

2022 South Dakota Legislature

Senate Bill 201**AMENDMENT 201D FOR THE SENATE ENGROSSED BILL**

1 **An Act to revise provisions regarding industrial hemp and to declare an emergency.**

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 ~~(2)~~(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 ~~(3)~~(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 ~~(4)~~(6) "Industrial hemp product," a finished manufactured product, or consumer product
25 made from industrial hemp containing cannabidiol that is packaged for individual
26 sale, with a delta-9 tetrahydrocannabinol concentration of not more than three-

- 1 ~~tenths of one percent, derived from or made by processing industrial hemp with a~~
2 ~~total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of~~
3 ~~one percent, derived from or made by processing industrial hemp;~~
- 4 ~~(5)(7)~~ "Lot," a contiguous area in a field or greenhouse containing the same variety or
5 strain of hemp throughout the area;
- 6 (8) "Measurement of uncertainty," the parameter associated with the result of a
7 measurement, that characterizes the dispersion of the values that could reasonably
8 be attributed to the particular quantity subject to measurement;
- 9 ~~(6)(9)~~ "Process" or "processing," ~~to convert or converting industrial hemp into industrial~~
10 ~~hemp product to render raw industrial hemp plants or plant parts from their natural~~
11 ~~or original state to an initial processed form. Typical processing includes~~
12 ~~decortication, devitalization, crushing, or extraction;~~
- 13 ~~(7)(10)~~ "Processor," a person ~~who processes industrial hemp that converts raw hemp~~
14 ~~into an initial processed form;~~
- 15 ~~(8)(11)~~ "Produce" or "producing," ~~to grow or growing, germinate, dry, sort, grade, bale,~~
16 ~~grind, mill, pelletize, and harvest hemp plants in the field for processing or in a~~
17 ~~greenhouse;~~
- 18 (12) "Product in process," the product being processed by a state licensed hemp
19 processor or the transfer of that product at no higher than ~~five-one~~ percent total
20 delta-9 tetrahydrocannabinol between one or more licensed hemp processors
21 during the process of processing state or federally approved, lab-tested biomass
22 from a licensed grower into a finished industrial hemp product;
- 23 (13) "Remediation," the process of rendering non-compliant cannabis compliant using
24 methods accepted by the USDA;
- 25 ~~(9)(14)~~ "Secretary," the secretary of the Department of Agriculture and Natural
26 Resources; ~~and~~
- 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 ~~(10)(16)~~ "Transporter," any person transporting, hauling, or delivering immature or
33 mature hemp or product in process, but not industrial hemp product or sterilized
34 seeds that are incapable of beginning germination.

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

1 **38-35-2.** No person may purchase, receive, or obtain industrial hemp or product
2 in process, other than industrial hemp seed or industrial hemp product, for planting,
3 storing, propagating, producing, or processing unless the person has a license as provided
4 by this chapter or is working under contract with or under the direction of a licensee. The
5 licensee is responsible, either civilly or criminally, for any person working under contract
6 with or under the direction of a licensee for all sections of this chapter.

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

11 ~~A person, whether or not licensed, who possesses or distributes a product~~
12 ~~determined to meet the definition of marijuana is subject to prosecution and penalties for~~
13 ~~possession or distribution of marijuana under chapter 22-42.~~

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

15 **38-35-3.** After the department receives approval by the United States Secretary
16 of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to
17 purchase, receive, or obtain industrial hemp, other than industrial hemp product, for
18 planting, storing, propagating, or producing shall apply to the secretary for a grower
19 license on an application form prescribed by the department and submit a nonrefundable
20 annual application fee. The secretary shall deposit fees collected under this chapter in the
21 hemp regulatory program fund.

22 ~~No application for licensure to plant, grow, or produce industrial hemp may be for~~
23 ~~less than one-half, contiguous outdoor acres or an indoor greenhouse that may not be~~
24 ~~less than two thousand eight hundred eighty square feet.~~ An application for licensure to
25 plant, grow, or produce industrial hemp must be for at least one-half, contiguous outdoor
26 acre with a three hundred plant minimum, or in a greenhouse with a fifty plant minimum,
27 or combination thereof. ~~No application for licensure~~ industrial hemp grower's license may
28 be issued by the secretary to plant, grow, or produce industrial hemp ~~may be approved~~
29 within the corporate limits of any incorporated municipality without receiving verification
30 from the municipality that it meets all applicable municipal zoning regulations.

31 **Section 4. That chapter 38-35 be amended with a NEW SECTION:**

32 Any person seeking to plant, store, propagate, or produce industrial hemp for the
33 purpose of research shall apply to the secretary for a research license on an application

1 form prescribed by the department and submit a nonrefundable annual application fee.
2 The secretary shall deposit fees collected under this chapter in the hemp regulatory
3 program fund pursuant to § 38-35-6. Research licensees may be exempt from lot size
4 minimums pursuant to § 38-35-3. Applicants for a research license must be affiliated with
5 an accredited university. Applicants for a research license must submit a summary to the
6 department that outlines the applicant's objectives and a timeline of activities.

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

8 (1) Grown, used, or processed for research purposes only; and

9 (2) Properly disposed of in a manner to render irretrievable and unable to enter the
10 stream of commerce, except for industrial hemp seed.

11 **Section 5. That § 38-35-4 be AMENDED:**

12 **38-35-4.** After the department receives approval by the United States Secretary
13 of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to
14 purchase, receive, or obtain industrial hemp, other than industrial hemp product, for
15 processing shall apply to the secretary for a processor license on an application form
16 prescribed by the department and submit a nonrefundable annual application fee. The
17 applicant may submit an application form for a processor license at any time. The
18 secretary shall deposit fees collected under this chapter in the hemp regulatory program
19 fund.

20 The applicant shall provide to the department the street address, legal description,
21 and ~~global positioning system~~ latitude and longitude coordinates for any location where
22 hemp will be processed under the processor's license and certify that any location where
23 hemp is to be processed is under the control of the applicant. A processor licensee shall
24 provide notice of any change in ownership or location to the department within ten days
25 of a change. Failure to amend change of ownership or location automatically invalidates
26 the license, and a new license must be obtained.

27 **Section 6. That § 38-35-5 be AMENDED:**

28 **38-35-5.** Each applicant for any license under this chapter, key participant, and
29 landowner, if the applicant is the lessee, shall submit to a state and federal criminal
30 background investigation by means of fingerprint checks by the Division of Criminal
31 Investigation and the Federal Bureau of Investigation. Upon application for a license, the
32 department shall submit the completed fingerprint cards to the division. Upon completion
33 of the criminal background check, the division shall forward to the department all

1 information obtained as a result of the criminal background check. This information ~~shall~~
2 must be obtained prior to the licensure of the applicant. All costs or fees associated with
3 the criminal background checks are the responsibility of the applicant. Information
4 provided to the department under this section is confidential, is not public record, and is
5 exempt from the provisions of chapter 1-27. However, the department may share this
6 information with law enforcement and the Department of Public Safety. Failure to submit
7 to or cooperate with a criminal background check is grounds for denial or revocation of a
8 license. The secretary may deny licensure if any applicant, key participant, or landowner
9 has been convicted of a misdemeanor or felony relating to a controlled substance or
10 marijuana under state or federal law within the previous ten years. Licensure under this
11 chapter is not required for employees of the state of South Dakota ~~when~~ if performing
12 official duties. Any person who has previously submitted a fingerprint card to the Division
13 of Criminal Investigation as part of an application under the hemp program is not required
14 to resubmit a fingerprint card but shall authorize the use of the previously submitted
15 fingerprints for an updated state and federal background check. All costs or fees
16 associated with the criminal background checks are the responsibility of the applicant. The
17 secretary may waive the requirement that landowners submit a fingerprint card for a state
18 and federal background check if the applicant is unable to have a fingerprint card
19 completed. Other types of background checks may be required in lieu of fingerprint card.

20 **Section 7. That § 38-35-7 be AMENDED:**

21 **38-35-7.** If the applicant has completed the application to the satisfaction of the
22 secretary, paid the application fee, returned a criminal background check compliant with
23 § 38-35-5, and is eligible for a license under this chapter, the secretary shall issue the
24 license upon receipt of an annual license fee.

25 A grower, research, or processor license issued under this chapter is valid for fifteen
26 months from the date of issuance.

27 The department may deny, revoke, or suspend a license of any person who:

- 28 (1) Violates any provision of this chapter or administrative rule promulgated under the
29 authority of this chapter;
- 30 (2) Violates any rule set forth by the United States Department of Agriculture regarding
31 industrial hemp;
- 32 (3) Provides false or misleading information in connection with any application required
33 by this chapter;

- 1 (4) Has been convicted of a misdemeanor or felony relating to a controlled substance
2 or marijuana under state or federal law within the previous ten years;~~or~~
- 3 (5) Has been charged with or convicted of a misdemeanor or felony relating to a
4 controlled substance or marijuana under state or federal law since the most recent
5 criminal background check~~;~~ or
- 6 (6) Requests the secretary to revoke or suspend the license.
- 7 Any person whose license is denied, revoked, or suspended under this section may
8 request a hearing pursuant to chapter 1-26.

9 **Section 8. That § 38-35-8 be AMENDED:**

10 **38-35-8.** Within thirty days of planting, each grower licensee under this chapter
11 shall file with the department planting verification documentation as required by the
12 secretary ~~in order to~~ identify the type and variety of each hemp seed planted with its
13 corresponding lot. ~~Any documentation provided under this section is not an open record~~
14 ~~pursuant to chapter 1-27 and may not be disclosed except to the Department of Public~~
15 ~~Safety or law enforcement. The department may make publicly available a list of all types~~
16 ~~and varieties of planted hemp seed submitted to the department.~~

17 **Section 9. That § 38-35-9 be AMENDED:**

18 **38-35-9.** The secretary ~~shall~~ may contract with the Department of Public Safety
19 to conduct inspections and sampling of ~~each lot~~ lots and any processor location. The
20 department and the Department of Public Safety may enter on any land or other property
21 where hemp is grown, produced, stored, or processed for the purpose of inspections,
22 sample collection, testing, or investigation while enforcing this chapter. Any person who
23 holds a license under this chapter is deemed to have given consent to the reasonable
24 search and seizure of any hemp without a warrant to determine the lawful amount of total
25 delta-9 tetrahydrocannabinol concentration and for enforcement of the provisions of this
26 chapter.

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

30 Any substance found to be in violation of this chapter is subject to confiscation and
31 disposal at the direction of the Department of Public Safety. Any costs arising from the
32 loss of crop, destruction, confiscation, or disposal are the responsibility of the grower,
33 producer, processor, or owner of the substance. The state is not liable for any confiscation,

1 seizure, disposal, or destruction of any substance carried out under this chapter. Any
2 testing, inspection, and investigation results ~~shall~~must be provided to the licensee. Notice
3 of any violation ~~shall~~must be provided to the licensee in writing. Inspection and
4 investigation records are not open records pursuant to chapter 1-27.

5 **Section 10. That § 38-35-10 be AMENDED:**

6 **38-35-10.** ~~Every lot of~~At the discretion of the secretary, a grower licensee~~shall~~
7 may be inspected and samples collected no more than thirty days before the hemp is
8 harvested. The grower licensee shall contact the Department of Public Safety prior to
9 harvest in order to ensure a reasonable amount of time to schedule an inspection. The
10 grower licensee ~~shall~~is required to be present during the inspection. No harvested lot of
11 hemp shall be commingled with another harvested lot of hemp ~~or other material.~~ ~~No~~and
12 no hemp may leave the dominion of control of the grower licensee until the grower licensee
13 receives a laboratory result from the department that confirms each lot complies with 7
14 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R 990.70(d) and 990.71(d) in
15 effect as of ~~January 1, 2020~~March 22, 2021.

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

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

21 **Section 11. That § 38-35-11 be AMENDED:**

22 **38-35-11.** The department shall promulgate rules, pursuant to chapter 1-26, to:

- 23 (1) Establish application, application form, licensure, and renewal procedures;
- 24 (2) Establish requirements to prevent the spread of hemp and hemp seeds from
25 licensed land areas and provide for the assessment of costs for the remediation
26 thereof;
- 27 (3) Establish criteria and procedures for denial, revocation, or suspension of a license
28 under this chapter;
- 29 (4) Make any modification or addition to the hemp regulatory program in order to
30 comply with any federal statutes or any rules and regulations regarding hemp
31 enacted or implemented by the United States Department of Agriculture;
- 32 (5) Establish a nonrefundable annual license application fee not to exceed fifty dollars,
33 ~~an~~a non-refundable annual grower license fee not to exceed five hundred dollars,

- 1 a non-refundable annual research grower license fee not to exceed one hundred
 2 dollars, and ~~an~~ a non-refundable annual processor license fee not to exceed two
 3 thousand dollars;
- 4 (6) Establish procedures for the collection of planting and harvest data for each lot;
 5 ~~(7) Establish labeling requirements for hemp; and~~
 6 ~~(8)(7)~~ Establish rules for corrective action for negligent and culpable violations of this
 7 chapter;
- 8 (8) Establish transportation documentation requirements;
 9 (9) Establish inspection procedures and requirements, a grower inspection fee per lot
 10 not to exceed two hundred fifty dollars, a research inspection fee per lot not to
 11 exceed two hundred fifty dollars, a remediation fee not to exceed one hundred
 12 dollars per hour, and a processor inspection fee per any processor location not to
 13 exceed five hundred dollars; and
- 14 (10) Establish sampling and testing procedures to determine if the hemp tested and
 15 sampled contains the lawful amount of total delta-9 tetrahydrocannabinol
 16 concentration of not more than three-tenths of one percent.

17 **Section 12. That § 38-35-12 be AMENDED:**

18 **38-35-12.** The Department of Health shall promulgate rules, pursuant to chapter
 19 1-26, to:

- 20 (1) Make any modification or addition to the hemp regulatory program in order to
 21 comply with any federal statutes or any rules and regulations regarding hemp
 22 enacted or implemented by the United States Department of Agriculture; ~~and~~
 23 (2) Establish testing procedures to determine if the hemp tested contains the lawful
 24 amount of total delta-9 tetrahydrocannabinol concentration ~~in hemp~~ and certifying
 25 results; and
 26 (3) Establish labeling requirements for industrial hemp products.

27 **Section 13. That § 38-35-14 be AMENDED:**

28 **38-35-14.** ~~All~~ The department compliance testing shall ~~must~~ be conducted by a
 29 laboratory approved by the Drug Enforcement Administration. The laboratory shall report
 30 the total delta-9 tetrahydrocannabinol concentration level and the measurement of
 31 uncertainty for each sample tested pursuant to this section. If a test reveals a total delta-
 32 9 tetrahydrocannabinol concentration of more than three-tenths of one percent but not
 33 more than five-tenths of one percent, the licensee may request a retest at the licensee's

1 expense. If, upon the retesting, the total delta-9 tetrahydrocannabinol concentration
2 exceeds three-tenths of one percent, the entire lot from which the noncompliant sample
3 was collected shall either be destroyed as provided by § 38-35-9 or remediated and
4 retested according to the United States Department of Agriculture guidelines. However, a
5 sample that tests a result within a measurement of uncertainty that produces a range that
6 includes a total delta-9 tetrahydrocannabinol concentration of three-tenths of one percent
7 is compliant for the purposes of this chapter. ~~For the purposes of this section, the measure~~
8 ~~of uncertainty means the parameter, associated with the result of a measurement, that~~
9 ~~characterizes the dispersion of the values that could reasonably be attributed to the~~
10 ~~particular quantity subject to measurement.~~

11 **Section 14. That § 38-35-16 be AMENDED:**

12 **38-35-16.** Any transporter is deemed to have given consent to the reasonable
13 search and seizure by law enforcement of any hemp without a warrant to determine the
14 lawful amount of total delta-9 tetrahydrocannabinol concentration. For purposes of this
15 section, product in process that is properly documented is compliant. Any law enforcement
16 officer may require any transporter to stop for the purposes of inspection. During a stop,
17 a law enforcement officer may collect a sample of any hemp for the purpose of testing for
18 any concentration of total delta-9 tetrahydrocannabinol that exceeds three-tenths of one
19 percent on a dry weight basis. Each sample collected by law enforcement may not exceed
20 eight ounces.

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

25 **Section 15. That § 38-35-17 be AMENDED:**

26 **38-35-17.** If the transporter is not a grower licensee, that transporter shall have
27 in the transporter's possession the following documentation:

- 28 (1) A copy of the license under which the industrial hemp was grown or produced;
- 29 (2) A laboratory report produced by a Drug Enforcement Administration-registered
30 laboratory that confirms the lot of origin of all hemp being transported complies
31 with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R 990.70(d) and
32 990.71(d) in effect as of ~~January 1, 2020~~ March 22, 2021;

- 1 (3) A signed affirmation from the licensee and the transporter that no illicit drugs or
2 variations of hemp not explicitly authorized by 7 U.S.C. Chapter 38, Subchapter
3 VII will be transported; and
- 4 (4) A bill of lading or manifest that includes the shipment contents, the specific name
5 and address of the transporter, the specific name and address of the origin and lot
6 of origin, the destination of the shipment, the total weight of the load, and the type
7 of vehicle being used.
- 8 Failure to possess the appropriate documentation pursuant to this section is a Class
9 2 misdemeanor.

10 **Section 16. That § 38-35-18 be AMENDED:**

11 **38-35-18.** Each applicant, licensee, key participant, and transporter of industrial
12 hemp, other than industrial hemp product, shall abide by any rules set forth by the United
13 States Department of Agriculture and the United States Department of Agriculture-
14 approved state hemp production plan.

15 **Section 17. That chapter 38-35 be amended with a NEW SECTION:**

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

19 **Section 18. That chapter 38-35 be amended with a NEW SECTION:**

20 No industrial hemp may be grown, stored, or transported concurrently with
21 marijuana. A violation of this section is a Class 2 misdemeanor.

22 **Section 19. That § 38-35-13 be REPEALED:**

23 ~~The Department of Public Safety shall promulgate rules, pursuant to chapter 1-26,~~
24 ~~to:~~

- 25 ~~(1) Make any modification or addition to the hemp regulatory program in order to~~
26 ~~comply with any federal statutes or any rules and regulations regarding hemp~~
27 ~~enacted or implemented by the United States Department of Agriculture;~~
- 28 ~~(2) Establish inspection procedures and requirements, a grower inspection fee per lot~~
29 ~~not to exceed two hundred fifty dollars, and a processor inspection fee per any~~
30 ~~processor location not to exceed five hundred dollars;~~

- 1 ~~(3) Establish transportation documentation requirements;~~
2 ~~(4) Establish sampling and testing procedures to determine if the hemp tested and~~
3 ~~sampled is the lawful amount of delta-9 tetrahydrocannabinol concentration of not~~
4 ~~more than three tenths of one percent; and~~
5 ~~(5) Establish rules for corrective action for negligent and culpable violations of this~~
6 ~~chapter.~~

7 **Section 20.** Whereas, this Act is necessary for the support of the state government and its
8 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
9 full force and effect from and after its passage and approval.