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HOUSE BILL 582

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pauline K. Gubbels

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

**RELATING TO AGRICULTURE; LEGALIZING THE GROWING OR POSSESSION
OF INDUSTRIAL HEMP; IMPOSING DUTIES ON THE NEW MEXICO
DEPARTMENT OF AGRICULTURE; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.**

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

Section 1. "[NEW MATERIAL] INDUSTRIAL HEMP--LICENSURE. --

**A. As used in this section, "industrial hemp"
means any variety of the species sativa, of the plant genus
cannabis, that produces not more than three-tenths of one
percent of delta 9 tetrahydrocannabinol per weighted unit of
flowering tops and leaves and has a delta 9
tetrahydrocannabinol concentration of not more than one
percent on a dry weight basis.**

B. Industrial hemp may be grown or possessed by a

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1 person in the state if the industrial hemp is grown from seeds
2 obtained from an industrial hemp seed growing facility and
3 seed bank managed and supervised by the New Mexico department
4 of agriculture in compliance with applicable federal law and
5 regulations. The department shall implement a receipt system
6 for the distribution of the seeds to ensure a method by which
7 a person growing industrial hemp may verify the origin of the
8 seeds.

9 C. The New Mexico department of agriculture shall
10 develop, manage and maintain an industrial hemp seed growing
11 facility and seed bank.

12 D. The regulation and licensing department shall:

13 (1) adopt rules for the issuance of licenses
14 for the production and testing of industrial hemp; and

15 (2) issue an industrial hemp license to an
16 applicant who has no previous drug-related felony conviction
17 and submits an application for licensure that contains:

18 (a) the name and address of the
19 applicant;

20 (b) the legal description of the land
21 to be used for production of industrial hemp;

22 (c) any other information required for
23 completion of a nationwide criminal history check; and

24 (d) an application fee of at least one
25 hundred fifty dollars (\$150) plus any additional costs of the

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1 administration of the license.

2 E. A person who has obtained an industrial hemp
3 license from the regulation and licensing department may
4 plant, grow, harvest, possess, process, sell and buy
5 industrial hemp. The license shall be valid for one year.

6 F. An industrial hemp licensee shall allow the
7 regulation and licensing department access to property of the
8 licensee for examining the crop and testing the industrial
9 hemp for levels of tetrahydrocannabinol.

10 G. A person who fraudulently obtains an industrial
11 hemp license or violates its provisions is guilty of a fourth
12 degree felony and shall be sentenced pursuant to the
13 provisions of Section 31-18-15 NMSA 1978. "

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 his agent;

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

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
5 substance listed in Schedules I through V of the Controlled
6 Substances Act or ~~[regulations]~~ 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
25 controlled 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
7 United 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,
15 preparation, compounding, conversion or processing of a
16 controlled substance or controlled substance analog by
17 extraction from substances of natural origin or independently
18 by means of chemical synthesis or by a combination of
19 extraction and chemical synthesis and includes any packaging
20 or repackaging of the substance or labeling or relabeling of
21 its container, except that this term does not include the
22 preparation or compounding of a controlled substance:

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

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

4 N. except as provided in Paragraph (2) of this
5 subsection, "marijuana":

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

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

23 0. "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
10 all parts of the plant of the species *Papaver somniferum* L.
11 except 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
15 equivalent of any of these substances except decocainized coca
16 leaves or extractions of coca leaves that do not contain
17 cocaine or 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, doctor of
5 oriental medicine, dentist, physician assistant, certified
6 nurse practitioner, clinical nurse specialist, certified
7 nurse-midwife, veterinarian or other person licensed or
8 certified to prescribe and administer drugs that are subject
9 to the Controlled Substances Act;

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

16 T. "scientific investigator" means a person
17 registered to conduct research with controlled substances in
18 the course of his professional practice or research and
19 includes analytical laboratories;

20 U. "ultimate user" means a person who lawfully
21 possesses a controlled substance for his own use or for the
22 use of a member of his household or for administering to an
23 animal under the care, custody and control of the person or by
24 a member of his 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,
9 intended for use or designed for use in removing twigs and
10 seeds from, 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
4 the 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
12 to hold burning material, such as a marijuana cigarette, that
13 has become too small to hold in the hand;

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

16 (g) chamber pipes;

17 (h) carburetor pipes;

18 (i) electric pipes;

19 (j) air-driven pipes;

20 (k) chillams;

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
3 anyone in control of the object concerning its use;

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

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

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1 to that of controlled substances in Schedule I, II, III, IV or
2 V. Examples of chemical classes in which controlled substance
3 analogs are found include the following:

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

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

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

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