



2023 South Dakota Legislature

House Bill 1209

Introduced by: **Representative** Lesmeister

1 **An Act to revise provisions regarding industrial hemp.**

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

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

4 **38-35-1.** Terms used in this chapter mean:

- 5 (1) "Applicant," a person, including the state or any agency or institution thereof, any
6 municipality, political subdivision, public or private corporation, individual,
7 partnership, limited liability company, association, or trust; and includes any officer
8 or governing or managing body of any municipality, political subdivision, or public
9 or private corporation, or limited liability company, applying for an industrial hemp
10 grower license, processor license, or both;
- 11 (2) "Department," the Department of Agriculture and Natural Resources;
- 12 (3) "Greenhouse," any indoor structure or enclosed building capable of continuous
13 cultivation throughout the year, no less than two thousand eight hundred and
14 eighty square feet, not part of a residential dwelling. Greenhouses may contain
15 multiple lots that are separated and identified;
- 16 (4) "Hemp" or "industrial hemp," the plant *Cannabis sativa* L. and any part of that
17 plant, including the seeds thereof and all derivatives, extracts, cannabinoids,
18 isomers, acids, salts, and salts of isomers, whether growing or not, with a total
19 delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one
20 percent on a dry weight basis;
- 21 (5) "Key participant," a sole proprietor, a partner in a partnership, a principal executive
22 officer for a government entity, or a person with executive managerial control in a
23 corporation or limited liability company;
- 24 (6) "Industrial hemp product," a finished manufactured product, or consumer product
25 made from industrial hemp with a total delta-9 tetrahydrocannabinol concentration

- 1 of not more than three-tenths of one percent, derived from or made by processing
2 industrial hemp;
- 3 (7) "Lot," a contiguous area in a field or greenhouse containing the same variety or
4 strain of hemp throughout the area;
- 5 (8) "Measurement of uncertainty," the parameter associated with the result of a
6 measurement, that characterizes the dispersion of the values that could reasonably
7 be attributed to the particular quantity subject to measurement;
- 8 (9) "Process" or "processing," to render raw industrial hemp plants or plant parts from
9 their natural or original state to an initial processed form. Typical processing
10 includes decortication, devitalization, crushing, or extraction;
- 11 (10) "Processor," a person that converts raw hemp into an initial processed form;
- 12 (11) "Produce" or "producing," to grow, germinate, dry, sort, grade, bale, grind, mill,
13 pelletize, and harvest hemp plants in the field or in a greenhouse;
- 14 (12) "Product in process," the product being processed ~~by a state licensed hemp~~
15 ~~processor or the transfer of that product at no higher than one percent total delta-~~
16 ~~9 tetrahydrocannabinol between one or more licensed hemp processors during the~~
17 ~~process of processing state or federally approved, lab tested biomass from a~~
18 ~~licensed grower into a finished industrial hemp product by a licensed hemp~~
19 processor or the transfer of that product at no higher than five percent total delta-
20 9 tetrahydrocannabinol between one or more hemp processors or growers licensed
21 in United States jurisdictions with United States Department of Agriculture
22 approved hemp plans during processing to make an end user THC compliant
23 industrial hemp product under this chapter;
- 24 (13) "Remediation," the process of rendering non-compliant cannabis compliant using
25 methods accepted by the USDA;
- 26 (14) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
- 27 (15) "Total delta-9 THC or total delta-9 tetrahydrocannabinol," the value determined
28 after the process of decarboxylation, or the application of a conversion factor if the
29 testing methodology does not include decarboxylation, that expresses the potential
30 total delta-9 tetrahydrocannabinol content derived from the sum of the THC and
31 THCA content and reported on a dry weight basis; and
- 32 (16) "Transporter," any person transporting, hauling, or delivering immature or mature
33 hemp or product in process, but not industrial hemp product or sterilized seeds
34 that are incapable of beginning germination.

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

1 **38-35-16.** Any transporter is deemed to have given consent to the reasonable
2 search and seizure by law enforcement of any hemp without a warrant to determine the
3 lawful amount of total delta-9 tetrahydrocannabinol concentration. For purposes of this
4 section, product in process that is properly documented is compliant. Any law enforcement
5 officer may require any transporter to stop for the purposes of inspection. During a stop,
6 a law enforcement officer may collect a sample of any hemp for the purpose of testing for
7 any concentration of total delta-9 tetrahydrocannabinol that exceeds three-tenths of one
8 percent on a dry weight basis. Each sample collected by law enforcement may not exceed
9 eight ounces.

10 Any container used to transport product in process must have a label that states
11 that the product in process is not intended for human consumption.

12 It is a Class 2 misdemeanor to transport industrial hemp or product in process, but
13 not industrial hemp product, without appropriate documentation and container signage
14 demonstrating compliance with an industrial hemp program of a federal, state, or tribal
15 authority, in addition to any permit or documentation required by § 38-35-17.

16 **Section 3. That § 38-35-19 be REPEALED:**

17 ~~The attorney general shall annually collect and compile information, statistical and~~
18 ~~otherwise, which will, as far as practicable, present an accurate survey and may be useful~~
19 ~~in the study of the effect legalizing industrial hemp has had on controlled substance and~~
20 ~~marijuana prosecutions in this state, including the extent and character of alleged crimes~~
21 ~~not prosecuted or dismissed, the operations of police in drug investigations, the charging~~
22 ~~discretion of prosecuting attorneys, and the administration of criminal justice due to the~~
23 ~~legalization of industrial hemp. All information collected under this section shall be~~
24 ~~reported annually to the Governor and Legislature by December first each year.~~

25 **Section 4. That § 38-35-21 be REPEALED:**

26 ~~The sale or use of industrial hemp for smoking or inhaling is prohibited. A violation~~
27 ~~of this section is a Class 1 misdemeanor.~~