

Senator David P. Hinkins proposes the following substitute bill:

**HEMP REGULATION AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: Jennifer Dailey-Provost

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**LONG TITLE**

**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 THC analogs;
- ▶ identifies an unlawful act for a person to:
  - distribute, sell, or market a product that exceeds the acceptable hemp THC level;
  - transport material outside of the state that exceeds the acceptable hemp THC level; or
  - produce, sell, or use a cannabinoid product that is added to an alcoholic beverage or food, enticing to children, or smokable flower;



- 26           ▶ allows for increased flexibility in dosage forms;
- 27           ▶ allows for the sale of unprocessed industrial hemp flower to an individual who is at
- 28 least 21 years old under certain packaging and labeling requirements; and
- 29           ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **4-41-102**, as last amended by Laws of Utah 2020, Chapters 12 and 14

37           **4-41-103.2**, as enacted by Laws of Utah 2020, Chapter 14

38           **4-41-103.4**, as enacted by Laws of Utah 2020, Chapter 14

39           **4-41-105**, as last amended by Laws of Utah 2020, Chapter 14

40           **4-41-204**, as enacted by Laws of Utah 2018, Chapter 446

41 ENACTS:

42           **4-41-107**, Utah Code Annotated 1953



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

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

46           **4-41-102. Definitions.**

47           As used in this chapter:

48           (1) "Acceptable hemp THC level" means total tetrahydrocannabinol concentration of

49 not more than 0.3% on a dry weight basis if laboratory testing confirms a result within a

50 measurement of uncertainty that includes the total tetrahydrocannabinol concentration of 0.3%.

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

52           (3) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS#

53 1244-58-2.

54           ~~(1)~~ (4) "Cannabinoid product" means [~~a chemical compound extracted from a hemp~~

55 ~~product that~~] any product that:

56           (a) contains or is represented to contain naturally occurring, derivative, or synthetic

57 cannabinoids; and

58 (b) contains less than 0.3% of delta-9-THC or any THC analog.

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

60 ~~[(b) contains less than 0.3% tetrahydrocannabinol by dry weight.]~~

61 (5) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified  
62 as CAS# 1972-08-03, the primary psychotropic cannabinoid in cannabis.

63 (6) "Derivative cannabinoid" means any cannabinoid that has been intentionally  
64 created using a process to convert a naturally occurring cannabinoid into another cannabinoid.

65 (7) "Dosage form" means the form in which a product is produced for individual  
66 dosage that is not specified as unlawful in this chapter.

67 ~~[(2)]~~ (8) "Industrial hemp" means any part of a cannabis plant, whether growing or not,  
68 with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.

69 ~~[(3)]~~ (9) "Industrial hemp certificate" means a certificate that the department issues to a  
70 higher education institution to grow or cultivate industrial hemp under Subsection 4-41-103(1).

71 ~~[(4)]~~ (10) "Industrial hemp certificate holder" means a person possessing an industrial  
72 hemp certificate that the department issues under this chapter.

73 ~~[(5)]~~ (11) "Industrial hemp laboratory permit" means a permit that the department  
74 issues to a laboratory qualified to test industrial hemp under the state hemp production plan.

75 ~~[(6)]~~ (12) "Industrial hemp producer license" means a license that the department  
76 issues to a person for the purpose of cultivating or processing industrial hemp or an industrial  
77 hemp product.

78 ~~[(7)]~~ (13) "Industrial hemp retailer permit" means a permit that the department issues  
79 to a retailer who sells any industrial hemp product.

80 ~~[(8)]~~ (14) "Industrial hemp product" means a product derived from, or made by,  
81 processing industrial hemp plants or industrial hemp parts.

82 (15) (a) "Key participant" means any person who has a financial interest in the business  
83 entity, including members of a limited liability company, a sole proprietor, partners in a  
84 partnership, and incorporators or directors of a corporation.

85 (b) "Key participant" also includes:

86 (i) an individual at an executive level, including a chief executive officer, chief  
87 operating officer, or chief financial officer; and

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

90 ~~[(9)]~~ (16) "Laboratory permittee" means a person possessing an industrial hemp  
91 laboratory permit that the department issues under this chapter.

92 ~~[(10)]~~ (17) "Licensee" means a person possessing an industrial hemp producer license  
93 that the department issues under this chapter.

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

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

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

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

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

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

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

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

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

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

105 ~~[(12)]~~ (18) "Non-compliant material" means a hemp plant or hemp product that does  
106 not comply with this chapter, including a cannabis plant or product that contains a  
107 concentration of:

108 (a) 0.3% [tetrahydrocannabinol] total THC or greater by dry weight[-]; or

109 (b) 0.3% of any THC analog or greater by dry weight.

110 ~~[(13)]~~ (19) "Permittee" means a person possessing a permit that the department issues  
111 under this chapter.

112 ~~[(14)]~~ (20) "Person" means:

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

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

117 ~~[(15)]~~ (21) "Research pilot program" means a program conducted by the department in  
118 collaboration with at least one licensee to study methods of cultivating, processing, or

119 marketing industrial hemp.

120 ~~[(16)]~~ (22) "Retailer permittee" means a person possessing an industrial hemp retailer  
121 permit that the department issues under this chapter.

122 ~~[(17)]~~ (23) "State hemp production plan" means a plan submitted by the state to, and  
123 approved by, the United States Department of Agriculture in accordance with 7 C.F.R. Chapter  
124 990.

125 (24) "Synthetic cannabinoid" means any cannabinoid that:

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

128 (b) is not a derivative cannabinoid.

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

131 (26) (a) "THC analog" means a substance that is structurally or pharmacologically  
132 substantially similar to, or is represented as being similar to, delta-9-THC.

133 (b) "THC analog" does not include the following substances or their naturally  
134 occurring acid forms:

135 (i) cannabichromene (CBC), CAS# 20675-51-8;

136 (ii) cannabicyclol (CBL), CAS# 21366-63-2;

137 (iii) cannabidiol (CBD), CAS# 13956-29-1;

138 (iv) cannabidivanol (CBDV), CAS# 24274-48-4;

139 (v) cannabielsoin (CBE), CAS# 52025-76-0;

140 (vi) cannabigerol (CBG), CAS# 25654-31-3;

141 (vii) cannabigerovarin (CBGV), CAS# 55824-11-8;

142 (viii) cannabinol (CBN), CAS# 521-35-7;

143 (ix) cannabivarin (CBV), CAS# 33745-21-0; or

144 (x) delta-9-tetrahydrocannabivarin (THCV), CAS# 31262-37-0.

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

147 (28) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined  
148 amounts of delta-9 THC and tetrahydrocannabinolic acid, calculated as "total THC = delta-9  
149 THC + (THCA x 0.877)."

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

151 **4-41-103.2. Industrial hemp producer license -- Background checks.**

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

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

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

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

161 (i) conducting a physical inspection; or

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

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

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

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

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

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

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

174 Generation Identification System's Rap Back Service; and

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

176 (A) the Bureau of Criminal Identification; and

177 (B) the Federal Bureau of Investigation.

178 (b) The Bureau of Criminal Identification shall:

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

181 Bureau of Investigation Next Generation Identification System;

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

183 (iii) maintain a separate file of fingerprints that applicants submit under Subsection

184 (6)(a) for search by future submissions to the local and regional criminal records databases,

185 including latent prints;

186 (iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next

187 Generation Identification System's Rap Back Service for search by future submissions to

188 national criminal records databases, including the Next Generation Identification System and

189 latent prints; and

190 (v) establish a privacy risk mitigation strategy to ensure that the department only

191 receives notifications for an individual with whom the department maintains an authorizing

192 relationship.

193 (c) The department shall:

194 (i) assess an individual who submits fingerprints under Subsection (6)(a) a fee in an

195 amount that the department sets in accordance with Section [63J-1-504](#) for the services that the

196 Bureau of Criminal Identification or another authorized agency provides under this section; and

197 (ii) remit the fee described in Subsection (6)(c)(i) to the Bureau of Criminal

198 Identification.

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

200 **4-41-103.4. Industrial hemp laboratory permit.**

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

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

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

206 (a) demonstrate to the department that:

207 (i) the laboratory and laboratory staff possess the professional certifications required by  
208 department rule;

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

211 (iii) the laboratory has the ability to meet the department's minimum standards of

212 performance for detecting delta-9 tetrahydrocannabinol (THC) concentration levels and THC  
213 analog concentration levels; and

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

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

220 (i) conducting a physical inspection; or

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

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

224 (5) The department may set a fee in accordance with Subsection 4-2-103(2) for the  
225 application for an industrial hemp laboratory permit.

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

227 **4-41-105. Unlawful acts.**

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

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

232 [(2)] (b) [~~It is unlawful for any person to~~] distribute, sell, or market an industrial hemp  
233 or cannabinoid product that is not registered with the department pursuant to Section  
234 4-41-104[-];

235 (c) distribute, sell, or market an industrial hemp or cannabinoid product that contains  
236 greater than 0.3% of either total THC or a THC analog under this chapter;

237 (d) transport outside the state extracted material or final product that exceeds the  
238 acceptable hemp THC level; or

239 (e) produce, sell, or use a cannabinoid product that is:

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

241 (ii) marketed or manufactured to be enticing to children, as the department specifies in  
242 rule in accordance with Section 4-41-204; or



243 (f) for unprocessed industrial hemp flower:  
244 (i) sell industrial hemp flower to an individual younger than 21 years old; or  
245 (ii) possess, except for during actual use, or sell industrial hemp flower that is not  
246 packaged in accordance with Section 4-41-107.

247 ~~[(3)]~~ (2) The department may seize and destroy non-compliant material.  
248 ~~[(4)]~~ (3) Nothing in this chapter authorizes any person to violate federal law,  
249 regulation, or any provision of this title.

250 Section 5. Section 4-41-107 is enacted to read:

251 **4-41-107. Industrial hemp flower.**

252 (1) For any industrial hemp flower that an industrial hemp producer produces for sale  
253 as unprocessed industrial hemp flower, the industrial hemp producer shall:

254 (a) package the industrial hemp flower in a container that:

255 (i) is tamper evident and tamper resistant;

256 (ii) does not appeal to children;

257 (iii) does not mimic a candy container;

258 (iv) is opaque; and

259 (v) complies with child-resistant effectiveness standards that the United States

260 Consumer Product Safety Commission establishes;

261 (b) include a label on the container described in Subsection (1)(a) that:

262 (i) clearly and unambiguously states that the container contains industrial hemp flower;

263 (ii) clearly displays the weight of the industrial hemp flower and the amount of total  
264 THC in the labeled container;

265 (iii) does not display an image, word, or phrase that the facility knows or should know  
266 appeals to children; and

267 (iv) identifies the industrial hemp producer; and

268 (c) includes a warning label that states: "WARNING: KEEP OUT OF REACH OF  
269 CHILDREN. This product is for medical use only."

270 (2) For any industrial hemp flower that an industrial hemp retailer offers for sale, the  
271 industrial hemp retailer shall:

272 (a) ensure that the industrial hemp flower is in a sealed and labeled container described  
273 in Subsection (1);

274 (b) add a label to the container described in Subsection (1) that specifies:  
275 (i) the date of purchase; and  
276 (ii) the industrial hemp retailer; and  
277 (c) provide the purchaser with an opaque, child-resistant bag.  
278 (3) (a) An industrial hemp producer may not produce unprocessed industrial hemp  
279 flower for sale except as provided in Subsection (1).

280 (b) An industrial hemp retailer may not offer unprocessed industrial hemp flower for  
281 sale except as provided in Subsection (2).

282 (c) An individual may not:  
283 (i) purchase, possess, or use unprocessed industrial hemp flower if the individual is  
284 younger than 21 years old;

285 (ii) purchase unprocessed industrial hemp flower for sale that is not in a sealed and  
286 labeled container described in Subsections (1) and (2); or

287 (iii) possess or transport industrial hemp flower in public outside of a sealed and  
288 labeled container described in Subsections (1) and (2) that is contained within the bag  
289 described in Subsection (2)(c).

290 Section 6. Section **4-41-204** is amended to read:

291 **4-41-204. Department to make rules regarding cultivation and processing.**

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

294 (1) to ensure:

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

297 (b) a private entity contracted to cultivate cannabis has sufficient security protocols;  
298 [~~and~~]

299 (2) governing an entity that puts cannabis into a [~~medicinal~~] dosage form, including  
300 standards for health and safety[~~;~~]; and

301 (3) regarding what constitutes a product that is marketed or manufactured to be  
302 enticing to children.