

Senator John L. Valentine proposes the following substitute bill:

PLANT EXTRACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Stephen H. Urquhart

6	Cosponsors:	Lynn N. Hemingway	Dixon M. Pitcher
7	Rebecca Chavez-Houck	John Knotwell	Marie H. Poulson
8	Jerry B. Anderson	Ronda Rudd Menlove	Marc K. Roberts
9	Susan Duckworth	Jim Nielson	Ryan D. Wilcox
10	Brian M. Greene	Curtis Oda	Larry B. Wiley
11	Richard A. Greenwood	Lee B. Perry	
12	Keith Grover	Jeremy A. Peterson	

LONG TITLE

General Description:

This bill makes amendments to the Utah Code related to hemp.

Highlighted Provisions:

This bill:

▶ permits the Department of Agriculture and a department-certified higher education institution to grow industrial hemp for the purpose of agricultural or academic research;

▶ exempts an individual with intractable epilepsy who uses or possesses hemp extract, and complies with other requirements, from the penalties related to possession or use of the hemp extract under the Controlled Substances Act;



- 25 ▶ exempts an individual who possesses hemp extract and administers the hemp
- 26 extract to a minor with intractable epilepsy from the penalties related to
- 27 administering the hemp extract to a minor under the Controlled Substances Act;
- 28 ▶ requires the Department of Health to issue a hemp extract registration card to an
- 29 individual who meets certain requirements;
- 30 ▶ requires a neurologist signing a statement that an individual or minor could benefit
- 31 from treatment with hemp extract to keep a record of the neurologist's evaluation
- 32 and transmit the record to the Department of Health;
- 33 ▶ requires the Department of Health to maintain a database of neurologist evaluations;
- 34 ▶ repeals certain provisions on July 1, 2016; and
- 35 ▶ makes technical and conforming amendments.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill takes effect on July 1, 2014.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **63I-1-226**, as last amended by Laws of Utah 2013, Chapters 32, 60, and 195

43 **63I-1-258**, as last amended by Laws of Utah 2013, Chapters 55, 87, 222, 278, and 351

44 ENACTS:

45 **4-41-101**, Utah Code Annotated 1953

46 **4-41-102**, Utah Code Annotated 1953

47 **4-41-103**, Utah Code Annotated 1953

48 **26-55-101**, Utah Code Annotated 1953

49 **26-55-102**, Utah Code Annotated 1953

50 **26-55-103**, Utah Code Annotated 1953

51 **58-37-4.3**, Utah Code Annotated 1953



53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **4-41-101** is enacted to read:

55 **CHAPTER 41. INDUSTRIAL HEMP RESEARCH ACT**

56 **4-41-101. Title.**

57 This chapter is known as the "Industrial Hemp Research Act."

58 Section 2. Section **4-41-102** is enacted to read:

59 **4-41-102. Definitions.**

60 For purposes of this chapter:

61 (1) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with
62 a concentration of less than 0.3% tetrahydrocannabinol by weight.

63 (2) "Industrial hemp certificate" means a certificate issued by the department to a
64 higher education institution to grow or cultivate industrial hemp under Subsection [4-41-103\(1\)](#).

65 Section 3. Section **4-41-103** is enacted to read:

66 **4-41-103. Industrial hemp -- Agricultural and academic research.**

67 (1) The department may grow or cultivate industrial hemp for the purpose of
68 agricultural or academic research.

69 (2) The department shall certify a higher education institution to grow or cultivate
70 industrial hemp for the purpose of agricultural or academic research if the higher education
71 institution submits to the department:

72 (a) the location where the higher education institution intends to grow or cultivate
73 industrial hemp;

74 (b) the higher education institution's research plan; and

75 (c) the name of an employee of the higher education institution who will supervise the
76 industrial hemp growth, cultivation, and research.

77 (3) The department shall maintain a list of each industrial hemp certificate holder.

78 (4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
79 Administrative Rulemaking Act, to ensure any industrial hemp project meets the standards of
80 an agricultural pilot project, as defined by Section 7606 of the U.S. Agricultural Act of 2014.

81 Section 4. Section **26-55-101** is enacted to read:

82 **CHAPTER 55. HEMP EXTRACT REGISTRATION ACT**

83 **26-55-101. Title.**

84 This chapter is known as the "Hemp Extract Registration Act."

85 Section 5. Section **26-55-102** is enacted to read:

86 **26-55-102. Definitions.**

87 As used in this chapter:

88 (1) "Hemp extract" is as defined in Section [58-37-4.3](#).

89 (2) "Hemp extract registration card" means a card issued by the department under
90 Subsection [26-55-103](#)(1) or (2).

91 (3) "Intractable epilepsy" means epilepsy that, as determined by a neurologist, does not
92 respond to three or more treatment options overseen by the neurologist.

93 (4) "Neurologist" means an individual who is licensed under Title 58, Chapter 67, Utah
94 Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, that is
95 board certified in neurology.

96 (5) "Parent" means a parent or legal guardian of a minor who is responsible for the
97 minor's medical care.

98 (6) "Registrant" means an individual to whom the department issues a hemp extract
99 registration card under Subsection [26-55-103](#)(1) or (2).

100 Section 6. Section **26-55-103** is enacted to read:

101 **26-55-103. Hemp extract registration card.**

102 (1) The department shall issue a hemp extract registration card to an individual who:

103 (a) is at least 18 years of age;

104 (b) is a Utah resident;

105 (c) provides the department with a statement signed by a neurologist that:

106 (i) indicates that the individual:

107 (A) suffers from intractable epilepsy; and

108 (B) may benefit from treatment with hemp extract; and

109 (ii) is consistent with a record from the neurologist, concerning the individual,
110 contained in the database described in Subsection (8);

111 (d) pays the department a fee in an amount established by the department under
112 Subsection (5); and

113 (e) submits an application to the department, on a form created by the department, that
114 contains:

115 (i) the individual's name and address;

116 (ii) a copy of the individual's valid photo identification; and

117 (iii) any other information the department considers necessary to implement this

118 chapter.

119 (2) The department shall issue a hemp extract registration card to a parent who:

120 (a) is at least 18 years of age;

121 (b) is a Utah resident;

122 (c) provides the department with a statement signed by a neurologist that:

123 (i) indicates that a minor in the parent's care:

124 (A) suffers from intractable epilepsy; and

125 (B) may benefit from treatment with hemp extract; and

126 (ii) is consistent with a record from the neurologist, concerning the minor, contained in
127 the database described in Subsection (8);

128 (d) pays the department a fee in an amount established by the department under
129 Subsection (5); and

130 (e) submits an application to the department, on a form created by the department, that
131 contains:

132 (i) the parent's name and address;

133 (ii) the minor's name;

134 (iii) a copy of the parent's valid photo identification; and

135 (iv) any other information the department considers necessary to implement this

136 chapter.

137 (3) The department shall maintain a record of:

138 (a) the name of each registrant; and

139 (b) the name of each minor receiving care from a registrant.

140 (4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
141 Administrative Rulemaking Act, to:

142 (a) establish the information an applicant is required to provide to the department under
143 Subsections (1)(e)(iii) and (2)(e)(iv); and

144 (b) establish, in accordance with recommendations from the Department of Public
145 Safety, the form and content of the hemp extract registration card.

146 (5) The department shall establish fees in accordance with Section [63J-1-504](#) that are
147 no greater than the amount necessary to cover the cost the department incurs to implement this
148 chapter.

149 (6) The registration cards issued under Subsections (1) and (2) are:
150 (a) valid for one year; and
151 (b) renewable, if, at the time of renewal, the registrant meets the requirements of either
152 Subsection (1) or (2).

153 (7) The neurologist who signs the statement described in Subsections (1)(c) or (2)(c)
154 shall:

155 (a) keep a record of the neurologist's evaluation and observation of a patient who is a
156 registrant or minor under a registrant's care, including the patient's response to hemp extract;
157 and

158 (b) transmit the record described in Subsection (7)(a) to the department.

159 (8) The department shall:

160 (a) maintain a database of the records described in Subsection (7); and

161 (b) treat the records as identifiable health data, as defined in Section [26-3-1](#).

162 (9) The department may share the records described in Subsection (8) with a higher
163 education institution for the purpose of studying hemp extract.

164 Section 7. Section **58-37-4.3** is enacted to read:

165 **58-37-4.3. Exemption for use or possession of hemp extract.**

166 (1) As used in this section, "hemp extract" means an extract from a cannabis plant, or a
167 mixture or preparation containing cannabis plant material, that:

168 (a) is composed of less than 0.3% tetrahydrocannabinol by weight;

169 (b) is composed of at least 15% cannabidiol by weight; and

170 (c) contains no other psychoactive substance.

171 (2) Notwithstanding any other provision of this chapter, an individual who possesses or
172 uses hemp extract is not subject to the penalties described in this chapter for possession or use
173 of the hemp extract if the individual:

174 (a) possesses or uses the hemp extract only to treat intractable epilepsy, as defined in
175 Section [26-55-102](#);

176 (b) originally obtained the hemp extract from a sealed container with a label indicating
177 the hemp extract's place of origin, and a number that corresponds with a certificate of analysis;

178 (c) possesses, in close proximity to the hemp extract, a certificate of analysis that:

179 (i) has a number that corresponds with the number on the label described in Subsection

180 (2)(b):
181 (ii) indicates the hemp extract's ingredients, including its percentages of
182 tetrahydrocannabinol and cannabidiol by weight;
183 (iii) is created by a laboratory that is:
184 (A) not affiliated with the producer or the hemp extract; and
185 (B) licensed in the state where the hemp extract was produced; and
186 (iv) is transmitted by the laboratory to the Department of Health; and
187 (d) has a current hemp extract registration card issued by the Department of Health
188 under Section 26-55-103.

189 (3) Notwithstanding any other provision of this chapter, an individual who possesses
190 hemp extract lawfully under Subsection (2) and administers hemp extract to a minor is not
191 subject to the penalties described in this chapter for administering the hemp extract to the
192 minor if:
193 (a) the individual is the minor's parent or legal guardian; and
194 (b) the individual is registered with the Department of Health as the minor's parent
195 under Section 26-55-103.

196 Section 8. Section **63I-1-226** is amended to read:

197 **63I-1-226. Repeal dates, Title 26.**

198 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
199 1, 2015.

200 (2) Section 26-10-11 is repealed July 1, 2015.

201 (3) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,
202 2013.

203 (4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed
204 July 1, 2018.

205 (5) Section 26-21-211 is repealed July 1, 2013.

206 (6) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.

207 (7) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2016.

208 (8) Section 26-38-2.5 is repealed July 1, 2017.

209 (9) Section 26-38-2.6 is repealed July 1, 2017.

210 (10) Title 26, Chapter 55, Hemp Extract Registration Act, is repealed July 1, 2016.

211 Section 9. Section **63I-1-258** is amended to read:
212 **63I-1-258. Repeal dates, Title 58.**
213 (1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
214 repealed July 1, 2016.
215 (2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.
216 (3) Section [58-17b-309.5](#) is repealed July 1, 2015.
217 (4) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.
218 (5) Section [58-37-4.3](#) is repealed July 1, 2016.
219 ~~[(5)]~~ (6) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1,
220 2023.
221 ~~[(6)]~~ (7) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing
222 Act, is repealed July 1, 2019.
223 ~~[(7)]~~ (8) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,
224 2015.
225 ~~[(8)]~~ (9) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is
226 repealed July 1, 2023.
227 ~~[(9)]~~ (10) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1,
228 2014.
229 ~~[(10)]~~ (11) Section [58-69-302.5](#) is repealed on July 1, 2015.
230 ~~[(11)]~~ (12) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.
231 Section 10. **Effective date.**
232 This bill takes effect on July 1, 2014.

Legislative Review Note
as of 3-10-14 4:42 PM

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a

high probability of being declared unconstitutional by a court.

This bill: (1) defines hemp extract as an extract of the cannabis plant or a mixture containing cannabis plant material that contains less than 0.3% tetrahydrocannabinol by weight and contains no other psychoactive substance; (2) gives the Utah Department of Health the authority to issue registration cards to individuals who, based on a statement from a physician, could benefit from treatment by hemp extract or to individuals caring for a minor who, based on a statement from a physician, could benefit from treatment by hemp extract; (3) allows a registered individual to use or possess hemp extract; and (4) allows a registered individual to administer hemp extract to a minor.

The federal Controlled Substances Act defines "marihuana" as "all parts of the plant *Cannabis sativa* L., whether growing or not," and only exempts a compound or other mixture made from the "mature stalks" or sterilized seeds of the plant. 21 U.S.C. § 802(16) (2014). The act lists marihuana as a controlled substance and makes it illegal to possess a controlled substance without a prescription, or to possess a controlled substance with intent to distribute the substance. *Id.* at §§ 841, 844.

Under the Supremacy Clause in the U.S. Constitution, the U.S. Supreme Court has "long recognized that state laws that conflict with federal law are without effect." *Altira Group v. Good*, 555 U.S. 70 (2008). Federal law limits preemption under the federal Controlled Substances Act to those cases where a "positive conflict" exists between the Act and a state law, such that it is impossible for a party to comply with both state and federal requirements. See 21 U.S.C. § 903; *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

Under the definition used in this bill, substances that meet the bill's definition of hemp extract need not be made exclusively from the mature stalks or sterilized seeds of the cannabis plant, and therefore are likely to be considered "marihuana" under the federal Controlled Substances Act. Any substance that meets the federal Controlled Substances Act's definition of marihuana will trigger the possession and distribution prohibitions contained in the Act. An individual possessing or using hemp extract or administering hemp extract to a minor likely could not comply with the provisions of this bill without also violating federal law, creating a positive conflict with the bill and federal law. That positive conflict results in a high probability that a court will hold that the bill is preempted by federal law and unconstitutional under the Supremacy Clause.

Office of Legislative Research and General Counsel