

SB0039S02 compared with SB0039S01

~~text~~ shows text that was in SB0039S01 but was deleted in SB0039S02.

text shows text that was not in SB0039S01 but was inserted into SB0039S02.

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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

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:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

4-41-104, as enacted by Laws of Utah 2018, Chapter 227

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

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

ENACTS:

4-41-107, Utah Code Annotated 1953

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

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

4-41-102. Definitions.

As used in this chapter:

(1) "Acceptable hemp THC level" means total tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis if laboratory testing confirms a result within a

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

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

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

~~[(1)]~~ (4) "Cannabinoid product" means [~~a chemical compound extracted from a hemp product that~~] any product that:

(a) contains or is represented to contain naturally occurring, derivative, or synthetic cannabinoids; and

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

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

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

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

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

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

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

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

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

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

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

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

~~[(8)]~~ (14) "Industrial hemp product" means a product derived from, or made by,

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processing industrial hemp plants or industrial hemp parts.

(15) ~~{(a)}~~ "Industrial hemp product class" means a group of industrial hemp or cannabinoid products that:

(a) have all ingredients in common; and

(b) differ in dosage strength.

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

~~—— (b) "Key participant" also includes:~~

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

~~—— (ii) an operation manager, site manager, or any employee who may present a risk of diversion;~~

~~—— [(9)] (16) individual who has access to raw hemp materials within the industrial hemp facility.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~[(12)] (18)~~ "Non-compliant material" means a hemp plant or hemp product that

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does not comply with this chapter, including a cannabis plant or product that contains a concentration of:

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

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

~~[(13)]~~ (~~19~~;20) "Permittee" means a person possessing a permit that the department issues under this chapter.

~~[(14)]~~ (~~20~~;21) "Person" means:

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

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

~~[(15)]~~ (~~21~~;22) "Research pilot program" means a program conducted by the department in collaboration with at least one licensee to study methods of cultivating, processing, or marketing industrial hemp.

~~[(16)]~~ (~~22~~;23) "Retailer permittee" means a person possessing an industrial hemp retailer permit that the department issues under this chapter.

~~[(17)]~~ (~~23~~;24) "State hemp production plan" means a plan submitted by the state to, and approved by, the United States Department of Agriculture in accordance with 7 C.F.R. Chapter 990.

(~~24~~;25) "Synthetic cannabinoid" means any cannabinoid that:

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

(b) is not a derivative cannabinoid.

(~~25~~;26) "Tetrahydrocannabinol" or "THC" means a substance derived from cannabis or a synthetic cannabinoid equivalent as described in Subsection 58-37-4(2)(a)(iii)(AA).

(~~26~~;27) (a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

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

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

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

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

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

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

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

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

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

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

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

(~~27~~28) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)."

(~~28~~29) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined amounts of delta-9 THC and tetrahydrocannabinolic acid, calculated as "total THC = delta-9 THC + (THCA x 0.877)."

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

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

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

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

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

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

(i) conducting a physical inspection; or

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

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

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

(5) A licensee may only market industrial hemp that the licensee cultivates or

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processes.

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

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

(ii) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the individual's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and

(iii) consent to a fingerprint background check by:

(A) the Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) The Bureau of Criminal Identification shall:

(i) check the fingerprints the applicant submits under Subsection (6)(a) against the applicable state, regional, and national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System;

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

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

(iv) request that the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and

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

(c) The department shall:

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

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

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

4-41-103.4. Industrial hemp laboratory permit.

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

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

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

(a) demonstrate to the department that:

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

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

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

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

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

(i) conducting a physical inspection; or

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

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

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

Section 4. Section 4-41-104 is amended to read:

4-41-104. Product registration required for distribution -- Application -- Fees -- Renewal.

(1) An industrial hemp product that is not registered with the department may not be

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distributed in this state.

(2) A person seeking registration for an industrial hemp product shall:

(a) apply to the department on forms provided by the department; and

(b) submit an annual registration fee, determined by the department pursuant to

Subsection 4-2-103(2), for each industrial hemp product class the person intends to distribute in this state.

(3) The department may conduct tests, or require test results, to ensure that any claim made by an applicant about an industrial hemp product is accurate.

(4) Upon receipt by the department of a proper application and payment of the appropriate fee, as described in Subsection (2), the department shall issue a registration to the applicant allowing the applicant to distribute the registered hemp product in the state ~~[through June 30 of each year]~~ for one year from the date of the payment of the fee, subject to suspension or revocation for cause.

(5) The department shall mail, either through the postal service or electronically, forms for the renewal of a registration to a registrant at least 30 days before the day on which the registrant's registration expires.

Section ~~{4}~~5. Section **4-41-105** is amended to read:

4-41-105. Unlawful acts.

(1) It is unlawful for a person to:

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

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

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

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

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

(i) added to a conventional food or alcoholic beverage~~{; or}~~ if:

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(A) the conventional food item is unpackaged; or

(B) the conventional food item contains more than 25mg of CBD per serving; or

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

(f) for unprocessed industrial hemp flower:

(i) sell industrial hemp flower to an individual younger than 21 years old; or

(ii) possess, except for during actual use, or sell industrial hemp flower that is not packaged in accordance with Section 4-41-107.

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

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

Section ~~{5}~~6. Section **4-41-107** is enacted to read:

4-41-107. Industrial hemp flower.

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

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

(i) is tamper evident and tamper resistant;

(ii) does not appeal to children;

(iii) does not mimic a candy container;

(iv) is opaque; and

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

Consumer Product Safety Commission establishes;

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

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

(ii) clearly displays the weight of the industrial hemp flower and the amount of total

THC in the labeled container;

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

(iv) identifies the industrial hemp producer; and

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

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

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

(b) add a label to the container described in Subsection (1) that specifies:

(i) the date of purchase; and

(ii) the industrial hemp retailer; ~~and~~

(c) provide the purchaser with an opaque, child-resistant bag~~;~~ or

(d) ensure that the unprocessed industrial hemp flower is registered in accordance with Sections 4-41-104 and 4-41-403.

(3) (a) An industrial hemp producer may not produce unprocessed industrial hemp flower for sale except as provided in Subsection (1).

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

(c) An individual may not:

(i) purchase, possess, or use unprocessed industrial hemp flower if the individual is younger than 21 years old;

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

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

(iv) sell or purchase unprocessed industrial hemp flower that is not registered in accordance with Sections 4-41-104 and 4-41-403.

Section ~~6~~7. Section **4-41-204** is amended 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

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- (b) a private entity contracted to cultivate cannabis has sufficient security protocols;
[and]
- (2) governing an entity that puts cannabis into a [~~medicinal~~] dosage form, including standards for health and safety[-]; and
- (3) regarding what constitutes a product that is marketed or manufactured to be enticing to children.