



## 2021 South Dakota Legislature

# House Bill 1228

### HOUSE AGRICULTURE AND NATURAL RESOURCES ENGROSSED

Introduced by: **Representative Finck**

1 **An Act to revise provisions regarding industrial hemp and to declare an emergency.**

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

3 **Section 1.** That § 38-35-3 be AMENDED.

4 **38-35-3. Application for grower license.**

5 After the department receives approval by the United States Secretary of Agriculture  
6 for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase,  
7 receive, or obtain industrial hemp, other than industrial hemp product, for planting,  
8 storing, propagating, or producing shall apply to the secretary for a grower license on an  
9 application form prescribed by the department and submit a nonrefundable annual  
10 application fee. ~~The department shall establish a sixty-day period in which an application~~  
11 ~~must be received.~~ The secretary shall deposit fees collected under this chapter in the hemp  
12 regulatory program fund.

13 No application for licensure to plant, grow, or produce industrial hemp may be for less  
14 than five one-half, contiguous outdoor acres or an indoor greenhouse that may not be less  
15 than two thousand eight hundred eighty square feet.

16 **Section 2.** That § 38-35-4 be AMENDED.

17 **38-35-4. Application for processor license--Fee--Location notice.**

18 After the department receives approval by the United States Secretary of Agriculture  
19 for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase,  
20 receive, or obtain industrial hemp, other than industrial hemp product, for processing shall  
21 apply to the secretary for a processor license on an application form prescribed by the  
22 department and submit a nonrefundable annual application fee. The applicant may submit  
23 an application form for a processor license at any time. The secretary shall deposit fees  
24 collected under this chapter in the hemp regulatory program fund.

1           The applicant shall provide to the department the street address, legal description,  
2           and global positioning system coordinates for any location where hemp will be processed  
3           under the processor's license and certify that any location where hemp is to be processed  
4           is under the control of the applicant. A processor licensee shall provide notice of any  
5           change in ownership or location to the department within ~~two-ten~~ ten days of a change. A  
6           Failure to amend change of ownership or location automatically invalidates the license,  
7           and a new license must be obtained.

8           **Section 3.** That § 38-35-5 be AMENDED.

9                    **38-35-5. Criminal background check--Denial of license for conviction--**  
10            **Licensure exemption.**

11           Each applicant for any license under this chapter, key participant, and landowner, if  
12           the applicant is the lessee, shall submit to a state and federal criminal background  
13           investigation by means of fingerprint checks by the Division of Criminal Investigation and  
14           the Federal Bureau of Investigation. Upon application for a license, the department shall  
15           submit the completed fingerprint cards to the division. Upon completion of the criminal  
16           background check, the division shall forward to the department all information obtained  
17           as a result of the criminal background check. This information shall be obtained prior to  
18           licensure of the applicant. All costs or fees associated with the criminal background checks  
19           are the responsibility of the applicant. Information provided to the department under this  
20           section is confidential, is not public record, and is exempt from the provisions of chapter  
21           1-27. However, the department may share this information with law enforcement and the  
22           Department of Public Safety. Failure to submit to or cooperate with a criminal background  
23           check is grounds for denial or revocation of a license. The secretary may deny licensure if  
24           any applicant, key participant, or landowner has been convicted of a misdemeanor or  
25           felony relating to a controlled substance or marijuana under state or federal law within  
26           the previous ten years. Licensure under this chapter is not required for employees of the  
27           state of South Dakota when performing official duties. Any person who has previously  
28           submitted a fingerprint card to the Division of Criminal Investigation as part of an  
29           application under the hemp program is not required to resubmit a fingerprint card but  
30           shall authorize the use of the previously submitted fingerprints for an updated state and  
31           federal background check. All costs or fees associated with the criminal background checks  
32           are the responsibility of the applicant.

33           **Section 4.** That § 38-35-7 be AMENDED.

1           **38-35-7. License issuance--Denial, revocation, or suspension--Contested**  
 2           **case.**

3           If the applicant has completed the application to the satisfaction of the secretary, paid  
 4           the application fee, returned a criminal background check compliant with § 38-35-5, and  
 5           is eligible for a license under this chapter, the secretary shall issue the license upon receipt  
 6           of an annual license fee ~~and upon the licensee's agreement and affirmation that as a~~  
 7           ~~continuing condition of licensure, the department shall have unlimited access to all lots or~~  
 8           ~~licensed locations processing hemp without prior notice to the licensee or the need to~~  
 9           ~~obtain a search warrant or court order for access to enforce the provisions of this chapter.~~

10          A grower or processor license issued under this chapter is valid for fifteen months from  
 11          the date of issuance. ~~A processor license issued under this chapter expires on December~~  
 12          ~~thirty first in the calendar year for which it was issued.~~

13          The department may deny, revoke, or suspend a license of any person who:

- 14          (1)    Violates any provision of this chapter or administrative rule promulgated under the  
 15                authority of this chapter;
- 16          (2)    Violates any rule set forth by the United States Department of Agriculture regarding  
 17                industrial hemp;
- 18          (3)    Provides false or misleading information in connection with any application required  
 19                by this chapter;
- 20          (4)    Has been convicted of a misdemeanor or felony relating to a controlled substance  
 21                or marijuana under state or federal law within the previous ten years; or
- 22          (5)    Has been charged with or convicted of a misdemeanor or felony relating to a  
 23                controlled substance or marijuana under state or federal law since the most recent  
 24                criminal background check.

25          Any person whose license is denied, revoked, or suspended under this section may  
 26          request a hearing pursuant to chapter 1-26.

27          **Section 5.** That § 38-35-10 be AMENDED.

28           **38-35-10. Inspection timing and procedure--Disclose information.**

29          Every lot of a grower licensee shall be inspected and samples collected no more than  
 30          ~~fifteen~~ thirty days before the hemp is harvested. The grower licensee shall contact the  
 31          Department of Public Safety prior to harvest in order to ensure a reasonable amount of  
 32          time to schedule an inspection. The grower licensee shall be present during the inspection.  
 33          No harvested lot of hemp shall be commingled with another harvested lot of hemp or other  
 34          material ~~except with documented prior written permission by the department or the United~~

1 ~~States Department of Agriculture~~. No hemp may leave the dominion of control of the  
2 grower licensee until the grower licensee receives a laboratory result from the department  
3 that confirms each lot complies with 7 U.S.C. Chapter 38, Subchapter VII, as provided in  
4 7 C.F.R 990.70(d) and 990.71(d) in effect as of January 1, 2020.

5 Any location of the processor licensee may be subject to random inspection. The  
6 processor licensee shall be present during the inspection.

7 **Section 6.** That § 38-35-13 be AMENDED.

8 **38-35-13. Department of Public Safety--Promulgation of rules.**

9 The Department of Public Safety shall promulgate rules, pursuant to chapter 1-26, to:

- 10 (1) Make any modification or addition to the hemp regulatory program in order to  
11 comply with any federal statutes or any rules and regulations regarding hemp  
12 enacted or implemented by the United States Department of Agriculture;
- 13 (2) Establish inspection procedures and requirements, a grower inspection fee per lot  
14 not to exceed two hundred fifty dollars, and a processor inspection fee per any  
15 processor location not to exceed five hundred dollars;
- 16 (3) Establish transportation ~~and permit documentation~~ requirements ~~including~~  
17 ~~assessment of a permit fee not to exceed twenty-five dollars;~~
- 18 (4) Establish sampling and testing procedures to determine ~~the lawful amount of delta-~~  
19 ~~9 tetrahydrocannabinol concentration in hemp if the hemp tested and sampled is~~  
20 the lawful amount of delta-9 tetrahydrocannabinol concentration of not more than  
21 three-tenths of one percent; and
- 22 (5) Establish rules for corrective action for negligent and culpable violations of this  
23 chapter.

24 **Section 7.** That § 38-35-14 be AMENDED.

25 **38-35-14. Testing samples--Exceeding concentration--Destruction of lot.**

26 All testing shall be conducted by a laboratory approved by the Drug Enforcement  
27 Administration. The laboratory shall report the delta-9 tetrahydrocannabinol concentration  
28 level and the measurement of uncertainty for each sample tested pursuant to this section.

29 If a test reveals a delta-9 tetrahydrocannabinol concentration of more than three-tenths  
30 of one percent but not more than five-tenths of one percent, the licensee may request a  
31 retest at the licensee's expense. If, upon the retesting, the delta-9 tetrahydrocannabinol  
32 concentration exceeds three-tenths of one percent, the entire lot from which the  
33 noncompliant sample was collected shall be destroyed as provided by § 38-35-9. However,

1 a sample that tests a result within a measurement of uncertainty that produces a range  
2 that includes a delta-9 tetrahydrocannabinol concentration of three-tenths of one percent  
3 is compliant for the purposes of this chapter. For the purposes of this section, the measure  
4 of uncertainty means the parameter, associated with the result of a measurement, that  
5 characterizes the dispersion of the values that could reasonably be attributed to the  
6 particular quantity subject to measurement.

7 **Section 8.** That § 38-35-17 be AMENDED.

8 **38-35-17. Transportation by persons other than grower licensee--Required**  
9 **documentation--Violation as misdemeanor.**

10 ~~An industrial hemp transportation permit is required for any transporter traveling~~  
11 ~~within or through the state. No person shall transport hemp in this state concurrently with~~  
12 ~~any other plant material that is not hemp. During transportation, a transporter shall have~~  
13 ~~the permit in the transporter's physical possession. The Department of Public Safety shall~~  
14 ~~assess an industrial hemp transportation permit fee and the fee shall be deposited in the~~  
15 ~~state highway fund. A transporter shall apply for an industrial hemp transportation permit~~  
16 ~~on a form provided by the Department of Public Safety. The Department of Public Safety~~  
17 ~~shall make available two types of an industrial hemp transportation permit.~~

18 ~~Grower licensees pursuant to § 38-35-3 may apply for the grower licensee~~  
19 ~~transportation permit that shall be exclusively for the transportation of the grower~~  
20 ~~licensee's industrial hemp from the land as described in the licensee's application to the~~  
21 ~~storage location as described in the licensee's application. The grower licensee shall~~  
22 ~~exercise dominion of control over the means of transportation and the storage location at~~  
23 ~~all times. The grower licensee transportation permit is valid for the length of the grower~~  
24 ~~license. During transportation pursuant to the grower licensee transportation permit, the~~  
25 ~~transporter may only be the grower licensee, a key participant, or a person working under~~  
26 ~~contract with or under the direction of the grower licensee. The transporter shall have in~~  
27 ~~the transporter's physical possession a copy of the grower license under which the~~  
28 ~~industrial hemp was grown or produced and a manifest that includes the following~~  
29 ~~information about the industrial hemp being transported: the specific name and address~~  
30 ~~of the transporter, the specific lot from which the hemp was harvested, the destination~~  
31 ~~storage location for the hemp, and the type of vehicle being used.~~

32 ~~All other transporters shall obtain the general hemp transportation permit. During~~  
33 ~~transportation pursuant to the general hemp transportation permit, the~~If the transporter

1 is not a grower licensee, that transporter shall have in the transporter's—physical  
2 possession the following documentation:

- 3 (1) A copy of the license under which the industrial hemp was grown or produced;
- 4 (2) A laboratory report produced by a Drug Enforcement Administration-registered  
5 laboratory that confirms the lot of origin of all hemp being transported complies  
6 with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R 990.70(d) and  
7 990.71(d) in effect as of January 1, 2020;
- 8 (3) A signed affirmation from the licensee and the transporter that no illicit drugs or  
9 variations of hemp not explicitly authorized by 7 U.S.C. Chapter 38, Subchapter  
10 VII will be transported; and
- 11 (4) A bill of lading or manifest that includes the shipment contents, the specific name  
12 and address of the transporter, the specific name and address of the origin and lot  
13 of origin, the destination of the shipment, the total weight of the load, and the type  
14 of vehicle being used.

15 ~~A transporter, applying for either type of permit, shall submit a permit form to the~~  
16 ~~Department of Public Safety at least five business days before the trip. A transporter who~~  
17 ~~falsifies any information contained on a permit form submitted to the Department of Public~~  
18 ~~Safety shall be reported to the hemp program under which the industrial hemp being~~  
19 ~~transported was grown, in addition to any other sanction or criminal charge allowed under~~  
20 ~~this chapter or title 22. Failure to physically possess an appropriate permit and all proper~~  
21 ~~documentation is probable cause to believe that the substance being transported is subject~~  
22 ~~to the provisions of § 38-35-9 and is probable cause to believe that the transporter is~~  
23 ~~subject to the provisions of chapter 22-42. No political subdivision, agency, law~~  
24 ~~enforcement officer, or the state is liable for the seizure, spoilage, or destruction of any~~  
25 ~~hemp shipment that does not meet the requirements of this chapter, regardless of whether~~  
26 ~~the shipment is later established to be industrial hemp. Failure to possess the appropriate~~  
27 ~~documentation pursuant to this section is a Class 2 misdemeanor.~~

28 **Section 9.** That a NEW SECTION be added:

29 **38-35-17.1. Grower licensee transportation documentation requirements--**  
30 **Violation as misdemeanor.**

31 A grower licensee traveling from the land as described in the licensee's application  
32 to the storage location as described in the licensee's application shall have in the  
33 transporter's possession the following:

1        (1) A copy of the grower license under which the industrial hemp was grown or  
2            produced; and

3        (2) A manifest that includes the specific name and address of the transporter, the  
4            specific lot from which the industrial hemp being transported was harvested, the  
5            destination storage location for the hemp, and the type of vehicle being used.

6            Failure to possess the appropriate documentation pursuant to this section is a Class  
7        2 misdemeanor.

8        **Section 10.** Whereas, this Act is necessary for the support of the state government and its  
9        existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
10       full force and effect from and after its passage and approval.