

House Study Bill 646 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR'S OFFICE
OF DRUG CONTROL POLICY
BILL)

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:

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DIVISION I

PRINCIPAL PROVISIONS

Section 1. Section 204.2, Code 2020, is amended by adding the following new subsections:

NEW SUBSECTION. 01. *“Consumable hemp product”* means a hemp product that includes a substance that is metabolized or is otherwise subject to a biotransformative process when introduced into a human or animal body.

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

b. A consumable hemp product may exist in a solid, liquid, or gaseous state.

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

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

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

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

d. *“Consumable hemp product”* includes but is not limited to any of the following:

(1) (a) A combustible or noncombustible form of hemp that may be inhaled when used as part of a device including but not limited to any type of cigarette, cigarillo, cigar, or pipe.

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

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

NEW SUBSECTION. 4A. *“Federal Food, Drug, and Cosmetic Act”* means the Act so entitled as codified in 21 U.S.C. §301 et

1 seq., including regulations adopted pursuant to that Act by the
2 United States food and drug administration under the Code of
3 Federal Regulations, Title 21.

4 NEW SUBSECTION. 13. *“Total delta-9 tetrahydrocannabinol*
5 *concentration”* means the sum of the delta-9 tetrahydrocannabinol
6 and delta-9 tetrahydrocannabinolic acid content expressed as
7 a percentage and reported on a dry weight basis as determined
8 according to a test as provided in section 204.8.

9 Sec. 2. Section 204.2, subsections 5, 6, and 8, Code 2020,
10 are amended to read as follows:

11 5. a. *“Federal hemp law”* means that part of Tit. X of the
12 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, that
13 authorizes hemp production according to a state plan approved
14 by the United States department of agriculture, as provided in
15 §10113 of that Act, amending the Agricultural Marketing Act of
16 1946, 7 U.S.C. §1621 et seq., including by adding §297A through
17 297E.

18 b. *“Federal hemp law”* includes rules adopted by the United
19 States department of agriculture pursuant to the provisions
20 described in paragraph *“a”*, including regulations provided in
21 7 C.F.R. pt. 990.

22 6. a. *“Hemp”* means the plant cannabis sativa L. and any
23 part of that plant, including the seeds thereof, and all
24 derivatives, extracts, cannabinoids, isomers, acids, salts,
25 and salts of isomers, whether growing or not, with a total
26 delta-9 tetrahydrocannabinol concentration ~~of not more than~~ not
27 exceeding three-tenths of one percent ~~on a dry weight basis.~~

28 b. *“Hemp”* also means a plant of the genus cannabis
29 other than cannabis sativa L., with a total delta-9
30 tetrahydrocannabinol concentration ~~of not more than~~ not
31 exceeding three-tenths of one percent ~~on a dry weight basis,~~
32 but only to the extent allowed by the department in accordance
33 with applicable federal law, including the federal hemp law.

34 8. a. *“Hemp product”* means an item derived from or made
35 by processing hemp or parts of hemp, including but not limited

1 to any item manufactured from hemp, ~~including but not limited~~
2 ~~to~~ such as cloth, cordage, fiber, food, fuel, paint, paper,
3 particle board, plastic, hemp seed, seed meal, or seed oil.

4 *b.* "Hemp product" does not include any of the following:

5 (1) An item or part of an item with a ~~maximum~~ total delta-9
6 tetrahydrocannabinol concentration ~~that exceeds~~ exceeding
7 three-tenths of one percent ~~on a dry weight basis.~~

8 (2) Hemp seed that is capable of germination.

9 Sec. 3. NEW SECTION. 204.2A Applicability — other state
10 law.

11 This chapter does not limit the regulation of articles under
12 other provisions of state law, including title IV and this
13 title.

14 Sec. 4. Section 204.7, subsection 9, Code 2020, is amended
15 to read as follows:

16 9. *a.* Except as otherwise provided in section 204.14A, all
17 of the following apply:

18 (1) A person may engage in the retail sale of a hemp product
19 if ~~the~~ all of the following apply:

20 (a) The hemp was produced in this state or another state
21 in compliance with the federal hemp law or other applicable
22 federal law. A person may engage in the retail sale of a hemp
23 product if the hemp was produced in another jurisdiction in
24 compliance with applicable federal law and the laws of the
25 other jurisdiction, if such law is substantially the same as
26 applicable federal law.

27 (b) The hemp product is sold in compliance with the federal
28 Food, Drug, and Cosmetic Act and other applicable federal law.

29 ~~b.~~ (2) To the extent consistent with the federal Food,
30 Drug, and Cosmetic Act and other applicable federal law, a
31 derivative of hemp, including hemp-derived cannabidiol, may
32 be added to cosmetics, personal care products, and products
33 intended for human or animal consumption. The addition of such
34 a derivative shall not be considered an adulteration of the
35 product, unless otherwise provided in the federal Food, Drug,

1 and Cosmetic Act and other applicable federal law.

2 ~~e.~~ (3) A person may transport a hemp product within and
3 through this state and may export a hemp product to any foreign
4 nation, in accordance with applicable federal law and the law
5 of the foreign nation.

6 ~~d.~~ b. A hemp product complying with ~~this subsection~~
7 paragraph "a" is not a controlled substance under chapter 124
8 or 453B.

9 Sec. 5. Section 204.8, subsection 1, paragraph c, Code 2020,
10 is amended to read as follows:

11 c. The department shall provide the department of public
12 safety any official test results of a sample that indicate
13 ~~a sample exceeds the maximum concentration of total~~ delta-9
14 ~~tetrahydrocannabinol in excess of~~ concentration exceeding two
15 percent ~~on a dry weight basis.~~

16 Sec. 6. Section 204.8, subsection 3, Code 2020, is amended
17 to read as follows:

18 3. The official test shall be a composite test of the
19 plants obtained by the department from a licensee's crop site
20 during the annual inspection and shall be conducted by a
21 laboratory designated by the department. ~~The sample must have~~
22 ~~a maximum concentration of~~ test must indicate a total delta-9
23 ~~tetrahydrocannabinol that does not exceed~~ concentration not
24 exceeding three-tenths of one percent ~~on a dry weight basis.~~

25 Sec. 7. Section 204.8, Code 2020, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 5. A test conducted pursuant to this
28 section must use decarboxylation or another similarly reliable
29 analytical method as specified or approved by the United States
30 department of agriculture, including as provided in 7 C.F.R.
31 pt. 990.

32 Sec. 8. Section 204.9, subsection 2, paragraph b, Code 2020,
33 is amended to read as follows:

34 b. The department of public safety or a local law
35 enforcement agency may obtain a sample of plants that are part

1 of the crop and provide for a test of that sample as provided in
2 section 204.8. The department of public safety or a local law
3 enforcement agency shall not impose, assess, or collect a fee
4 for conducting an inspection or test under [this section](#).

5 Sec. 9. Section 204.10, subsection 1, Code 2020, is amended
6 to read as follows:

7 1. If a sample of a crop that is produced at a licensee's
8 crop site does not qualify as hemp indicates a total delta-9
9 tetrahydrocannabinol concentration exceeding three-tenths
10 of one percent, but not exceeding two percent, according to
11 an official test conducted pursuant to [section 204.8](#), the
12 department, in consultation with the department of public
13 safety, shall order the disposal of the crop by destruction
14 at the site or if necessary require the crop to be removed to
15 another location for destruction.

16 Sec. 10. NEW SECTION. 204.14A Consumable hemp products —
17 criminal offense.

18 1. Except as provided in subsection 3, a person shall not
19 process or otherwise manufacture, transport, deliver, market,
20 sell, distribute, possess, or use a consumable hemp product.

21 2. A person who violates subsection 1 is guilty of a serious
22 misdemeanor.

23 3. Subsection 1 does not apply to the extent that the
24 federal Food, Drug, and Cosmetic Act or other applicable
25 federal law authorizes or recognizes the processing or
26 manufacturing, transportation, delivery, marketing, sale, or
27 distribution, possession, or use of a consumable hemp product
28 for its intended use by a method for introduction into the body
29 of a human or animal.

30 Sec. 11. NEW SECTION. 204.14B Consumable hemp products —
31 notice.

32 A person shall not sell a consumable hemp product on a
33 retail basis unless the sale is authorized or recognized by
34 the federal Food, Drug, and Cosmetic Act or other applicable
35 federal law, and the person notifies retail purchasers of the

1 consumable hemp product's intended use. The notice shall be
2 posted in a manner and format required by rules adopted by
3 the department. However, the notice shall be posted in a
4 conspicuous place where the consumable hemp product is offered
5 for sale.

6 Sec. 12. Section 204.15, subsection 1, paragraph a,
7 subparagraph (3), Code 2020, is amended to read as follows:

8 (3) Producing a crop on the licensee's crop site with a
9 ~~maximum concentration of total~~ total delta-9 tetrahydrocannabinol
10 ~~that exceeds concentration exceeding~~ concentration exceeding three-tenths of one
11 percent according to the results of an official test of a
12 sample obtained from the licensed crop site pursuant to an
13 inspection conducted under [section 204.8](#).

14 Sec. 13. Section 204.15, subsection 1, paragraph b, Code
15 2020, is amended to read as follows:

16 *b.* It is conclusively presumed that a licensee acted
17 with a culpable mental state greater than negligence, if
18 the department obtains a sample of a crop produced on the
19 licensee's crop site and the official test results of the
20 sample conducted pursuant to [section 204.8](#) indicate a ~~maximum~~
21 ~~concentration of total~~ total delta-9 tetrahydrocannabinol ~~in excess~~
22 ~~of concentration exceeding~~ concentration exceeding two percent ~~on a dry weight basis~~.

23 Sec. 14. Section 204.15, subsection 3, Code 2020, is amended
24 to read as follows:

25 3. A licensee shall not participate in the negligent
26 violation program, if a official test results of a sample of
27 plants that are part of a crop produced on the licensee's crop
28 site ~~exceeds a maximum concentration of two percent indicate~~
29 a total delta-9 tetrahydrocannabinol ~~on a dry weight basis~~
30 concentration exceeding two percent.

31 Sec. 15. Section 718.6, Code 2020, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 4. A person who knowingly identifies a
34 controlled substance, as defined in section 124.101, as hemp or
35 a hemp product, as those terms are defined in section 204.2,

1 to a law enforcement officer, commits a simple misdemeanor.
2 However, if the controlled substance is an element or part of
3 an element in the criminal offense for which the person may be
4 charged, and that criminal offense is punishable as a serious
5 or aggravated misdemeanor or a felony, the person commits a
6 serious misdemeanor.

7 DIVISION II

8 COORDINATING PROVISIONS

9 Sec. 16. Section 124.101, Code 2020, is amended by adding
10 the following new subsections:

11 NEW SUBSECTION. 15A. "*Hemp*" means the same as defined in
12 section 204.2.

13 NEW SUBSECTION. 15B. "*Hemp product*" means the same as
14 defined in section 204.2.

15 NEW SUBSECTION. 30A. "*Total delta-9 tetrahydrocannabinol*
16 *concentration*" means the same as defined in section 204.2.

17 Sec. 17. Section 124.204, subsection 7, paragraph b, as
18 enacted by 2019 Iowa Acts, chapter 130, section 23, is amended
19 to read as follows:

20 b. (1) Hemp ~~as defined in section 204.2~~ that is or was
21 produced in this state, or was produced in another state, in
22 accordance with the provisions of ~~chapter 204~~ with a ~~maximum~~
23 total delta-9 tetrahydrocannabinol concentration ~~that does not~~
24 ~~exceed~~ exceeding three-tenths of one percent ~~on a dry weight~~
25 ~~basis~~.

26 (2) A hemp product ~~as provided in chapter 204~~ with a ~~maximum~~
27 total delta-9 tetrahydrocannabinol concentration ~~that does not~~
28 ~~exceed~~ exceeding three-tenths of one percent ~~on a dry weight~~
29 ~~basis~~.

30 Sec. 18. Section 124.401H, subsection 3, as enacted by
31 2019 Iowa Acts, chapter 130, section 25, is amended to read as
32 follows:

33 3. The offense arises out of a test of a sample of plants
34 that are part of a crop produced on the licensee's crop
35 site, ~~and~~ the test indicates that the sample does not qualify

1 as hemp under section 204.8, and ~~does not exceed a maximum~~
2 ~~concentration of two percent~~ the test result indicates that the
3 crop has a total delta-9 tetrahydrocannabinol on a dry weight
4 basis concentration not exceeding two percent.

5 Sec. 19. Section 124.506, Code 2020, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 4A. According to an order for the disposal
8 of a crop that does not qualify as hemp as provided in section
9 204.10.

10 Sec. 20. Section 453B.1, Code 2020, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 10A. *"Total delta-9 tetrahydrocannabinol*
13 *concentration"* means the same as defined in section 204.2.

14 Sec. 21. Section 453B.18, subsection 3, as enacted by 2019
15 Iowa Acts, chapter 130, section 32, is amended to read as
16 follows:

17 3. The offense arises out of a test of a sample of plants
18 that are part of a crop produced on the licensee's crop site,
19 ~~and~~ the test indicates that the sample does not qualify as
20 hemp under section 204.8, and ~~it does not exceed a maximum~~
21 ~~concentration of two percent~~ the test indicates that the crop
22 has a total delta-9 tetrahydrocannabinol on a dry weight basis
23 concentration not exceeding two percent.

24 DIVISION III

25 CONTINGENT EFFECTIVE DATE

26 Sec. 22. CONTINGENT EFFECTIVE DATE.

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

30 2. a. If the department of agriculture and land
31 stewardship, in cooperation with the department of public
32 safety, determines that the United States department of
33 agriculture must approve any amendment to an existing provision
34 or new provision enacted in this Act as part of a state plan
35 pursuant to section 204.3, the secretary of agriculture shall

1 publish a notice of that fact in the Iowa administrative
2 bulletin. The department of agriculture and land stewardship
3 shall forward a copy of the statement to the Code editor prior
4 to publication.

5 b. If a determination is made as provided in paragraph
6 "a", the amendment or new provision enacted in this Act takes
7 effect on the publication date of the edition of the Iowa
8 administrative bulletin that includes a statement by the
9 secretary of agriculture of the department of agriculture and
10 land stewardship certifying that the United States department
11 of agriculture has approved the amendment or provision. The
12 department of agriculture and land stewardship shall forward a
13 copy of the statement to the Code editor prior to publication.

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

16

EXPLANATION

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

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

27 BACKGROUND — JURISDICTION OF THE UNITED STATES DEPARTMENT
28 OF AGRICULTURE. Iowa's 2019 Act was enacted after the
29 enactment of the federal Agriculture Improvement Act of 2018,
30 commonly known as the 2018 farm bill, including provisions
31 allowing the production of hemp (7 U.S.C. §1639o et seq.). The
32 IHA refers to these provisions as the "federal hemp law" (Code
33 section 204.2). The federal hemp law allows states and tribes
34 to assume primary regulatory authority over the production of
35 hemp by submitting a plan for approval by the United States

1 department of agriculture (USDA). The IHA assigns principal
2 regulatory authority over hemp production to the department
3 of agriculture and land stewardship (DALs), which must act in
4 cooperation with the department of public safety (DPS). The
5 USDA has published its interim rules to implement the federal
6 hemp law (7 C.F.R. pt. 990). The USDA has neither approved nor
7 disapproved Iowa's state plan.

8 BACKGROUND — JURISDICTION OF THE UNITED STATES FOOD AND
9 DRUG ADMINISTRATION. By its own terms, the federal hemp
10 law does not affect or modify the federal Food, Drug, and
11 Cosmetic Act (FDCA) (21 U.S.C. §301 et seq.), and therefore the
12 authority of the United States food and drug administration
13 (FDA) to regulate human and animal foods and additives, dietary
14 supplements, human and veterinary drugs, and cosmetics is
15 preserved (see 7 U.S.C. §1639r).

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

26 DIVISION I — PRINCIPAL PROVISIONS. The IHA follows the
27 federal hemp law by defining hemp as a species of cannabis
28 (e.g., sativa L.) having a maximum concentration of delta-9
29 tetrahydrocannabinol (THC) not exceeding three-tenths of 1
30 percent as calculated on a dry weight basis. The bill modifies
31 the testing methodology in accordance with the USDA interim
32 regulations. The bill requires testing that calculates a value
33 produced from a process referred to as decarboxylation that
34 determines the "total" potential delta-9 tetrahydrocannabinol
35 which equals the sum of the THC and a related compound,

1 tetrahydrocannabinolic acid (THC-A), reported on a dry weight
2 basis (Code sections 204.2 and 204.8).

3 DIVISION I — REGULATION OF HEMP PRODUCTS. The IHA defines
4 a hemp product as derived from or made by processing hemp or
5 parts of hemp. Generally, the IHA allows a person to engage
6 in the retail sale of a hemp product so long as the hemp was
7 produced in this state or another state in compliance with the
8 federal hemp law (Code section 204.7(9)). The bill provides
9 that the sale of a hemp product is authorized if allowed by the
10 FDCA or other applicable federal law.

11 DIVISION I — SPECIAL REGULATIONS APPLICABLE TO CONSUMABLE
12 HEMP PRODUCTS. The bill amends the IHA by defining a
13 consumable hemp product as a hemp product that may be
14 introduced into a human or animal body either directly or
15 via a device (e.g., a skin patch, pipe, cigarette, cigar, or
16 cigarillo) (Code section 204.2). The bill prohibits a person
17 from processing or otherwise manufacturing, transporting,
18 delivering, marketing, selling, distributing, possessing,
19 or using a consumable hemp product. A person violating
20 the prohibition is guilty of a serious misdemeanor. This
21 prohibition does not apply to the extent that the FDCA or other
22 applicable federal law authorizes or recognizes the processing,
23 manufacture, transportation, delivery, marketing, sale,
24 distribution, possession, or use of a consumable hemp product
25 for its intended use by a method for introduction into the body
26 of a human or animal. The bill also requires a person who sells
27 a consumable hemp product on a retail basis as authorized by
28 the FDCA to notify retail purchasers of the consumable hemp
29 product's intended use. The notice must be posted in a manner
30 and format required by rules adopted by DALs.

31 DIVISION I — WRONGFULLY IDENTIFYING HEMP. The bill
32 amends Code section 718.6 to prohibit a person from knowingly
33 identifying a controlled substance as hemp or a hemp product to
34 a law enforcement officer. Generally, the person who commits
35 the offense is guilty of a simple misdemeanor. However, that

1 person commits a serious misdemeanor if the criminal offense
2 relating to the controlled substance for which the person may
3 be charged is punishable as a serious or aggravated misdemeanor
4 or a felony.

5 DIVISION II — COORDINATING PROVISIONS. The bill makes
6 changes to provisions in division II of the 2019 Iowa Act.
7 Specifically, it includes provisions that account for the IHA's
8 new method of testing hemp based on the total sum of THC and
9 THC-A compounds. It also provides for the disposal of a crop
10 according to an order issued by DALs.

11 APPLICABLE CIVIL PENALTIES. A person who violates a
12 provision of the IHA is subject to a civil penalty of not
13 less than \$500 and not more than \$2,000 with each day of a
14 continuing offense considered as a separate offense (Code
15 section 204.12). DALs or the attorney general may seek
16 injunctive relief by petitioning a court (Code section 204.13).

17 CRIMINAL PENALTIES. A simple misdemeanor is punishable by
18 confinement for no more than 30 days or a fine of at least \$65
19 but not more than \$625 or by both. A serious misdemeanor is
20 punishable by confinement for no more than one year and a fine
21 of at least \$315 but not more than \$1,875.

22 DIVISION III — CONTINGENT EFFECTIVE DATE. The bill takes
23 effect on the implementation date of Code chapter 204, unless
24 DALs, acting in coordination with DPS, determines that the
25 provisions must be submitted to the USDA for approval. In that
26 case, the provisions take effect when DALs publishes a notice
27 of the USDA's approval in the IAB.