SENATE FILE 279
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A BILL FOR

1 An Act relating to hemp, including the regulation of hemp,
2 providing for enforcement and the confiscation and
3 destruction or disposal of certain property, providing
4 for fees, making appropriations, including penalties, and
5 providing implementation and effective date provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
DIVISION I

IOWA HEMP ACT

Section 1. Section 189.1, subsection 1, Code 2019, is amended to read as follows:

I. "Article" means food, commercial feed, agricultural seed, commercial fertilizer, drug, pesticide, hemp, and paint, in the sense in which they are defined in the various provisions of this subtitle.

Sec. 2. NEW SECTION. 204.1 Short title.
This chapter shall be known as the "Iowa Hemp Act".

Sec. 3. NEW SECTION. 204.2 Definitions.
As used in this chapter, unless the context otherwise requires:

1. "Controlled substance" means the same as defined in 21 U.S.C. §§802 and 812, including as those sections are amended in §12619 of the federal hemp law or as that phrase is defined in Tit. IV, subtitle 1 of this Code.

2. "Conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

3. "Crop site" or "site" means a single contiguous parcel of agricultural land suitable for the planting, growing, or harvesting of hemp, if the parcel does not exceed forty acres.

4. "Department" means the department of agriculture and land stewardship.

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

6. "Hemp" means a plant that may be produced under federal
hemp law, or another plant of the same genus to the extent
allowed under federal hemp law, if any such plant is produced
as part of a crop qualifying under section 204.8.
7. a. "Hemp product" means an item derived from or made by
processing hemp or parts of hemp.
7. b. "Hemp product" does not include hemp seed that is capable
of germination.
8. "Law enforcement agency" means the department of public
safety, an office of county sheriff, or a municipal police
department.
9. "Licensee" means a person who obtains a hemp license from
the department under this chapter.

Sec. 4. NEW SECTION. 204.3 State plan.
1. The department shall prepare a state plan to be
submitted to the United States secretary of agriculture under
the federal hemp law. Upon approval of the state plan, the
department shall assume primary regulatory authority over the
production of hemp in this state as provided in this chapter.
The department may submit any number of amended state plans
to the United States secretary of agriculture or any number
of amendments to a state plan approved by the United States
secretary of agriculture.
2. The department shall prepare the state plan, any amended
state plan, or amendment to an approved state plan, by adopting
rules pursuant to chapter 17A. The department may adopt the
rules on an emergency basis as provided in section 17A.4,
subsection 3, and section 17A.5, subsection 2, and the rules
shall be effective immediately upon filing unless a later date
is specified in the rules.

Sec. 5. NEW SECTION. 204.4 Hemp license — requirements.
1. The department shall establish and administer a process
to receive, evaluate, and approve or disapprove applications
for a hemp license.
2. The department shall prepare and publish one or more
hemp license application forms. A completed application form
1 submitted to the department shall contain all of the following:
2  
3 a. The applicant's full name and residence address.
4 b. A legal description and map of each crop site where the
5 applicant proposes to produce the hemp.
6 c. The number of crop acres to be used for hemp production.
7 d. The name of the hemp variety.
8 e. Any other information required by the department in order
9 to administer and enforce the provisions of this chapter.
3. The department may do all of the following:
4 a. Require that all or some licenses expire on the same
5 date.
6 b. Provide a different application form and requirements
7 relating to the submission, evaluation, and approval or
8 disapproval of an application for a renewed license consistent
9 with federal law.
4. An applicant shall not be issued a hemp license unless
5 the applicant agrees to comply with all terms and conditions
6 relating to the department's regulation of a licensee.
5. A person may hold any number of licenses at the same
6 time. However, the person shall not hold a legal or equitable
7 interest in a licensed crop site, if the total number of acres
8 of all licensed crop sites in which the person holds all such
9 interests equals more than forty acres.
6. An initial license expires one year from the date of
7 issuance and may be issued on a renewal basis annually. The
8 department may require that a licensee apply for an amended or
9 new initial license if information contained in the existing
10 application is no longer accurate or is incomplete.
7. Information received on an application form shall be
8 maintained by the department for not less than three years.
8. The department shall disapprove the application of a
9 person for good cause, which shall include, but is not limited
10 to, any of the following:
11 a. The conviction of a felony within the prior ten years or
12 any conviction of a controlled substance offense within that
same period, regardless of whether either type of conviction is
in this state or another state.

b. The revocation of a license under section 204.11, or
the revocation of a license, permit, registration, or other
authorization to produce hemp in any other state.

9. A license shall be suspended or revoked as provided in
section 204.11.

Sec. 6. NEW SECTION. 204.5 Hemp fees.

1. The department shall impose, assess, and collect the
following hemp fees:

   a. A license fee which shall be paid by a person being
      issued a hemp production license as provided in section 204.4.

   b. An inspection fee which shall be paid by a licensee for
      an inspection of a licensee's crop site as provided in section
      204.8.

2. a. For each license, the license fee shall be imposed
   on an interim basis until June 30, 2022. The amount of the
   license fee shall not be more than the following:

   (1) Five hundred dollars plus five dollars per acre, for
       each site that is five acres or less.

   (2) Seven hundred and fifty dollars, plus five dollars per
       acre, for each site that is more than five acres but less than
       ten acres.

   (3) One thousand dollars plus five dollars per acre, for
       each site is more than ten acres.

   b. For an annual inspection, an inspection fee shall be
      imposed on an interim basis until June 30, 2022. The amount
      of the inspection fee shall not be more than one thousand
      dollars. The department, during the interim period, may charge
      an additional inspection fee of not more than one thousand
      dollars for each inspection of a licensee's crop site, if the
      inspection is conducted upon the request of the licensee.

   c. This subsection is repealed on July 1, 2022.

3. a. The department shall adopt rules to establish hemp
   fees for the issuance of a hemp production license pursuant to
section 204.4.

b. The department shall adopt rules to establish hemp fees for the annual inspection of a license pursuant to section 204.8. The rules may provide that the department charge an additional inspection fee for each inspection of a licensee's crop site, if the inspection is conducted upon the request of the licensee.

c. The total amount of hemp fees collected by the department pursuant to this section shall not be more than the department's estimate of the total amount of revenues necessary to administer and enforce the provisions of this chapter based on the expected revenue collected from the hemp fees and the costs to be incurred by the department in administering and enforcing the provisions of this chapter for the succeeding twelve-month period.

d. The department may establish different rates for any category of hemp fees based on criteria determined relevant by the department, which may include the number of acres of the crop site and the type of license issued.

e. (1) The rules shall first take effect immediately after the repeal of subsection 2.

(2) This paragraph "e" is repealed immediately after the rules described in subparagraph (1) take effect.

4. The license fee and any annual inspection fee shall be collected by the department at the time the hemp license application is submitted.

5. Any hemp fee collected by the department under this section shall be deposited in the hemp fund established pursuant to section 204.6.

6. The department may refund all or any part of a hemp fee collected under this section.

Sec. 7. NEW SECTION. 204.6 Hemp fund.

1. A hemp fund is established in the state treasury under the management and control of the department.

2. The hemp fund shall include moneys collected by the
department from hemp fees imposed and assessed under section 204.5 and moneys appropriated by the general assembly for deposit in the hemp fund. The hemp fund may include other moneys available to and obtained or accepted by the department, including moneys from public or private sources.

3. Moneys in the hemp fund are appropriated to the department and shall be used exclusively to carry out the responsibilities conferred upon the department under this chapter as determined and directed by the department, and shall not require further special authorization by the general assembly.

4. a. Notwithstanding section 12C.7, interest or earnings on moneys in the hemp fund shall be credited to the hemp fund. b. Notwithstanding section 8.33, moneys credited to the hemp fund that remain unexpended or unobligated at the end of a fiscal year shall not revert to any other fund.

Sec. 8. NEW SECTION. 204.7 Regulations.

1. The department may adopt rules regulating the production, handling, transporting, or marketing of hemp produced on a licensee's crop site. The rules may provide different requirements that apply to nonseed parts of hemp and hemp seed, including the certification of hemp seed.

2. Notwithstanding any other provision of law to the contrary, hemp is not a controlled substance if the hemp is or was produced on a licensee's crop site.

3. Nothing in this chapter prohibits a person from producing, handling, transporting, marketing, or processing a hemp product.

Sec. 9. NEW SECTION. 204.8 Annual inspection and official test.

1. The department shall conduct an annual inspection of a licensee's crop site to determine if the crop produced at the site qualifies as hemp under this section. The inspection shall include obtaining a sample of plants that are part of the crop and providing for an official test of that sample. The
1 inspection shall be conducted as provided in section 204.9.
2  2. A licensee shall deliver a notice to the department
3 stating the expected harvest date for the crop produced at the
4 licensee’s crop site. The department must receive the notice
5 at least thirty days prior to the expected harvest date. The
6 department shall conduct an inspection of the site within
7 thirty days prior to the actual harvest date. The licensee
8 shall not harvest any portion of a crop produced at the site
9 unless the department notifies the licensee that the crop
10 qualifies as hemp pursuant to the results of an official test.
11  3. The official test shall be a composite test of the
12 plants obtained by the department from the licensee’s crop site
13 during an inspection and shall be conducted by the laboratory
14 designated by the department. The sample must have maximum
15 concentration of delta-9 tetrahydrocannabinol that does not
16 exceed three-tenths of one percent on a dry weight basis. The
17 laboratory’s official test results indicating that a sample
18 exceeds that percentage shall be conclusive evidence that the
19 crop produced at a site does not qualify as hemp.
20 Sec. 10. NEW SECTION. 204.9 Right of access.
21  1. The department, including an authorized inspector,
22 employee, or agent of the department, may enter onto a crop
23 site during reasonable hours to determine whether a licensee
24 is acting in compliance with the provisions of this chapter.
25 The department may also enter into any structure, other than a
26 dwelling, if the structure is located on or in close proximity
27 to the crop site, and the use of such structure is directly
28 related to the planting, growing, or harvesting of hemp,
29 including but not limited to a barn, machine shed, greenhouse,
30 or storage crib.
31  2. The department may obtain a sample of plants that are
32 part of the crop and provide for an official test of that
33 sample in the same manner as provided in section 204.8 even
34 though the department is not conducting an annual inspection.
35 The department shall not assess or collect a fee, other than a
hemp fee as provided in section 204.5.

3. A person shall not prevent the department from administering this section by any means, including but not limited to any act, including a refusal to allow entry, misrepresentation, omission, or concealment of facts.

4. The licensee shall not harvest any portion of a crop produced at the crop site if the department has been prevented from accessing the site under this section.

Sec. 11. NEW SECTION. 204.10 Order of disposal.

1. If a crop that is produced at a licensee's crop site does not qualify as hemp according to an official test conducted pursuant to section 204.8, the department shall order the disposal of the crop by destruction at the site or if necessary require the crop to be removed to another location for destruction.

2. The department may request assistance from a law enforcement agency necessary to carry out this section. The department upon request shall deliver any sample of the crop to the law enforcement agency.

3. The licensee shall pay for all actual and reasonable costs of the destruction. If the department assumes any of the amount of costs, it may charge that amount to the licensee. If the licensee fails to reimburse any of that amount to the department, the department may report the amount to the county treasurer. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. The county shall reimburse the department within thirty days from the collection of the property taxes.

4. To the extent allowed by applicable federal law, the department may provide for the disposal of the mature stalks of the crop confiscated by the department for the licensee's on-farm use and at the licensee's expense.

Sec. 12. NEW SECTION. 204.11 Disciplinary action.

1. The department may suspend or revoke the license obtained
under section 204.4 by a person who does any of the following:

a. Provides false or misleading information to the department under this chapter, including by submitting a false application.

b. Fails to comply with or violates any provision of this chapter, including a rule adopted by the department or a condition of an application for the issuance of a license.

c. Fails to comply with an order issued by the department under this chapter.

2. The suspension or revocation of a license is in addition to an order of disposal under section 204.10; the imposition of a civil penalty under section 204.12, subject to the provisions of section 204.14; or the imposition of any other civil or criminal penalty authorized under state law, subject to the provisions of section 204.14.

Sec. 13. NEW SECTION. 204.12 Civil penalties.

1. A person who violates a provision of this chapter is subject to a civil penalty of not less than five hundred dollars and not more than two thousand five hundred dollars. The department shall assess and collect the civil penalty. Each day that a continuing violation occurs may be considered a separate offense.

2. Notwithstanding subsection 1, a civil penalty shall not be assessed against a licensee for a violation that results in the disposal of the licensee’s crop under section 204.10, if the department obtains a sample of the crop produced on the licensee’s crop site and the official test results of the sample conducted pursuant to section 204.8 indicates a maximum concentration of delta-9 tetrahydrocannabinol not in excess of two percent on a dry weight basis.

3. All civil penalties collected under this section shall be deposited into the general fund of the state.

Sec. 14. NEW SECTION. 204.13 Injunctive relief.

The department or the attorney general acting on behalf of the department may apply to the district court for injunctive
relief in order to restrain a person from acting in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

Sec. 15. NEW SECTION. 204.14 Negligent violations.

1. a. The department may find that a licensee has negligently violated a provision of this chapter by doing any of the following:
   (1) Completing an application for a license without providing a legal description of the crop site pursuant to section 204.4.
   (2) Failing to renew a license or obtain a license for a new crop site pursuant to section 204.4.
   (3) Producing a crop on the licensee's crop site with a maximum concentration of delta-9 tetrahydrocannabinol in excess of three-tenths of one percent according to the results of an official test conducted of a sample obtained from the crop site pursuant to section 204.8.
   b. In making its finding under paragraph "a", the department must determine that the licensee acted with a culpable mental state of negligence. It is conclusively presumed that a licensee acted with a culpable mental state greater than negligence, if the department obtains a sample of a crop produced on the licensee's crop site and the official test results of the sample conducted pursuant to section 204.8 indicates a maximum concentration of delta-9 tetrahydrocannabinol in excess of two percent on a dry weight basis.
   c. If the department determines a licensee violated this chapter with a culpable mental state greater than negligence, the department shall immediately report the licensee to the
county attorney and the attorney general, who shall take action as the facts and circumstances warrant. The department shall also report the licensee to the United States attorney general to the extent required by the federal hemp law.

2. The department may establish a negligent violation program. The purpose of the program is to allow a participating licensee who has negligently violated a provision of this chapter as described in subsection 1 to comply with a corrective plan established by the department to correct each negligent violation, including by providing for all of the following:

a. A reasonable date, established by the department, for the licensee to correct any cause for the violation.

b. That the licensee periodically report to the department evidence that the licensee is complying with the requirements of this chapter. The licensee shall submit a report to the department for at least two years from the date that the licensee first participated in the program.

3. A licensee who is participating in the negligent violation program shall not be subject to criminal enforcement action by the state, or the imposition of criminal or civil penalties, including as provided in section 204.12.

4. A licensee who negligently violates a provision of this chapter more than three times in any five-year period shall be ineligible to be issued a license pursuant to section 204.4 for a period of five years beginning on the date of the third violation.

5. A licensee convicted of a felony relating to a controlled substance before, on, or after the implementation date of this chapter shall be ineligible to produce hemp under this chapter for a ten-year period following the date of conviction.

6. Any person who materially falsifies any information contained in an application to participate in the negligent violation program shall be ineligible to participate in the program.
Sec. 16. NEW SECTION. 204.15 Statutory construction.

Nothing in this chapter shall be construed or applied to be less stringent than required under the federal hemp law.

Sec. 17. CONTINGENT IMPLEMENTATION.

1. Except as provided in subsection 2, the provisions of chapter 204, as enacted in this division of this Act, shall only be implemented, including administered and enforced, by the department of agriculture and land stewardship beginning on the publication date of the edition of the Iowa administrative bulletin that includes a statement by the secretary of agriculture of the department of agriculture and land stewardship certifying that the United States department of agriculture has approved a state plan as described in section 204.3, as enacted in this division of this Act. The department shall forward a copy of the statement to the Iowa Code editor prior to publication.

2. Section 204.3 and this subsection shall be implemented on the effective date of this Act.

Sec. 18. EFFECTIVE DATES.

1. Except as provided in subsection 2, this division of this Act, being deemed of immediate importance, takes effect upon enactment.

2. The amendment to section 189.1, as enacted in this division of this Act, shall become effective upon the date of implementation of chapter 204 as described in subsection 1 of the section providing for contingent implementation of that chapter, as enacted in this division of this Act.

DIVISION II

COORDINATING AMENDMENTS

Sec. 19. NEW SECTION. 317.1D Hemp production.

This chapter does not apply to a plant or any part of the plant qualifying as hemp, if the hemp is produced on a crop site regulated by the department of agriculture and land stewardship under chapter 204.

Sec. 20. NEW SECTION. 453B.17 Exception — hemp.
This chapter does not apply to a plant or any part of the plant qualifying as hemp, if the hemp is produced or was produced on a crop site regulated by the department of agriculture and land stewardship under chapter 204. Nothing in this chapter applies to a person producing, handling, transporting, marketing, or processing a hemp product as defined in section 204.2.

Sec. 21. CONTINGENT EFFECTIVE DATE. Sections 317.1D and 453B.17, as enacted in this division of this Act, shall become effective upon the date of implementation of chapter 204 as described in subsection 1 of the section providing for the contingent implementation of that chapter, as enacted in division I of this Act.

DIVISION III

APPROPRIATIONS

Sec. 22. HEMP FUND — 2019-2020. There is appropriated from the general fund of the state to the department of agriculture and land stewardship for the fiscal year beginning July 1, 2019, and ending June 30, 2020, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For deposit in the hemp fund created in section 204.6 to be used as provided in that section: $ 303,750

2. Notwithstanding subsection 1 of the section providing for the contingent implementation of division I, as enacted in this Act, moneys in the hemp fund are appropriated to the department to take all administrative actions, including the purchase of equipment, as deemed necessary or desirable by the department to prepare for the implementation of chapter 204 as enacted in division I of this Act. After the implementation date as provided in that subsection, the department may expend moneys in the hemp fund as provided in section 204.6.

Sec. 23. HEMP FUND — 2020-2021. There is appropriated from the general fund of the state to the department of agriculture...
and land stewardship for the fiscal year beginning July 1, 2020, and ending June 30, 2021, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For deposit in the hemp fund created in section 204.6 to be used as provided in that section:

   ................................................................. $ 208,500

2. Notwithstanding subsection 1 of the section providing for the contingent implementation of division I, as enacted in this Act, moneys in the hemp fund are appropriated to the department to take all administrative actions, including the purchase of equipment, as deemed necessary or desirable by the department to prepare for the implementation of chapter 204 as enacted in division I of this Act. After the implementation date as provided in that subsection, the department may expend moneys in the hemp fund as provided in section 204.6.

EXPLANATION

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

OVERVIEW. This bill creates the “Iowa Hemp Act” under Title V, subtitle 4, of the Code regulating persons operating under licenses issued by the department of agriculture and land stewardship (DALS). The bill creates Code chapter 204 and authorizes the production of hemp under the DALS’ regulatory supervision when acting under the provisions of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 (2018 Farm Bill). The 2018 Farm Bill defines hemp as a species of Cannabis having a maximum concentration of delta-9 tetrahydrocannabinol (THC) that does not exceed three-tenths of 1 percent. The 2018 Farm Bill authorizes states to assume primary regulatory authority over the production of hemp by submitting a state plan (plan) for approval by the United States department of agriculture (USDA) which has 60 days to approve, disapprove, or amend the plan. The 2018 Farm Bill provides that state regulations may be more but not less stringent than the federal regulations.
HEMP LICENSES AND FEES. DALS is required to accept and approve or disapprove applications for the issuance of a hemp license (license) on a one-year basis subject to renewal. A license covers a crop site which cannot exceed 40 contiguous acres. DALS may issue any number of licenses to a single applicant. However, a person is prohibited from holding more than 40 crop sites under all current licenses issued to the person. DALS must assess and collect hemp fees (fees) for the issuance of a license and for an annual fall inspection until June 30, 2022. After that date, fees are to be established by rule based on the amount required to administer and enforce the provisions of the bill. Moneys collected from the fees are to be deposited into a hemp fund (fund) which are appropriated to DALS for purposes of administering and enforcing these provisions.

REGULATIONS. DALS may adopt rules regulating the production, handling, transporting, or marketing of hemp which was produced on a licensee's crop site. In addition, such hemp is not considered to be a controlled substance. Generally, production, possession, or distribution of a controlled substance is a criminal offense. The bill provides that new Code chapter 204 does not prohibit a person from producing, handling, transporting, marketing, or processing a hemp product. DALS is required to conduct an annual inspection of a licensee's crop site and obtain a sample for official testing by a laboratory designated by DALS. In addition to an annual inspection, DALS may enter onto a crop site during reasonable hours to determine whether a licensee is acting in compliance with the bill's requirements and may obtain a sample of the crop for official testing.

ENFORCEMENT AND PENALTIES. DALS may order the disposal of a crop produced on a licensee's crop site if official test results indicate that a crop does not qualify as hemp. The disposal, including the crop's destruction, must be at the licensee's expense. DALS may also suspend or revoke a license
1 if the licensee fails to comply with a requirement of the bill.
2 A person who violates a provision of the bill is subject to a
3 civil penalty of not less than $500 and not more than $2,500.
4 DALS or the attorney general may apply to district court to
5 obtain an injunction to enforce the bill's provisions. DALS
6 may establish a program to correct certain violations committed
7 negligently by a licensee including producing a crop having a
8 maximum THC concentration that does not exceed 2 percent.
9 CONTINGENT IMPLEMENTATION AND EFFECTIVE DATE. Generally,
10 the bill's provisions are to be implemented when DALS certifies
11 USDA has approved DALS' state plan.
12 APPROPRIATIONS. The bill appropriates moneys from the
13 general fund of the state to DALS for deposit in the fund
14 to take administrative actions, including the purchase of
15 equipment, as deemed necessary or desirable by the department
16 to carry out the bill's provisions, including by preparing for
17 the implementation of the bill.
18 EFFECTIVE DATES. The bill takes effect upon enactment
19 except for those provisions which make enactment contingent
20 upon implementation of Code chapter 204 and those appropriating
21 moneys to the fund which take effect on July 1, 2019.