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COMMITTEE AMENDMENT ADOPTED AND AMENDED

March 14, 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 February 26, 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.

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

SECTION 1. Chapter 55, Title 46 of the 1976 Code is amended to read:

“CHAPTER 55

~~Industrial~~ The Hemp ~~Cultivation~~ Farming Act

Section 46-55-10. For the purposes of 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’ means the sale of hemp products in the stream of commerce, at retail, wholesale, and online.

(3) ‘Commissioner’ means 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’ also 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’ or ‘industrial 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 shall be considered an agricultural commodity.

~~(1)~~(9) ‘~~Industrial hemp~~ Hemp products’ means all products ~~made from any part of industrial hemp, including, but not limited to, cannabinoids, cloth, construction materials, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal, supplements, seed oil for consumption, and seed for cultivation if the seeds originate from industrial hemp varieties~~ 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.

~~(2)~~(10) ~~‘Industrial hemp’ means the plant Cannabis sativa L. and any part of the plant, whether growing or not, with a delta‑9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dried weight basis~~ ‘Licensee’ means an individual or business entity possessing a license issued by the department under the authority of this chapter to cultivate, handle, or process hemp.

~~(3)~~(11) ~~‘Delta‑9 tetrahydrocannabinol’ means the natural or synthetic equivalents or substances contained in the plant, or in the resinous extractives of cannabis, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity~~ ‘Marijuana’ has the same meaning as in Section 44-53-110 and does not include tetrahydrocannabinol in hemp or hemp products as defined herein.

~~(4)~~(12) ~~‘Human consumption’ means ingestion or topical application to the skin or hair~~ ‘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 pursuant to which the department regulates hemp production.

(14) ‘THC’ means tetrahydrocannabinol.

Section 46-55-20. (A)(1) ~~The South Carolina Industrial Hemp Program is created~~ It is unlawful for a person to cultivate, handle, or process hemp in this State without a hemp license issued by the department pursuant to the state plan.

(2) The department may charge application, license, and renewal of license fees reasonably calculated by the department to pay the cost of administering this chapter. Licensing fees for cultivators and handlers shall not exceed one thousand dollars annually per registrant, and licensing fees for processors shall not exceed the cost calculated by the department of the processor licensing program. Fees collected by the department pursuant to this item shall continuously be appropriated to the department for the purposes of carrying out the duties of the South Carolina industrial hemp program under this chapter.

(3) Any person seeking to cultivate, handle, or process hemp shall undergo a state criminal records check, supported by fingerprints, by the State Law Enforcement Division and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the department. The State Law Enforcement Division is authorized to retain fingerprints for certification purposes and for notification of the department regarding criminal charges. No person who has been convicted of a felony relating to a controlled substance under state or federal law during a ten-year period from the date of his conviction shall be eligible to obtain a license to cultivate, handle, or process hemp.

(4) Any person who materially falsifies any information contained in an application to participate in the program established herein shall be ineligible to participate.

(5) The commissioner shall make information regarding a licensee and that information described in subsection (B)(1) accessible in real time to federal, state, and local law enforcement.

(B)(1) ~~Industrial hemp is an agricultural crop. 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 may conduct research, pursuant to Public Law 113‑79, contingent upon funding. The institution may conduct research or pilot programs as an agricultural commodity and may work with growers located in South Carolina. Once the institution of higher education engages in research on industrial hemp, the institution shall work in conjunction with the Department of Agriculture to identify solutions for applications, applicants, and new market opportunities for industrial hemp growers. The purchaser or manufacturer will be included under the provisions of this chapter~~ A person applying for a license to cultivate hemp shall provide to the department a legal description and global positioning coordinates sufficient to locate the fields or greenhouses used to cultivate hemp.

(2) A person applying for a license to cultivate, handle, or process hemp shall provide the department with prior written consent:

(a) allowing representatives of the department, the State Law Enforcement Division, and local law enforcement agencies to enter onto all premises where hemp is cultivated, handled, processed, or stored for the purpose of conducting physical inspections, obtaining samples of hemp or hemp products, or otherwise ensuring compliance with the requirements of state law and any administrative regulations promulgated by the department; and

(b) to the testing procedure set forth in the state plan, using post-decarboxylation or other similarly reliable methods, delta-9 THC concentration levels of hemp produced in the State.

~~(3)~~ ~~The Department of Agriculture will allow up to twenty permits for the first year and up to forty permits for the second year and third year, and every year after, the Department of Agriculture, along with the institutions of higher learning, will evaluate the program to determine the number of permits to be issued. The permits are to be given to South Carolina residents for the purposes of a pilot program. Each permittee is permitted to grow industrial hemp on up to twenty acres of land the first year and up to forty acres the second year and third year, and every year after, the Department of Agriculture, along with the institutions of higher learning, will evaluate the program to determine the amount of acreage permitted. When applying for a permit, each applicant, at a minimum, must submit to the department global positioning system coordinates of where the industrial hemp will be grown and must submit any and all information, including, but not limited to, fingerprints, and the appropriate fees, required by the South Carolina Law Enforcement Division (SLED) to perform a fingerprint‑based state criminal records check and for the Federal Bureau of Investigation to perform a national fingerprint‑based criminal records check.~~

~~(4)~~ ~~The department shall require 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 criminal 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. No person who has been convicted of any felony, or any person convicted of any drug‑related misdemeanor or violation in the previous ten years from the date of the application, shall be eligible to obtain a permit.~~

~~(5)~~ ~~Before the department will issue a permit to the applicant, the applicant must have proof of a signed purchaser with a contract.~~

~~(6)~~ ~~Industrial hemp is an agricultural crop subject to regulations by the Department of Agriculture.~~

~~(7)~~ ~~To grow industrial hemp, a person must be registered with the department as a grower.~~

~~(8)~~ ~~To register, an applicant, under this section, must submit to the department, in a manner prescribed by the department, the following information:~~

~~(a)~~ ~~the name and address of the applicant;~~

~~(b)~~ ~~the name and address of the industrial hemp operation of the applicant;~~

~~(c)~~ ~~the Global Positioning System coordinates of the land on which the industrial hemp will be planted, grown, cultivated, or processed;~~

~~(d)~~ ~~any other information required by the department through regulation; and~~

~~(e)~~ ~~written consent allowing SLED and the Department of Agriculture to enter onto all premises where industrial hemp is cultivated, processed, or stored for the purpose of conducting physical inspections or ensuring compliance with the Industrial Hemp Pilot Program.~~

~~(9)~~ ~~A grower may renew a registration under this section in the manner prescribed by the department.~~

~~(10)~~ ~~The department may charge growers application, registration, and renewal of registration fees reasonably calculated by the department to pay the cost of administering the South Carolina Industrial Hemp Program, not to exceed one thousand dollars annually per registrant. Monies from fees collected under this subsection shall be continuously appropriated to the department for purposes of carrying out the duties of the South Carolina Industrial Hemp Program under this section~~.

~~(11)~~ ~~It is lawful for a permitted individual to cultivate, produce, or otherwise grow industrial hemp in this State to be used for any lawful purpose, including, but not limited to, the manufacture of industrial hemp products, and scientific, agricultural, or other research related to other lawful applications for industrial hemp.~~

~~(12)~~ ~~Growers or processors may retain any industrial hemp that tests between three‑tenths of one percent to one percent delta‑9 tetrahydrocannabinol on a dry weight basis and recondition the hemp product by grinding it with the stem and stalk. Industrial hemp products must not exceed three‑tenths of one percent delta‑9 tetrahydrocannabinol.~~

~~(13)~~ ~~For the purposes of Chapter 25, Title 39, industrial hemp or industrial hemp products may not be considered to be an adulterant.~~

Section 46-55-30. ~~(1)~~ ~~A grower may use any propagation method, including, but not limited to, planting seeds or starts or using clones or cuttings, to produce industrial hemp. Nothing in this article limits or precludes a grower from propagating or cultivating noncertified industrial hemp seed~~ The provisions contained in this chapter do not apply to the possession, handling, transport, or sale of hemp products and extracts, including those containing hemp-derived cannabinoids, including CBD. Nothing in this chapter authorizes any person to violate any federal or state law or regulation.

~~(2)~~ ~~Notwithstanding any other provision of law, except as subject to federal law, a person engaged in cultivating, processing, selling, transporting, possessing, or otherwise distributing industrial hemp, or selling industrial hemp products from industrial hemp, grown, processed, or produced pursuant to this chapter, is not subject to any civil or criminal actions under South Carolina law for engaging in these activities. Nothing in this chapter limits or precludes the importation or exportation of industrial hemp or industrial hemp products. The provisions of the chapter create a three‑year pilot program as contained in 7 U.S.C. Section 5940.~~

Section 46-55-40. (A) ~~For purposes of this section:~~ (1) ~~‘Independent testing laboratory’ means any facility, entity, or site that offers or performs tests of industrial hemp or industrial hemp‑based products that has been accredited by an independent accreditation body~~ A licensee in the South Carolina hemp program shall be required to conduct a corrective action plan if the commissioner, or his designee, determines that the licensee negligently violated a provision of this chapter, regulations promulgated pursuant to this chapter, or the state plan, including, but not limited to:

(a) failing to provide a legal description and global positioning coordinates of the land on which the licensee cultivates hemp;

(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) ~~‘Accreditation body’ means an impartial organization that provides accreditation to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Corporation Mutual Recognition Arrangement for Testing~~ A corrective action plan required pursuant to item (1) shall include a:

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

(b) requirement that the licensee shall periodically report to the commissioner on his compliance with this chapter and the state plan for a period of not less than the next two calendar years, to be determined by the commissioner.

(3) ~~‘Scope of accreditation’ means a document issued by the accreditation body which describes the methodologies, range, and parameters for testing for which the accreditation has been granted~~ The corrective action plan provided for in item (2) is the sole remedy for negligent violations of this chapter, regulations promulgated pursuant to this chapter, or the state plan. A licensee who negligently violates a provision of this chapter, regulations promulgated pursuant to this chapter, or the state plan shall not be subject to any criminal or civil enforcement action.

(4) A licensee who negligently violates a provision of this chapter, regulations promulgated pursuant to this chapter, or the state plan three times in a five‑year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(B) ~~Independent testing laboratories may test industrial hemp and industrial hemp products produced or processed by a grower or processor~~ If the commissioner determines that a licensee has violated state law with a culpable mental state greater than negligence, then the commissioner shall immediately report the hemp producer to the Attorney General and the Chief of the South Carolina Law Enforcement Division, and subsection (A)(2) shall not apply to the violation.

~~(C)~~ ~~All testing performed to meet regulatory requirements shall be included in an independent testing laboratory’s scope of accreditation.~~

~~(D)~~ ~~An independent testing laboratory shall demonstrate the ability to accurately quantitate individual cannabinoids in both their acidic and neutral forms down to 0.05 percent by weight, including, but not limited to, delta‑9 THC, delta‑9 THCA, cannabidiol (CBD), and CBDA.~~

~~(E)~~ ~~Testing is required by an International Organization for Standardization (ISO) Certified Laboratory Facility as approved by an accredited body. The test results must be retained by the grower or processor for at least three years and be made readily available to any state law enforcement agency upon request. Any industrial hemp sample testing at one percent or above delta‑9 tetrahydrocannabinol shall be destroyed in a controlled environment with law enforcement present.~~

~~(F)~~ ~~Registered growers shall have a minimum of four random samples per grow tested for delta‑9 tetrahydrocannabinol concentrations not more than thirty days prior to harvest. If the grower has planted different varieties, at least one sample from each variety must be tested for delta‑9 tetrahydrocannabinol concentrations.~~

~~(G)~~ ~~Industrial hemp or industrial hemp products, intended by a processor for sale for human consumption, shall be tested by an independent testing laboratory to confirm that products are fit for human consumption and meet United States Food Industry standards for food products. Testing shall confirm safe levels of potential contaminants, including, but not limited to, pesticides, heavy metals, residual solvents, and microbiological contaminants.~~

~~(H)~~ ~~All test results and corresponding product batch numbers shall be retained by the registered processor for at least three years.~~

~~Section 46-55-50.~~ ~~Industrial hemp is excluded from the definition of marijuana in Section 44‑53‑110.~~

Section 46-55-60. An individual who manufactures, distributes, dispenses, delivers, purchases, aids, abets, attempts to, 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, 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. (A) Within sixty days after the effective date of this act, the Commissioner of the South Carolina Department of Agriculture shall submit a State Plan to the Secretary of the United States Department of Agriculture pursuant to which the South Carolina Department of Agriculture proposes to regulate hemp production. The submission shall include:

(1) a practice to maintain relevant information regarding land on which hemp is produced in the State, including a legal description of the land, for a period of not less than three calendar years;

(2) a procedure for testing, using post‑decarboxylation or other similarly reliable methods, delta‑9 THC concentration levels of hemp produced in the State;

(3) a procedure for the effective disposal of products that are produced in violation of Chapter 55, Title 46, as amended by this act; and

(4) a procedure to comply with the enforcement procedures outlined in this act.

(B) If the Secretary of the United States Department of Agriculture disapproves the State Plan, then the Commissioner of the South Carolina Department of Agriculture, in consultation with the Governor and Attorney General, shall submit to the Secretary of the United States Department of Agriculture an amended State Plan.

SECTION 3. (A) The forty 2019 licenses issued pursuant to Chapter 55, Title 46 prior to the effective date of this act shall be valid for the term of the licenses, under the terms and conditions under which the licenses were issued, except that, upon the approval of the South Carolina Department of Agriculture, each licensee may expand operations beyond the forty‑acre limit and may cultivate hemp for commercial purposes.

(B) Notwithstanding the provisions of Section 46‑55‑20(B)(3), as amended by this act, as of the date licenses were issued for 2019, the South Carolina Department of Agriculture may issue additional licenses for 2019 to any applicant that met the licensing criteria but was denied solely because the department had already issued the legally permitted number of licenses for the year. Licenses issued pursuant to this subsection shall be for the same term, and under the same terms and conditions, under which the forty licenses identified in subsection (A) were issued. Licensees pursuant to this subsection may also expand operations beyond the forty‑acre limit and may cultivate hemp for commercial purposes upon the approval of the South Carolina Department of Agriculture.

(C) The law under which licenses are issued shall be in full force and effect for those licenses during the term of the licenses.

SECTION 4. This act takes effect upon approval by the Governor.

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