



2021 South Dakota Legislature
House Bill 1228
ENROLLED

AN ACT

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

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

Section 1. That § 38-35-3 be AMENDED.

38-35-3. Application for grower license--Location and size requirements.

After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for planting, storing, propagating, or producing shall apply to the secretary for a grower license on an application form prescribed by the department and submit a nonrefundable annual application fee. The secretary shall deposit fees collected under this chapter in the hemp regulatory program fund.

No application for licensure to plant, grow, or produce industrial hemp may be for less than one-half, contiguous outdoor acres or an indoor greenhouse that may not be less than two thousand eight hundred eighty square feet. No application for licensure to plant, grow, or produce industrial hemp may be approved within the corporate limits of any incorporated municipality without receiving verification from the municipality that it meets all applicable municipal zoning regulations.

Section 2. That § 38-35-4 be AMENDED.

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

After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase, receive, or obtain industrial hemp, other than industrial hemp product, for processing shall apply to the secretary for a processor license on an application form prescribed by the department and submit a nonrefundable annual application fee. The applicant may submit

an application form for a processor license at any time. The secretary shall deposit fees collected under this chapter in the hemp regulatory program fund.

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

Section 3. That § 38-35-5 be AMENDED.

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

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

Section 4. That § 38-35-7 be AMENDED.

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

If the applicant has completed the application to the satisfaction of the secretary, paid the application fee, returned a criminal background check compliant with § 38-35-5, and is eligible for a license under this chapter, the secretary shall issue the license upon receipt of an annual license fee.

A grower or processor license issued under this chapter is valid for fifteen months from the date of issuance.

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

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

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

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

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

Every lot of a grower licensee shall be inspected and samples collected no more than thirty days before the hemp is harvested. The grower licensee shall contact the Department of Public Safety prior to harvest in order to ensure a reasonable amount of time to schedule an inspection. The grower licensee shall be present during the inspection. No harvested lot of hemp shall be commingled with another harvested lot of hemp or other material. No hemp may leave the dominion of control of the grower licensee until the grower licensee receives a laboratory result from the department that confirms each lot

complies with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R 990.70(d) and 990.71(d) in effect as of January 1, 2020.

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

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

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

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

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

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

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

All testing shall be conducted by a laboratory approved by the Drug Enforcement Administration. The laboratory shall report the delta-9 tetrahydrocannabinol concentration level and the measurement of uncertainty for each sample tested pursuant to this section. If a test reveals a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent but not more than five-tenths of one percent, the licensee may request a retest at the licensee's expense. If, upon the retesting, the delta-9 tetrahydrocannabinol concentration exceeds three-tenths of one percent, the entire lot from which the noncompliant sample was collected shall be destroyed as provided by § 38-35-9. However, a sample that tests a result within a measurement of uncertainty that produces a range that includes a delta-9 tetrahydrocannabinol concentration of three-tenths of one percent is compliant for the purposes of this chapter. For the purposes of this section, the measure of uncertainty means the parameter, associated with the result of a measurement, that

characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

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

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

If the transporter is not a grower licensee, that transporter shall have in the transporter's possession the following documentation:

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

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

Section 9. That a NEW SECTION be added:

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

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

- (1) A copy of the grower license under which the industrial hemp was grown or produced; and
- (2) A manifest that includes the specific name and address of the transporter, the specific lot from which the industrial hemp being transported was harvested, the destination storage location for the hemp, and the type of vehicle being used.

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

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

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

I certify that the attached Act originated in the:
House as Bill No. 1228

Received at this Executive Office this ____ day of _____, 2021 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2021

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2021 at _____ o'clock ___ M.

Secretary of the Senate

Secretary of State

House Bill No. 1228
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State