

## HB0227S01 compared with HB0227

~~text~~ shows text that was in HB0227 but was deleted in HB0227S01.

text shows text that was not in HB0227 but was inserted into HB0227S01.

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Representative Jennifer Dailey-Provost proposes the following substitute bill:

### HEMP AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer ~~Dailey-Provost~~ Dailey-Provost**

**Senate Sponsor: ~~\_\_\_\_\_~~ Evan J. Vickers**

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#### LONG TITLE

##### General Description:

This bill amends provisions related to hemp.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies definitions;
- ▶ allows the Department of Agriculture and Food (department) to require the registration of non-cannabinoid hemp products;
- ▶ creates an industrial hemp producer registration process;
- ▶ prohibits the sale of a cannabinoid product to an individual who is not at least 21 years old;
- ▶ allows a cannabinoid processor to produce products that may not be sold in the

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state;

- ▶ requires a warning label to be added to all cannabinoid products that are designed to be inhaled;
- ▶ expands the authority of the department to keep certain fines:
- ▶ authorizes rulemaking for the department:
  - to test a cannabinoid processor's cannabinoid at the processor's expense; and
  - to ban or limit the presence of a substance if the department receives a recommendation from the public health authority; and
- ▶ makes technical 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 2022, Chapters 74, 290

**4-41-103.1**, as last amended by Laws of Utah 2022, Chapter 74

**4-41-103.2**, as last amended by Laws of Utah 2022, Chapter 74

**4-41-103.3**, as last amended by Laws of Utah 2022, Chapter 290

**4-41-103.4**, as last amended by Laws of Utah 2022, Chapter 290

**4-41-104**, as last amended by Laws of Utah 2022, Chapter 74

**4-41-105**, as last amended by Laws of Utah 2022, Chapters 74, 290 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 74

**4-41-106**, as last amended by Laws of Utah 2022, Chapter 74

**4-41-402**, as last amended by Laws of Utah 2022, Chapter 290

**4-41-403**, as last amended by Laws of Utah 2022, Chapter 74

ENACTS:

**4-41-103.5**, Utah Code Annotated 1953

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

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

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### 4-41-102. Definitions.

As used in this chapter:

(1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to human health, including:

- (a) pesticides;
- (b) heavy metals;
- (c) solvents;
- (d) microbial life;
- (e) artificially derived cannabinoids;
- (f) toxins; or
- (g) foreign matter.

(2) (a) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substances derived from the cannabis plant.

(b) "Artificially derived cannabinoid" does not include:

- (i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or
- (ii) cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

(3) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# 13956-29-1.

~~[(2)]~~ (4) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS# 1244-58-2.

(5) "Cannabinoid processor license" means a license that the department issues to a person for the purpose of processing a cannabinoid product.

~~[(3)]~~ (6) "Cannabinoid product" means a product that:

- (a) contains or is represented to contain one or more naturally occurring cannabinoids;
- [and]
- (b) contains less than the cannabinoid product THC level, by dry weight; [and]
  - (c) ~~[after December 1, 2022,]~~ contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content~~[-];~~ and
  - (d) does not exceed a total of THC and any THC analog that is greater than:

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(i) 5 milligrams per serving; ~~for~~and

(ii) ~~50~~150 milligrams per package.

(7) "Cannabinoid product class" means a group of cannabinoid products that:

(a) have all ingredients in common; and

(b) are produced by or for the same company.

~~(4)~~ (8) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

~~(5)~~ (9) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS# 1972-08-3, the primary psychotropic cannabinoid in cannabis.

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

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

~~(8)~~ (10) "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.

~~(9)~~ (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~~].

~~(10)~~ (12) "Industrial hemp producer [~~license~~] registration" means a [~~license~~] registration that the department issues to a person for the purpose of processing industrial hemp or an industrial hemp product.

~~(11)~~ (13) "Industrial hemp retailer permit" means a permit that the department issues to a retailer who sells any viable industrial hemp [~~product~~] seed or cannabinoid product.

~~(12)~~ (14) (a) "Industrial hemp product" means a product [~~derived from, or made by,~~] made by processing industrial hemp plants or industrial hemp parts.

(b) "Industrial hemp product" does not include cannabinoid material.

(15) "Key participant" means any of the following:

(a) a licensee;

(b) an operation manager;

(c) a site manager; or

(d) an employee who has access to any industrial hemp material with a THC

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concentration above 0.3%.

~~[(13) "Industrial hemp product class" means a group of cannabinoid products:]~~

~~[(a) that have all ingredients in common; and]~~

~~[(b) are produced by or for the same company.]~~

~~[(14) (a) "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" includes an:]~~

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

~~[(ii) operation manager, site manager, or any employee who may present a risk of diversion.]~~

~~[(15)] (16) "Laboratory permittee" means a person possessing an industrial hemp laboratory permit that the department issues under this chapter.~~

~~[(16)] (17) "Licensee" means a person possessing [an industrial hemp producer] a cannabinoid processor license that the department issues under this chapter.~~

~~[(17)] (18) "Non-compliant material" means:~~

~~(a) a hemp plant that does not comply with this chapter, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and~~

~~(b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.~~

~~[(18)] (19) "Permittee" means a person possessing a permit that the department issues under this chapter.~~

~~[(19)] (20) "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.~~

~~[(20)] (21) "Retailer permittee" means a person possessing an industrial hemp retailer permit that the department issues under this chapter.~~

~~[(21) "Synthetic cannabinoid" means any cannabinoid that:]~~

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

~~[(b) is not a derivative cannabinoid.]~~

(22) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS# 1972-08-3.

(23) (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 the naturally occurring acid forms of the following substances:

- (i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;
- (ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;
- (iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;
- (iv) cannabidivanol (CBDV), the cannabinoid identified as CAS# 24274-48-4;
- (v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;
- (vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;
- (vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;
- (viii) cannabinol (CBN), the cannabinoid identified as CAS# 521-35-7;
- (ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or
- (x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS# 31262-37-0.

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

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

Section 2. Section **4-41-103.1** is amended to read:

**4-41-103.1. Authority to regulate production, sale, and testing of cannabinoid products and industrial hemp.**

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

- (a) establish requirements for ~~[an industrial hemp producer]~~ a cannabinoid processor

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license to process [~~industrial hemp~~] cannabinoid products;

(b) establish requirements for an industrial hemp retailer permit to market or sell industrial hemp products; [~~and~~]

(c) establish the standards, methods, practices, and procedures a laboratory must use to qualify for a permit to test industrial hemp and [~~industrial hemp~~] cannabinoid products and to dispose of non-compliant material[~~;~~]; and

(d) establish requirements for registration of processors of non-cannabinoid industrial hemp products.

(2) The department shall maintain a list of each licensee and permittee.

Section 3. Section **4-41-103.2** is amended to read:

### **4-41-103.2. Cannabinoid processor license.**

(1) The department or a licensee of the department may process [~~industrial hemp~~] a cannabinoid product.

(2) A person seeking [~~an industrial hemp producer~~] a cannabinoid processor license shall provide to the department:

(a) the legal description and global positioning coordinates sufficient for locating the facility the person uses to process industrial hemp; and

(b) written consent allowing a representative of the department and local law enforcement to enter all premises where the person 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~~] a cannabinoid processor license.

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

(5) A licensee may only market [~~industrial hemp~~] a cannabinoid product that the licensee [~~cultivates or~~] processes.

(6) (a) Each applicant for a license to process [~~industrial hemp~~] cannabinoid products 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;

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(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.

Section 4. Section **4-41-103.3** is amended to read:

### **4-41-103.3. Industrial hemp retailer permit.**

(1) Except as provided in Subsection (4), a retailer permittee of the department may market or sell [~~industrial hemp products~~] a cannabinoid product or a viable industrial hemp



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seed.

(2) A person seeking an industrial hemp retailer permit shall provide to the department:

(a) the name of the person that is seeking to market or sell [~~an industrial hemp product~~] a cannabinoid product or a viable industrial hemp seed;

(b) the address of each location where [~~the industrial hemp product~~] a cannabinoid product or a viable industrial hemp seed will be sold; and

(c) written consent allowing a representative of the department to enter all premises where the person is selling [~~an industrial hemp product~~] a cannabinoid product or a viable industrial hemp seed for the purpose of:

(i) conducting a physical inspection; or

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

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

(4) Any marketing for [~~an industrial hemp product~~] a cannabinoid product or a viable industrial hemp seed shall include a notice to consumers that the product is hemp and is not cannabis or medical cannabis, as those terms are defined in Section 26-61a-102.

Section 5. 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~~] cannabinoid 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 concentration levels of THC and any cannabinoid known to be present; and

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(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 6. Section **4-41-103.5** is enacted to read:

### **4-41-103.5. Industrial hemp producer registration -- Limitation on industrial hemp product use.**

(1) A person may produce an industrial hemp product if the person has registered with the department as an industrial hemp producer.

(2) A person seeking to register under Subsection (1) shall provide to the department:

(a) the name of the person that is seeking to produce an industrial hemp product;

(b) the address of each location where the industrial hemp product will be manufactured; and

(c) written consent allowing a representative of the department to enter any premise where the person is manufacturing industrial hemp product for:

(i) conducting a physical inspection; or

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

(3) ~~Any~~ An industrial hemp product or ~~by product cannot~~ byproduct may not be used for production of a cannabinoid ~~products~~ product.

~~(4) An industrial hemp product or byproduct may not be used for production of a cannabinoid product.~~

‡ Section 7. Section **4-41-104** is amended to read:

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

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### Renewal.

(1) [~~An industrial hemp~~] A cannabinoid product class or cannabinoid product that is not registered with the department may not be distributed in this state.

(2) A person seeking registration for [~~an industrial hemp~~] a cannabinoid product class or cannabinoid 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~~] cannabinoid product class or cannabinoid product 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~~] a cannabinoid product class or cannabinoid 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 [~~industrial hemp~~] cannabinoid product class or cannabinoid product in the state 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 8. Section **4-41-105** is amended to read:

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

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

(a) distribute, sell, or market [~~an industrial hemp product or~~] a cannabinoid product that is:

(i) not registered with the department under Section 4-41-104; or

(ii) noncompliant material;

(b) transport into or out of the state extracted material or final product that contains

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0.3% or more of total THC; ~~[or]~~

(c) ~~[produce, sell,]~~ sell or use a cannabinoid product that is:

(i) added to a conventional food or beverage, as the department further defines in rules described in Section 4-41-403;

(ii) marketed or manufactured to be enticing to children, as further defined in rules described in Section 4-41-403; or

(iii) smokable flower~~[-];~~ or

(d) knowingly or intentionally sell or give a cannabinoid product in the course of business to an individual who is not at least 21 years old.

(3) The department may seize and destroy non-compliant material.

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

Section 9. Section **4-41-106** is amended to read:

### **4-41-106. Enforcement -- Fine -- Citation.**

(1) If a person violates this part, the department may:

(a) revoke the person's license or permit;

(b) decline to renew the person's license or permit; or

(c) assess the person a civil penalty that the department establishes in accordance with Section 4-2-304.

(2) Except for a fine that the department assesses for an ~~[unlicensed processor or unregistered product]~~ unlicensed processor, an unregistered product, or the sale of a cannabinoid product to an individual younger than 21 years old, the department shall deposit a penalty imposed under this section into the General Fund.

(3) The department may take an action described in Subsection (4) if the department concludes, upon investigation, that a person has violated this chapter, a rule made under this chapter, or an order issued under this chapter.

(4) If the department makes the conclusion described in Subsection (3), the department shall:

(a) issue the person a written administrative citation;

(b) attempt to negotiate a stipulated settlement;

(c) seize, embargo, or destroy the industrial hemp batch or unregistered product;

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(d) order the person to cease the violation; and

(e) if a stipulated settlement cannot be reached, conduct an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

(5) The department may, for a person, other than an individual, that is subject to an uncontested citation, a stipulated settlement, or a finding of a violation in an adjudicative proceeding under this section, for a fine amount not already specified in law, assess the person a fine of up to \$5,000 per violation, in accordance with a fine schedule that the department establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) The department may not revoke [~~an industrial hemp producer's~~] a cannabinoid processor license, an industrial hemp retailer's permit, or an industrial hemp laboratory permit without first giving the person the opportunity to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(7) If, within 30 calendar days after the day on which a department serves a citation for a violation of this chapter, the person that is the subject of the citation fails to request a hearing to contest the citation, the citation becomes the department's final order.

(8) The department may, for a person who fails to comply with a citation under this section:

(a) refuse to issue or renew the person's [~~producer~~] processor license, retailer permit, or laboratory permit; or

(b) suspend, revoke, or place on probation the person's [~~producer~~] processor license, retailer permit, or laboratory permit.

Section 10. Section ~~4-41-402~~ is amended to read:

### **4-41-402. Cannabinoid sales and use authorized.**

(1) The sale or use of a cannabinoid product is prohibited:

(a) except as provided in this chapter; or

(b) unless the United States Food and Drug Administration approves the product.

(2) The department shall keep a list of registered cannabinoid products that the department has determined, in accordance with Section 4-41-403, are safe for human consumption.

(3) (a) A person may sell or use a cannabinoid product that is in the list of registered

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cannabinoid products described in Subsection (2).

(b) An individual may use cannabidiol or a cannabidiol product that is not in the list of registered cannabinoid products described in Subsection (2) if:

(i) the individual purchased the product outside the state; and

(ii) the product's contents do not violate Title 58, Chapter 37, Utah Controlled Substances Act.

(4) Any marketing for a cannabinoid product shall include a notice to consumers that the product is hemp or CBD and is not cannabis or medical cannabis, as those terms are defined in Section 26-61a-102.

(5) A cannabinoid product that is designed to be inhaled shall include a warning on the label regarding the possible health effects of inhaling cannabinoid products.

Section 11. Section **4-41-403** is amended to read:

### **4-41-403. Standards for registration.**

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

(i) to determine standards for a registered cannabinoid product, including standards for:

(A) testing to ensure the product is safe for human consumption; and

(B) accurate labeling;

(ii) governing an entity that manufactures cannabinoid products, including standards for health and safety;

(iii) to determine when and how a cannabinoid processor's cannabinoid must be tested by the department at the expense of the cannabinoid processor;

~~[(iii)]~~ (iv) regarding what constitutes:

(A) a conventional food or beverage; and

(B) a product that is marketed or manufactured to be enticing to children; and

~~[(iv)]~~ (v) regarding any other issue the department considers necessary for the safe production and sale of cannabinoid products.

(b) Notwithstanding Subsection (1)(a), the department may not prohibit a sugar coating on a cannabinoid product to mask the product's taste, subject to the limitations described in Subsection ~~[(1)(a)(iii) or (iv)]~~ (1)(a)(iv) or (v).

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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department may make rules to immediately ban or limit the presence of any substance in a cannabinoid product after receiving a recommendation to do so from a public health authority as defined in Section 26B-1-102.

~~(2)~~ (3) The department shall set a fee for a registered cannabinoid product, in accordance with Section 4-2-103.

~~(3)~~ (4) (a) A producer, manufacturer, or distributor of a cannabinoid product may pay the fee described in Subsection ~~(2)~~ (3).

(b) A cannabinoid product may not be registered with the department until the fee described in Subsection ~~(2)~~ (3) is paid.

~~(4)~~ (5) The department shall set an administrative fine, larger than the fee described in Subsection ~~(2)~~ (3), for a person who sells a cannabinoid product that is not registered by the department.