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Indicates New Matter

AMENDED

February 21, 2019

**H. 3449**

Introduced by Reps. Hiott, Lucas, Kirby, Forrest, Young, Hixon, B. Newton, Erickson, Bradley, Mace, Atkinson, Ligon, Magnuson, Hill, Johnson and Hardee

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Read the first time January 8, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 46-55-70 SO AS TO PROVIDE THAT THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE IS RESPONSIBLE FOR THE REGULATION OF HEMP IN SOUTH CAROLINA IN STRICT COMPLIANCE WITH THE STANDARDS AND PRACTICES ESTABLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE; AND TO REPEAL SECTIONS 46‑55‑20 THROUGH 46‑55‑60, ALL RELATING TO INDUSTRIAL HEMP.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 46 of the 1976 Code is amended by adding:

“CHAPTER 56

South Carolina Hemp Farming Act

Section 46‑56‑10. This chapter must be known and may be cited as the ‘South Carolina Hemp Farming Act’.

Section 46‑56‑20. The General Assembly finds that hemp is a viable agricultural crop in South Carolina. This chapter is intended to:

(1) promote the cultivation and processing of hemp and to open new commercial markets for farmers and businesses through the sale of hemp products;

(2) promote the expansion of this state’s hemp industry to the maximum extent permitted by law, allowing farmers and businesses to cultivate, handle, and process industrial hemp and sell industrial hemp products for commercial purposes;

(3) encourage and empower research into hemp growth and hemp products at state institutions of higher education and in the private sector; and

(4) move this State and its citizens to the forefront of the hemp industry.

Section 46‑56‑30. As used in this chapter:

(1) ‘Cannabidiol’ or ‘CBD’ means the compound by the same name derived from the hemp variety of the Cannabis sativa L. plant.

(2) ‘Commercial sales’ mean the sale of hemp products in the stream of commerce, at retail, wholesale and online.

(3) ‘Commissioner’ is the Commissioner of the South Carolina Department of Agriculture.

(4) ‘Cultivating’ means planting, watering, growing, and harvesting a plant or crop.

(5) ‘Department’ means the South Carolina Department of Agriculture.

(6) ‘Federally defined THC level for hemp’ means a delta‑9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. sec 5940, whichever is greater.

(7) ‘Handling’ means possessing or storing hemp for any period of time. Handling includes possessing or storing hemp in a vehicle for any period of time other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person. Handling does not mean possessing or storing finished hemp products.

(8) ‘Hemp’ means the plant Cannabis sativa L. and any part of that plant, including the non‑sterilized seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC level for hemp. Hemp is considered an agricultural commodity. The term also includes all industrial grown hemp and hemp products.

(9) ‘Hemp products’ means all products with the federally defined THC level for hemp derived from, or made by, processing hemp plants or hemp plant parts, that are prepared in a form available for commercial sale, including, but not limited to cosmetics, personal care products, food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp‑derived cannabinoids, such as cannabidiol. Unprocessed or raw plant material, including non‑sterilized hemp seeds is not considered a hemp product.

(10) ‘Licensee’ means an individual or business entity possessing a license issued by the department under the authority of this chapter to grow, handle, cultivate, or process hemp.

(11) ‘Marijuana,’ has the same meaning as in Section 44‑53‑110 and does not include hemp or hemp products.

(12) ‘Processing’ means converting an agricultural commodity into a marketable form.

(13) ‘State plan’ means the plan submitted by the department and approved by the Secretary of the United States Department of Agriculture under which the department regulates hemp production.

(14) ‘THC’ means tetrahydrocannabinol. The THC found in hemp is not considered to be THC in qualifying as a controlled substance.

(15) ‘University’ means any public institution of higher education offering a four‑year baccalaureate degree or private institution of higher education accredited by the Southern Association of Colleges and Schools offering a four‑year baccalaureate degree throughout the State.

Section 46‑56‑40. (A)(1) There is created the South Carolina Hemp Program to enable the department, its licensees, and affiliated universities to promote the cultivation and processing of hemp and the commercial sales of hemp products. The department, its licensees, the licensees’ agents, and affiliated universities may cultivate, handle, and process hemp in this State and may transport hemp within and outside of this State.

(2) It is lawful to possess, transport, sell, and purchase legally produced hemp products in this State. Nothing in this chapter authorizes a person to violate a federal or state law or regulation.

(B) A person only may cultivate, handle, or process hemp in this State with a hemp license issued by the department under the state plan. A person seeking to cultivate hemp must:

(1) provide to the department the legal description and global positioning coordinates sufficient for locating the fields or greenhouses used to cultivate hemp;

(2) provide written consent allowing representatives of the department, South Carolina Law Enforcement Division (SLED), and local law enforcement, to enter onto all premises where hemp is cultivated, processed, or stored for the purposes of conducting physical inspections, obtaining samples of hemp or hemp products, or otherwise ensuring compliance with the requirements of applicable laws and regulations;

(3) subject hemp to the testing procedure set forth in the state plan using post‑decarboxylation or other similarly reliable methods to test the delta‑9 THC concentration levels of hemp produced in the State; and

(4) undergo a state criminal records check, supported by fingerprints, by SLED and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these records checks must be reported to the department. SLED is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. A person who has been convicted of a felony relating to a controlled substance under state or federal law in the ten years prior to the submission of the application is not eligible to:

(a) obtain a license or participate in the program established under this section or the Agriculture Improvement Act of 2018; or

(b) produce hemp under a regulation or guideline issued under the Agriculture Improvement Act of 2018.

(C)(1) A licensee is required to conduct a corrective action plan if the commissioner determines that the licensee has negligently violated applicable state laws, regulations, or the state plan by:

(a) failing to provide a legal description and global positioning coordinates of land on which hemp is cultivated;

(b) failing to obtain a proper license or other required authorization from the commissioner; or

(c) producing Cannabis sativa L. with more than the federally defined THC level for hemp.

(2) A corrective action plan should include a:

(a) reasonable date by which the licensee must correct the violation; and

(b) requirement that the licensee periodically report to the commissioner on the compliance of the hemp producer with the provisions of this chapter and the state plan for a period of not less than the next two calendar years.

(3) A licensee that negligently violates state laws or regulations may not be subject to criminal or civil liability other than the enforcement action provided in this section.

(4) A licensee that negligently violates the state plan three times within a five‑year period is ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) If the commissioner determines that a licensee violated a state law with a culpable mental state greater than negligence, the commissioner must immediately report the hemp producer to the United States Attorney General and the South Carolina Attorney General.

Section 46‑56‑50. The department may charge a reasonable application fee, license fee, and renewal of license fee that must be remitted to administer the South Carolina Hemp Program. Licensing fees for:

(1) hemp growers and handlers may not exceed one thousand dollars each year per registrant; and

(2) processors may not exceed the cost calculated by the department to cover the costs incurred under the processor licensing program.

Section 46‑56‑60. (A) Within sixty days of the effective date of this chapter, the commissioner shall submit a state plan to the Secretary of the United States Department of Agriculture regulating hemp production in South Carolina. The plan shall include a:

(1) practice to maintain relevant information relating to land on which hemp is produced including a legal description of the land for a period of no less than three years;

(2) procedure for testing delta‑9 THC concentration levels on hemp produced in this State using post‑decarboxylation or a similarly reliable method;

(3) procedure for the effective disposal of products that are in violation of this chapter; and

(4) procedure to comply with the enforcement of this chapter.

(B) If the secretary disapproves the state plan, the commissioner, in consultation with the Governor and Attorney General, shall submit an amended state plan.

Section 46‑56‑70. The South Carolina Hemp Program does not apply to the possession, handling, transport, or sale of hemp products and extracts, including those containing hemp‑derived cannabinoids such as CBD.

Section 46‑56‑80. A person who manufactures, distributes, dispenses, delivers, purchases, aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, in a manner intended to disguise the marijuana due to its proximity to industrial hemp, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than three thousand dollars, or both. The penalty provided for in this section may be imposed in addition to any other penalties provided by law.”

SECTION 2. Chapter 55, Title 46 of the 1976 Code is repealed.

SECTION 3. This act takes effect upon approval by the Governor.

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