

House File 2581 - Introduced

HOUSE FILE 2581

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 646)

A BILL FOR

1 An Act relating to the regulation of hemp, including by
2 providing for testing methods and the regulation of hemp
3 products, providing penalties, making penalties applicable,
4 and including effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 124.506, Code 2020, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4A. According to an order for the disposal
4 of a crop that does not qualify as hemp as provided in section
5 204.10.

6 Sec. 2. Section 204.2, Code 2020, is amended by adding the
7 following new subsections:

8 NEW SUBSECTION. 01. "*Certificate of analysis*" means proof
9 that a crop produced on a licensee's crop site qualifies as
10 hemp as provided in section 204.8.

11 NEW SUBSECTION. 001. "*Consumable hemp product*" means a
12 hemp product that includes a substance that is metabolized
13 or is otherwise subject to a biotransformative process when
14 introduced into a human or animal body.

15 a. A consumable hemp product may be introduced into a
16 human or animal body by ingestion or absorption by any device
17 including but not limited to an electronic device.

18 b. A consumable hemp product may exist in a solid or liquid
19 state.

20 c. A hemp product is deemed to be a consumable hemp product
21 if it is any of the following:

22 (1) Designed by the processor, including the manufacturer,
23 to be introduced into a human or animal body.

24 (2) Advertised as an item to be introduced into a human or
25 animal body.

26 (3) Distributed, exported, or imported for sale or
27 distribution to be introduced into a human or animal body.

28 d. "*Consumable hemp product*" includes but is not limited to
29 any of the following:

30 (1) A noncombustible form of hemp that may be digested,
31 such as food; internally absorbed, such as chew or snuff; or
32 absorbed through the skin, such as a topical application.

33 (2) Hemp processed or otherwise manufactured, marketed,
34 sold, or distributed as human or animal food, a human or animal
35 food additive, a human or animal dietary supplement, or a human

1 or animal drug.

2 *e.* "Consumable hemp product" does not include a hemp product
3 if the intended use of the hemp product is introduction into
4 the body of a human or animal by any method of inhalation, as
5 prohibited under section 204.14A.

6 NEW SUBSECTION. 4A. "Federal Food, Drug, and Cosmetic Act"
7 means the Act so entitled as codified in 21 U.S.C. §301 et
8 seq., including regulations adopted pursuant to that Act by the
9 United States food and drug administration under the Code of
10 Federal Regulations, Title 21.

11 NEW SUBSECTION. 13. "Temporary harvest and transportation
12 permit" means a document allowing the harvesting of a crop
13 produced on a licensee's crop site and the temporary movement
14 of that crop subject to limitations provided in section 204.8.

15 Sec. 3. Section 204.3, subsection 4, Code 2020, is amended
16 to read as follows:

17 4. The department may provide for the receipt, filing,
18 processing, and return of documents described in [this chapter](#)
19 in an electronic format, including but not limited to the
20 transmission of documents by the internet. The department
21 shall provide for the authentication of official forms in an
22 electronic format that may include electronic signatures as
23 provided in [chapter 554D](#). An official form in an electronic
24 format shall have the same validity and is discoverable and
25 admissible in evidence if given under penalty of perjury in the
26 same manner as an original printed form. The department shall
27 provide for the issuance of certificates of ~~crop inspection~~
28 analysis in an electronic format as provided in [section 204.8](#).

29 Sec. 4. Section 204.7, subsection 4, Code 2020, is amended
30 to read as follows:

31 4. The department shall adopt rules regulating the
32 production of hemp, including but not limited to inspection
33 and testing requirements under [section 204.8](#) or [204.9](#), and the
34 issuance of a temporary harvest and transportation permit or
35 certificate of ~~crop inspection~~ analysis under [section 204.8](#).

1 The department shall adopt rules as necessary to administer the
2 negligent violation program. The department may adopt other
3 rules as necessary or desirable to administer and enforce the
4 provisions of [this chapter](#) relating to hemp or hemp products.

5 Sec. 5. Section 204.7, subsection 5, Code 2020, is amended
6 by striking the subsection and inserting in lieu thereof the
7 following:

8 5. *a.* A person is not subject to a criminal offense
9 involving hemp as otherwise prohibited in chapter 124 or 453B,
10 if all of the following apply:

11 (1) If the person is a licensee, the person carries the
12 person's hemp license when possessing hemp.

13 (2) The person carries a certificate of analysis, or a
14 temporary harvest and transportation permit, if the person is
15 in possession of harvested hemp. If the person is transporting
16 harvested hemp into or through this state, the person must
17 carry a certificate of analysis or an equivalent document
18 issued to the person by the state of the hemp's origin.

19 (3) The person carries a certificate of analysis, if the
20 person is delivering hemp seed for planting.

21 (4) The person carries a bill of lading under all of the
22 following circumstances:

23 (a) The person is in possession of hemp in transit to
24 transfer ownership.

25 (b) The person is delivering hemp seed for planting and the
26 seed is not of the licensee's own production.

27 (c) A person brings hemp produced in another state into or
28 through this state.

29 *b.* For purposes of paragraph "*a*", a criminal offense
30 involving hemp includes but is not limited to production, use,
31 harvest, transportation, delivery, distribution, or sale.

32 Sec. 6. Section 204.7, subsection 6, Code 2020, is amended
33 by striking the subsection and inserting in lieu thereof the
34 following:

35 6. A person other than a licensee is not subject to a

1 criminal offense involving hemp as described in subsection 5 if
2 the person is authorized to be on the licensee's crop site by
3 the licensee.

4 Sec. 7. Section 204.7, subsections 7 and 8, Code 2020, are
5 amended by striking the subsections.

6 Sec. 8. Section 204.7, subsection 9, paragraph a, Code 2020,
7 is amended to read as follows:

8 a. A Except as provided in subsection 10, and section
9 204.14A, a person may engage in the retail sale of a hemp
10 product if the hemp was produced in this state or another state
11 in compliance with the federal hemp law or other applicable
12 federal law. A person may engage in the retail sale of a hemp
13 product if the hemp was produced in another jurisdiction in
14 compliance with applicable federal law and the laws of the
15 other jurisdiction, if such law is substantially the same as
16 applicable federal law.

17 Sec. 9. Section 204.7, subsection 9, paragraph b, Code 2020,
18 is amended by striking the paragraph.

19 Sec. 10. Section 204.7, Code 2020, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 10. a. Except as provided in paragraph
22 "e", a consumable hemp product shall not be manufactured,
23 sold, or consumed in this state unless all of the following
24 conditions are met:

25 (1) The consumable hemp product is manufactured in this
26 state in compliance with this chapter.

27 (2) The hemp contained in the consumable hemp product was
28 produced exclusively in this state in compliance with this
29 chapter.

30 (3) The consumable hemp product complies with packaging
31 and labeling requirements, which shall be established by the
32 department of inspections and appeals by rule.

33 b. A person manufacturing a consumable hemp product in this
34 state shall register with the department on a form prescribed
35 by the department by rule. The department may impose a fee,

1 established by the department by rule, on a registrant not to
2 exceed the cost of processing the registration. The department
3 shall adopt rules for the revocation of a registration issued
4 to a manufacturer who manufactures a consumable hemp product
5 not in compliance with this chapter.

6 *c.* A person selling a consumable hemp product in this
7 state shall register with the department of inspections and
8 appeals on a form prescribed by the department of inspections
9 and appeals by rule and shall keep on the premises of the
10 person's business a copy of the certificate of crop inspection
11 issued pursuant to section 204.8 for the hemp contained in the
12 consumable hemp products sold by the person. The department of
13 inspections and appeals may impose a fee, established by the
14 department of inspections and appeals by rule, on a registrant
15 not to exceed the cost of processing the registration. The
16 department of inspections and appeals shall adopt rules for the
17 revocation of a registration issued to a person who sells a
18 consumable hemp product not in compliance with this section.

19 *d.* Except as otherwise provided in this subsection,
20 a political subdivision of the state shall not adopt any
21 ordinance, rule, or regulation regarding the manufacture, sale,
22 or consumption of a consumable hemp product.

23 *e.* A consumable hemp product manufactured in another
24 state pursuant to a state plan approved by the United
25 States secretary of agriculture may be imported for use by a
26 consumer or sale by a retailer to a consumer if the state has
27 substantially similar testing requirements as those provided
28 in section 204.8.

29 *f.* A consumable hemp product manufactured, sold, or
30 consumed in compliance with this subsection is not a controlled
31 substance under chapter 124 or 453B regardless of whether the
32 consumable hemp product has been approved by the United States
33 food and drug administration.

34 Sec. 11. Section 204.8, subsection 1, paragraph d, Code
35 2020, is amended to read as follows:

1 *d.* A licensee shall not harvest any portion of a crop
2 produced at the licensee's crop site unless the department has
3 obtained a sample of plants to conduct a test as provided in
4 this section and has issued the licensee a temporary harvest
5 and transportation permit or certificate of ~~crop inspection~~
6 analysis. The department may adopt rules that it determines
7 necessary or desirable to administer and enforce the terms and
8 conditions of a permit. The department shall have unrestricted
9 access to a crop site subject to a permit. A licensee subject
10 to a permit shall receive permission from the department prior
11 to moving the hemp, shall not commingle the hemp, and shall not
12 transfer the hemp to another person.

13 *e.* The department shall issue a verified copy of the
14 temporary harvest and transportation permit or certificate of
15 analysis to any other person upon request of the licensee. The
16 permit or certificate shall be published by the department as
17 an official form.

18 *f.* To the extent allowed by the federal hemp law, the
19 certificate of analysis shall be proof that the harvested crop
20 described on the form qualifies as hemp pursuant to the results
21 of an official test.

22 *g.* A temporary harvest and transportation permit expires
23 when the department issues the licensee a certificate of
24 analysis. A permit or certificate of analysis terminates upon
25 the issuance of an order of disposal of the licensee's crop
26 as provided in section 204.10 or upon the revocation of the
27 licensee's hemp license as provided in section 204.11.

28 Sec. 12. Section 204.8, subsection 3, Code 2020, is amended
29 by striking the subsection and inserting in lieu thereof the
30 following:

31 3. The official test shall be a composite test of the
32 plants obtained by the department from a licensee's crop
33 site during the annual inspection and shall be conducted by
34 a laboratory designated by the department. The sample must
35 have an acceptable delta-9 tetrahydrocannabinol concentration,

1 resulting from a post decarboxylation analysis, that does not
2 exceed three-tenths of one percent on a dry weight basis.

3 *a.* The laboratory shall report delta-9 tetrahydrocannabinol
4 concentration on a dry weight basis that accounts for a
5 measurement uncertainty associated with the result of a
6 measurement. The measurement uncertainty shall characterize
7 the dispersion of the values that could be reasonably
8 attributed to the particular quantity subject to measurement.
9 The acceptable delta-9 tetrahydrocannabinol concentration
10 occurs when the application of the measurement uncertainty to
11 the reported delta-9 tetrahydrocannabinol concentration on a
12 dry weight basis produces a distribution or range that includes
13 three-tenths of one percent or less.

14 *b.* The post decarboxylation value is the result
15 of an analysis determined after the process of
16 decarboxylation that determines the total potential
17 delta-9 tetrahydrocannabinol content derived from the sum of
18 the delta-9 tetrahydrocannabinol concentration and delta-9
19 tetrahydrocannabinolic acid content and reported on a dry
20 weight basis. The post decarboxylation value may be determined
21 by using a chromatographic technique using heat and gas
22 chromatography, through which the tetrahydrocannabinolic
23 acid content is converted from its acid form to its neutral
24 form. The post decarboxylation value may also be calculated
25 by using a high-performance liquid chromatograph technique,
26 which keeps the tetrahydrocannabinolic acid intact and requires
27 a conversion calculation of that tetrahydrocannabinolic acid
28 to determine the total potential delta-9 tetrahydrocannabinol
29 content in a given sample.

30 Sec. 13. Section 204.9, subsection 2, paragraph b, Code
31 2020, is amended to read as follows:

32 *b.* The department of public safety or a local law
33 enforcement agency may obtain a sample of plants that are part
34 of the crop and provide for a test of that sample as provided in
35 section 204.8. The department of public safety or a local law

1 enforcement agency shall not impose, assess, or collect a fee
2 for conducting an inspection or test under [this section](#).

3 Sec. 14. Section 204.10, subsection 1, Code 2020, is amended
4 to read as follows:

5 1. If a crop that is produced at a licensee's crop site does
6 not qualify as hemp according to an official test conducted
7 pursuant to [section 204.8](#), but has a maximum concentration
8 not in excess of two percent delta-9 tetrahydrocannabinol on
9 a dry weight basis, the department, in consultation with the
10 department of public safety, shall order the disposal of the
11 crop by destruction at the site or if necessary require the
12 crop to be removed to another location for destruction.

13 Sec. 15. Section 204.14, subsections 2 and 3, Code 2020, are
14 amended to read as follows:

15 2. *a.* The Except as provided in paragraph "b", the person
16 is required to hold a certificate of ~~crop inspection~~ under
17 ~~section 204.8~~ analysis to possess, handle, use, manufacture,
18 market, transport, deliver, or distribute hemp that has been
19 harvested under [this chapter](#).

20 *b.* The person holds a temporary harvest and transportation
21 permit to process, handle, or transport hemp.

22 3. The person knowingly or intentionally does any of the
23 following:

24 *a.* Falsifies the temporary harvest and transportation permit
25 or certificate of ~~crop inspection~~ analysis.

26 *b.* Acquires the temporary harvest and transportation permit
27 or certificate of ~~crop inspection~~ analysis that the person
28 knows has been falsified.

29 Sec. 16. NEW SECTION. 204.14A Criminal offense —
30 inhalation.

31 1. A person shall not possess, use, manufacture, market,
32 transport, deliver, or distribute harvested hemp or a hemp
33 product if the intended use of the harvested hemp or hemp
34 product is introduction into the body of a human or animal by
35 any method of inhalation, including any of the following:

1 *a.* Smoke produced from combustion.

2 *b.* A type of article that uses a heating element, power
3 source, electronic circuit, or other electronic, chemical, or
4 mechanical process.

5 *c.* A device, including but not limited to a cigarette,
6 cigar, cigarillo, or pipe, regardless of whether such device
7 produces smoke or vapor.

8 2. A person who violates subsection 1 is guilty of a serious
9 misdemeanor.

10 3. This section does not apply to the extent that federal
11 law, including the federal Food, Drug, and Cosmetic Act,
12 authorizes as its intended use the introduction of harvested
13 hemp or a hemp product into the body of a human or animal by a
14 method of inhalation.

15 Sec. 17. Section 204.17, subsection 2, paragraph c, Code
16 2020, is amended to read as follows:

17 *c.* Local law relating to product development, product
18 manufacturing, consumer safety, or public health so long as the
19 local law is consistent with federal and state law, except as
20 provided in section 204.7, subsection 10.

21 Sec. 18. CONTINGENT EFFECTIVE DATE.

22 1. Except as provided in subsection 2, this Act takes effect
23 on the date that chapter 204 is implemented as provided in 2019
24 Iowa Acts, chapter 130, section 18, subsection 1.

25 2. *a.* If the department of agriculture and land
26 stewardship, in cooperation with the department of public
27 safety, determines that the United States department of
28 agriculture must approve any amendment to an existing provision
29 or new provision enacted in this Act as part of a state plan
30 pursuant to section 204.3, the secretary of agriculture shall
31 publish a notice of that fact in the Iowa administrative
32 bulletin. The department of agriculture and land stewardship
33 shall forward a copy of the statement to the Code editor prior
34 to publication.

35 *b.* If a determination is made as provided in paragraph

1 "a", the amendment or new provision enacted in this Act takes
2 effect on the publication date of the edition of the Iowa
3 administrative bulletin that includes a statement by the
4 secretary of agriculture of the department of agriculture and
5 land stewardship certifying that the United States department
6 of agriculture has approved the amendment or provision. The
7 department of agriculture and land stewardship shall forward a
8 copy of the statement to the Code editor prior to publication.

9 3. This section does not affect the implementation of
10 provisions amended or enacted in 2019 Iowa Acts, chapter 130.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 BACKGROUND — GENERAL. This bill amends a number of
15 provisions enacted in 2019 Iowa Acts, chapter 130 (Iowa's 2019
16 Act). Division I of that Act creates Code chapter 204, the
17 "Iowa Hemp Act" (IHA) (see Code section 204.1), authorizing the
18 production of a certain type of cannabis (*sativa* L.). Division
19 II of that Act includes a number of coordinating provisions,
20 including amendments that remove hemp from the list of schedule
21 I controlled substances (see Code chapters 124 and 453B).

22 BACKGROUND — JURISDICTION OF THE UNITED STATES DEPARTMENT
23 OF AGRICULTURE. Iowa's 2019 Act was enacted after the
24 enactment of the federal Agriculture Improvement Act of 2018,
25 commonly known as the 2018 farm bill, including provisions
26 allowing the production of hemp (7 U.S.C. §1639o et seq.). The
27 IHA refers to these provisions as the "federal hemp law" (Code
28 section 204.2). The federal hemp law allows states and tribes
29 to assume primary regulatory authority over the production of
30 hemp by submitting a plan for approval by the United States
31 department of agriculture (USDA). The IHA assigns principal
32 regulatory authority over hemp production to the department
33 of agriculture and land stewardship (DALs), which must act in
34 cooperation with the department of public safety (DPS) (Code
35 section 204.3). The USDA has published its interim rules to

1 implement the federal hemp law (7 C.F.R. pt. 990). The USDA
2 has neither approved nor disapproved Iowa's state plan.

3 BACKGROUND — FEDERAL FOOD, DRUG, AND COSMETIC ACT. By
4 its own terms, the federal hemp law is not to be construed to
5 affect or modify certain federal laws, including the federal
6 Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. §301 et seq.).
7 Generally, the United States food and drug administration
8 regulates human and animal foods and additives, dietary
9 supplements, human and veterinary drugs, and cosmetics (see 7
10 U.S.C. §1639r).

11 BACKGROUND — REGULATION OF HEMP PRODUCTS. The IHA defines
12 a hemp product as derived from or made by processing hemp or
13 parts of hemp. Generally, the IHA allows a person to engage
14 in the retail sale of a hemp product so long as the hemp was
15 produced in this state or another state in compliance with the
16 federal hemp law (Code section 204.7(9)).

17 BACKGROUND — IMPLEMENTATION AND EFFECTIVE DATES. The
18 provisions of Iowa's 2019 Act that enacted the IHA took effect
19 May 13, 2019, but will be implemented only if the USDA approves
20 Iowa's state plan. The implementation date is the publication
21 date of the edition of the Iowa administrative bulletin
22 (IAB) that includes a statement by DALs certifying approval
23 (2019 Iowa Acts, chapter 130, section 18). The coordinating
24 amendments will take effect on the IAB's publication date and
25 are therefore contingent on the IHA's implementation (2019 Iowa
26 Acts, chapter 130, section 33).

27 DISPOSAL. The bill provides for the disposal of a crop that
28 does not qualify as hemp according to an order issued by DALs
29 in consultation with DPS.

30 TESTING. The IHA follows the federal hemp law by defining
31 hemp as a species of cannabis (e.g., sativa L.) having a
32 maximum concentration of delta-9 tetrahydrocannabinol (THC)
33 not exceeding three-tenths of 1 percent as calculated on a dry
34 weight basis. The bill modifies the testing requirements by
35 requiring a designated laboratory to determine whether the

1 sample has an acceptable THC concentration, resulting from a
2 post decarboxylation analysis. The laboratory must report a
3 concentration that accounts for a measurement of uncertainty
4 associated with the result. It must also account for a
5 post decarboxylation value that is the result of an analysis
6 determined after the process of decarboxylation that determines
7 the total potential delta-9 tetrahydrocannabinol content
8 derived from the sum of the delta-9 tetrahydrocannabinol
9 concentration and delta-9 tetrahydrocannabinolic acid content
10 and reported on a dry weight.

11 DOCUMENTATION. The bill provides that a person is not
12 exempt from applicable criminal offenses unless the person
13 carries the required documentation which includes a license, a
14 certificate of analysis formally referred to as a certificate
15 of crop inspection (certificate), or a temporary harvest and
16 transportation permit (permit). The permit is issued on a
17 temporary basis until DALS issues the licensee a certificate
18 and allows the movement of hemp subject to a number of
19 restrictions. A person transporting hemp may also be required
20 to carry a bill of lading.

21 CONSUMABLE HEMP PRODUCTS. The bill eliminates a provision
22 that allows a derivative of hemp to be added to cosmetics,
23 personal care products, and products intended for human or
24 animal consumption, unless otherwise provided by federal law.
25 The bill provides for the manufacture, sale, and consumption
26 of consumable hemp products in this state. The bill defines
27 "consumable hemp product" as a hemp product that includes a
28 substance that is metabolized or is otherwise subject to a
29 biotransformative process when introduced into a human or
30 animal body. A consumable hemp product does not include a hemp
31 product if its intended use is by inhalation.

32 The bill allows a person to manufacture, sell, or consume a
33 consumable hemp product only if the consumable hemp product is
34 manufactured in Iowa in compliance with Code chapter 204, the
35 hemp in the consumable hemp product was produced exclusively in

1 Iowa in compliance with Code chapter 204, and the consumable
2 hemp product complies with packaging and labeling requirements
3 established by the department of inspections and appeals by
4 rule. The bill also allows a consumable hemp product to be
5 imported for use by a consumer if the state from which the
6 consumable hemp product is being imported has a state hemp plan
7 approved by the United States secretary of agriculture and
8 testing requirements substantially similar to those of this
9 state.

10 The bill requires a person manufacturing consumable hemp
11 products to register with DALs, which may impose a fee to
12 recoup the cost of registration. A person selling consumable
13 hemp products must register with the department of inspections
14 of appeals, which may also impose a fee to recoup the cost of
15 registration.

16 The bill prohibits political subdivisions of the state
17 from adopting any ordinance, rule, or regulation regarding
18 the manufacture, sale, or consumption of a consumable hemp
19 product, and exempts consumable hemp products that comply with
20 the provisions of the bill from classification as a controlled
21 substance.

22 INHALATION. This bill prohibits a person from possessing,
23 using, manufacturing, marketing, transporting, delivering, or
24 distributing harvested hemp or a hemp product if the intended
25 use of the harvested hemp or hemp product is introduction into
26 the body of a human or animal by any method of inhalation
27 (e.g., cigarette, cigar, cigarillo, or pipe). The prohibition
28 does not apply to the extent that federal law, including the
29 FDCA, authorizes as its intended use the introduction of
30 harvested hemp or a hemp product by a method of inhalation.

31 PENALTIES. The bill provides that a person who violates
32 the bill's provisions prohibiting the use of hemp products
33 for inhalation is guilty of a serious misdemeanor which is
34 punishable by confinement for no more than one year and a
35 fine of at least \$315 but not more than \$1,875. A person who

1 violates the bill's provisions is also subject to a civil
2 penalty of not less than \$500 and not more than \$2,500 that
3 DALs may impose, assess, and collect for any violation of the
4 IHA (Code section 204.12). DALs or the attorney general may
5 seek injunctive relief by petitioning a court (Code section
6 204.13).

7 CONTINGENT EFFECTIVE DATE. The bill takes effect on the
8 implementation date of Code chapter 204, unless DALs, acting
9 in coordination with DPS, determines that the provisions must
10 be submitted to the USDA for approval. In that case, the
11 provisions take effect when DALs publishes a notice of the
12 USDA's approval in the IAB.