

Chapter 167
(Senate Bill 39)

An Act to revise provisions relating to 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) ~~"Chemically derived cannabinoid," a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant. The term does not include:~~
 - (a) ~~Cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst;~~
 - (b) ~~Non psychoactive cannabinoids; or~~
 - (c) ~~Cannabinoids in a topical cream product;~~
- (4) ~~"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;~~
- (5) "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;
- (6) ~~"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;~~
- ~~(7)~~(2) "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. This term does not include a product containing any of the following chemically derived cannabinoids;~~including:~~
 - (a) Delta-8 tetrahydrocannabinol, also known as delta-8-THC;
 - (b) Delta-10 tetrahydrocannabinol, also known as delta-10-THC;
 - (c) Tetrahydrocannabinol acetate, also known as THC-O-acetate or THC-O;
 - (d) Hexahydrocannabinol, also known as HHC; or
 - (e) Tetrahydrocannabiphoral, also known as THCP;

- ~~(8)~~ "Industrial hemp stalk bale," a bale that contains two main types of fiber, bast or long fiber found in the bark (skin) and hurd (shive), or short fiber located in the core of the stem, with a total delta-9 tetrahydrocannabinol concentration of not more than three tenths of one percent;
- ~~(9)~~ "Lot," a contiguous area in a field or greenhouse containing the same variety or strain of hemp throughout the area. In addition, "lot" means the terms, "farm," "tract," "field," and "subfield" used by the United States Department of Agriculture Farm Service Agency to mean "lot";
- ~~(10)~~ "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;
- ~~(3)~~ "Licensed hemp producer," a person licensed by the United States Department of Agriculture or a tribal program to produce hemp, as provided in 7 C.F.R. §§ 990.20 to 990.32, inclusive (January 1, 2026), and any authorized employee or agent of the person;
- ~~(11)(4)~~ "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;~~
- ~~(12)(5)~~ "Processor," a person an entity that converts raw hemp into an initial processed form;
- ~~(13)(6)~~ "Produce," or "producing," to grow, germinate, dry, sort, grade, bale, grind, mill, pelletize, and harvest hemp plants in the field or in a greenhouse;
- ~~(14)(7)~~ "Product in process," the product industrial hemp being processed at no higher than one percent total delta-9 tetrahydrocannabinol by a state licensed hemp processor or the transfer of that product at no higher than one percent total delta-9 tetrahydrocannabinol between one or more licensed hemp processors during the process of processing of state or federally approved, lab-tested biomass from a licensed grower into a finished industrial hemp product;
- ~~(15)~~ "Remediation," ~~the process of rendering non-compliant cannabis compliant using methods accepted by the USDA;~~
- ~~(16)~~ "Secretary," ~~the secretary of the Department of Agriculture and Natural Resources;~~
- ~~(17)(8)~~ "Total delta-9 THC or total delta-9 tetrahydrocannabinol," "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
- ~~(18)(9)~~ "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 § 38-35-17 be AMENDED:

38-35-17. If the transporter is not a ~~grower licensee~~ licensed hemp producer, that transporter ~~shall must~~ 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 confirming 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 March 22, 2021 7 U.S.C. §§ 1639o to 1639s, inclusive (January 1, 2026);

- (3) A signed affirmation from the licensee licensed hemp producer 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 3. That § 38-35-17.1 be AMENDED:

38-35-17.1. ~~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~~ licensed hemp producer transporting hemp shall have in the ~~transporter's licensee's~~ possession the following:

- (1) A copy of the ~~grower producer's~~ licensee's 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 4. That a NEW SECTION be added to chapter 38-35:

Only a licensed hemp producer may cultivate hemp in this state.

Section 5. That § 38-35-2 be REPEALED.

~~No person may purchase, receive, or obtain industrial hemp or product in process, other than industrial hemp seed or industrial hemp product, for planting, storing, propagating, producing, or processing unless the person has a license as provided by this chapter or is working under contract with or under the direction of a licensee. The licensee is responsible, either civilly or criminally, for any person working under contract with or under the direction of a licensee for all sections of this chapter.~~

~~It is a Class 2 misdemeanor to purchase, receive, or obtain industrial hemp or product in process, other than industrial hemp product, for planting, storing, propagating, producing, or processing without a license. No unlicensed person is subject to criminal penalties for possession or distribution of hemp seed.~~

Section 6. That § 38-35-3 be REPEALED.

~~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 and industrial hemp stalk bales, 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.~~

~~An application for licensure to plant, grow, or produce industrial hemp must be for at least one half, contiguous outdoor acre with a three hundred plant minimum, or in a greenhouse with a fifty plant minimum, or combination thereof. No industrial hemp grower's license may be issued by the secretary to plant, grow, or produce industrial hemp within the corporate limits of any incorporated municipality~~

~~without receiving verification from the municipality that it meets all applicable municipal zoning regulations.~~

Section 7. That § 38-35-3.1 be REPEALED.

~~Any person seeking to plant, store, propagate, or produce industrial hemp for the purpose of research shall apply to the secretary for a research 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 pursuant to § 38-35-6. Research licensees may be exempt from lot size minimums pursuant to § 38-35-3. Applicants for a research license must be affiliated with an accredited university. Applicants for a research license must submit a summary to the department that outlines the applicant's objectives and a timeline of activities.~~

~~All industrial hemp produced or processed under a research license must be:~~

- ~~(1) Grown, used, or processed for research purposes only; and~~
- ~~(2) Properly disposed of in a manner to render irretrievable and unable to enter the stream of commerce, except for industrial hemp seed.~~

Section 8. That § 38-35-4 be REPEALED.

~~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 latitude and longitude 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 9. That § 38-35-5 be REPEALED.

~~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. A licensed applicant must only submit to a background criminal investigation pursuant to this section once every three years, unless requested by the secretary. Upon application for a license, the department shall submit fingerprints 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 must be obtained prior to the 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 if performing official duties. Any person who has previously submitted fingerprints to the Division of Criminal Investigation as part of an application under~~

~~the hemp program is not required to resubmit fingerprints 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. The secretary may waive the requirement that landowners submit fingerprints for a state and federal background check if the applicant is unable to have a fingerprint card completed. Other types of background checks may be required in lieu of submitting fingerprints on cards or online.~~

Section 10. That § 38-35-6 be REPEALED.

~~There is hereby created within the state treasury the hemp regulatory program fund, into which all application fees, license fees, inspection fees, and other fees or revenue paid to the state from the operation of the hemp regulatory program shall be deposited. All moneys in the fund created in this section shall be used for the purpose of administering the hemp regulatory program. Interest earned on money in the fund shall be deposited into the fund. Expenditures from the fund shall be appropriated through the normal budget process.~~

Section 11. That § 38-35-7 be REPEALED.

~~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 research license issued under this chapter is valid for fifteen months from the date of issuance. A processor license issued under this chapter is valid for up to three years 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;~~
- ~~(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; or~~
- ~~(6) Requests the secretary to revoke or suspend the license.~~

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

Section 12. That § 38-35-8 be REPEALED.

~~Within thirty days of planting, each grower licensee under this chapter shall file with the department planting verification documentation as required by the secretary to identify the type and variety of each hemp seed planted with its corresponding lot.~~

Section 13. That § 38-35-9 be REPEALED.

~~The secretary may contract with the Department of Public Safety to conduct inspections and sampling of lots and any processor location. The department and the Department of Public Safety may enter on any land or other property where hemp is grown, produced, stored, or processed for the purpose of inspections, sample collection, testing, or investigation while enforcing this chapter. Any person who~~

~~holds a license under this chapter is deemed to have given consent to the reasonable search and seizure of any hemp without a warrant to determine the lawful amount of total delta-9 tetrahydrocannabinol concentration and for enforcement of the provisions of this chapter.~~

~~The secretary shall assess a grower inspection fee per lot for grower licensees, a research inspection fee per lot for research licenses, and a processor inspection fee per location for processor licensees.~~

~~Any substance found to be in violation of this chapter is subject to confiscation and disposal at the direction of the Department of Public Safety. Any costs arising from the loss of crop, destruction, confiscation, or disposal are the responsibility of the grower, producer, processor, or owner of the substance. The state is not liable for any confiscation, seizure, disposal, or destruction of any substance carried out under this chapter. Any testing, inspection, and investigation results must be provided to the licensee. Notice of any violation must be provided to the licensee in writing. Inspection and investigation records are not open records pursuant to chapter 1-27.~~

Section 14. That § 38-35-10 be REPEALED.

~~At the discretion of the secretary, a grower licensee may be inspected and samples collected no more than thirty days before the hemp is harvested. The grower licensee shall contact the department prior to harvest to ensure a reasonable amount of time to schedule an inspection. The grower licensee is required to be present during the inspection. No harvested lot of hemp must be commingled with another harvested lot of hemp and 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 March 22, 2021.~~

~~Any location of the processor licensee is subject to random inspection. The processor licensee is required to be present during the inspection.~~

~~At the discretion of the secretary, a research licensee may be inspected, and samples may be collected. The research licensee is required to be present during the inspection.~~

Section 15. That § 38-35-11 be REPEALED.

~~The department shall promulgate rules, pursuant to chapter 1-26, to:~~

- ~~(1) Establish application, application form, licensure, and renewal procedures;~~
- ~~(2) Establish requirements to prevent the spread of hemp and hemp seeds from licensed land areas and provide for the assessment of costs for the remediation thereof;~~
- ~~(3) Establish criteria and procedures for denial, revocation, or suspension of a license under this chapter;~~
- ~~(4) 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;~~
- ~~(5) Establish a nonrefundable annual license application fee not to exceed fifty dollars, a non-refundable annual grower license fee not to exceed five hundred dollars, a non-refundable annual research grower license fee not to exceed one hundred dollars, and a non-refundable annual processor license fee not to exceed two thousand dollars;~~
- ~~(6) Establish procedures for the collection of planting and harvest data for each lot;~~

- (7) ~~Establish rules for corrective action for negligent and culpable violations of this chapter;~~
- (8) ~~Establish transportation documentation requirements;~~
- (9) ~~Establish inspection procedures and requirements, a grower inspection fee per lot not to exceed two hundred fifty dollars, a research inspection fee per lot not to exceed two hundred fifty dollars, a remediation fee not to exceed one hundred dollars per hour, and a processor inspection fee per any processor location not to exceed five hundred dollars; and~~
- (10) ~~Establish sampling and testing procedures to determine if the hemp tested and sampled contains the lawful amount of total delta 9 tetrahydrocannabinol concentration of not more than three tenths of one percent.~~

Section 16. That § 38-35-12 be REPEALED.

~~The Department of Health 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 testing procedures to determine if the hemp tested contains the lawful amount of total delta 9 tetrahydrocannabinol concentration and certifying results; and~~
- (3) ~~Establish labeling requirements for industrial hemp products.~~

Section 17. That § 38-35-14 be REPEALED.

~~The department compliance testing must be conducted by a laboratory approved by the Drug Enforcement Administration. The laboratory shall report the total delta 9 tetrahydrocannabinol concentration level and the measurement of uncertainty for each sample tested pursuant to this section. If a test reveals a total delta 9 tetrahydrocannabinol concentration of more than three tenths of one percent but not more than one percent, the licensee may request a retest at the licensee's expense. If upon the retesting, the total delta 9 tetrahydrocannabinol concentration exceeds three tenths of one percent, the entire lot from which the noncompliant sample was collected must either be destroyed or remediated and retested according to the United States Department of Agriculture guidelines. However, a sample that tests a result within a measurement of uncertainty that produces a range that includes a total delta 9 tetrahydrocannabinol concentration of three tenths of one percent is compliant for the purposes of this chapter.~~

Section 18. That § 38-35-15 be REPEALED.

~~The department shall work with the attorney general to develop a state hemp production plan and submit the plan to the United States Department of Agriculture for approval of a program to license the growth, production, storage, processing, and transportation of industrial hemp in South Dakota. The department shall establish a program once approval is received by the United States Department of Agriculture.~~

Section 19. That § 38-35-18 be REPEALED.

~~Each applicant, licensee, key participant, and transporter of industrial hemp, other than industrial hemp product, shall abide by any rules set forth by the United States Department of Agriculture and the United States Department of Agriculture-approved state hemp production plan.~~

Section 20. That § 38-35-20 be REPEALED.

~~The department, Department of Health, and Department of Public Safety may provide to another state, local, tribal, or federal government entity, any specific licensee or permittee information as may be necessary to verify the legality or compliance of any licensee or permittee under this chapter. Application for, and receipt of, a license or permit under this chapter serves as the applicant's consent to provide information without prior notice or disclosure to the applicant that the information will be or has been shared.~~

Section 21. That § 38-35-22 be REPEALED.

~~Industrial hemp used in wildlife food plots not intended to be harvested must be sampled by November 1 of the year planted. No cannabidiol varieties shall be grown for the purpose of wildlife food plots.~~

Section 22. This Act is effective beginning January 1, 2027.

Signed March 17, 2026
