

1 **PLANT EXTRACT AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Controlled Substances Act and the Utah Health Code  
10 related to hemp extract.

11 **Highlighted Provisions:**

12 This bill:

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

16 ▶ exempts an individual who possesses hemp extract and administers the hemp  
17 extract to a minor from the penalties related to administering the hemp extract to a  
18 minor under the Controlled Substances Act;

19 ▶ requires the Department of Health to issue a hemp extract registration card to an  
20 individual who meets certain requirements; and

21 ▶ makes technical and conforming amendments.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill takes effect on July 1, 2014.

26 **Utah Code Sections Affected:**

27 ENACTS:



- 28 [26-55-101](#), Utah Code Annotated 1953
- 29 [26-55-102](#), Utah Code Annotated 1953
- 30 [26-55-103](#), Utah Code Annotated 1953
- 31 [58-37-4.3](#), Utah Code Annotated 1953



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

34 Section 1. Section **26-55-101** is enacted to read:

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

36 **26-55-101. Title.**

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

38 Section 2. Section **26-55-102** is enacted to read:

39 **26-55-102. Definitions.**

40 As used in this chapter:

41 (1) "Applicant" means an individual who applies for a hemp extract registration card  
42 under Subsection [26-55-103](#)(1) or (2).

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

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

46 (4) "Parent" means a parent or legal guardian of a minor who is responsible for the  
47 minor's medical care.

48 (5) "Physician" is as defined in Section [58-67-102](#).

49 Section 3. Section **26-55-103** is enacted to read:

50 **26-55-103. Hemp extract registration card.**

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

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

53 (b) is a Utah resident;

54 (c) provides the department with a statement signed by a physician that the individual  
55 may benefit from treatment with hemp extract;

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

58 (e) submits an application to the department, on a form created by the department, that

59 contains:

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

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

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

63 chapter.

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

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

66 (b) is a Utah resident;

67 (c) provides the department with a statement signed by a physician that a minor in the  
68 parent's care may benefit from treatment with hemp extract;

69 (d) pays the department a fee in an amount established by the department under

70 Subsection (5); and

71 (e) submits an application to the department, on a form created by the department, that  
72 contains, at minimum:

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

74 (ii) the minor's name;

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

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

77 chapter.

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

79 (a) the names of each applicant to whom the department issues a hemp extract  
80 registration card; and

81 (b) the name of each minor receiving care from a parent who is issued a hemp extract  
82 registration card under Subsection (2).

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

85 (a) the information an applicant is required to provide the department under  
86 Subsections (1)(e) and (2)(e);

87 (b) the form of the application described in Subsections (1)(e) and (2)(e); and

88 (c) the form of the hemp extract registration card issued under Subsections (1) and (2).

89 (5) The department shall establish the fee described in Subsections (1)(d) and (2)(d) in

90 accordance with Section 63J-1-504 and may not establish a fee that is greater than an amount  
91 that will cover the cost the department incurs to implement this chapter.

92 (6) The department may, with an applicant's consent, release the applicant's name and  
93 contact information to a survey administrator to investigate the medical response to hemp  
94 extract of:

- 95 (a) the applicant; or
- 96 (b) a minor under the applicant's care.

97 Section 4. Section 58-37-4.3 is enacted to read:

98 **58-37-4.3. Exemption for use or possession of hemp extract.**

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

- 101 (a) is composed of less than 0.3% tetrahydrocannabinol by weight; and
- 102 (b) contains no other psychoactive substance.

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

- 106 (a) possesses or uses the hemp extract only for medical purposes; and
- 107 (b) obtains a hemp extract registration card issued by the Department of Health under  
108 Section 26-55-103.

109 (3) Notwithstanding any other provision of this chapter, an individual who possesses  
110 hemp extract lawfully under Subsection (2) and administers hemp extract to a minor is not  
111 subject to the penalties described in this chapter for administering the hemp extract to the  
112 minor if:

- 113 (a) the individual is the minor's parent or legal guardian; and
- 114 (b) the individual is registered with the Department of Health as the minor's parent  
115 under Section 26-55-103.

116 Section 5. **Effective date.**

117 This bill takes effect on July 1, 2014.

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 authorization 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 an authorized individual to use or possess hemp extract; and (4) allows an authorized 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**