State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY,

471B0595

HOUSE ENGROSSED NO. HB 1191 - 2/11/2019

Introduced by: Representatives Lesmeister, Beal, Bordeaux, Borglum, Brunner, Cwach, Dennert, Deutsch, Diedrich, Duba, Finck, Goodwin, Gosch, Hansen, Healy, Johns, Johnson (Chris), Johnson (David), Koth, Lake, Latterell, Livermont, Marty, McCleerey, Mills, Otten (Herman), Peterson (Kent), Peterson (Sue), Pischke, Pourier, Qualm, Rasmussen, Reed, Ring, Rounds, Saba, Schoenfish, Smith (Jamie), St John, Steele, Sullivan, Wiese, and Willadsen and Senators Youngberg, Cammack, Cronin, DiSanto, Foster, Greenfield (Brock), Heinert, Kennedy, Kolbeck, Langer, Maher, Nesiba, Otten (Ernie), Smith (VJ), Soholt, Solano, Steinhauer, White, and Wismer

FOR AN ACT ENTITLED, An Act to legalize the growth, production, and processing of industrial hemp and derivative products in the state.

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

Section 1. That subdivision (7) of § 22-42-1 be amended to read:

(7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include <u>industrial hemp as defined in section 3 of this Act,</u> fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of ~~such~~ <u>the</u> plant;

Section 2. That subdivision (12) of § 34-20B-1 be amended to read:

100 copies were printed on recycled paper by the South Dakota Legislative Research Council at a cost of $.167 per page.

Insertions into existing statutes are indicated by <u>underscores</u>.
Deletions from existing statutes are indicated by ~~overstrikes~~.

(12) "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 industrial hemp as defined in section 3 of this Act, 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 ~~cannabidiol,~~ a drug product approved by the United States Food and Drug Administration;

Section 3. That the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, industrial hemp or hemp, is 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 0.3 percent on a dry weight basis.

Section 4. That the code be amended by adding a NEW SECTION to read:

Any applicant desiring to grow, produce, or process industrial hemp shall apply to the Department of Agriculture for a license on a form prescribed by the department in rules promulgated pursuant to chapter 1-26. A license shall be obtained before an applicant may purchase or obtain industrial hemp material for planting, propagation, or processing. The applicant is responsible for anyone working under the applicant's license for all sections of this Act. Only an applicant licensed to grow or process and produce industrial hemp pursuant to this Act may possess any part, stalk, leaf, bud, flower, or seed of an industrial hemp plant.

Section 5. That the code be amended by adding a NEW SECTION to read:

The application for a license shall include the name and address of the applicant, and the legal description of the land area to be used to grow, produce, or process industrial hemp. Except for employees of the South Dakota Department of Agriculture, the South Dakota

Agricultural Experiment Station, or the South Dakota State University Extension Service involved in research and extension-related activities, the department shall require each applicant for initial licensure and each license renewal thereafter to submit to a statewide and nationwide criminal history record check through fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. However, the department may disclose information received pursuant to this section with law enforcement. The department may use the records only in determining an applicant's eligibility for licensure.

Section 6. That the code be amended by adding a NEW SECTION to read:

The department shall deny licensure to any applicant convicted of a felony relating to a controlled substance or marijuana under state or federal law in the ten year period following conviction.

Section 7. That the code be amended by adding a NEW SECTION to read:

There is hereby created within the state treasury the industrial hemp licensure program fund, into which all license fees, inspection fees, and other fees or revenue paid to the state from the operation of the industrial hemp program shall be deposited. All moneys in the fund created by this section shall be used for the purpose of administering the industrial hemp 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 8. That the code be amended by adding a NEW SECTION to read:

If the applicant has completed the application process to the satisfaction of the department, the department shall issue the license. A license issued under this Act is valid for one year. An application for a license under this section shall be submitted to the department any time before

the purchase of industrial hemp products, including hemp seed or viable propagation material. The department shall assess each licensee a fee not to exceed three hundred fifty dollars. The department shall deposit fees collected under this chapter in the industrial hemp licensure program fund.

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

(1) Violates this Act;

(2) Provides false or misleading information in connection with any application required by this Act; or

(3) Has been convicted of a felony, as described in section 6 of this Act, since the most recent criminal history background check.

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

Section 9. That the code be amended by adding a NEW SECTION to read:

Each licensee pursuant to this Act shall file with the Department of Agriculture documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol.

Section 10. That the code be amended by adding a NEW SECTION to read:

The department may enter on any land or areas where hemp is grown, stored, or processed for the purposes of inspections, sample collection, testing, or investigation for the purposes of enforcing this Act. Any hemp found to be in violation of this Act is subject to confiscation and disposal by the department. Any costs arising from the confiscation and disposal shall be the responsibility of the grower, producer, processor, or owner of the hemp. The department is not liable for any destruction of hemp or hemp products carried out under this Act. If a violation occurs, the grower shall be given, in writing, a copy of the results.

Section 11. That the code be amended by adding a NEW SECTION to read:

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

(1) Establish inspection, testing, and transportation requirements in accordance with guidance from the United States Department of Agriculture;

(2) Make any modifications or additions to the industrial hemp licensure program in order to comply with any standards or regulations regarding hemp implemented by the United States Department of Agriculture; and

(3) Establish an inspection fee, moneys from which shall be placed in the industrial hemp licensure program fund.

Section 12. That the code be amended by adding a NEW SECTION to read:

The Department of Agriculture shall work with the attorney general to develop a program to license growth of industrial hemp in South Dakota. With approval of the attorney general, the Department of Agriculture shall apply to the United States Department of Agriculture for approval of a program to license growth of industrial hemp in South Dakota. The Department of Agriculture shall set up a program to license growth, production, or processing of industrial hemp once approval is received by the United States Department of Agriculture.

Section 13. That the code be amended by adding a NEW SECTION to read:

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