

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

2023 South Dakota Legislature

FISCAL NOTE 2023-FN1226A

HB1226, An Act to regulate industrial hemp-derived delta-8 and delta-10 tetrahydrocannabinol products, and other hemp-derived psychoactive compounds, and to declare an emergency.

The bill, as amended, would require the Department of Health (Department) to promulgate rules to "[e]stablish labeling, marketing, packaging, and testing requirements and procedures for delta-8 and delta-10 tetrahydrocannabinol products[.]"

With the Agriculture Improvement Act of 2018, Congress established a new federal hemp regulatory scheme which allows for the cultivation of cannabis plants "with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 1639o(1). Thus, hemp-derived products with delta-8 and delta-10 THC, despite their psychoactive properties, are generally understood to be legal at the federal level, as only delta-9 THC levels are limited.

As there exists no concrete federal regulation of these compounds, states have responded using various frameworks to regulate these hemp-derived compounds, banning the compounds outright, or taking no action at all.

One state with a newly formed discrete regulatory structure is Minnesota (see Minn. Stat. § 151.72). In 2022, Minnesota added all cannabinoids derived from hemp, including delta-8 and delta-10, to the Minnesota Board of Pharmacy's regulatory purview, limiting THC levels to not more than 0.3% in any form for non-edibles and not more than 5 grams per dose for edibles. The fiscal note prepared for these amendments projected no fiscal impact, noting the Board would not have to license or inspect any facility or review any applications. The only long-term fiscal consideration mentioned was the possibility of investigating complaints, although no dollar amount was suggested.

While the bill could result in the Department drafting rules requiring an active role in the regulation of delta-8 THC and delta-10 THC, the eventual extent of its authority over these compounds is not known. The Department projects the fiscal impact of the bill would be up to \$1,535,177 in FY 2024, including 7.0 new FTE positions, \$570,651 in salaries and benefits, and \$964,526 in operating expenses.

APPROVED BY: /s/ Reed Holwegner
Director, Legislative Research Council

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