In 2015, North Carolina Department of Agriculture and Consumer Services created the Industrial Hemp Commission, in response to growing demand for CBD products. But, according to the US Department of Agriculture:

Marijuana and industrial hemp are different varieties of the same plant species, Cannabis sativa . . . [A] study of 97 Cannabis strains concluded that short of chemical analysis of the THC content, there was no way to distinguish between marijuana and hemp varieties.


So the legislature quietly amends the definition of marijuana in N.C.G.S. 90-87(16) and adds:

The term does not include industrial hemp as defined in G.S. 106-568.51, when the industrial hemp is produced and used in compliance with rules issued by the North Carolina Industrial Hemp Commission.

(The rules it refers to are rules governing the growth, processing, and movement to market of products, and nothing beyond that)

And N.C.G.S. 106-568.51(7) defines Industrial Hemp as:

All parts and varieties of the plant Cannabis sativa (L.), cultivated or possessed by a grower licensed by the Commission, whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

State v. Ward, 364 N.C. 133 (2010), required chemical analysis of controlled substances based on the existence of counterfeit powders/pills which can’t otherwise be distinguished without chemical analysis. Chemical analysis as the only way to distinguish two substances is the basis for later cases that do not apply Ward to marijuana. Post-Ward cases rely on State v. Fletcher, 92 N.C. App. 50 (1988), where an officer was admitted as an expert based on training and experience and testified to the identity of a substance as marijuana without chemical analysis.

Three distinctions now support requiring chemical analysis to identify marijuana:

1. Marijuana is now defined by its chemical composition in the statute.
2. In Fletcher, identification of the substance by the witness was permitted as expert testimony because “they were better qualified than the jury to form an opinion as to the contents of the clear plastic bag.” Now, they’re not. Their ability to see and smell the substance is as useful as any fact-finder in identifying the substance. Ward specifically warns that the expert’s remarkable credentials presented a compelling need to halt his testimony, because it would cause the jury to be unduly persuaded and for his testimony to be “shrouded with an aura of near infallibility” when based on an insufficient method of proof.
3. Ward and Fletcher were decided before State v. McGrady, 368 N.C. 880 (2016). McGrady raised the requirements of Rule 702 from the “decidedly less . . . rigorous” Howerton standard to the Daubert standard. See McGrady for a thorough application of the more strenuous requirements.