

AN ACT relating to industrial hemp.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 5 of this Act, unless the context requires otherwise:*

- (1) "Department" means the Kentucky Department of Agriculture;*
- (2) "Industrial hemp" means all parts and varieties of the plant cannabis sativa, cultivated or possessed by a licensed grower, whether growing or not, that contain a tetrahydrocannabinol concentration of no more than that adopted by federal law in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq. "Industrial hemp," as defined and applied for the purposes of Sections 1 to 5 of this Act, is excluded from the definition of marijuana in KRS 218A.010; and*
- (3) "Tetrahydrocannabinol" or "THC" means the natural or synthetic equivalents of the 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.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) Any person desiring to grow or process industrial hemp for commercial purposes shall apply to the department for a license on a form provided by the department. The application for a license shall include:*
  - (a) The name and address of the applicant;*
  - (b) The legal description of the land area to be used to grow or process industrial hemp; and*
  - (c) A copy of any contracts between the applicant and the persons who plan to grow or process industrial hemp for the applicant, if the applicant plans to*

let another person grow or process the industrial hemp.

(2) (a) For initial licensure, each applicant shall be required to submit to a statewide and nationwide criminal history check, which shall be conducted by the sheriff's department having jurisdiction in the county in which the industrial hemp will be grown or processed. For applicants planning to grow or process industrial hemp in more than one (1) county, the department shall determine which sheriff's department shall conduct the checks.

(b) The sheriff's department shall provide the department with a copy of the criminal history records. Criminal history records provided to the department shall be confidential and shall only be used in determining an applicant's eligibility for licensure.

(c) All costs associated with the checks shall be paid by the applicant.

(d) A person with a prior felony conviction within ten (10) years of applying for a license shall not be eligible for licensure.

(3) If the applicant has completed the application process to the satisfaction of the department, the department shall issue the license, which shall be valid for a period of one (1) year. Any person licensed under this section shall be presumed to be growing or processing industrial hemp for commercial purposes.

(4) The department shall administer the licensing program and shall promulgate administrative regulations necessary to carry out Sections 1 to 5 of this Act.

(5) The license required by this section shall not be conditioned on or subject to review or approval by the United States Drug Enforcement Agency.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

(1) In addition to the criminal history checks required by Section 2 of this Act, the sheriff's department shall be responsible for monitoring registered industrial

hemp fields and shall randomly test the industrial hemp for compliance with THC levels. The department shall provide the sheriffs with a list of approved licensees and copies of the legal descriptions of the lands upon which industrial hemp is being grown or processed. For licensees growing or processing industrial hemp in more than one (1) county, each county's industrial hemp fields shall be monitored and tested by the sheriff's department having jurisdiction in that county.

- (2) To provide sufficient funds to pay the costs associated with administering, monitoring, and testing industrial hemp, the department shall assess each licensee a fee of five dollars (\$5) per acre, with a minimum fee of one hundred fifty dollars (\$150) per applicant. Collections from this fee shall be equally divided between the department and the appropriate sheriff's department.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) Each licensee shall:

(a) File with the department documentation indicating that the industrial hemp seeds planted were of a type and variety certified to have no more THC concentration than that adopted by federal law in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq.;

(b) Notify the department of the sale or distribution of any industrial hemp grown or processed under the license and the names and addresses of the persons to whom the industrial hemp was sold or distributed; and

(c) Provide the department with any contracts between the licensee and any person to whom industrial hemp was sold or distributed.

- (2) Any person licensed to grow or process industrial hemp under Sections 1 to 5 of this Act may import and resell industrial hemp seed that has been certified as having no more THC concentration than that adopted by federal law in the

**Controlled Substances Act, 21 U.S.C. secs. 801 et seq.**

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

**(1) Nothing in Sections 1 to 5 of this Act shall be construed to authorize any person to violate any federal rules or regulations.**

**(2) If any part of Sections 1 to 5 of this Act conflicts with a provision of federal law regarding industrial hemp that has not been adopted in Kentucky under KRS 260.865, the federal provision shall control to the extent of the conflict.**

➔Section 6. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - (a) A practitioner or by his or her authorized agent under his or her immediate supervision and pursuant to his or her order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (6) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance

analogue;

(7) (a) "Controlled substance analogue," except as provided in paragraph (b) of this subsection, means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;
2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;

(8) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact

manufactured, distributed, or dispensed the substance;

- (9) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (11) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (12) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;
- (13) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
  - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
  - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
  - (d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories;

- (14) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice

- providers licensed pursuant to KRS Chapter 216B;
- (15) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
  - (b) Poses a fire hazard; or
  - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (16) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;
- (17) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (18) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (19) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (20) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural

origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

- (a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice;
  - (b) By a practitioner, or by his or her authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
  - (c) By a pharmacist as an incident to his or her dispensing of a controlled substance in the course of his or her professional practice;
- (21) (a) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances; and
- (b) "*Marijuana*" does not include industrial hemp as defined in Section 1 of this Act;
- (22) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (23) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (24) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient,

- kept by a practitioner as a result of the practitioner-patient relationship;
- (25) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (26) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
  - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
  - (c) Opium poppy and poppy straw;
  - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
  - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (27) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (28) "Opium poppy" means the plant of the species *papaver somniferum* L., except its

seeds;

- (29) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (30) "Physical injury" has the same meaning it has in KRS 500.080;
- (31) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (32) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (33) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (34) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his or her designee has conducted at least one (1) good faith prior examination;
- (35) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric

practitioner, or advanced practice registered nurse, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

- (36) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (37) "Presumptive probation" means a sentence of probation not to exceed the maximum term specified for the offense, subject to conditions otherwise authorized by law, that is presumed to be the appropriate sentence for certain offenses designated in this chapter, notwithstanding contrary provisions of KRS Chapter 533. That presumption shall only be overcome by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety;
- (38) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (39) "Recovery program" means an evidence-based, nonclinical service that assists individuals and families working toward sustained recovery from substance use and other criminal risk factors. This can be done through an array of support programs and services that are delivered through residential and nonresidential means;
- (40) "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;

- (41) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- (42) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (43) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (44) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; (1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250); or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;
- (45) "Telehealth" has the same meaning it has in KRS 311.550;
- (46) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
  3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (47) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (48) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (49) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

➔Section 7. KRS 260.857 is amended to read as follows:

The Kentucky Industrial Hemp Commission is created and is attached to the Department of Agriculture for administrative purposes. The membership of the commission shall consist of at least seventeen (17) members as follows:

- (1) The Speaker of the House of Representatives or the Speaker's designee;
- (2) The President of the Senate or the President's designee;
- (3) The chair of the Senate Agriculture Committee;
- (4) The chair of the House Agriculture and Small Business Committee;
- (5) The Commissioner of the Department of Agriculture or the Commissioner's designee, ***who shall serve as chair of the commission***;
- (6) The commissioner of the Department of Kentucky State Police or the commissioner's designee;
- (7) The executive director of the Governor's Office of Agricultural Policy or the executive director's designee;
- (8) The chairs of the agriculture departments at the Kentucky university or universities where the industrial hemp research program is to be established;

- (9) The president of the Kentucky Hemp Growers Cooperative Association;
- (10) The president of the Kentucky Sheriffs' Association;
- (11) The president of the Kentucky Association of Chiefs of Police; and
- (12) Six (6) members, three (3) appointed by the Speaker of the House and three (3) by the President of the Senate, representing the following interests:
  - (a) Kentucky farmers with an interest in growing industrial hemp;
  - (b) Retailers of industrial hemp products;
  - (c) Wholesalers of industrial hemp products; and
  - (d) Manufacturers of industrial hemp products.

➔Section 8. KRS 260.859 is amended to read as follows:

A majority of the members of the commission shall constitute a quorum.~~[The members shall elect one (1) member to serve as chair.]~~