient relationship" means  
9 a professional relationship, as defined by the practitioner's  
10 licensing board, between the practitioner and the patient."