

Representative Gage Froerer proposes the following substitute bill:

PLANT EXTRACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Code related to hemp extract.

Highlighted Provisions:

This bill:

▶ permits the Department of Agriculture and a department-certified higher education institution to grow industrial hemp for the purpose of agricultural or academic research;

▶ exempts an individual with a neurological condition who uses or possesses hemp extract, and complies with other requirements, from the penalties related to possession or use of the hemp extract under the Controlled Substances Act;

▶ exempts an individual who possesses hemp extract and administers the hemp extract to a minor with a neurological condition from the penalties related to administering the hemp extract to a minor under the Controlled Substances Act;

▶ requires the Department of Health to issue a hemp extract registration card to an individual who meets certain requirements;

▶ requires a medical practitioner signing a statement that an individual or minor could benefit from treatment with hemp extract to keep a record of the medical practitioner's evaluation and transmit the record to the Department of Health;



- 26 ▶ requires the Department of Health to maintain a database of physician evaluations;
- 27 and
- 28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2014.

33 **Utah Code Sections Affected:**

34 ENACTS:

- 35 **4-41-101**, Utah Code Annotated 1953
- 36 **4-41-102**, Utah Code Annotated 1953
- 37 **4-41-103**, Utah Code Annotated 1953
- 38 **26-55-101**, Utah Code Annotated 1953
- 39 **26-55-102**, Utah Code Annotated 1953
- 40 **26-55-103**, Utah Code Annotated 1953
- 41 **58-37-4.3**, Utah Code Annotated 1953



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **4-41-101** is enacted to read:

45 **CHAPTER 41. INDUSTRIAL HEMP RESEARCH ACT**

46 **4-41-101. Title.**

47 This chapter is known as the "Industrial Hemp Research Act."

48 Section 2. Section **4-41-102** is enacted to read:

49 **4-41-102. Definitions.**

50 For purposes of this chapter:

51 (1) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with
52 a concentration of less than 0.3% tetrahydrocannabinol by weight.

53 (2) "Industrial hemp certificate" means a certificate issued by the department to a
54 higher education institution to grow or cultivate industrial hemp under Subsection **4-41-103(1)**.

55 Section 3. Section **4-41-103** is enacted to read:

56 **4-41-103. Industrial hemp -- Agricultural and academic research.**

57 (1) The department may grow or cultivate industrial hemp for the purpose of
58 agricultural or academic research.

59 (2) The department shall certify a higher education institution to grow or cultivate
60 industrial hemp for the purpose of agricultural or academic research if the higher education
61 institution submits to the department:

62 (a) the location where the higher education institution intends to grow or cultivate
63 industrial hemp;

64 (b) the higher education institution's research plan; and

65 (c) the name of an employee of the higher education institution that will supervise the
66 industrial hemp growth, cultivation, and research.

67 (3) The department shall maintain a list of each industrial hemp certificate holder.

68 (4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
69 Administrative Rulemaking Act to ensure any industrial hemp project meets the standards of an
70 agricultural pilot project, as defined by section 7606 of the U.S. Agricultural Act of 2014.

71 Section 4. Section **26-55-101** is enacted to read:

72 **CHAPTER 55. HEMP EXTRACT REGISTRATION ACT**

73 **26-55-101. Title.**

74 This chapter is known as the "Hemp Extract Registration Act."

75 Section 5. Section **26-55-102** is enacted to read:

76 **26-55-102. Definitions.**

77 As used in this chapter:

78 (1) "Hemp extract" is as defined in Section [58-37-4.3](#).

79 (2) "Hemp extract registration card" means a card issued by the department under
80 Subsection [26-55-103](#)(1) or (2).

81 (3) "Parent" means a parent or legal guardian of a minor who is responsible for the
82 minor's medical care.

83 (4) "Medical practitioner" means an individual:

84 (a) licensed to practice as a physician as defined in Section [58-67-102](#); or

85 (b) licensed to practice advanced practice registered nursing under Title 58, Chapter
86 31b, Nurse Practice Act.

87 (5) "Registrant" means an individual to whom the department issues a hemp extract

88 registration card under Subsections 26-55-103(1) or (2).

89 Section 6. Section 26-55-103 is enacted to read:

90 **26-55-103. Hemp extract registration card.**

91 (1) The department shall issue a hemp extract registration card to an individual who:

92 (a) is at least 18 years of age;

93 (b) is a Utah resident;

94 (c) provides the department with a statement signed by a medical practitioner

95 indicating that the individual:

96 (i) suffers from a neurological condition; and

97 (ii) may benefit from treatment with hemp extract;

98 (d) pays the department a fee in an amount established by the department under

99 Subsection (5); and

100 (e) submits an application to the department, on a form created by the department, that
101 contains:

102 (i) the individual's name and address;

103 (ii) a copy of the individual's valid photo identification; and

104 (iii) any other information the department considers necessary to implement this
105 chapter.

106 (2) The department shall issue a hemp extract registration card to a parent who:

107 (a) is at least 18 years of age;

108 (b) is a Utah resident;

109 (c) provides the department with a statement signed by a medical practitioner that:

110 (i) a minor in the parent's care suffers from a neurological condition; and

111 (ii) the minor may benefit from treatment with hemp extract;

112 (d) pays the department a fee in an amount established by the department under

113 Subsection (5); and

114 (e) submits an application to the department, on a form created by the department, that
115 contains:

116 (i) the parent's name and address;

117 (ii) the minor's name;

118 (iii) a copy of the parent's valid photo identification; and

119 (iv) any other information the department considers necessary to implement this
120 chapter.

121 (3) The department shall maintain a record of:

122 (a) the names of each applicant to whom the department issues a hemp extract
123 registration card; and

124 (b) the name of each minor receiving care from a parent who is issued a hemp extract
125 registration card under Subsection (2).

126 (4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
127 Administrative Rulemaking Act, to establish the information an applicant is required to provide
128 the department under Subsections (1)(e) and (2)(e).

129 (5) The department shall establish the fee described in Subsections (1)(d) and (2)(d) in
130 accordance with Section 63J-1-504 and may not establish a fee that is greater than an amount
131 that will cover the cost the department incurs to implement this chapter.

132 (6) The registration cards issued under Subsections (1) and (2) are:

133 (a) valid for one year; and

134 (b) renewable, if, at the time of renewal, the registrant meets the requirements of either
135 Subsection (1) or (2).

136 (7) The medical practitioner who signs the statement described in Subsections (1)(c) or
137 (2)(c) shall:

138 (a) keep a record of the medical practitioner's evaluation and observation of a patient
139 who is a registrant or minor under a registrant's care, including the patient's response to hemp
140 extract; and

141 (b) transmit the record described on Subsection (7)(a) to the department.

142 (8) The department shall:

143 (a) maintain a database of the records described in Subsection (7);

144 (b) treat the records as personally identifiable health information; and

145 (c) store, manage, and share the records in compliance with 45 C.F.R. parts 160, 162,
146 and 164.

147 (9) The department may share the records described in Subsection (8) with a higher
148 education institution for the purpose of studying hemp extract.

149 Section 7. Section **58-37-4.3** is enacted to read:

150 58-37-4.3. Exemption for use or possession of hemp extract.

151 (1) As used in this section, "hemp extract" means an extract from a cannabis plant, or a
152 mixture or preparation containing cannabis plant material, that:

153 (a) is composed of less than 0.3% tetrahydrocannabinol by weight; and

154 (b) contains no other psychoactive substance.

155 (2) Notwithstanding any other provision of this chapter, an individual who possesses or
156 uses hemp extract is not subject to the penalties described in this chapter for possession or use
157 of the hemp extract if the individual:

158 (a) possesses or uses the hemp extract only for medical purposes;

159 (b) originally obtained the hemp extract from a sealed container with a label indicating
160 the hemp extract's place of origin, and a number that corresponds with a certificate of analysis;

161 (c) possesses, in close proximity to the hemp extract, a certificate of analysis that:

162 (i) has a number that corresponds with the number on the label described in Subsection
163 (2)(b); and

164 (ii) indicates the hemp extract's ingredients, including its percentage of
165 tetrahydrocannabinol by weight; and

166 (d) has a current hemp extract registration card issued by the Department of Health
167 under Section [26-55-103](#).

168 (3) Notwithstanding any other provision of this chapter, an individual who possesses
169 hemp extract lawfully under Subsection (2) and administers hemp extract to a minor is not
170 subject to the penalties described in this chapter for administering the hemp extract to the
171 minor if:

172 (a) the individual is the minor's parent or legal guardian; and

173 (b) the individual is registered with the Department of Health as the minor's parent
174 under Section [26-55-103](#).

175 Section 8. **Effective date.**

176 This bill takes effect on July 1, 2014.

The Utah Legislature's Joint Rule 4-2-402 requires legislative general counsel to place a legislative review note on legislation. The Legislative Management Committee has further directed legislative general counsel to include legal analysis in the legislative review note only if legislative general counsel determines there is a high probability that a court would declare the legislation to be unconstitutional under the Utah Constitution, the United States Constitution, or both. As explained in the legal analysis below, legislative general counsel has determined, based on applicable state and federal constitutional language and current interpretations of that language in state and federal court case law, that this legislation has a high probability of being declared unconstitutional by a court.

This bill: (1) defines hemp extract as an extract of the cannabis plant or a mixture containing cannabis plant material that contains less than 0.3% tetrahydrocannabinol by weight and contains no other psychoactive substance; (2) gives the Utah Department of Health the authority to issue authorization cards to individuals who, based on a statement from a physician, could benefit from treatment by hemp extract or to individuals caring for a minor who, based on a statement from a physician, could benefit from treatment by hemp extract; (3) allows an authorized individual to use or possess hemp extract; and (4) allows an authorized individual to administer hemp extract to a minor.

The federal Controlled Substances Act defines “marihuana” as “all parts of the plant *Cannabis sativa* L., whether growing or not,” and only exempts a compound or other mixture made from the “mature stalks” or sterilized seeds of the plant. 21 U.S.C. § 802(16) (2014). The act lists marihuana as a controlled substance and makes it illegal to possess a controlled substance without a prescription, or to possess a controlled substance with intent to distribute the substance. *Id.* at §§ 841, 844.

Under the Supremacy Clause in the U.S. Constitution, the U.S. Supreme Court has “long recognized that state laws that conflict with federal law are without effect.” *Altira Group v. Good*, 555 U.S. 70 (2008). Federal law limits preemption under the federal Controlled Substances Act to those cases where a “positive conflict” exists between the Act and a state law, such that it is impossible for a party to comply with both state and federal requirements. *See* 21 U.S.C. § 903; *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

Under the definition used in this bill, substances that meet the bill’s definition of hemp extract need not be made exclusively from the mature stalks or sterilized seeds of the cannabis plant, and therefore are likely to be considered “marihuana” under the federal Controlled Substances Act. Any substance that meets the federal Controlled Substances Act’s definition of marihuana will trigger the possession and distribution prohibitions contained in the Act. An individual possessing or using hemp extract or administering hemp extract to a minor likely could not comply with the provisions of this bill without also violating federal law, creating a positive conflict with the bill and federal law. That positive conflict results in a high probability that a court will hold that the bill is preempted by federal law and unconstitutional under the Supremacy Clause.

Office of Legislative Research and General Counsel