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SENATE BILL

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

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND THE
WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76
NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO
DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON
INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW
MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

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

SECTION 1. A new section of Chapter 76 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] INDUSTRIAL HEMP RESEARCH--NEW MEXICO
DEPARTMENT OF AGRICULTURE.--

A. As used in this section, "industrial hemp" means
the plant Cannabis sativa L. and any part of the plant, whether
growing or not, containing a delta-9-tetrahydrocannabinol
concentration of no more than three-tenths percent on a dry
weight basis.

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1 B. The intent of this section is to bring New
2 Mexico into compliance with federal law.

3 C. Notwithstanding any other provision of law to
4 the contrary, the New Mexico department of agriculture shall
5 issue licenses pursuant to rules enacted under Subsection D of
6 this section to grow industrial hemp for research and
7 development purposes, including agricultural, agronomic,
8 ecological, processing, sales and marketing research.

9 D. The director of the New Mexico department of
10 agriculture shall adopt rules to establish and carry out the
11 provisions of this section, including requirements for
12 licensure, training of law enforcement personnel, inspection,
13 recordkeeping, fees not to exceed program costs and compliance
14 processes. An institution of higher education, person or
15 business that plans to grow industrial hemp seed or industrial
16 hemp fiber shall obtain a grower's license by submitting an
17 application to the New Mexico department of agriculture
18 pursuant to promulgated rules.

19 E. A person who holds a license issued pursuant to
20 this section may grow industrial hemp for commercial or
21 research and development purposes, including agricultural,
22 agronomic, ecological, processing, sales and marketing
23 research.

24 F. New Mexico state university shall establish a
25 "New Mexico industrial hemp research and development fund".

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1 The fund consists of fees collected by the New Mexico
2 department of agriculture for administration of the industrial
3 hemp research and development program, donations, grants and
4 income earned from investment of the fund and money otherwise
5 accruing to the fund. Money in the fund shall not revert to
6 any other fund at the end of a fiscal year. The New Mexico
7 department of agriculture shall administer the fund, and money
8 in the fund is subject to appropriation by the legislature to
9 the New Mexico department of agriculture to conduct related
10 programs. Money in the fund shall be disbursed on warrants
11 signed by the secretary of finance and administration pursuant
12 to vouchers signed by the director of the New Mexico department
13 of agriculture or the director's authorized representative."

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

16 "30-31-2. DEFINITIONS.--As used in the Controlled
17 Substances Act:

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

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

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

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

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

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

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

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

23 I. "dispenser" means a practitioner who dispenses
24 and includes hospitals, pharmacies and clinics where controlled
25 substances are dispensed;

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

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

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

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

23 (1) by a practitioner as an incident to
24 administering or dispensing a controlled substance in the
25 course of the practitioner's professional practice; or

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

5 N. "marijuana" means all parts of the plant
6 cannabis, including any and all varieties, species and
7 subspecies of the genus Cannabis, whether growing or not, the
8 seeds thereof and every compound, manufacture, salt,
9 derivative, mixture or preparation of the plant or its seeds.
10 It does not include the mature stalks of the plant, hashish,
11 tetrahydrocannabinols extracted or isolated from marijuana,
12 fiber produced from the stalks, oil or cake made from the seeds
13 of the plant, any other compound, manufacture, salt,
14 derivative, mixture or preparation of the mature stalks, fiber,
15 oil or cake, or the sterilized seed of the plant that is
16 incapable of germination; or the plant Cannabis sativa L. and
17 any part of the plant, whether growing or not, containing a
18 delta-9-tetrahydrocannabinol concentration of no more than
19 three-tenths percent on a dry weight basis;

20 O. "narcotic drug" means any of the following,
21 whether produced directly or indirectly by extraction from
22 substances of vegetable origin or independently by means of
23 chemical synthesis or by a combination of extraction and
24 chemical synthesis:

25 (1) opium and opiate and any salt, compound,

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1 derivative or preparation of opium or opiate;

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

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

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

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

23 Q. "person" means an individual, partnership,
24 corporation, association, institution, political subdivision,
25 government agency or other legal entity;

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

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

20 T. "scientific investigator" means a person
21 registered to conduct research with controlled substances in
22 the course of the person's professional practice or research
23 and includes analytical laboratories;

24 U. "ultimate user" means a person who lawfully
25 possesses a controlled substance for the person's own use or

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1 for the use of a member of the person's household or for
2 administering to an animal under the care, custody and control
3 of the person or by a member of the person's household;

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

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

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

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

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

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

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

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

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

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

23 (10) containers and other objects used,
24 intended for use or designed for use in storing or concealing
25 controlled substances or controlled substance analogs;

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

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

9 (a) metal, wooden, acrylic, glass,
10 stone, plastic or ceramic pipes, with or without screens,
11 permanent screens, hashish heads or punctured metal bowls;

12 (b) water pipes;

13 (c) carburetion tubes and devices;

14 (d) smoking and carburetion masks;

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

18 (f) miniature cocaine spoons and cocaine
19 vials;

20 (g) chamber pipes;

21 (h) carburetor pipes;

22 (i) electric pipes;

23 (j) air-driven pipes;

24 (k) chilams;

25 (l) bongs; or

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1 (m) ice pipes or chillers; and
2 (13) in determining whether an object is drug
3 paraphernalia, a court or other authority should consider, in
4 addition to all other logically relevant factors, the
5 following:

6 (a) statements by the owner or by anyone
7 in control of the object concerning its use;

8 (b) the proximity of the object, in time
9 and space, to a direct violation of the Controlled Substances
10 Act or any other law relating to controlled substances or
11 controlled substance analogs;

12 (c) the proximity of the object to
13 controlled substances or controlled substance analogs;

14 (d) the existence of any residue of a
15 controlled substance or controlled substance analog on the
16 object;

17 (e) instructions, written or oral,
18 provided with the object concerning its use;

19 (f) descriptive materials accompanying
20 the object that explain or depict its use;

21 (g) the manner in which the object is
22 displayed for sale; and

23 (h) expert testimony concerning its use;

24 W. "controlled substance analog" means a substance
25 other than a controlled substance that has a chemical structure

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1 substantially similar to that of a controlled substance in
2 Schedule I, II, III, IV or V or that was specifically designed
3 to produce effects substantially similar to that of controlled
4 substances in Schedule I, II, III, IV or V. Examples of
5 chemical classes in which controlled substance analogs are
6 found include the following:

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

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

22 X. "human consumption" includes application,
23 injection, inhalation, ingestion or any other manner of
24 introduction;

25 Y. "drug-free school zone" means a public school,

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1 parochial school or private school or property that is used for
2 a public, parochial or private school purpose and the area
3 within one thousand feet of the school property line, but it
4 does not mean any post-secondary school; and

5 Z. "valid practitioner-patient relationship" means
6 a professional relationship, as defined by the practitioner's
7 licensing board, between the practitioner and the patient."

8 SECTION 3. Section 30-31-6 NMSA 1978 (being Laws 1972,
9 Chapter 84, Section 6, as amended) is amended to read:

10 "30-31-6. SCHEDULE I.--The following controlled
11 substances are included in Schedule I:

12 A. any of the following opiates, including their
13 isomers, esters, ethers, salts, and salts of isomers, esters
14 and ethers, unless specifically exempted, whenever the
15 existence of these isomers, esters, ethers and salts is
16 possible within the specific chemical designation:

- 17 (1) acetylmethadol;
- 18 (2) allylprodine;
- 19 (3) alphacetylmethadol;
- 20 (4) alphameprodine;
- 21 (5) alphamethadol;
- 22 (6) benzethidine;
- 23 (7) betacetylmethadol;
- 24 (8) betameprodine;
- 25 (9) betamethadol;

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- 1 (10) betaprodine;
- 2 (11) clonitazene;
- 3 (12) dextromoramide;
- 4 (13) dextrorphan;
- 5 (14) diampromide;
- 6 (15) diethylthiambutene;
- 7 (16) dimenoxadol;
- 8 (17) dimepheptanol;
- 9 (18) dimethylthiambutene;
- 10 (19) dioxaphetyl butyrate;
- 11 (20) dipipanone;
- 12 (21) ethylmethylthiambutene;
- 13 (22) etonitazene;
- 14 (23) etoxeridine;
- 15 (24) furethidine;
- 16 (25) hydroxypethidine;
- 17 (26) ketobemidone;
- 18 (27) levomoramide;
- 19 (28) levophenacymorphan;
- 20 (29) morpheridine;
- 21 (30) noracymethadol;
- 22 (31) norlevorphanol;
- 23 (32) normethadone;
- 24 (33) norpipanone;
- 25 (34) phenadoxone;

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- 1 (35) phenampromide;
- 2 (36) phenomorphan;
- 3 (37) phenoperidine;
- 4 (38) piritramide;
- 5 (39) proheptazine;
- 6 (40) properidine;
- 7 (41) racemoramide; and
- 8 (42) trimeperidine;

9 B. any of the following opium derivatives, their
10 salts, isomers and salts of isomers, unless specifically
11 exempted, whenever the existence of these salts, isomers and
12 salts of isomers is possible within the specific chemical
13 designation:

- 14 (1) acetorphine;
- 15 (2) acetyldihydrocodeine;
- 16 (3) benzylmorphine;
- 17 (4) codeine methylbromide;
- 18 (5) codeine-N-oxide;
- 19 (6) cyprenorphine;
- 20 (7) desomorphine;
- 21 (8) dihydromorphine;
- 22 (9) etorphine;
- 23 (10) heroin;
- 24 (11) hydromorphinol;
- 25 (12) methyl-desorphine;

- 1 (13) methyldihydromorphine;
- 2 (14) morphine methylbromide;
- 3 (15) morphine methylsulfonate;
- 4 (16) morphine-N-oxide;
- 5 (17) myrophine;
- 6 (18) nicocodeine;
- 7 (19) nicomorphine;
- 8 (20) normorphine;
- 9 (21) pholcodine; and
- 10 (22) thebacon;

11 C. any material, compound, mixture or preparation
12 that contains any quantity of the following hallucinogenic
13 substances, their salts, isomers and salts of isomers, unless
14 specifically exempted, whenever the existence of these salts,
15 isomers and salts of isomers is possible within the specific
16 chemical designation:

- 17 (1) 3,4-methylenedioxy amphetamine;
- 18 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 19 (3) 3,4,5-trimethoxy amphetamine;
- 20 (4) bufotenine;
- 21 (5) diethyltryptamine;
- 22 (6) dimethyltryptamine;
- 23 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 24 (8) ibogaine;
- 25 (9) lysergic acid diethylamide;

- 1 (10) marijuana;
- 2 (11) mescaline;
- 3 (12) peyote, except as otherwise provided in
- 4 the Controlled Substances Act;
- 5 (13) N-ethyl-3-piperidyl benzilate;
- 6 (14) N-methyl-3-piperidyl benzilate;
- 7 (15) psilocybin;
- 8 (16) psilocyn;
- 9 (17) tetrahydrocannabinols;
- 10 (18) hashish;
- 11 (19) synthetic cannabinoids, including:
- 12 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
- 13 naphthoyl)indole;
- 14 (b) 1-butyl-3-(1-naphthoyl)indole;
- 15 (c) 1-hexyl-3-(1-naphthoyl)indole;
- 16 (d) 1-pentyl-3-(1-naphthoyl)indole;
- 17 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
- 18 indole;
- 19 (f) cannabicyclohexanol (CP 47, 497 and
- 20 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
- 21 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
- 22 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
- 23 (g) 6aR,10aR)-9-(hydroxymethyl)
- 24 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
- 25 10a-tetrahydrobenzo[c]chromen-1-ol);

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- 1 (h) dexanabinol, (6aS,10aS)
2 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
3 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
4 (i) 1-pentyl-3-(4-chloro naphthoyl)
5 indole;
6 (j) (2-methyl-1-propyl-1H-indol-3-yl)
7 -1-naphthalenyl-methanone; and
8 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
9 cyclohexyl)-phenol;
10 (20) 3,4-methylenedioxy methcathinone;
11 (21) 3,4-methylenedioxy pyrovalerone;
12 (22) 4-methylmethcathinone;
13 (23) 4-methoxymethcathinone;
14 (24) 3-fluoromethcathinone; and
15 (25) 4-fluoromethcathinone;

16 D. the enumeration of peyote as a controlled
17 substance does not apply to the use of peyote in bona fide
18 religious ceremonies by a bona fide religious organization, and
19 members of the organization so using peyote are exempt from
20 registration. Any person who manufactures peyote for or
21 distributes peyote to the organization or its members shall
22 comply with the federal Comprehensive Drug Abuse Prevention and
23 Control Act of 1970 and all other requirements of law;

24 E. the enumeration of marijuana,
25 tetrahydrocannabinols or chemical derivatives of

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1 tetrahydrocannabinol as Schedule I controlled substances does
2 not apply to:

3 (1) cultivation of industrial hemp by
4 qualified entities pursuant to rules adopted by the New Mexico
5 department of agriculture; or

6 (2) the use of marijuana,
7 tetrahydrocannabinols or chemical derivatives of
8 tetrahydrocannabinol by certified patients pursuant to the
9 Controlled Substances Therapeutic Research Act or by qualified
10 patients pursuant to the provisions of the Lynn and Erin
11 Compassionate Use Act; and

12 F. controlled substances added to Schedule I by
13 rule adopted by the board pursuant to Section 30-31-3 NMSA
14 1978."