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SENATE BILL 3

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Cisco McSorley

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

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1 weight basis.

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

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

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

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

25 F. New Mexico state university shall establish a

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

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

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

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

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

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

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

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

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

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

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

24 I. "dispenser" means a practitioner who dispenses
25 and includes hospitals, pharmacies and clinics where controlled

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1 substances are dispensed;

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

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

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

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

24 (1) by a practitioner as an incident to
25 administering or dispensing a controlled substance in the

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1 course of the practitioner's professional practice; or

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

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

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

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

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

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

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

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

24 Q. "person" means an individual, partnership,
25 corporation, association, institution, political subdivision,

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1 government agency or other legal entity;

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

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

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

25 U. "ultimate user" means a person who lawfully

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

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

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

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

24 (3) isomerization devices used, intended for
25 use or designed for use in increasing the potency of any

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1 species of plant that is a controlled substance;

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

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

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

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

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

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

24 (10) containers and other objects used,
25 intended for use or designed for use in storing or concealing

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1 controlled substances or controlled substance analogs;

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

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

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

13 (b) water pipes;

14 (c) carburetion tubes and devices;

15 (d) smoking and carburetion masks;

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

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

21 (g) chamber pipes;

22 (h) carburetor pipes;

23 (i) electric pipes;

24 (j) air-driven pipes;

25 (k) chilams;

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- 1 (l) bongs; or
2 (m) ice pipes or chillers; and
3 (13) in determining whether an object is drug
4 paraphernalia, a court or other authority should consider, in
5 addition to all other logically relevant factors, the
6 following:
7 (a) statements by the owner or by anyone
8 in control of the object concerning its use;
9 (b) the proximity of the object, in time
10 and space, to a direct violation of the Controlled Substances
11 Act or any other law relating to controlled substances or
12 controlled substance analogs;
13 (c) the proximity of the object to
14 controlled substances or controlled substance analogs;
15 (d) the existence of any residue of a
16 controlled substance or controlled substance analog on the
17 object;
18 (e) instructions, written or oral,
19 provided with the object concerning its use;
20 (f) descriptive materials accompanying
21 the object that explain or depict its use;
22 (g) the manner in which the object is
23 displayed for sale; and
24 (h) expert testimony concerning its use;
25 W. "controlled substance analog" means a substance

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

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

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;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) lysergic acid diethylamide;
2 (10) marijuana;
3 (11) mescaline;
4 (12) peyote, except as otherwise provided in
5 the Controlled Substances Act;

6 (13) N-ethyl-3-piperidyl benzilate;
7 (14) N-methyl-3-piperidyl benzilate;
8 (15) psilocybin;
9 (16) psilocyn;
10 (17) tetrahydrocannabinols;
11 (18) hashish;
12 (19) synthetic cannabinoids, including:

13 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
14 naphthoyl)indole];

15 (b) 1-butyl-3-(1-naphthoyl)indole;

16 (c) 1-hexyl-3-(1-naphthoyl)indole;

17 (d) 1-pentyl-3-(1-naphthoyl)indole;

18 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
19 indole;

20 (f) cannabicyclohexanol (CP 47, 497 and
21 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
22 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
23 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

24 (g) 6aR,10aR)-9-(hydroxymethyl)
25 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,

1 10a-tetrahydrobenzo[c]chromen-1-ol);

2 (h) dexanabinol, (6aS,10aS)

3 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)

4 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

5 (i) 1-pentyl-3-(4-chloro naphthoyl)

6 indole;

7 (j) (2-methyl-1-propyl-1H-indol-3-yl)

8 -1-naphthalenyl-methanone; and

9 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy

10 cyclohexyl)-phenol;

11 (20) 3,4-methylenedioxy methcathinone;

12 (21) 3,4-methylenedioxy pyrovalerone;

13 (22) 4-methylmethcathinone;

14 (23) 4-methoxymethcathinone;

15 (24) 3-fluoromethcathinone; and

16 (25) 4-fluoromethcathinone;

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

25 E. the enumeration of marijuana,

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1 tetrahydrocannabinols or chemical derivatives of
2 tetrahydrocannabinol as Schedule I controlled substances does
3 not apply to:

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

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

13 F. controlled substances added to Schedule I by
14 rule adopted by the board pursuant to Section 30-31-3 NMSA
15 1978."