

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY,

471B0595

SENATE ENGROSSED NO. **HB 1191** - 3/6/2019

Introduced by: Representatives Lesmeister, Beal, Bordeaux, Borglum, Brunner, Cwach, Dennert, Deutsch, Diedrich, Duba, Finck, Goodwin, Gosch, Hansen, Healy, Johns, Johnson (Chris), Johnson (David), Koth, Lake, Latterell, Livermont, Marty, McCleerey, Mills, Otten (Herman), Peterson (Kent), Peterson (Sue), Pischke, Pourier, Qualm, Rasmussen, Reed, Ring, Rounds, Saba, Schoenfish, Smith (Jamie), St John, Steele, Sullivan, Wiese, and Willadsen and Senators Youngberg, Cammack, Cronin, DiSanto, Foster, Greenfield (Brock), Heinert, Kennedy, Kolbeck, Langer, Maher, Nesiba, Otten (Ernie), Smith (VJ), Soholt, Solano, Steinhauer, White, and Wismer

1 FOR AN ACT ENTITLED, An Act to legalize the growth, production, and processing of
2 industrial hemp and derivative products in the state.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subdivision (7) of § 22-42-1 be amended to read:

5 (7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not, in
6 its natural and unaltered state, except for drying or curing and crushing or crumbling.

7 The term includes an altered state of marijuana absorbed into the human body. The
8 term does not include industrial hemp as defined in section 3 of this Act, fiber
9 produced from the mature stalks of such plant, or oil or cake made from the seeds of
10 ~~such~~ the plant;

11 Section 2. That subdivision (12) of § 34-20B-1 be amended to read:



1 (12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the
2 seeds thereof; and every compound, manufacture, salt, derivative, mixture, or
3 preparation of such plant or its seeds. The term does not include industrial hemp as
4 defined in section 3 of this Act, fiber produced from the mature stalks of the plant,
5 or oil or cake made from the seeds of the plant, or the resin when extracted from any
6 part of the plant, or ~~cannabidiol~~, a drug product approved by the United States Food
7 and Drug Administration;

8 Section 3. That the code be amended by adding a NEW SECTION to read:

9 For the purposes of this Act, industrial hemp or hemp, is the plant Cannabis sativa L. and
10 any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids,
11 isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9
12 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

13 Section 4. That the code be amended by adding a NEW SECTION to read:

14 Any applicant desiring to grow, produce, or process industrial hemp shall apply to the
15 Department of Agriculture for a license on a form prescribed by the department in rules
16 promulgated pursuant to chapter 1-26. A license shall be obtained before an applicant may
17 purchase or obtain industrial hemp material for planting, propagation, or processing. The
18 applicant is responsible for compliance by anyone working under the applicant's license with
19 all sections of this Act. Only an applicant licensed to grow, produce, or process industrial hemp
20 pursuant to this Act, or an employee of the licensed applicant, may intentionally possess any
21 part, stalk, leaf, bud, flower, or seed of an industrial hemp plant.

22 Section 5. That the code be amended by adding a NEW SECTION to read:

23 The application for a license shall include the name and address of the applicant, and the
24 legal description of the land area to be used to grow, produce, or process industrial hemp.

1 Except for employees of the South Dakota Department of Agriculture, the South Dakota
2 Agricultural Experiment Station, or the South Dakota State University Extension Service
3 involved in research and extension-related activities, before initial licensure and any subsequent
4 license renewal, the department shall require each applicant and each of the applicant's
5 employees who have access to and control over industrial hemp in the ordinary course of their
6 employment to submit to a statewide and nationwide criminal history record check through
7 fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of
8 Investigation. The department shall require any of the applicant's employees covered by this
9 section, hired by the applicant subsequent to licensure, to submit to the same criminal history
10 record check at the time the employee is hired. All costs associated with the criminal history
11 record check are the responsibility of the applicant. Criminal history records provided to the
12 department under this section are confidential. However, the department may disclose
13 information received pursuant to this section with law enforcement. The department may use
14 the records only in determining an applicant's eligibility for licensure.

15 Section 6. That the code be amended by adding a NEW SECTION to read:

16 The department shall deny licensure to any applicant convicted of a felony relating to a
17 controlled substance or marijuana under state or federal law in the ten year period following
18 conviction.

19 Section 7. That the code be amended by adding a NEW SECTION to read:

20 If the applicant has completed the application process to the satisfaction of the department,
21 the department shall issue the license. A license issued under this Act is valid for one year. An
22 application for a license under this section shall be submitted to the department any time before
23 the purchase of industrial hemp material, including hemp seed or viable propagation material.
24 The department shall assess each applicant a fee not to exceed three hundred fifty dollars. The

1 department shall deposit fees collected under this chapter in the general fund.

2 The department may deny, revoke, or suspend a license to any person who:

- 3 (1) Violates this Act;
- 4 (2) Provides false or misleading information in connection with any application required
5 by this Act; or
- 6 (3) Has been convicted of a felony, as described in section 6 of this Act, since the most
7 recent criminal history background check.

8 Any person denied a license under this section may request a hearing before the secretary
9 pursuant to chapter 1-26.

10 Section 8. That the code be amended by adding a NEW SECTION to read:

11 Each licensee pursuant to this Act shall file with the Department of Agriculture
12 documentation indicating compliance with the following, as applicable:

- 13 (1) That the seeds planted were of a type and variety certified to have no more than
14 three-tenths of one percent tetrahydrocannabinol;
- 15 (2) That the industrial hemp harvested contains a delta-9 tetrahydrocannabinol
16 concentration of not more than 0.3 percent on a dry weight basis at the time of
17 harvest;
- 18 (3) That the industrial hemp processed contains a delta-9 tetrahydrocannabinol
19 concentration of not more than 0.3 percent at the time of receipt of the raw material
20 to be processed; and
- 21 (4) That the product resulting from the processing of industrial hemp contains a delta-9
22 tetrahydrocannabinol concentration of not more than 0.3 percent at the time of
23 shipment or sale by the processor.

24 Section 9. That the code be amended by adding a NEW SECTION to read:

1 The department may enter on any land or areas where hemp is grown, stored, or processed
2 for the purposes of inspections, sample collection, testing, or investigation for the purposes of
3 enforcing this Act. Any hemp found to be in violation of this Act is subject to confiscation and
4 disposal by the department. Any costs arising from the confiscation and disposal shall be the
5 responsibility of the grower, producer, processor, or owner of the hemp. The department is not
6 liable for any destruction of hemp or hemp products carried out under this Act. If a violation
7 occurs, the grower, producer, or processor shall be given, in writing, a copy of the results.

8 Section 10. That the code be amended by adding a NEW SECTION to read:

9 The following state agencies shall promulgate rules, pursuant to chapter 1-26, in the
10 following areas:

- 11 (1) The Department of Agriculture shall establish inspection, testing, and transportation
12 requirements in accordance with guidance from the United States Department of
13 Agriculture;
- 14 (2) The Department of Agriculture shall make any modifications or additions to the
15 industrial hemp licensure program and rules adopted pursuant to this Act in order to
16 comply with any standards or regulations regarding industrial hemp implemented by
17 the United States Department of Agriculture;
- 18 (3) The Department of Agriculture shall establish inspection, testing, licensure, and other
19 fees under this Act, not to exceed one thousand dollars, in each instance, moneys
20 from which shall be placed in the general fund;
- 21 (4) The Department of Agriculture shall establish certification criteria and testing
22 procedures for industrial hemp seed;
- 23 (5) The Department of Public Safety shall establish requirements for licensure of
24 transportation of industrial hemp in and through South Dakota, whether by a licensed

1 grower, producer, or processor or by persons contracting for such transportation,
2 provided that all such standards shall be consistent with federal law, including federal
3 laws regarding industrial hemp and interstate commerce of industrial hemp; and

4 (6) The Department of Health shall establish rules for the revocation of a license to
5 produce or process industrial hemp under the circumstances set forth in section 17
6 of this Act.

7 Section 11. That the code be amended by adding a NEW SECTION to read:

8 The Department of Agriculture, in consultation with the Department of Public Safety and
9 the Department of Health, shall work with the attorney general to develop a program, to license
10 growth of industrial hemp in South Dakota. With approval of the attorney general, the
11 Department of Agriculture shall apply to the United States Department of Agriculture for
12 approval of a program to license growth of industrial hemp in South Dakota. The Department
13 of Agriculture shall set up a program to license growth, production, or processing of industrial
14 hemp once approval is received by the United States Department of Agriculture.

15 Section 12. That the code be amended by adding a NEW SECTION to read:

16 Any law enforcement officer may require any person transporting industrial hemp to stop
17 any vehicle transporting such product for the purposes of inspection of appropriate licensure or
18 paperwork. The law enforcement officer may collect a sample of such product for the purpose
19 of testing for any concentration of tetrahydrocannabinol that exceeds three-tenths of one percent.
20 The sample collected by law enforcement may not exceed eight ounces. It shall be a Class 2
21 misdemeanor to transport industrial hemp without appropriate licensure or paperwork from a
22 federal or state authority.

23 Section 13. That the code be amended by adding a NEW SECTION to read:

24 The transportation of industrial hemp in South Dakota is prohibited, except for the

1 following:

- 2 (1) Persons licensed pursuant to this Act and employees of such licensees under section
3 5 of this Act;
- 4 (2) Persons authorized or licensed for transportation of industrial hemp under this Act,
5 including persons authorized for interstate transportation of industrial hemp by a
6 valid state or federal authority;
- 7 (3) Seed suppliers licensed pursuant to this Act;
- 8 (4) Persons under contract with South Dakota state government pursuant to this Act; and
- 9 (5) State or federal government and law enforcement officials in the ordinary conduct of
10 their office.

11 Section 14. That the code be amended by adding a NEW SECTION to read:

12 Except for willful or wanton misconduct, a law enforcement officer described in this Act,
13 or a surety on his or her official bond, may not be liable for any damages claimed to have been
14 incurred by reason of any damages allegedly arising from the regulation of industrial hemp
15 under this Act, including loss of time, shrinkage, or related damages.

16 Section 15. That the code be amended by adding a NEW SECTION to read:

17 Notwithstanding any other provision of law, a person licensed to grow industrial hemp under
18 this Act shall grow the plant only in a field open to the air above throughout the year.

19 Section 16. That the code be amended by adding a NEW SECTION to read:

20 As used in section 3 of this Act, the term, cannabinoids, includes cannabidiol, which shall
21 be defined for purposes of this section as a processed cannabinoid product derived from
22 industrial hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

23 A person licensed under this Act shall be permitted to produce or process cannabidiol, provided:

- 24 (1) The licensee complies with all provisions of this Act and regulations adopted

1 pursuant to the Act; and

2 (2) The United States Food and Drug Administration does not enact any new regulations
3 or issue official decisions, within its established jurisdiction over food and drugs
4 under the federal Food, Drug & Cosmetics Act, directly prohibiting the introduction
5 into interstate commerce of the specific cannabidiol products produced or processed
6 by the licensee.

7 Section 17. That the code be amended by adding a NEW SECTION to read:

8 The Department of Health shall revoke the license of any licensee under this Act if the
9 licensee produces or processes one or more specific cannabidiol products under this section that
10 have been directly prohibited for introduction into interstate commerce by new regulations
11 adopted, or official decisions issued, by the Food & Drug Administration. Before revocation of
12 a license under this section, the licensee shall be afforded:

13 (1) Thirty days in which to cease production or processing of the specific cannabidiol
14 product or products directly prohibited by the Food & Drug Administration; and

15 (2) A contested case hearing and other procedures provided under chapter 1-26.

16 In the event the licensee demonstrates that he or she has ceased production or processing of
17 the specific cannabidiol product or products directly prohibited by the Food & Drug
18 Administration within thirty days of written notice from the Department of Health, the licensee
19 shall be authorized to continue the production or processing of any industrial hemp products for
20 which it has been licensed under this Act and which have not been directly prohibited by the
21 Food & Drug Administration.