

Chapter 129
(House Bill 1125)

An Act to prohibit the chemical modification or conversion of industrial hemp and the sale or distribution of chemically modified or converted industrial hemp and to provide a penalty therefor.

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

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

34-20B-1. Terms as used in this chapter mean:

- (1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;
- (2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;
- (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;
- ~~(3)~~(4) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;
- ~~(4)~~(5) "Controlled substance analogue," any of the following:
 - (a) A substance that differs in its chemical structure from a controlled substance listed in or added to Schedule I or II only by substituting one or more hydrogens with halogens, or by substituting one halogen with a different halogen;
 - (b) A substance that is an alkyl homolog of a controlled substance listed in or added to Schedule I or II; or
 - (c) A substance intended for human consumption:
 - (i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; or
 - (ii) That has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II;

The term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application;

- ~~(5)~~(6) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark,

trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

~~(6)~~(7) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled drug, substance, or marijuana whether or not there exists an agency relationship;

~~(7)~~(8) "Department," the Department of Health created by chapter 1-43;

~~(8)~~(9) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

~~(9)~~(10) "Distribute," to deliver a controlled drug, substance, or marijuana. A distributor is a person who delivers a controlled drug, substance, or marijuana;

~~(10)~~(11) "Hashish," the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis;

~~(11)~~(12) "Imprisonment," imprisonment in a state correctional facility unless the penalty specifically provides for imprisonment in the county jail;

~~(12)~~(13) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~(13)~~(14) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant, or a drug product approved by the United States Food and Drug Administration. The term does not include 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 delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

~~(14)~~(15) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (a) Opium, coca leaves, or opiates;
- (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
- (c) A substance, and any compound, manufacture, salt, derivative, or preparation thereof, that is chemically identical to any of the substances referred to in subsections (a) and (b) of this subdivision;

The term, narcotic drug, does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

- ~~(15)~~(16) "Opiate" or "Opioid," any controlled drug or substance having an addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;
- ~~(16)~~(17) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds thereof;
- ~~(17)~~(18) "Person," any corporation, association, limited liability company, partnership, or one or more individuals;
- ~~(18)~~(19) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;
- ~~(19)~~(20) "Practitioner,":
- (a) A physician licensed pursuant to chapter 36-4, a physician assistant licensed pursuant to chapter 36-4A, a dentist licensed pursuant to chapter 36-6A, an optometrist licensed pursuant to chapter 36-7, a podiatrist licensed pursuant to chapter 36-8, a certified registered nurse anesthetist licensed pursuant to chapter 36-9, a certified nurse practitioner or certified nurse midwife licensed pursuant to chapter 36-9A, a pharmacist licensed pursuant to chapter 36-11, or a veterinarian licensed pursuant to chapter 36-12;
 - (b) A government employee acting within the scope of employment; and
 - (c) A person permitted by a certificate issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;
- ~~(20)~~(21) "Prescribe," an order of a practitioner for a controlled drug or substance;
- ~~(21)~~(22) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;
- ~~(22)~~(23) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household, or for administration to an animal owned by the person or by a member of the person's household.

Section 2. That a NEW SECTION be added to chapter 34-20B:

No person or entity may:

- (1) Chemically modify or convert industrial hemp as defined in § 38-35-1, or engage in any process that converts cannabidiol, into delta-8 tetrahydrocannabinol, delta-9 tetrahydrocannabinol, delta-10 tetrahydrocannabinol, or any other tetrahydrocannabinol isomer, analog, or derivative; or
- (2) Sell or distribute industrial hemp or an industrial hemp product that contains chemically derived cannabinoids or cannabinoids created by chemically modifying or converting a hemp extract.

A violation of this section is a Class 2 misdemeanor.

Section 3. 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;
- ~~(3)~~(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;
- ~~(4)~~(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;
- ~~(5)~~(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;
- ~~(6)~~(7) "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 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;
- ~~(7)~~(8) "Lot," a contiguous area in a field or greenhouse containing the same variety or strain of hemp throughout the area;
- ~~(8)~~(9) "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)~~(10) "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)~~(11) "Processor," a person that converts raw hemp into an initial processed form;
- ~~(11)~~(12) "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)~~(13) "Product in process," the product being processed 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 state or federally approved, lab-tested biomass from a licensed grower into a finished industrial hemp product;
- ~~(13)~~(14) "Remediation," the process of rendering non-compliant cannabis compliant using methods accepted by the USDA;
- ~~(14)~~(15) "Secretary," the secretary of the Department of Agriculture and Natural Resources;
- ~~(15)~~(16) "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)~~(17) "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.

Signed March 18, 2024
