

## HB0197S01 compared with HB0197

~~{deleted text}~~ shows text that was in HB0197 but was deleted in HB0197S01.

Inserted text shows text that was not in HB0197 but was inserted into HB0197S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Brad M. Daw proposes the following substitute bill:

### CANNABIS CULTIVATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

Senate Sponsor: Evan J. Vickers

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#### LONG TITLE

##### General Description:

This bill deals with the cultivation~~{and}~~, processing, and sale of cannabis~~{for academic or medical research}~~.

##### 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;~~{and}~~

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- ▶ 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

†:

- ▶ directs the Department of Financial Institutions to issue cannabis payment processor licenses and enforce cannabis payment processor operating requirements;
- ▶ creates an exemption from sales and use tax for sales of cannabinoid products;
- ▶ imposes a special tax on the sale of cannabinoid products;

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

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

#### ENACTS:

4-41-201, Utah Code Annotated 1953

4-41-202, Utah Code Annotated 1953

4-41-203, Utah Code Annotated 1953

4-41-204, Utah Code Annotated 1953

4-41-301, Utah Code Annotated 1953

4-41-302, Utah Code Annotated 1953

4-41-303, Utah Code Annotated 1953

4-41-304, Utah Code Annotated 1953

7-26-101, Utah Code Annotated 1953

7-26-102, Utah Code Annotated 1953

7-26-201, Utah Code Annotated 1953

7-26-202, Utah Code Annotated 1953

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7-26-203, Utah Code Annotated 1953

7-26-204, Utah Code Annotated 1953

7-26-301, Utah Code Annotated 1953

7-26-401, Utah Code Annotated 1953

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

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

### **Part 2. Cannabis Cultivation**

#### **4-41-201. Title.**

This part is known as "Cannabis Cultivation."

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

#### **4-41-202. Definitions.**

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) to ensure:

(a) cannabis cultivated in the state pursuant to this chapter is cultivated from state-approved seed sources; and

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

(2) governing ~~fa processor who~~ an entity that puts cannabis into a medicinal dosage form, including standards for health and safety.

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

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

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

(2) The state dispensary shall:

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

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

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

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

(iii) a patient with a recommendation to try cannabis from the patient's physician or advanced practice nurse practitioner.

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

(4) (a) The department may contract with a private entity to serve as a courier for the

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state dispensary, delivering purchased cannabis that has been processed into a medicinal dosage form to a purchaser described in Subsection (2).

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

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

### **4-41-302. Labeling.**

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

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

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

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

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

(a) the demand for the product;

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

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

(d) any other consideration the department considers necessary.

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

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

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

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

### **4-41-304. Department to make rules regarding purchasers.**

The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to determine whether an entity engaged in academic or medical research qualifies to purchase cannabis pursuant to this chapter.

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

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### 7-1-401. Fees payable to commissioner.

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

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

(b) at the following rates:

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

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

(B) \$500;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) a depository institution;

(II) a trust company; or

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

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

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

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

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

(i) for each examiner; and

(ii) per hour worked.

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

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

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

Section ~~{5}~~10. Section ~~{58-37-3.6}~~7-26-101 is ~~{amended to read:~~  
enacted to read:

7-26-101. Title.

This chapter is known as "Cannabis Payment Processor."

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

7-26-102. Definitions.

As used in this chapter:

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

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

(a) without using cash;

(b) electronically; and

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

(6) "Cannabis producer" means:

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

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

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

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

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

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

(a) submit to the department:

(i) the applicant's name, business address, and place of incorporation;

(ii) the name of each owner, officer, director, board member, shareholder, agent, employee, or volunteer of the applicant; and

(iii) a fee in accordance with Section 7-1-401; and

(b) present evidence to the department that:

(i) the applicant is capable of electronically receiving funds from, and distributing funds to:

(A) a cannabis producer; and

(B) an entity engaged in academic or medical research;

(ii) the applicant has a partnership, service agreement, or service contract with a federally insured depository institution that agrees to clear cannabis product transactions; and

(iii) the applicant is, at minimum:

(A) a level one payment card industry data security standard-validated provider;



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(B) certified by Europay, MasterCard, and Visa; and

(C) capable of integrating with 50 payment processors.

(3) A license issued under this section is valid for two years.

(4) The department may determine, by rule made in accordance with Title 63G,

Chapter 3, Utah Administrative Rulemaking Act:

(a) any additional information an applicant for a cannabis payment processor is required to submit to the department; and

(b) procedural requirements for an applicant for a license under this chapter.

(5) An applicant for a cannabis payment processor license under this section may request that the department treat information that the applicant submits to the department as confidential under Section 7-1-802.

Section 13. Section 7-26-202 is enacted to read:

### **7-26-202. Renewal -- Abandonment.**

The department shall renew a person's cannabis payment processor license every two years if, at the time of renewal, the person:

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

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

(3) pays the department a license renewal fee in an amount that is the same as the licensing fee determined by the department in accordance with Section 7-1-401.

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

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

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

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

(a) experience with:

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

(ii) operating a payment processing system;

(iii) complying with a regulatory environment; and

(iv) training, evaluating, and monitoring employees;

(b) connections to the local community;

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

(d) that the applicant will maximize convenience, efficiency, and security for processing cannabinoid product payments.

(3) After an appropriate supervisor reviews an applicant's application under Section 7-26-201 and evaluates the application for the criteria described in Subsection (2), the appropriate supervisor shall submit the department's findings and recommendations to the commissioner.

(4) After reviewing the findings and recommendations described in Subsection (3), the commissioner shall make a final determination that awards or denies a cannabis payment processor license to an applicant.

(5) In making a recommendation of which applicant to award a cannabis payment processor license under Subsection (1), the department shall consult, to the extent that the consultation involves compatibility and coordination of a cannabis payment processor licensee with other state cannabinoid medicine regulation, with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a cannabis cultivator; or

(b) an academic or medical research entity.

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

### **Part 4. Enforcement**

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

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

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

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

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

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

(a) order the person to cease and desist from the violation;

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

(c) revoke the person's license.

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

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

(1) As used in this section:

(a) "Cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(b) "Cannabis" means any part of the plant *cannabis sativa*, whether growing or not.

(c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(d) "Expanded cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains less than 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(e) "Medicinal dosage form" means:

(i) a tablet;

(ii) a capsule;

(iii) a concentrated oil;

(iv) a liquid suspension;

(v) a transdermal preparation; or

(vi) a sublingual preparation.

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

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

(3) Notwithstanding any other provision of this chapter, an individual who grows,

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processes, or possesses cannabis is not subject to the penalties described in this title for the growth, processing, or possession of marijuana to the extent that the individual is authorized to grow, process, or possess the cannabis under Section 4-41-203 and is in compliance with any rules made pursuant to Section 4-41-204.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**