

HEMP AND CBD AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Evan J. Vickers

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LONG TITLE

**General Description:**

This bill amends provisions related to the production and sale of industrial hemp and cannabinoid products.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows industrial hemp producers to procure background checks through a federal system;
- ▶ identifies an unlawful act for a person to:
  - distribute, sell, or market a product that exceeds a concentration of THC;
  - transport material outside the state that exceeds a concentration of THC; and
  - produce, sell, or use a cannabinoid product that is added to a conventional food or beverage, enticing to children, or smokable flower;
- ▶ allows for increased flexibility in dosage forms;
- ▶ provides for registration of a product class rather than individual products;
- ▶ repeals a provision related to an industrial hemp research certificate;
- ▶ repeals the involvement of the Utah Department of Agriculture and Food in the regulation of hemp cultivation; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

30 This bill provides a coordination clause.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 4-41-102, as last amended by Laws of Utah 2020, Chapters 12 and 14

34 4-41-103.1, as enacted by Laws of Utah 2020, Chapter 14

35 4-41-103.2, as enacted by Laws of Utah 2020, Chapter 14

36 4-41-104, as enacted by Laws of Utah 2018, Chapter 227

37 4-41-105, as last amended by Laws of Utah 2020, Chapter 14

38 4-41-106, as enacted by Laws of Utah 2020, Chapter 14

39 4-41-403, as last amended by Laws of Utah 2019, Chapter 23

40 REPEALS:

41 4-41-103, as last amended by Laws of Utah 2020, Chapter 14

42 4-41-204, as enacted by Laws of Utah 2018, Chapter 446

43 **Utah Code Sections Affected by Coordination Clause:**

44 4-41-105, as last amended by Laws of Utah 2020, Chapter 14



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

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

48 **4-41-102. Definitions.**

49 As used in this chapter:

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

51 (2) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS#

52 1244-58-2.

53 [(+)] (3) "Cannabinoid product" means a [chemical compound extracted from a hemp]

54 product that:

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

56 (a) contains or is represented to contain one or more naturally occurring cannabinoids;

57 and

58 (b) contains less than 0.3% tetrahydrocannabinol by dry weight.

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

61 (5) "Derivative cannabinoid" means any cannabinoid that has been intentionally  
62 created using a process to convert one cannabinoid into another.

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

65 [(2)] (7) "Industrial hemp" means any part of a cannabis plant, whether growing or not,  
66 with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.

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

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

72 [(5)] (8) "Industrial hemp laboratory permit" means a permit that the department issues  
73 to a laboratory qualified to test industrial hemp under the state hemp production plan.

74 [(6)] (9) "Industrial hemp producer license" means a license that the department issues  
75 to a person for the purpose of ~~[cultivating or]~~ processing industrial hemp or an industrial hemp  
76 product.

77 [(7)] (10) "Industrial hemp retailer permit" means a permit that the department issues  
78 to a retailer who sells any industrial hemp product.

79 [(8)] (11) "Industrial hemp product" means a product derived from, or made by,  
80 processing industrial hemp plants or industrial hemp parts.

81 (12) "Industrial hemp product class" means a group of cannabinoid products:

82 (a) that have all ingredients in common; and

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

84 (13) (a) "Key participant" means any person who has a financial interest in the business  
85 entity, including members of a limited liability company, a sole proprietor, partners in a

86 partnership, and incorporators or directors of a corporation.

87 (b) "Key participant" includes an:

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

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

92 ~~[(9)]~~ (14) "Laboratory permittee" means a person possessing an industrial hemp  
93 laboratory permit that the department issues under this chapter.

94 ~~[(10)]~~ (15) "Licensee" means a person possessing an industrial hemp producer license  
95 that the department issues under this chapter.

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

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

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

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

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

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

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

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

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

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

107 ~~[(12)]~~ (16) "Non-compliant material" means a hemp plant or hemp product that does  
108 not comply with this chapter, including a cannabis plant or product that contains a  
109 concentration of 0.3% tetrahydrocannabinol or greater by dry weight.

110 ~~[(13)]~~ (17) "Permittee" means a person possessing a permit that the department issues  
111 under this chapter.

112 ~~[(14)]~~ (18) "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) "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)]~~ (19) "Retailer permittee" means a person possessing an industrial hemp retailer  
121 permit that the department issues under this chapter.

122 ~~[(17) "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 (20) "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 (21) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol  
130 and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)".

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

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

135 **4-41-103.1. Authority to regulate production, sale, and testing of industrial hemp.**

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

138 ~~[(a) create a state hemp production plan that meets the standards of the Domestic  
139 Hemp Production Program, 7 C.F.R. Chapter 990;]~~

140 ~~[(b)]~~ (a) establish requirements for an industrial hemp producer license to ~~[cultivate or]~~  
141 process industrial hemp;

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

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

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

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

149           **4-41-103.2. Industrial hemp producer license.**

150           (1) The department or a licensee of the department may ~~[cultivate or]~~ process industrial  
151 hemp.

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

154           (a) the legal description and global positioning coordinates sufficient for locating the  
155 ~~[fields or greenhouses]~~ facility the person uses to ~~[grow]~~ process industrial hemp; and

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

159           (i) conducting a physical inspection; or

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

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

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

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

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

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

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

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

174 (A) the Bureau of Criminal Identification; and

175 (B) the Federal Bureau of Investigation.

176 (b) The Bureau of Criminal Identification shall:

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

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

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

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

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

191 (c) The department shall:

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

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

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

198           **4-41-104. Product registration required for distribution -- Application -- Fees --**  
199 **Renewal.**

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

202           (2) A person seeking registration for an industrial hemp product class or cannabinoid  
203 product shall:

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

205           (b) submit an annual registration fee, determined by the department pursuant to  
206 Subsection 4-2-103(2), for each industrial hemp product class or cannabinoid product the  
207 person intends to distribute in this state.

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

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

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

219           Section 5. Section **4-41-105** is amended to read:

220           **4-41-105. Unlawful acts.**

221           (1) It is unlawful for a person to [~~cultivate,~~] handle, process, or market living industrial  
222 hemp plants, viable hemp seeds, leaf materials, or floral materials derived from industrial hemp  
223 without the appropriate license or permit issued by the department under this chapter.

224           (2) It is unlawful for any person to:

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



- 226 (i) not registered with the department [~~pursuant to~~] under Section 4-41-104~~[.]~~; or
- 227 (ii) noncompliant material;
- 228 (b) transport into or out of the state extracted material or final product that contains
- 229 0.3% or more of total THC;
- 230 (c) produce, sell, or use a cannabinoid product that is:
- 231 (i) added to a conventional food or beverage, as the department further defines in rules
- 232 described in Section 4-41-403; or
- 233 (ii) marketed or manufactured to be enticing to children, as further defined in rules
- 234 described in Section 4-41-403; or
- 235 (iii) smokable flower.
- 236 (3) The department may seize and destroy non-compliant material.
- 237 (4) Nothing in this chapter authorizes any person to violate federal law, regulation, or
- 238 any provision of this title.

239 Section 6. Section **4-41-106** is amended to read:

240 **4-41-106. Enforcement -- Fine -- Citation.**

- 241 (1) If a person violates this part, the department may:
- 242 (a) revoke the person's license or permit;
- 243 (b) decline to renew the person's license or permit; or
- 244 (c) assess the person a civil penalty that the department establishes in accordance with
- 245 Section 4-2-304.
- 246 (2) [~~The~~] Except for a fine that the department assesses for an unlicensed processor or
- 247 unregistered product, the department shall deposit a penalty imposed under this section into the
- 248 General Fund.
- 249 (3) The department may take an action described in Subsection (4) if the department
- 250 concludes, upon investigation, that a person has violated this chapter, a rule made under this
- 251 chapter, or an order issued under this chapter.
- 252 (4) If the department makes the conclusion described in Subsection (3), the department
- 253 shall:

- 254 (a) issue the person a written administrative citation;
- 255 (b) attempt to negotiate a stipulated settlement;
- 256 (c) seize, embargo, or destroy the industrial hemp batch or unregistered product;
- 257 (d) order the person to cease the violation; and
- 258 (e) if a stipulated settlement cannot be reached, conduct an adjudicative proceeding
- 259 under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

275 (a) refuse to issue or renew the person's producer license, retailer permit, or laboratory  
276 permit; or

277 (b) suspend, revoke, or place on probation the person's producer license, retailer  
278 permit, or laboratory permit.

279 Section 7. Section **4-41-403** is amended to read:

280 **4-41-403. Standards for registration.**

281 (1) (a) The department shall make rules in accordance with Title 63G, Chapter 3, Utah

282 Administrative Rulemaking Act[;]:

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

284       [~~(a)~~] (A) testing to ensure the product is safe for human consumption; and

285       [~~(b)~~] (B) accurate labeling; [~~and~~]

286       (ii) governing an entity that manufactures cannabinoid products, including standards

287 for health and safety;

288       (iii) regarding what constitutes:

289       (A) a conventional food or beverage; and

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

291       [~~(c)~~] (iv) regarding any other issue the department considers necessary for the safe

292 production and sale of cannabinoid products.

293       (b) Notwithstanding Subsection (1)(a), the department may not prohibit a sugar coating

294 on a cannabinoid product to mask the product's taste, subject to the limitations described in

295 Subsection (1)(a)(iii) or (iv).

296       (2) The department shall set a fee for a registered cannabinoid product, in accordance

297 with Section 4-2-103.

298       (3) (a) A producer, manufacturer, or distributor of a cannabinoid product may pay the

299 fee described in Subsection (2).

300       (b) A cannabinoid product may not be registered with the department until the fee

301 described in Subsection (2) is paid.

302       (4) The department shall set an administrative fine, larger than the fee described in

303 Subsection (2), for a person who sells a cannabinoid product that is not registered by the

304 department.

305       Section 8. **Repealer.**

306       This bill repeals:

307       Section 4-41-103, **Industrial hemp -- Agricultural and academic research.**

308       Section 4-41-204, **Department to make rules regarding cultivation and processing.**

309       Section 9. **Coordinating H.B. 385 with S.B. 190 -- Substantive and technical**

310 **amendments.**

311 If this H.B. 385 and S.B. 190, Medical Cannabis Act Amendments, both pass and  
312 become law, it is the intent of the Legislature that the Office of Legislative Research and  
313 General Counsel shall prepare the Utah Code database for publication by amending Subsection  
314 4-41-105(2) to read:

315 "(2) It is unlawful for any person to:

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

317 (i) not registered with the department [~~pursuant to~~] under Section 4-41-104[-]; or

318 (ii) noncompliant material;

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

320 0.3% or more of total THC; or

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

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

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

326 (iii) smokable flower."