

CANNABIS CULTIVATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill deals with the cultivation, processing, and sale of cannabis.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Agriculture and Food, by January 1, 2019, to ensure the cultivation and processing of cannabis in the state for academic or medical research purposes;
- ▶ authorizes the Department of Agriculture and Food to:
 - contract with a third party to cultivate or process cannabis; and
 - make rules;
- ▶ establishes a state dispensary for cannabis that has been processed into a medical dosage form;
- ▶ states that an individual who possesses, processes, or grows cannabis does not violate the Controlled Substances Act if the individual is authorized to possess, process, or grow cannabis for academic or medical research purposes; and
- ▶ directs the Department of Financial Institutions to issue cannabis payment processor licenses and enforce cannabis payment processor operating requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **7-1-401**, as last amended by Laws of Utah 2015, Chapter 284

33 **58-37-3.6**, as enacted by Laws of Utah 2017, Chapter 398

34 ENACTS:

35 **4-41-201**, Utah Code Annotated 1953

36 **4-41-202**, Utah Code Annotated 1953

37 **4-41-203**, Utah Code Annotated 1953

38 **4-41-204**, Utah Code Annotated 1953

39 **4-41-301**, Utah Code Annotated 1953

40 **4-41-302**, Utah Code Annotated 1953

41 **4-41-303**, Utah Code Annotated 1953

42 **4-41-304**, Utah Code Annotated 1953

43 **7-26-101**, Utah Code Annotated 1953

44 **7-26-102**, Utah Code Annotated 1953

45 **7-26-201**, Utah Code Annotated 1953

46 **7-26-202**, Utah Code Annotated 1953

47 **7-26-203**, Utah Code Annotated 1953

48 **7-26-204**, Utah Code Annotated 1953

49 **7-26-301**, Utah Code Annotated 1953

50 **7-26-401**, Utah Code Annotated 1953

51

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

53 Section 1. Section **4-41-201** is enacted to read:

54 **Part 2. Cannabis Cultivation**

55 **4-41-201. Title.**

56 This part is known as "Cannabis Cultivation."

57 Section 2. Section **4-41-202** is enacted to read:

58 **4-41-202. Definitions.**

59 As used in this part:

60 (1) "Cannabis" means any part of a cannabis plant, whether growing or not, with
61 tetrahydrocannabinol content greater than 0.3%.

62 (2) "Medicinal dosage form" means the same as that term is defined in Section
63 58-37-3.6.

64 Section 3. Section **4-41-203** is enacted to read:

65 **4-41-203. Department to cultivate cannabis.**

66 (1) The department shall, by January 1, 2019:

67 (a) ensure the cultivation of cannabis in the state for academic or medical research
68 purposes; and

69 (b) ensure that cannabis grown in the state pursuant to Subsection (1)(a) may be
70 processed into a medicinal dosage form.

71 (2) The department may contract with a private entity to fulfill the duty described in
72 Subsection (1).

73 (3) In issuing a contract to a private entity as described in Subsection (2), the
74 department shall:

75 (a) comply with Title 63G, Chapter 6a, Utah Procurement Code; and

76 (b) provide regular, strict oversight of a private entity awarded a contract to ensure that
77 the private entity complies with the awarded contract, state law, and department rules.

78 (4) The department shall set a fee, to be paid by a person who is awarded a contract
79 under Subsections (2) and (3), consistent with Section 4-2-103.

80 Section 4. Section **4-41-204** is enacted to read:

81 **4-41-204. Department to make rules regarding cultivation and processing.**

82 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
83 Administrative Rulemaking Act:

84 (1) to ensure:

85 (a) cannabis cultivated in the state pursuant to this chapter is cultivated from

86 state-approved seed sources; and

87 (b) a private entity contracted to cultivate cannabis has sufficient security protocols;

88 and

89 (2) governing an entity that puts cannabis into a medicinal dosage form, including

90 standards for health and safety.

91 Section 5. Section **4-41-301** is enacted to read:

92 **4-41-301. Department to establish a state dispensary.**

93 (1) The department shall by July 1, 2019, establish a state dispensary as described in

94 this section.

95 (2) The state dispensary shall:

96 (a) receive cannabis that has been processed into a medicinal dosage form by a private
97 entity with a contract pursuant to Section [4-41-203](#) from the private entity; and

98 (b) sell the cannabis that has been processed into a medicinal dosage form at the price
99 set by the department pursuant to Section [4-41-303](#) to any of the following purchasers:

100 (i) a qualified academic research institution, as described in Section [4-41-304](#);

101 (ii) a qualified medical research institution, as described in Section [4-41-304](#); or

102 (iii) a patient with a recommendation to try cannabis from the patient's physician.

103 (3) In selling cannabis that has been processed into a medicinal dosage form to a
104 patient, as described in Subsection (2)(b)(iii), the state dispensary shall only sell up to the
105 amount of cannabis recommended by the patient's physician.

106 (4) (a) The department may contract with a private entity to serve as a courier for the
107 state dispensary, delivering purchased cannabis that has been processed into a medicinal
108 dosage form to a purchaser described in Subsection (2).

109 (b) In issuing the contract described in Subsection (4)(a), the department shall comply
110 with Title 63G, Chapter 6a, Utah Procurement Code, and provide regular oversight of the
111 private entity.

112 Section 6. Section **4-41-302** is enacted to read:

113 **4-41-302. Labeling.**

114 The department shall, in conjunction with the Division of Occupational and
115 Professional Licensing, establish by rule in accordance with Title 63G, Chapter 3, Utah
116 Administrative Rulemaking Act, standards for labeling cannabis that has been processed into a
117 medicinal dosage form and is being sold at the state dispensary established in Section
118 4-41-301.

119 Section 7. Section **4-41-303** is enacted to read:

120 **4-41-303. Department to set prices.**

121 (1) The department shall set a price schedule for cannabis that has been processed into
122 a medicinal dosage form and sold at the state dispensary.

123 (2) The price schedule described in Subsection (1) shall take into consideration:

124 (a) the demand for the product;

125 (b) the labor required to cultivate and process the product into a medicinal dosage
126 form;

127 (c) the regulatory burden involved in the creation of the product; and

128 (d) any other consideration the department considers necessary.

129 (3) The price set by the department under Subsection (1) shall include:

130 (a) sales tax, to be remitted by the state dispensary to the State Tax Commission; and

131 (b) a set fee, to be retained by the department to fund the state dispensary and the
132 courier described in Subsection 4-41-301(3), if any.

133 Section 8. Section **4-41-304** is enacted to read:

134 **4-41-304. Department to make rules regarding purchasers, communication --**
135 **Report.**

136 (1) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
137 Administrative Rulemaking Act:

138 (a) to determine whether an entity engaged in academic or medical research qualifies to
139 purchase cannabis pursuant to this chapter; and

140 (b) on how the state dispensary shall provide information to a patient's physician after a
141 patient purchases cannabis from the state dispensary.

142 (2) The department shall immediately report to the Legislature, or the Health and
143 Human Services Interim Committee if the Legislature is not in general session, if cannabis is
144 removed from the list of Schedule I drugs under the Controlled Substances Act so that the
145 Legislature may repeal this chapter and any relevant section in state code.

146 Section 9. Section **7-1-401** is amended to read:

147 **7-1-401. Fees payable to commissioner.**

148 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
149 institution under the jurisdiction of the department shall pay an annual fee:

150 (a) computed by averaging the total assets of the depository institution shown on each
151 quarterly report of condition for the depository institution for the calendar year immediately
152 proceeding the date on which the annual fee is due under Section [7-1-402](#); and

153 (b) at the following rates:

154 (i) on the first \$5,000,000 of these assets, the greater of:

155 (A) 65 cents per \$1,000; or

156 (B) \$500;

157 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

158 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

159 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

160 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

161 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

162 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

163 (2) A financial institution with a trust department shall pay a fee determined in
164 accordance with Subsection (7) for each examination of the trust department by a state
165 examiner.

166 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
167 pay a basic fee of \$25 instead of the fee required under Subsection (1).

168 (4) A trust company that is not a depository institution or a subsidiary of a depository
169 institution holding company shall pay:

170 (a) an annual fee of \$500; and

171 (b) an additional fee determined in accordance with Subsection (7) for each
172 examination by a state examiner.

173 (5) Any person or institution under the jurisdiction of the department that does not pay
174 a fee under Subsections (1) through (4) shall pay:

175 (a) an annual fee of \$200; and

176 (b) an additional fee determined in accordance with Subsection (7) for each
177 examination by a state examiner.

178 (6) A person filing an application or request under Section [7-1-503](#), [7-1-702](#), [7-1-703](#),
179 [7-1-704](#), [7-1-713](#), [7-5-3](#), [~~or~~] [7-18a-202](#), or [7-26-201](#) shall pay:

180 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
181 person:

182 (A) is a person with authority to transact business as:

183 (I) a depository institution;

184 (II) a trust company; or

185 (III) any other person described in Section [7-1-501](#) as being subject to the jurisdiction
186 of the department; and

187 (B) has total assets in an amount less than \$5,000,000; or

188 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

189 (b) all reasonable expenses incurred in processing the application.

190 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
191 per hour:

192 (i) for each examiner; and

193 (ii) per hour worked.

194 (b) For an examination of a branch or office of a financial institution located outside of
195 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
196 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
197 conducting the examination.

198 (8) In addition to a fee under Subsection (5), a person registering under Section
199 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

200 (9) In addition to a fee under Subsection (5), a person applying for licensure under
201 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

202 Section 10. Section 7-26-101 is enacted to read:

203 **CHAPTER 26. CANNABIS PAYMENT PROCESSOR**

204 **7-26-101. Title.**

205 This chapter is known as "Cannabis Payment Processor."

206 Section 11. Section 7-26-102 is enacted to read:

207 **7-26-102. Definitions.**

208 As used in this chapter:

209 (1) "Cannabis" means the same as that term is defined in Section 4-41-202.

210 (2) "Cannabis payment processor" means a person that facilitates payment:

211 (a) without using cash;

212 (b) electronically; and

213 (c) between a cannabis producer and an entity engaged in academic or medical
214 research.

215 (3) "Cannabis producer" means:

216 (a) a private entity that is contracted with the Department of Agriculture and Food,
217 pursuant to Section 4-41-203, to cultivate cannabis or process it into a medicinal dosage form;
218 and

219 (b) the Department of Agriculture and Food, if the Department of Agriculture and Food
220 is engaged in the cultivation or processing of cannabis.

221 Section 12. Section 7-26-201 is enacted to read:

222 **7-26-201. Cannabis payment processor -- License.**

223 (1) A person may not act as a cannabis payment processor without a license issued by
224 the department under this section.

225 (2) An applicant for a cannabis payment processor license shall:

226 (a) submit to the department:
227 (i) the applicant's name, business address, and place of incorporation;
228 (ii) the name of each owner, officer, director, board member, shareholder, agent,
229 employee, or volunteer of the applicant; and
230 (iii) a fee in accordance with Section [7-1-401](#); and
231 (b) present evidence to the department that:
232 (i) the applicant is capable of electronically receiving funds from, and distributing
233 funds to:
234 (A) a cannabis producer; and
235 (B) an entity engaged in academic or medical research;
236 (ii) the applicant has a partnership, service agreement, or service contract with a
237 federally insured depository institution that agrees to clear cannabis product transactions; and
238 (iii) the applicant is, at minimum:
239 (A) a level one payment card industry data security standard-validated provider;
240 (B) certified by Europay, MasterCard, and Visa; and
241 (C) capable of integrating with 50 payment processors.
242 (3) A license issued under this section is valid for two years.
243 (4) The department may determine, by rule made in accordance with Title 63G,
244 Chapter 3, Utah Administrative Rulemaking Act:
245 (a) any additional information an applicant for a cannabis payment processor is
246 required to submit to the department; and
247 (b) procedural requirements for an applicant for a license under this chapter.
248 (5) An applicant for a cannabis payment processor license under this section may
249 request that the department treat information that the applicant submits to the department as
250 confidential under Section [7-1-802](#).
251 Section 13. Section **7-26-202** is enacted to read:
252 **7-26-202. Renewal -- Abandonment.**
253 The department shall renew a person's cannabis payment processor license every two

254 years if, at the time of renewal, the person:

255 (1) meets the requirements of Section 7-26-201;

256 (2) demonstrates the criteria described in Subsection 7-26-203(2); and

257 (3) pays the department a license renewal fee in an amount that is the same as the

258 licensing fee determined by the department in accordance with Section 7-1-401.

259 Section 14. Section 7-26-203 is enacted to read:

260 **7-26-203. Number of licenses -- Criteria for awarding a license.**

261 (1) The department may issue up to a number of cannabis payment processor licenses
262 determined by the department.

263 (2) The department shall evaluate an applicant for a cannabis payment processor
264 license to determine to what extent the applicant has demonstrated:

265 (a) experience with:

266 (i) establishing and running a business in a related field;

267 (ii) operating a payment processing system;

268 (iii) complying with a regulatory environment; and

269 (iv) training, evaluating, and monitoring employees;

270 (b) connections to the local community;

271 (c) that the applicant will keep the cost of the applicant's products or services low; and

272 (d) that the applicant will maximize convenience, efficiency, and security for

273 processing cannabinoid product payments.

274 (3) After an appropriate supervisor reviews an applicant's application under Section

275 7-26-201 and evaluates the application for the criteria described in Subsection (2), the

276 appropriate supervisor shall submit the department's findings and recommendations to the

277 commissioner.

278 (4) After reviewing the findings and recommendations described in Subsection (3), the

279 commissioner shall make a final determination that awards or denies a cannabis payment

280 processor license to an applicant.

281 (5) In making a recommendation of which applicant to award a cannabis payment

282 processor license under Subsection (1), the department shall consult, to the extent that the
283 consultation involves compatibility and coordination of a cannabis payment processor licensee
284 with other state cannabinoid medicine regulation, with:

285 (a) the executive director of the Department of Commerce or the executive director's
286 designee;

287 (b) the chair of the State Tax Commission or the chair's designee;

288 (c) the chief information officer of the Department of Technology Services or the chief
289 information officer's designee;

290 (d) the executive director of the Department of Health or the executive director's
291 designee;

292 (e) the commissioner of the Department of Agriculture and Food or the commissioner's
293 designee; and

294 (f) the commissioner of the Department of Public Safety or the commissioner's
295 designee.

296 (6) An applicant for which the department denies an application is entitled to judicial
297 review under Section [7-1-714](#).

298 Section 15. Section **7-26-204** is enacted to read:

299 **7-26-204. Cash system if no cannabis payment processor available.**

300 (1) The department shall determine if no qualified cannabis payment processor
301 submitted an application for a license under this chapter.

302 (2) If the department makes the determination described in Subsection (1), the
303 department shall issue a statement that a cannabis payment processor is not available and that
304 an academic or medical research entity may use cash to pay for products and services related to
305 cannabinoid products.

306 Section 16. Section **7-26-301** is enacted to read:

307 **7-26-301. Operating requirements.**

308 (1) Except as provided in Section [7-26-204](#), a cannabis payment processor may not
309 accept or disburse cash in a transaction involving cannabis.

310 (2) A cannabis payment processor may not act as a cannabis payment processor for a
311 person unless the person is:

- 312 (a) a cannabis cultivator; or
- 313 (b) an academic or medical research entity.

314 Section 17. Section **7-26-401** is enacted to read:

315 **Part 4. Enforcement**

316 **7-26-401. Examination -- Administrative action.**

317 (1) The department may examine the records or activities of a cannabis payment
318 processor at any time in order to determine if the cannabis payment processor is complying
319 with this chapter.

320 (2) If the department determines that a person is acting as a cannabis payment
321 processor without a license issued under this section, the department may:

- 322 (a) order the person to cease and desist from acting as a cannabis payment processor;
- 323 and

324 (b) assess the person a fine in an amount determined by the department by rule made in
325 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

326 (3) If the department determines that a person with a cannabis payment processor
327 license issued by the department has violated this chapter, the department may:

- 328 (a) order the person to cease and desist from the violation;
- 329 (b) assess the person a fine in an amount determined by the department by rule made in
330 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
- 331 (c) revoke the person's license.

332 Section 18. Section **58-37-3.6** is amended to read:

333 **58-37-3.6. Exemption for possession or distribution of a cannabinoid product or**
334 **expanded cannabinoid product pursuant to an approved study.**

335 (1) As used in this section:

- 336 (a) "Cannabinoid product" means a product intended for human ingestion that:
- 337 (i) contains an extract or concentrate that is obtained from cannabis;

- 338 (ii) is prepared in a medicinal dosage form; and
- 339 (iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.
- 340 (b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.
- 341 (c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- 342 (d) "Expanded cannabinoid product" means a product intended for human ingestion

343 that:

- 344 (i) contains an extract or concentrate that is obtained from cannabis;
- 345 (ii) is prepared in a medicinal dosage form; and
- 346 (iii) contains less than 10 units of cannabidiol for every one unit of

347 tetrahydrocannabinol.

348 (e) "Medicinal dosage form" means:

- 349 (i) a tablet;
- 350 (ii) a capsule;
- 351 (iii) a concentrated oil;
- 352 (iv) a liquid suspension;
- 353 (v) a transdermal preparation; or
- 354 (vi) a sublingual preparation.

355 (f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
356 description in Subsection 58-37-4(2)(a)(iii)(AA).

357 (2) Notwithstanding any other provision of this chapter, an individual who possesses or
358 distributes a cannabinoid product or an expanded cannabinoid product is not subject to the
359 penalties described in this title for the possession or distribution of marijuana or
360 tetrahydrocannabinol to the extent that the individual's possession or distribution of the
361 cannabinoid product or expanded cannabinoid product complies with Title 26, Chapter 61,
362 Cannabinoid Research Act.

363 (3) Notwithstanding any other provision of this chapter, an individual who grows,
364 processes, or possesses cannabis is not subject to the penalties described in this title for the
365 growth, processing, or possession of marijuana to the extent that the individual is authorized to

366 grow, process, or possess the cannabis under Section [4-41-203](#) and is in compliance with any
367 rules made pursuant to Section [4-41-204](#).