

1 SENATE BILL 377

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND
20 PURPOSE.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 B. ensure the participation by and inclusion of
23 individual farmers, agricultural cooperatives and businesses in
24 the rulemaking process.

25 Section 5. [NEW MATERIAL] IMPLEMENTATION--FEES.--

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

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

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

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

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

14 B. A grower shall maintain records showing:

15 (1) the origin of the seed purchased and
16 planted;

17 (2) the quantity of the seed purchased and
18 planted;

19 (3) the amount of industrial hemp harvested
20 and sold; and

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

23 C. The New Mexico department of agriculture shall
24 help to ensure availability of seed. The department shall:

25 (1) maintain an authorized list of certified

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1 seed sources for industrial hemp;

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

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

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

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

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

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

24 G. Fees collected pursuant to this section are
25 appropriated to the New Mexico department of agriculture to

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1 carry out the provisions of the Industrial Hemp Farming Act.

2 Section 6. [NEW MATERIAL] DEPARTMENT OF PUBLIC
3 SAFETY--DUTIES AND POWERS.--The department of public safety:

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

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

11 C. shall train law enforcement officers to identify
12 industrial hemp;

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

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

21 Section 7. [NEW MATERIAL] COOPERATION BETWEEN
22 AGENCIES.--The New Mexico department of agriculture and the
23 department of public safety shall cooperate fully with one
24 another to implement and enforce the provisions of the
25 Industrial Hemp Farming Act.

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

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

8 "30-31-2. DEFINITIONS.--As used in the Controlled
9 Substances Act:

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

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

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

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

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

24 F. "counterfeit substance" means a controlled
25 substance that bears the unauthorized trademark, trade name,

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1 imprint, number, device or other identifying mark or likeness
2 of a manufacturer, distributor or dispenser other than the
3 person who in fact manufactured, distributed or dispensed the
4 controlled substance;

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

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

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

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

21 K. "drug" or "substance" means substances
22 recognized as drugs in the official United States
23 pharmacopoeia, official homeopathic pharmacopoeia of the United
24 States or official national formulary or any respective
25 supplement to those publications. It does not include devices

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1 or their components, parts or accessories;

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

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

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

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

22 N. "marijuana" means all parts of the plant
23 cannabis, including any and all varieties, species and
24 subspecies of the genus Cannabis, whether growing or not, the
25 seeds thereof and every compound, manufacture, salt,

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

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

19 (1) opium and opiate and any salt, compound,
20 derivative or preparation of opium or opiate;

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

25 (3) opium poppy and poppy straw, including all

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1 parts of the plant of the species *Papaver somniferum* L. except
2 its seeds; or

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

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

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

20 R. "practitioner" means a physician, certified
21 advanced practice chiropractic physician, doctor of oriental
22 medicine, dentist, physician assistant, certified nurse
23 practitioner, clinical nurse specialist, certified nurse-
24 midwife, prescribing psychologist, veterinarian, pharmacist,
25 pharmacist clinician or other person licensed or certified to

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1 prescribe and administer drugs that are subject to the
2 Controlled Substances Act;

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

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

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

23 V. "drug paraphernalia" means all equipment,
24 products and materials of any kind that are used, intended for
25 use or designed for use in planting, propagating, cultivating,

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1 growing, harvesting, manufacturing, compounding, converting,
2 producing, processing, preparing, testing, analyzing,
3 packaging, repackaging, storing, containing, concealing,
4 injecting, ingesting, inhaling or otherwise introducing into
5 the human body a controlled substance or controlled substance
6 analog in violation of the Controlled Substances Act. It
7 includes:

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

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

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

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

24 (5) scales or balances used, intended for use
25 or designed for use in weighing or measuring controlled

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1 substances or controlled substance analogs;

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

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

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

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

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

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

24 (12) objects used, intended for use or
25 designed for use in ingesting, inhaling or otherwise

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1 introducing marijuana, cocaine, hashish or hashish oil into the
2 human body, such as:

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

6 (b) water pipes;

7 (c) carburetion tubes and devices;

8 (d) smoking and carburetion masks;

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

12 (f) miniature cocaine spoons and cocaine
13 vials;

14 (g) chamber pipes;

15 (h) carburetor pipes;

16 (i) electric pipes;

17 (j) air-driven pipes;

18 (k) chilams;

19 (l) bongs; or

20 (m) ice pipes or chillers; and

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

25 (a) statements by the owner or by anyone

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1 in control of the object concerning its use;

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

6 (c) the proximity of the object to
7 controlled substances or controlled substance analogs;

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

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

13 (f) descriptive materials accompanying
14 the object that explain or depict its use;

15 (g) the manner in which the object is
16 displayed for sale; and

17 (h) expert testimony concerning its use;

18 W. "controlled substance analog" means a substance
19 other than a controlled substance that has a chemical structure
20 substantially similar to that of a controlled substance in
21 Schedule I, II, III, IV or V or that was specifically designed
22 to produce effects substantially similar to that of controlled
23 substances in Schedule I, II, III, IV or V. Examples of
24 chemical classes in which controlled substance analogs are
25 found include the following:

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

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

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

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

24 Z. "valid practitioner-patient relationship" means
25 a professional relationship, as defined by the practitioner's

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1 licensing board, between the practitioner and the patient."

2 Section 10. APPROPRIATION.--

3 A. One hundred fifty thousand dollars (\$150,000) is
4 appropriated from the general fund for expenditure in fiscal
5 year 2010 for the following:

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

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

16 B. Any unexpended or unencumbered balance remaining
17 at the end of fiscal year 2010 shall revert to the general
18 fund.

19 Section 11. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2009.