

HEMP REGULATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Jennifer Dailey-Provost

LONG TITLE

Committee Note:

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

Legislative Vote: 16 voting for 0 voting against 3 absent

General Description:

This bill amends provisions of Title 4, Chapter 41, Hemp and Cannabinoid Act, to provide clarity regarding existing and developing cannabinoids and regulate production and sale.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows industrial hemp producers to procure background checks through a federal system;
- ▶ requires industrial hemp laboratories to demonstrate the ability to test for delta-8 tetrahydrocannabinol;
- ▶ identifies an unlawful act for a person to:
 - distribute, sell, or market a product that exceeds the acceptable hemp THC level;
 - sell a psychoactive cannabinoid;
 - transport material outside of the state that exceeds the acceptable hemp THC



28 level; or

29 • produce, sell, or use a cannabinoid product that is added to an alcoholic

30 beverage or food, enticing to children, or smokable flower;

31 ▶ allows for increased flexibility in dosage forms; and

32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 [4-41-102](#), as last amended by Laws of Utah 2020, Chapters 12 and 14

40 [4-41-103.2](#), as enacted by Laws of Utah 2020, Chapter 14

41 [4-41-103.4](#), as enacted by Laws of Utah 2020, Chapter 14

42 [4-41-105](#), as last amended by Laws of Utah 2020, Chapter 14

43 [4-41-204](#), as enacted by Laws of Utah 2018, Chapter 446



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

46 Section 1. Section **4-41-102** is amended to read:

47 **4-41-102. Definitions.**

48 As used in this chapter:

49 (1) "Acceptable hemp THC level" means total tetrahydrocannabinol concentration of
50 not more than 0.3% on a dry weight basis if laboratory testing confirms a result within a
51 measurement of uncertainty that includes the total tetrahydrocannabinol concentration of 0.3%.

52 (2) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# [3556-78-3](#).

53 (3) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS#
54 [1244-58-2](#).

55 [(+)] (4) "Cannabinoid product" means a chemical compound extracted from a hemp
56 product or any cannabinoid extracted from any naturally occurring biomass that:

57 (a) is processed into a [medicinal] dosage form; and

58 (b) contains less than;

- 59 (i) 0.3% tetrahydrocannabinol by dry weight[-]; or
60 (ii) 0.3% delta-8 tetrahydrocannabinol by dry weight.
- 61 (5) "Delta-8 tetrahydrocannabinol" or "delta-8 THC" means the cannabinoid identified
62 as CAS# 5957-75-5, having a lower psychotropic potency than delta-9 THC.
- 63 (6) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified
64 as CAS# 1972-08-03, the primary psychotropic cannabinoid in cannabis.
- 65 (7) "Derivative cannabinoid" means any cannabinoid that has been intentionally
66 created using a process to convert a naturally occurring cannabinoid into another cannabinoid.
- 67 (8) "Dosage form" means the form in which a product is produced for individual
68 dosage that is not specified as unlawful in this chapter.
- 69 [~~(2)~~] (9) "Industrial hemp" means any part of a cannabis plant, whether growing or not,
70 with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.
- 71 [~~(3)~~] (10) "Industrial hemp certificate" means a certificate that the department issues to
72 a higher education institution to grow or cultivate industrial hemp under Subsection
73 [4-41-103\(1\)](#).
- 74 [~~(4)~~] (11) "Industrial hemp certificate holder" means a person possessing an industrial
75 hemp certificate that the department issues under this chapter.
- 76 [~~(5)~~] (12) "Industrial hemp laboratory permit" means a permit that the department
77 issues to a laboratory qualified to test industrial hemp under the state hemp production plan.
- 78 [~~(6)~~] (13) "Industrial hemp producer license" means a license that the department
79 issues to a person for the purpose of cultivating or processing industrial hemp or an industrial
80 hemp product.
- 81 [~~(7)~~] (14) "Industrial hemp retailer permit" means a permit that the department issues
82 to a retailer who sells any industrial hemp product.
- 83 [~~(8)~~] (15) "Industrial hemp product" means a product derived from, or made by,
84 processing industrial hemp plants or industrial hemp parts.
- 85 (16) (a) "Key participant" means any person who has a financial interest in the business
86 entity, including members of a limited liability company, a sole proprietor, partners in a
87 partnership, and incorporators or directors of a corporation.
- 88 (b) "Key participant" also includes:
- 89 (i) an individual at an executive level, including a chief executive officer, chief

90 operating officer, or chief financial officer; and

91 (ii) an operation manager, site manager, or any employee who may present a risk of
92 diversion.

93 ~~[(9)]~~ (17) "Laboratory permittee" means a person possessing an industrial hemp
94 laboratory permit that the department issues under this chapter.

95 ~~[(10)]~~ (18) "Licensee" means a person possessing an industrial hemp producer license
96 that the department issues under this chapter.

97 ~~[(11) "Medicinal dosage form" means:]~~

98 ~~[(a) a tablet;]~~

99 ~~[(b) a capsule;]~~

100 ~~[(c) a concentrated oil;]~~

101 ~~[(d) a liquid suspension;]~~

102 ~~[(e) a sublingual preparation;]~~

103 ~~[(f) a topical preparation;]~~

104 ~~[(g) a transdermal preparation;]~~

105 ~~[(h) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or~~
106 ~~rectangular cuboid shape; or]~~

107 ~~[(i) other preparations that the department approves.]~~

108 ~~[(12)]~~ (19) "Non-compliant material" means a hemp plant or hemp product that does
109 not comply with this chapter, including a cannabis plant or product that contains a
110 concentration of:

111 (a) 0.3% tetrahydrocannabinol or greater by dry weight[-]; or

112 (b) 0.3% delta-8-tetrahydrocannabinol or greater by dry weight.

113 ~~[(13)]~~ (20) "Permittee" means a person possessing a permit that the department issues
114 under this chapter.

115 ~~[(14)]~~ (21) "Person" means:

116 (a) an individual, partnership, association, firm, trust, limited liability company, or
117 corporation; and

118 (b) an agent or employee of an individual, partnership, association, firm, trust, limited
119 liability company, or corporation.

120 ~~[(15)]~~ (22) "Research pilot program" means a program conducted by the department in

121 collaboration with at least one licensee to study methods of cultivating, processing, or
 122 marketing industrial hemp.

123 ~~[(16)]~~ (23) "Retailer permittee" means a person possessing an industrial hemp retailer
 124 permit that the department issues under this chapter.

125 ~~[(17)]~~ (24) "State hemp production plan" means a plan submitted by the state to, and
 126 approved by, the United States Department of Agriculture in accordance with 7 C.F.R. Chapter
 127 990.

128 (25) "Synthetic cannabinoid" means any cannabinoid that:

129 (a) was chemically synthesized from starting materials other than a naturally occurring
 130 cannabinoid; and

131 (b) is not a derivative cannabinoid.

132 (26) "Tetrahydrocannabinol" or "THC" means a substance derived from cannabis or a
 133 synthetic cannabinoid equivalent as described in Subsection 58-37-4(2)(a)(iii)(AA).

134 (27) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol
 135 and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)."

136 (28) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined
 137 amounts of delta-9 THC and tetrahydrocannabinolic acid, calculated as "total THC = delta-9
 138 THC + (THCA x 0.977)."

139 Section 2. Section **4-41-103.2** is amended to read:

140 **4-41-103.2. Industrial hemp producer license -- Background checks.**

141 (1) The department or a licensee of the department may cultivate or process industrial
 142 hemp.

143 (2) A person seeking an industrial hemp producer license shall provide to the
 144 department:

145 (a) the legal description and global positioning coordinates sufficient for locating the
 146 fields or greenhouses the person uses to grow industrial hemp; and

147 (b) written consent allowing a representative of the department and local law
 148 enforcement to enter all premises where the person cultivates, processes, or stores industrial
 149 hemp for the purpose of:

150 (i) conducting a physical inspection; or

151 (ii) ensuring compliance with the requirements of this chapter.

152 (3) An individual who has been convicted of a drug-related felony within the last 10
153 years is not eligible to obtain an industrial hemp producer license.

154 (4) The department may set a fee in accordance with Subsection 4-2-103(2) for the
155 application for an industrial hemp producer license.

156 (5) A licensee may only market industrial hemp that the licensee cultivates or
157 processes.

158 (6) (a) Each applicant for a license to cultivate or process industrial hemp shall submit
159 to the department, at the time of application, from each key participant:

160 (i) a fingerprint card in a form acceptable to the Department of Public Safety;

161 (ii) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the
162 registration of the individual's fingerprints in the Federal Bureau of Investigation Next

163 Generation Identification System's Rap Back Service; and

164 (iii) consent to a fingerprint background check by:

165 (A) the Bureau of Criminal Identification; and

166 (B) the Federal Bureau of Investigation.

167 (b) The Bureau of Criminal Identification shall:

168 (i) check the fingerprints the applicant submits under Subsection (6)(a) against the
169 applicable state, regional, and national criminal records databases, including the Federal

170 Bureau of Investigation Next Generation Identification System;

171 (ii) report the results of the background check to the department;

172 (iii) maintain a separate file of fingerprints that applicants submit under Subsection
173 (6)(a) for search by future submissions to the local and regional criminal records databases,

174 including latent prints;

175 (iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next
176 Generation Identification System's Rap Back Service for search by future submissions to

177 national criminal records databases, including the Next Generation Identification System and
178 latent prints; and

179 (v) establish a privacy risk mitigation strategy to ensure that the department only
180 receives notifications for an individual with whom the department maintains an authorizing
181 relationship.

182 (c) The department shall:

183 (i) assess an individual who submits fingerprints under Subsection (6)(a) a fee in an
184 amount that the department sets in accordance with Section 63J-1-504 for the services that the
185 Bureau of Criminal Identification or another authorized agency provides under this section; and

186 (ii) remit the fee described in Subsection (6)(c)(i) to the Bureau of Criminal
187 Identification.

188 Section 3. Section 4-41-103.4 is amended to read:

189 **4-41-103.4. Industrial hemp laboratory permit.**

190 (1) The department or a laboratory permittee of the department may test industrial
191 hemp and industrial hemp products.

192 (2) The department or a laboratory permittee of the department may dispose of
193 non-compliant material.

194 (3) A laboratory seeking an industrial hemp laboratory permit shall:

195 (a) demonstrate to the department that:

196 (i) the laboratory and laboratory staff possess the professional certifications required by
197 department rule;

198 (ii) the laboratory has the ability to test industrial hemp and industrial hemp products
199 using the standards, methods, practices, and procedures required by department rule;

200 (iii) the laboratory has the ability to meet the department's minimum standards of
201 performance for detecting delta-9 tetrahydrocannabinol (THC) concentration levels and delta-8
202 tetrahydrocannabinol concentration levels; and

203 (iv) the laboratory has a plan that complies with the department's rule for the safe
204 disposal of non-compliant material; and

205 (b) provide to the department written consent allowing a representative of the
206 department and local law enforcement to enter all premises where the laboratory tests,
207 processes, or stores industrial hemp, industrial hemp products, and non-compliant plants for the
208 purpose of:

209 (i) conducting a physical inspection; or

210 (ii) ensuring compliance with the requirements of this chapter.

211 (4) An individual who has been convicted of a drug-related felony within the last 10
212 years is not eligible to obtain a license under this chapter.

213 (5) The department may set a fee in accordance with Subsection 4-2-103(2) for the

214 application for an industrial hemp laboratory permit.

215 Section 4. Section 4-41-105 is amended to read:

216 **4-41-105. Unlawful acts.**

217 (1) It is unlawful for a person to:

218 (a) cultivate, handle, process, or market living industrial hemp plants, viable hemp
219 seeds, leaf materials, or floral materials derived from industrial hemp without the appropriate
220 license or permit issued by the department under this chapter[-];

221 ~~[(2)]~~ (b) ~~[It is unlawful for any person to]~~ distribute, sell, or market an industrial hemp
222 product that is not registered with the department pursuant to Section 4-41-104[-];

223 (c) distribute, sell, or market a product that contains greater than 0.3% of either total
224 THC or delta-8 THC under this chapter;

225 (d) sell a cannabinoid identified by the department as psychoactive under this chapter;

226 (e) transport outside the state extracted material or final product that exceeds the
227 acceptable hemp THC level; or

228 (f) produce, sell, or use a cannabinoid product that is:

229 (i) added to a conventional food or alcoholic beverage;

230 (ii) marketed or manufactured to be enticing to children; or

231 (iii) smokable flower.

232 ~~[(3)]~~ (2) The department may seize and destroy non-compliant material.

233 ~~[(4)]~~ (3) Nothing in this chapter authorizes any person to violate federal law,
234 regulation, or any provision of this title.

235 Section 5. Section 4-41-204 is amended to read:

236 **4-41-204. Department to make rules regarding cultivation and processing.**

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

239 (1) to ensure:

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

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

244 (2) governing an entity that puts cannabis into a ~~[medicinal]~~ dosage form, including

245 standards for health and safety.