

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 350

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Ray Begaye

AN ACT

**RELATING TO AGRICULTURE; ENACTING THE INDUSTRIAL HEMP
LICENSING ACT; LICENSING THE GROWING, SELLING AND PROCESSING
OF INDUSTRIAL HEMP; ESTABLISHING FEES; ESTABLISHING FINES;
ESTABLISHING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 10 of this act may be cited as the "Industrial Hemp
Licensing Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Industrial Hemp Licensing Act:**

**A. "grower" means a licensed industrial hemp
grower;**

B. "industrial hemp" means any plant that produces

underscored material = new
[bracketed material] = delete

1 not more than three-tenths of one percent of delta 9
2 tetrahydrocannabinol per weighted unit of flowering tops and
3 leaves and has a delta 9 tetrahydrocannabinol concentration of
4 not more than one percent on a dry weight basis and is not
5 used for human consumption; and

6 C. "processor" means a licensed industrial hemp
7 processor.

8 Section 3. [NEW MATERIAL] LICENSE REQUIRED TO GROW AND
9 SELL-- ADMINISTRATION. --

10 A. A person planning to grow and sell industrial
11 hemp seed or industrial hemp fiber shall obtain a grower's
12 license by submitting an application to the regulation and
13 licensing department containing the following:

- 14 (1) the name and address of the applicant;
15 (2) the location and legal description of the
16 land to be used for the production of industrial hemp and the
17 name and address of the person holding title to the land on
18 which the industrial hemp will be planted;
19 (3) any other information required for
20 completion of a nationwide criminal background check; and
21 (4) a nonrefundable application fee of no
22 more than one hundred fifty dollars (\$150).

23 B. A grower shall maintain records showing:
24 (1) origin of the seed purchased and planted;
25 (2) quantity of the seed purchased and

underscored material = new
[bracketed material] = delete

1 planted;

2 (3) amount of industrial hemp harvested and
3 sold; and

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

6 Section 4. [NEW MATERIAL] LICENSE REQUIRED TO PROCESS OR
7 SELL-- ADMINISTRATION. --

8 A. A person planning to import, process,
9 distribute or sell industrial hemp plant material shall obtain
10 a processor's license from the regulation and licensing
11 department through an application that contains the following:

12 (1) the name and address of the applicant and
13 processing facility's owner;

14 (2) the location of the facilities to be used
15 for the processing of industrial hemp;

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

18 (4) a nonrefundable application fee of no
19 more than one hundred fifty dollars (\$150).

20 B. A processor shall maintain records showing:

21 (1) origin of the industrial hemp product
22 purchased and processed;

23 (2) quantity of the industrial hemp product
24 purchased, processed and sold;

25 (3) the type and amount of finished product

. 140032. 6

underscored material = new
[bracketed material] = delete

1 created by processing the industrial hemp; and

2 (4) buyers and recipients of the processed
3 industrial hemp.

4 Section 5. [NEW MATERIAL] FEES. --The regulation and
5 licensing department shall impose the following fees on
6 licenses issued to the Industrial Hemp Licensing Act:

7 A. for a grower's license, one hundred fifty
8 dollars (\$150);

9 B. for the renewal of a grower's license, one
10 hundred dollars (\$100);

11 C. for a processor's license, one hundred fifty
12 dollars (\$150); and

13 D. for the renewal of a processor's license, one
14 hundred dollars (\$100).

15 Section 6. [NEW MATERIAL] REGULATION AND LICENSING
16 DEPARTMENT--DUTIES AND POWERS. --The regulation and licensing
17 department:

18 A. shall monitor, license and regulate the growing
19 and processing of industrial hemp in the state;

20 B. shall make rules as may be necessary for the
21 administration and enforcement of the Industrial Hemp
22 Licensing Act;

23 C. may enter into joint powers agreements with an
24 Indian nation, tribe or pueblo to coordinate licensing of
25 growers and processors, to share information, to provide

. 140032. 6

underscored material = new
[bracketed material] = delete

1 technical assistance and to generally cooperate with the
2 Indian nation, tribe or pueblo to facilitate the production of
3 industrial hemp on tribal land;

4 D. shall adopt rules, issue licenses and collect
5 license fees for growing and processing of industrial hemp;
6 and

7 E. may revoke or suspend a grower's or a
8 processor's license if the grower or processor is found to
9 have substantially violated the provisions of the Industrial
10 Hemp Licensing Act or rules adopted pursuant to that act. The
11 regulation and licensing department shall impose fines of:

12 (1) up to one thousand dollars (\$1,000) per
13 acre on an unlicensed person growing industrial hemp; and

14 (2) up to ten thousand dollars (\$10,000) on
15 an unlicensed person processing industrial hemp.

16 Section 7. [NEW MATERIAL] DEPARTMENT OF PUBLIC SAFETY--
17 DUTIES AND POWERS.--The department of public safety:

18 A. shall conduct background checks on license
19 applicants when requested by the regulation and licensing
20 department;

21 B. shall inspect growing fields and processing
22 facilities;

23 C. shall train law enforcement officers regarding
24 the identification of industrial hemp;

25 D. shall inform the regulation and licensing

. 140032. 6

underscored material = new
[bracketed material] = delete

1 department and the New Mexico department of agriculture of any
2 criminal offenses regarding the growing or processing of
3 industrial hemp; and

4 E. may enter into joint powers agreements with an
5 Indian nation, tribe or pueblo to share information, to
6 provide technical assistance and to generally cooperate with
7 the Indian nation, tribe or pueblo to facilitate the
8 production of industrial hemp on tribal land.

9 Section 8. [NEW MATERIAL] NEW MEXICO DEPARTMENT OF
10 AGRICULTURE POWER AND DUTIES. -- The New Mexico department of
11 agriculture:

12 A. shall maintain an authorized list of certified
13 seed sources for industrial hemp;

14 B. shall certify industrial hemp seed obtained
15 from other sources;

16 C. may establish an industrial hemp seed bank and
17 provide seed for a fee that does not exceed ten percent more
18 than the cost of the seed to growers upon request;

19 D. shall maintain a list of growers and processors
20 for whom seed has been certified and periodically provide the
21 list to the regulation and licensing department and the
22 department of public safety;

23 E. shall maintain a list of growers and processors
24 to whom seed has been provided and periodically provide the
25 list to the regulation and licensing department and the

. 140032. 6

underscored material = new
[bracketed material] = delete

1 department of public safety; and

2 F. may enter into joint powers agreements with an
3 Indian nation, tribe or pueblo to share information, to
4 provide technical assistance and to generally cooperate with
5 the Indian nation, tribe or pueblo to facilitate the
6 production of industrial hemp on tribal land.

7 Section 9. [NEW MATERIAL] COOPERATION BETWEEN
8 AGENCIES. -- The regulation and licensing department, the New
9 Mexico department of agriculture and the department of public
10 safety shall cooperate fully with one another to implement and
11 enforce the provisions of the Industrial Hemp Licensing Act.

12 Section 10. [NEW MATERIAL] PENALTY. -- A person who
13 fraudulently obtains a license pursuant to the Industrial Hemp
14 Licensing Act or violates the provisions of the license is
15 guilty of a fourth degree felony and shall be sentenced
16 pursuant to the provisions of Section 31-18-15 NMSA 1978.

17 Section 11. Section 30-31-2 NMSA 1978 (being Laws 1972,
18 Chapter 84, Section 2, as amended) is amended to read:

19 "30-31-2. DEFINITIONS. -- As used in the Controlled
20 Substances Act:

21 A. "administer" means the direct application of a
22 controlled substance by any means to the body of a patient or
23 research subject by a practitioner or his agent;

24 B. "agent" includes an authorized person who acts
25 on behalf of a manufacturer, distributor or dispenser. It

. 140032. 6

underscored material = new
[bracketed material] = delete

1 does not include a common or contract carrier, public
2 warehouseman or employee of the carrier or warehouseman;

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

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

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

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

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

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

. 140032. 6

1 I. "dispenser" means a practitioner who dispenses
2 and includes hospitals, pharmacies and clinics where
3 controlled substances are dispensed;

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

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

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

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

underscored material = new
[bracketed material] = delete

1 (1) by a practitioner as an incident to his
2 administering or dispensing of a controlled substance in the
3 course of his professional practice; or

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

7 N. "marijuana":

8 (1) means all parts of the plant cannabis,
9 including any and all varieties, species and subspecies of the
10 genus cannabis, whether growing or not, the seeds thereof and
11 every compound, manufacture, salt, derivative, mixture or
12 preparation of the plant or its seeds; and

13 (2) [~~It~~] does not include the mature stalks
14 of the plant, hashish, tetrahydrocannabinols extracted or
15 isolated from marijuana, fiber produced from the stalks, oil
16 or cake made from the seeds of the plant, any other compound,
17 manufacture, salt, derivative, mixture or preparation of the
18 mature stalks, fiber, oil or cake, [~~or~~] the sterilized seed of
19 the plant that is incapable of germination or any variety of
20 the species sativa of the plant genus cannabis that produces
21 not more than three-tenths of one percent of delta 9
22 tetrahydrocannabinol per weighted unit of flowering tops and
23 leaves and has a delta 9 tetrahydrocannabinol concentration of
24 not more than one percent on a dry weight basis and that is
25 not for human consumption;

. 140032. 6

1 0. "narcotic drug" means any of the following,
2 whether produced directly or indirectly by extraction from
3 substances of vegetable origin or independently by means of
4 chemical synthesis or by a combination of extraction and
5 chemical synthesis:

6 (1) opium and opiate and any salt, compound,
7 derivative or preparation of opium or opiate;

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

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

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

21 P. "opiate" means any substance having an
22 addiction-forming or addiction-sustaining liability similar to
23 morphine or being capable of conversion into a drug having
24 addiction-forming or addiction-sustaining liability. "Opiate"
25 does not include, unless specifically designated as controlled

underscored material = new
[bracketed material] = delete

1 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
2 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

3 "Opiate" does include its racemic and levorotatory forms;

4 Q. "person" means an individual, partnership,
5 corporation, association, institution, political subdivision,
6 government agency or other legal entity;

7 R. "practitioner" means a physician, doctor of
8 oriental medicine, dentist, physician assistant, certified
9 nurse practitioner, clinical nurse specialist, certified
10 nurse-midwife, veterinarian, pharmacist, pharmacist clinician
11 or other person licensed or certified to prescribe and
12 administer drugs that are subject to the Controlled Substances
13 Act;

14 S. "prescription" means an order given
15 individually for the person for whom is prescribed a
16 controlled substance, either directly from the prescriber to
17 the pharmacist or indirectly by means of a written order
18 signed by the prescriber, in accordance with the Controlled
19 Substances Act or rules adopted thereto;

20 T. "scientific investigator" means a person
21 registered to conduct research with controlled substances in
22 the course of his professional practice or research and
23 includes analytical laboratories;

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

underscored material = new
[bracketed material] = delete

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

. 140032. 6

underscored material = new
[bracketed material] = delete

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,
13 intended for use or designed for use in removing twigs and
14 seeds from, 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;

. 140032. 6

underscored material = new
[bracketed material] = delete

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
8 the 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
16 to hold burning material, such as a marijuana cigarette, that
17 has become too small to hold in the hand;

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

20 (g) chamber pipes;

21 (h) carburetor pipes;

22 (i) electric pipes;

23 (j) air-driven pipes;

24 (k) chills;

25 (l) bongs; or

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- (m) ice pipes or chillers; and
- (13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
 - (a) statements by the owner or by anyone in control of the object concerning its use;
 - (b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;
 - (c) the proximity of the object to controlled substances or controlled substance analogs;
 - (d) the existence of any residue of a controlled substance or controlled substance analog on the object;
 - (e) instructions, written or oral, provided with the object concerning its use;
 - (f) descriptive materials accompanying the object that explain or depict its use;
 - (g) the manner in which the object is displayed for sale; and
 - (h) expert testimony concerning its use;

W. "controlled substance analog" means a substance

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

- 8 (1) phenethyl amines;
- 9 (2) N-substituted piperidines;
- 10 (3) morphinans;
- 11 (4) ecgonines;
- 12 (5) quinazolines;
- 13 (6) substituted indoles; and
- 14 (7) arylcycloalkyl amines.

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

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

underscored material = new
[bracketed material] = delete

1 Y. "drug-free school zone" means a public school
2 or property that is used for public school purposes and the
3 area within one thousand feet of the school property line, but
4 it does not mean any post-secondary school. "

5 Section 12. APPROPRIATION. --

6 A. One hundred fifty thousand dollars (\$150,000)
7 is appropriated from the general fund for expenditure in
8 fiscal year 2003 for the following:

9 (1) fifty thousand dollars (\$50,000) to the
10 board of regents of New Mexico state university to establish
11 and maintain databases, a seed bank and a seed certification
12 program pursuant to the Industrial Hemp Licensing Act;

13 (2) fifty thousand dollars (\$50,000) to the
14 regulation and licensing department to implement the
15 Industrial Hemp Licensing Act; and

16 (3) fifty thousand dollars (\$50,000) to the
17 department of public safety to educate law enforcement
18 officers regarding the identification of industrial hemp and
19 to implement a law enforcement program regarding the growth,
20 sale and processing of industrial hemp pursuant to the
21 Industrial Hemp Licensing Act.

22 B. Any unexpended or unencumbered balance
23 remaining at the end of fiscal year 2003 shall revert to the
24 general fund.

25 Section 13. EMERGENCY. --It is necessary for the public

underscored material = new
[bracketed material] = delete

1 peace, health and safety that this act take effect
2 immediately.

3 - 19 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25