



2023 South Dakota Legislature

House Bill 1236

Introduced by: **Representative Sue Peterson**

1 **An Act to regulate tetrahydrocannabinol for medical use.**

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;
- 19 (13) "Remediation," the process of rendering non-compliant cannabis compliant using
20 methods accepted by the USDA;
- 21 (14) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
- 22 (15) "Tetrahydrocannabinol", the psychoactive substance contained in the plant of the
23 genus cannabis or plant Cannabis sativa L., as well as the synthetic equivalents of
24 the substances contained in the cannabis plant, or in the resinous extractives of
25 the plant, or synthetic substances, derivatives, and their isomers with similar
26 chemical structure and pharmacological activity to those substances contained in
27 the plant, including delta-8, delta-9, and delta-10 tetrahydrocannabinol, and any
28 compounds of these structures regardless of atomic positions;
- 29 ~~(15)~~(16) "Total delta-9 THC or total delta-9 tetrahydrocannabinol," the value determined
30 after the process of decarboxylation, or the application of a conversion factor if the
31 testing methodology does not include decarboxylation, that expresses the potential
32 total delta-9 tetrahydrocannabinol content derived from the sum of the THC and
33 THCA content and reported on a dry weight basis; and

1 ~~(16)~~(17) "Transporter," any person transporting, hauling, or delivering immature or
2 mature hemp or product in process, but not industrial hemp product or sterilized
3 seeds that are incapable of beginning germination.

4 **Section 2. That § 38-35-23 be AMENDED:**

5 **38-35-23.** No industrial hemp may be grown, stored, or transported concurrently
6 with marijuana, except by a medical cannabis establishment that is registered with the
7 Department of Health pursuant to § 34-20G-55. A violation of this section is a Class 2
8 misdemeanor.

9 **Section 3. That chapter 38-35 be amended with a NEW SECTION:**

10 A licensee under this chapter must also register as a medical cannabis
11 establishment with the Department of Health, pursuant to § 34-20G-55, in order to:
12 (1) Engage in the isomerization of cannabinoids to create isomers of
13 tetrahydrocannabinol, including delta-8, delta-9, and delta-10
14 tetrahydrocannabinol; and
15 (2) Sell, distribute, or transport hemp or hemp products that were created using the
16 isomerization of cannabinoids to create isomers of tetrahydrocannabinol, including
17 delta-8, delta-9, and delta-10 tetrahydrocannabinol.
18 A violation of this section is a Class 1 misdemeanor.

19 **Section 4. That § 34-20G-72 be AMENDED:**

20 **34-20G-72.** The department shall promulgate rules pursuant to chapter 1-26:
21 (1) Governing the manner in which the department shall consider petitions from the
22 public to add a debilitating medical condition or treatment to the list of debilitating
23 medical conditions as defined by this chapter, including public notice of and an
24 opportunity to comment in public hearings on the petitions;
25 (2) Establishing the form and content of registration and renewal applications
26 submitted under this chapter;
27 (3) Establishing a system to numerically score competing medical cannabis
28 establishment applicants, in cases where more applicants apply than are allowed
29 by the local government, that includes analysis of:
30 (a) The preference of the local government;

- 1 (b) In the case of dispensaries, the suitability of the proposed location and its
2 accessibility for patients;
- 3 (c) The character, veracity, background, qualifications, and relevant experience
4 of principal officers and board members; and
- 5 (d) The business plan proposed by the applicant, that in the case of a cultivation
6 facility or dispensary shall include the ability to maintain an adequate supply
7 of cannabis, plans to ensure safety and security of patrons and the
8 community, procedures to be used to prevent diversion, and any plan for
9 making cannabis available to low-income registered qualifying patients;
- 10 (4) Governing the manner in which the department shall consider applications for and
11 renewals of registry identification cards, that may include creating a standardized
12 written certification form;
- 13 (5) Governing medical cannabis establishments to ensure the health and safety of
14 qualifying patients and prevent diversion and theft without imposing an undue
15 burden or compromising the confidentiality of a cardholder, including:
- 16 (a) Oversight requirements;
- 17 (b) Record-keeping requirements;
- 18 (c) Security requirements, including lighting, physical security, and alarm
19 requirements;
- 20 (d) Health and safety regulations, including restrictions on the use of pesticides
21 that are injurious to human health;
- 22 (e) Standards for the manufacture of cannabis products and both the indoor
23 and outdoor cultivation of cannabis by a cultivation facility;
- 24 (f) Requirements for the transportation and storage of cannabis by a medical
25 cannabis establishment;
- 26 (g) Employment and training requirements, including requiring that each
27 medical cannabis establishment create an identification badge for each
28 agent;
- 29 (h) Standards for the safe manufacture of cannabis products, including extracts
30 and concentrates;
- 31 (i) Restrictions on the advertising, signage, and display of medical cannabis,
32 provided that the restrictions may not prevent appropriate signs on the
33 property of a dispensary, listings in business directories including phone
34 books, listings in marijuana-related or medical publications, or the
35 sponsorship of health or not-for-profit charity or advocacy events;

- 1 (j) Requirements and procedures for the safe and accurate packaging, labeling,
2 distribution, and tracking of medical cannabis;
- 3 (k) Certification standards for testing facilities, including requirements for
4 equipment and qualifications for personnel; and
- 5 (l) Requirements for samples of cannabis and cannabis products submitted to
6 testing facilities, including batch sizes to not exceed fifty pounds of cannabis
7 intended for retail sale, batch sizes for homogenous cannabis products
8 intended for retail sale, and procedures to ensure representative sampling;
- 9 (6) Establishing procedures for suspending or terminating the registration certificates
10 or registry identification cards of cardholders and medical cannabis establishments
11 that commit multiple or serious violations of this chapter;
- 12 (7) Establishing labeling requirements for cannabis and cannabis products, including
13 requiring cannabis product labels to include the following:
- 14 (a) The length of time it typically takes for a product to take effect;
- 15 (b) Disclosing ingredients and possible allergens;
- 16 (c) A nutritional fact panel; and
- 17 (d) Requiring that edible cannabis products be clearly identifiable, when
18 practicable, with a standard symbol indicating that it contains cannabis;
- 19 (8) Establishing procedures for the registration of nonresident cardholders and the
20 cardholder's designation of no more than two dispensaries, which shall require the
21 submission of:
- 22 (a) A practitioner's statement confirming that the patient has a debilitating
23 medical condition; and
- 24 (b) Documentation demonstrating that the nonresident cardholder is allowed to
25 possess cannabis or cannabis preparations in the jurisdiction where the
26 nonresident cardholder resides;
- 27 (9) Establishing the amount of cannabis products, including the amount of
28 concentrated cannabis, each cardholder and nonresident cardholder may possess;
29 ~~and~~
- 30 (10) Establishing reasonable application and renewal fees for registry identification
31 cards and registration certificates, according to the following:
- 32 (a) Application fees for medical cannabis establishments may not exceed five
33 thousand dollars, with this upper limit adjusted annually for inflation;
- 34 (b) The total fees collected shall generate revenues sufficient to offset all
35 expenses of implementing and administering this chapter;

- 1 (c) A sliding scale of patient application and renewal fees based upon a
- 2 qualifying patient's household income;
- 3 (d) The fees charged to qualifying patients, nonresident cardholders, and
- 4 caregivers shall be no greater than the costs of processing the application
- 5 and issuing a registry identification card or registration; and
- 6 (e) The department may accept donations from private sources to reduce
- 7 application and renewal fees; and

8 (11) Governing medical cannabis establishments concerning the isomerization of
 9 cannabinoids to create isomers of tetrahydrocannabinol, including delta-8, delta-
 10 9, and delta-10 tetrahydrocannabinol; and the sale, and distribution of hemp or
 11 hemp products that were created using the isomerization of cannabinoids to create
 12 isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10
 13 tetrahydrocannabinol.

14 A violation of a required or prohibited action under any rule authorized by this
 15 section is a Class 2 misdemeanor.