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HOUSE BILL 565

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO AGRICULTURE; PROVIDING FOR LICENSING THE GROWING,
SELLING AND PROCESSING OF INDUSTRIAL HEMP; ESTABLISHING FEES;
PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 8 of this act may be cited as the "Industrial Hemp
Farming Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND
PURPOSE.--

A. Industrial hemp is a suitable crop for New
Mexico, and its production will contribute to the future
viability of New Mexico agriculture.

B. Allowing industrial hemp production will provide
farmers with an opportunity to sell their products to a

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1 marketplace that pays them a reasonable rate of return for
2 their labor and capital investments. Farmers in Canada report
3 a rate of return of eight hundred dollars (\$800) per acre for
4 the crop.

5 C. The infrastructure needed to process industrial
6 hemp will result in increased business opportunities and new
7 jobs in our communities.

8 D. As a food crop, industrial hemp seeds and the
9 oil produced from the seeds have high nutritional value,
10 including healthy fats and protein.

11 E. As a fiber crop, industrial hemp can be used in
12 the manufacture of products such as clothing, building supplies
13 and animal bedding.

14 F. As a fuel crop, industrial hemp seeds can be
15 processed into biodiesel and stalks can be pelletized or flaked
16 for burning or processed for cellulosic ethanol. Industrial
17 hemp also expands opportunities for on-farm renewable energy
18 production.

19 G. The production of industrial hemp can play a
20 useful agronomic role in farm land management as part of a crop
21 rotation system.

22 H. In addition to being an efficient
23 photosynthesizer for converting the greenhouse gases carbon
24 dioxide and carbon monoxide to oxygen, industrial hemp is fast
25 growing and drought tolerant, making it suitable for the arid

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1 southwest.

2 I. The purpose of the Industrial Hemp Farming Act
3 is to establish policy and procedures for growing industrial
4 hemp in New Mexico so that farmers and other businesses in the
5 New Mexico agricultural industry can take advantage of this
6 market opportunity.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Industrial Hemp Farming Act:

9 A. "grower" means a licensed industrial hemp
10 grower; and

11 B. "industrial hemp" means any plant that produces
12 not more than three-tenths of one percent of delta 9
13 tetrahydrocannabinol per weighted unit of flowering tops and
14 leaves and that has a delta 9 tetrahydrocannabinol
15 concentration of not more than one percent on a dry weight
16 basis.

17 SECTION 4. [NEW MATERIAL] ADMINISTRATIVE DISCOVERY
18 PROCESS TO DETERMINE RULES TO ENCOURAGE GROWTH AND SALES OF
19 INDUSTRIAL HEMP--ADMINISTRATION.--The New Mexico department of
20 agriculture shall:

21 A. monitor the initial phase of research and
22 development necessary to ensure a viable and legal industrial
23 hemp industry in the state; and

24 B. ensure the participation by and inclusion of
25 individual farmers, agricultural cooperatives and businesses in

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1 the rulemaking process.

2 SECTION 5. [NEW MATERIAL] IMPLEMENTATION--FEES.--

3 A. A person or business planning to grow and sell
4 industrial hemp seed or industrial hemp fiber shall obtain a
5 grower's license by submitting an application to the New Mexico
6 department of agriculture containing the following:

7 (1) the name and address of the applicant;

8 (2) the location and legal description of the
9 land to be used for the production of industrial hemp and the
10 name and address of the person holding title to the land on
11 which the industrial hemp will be planted;

12 (3) any other information required for
13 completion of a nationwide criminal background check; and

14 (4) a nonrefundable application or renewal
15 fee of no more than one hundred fifty dollars (\$150).

16 B. A grower shall maintain records showing:

17 (1) the origin of the seed purchased and
18 planted;

19 (2) the quantity of the seed purchased and
20 planted;

21 (3) the amount of industrial hemp harvested
22 and sold; and

23 (4) buyers and recipients of the industrial
24 hemp plants, fiber and seed.

25 C. The New Mexico department of agriculture shall

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1 help to ensure availability of seed. The department shall:

2 (1) maintain an authorized list of certified
3 seed sources for industrial hemp;

4 (2) certify industrial hemp seed obtained from
5 other sources;

6 (3) maintain a list of growers and processors
7 for whom seed has been provided; and

8 (4) maintain a list of growers and processors.

9 D. The New Mexico department of agriculture may
10 collaborate with individual farmers, agricultural cooperatives
11 or businesses to establish an industrial hemp seed bank and
12 provide seed for a fee that does not exceed ten percent more
13 than the cost of the seed to growers upon request.

14 E. The New Mexico department of agriculture may
15 enter into joint powers agreements with an Indian nation, tribe
16 or pueblo to share information, to provide technical assistance
17 and to generally cooperate with the Indian nation, tribe or
18 pueblo to facilitate the production of industrial hemp on
19 tribal land.

20 F. The New Mexico department of agriculture may
21 revoke or suspend the license of a grower if there is
22 substantial evidence of violations of the provisions of the
23 Industrial Hemp Farming Act or rules adopted pursuant to that
24 act. The department shall impose fines subsequent to the
25 implementation of the Industrial Hemp Farming Act.

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1 G. Fees collected pursuant to this section are
2 appropriated to the New Mexico department of agriculture to
3 carry out the provisions of the Industrial Hemp Farming Act.

4 **SECTION 6. [NEW MATERIAL] DEPARTMENT OF PUBLIC**
5 **SAFETY--DUTIES AND POWERS.--**The department of public safety:

6 A. shall conduct background checks on applicants
7 requesting licenses upon request by the New Mexico department
8 of agriculture;

9 B. shall inspect growing fields and processing
10 facilities upon verifiable evidence that a designated
11 industrial hemp field is unlicensed and is in violation of the
12 Industrial Hemp Farming Act;

13 C. shall train law enforcement officers to identify
14 industrial hemp;

15 D. shall inform the New Mexico department of
16 agriculture of any criminal offenses regarding the growing or
17 processing of industrial hemp; and

18 E. may enter into joint powers agreements with an
19 Indian nation, tribe or pueblo to share information, to provide
20 technical assistance and to generally cooperate with the Indian
21 nation, tribe or pueblo to facilitate the production of
22 industrial hemp on tribal land.

23 **SECTION 7. [NEW MATERIAL] COOPERATION BETWEEN**
24 **AGENCIES.--**The New Mexico department of agriculture and the
25 department of public safety shall cooperate fully with one

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1 another to implement and enforce the provisions of the
2 Industrial Hemp Farming Act.

3 SECTION 8. [NEW MATERIAL] PENALTY.--A person who
4 fraudulently obtains a license pursuant to the Industrial Hemp
5 Farming Act or violates the provisions of the license is guilty
6 of a fourth degree felony and shall be sentenced pursuant to
7 the provisions of Section 31-18-15 NMSA 1978.

8 SECTION 9. Section 30-31-2 NMSA 1978 (being Laws 1972,
9 Chapter 84, Section 2, as amended) is amended to read:

10 "30-31-2. DEFINITIONS.--As used in the Controlled
11 Substances Act:

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

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

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

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

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

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1 F. "counterfeit substance" means a controlled
2 substance that bears the unauthorized trademark, trade name,
3 imprint, number, device or other identifying mark or likeness
4 of a manufacturer, distributor or dispenser other than the
5 person who in fact manufactured, distributed or dispensed the
6 controlled substance;

7 G. "deliver" means the actual, constructive or
8 attempted transfer from one person to another of a controlled
9 substance or controlled substance analog, whether or not there
10 is an agency relationship;

11 H. "dispense" means to deliver a controlled
12 substance to an ultimate user or research subject pursuant to
13 the lawful order of a practitioner, including the
14 administering, prescribing, packaging, labeling or compounding
15 necessary to prepare the controlled substance for that
16 delivery;

17 I. "dispenser" means a practitioner who dispenses
18 and includes hospitals, pharmacies and clinics where controlled
19 substances are dispensed;

20 J. "distribute" means to deliver other than by
21 administering or dispensing a controlled substance or
22 controlled substance analog;

23 K. "drug" or "substance" means substances
24 recognized as drugs in the official United States
25 pharmacopoeia, official homeopathic pharmacopoeia of the United

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1 States or official national formulary or any respective
2 supplement to those publications. It does not include devices
3 or their components, parts or accessories;

4 L. "hashish" means the resin extracted from any
5 part of marijuana, whether growing or not, and every compound,
6 manufacture, salt, derivative, mixture or preparation of such
7 resins;

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

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

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

24 N. "marijuana" means all parts of the plant
25 cannabis, including any and all varieties, species and

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1 subspecies of the genus Cannabis, whether growing or not, the
2 seeds thereof and every compound, manufacture, salt,
3 derivative, mixture or preparation of the plant or its seeds.
4 It does not include the mature stalks of the plant, hashish,
5 tetrahydrocannabinols extracted or isolated from marijuana,
6 fiber produced from the stalks, oil or cake made from the seeds
7 of the plant, any other compound, manufacture, salt,
8 derivative, mixture or preparation of the mature stalks, fiber,
9 oil or cake, or the sterilized seed of the plant that is
10 incapable of germination; or any variety of the species sativa
11 of the genus Cannabis that produces not more than three-tenths
12 of one percent of delta 9 tetrahydrocannabinol per weighted
13 unit of flowering tops and leaves and that has a delta 9
14 tetrahydrocannabinol concentration of not more than one percent
15 on a dry weight basis;

16 0. "narcotic drug" means any of the following,
17 whether produced directly or indirectly by extraction from
18 substances of vegetable origin or independently by means of
19 chemical synthesis or by a combination of extraction and
20 chemical synthesis:

21 (1) opium and opiate and any salt, compound,
22 derivative or preparation of opium or opiate;

23 (2) any salt, compound, isomer, derivative or
24 preparation that is a chemical equivalent of any of the
25 substances referred to in Paragraph (1) of this subsection,

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1 except the isoquinoline alkaloids of opium;

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

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

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

19 Q. "person" means an individual, partnership,
20 corporation, association, institution, political subdivision,
21 government agency or other legal entity;

22 R. "practitioner" means a physician, certified
23 advanced practice chiropractic physician, doctor of oriental
24 medicine, dentist, physician assistant, certified nurse
25 practitioner, clinical nurse specialist, certified nurse-

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1 midwife, prescribing psychologist, veterinarian, euthanasia
2 technician, pharmacist, pharmacist clinician or other person
3 licensed or certified to prescribe and administer drugs that
4 are subject to the Controlled Substances Act;

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

16 T. "scientific investigator" means a person
17 registered to conduct research with controlled substances in
18 the course of the person's professional practice or research
19 and includes analytical laboratories;

20 U. "ultimate user" means a person who lawfully
21 possesses a controlled substance for the person's own use or
22 for the use of a member of the person's household or for
23 administering to an animal under the care, custody and control
24 of the person or by a member of the person's household;

25 V. "drug paraphernalia" means all equipment,

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

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

15 (2) kits used, intended for use or designed
16 for use in manufacturing, compounding, converting, producing,
17 processing or preparing controlled substances or controlled
18 substance analogs;

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

22 (4) testing equipment used, intended for use
23 or designed for use in identifying or in analyzing the
24 strength, effectiveness or purity of controlled substances or
25 controlled substance analogs;

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

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

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

11 (8) blenders, bowls, containers, spoons and
12 mixing devices used, intended for use or designed for use in
13 compounding controlled substances or controlled substance
14 analogs;

15 (9) capsules, balloons, envelopes and other
16 containers used, intended for use or designed for use in
17 packaging small quantities of controlled substances or
18 controlled substance analogs;

19 (10) containers and other objects used,
20 intended for use or designed for use in storing or concealing
21 controlled substances or controlled substance analogs;

22 (11) hypodermic syringes, needles and other
23 objects used, intended for use or designed for use in
24 parenterally injecting controlled substances or controlled
25 substance analogs into the human body;

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1 (12) objects used, intended for use or
2 designed for use in ingesting, inhaling or otherwise
3 introducing marijuana, cocaine, hashish or hashish oil into the
4 human body, such as:

5 (a) metal, wooden, acrylic, glass,
6 stone, plastic or ceramic pipes, with or without screens,
7 permanent screens, hashish heads or punctured metal bowls;

8 (b) water pipes;

9 (c) carburetion tubes and devices;

10 (d) smoking and carburetion masks;

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

14 (f) miniature cocaine spoons and cocaine
15 vials;

16 (g) chamber pipes;

17 (h) carburetor pipes;

18 (i) electric pipes;

19 (j) air-driven pipes;

20 (k) chilams;

21 (l) bongs; or

22 (m) ice pipes or chillers; and

23 (13) in determining whether an object is drug
24 paraphernalia, a court or other authority should consider, in
25 addition to all other logically relevant factors, the

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1 following:

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

4 (b) the proximity of the object, in time
5 and space, to a direct violation of the Controlled Substances
6 Act or any other law relating to controlled substances or
7 controlled substance analogs;

8 (c) the proximity of the object to
9 controlled substances or controlled substance analogs;

10 (d) the existence of any residue of a
11 controlled substance or controlled substance analog on the
12 object;

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

15 (f) descriptive materials accompanying
16 the object that explain or depict its use;

17 (g) the manner in which the object is
18 displayed for sale; and

19 (h) expert testimony concerning its use;

20 W. "controlled substance analog" means a substance
21 other than a controlled substance that has a chemical structure
22 substantially similar to that of a controlled substance in
23 Schedule I, II, III, IV or V or that was specifically designed
24 to produce effects substantially similar to that of controlled
25 substances in Schedule I, II, III, IV or V. Examples of

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1 chemical classes in which controlled substance analogs are
2 found include the following:

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

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

18 X. "human consumption" includes application,
19 injection, inhalation, ingestion or any other manner of
20 introduction;

21 Y. "drug-free school zone" means a public school,
22 parochial school or private school or property that is used for
23 a public, parochial or private school purpose and the area
24 within one thousand feet of the school property line, but it
25 does not mean any post-secondary school; and

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1 Z. "valid practitioner-patient relationship" means
2 a professional relationship, as defined by the practitioner's
3 licensing board, between the practitioner and the patient."

4 **SECTION 10. APPROPRIATION.--**

5 A. One hundred fifty thousand dollars (\$150,000) is
6 appropriated from the general fund for expenditure in fiscal
7 year 2012 for the following:

8 (1) one hundred thousand dollars (\$100,000) to
9 the board of regents of New Mexico state university to
10 establish and maintain databases, a seed bank and a seed
11 certification program pursuant to the Industrial Hemp Farming
12 Act; and

13 (2) fifty thousand dollars (\$50,000) to the
14 department of public safety to train law enforcement officers
15 to identify industrial hemp and to implement a law enforcement
16 program regarding the growth, sale and processing of industrial
17 hemp pursuant to the Industrial Hemp Farming Act.

18 B. Any unexpended or unencumbered balance remaining
19 at the end of fiscal year 2012 shall revert to the general
20 fund.

21 **SECTION 11. EFFECTIVE DATE.--**The effective date of the
22 provisions of this act is July 1, 2011.