



2023 South Dakota Legislature  
**House Bill 1209**  
**ENROLLED**

AN ACT

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

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

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

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

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

- of not more than three-tenths of one percent, derived from or made by processing industrial hemp;
- (7) "Lot," a contiguous area in a field or greenhouse containing the same variety or strain of hemp throughout the area;
  - (8) "Measurement of uncertainty," 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;
  - (9) "Process" or "processing," to render raw industrial hemp plants or plant parts from their natural or original state to an initial processed form. Typical processing includes decortication, devitalization, crushing, or extraction;
  - (10) "Processor," a person that converts raw hemp into an initial processed form;
  - (11) "Produce" or "producing," to grow, germinate, dry, sort, grade, bale, grind, mill, pelletize, and harvest hemp plants in the field or in a greenhouse;
  - (12) "Product in process," the product being processed by a state licensed hemp processor or the transfer of that product at no higher than five percent total delta-9 tetrahydrocannabinol between one or more licensed hemp processors during the process of processing state or federally approved, lab-tested biomass from a licensed grower into a finished industrial hemp product;
  - (13) "Remediation," the process of rendering non-compliant cannabis compliant using methods accepted by the USDA;
  - (14) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
  - (15) "Total delta-9 THC or total delta-9 tetrahydrocannabinol," the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis; and
  - (16) "Transporter," any person transporting, hauling, or delivering immature or mature hemp or product in process, but not industrial hemp product or sterilized seeds that are incapable of beginning germination.

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

**38-35-16.** Any transporter is deemed to have given consent to the reasonable search and seizure by law enforcement of any hemp without a warrant to determine the lawful amount of total delta-9 tetrahydrocannabinol concentration. For purposes of this section, product in process that is properly documented is compliant. Any law enforcement

officer may require any transporter to stop for the purposes of inspection. During a stop, a law enforcement officer may collect a sample of any hemp for the purpose of testing for any concentration of total delta-9 tetrahydrocannabinol that exceeds three-tenths of one percent on a dry weight basis. Each sample collected by law enforcement may not exceed eight ounces.

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

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

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

An Act to revise provisions regarding industrial hemp.

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I certify that the attached Act originated in  
the:

House as Bill No. 1209

\_\_\_\_\_

Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2023 at \_\_\_\_\_ M.

\_\_\_\_\_

Chief Clerk

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_

Speaker of the House

The attached Act is hereby  
approved this \_\_\_\_ day of  
\_\_\_\_\_, A.D., 2023

Attest:

\_\_\_\_\_

Chief Clerk

\_\_\_\_\_

Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_

President of the Senate

Attest:

Filed \_\_\_\_\_, 2023  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_

Secretary of the Senate

\_\_\_\_\_

Secretary of State

House Bill No. 1209  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State