



2020 South Dakota Legislature

House Bill 1008

Introduced by: **Representatives** Qualm, Bordeaux, Goodwin, Gross, and Lesmeister and **Senators** Klumb, Blare, Foster, and Nesiba at the request of the Industrial Hemp Study Committee

1 **An Act to legalize the growth and production of industrial hemp and derivative**
 2 **products in the state, and to declare an emergency.**

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

4 **Section 1.** That a NEW SECTION be added:

5 **38-35-1. Industrial hemp defined.**

6 For the purposes of this chapter, industrial hemp or hemp, is the plant Cannabis
 7 sativa L. and any part of that plant, including the seeds thereof and all derivatives,
 8 extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or
 9 not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of
 10 one percent on a dry weight basis.

11 **Section 2.** That a NEW SECTION be added:

12 **38-35-2. Purchasing or obtaining industrial hemp--License required--**
 13 **Penalty.**

14 No person may purchase or obtain industrial hemp material for planting,
 15 propagation, or producing unless the person has a license as provided by this chapter.
 16 The person is responsible for anyone working under the person's license for all sections of
 17 this chapter. Only a person licensed to grow or produce industrial hemp under this chapter
 18 may possess any part, stalk, leaf, bud, flower, or seed of an industrial hemp plant. Any
 19 person who possesses industrial hemp material who is not licensed under this chapter is
 20 guilty of a Class 4 felony.

21 **Section 3.** That a NEW SECTION be added:

1 **38-35-3. Application for licensure--Procedure--Criminal history check--**
2 **Promulgation of rules.**

3 Any person desiring to grow or produce industrial hemp shall apply to the
4 Department of Agriculture for a license on a form prescribed by the department in rules
5 promulgated pursuant to chapter 1-26.

6 The person applying for a license shall include the name and address of the
7 applicant, and the legal description of the land area to be used to grow or produce
8 industrial hemp. If the land area is to be used to grow hemp, the land area must be at
9 least five contiguous acres. If the applicant is the lessee and is not the landowner of the
10 land area, the name and address of the landowner shall be included on the application.

11 Except for employees of the South Dakota Department of Agriculture, the South
12 Dakota Agricultural Experiment Station, or the South Dakota State University Extension
13 Service involved in research and extension-related activities, the department shall require
14 each applicant and landowner, if the applicant is the lessee of the land area, for initial
15 licensure and each license renewal thereafter to submit to a statewide and nationwide
16 criminal history record check through fingerprint checks by the Division of Criminal
17 Investigation and the Federal Bureau of Investigation. All costs associated with the
18 criminal history record check are the responsibility of the applicant. Criminal history
19 records provided to the department under this section are confidential. However, the
20 department may disclose information received under to this section with law enforcement.
21 The department may use the records only in determining an applicant's eligibility for
22 licensure.

23 **Section 4.** That a NEW SECTION be added:

24 **38-35-4. Industrial hemp licensure program fund--Purpose--Expenditures.**

25 There is hereby created within the state treasury the industrial hemp licensure
26 program fund, into which all license fees, inspection fees, and other fees or revenue paid
27 to the state from the operation of the industrial hemp program shall be deposited. All
28 moneys in the fund created by this section shall be used for the purpose of administering
29 the industrial hemp program. Interest earned on money in the fund shall be deposited
30 into the fund. Expenditures from the fund shall be appropriated through the normal budget
31 process.

32 **Section 5.** That a NEW SECTION be added:

1 **38-35-5. License issuance--Fee--Denial or suspension--Contested case.**

2 If the applicant has completed the application process to the satisfaction of the
3 Department of Agriculture, the department shall issue the license. A license issued under
4 this chapter is valid for fifteen months. An application for a license under this section shall
5 be submitted to the department any time before the purchase of industrial hemp products,
6 including hemp seed or viable propagation material. The department shall assess each
7 licensee a fee not to exceed three hundred fifty dollars. The department shall deposit fees
8 collected under this chapter in the industrial hemp licensure program fund.

9 The department may deny or suspend a license to any person who:

- 10 (1) Violates any provisions of this chapter;
11 (2) Violates any rules set forth by the United States Department of Agriculture
12 regarding industrial hemp;
13 (3) Provides false or misleading information in connection with any application required
14 by this chapter;
15 (4) Has been convicted of a felony relating to a controlled substance or marijuana
16 under state or federal law within the previous ten years; or
17 (5) Has been convicted of a felony relating to a controlled substance or marijuana
18 under state or federal law since the most recent criminal history background check.

19 Any person denied a license under this section or has a license suspended under
20 this section may request a hearing before the secretary pursuant to chapter 1-26.

21 **Section 6.** That a NEW SECTION be added:

22 **38-35-6. Planting--Documentation to be filed--Contents.**

23 Within thirty days of planting, each licensee under this chapter shall file with the
24 Department of Agriculture documentation indicating that the seeds planted were of a type
25 and variety certified to have no more than three-tenths of one percent
26 tetrahydrocannabinol.

27 **Section 7.** That a NEW SECTION be added:

28 **38-35-7. Entrance by department--Inspection, confiscation, and disposal--**
29 **Costs--Liability for destruction.**

30 The Department of Agriculture may enter on any land or area where hemp is
31 grown, stored, or produced for the purposes of inspections, sample collection, testing, or
32 investigation for the purposes of enforcing this chapter. Any hemp found to be in violation
33 of this chapter is subject to confiscation and disposal by the department. Any costs arising

1 from the confiscation and disposal shall be the responsibility of the grower, producer, or
2 owner of the hemp. The department is not liable for any destruction of hemp or hemp
3 products carried out under this chapter. If a violation occurs, the grower shall be given,
4 in writing, a copy of the results.

5 **Section 8.** That a NEW SECTION be added:

6 **38-35-8. Promulgation of rules.**

7 The Department of Agriculture shall promulgate rules, pursuant to chapter 1-26,
8 to:

- 9 (1) Establish inspection, testing, and transportation requirements in accordance with
10 guidance from the United States Department of Agriculture;
11 (2) Establish criteria and procedure for denial or suspension of a license under this
12 chapter;
13 (3) Make any modifications or additions to the industrial hemp licensure program in
14 order to comply with any rules and regulations regarding hemp implemented by
15 the United States Department of Agriculture; and
16 (4) Establish an inspection fee not to exceed two hundred fifty dollars, moneys from
17 which shall be placed in the industrial hemp licensure program fund.

18 **Section 9.** That a NEW SECTION be added:

19 **38-35-9. Testing samples--Exceeding concentration--Destruction of crop.**

20 If a test sample reveals a delta-9 tetrahydrocannabinol concentration of at least
21 three-tenths of one percent but not more than five-tenths of one percent on a dry weight
22 basis, the licensee's hemp crop may be retested by a laboratory approved by the Drug
23 Enforcement Administration and if upon the retesting, the delta-9 tetrahydrocannabinol
24 concentration exceeds three-tenths of one percent, the entire crop shall be destroyed by
25 a Drug Enforcement Administration registered reverse distributor, or a law enforcement
26 officer authorized under the Controlled Substances Act (21 U.S.C. § 802(6)).

27 **Section 10.** That a NEW SECTION be added:

28 **38-35-10. State hemp production plan--Submission to United States**
29 **Department of Agriculture--Establishment of program.**

30 The Department of Agriculture shall develop a state hemp production plan and
31 submit the plan to the United States Department of Agriculture for approval of a program

1 to license and grow industrial hemp in South Dakota within thirty days of the passage of
2 this Act. The department shall establish a program to license growth or production of
3 industrial hemp once approval is received by the United States Department of Agriculture.

4 **Section 11.** That a NEW SECTION be added:

5 **38-35-11. Transportation--Inspection by law enforcement--Purposes--**
6 **Penalty.**

7 Any law enforcement officer may require any person transporting industrial hemp
8 to stop any vehicle transporting the product for the purposes of inspection of appropriate
9 licensure or paperwork under § 38-35-13. The law enforcement officer may collect a
10 sample of the product for the purpose of testing for any concentration of
11 tetrahydrocannabinol that exceeds three-tenths of one percent. The sample collected by
12 law enforcement may not exceed eight ounces. It shall be a Class 2 misdemeanor to
13 transport industrial hemp without appropriate licensure or paperwork from a federal or
14 state authority.

15 **Section 12.** That a NEW SECTION be added:

16 **38-35-12. Transportation--Permit--Duration of permit--Required**
17 **documentation--Exception.**

18 An industrial hemp transportation permit is required to transport industrial hemp.
19 The licensee shall apply for an industrial hemp transportation permit on a form provided
20 by the Department of Agriculture. A permit issued under this section is valid for fifteen
21 months. A request for an industrial hemp transportation permit shall be submitted to the
22 department at least five business days prior to the transport. Any licensee transporting or
23 delivering industrial hemp shall have a dated invoice, bill of lading, or manifest in their
24 possession during the entire time the licensee is transporting or delivering industrial hemp
25 unless the hemp is being transported ten miles or less from where the crop was originally
26 grown. The invoice, bill of lading, or manifest shall include the following information:

- 27 (1) The licensee's name and address;
28 (2) The specific origin and destination of the industrial hemp being transported; and
29 (3) The quantity of industrial hemp being transported.

30 **Section 13.** That a NEW SECTION be added:

1 **38-35-13. Rules of United States Department of Agriculture.**

2 All applicants and licensees shall abide by the any rules set forth by the United
3 States Department of Agriculture.

4 **Section 14.** That § 22-42-1 be AMENDED:

5 **22-42-1. Definitions.**

6 Terms used in this chapter mean:

- 7 (1) "Controlled drug or substance," a drug or substance, or an immediate precursor of
8 a drug or substance, listed in Schedules I through IV. The term includes an altered
9 state of a drug or substance listed in Schedules I through IV absorbed into the
10 human body;
- 11 (2) "Counterfeit substance," a controlled drug or substance which, or the container of
12 labeling of which, without authorization, bears the trade-mark, trade name, or other
13 identifying mark, imprint, number, or device, or any likeness thereof, of a
14 manufacturer, distributor, or dispenser other than the person or persons who
15 manufactured, distributed, or dispensed such substance and which thereby falsely
16 purports or is represented to be the product of, or to have been distributed by, such
17 other manufacturer, distributor, or dispenser;
- 18 (3) "Deliver" or "delivery," the actual or constructive transfer of a controlled drug,
19 substance, or marijuana whether or not there exists an agency relationship;
- 20 (4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
21 research subject by or pursuant to the lawful order of a practitioner, including the
22 prescribing, administering, packaging, labeling, or compounding necessary to
23 prepare the substance for such delivery, and a dispenser is one who dispenses;
- 24 (5) "Distribute," to deliver a controlled drug, substance, or marijuana. Distribution
25 means the delivery of a controlled drug, substance, or marijuana;
- 26 (6) "Manufacture," the production, preparation, propagation, compounding, or
27 processing of a controlled drug or substance, either directly or indirectly by
28 extraction from substances of natural origin, or independently by means of chemical
29 synthesis or by a combination of extraction and chemical synthesis. A manufacturer
30 includes any person who packages, repackages, or labels any container of any
31 controlled drug or substance, except practitioners who dispense or compound
32 prescription orders for delivery to the ultimate user;
- 33 (7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not,
34 in its natural and unaltered state, except for drying or curing and crushing or

1 crumbling. The term includes an altered state of marijuana absorbed into the human
2 body. The term does not include industrial hemp as defined in § 38-35-1, fiber
3 produced from the mature stalks of such plant, or oil or cake made from the seeds
4 of such plant;

5 (8) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or
6 veterinary medicine licensed to practice his profession, or pharmacists licensed to
7 practice their profession; physician's assistants certified to practice their profession;
8 government employees acting within the scope of their employment; and persons
9 permitted by certificates issued by the Department of Health to distribute, dispense,
10 conduct research with respect to, or administer a substance controlled by chapter
11 34-20B;

12 (9) "Precursor" or "immediate precursor," a substance which the Department of Health
13 has found to be and by rule designates as being a principal compound commonly
14 used or produced primarily for use, and which is an immediate chemical
15 intermediary used or likely to be used, in the manufacture of a controlled drug or
16 substance, the control of which is necessary to prevent, curtail, or limit such
17 manufacture;

18 (10) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of
19 drugs, substances, and immediate precursors listed in chapter 34-20B;

20 (11) "Ultimate user," a person who lawfully possesses a controlled drug or substance for
21 that person's own use or for the use of a member of that person's household or for
22 administration to an animal owned by that person or by a member of that person's
23 household.

24 **Section 15.** That § 34-20B-1 be AMENDED:

25 **34-20B-1. Definitions.**

26 Terms as used in this chapter mean:

27 (1) "Administer," to deliver a controlled drug or substance to the ultimate user or
28 human research subject by injection, inhalation, or ingestion, or by any other
29 means;

30 (2) "Agent," an authorized person who acts on behalf of or at the direction of a
31 manufacturer, distributor, or dispenser and includes a common or contract carrier,
32 public warehouseman, or employee thereof;

33 (3) "Control," to add, remove, or change the placement of a drug, substance, or
34 immediate precursor under §§ 34-20B-27 and 34-20B-28;

- 1 (4) "Counterfeit substance," a controlled drug or substance which, or the container or
2 labeling of which, without authorization, bears the trademark, trade name, or other
3 identifying mark, imprint, number, or device, or any likeness thereof, of a
4 manufacturer, distributor, or dispenser other than the person or persons who
5 manufactured, distributed, or dispensed such substance and which thereby falsely
6 purports or is represented to be the product of, or to have been distributed by, such
7 other manufacturer, distributor, or dispenser;
- 8 (5) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a
9 controlled drug, substance, or marijuana whether or not there exists an agency
10 relationship;
- 11 (6) "Department," the Department of Health created by chapter 1-43;
- 12 (7) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
13 research subject by or pursuant to the lawful order of a practitioner, including the
14 prescribing, administering, packaging, labeling, or compounding necessary to
15 prepare the substance for such delivery, and a dispenser is one who dispenses;
- 16 (8) "Distribute," to deliver a controlled drug, substance, or marijuana. A distributor is
17 a person who delivers a controlled drug, substance, or marijuana;
- 18 (9) "Hashish," the resin extracted from any part of any plant of the genus cannabis,
19 commonly known as the marijuana plant;
- 20 (10) "Imprisonment," imprisonment in the state penitentiary unless the penalty
21 specifically provides for imprisonment in the county jail;
- 22 (11) "Manufacture," the production, preparation, propagation, compounding, or
23 processing of a controlled drug or substance, either directly or indirectly by
24 extraction from substances of natural origin, or independently by means of chemical
25 synthesis or by a combination of extraction and chemical synthesis. A manufacturer
26 includes any person who packages, repackages, or labels any container of any
27 controlled drug or substance, except practitioners who dispense or compound
28 prescription orders for delivery to the ultimate consumer;
- 29 (12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not;
30 the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or
31 preparation of such plant or its seeds. The term does not include industrial hemp
32 as defined in § 38-35-1, fiber produced from the mature stalks of the plant, or oil
33 or cake made from the seeds of the plant, or the resin when extracted from any
34 part of the plant or cannabidiol, a drug product approved by the United States Food
35 and Drug Administration;

- 1 (13) "Narcotic drug," any of the following, whether produced directly or indirectly by
2 extraction from substances of vegetable origin or independently by means of
3 chemical synthesis, or by a combination of extraction and chemical synthesis:
4 (a) Opium, coca leaves, and opiates;
5 (b) A compound, manufacture, salt, derivative, or preparation of opium, coca
6 leaves, or opiates;
7 (c) A substance (and any compound, manufacture, salt, derivative, or
8 preparation thereof) which is chemically identical with any of the substances
9 referred to in subsections (a) and (b) of this subdivision;
10 except that the term, narcotic drug, as used in this chapter does not include
11 decocainized coca leaves or extracts of coca leaves, which extracts do not contain
12 cocaine or ecgonine;
- 13 (14) "Opiate" or "Opioid," any controlled drug or substance having an addiction-
14 sustaining liability similar to morphine or being capable of conversion into a drug
15 having such addiction-forming or addiction-sustaining liability;
- 16 (15) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds
17 thereof;
- 18 (16) "Person," any corporation, association, limited liability company, partnership or one
19 or more individuals;
- 20 (17) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;
- 21 (18) "Practitioner," a doctor of medicine, osteopathy, podiatry, optometry, dentistry, or
22 veterinary medicine licensed to practice their profession, or pharmacists licensed to
23 practice their profession; physician assistants certified to practice their profession;
24 certified nurse practitioners and certified nurse midwives to practice their
25 profession; government employees acting within the scope of their employment;
26 and persons permitted by certificates issued by the department to distribute,
27 dispense, conduct research with respect to, or administer a substance controlled by
28 this chapter;
- 29 ~~(18A)~~(19) "Prescribe," an order of a practitioner for a controlled drug or substance.
- 30 ~~(19)~~(20) "Production," the manufacture, planting, cultivation, growing, or harvesting
31 of a controlled drug or substance;
- 32 ~~(20)~~(21) "State," the State of South Dakota;
- 33 ~~(21)~~(22) "Ultimate user," a person who lawfully possesses a controlled drug or
34 substance for personal use or for the use of a member of the person's household or

1 for administration to an animal owned by the person or by a member of the person's
2 household;

3 ~~(22)~~(23) "Controlled substance analogue," any of the following:

- 4 (a) A substance that differs in its chemical structure to a controlled substance
5 listed in or added to the schedule designated in schedule I or II only by
6 substituting one or more hydrogens with halogens or by substituting one
7 halogen with a different halogen; or
- 8 (b) A substance that is an alkyl homolog of a controlled substance listed in or
9 added to schedule I or II; or
- 10 (c) A substance intended for human consumption; and
- 11 (i) The chemical structure of which is substantially similar to the chemical
12 structure of a controlled substance in schedule I or II;
- 13 (ii) Which has a stimulant, depressant, or hallucinogenic effect on the
14 central nervous system that is substantially similar to or greater than
15 the stimulant, depressant, or hallucinogenic effect on the central
16 nervous system of a controlled substance in schedule I or II; or
- 17 (iii) With respect to a particular person, which such person represents or
18 intends to have a stimulant, depressant, or hallucinogenic effect on the
19 central nervous system that is substantially similar to or greater than
20 the stimulant, depressant, or hallucinogenic effect on the central
21 nervous system of a controlled substance in schedule I or II;

22 However, the term, controlled substance analogue, does not include a controlled
23 substance or any substance for which there is an approved new drug application.

24 **Section 16.** Whereas, this Act is necessary for the support of the state government and its
25 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
26 full force and effect from and after its passage and approval.