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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **759**

February 28, 2011

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The bill was read for the first time and referred to the Committee on Agriculture and Rural Development Policy and Finance

A bill for an act

relating to agriculture; providing for the development and regulation of an industrial hemp industry; authorizing rulemaking; providing a defense for possession and cultivation of industrial hemp; modifying the definition of marijuana; amending Minnesota Statutes 2010, sections 18J.01; 18J.02; 18J.03; 18J.04, subdivisions 1, 2, 3, 4; 18J.05, subdivisions 1, 2, 6; 18J.06; 18J.07, subdivisions 3, 4, 5; 18J.09; 18J.11, subdivision 1, by adding a subdivision; 152.01, subdivision 9; 375.30, subdivision 2; proposing coding for new law as Minnesota Statutes, chapter 18K.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 18J.01, is amended to read:

18J.01 DEFINITIONS.

(a) The definitions in sections 18G.02 ~~and~~, 18H.02, and 18K.03 apply to this chapter.

(b) For purposes of this chapter, "associated rules" means rules adopted under this chapter, chapter 18G ~~or~~, 18H, or 18K, or sections 21.80 to 21.92.

Sec. 2. Minnesota Statutes 2010, section 18J.02, is amended to read:

18J.02 DUTIES OF COMMISSIONER.

The commissioner shall administer and enforce this chapter, chapters 18G ~~and~~, 18H, and 18K, sections 21.80 to 21.92, and associated rules.

Sec. 3. Minnesota Statutes 2010, section 18J.03, is amended to read:

18J.03 CIVIL LIABILITY.

2.1 A person regulated by this chapter, chapter 18G ~~or~~, 18H, or 18K, or sections 21.80
2.2 to 21.92, is civilly liable for any violation of one of those statutes or associated rules by
2.3 the person's employee or agent.

2.4 Sec. 4. Minnesota Statutes 2010, section 18J.04, subdivision 1, is amended to read:

2.5 Subdivision 1. **Access and entry.** The commissioner, upon presentation of official
2.6 department credentials, must be granted immediate access at reasonable times to sites
2.7 where a person manufactures, distributes, uses, handles, disposes of, stores, or transports
2.8 seeds, plants, or other living or nonliving products or other objects regulated under chapter
2.9 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules.

2.10 Sec. 5. Minnesota Statutes 2010, section 18J.04, subdivision 2, is amended to read:

2.11 Subd. 2. **Purpose of entry.** (a) The commissioner may enter sites for:

2.12 (1) inspection of inventory and equipment for the manufacture, storage, handling,
2.13 distribution, disposal, or any other process regulated under chapter 18G ~~or~~, 18H, or 18K,
2.14 sections 21.80 to 21.92, or associated rules;

2.15 (2) sampling of sites, seeds, plants, products, or other living or nonliving objects that
2.16 are manufactured, stored, distributed, handled, or disposed of at those sites and regulated
2.17 under chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules;

2.18 (3) inspection of records related to the manufacture, distribution, storage, handling,
2.19 or disposal of seeds, plants, products, or other living or nonliving objects regulated under
2.20 chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules;

2.21 (4) investigating compliance with chapter 18G ~~or~~, 18H, or 18K, sections 21.80
2.22 to 21.92, or associated rules; or

2.23 (5) other purposes necessary to implement chapter 18G ~~or~~, 18H, or 18K, sections
2.24 21.80 to 21.92, or associated rules.

2.25 (b) The commissioner may enter any public or private premises during or after
2.26 regular business hours without notice of inspection when a suspected violation of chapter
2.27 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules may threaten public
2.28 health or the environment.

2.29 Sec. 6. Minnesota Statutes 2010, section 18J.04, subdivision 3, is amended to read:

2.30 Subd. 3. **Notice of inspection samples and analyses.** (a) The commissioner shall
2.31 provide the owner, operator, or agent in charge with a receipt describing any samples
2.32 obtained. If requested, the commissioner shall split any samples obtained and provide
2.33 them to the owner, operator, or agent in charge. If an analysis is made of the samples,

3.1 a copy of the results of the analysis must be furnished to the owner, operator, or agent
 3.2 in charge within 30 days after an analysis has been performed. If an analysis is not
 3.3 performed, the commissioner must notify the owner, operator, or agent in charge within 30
 3.4 days of the decision not to perform the analysis.

3.5 (b) The sampling and analysis must be done according to methods provided for
 3.6 under applicable provisions of chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92,
 3.7 or associated rules. In cases not covered by those sections and methods or in cases
 3.8 where methods are available in which improved applicability has been demonstrated the
 3.9 commissioner may adopt appropriate methods from other sources.

3.10 Sec. 7. Minnesota Statutes 2010, section 18J.04, subdivision 4, is amended to read:

3.11 Subd. 4. **Inspection requests by others.** (a) A person who believes that a violation
 3.12 of chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules has occurred
 3.13 may request an inspection by giving notice to the commissioner of the violation. The
 3.14 notice must be in writing, state with reasonable particularity the grounds for the notice,
 3.15 and be signed by the person making the request.

3.16 (b) If after receiving a notice of violation the commissioner reasonably believes that
 3.17 a violation has occurred, the commissioner shall make a special inspection in accordance
 3.18 with the provisions of this section as soon as practicable, to determine if a violation has
 3.19 occurred.

3.20 (c) An inspection conducted pursuant to a notice under this subdivision may cover
 3.21 an entire site and is not limited to the portion of the site specified in the notice. If the
 3.22 commissioner determines that reasonable grounds to believe that a violation occurred
 3.23 do not exist, the commissioner must notify the person making the request in writing of
 3.24 the determination.

3.25 Sec. 8. Minnesota Statutes 2010, section 18J.05, subdivision 1, is amended to read:

3.26 Subdivision 1. **Enforcement required.** (a) A violation of chapter 18G ~~or~~, 18H, or
 3.27 18K, sections 21.80 to 21.92, or an associated rule is a violation of this chapter.

3.28 (b) Upon the request of the commissioner, county attorneys, sheriffs, and other
 3.29 officers having authority in the enforcement of the general criminal laws must take action
 3.30 to the extent of their authority necessary or proper for the enforcement of chapter 18G
 3.31 ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules or valid orders, standards,
 3.32 stipulations, and agreements of the commissioner.

3.33 Sec. 9. Minnesota Statutes 2010, section 18J.05, subdivision 2, is amended to read:

4.1 Subd. 2. **Commissioner's discretion.** If minor violations of chapter 18G ~~or~~, 18H,
 4.2 or 18K, sections 21.80 to 21.92, or associated rules occur or the commissioner believes
 4.3 the public interest will be best served by a suitable notice of warning in writing, this
 4.4 section does not require the commissioner to:

- 4.5 (1) report the violation for prosecution;
- 4.6 (2) institute seizure proceedings; or
- 4.7 (3) issue a withdrawal from distribution, stop-sale, or other order.

4.8 Sec. 10. Minnesota Statutes 2010, section 18J.05, subdivision 6, is amended to read:

4.9 Subd. 6. **Agent for service of process.** All persons licensed, permitted, registered,
 4.10 or certified under chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules
 4.11 must appoint the commissioner as the agent upon whom all legal process may be served
 4.12 and service upon the commissioner is deemed to be service on the licensee, permittee,
 4.13 registrant, or certified person.

4.14 Sec. 11. Minnesota Statutes 2010, section 18J.06, is amended to read:

4.15 **18J.06 FALSE STATEMENT OR RECORD.**

4.16 A person must not knowingly make or offer a false statement, record, or other
 4.17 information as part of:

- 4.18 (1) an application for registration, license, certification, or permit under chapter 18G
 4.19 ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules;
- 4.20 (2) records or reports required under chapter 18G ~~or~~, 18H, or 18K, sections 21.80
 4.21 to 21.92, or associated rules; or
- 4.22 (3) an investigation of a violation of chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to
 4.23 21.92, or associated rules.

4.24 Sec. 12. Minnesota Statutes 2010, section 18J.07, subdivision 3, is amended to read:

4.25 Subd. 3. **Cancellation of registration, permit, license, certification.** The
 4.26 commissioner may cancel or revoke a registration, permit, license, or certification
 4.27 provided for under chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated
 4.28 rules or refuse to register, permit, license, or certify under provisions of chapter 18G ~~or~~,
 4.29 18H, or 18K, sections 21.80 to 21.92, or associated rules if the registrant, permittee,
 4.30 licensee, or certified person has used fraudulent or deceptive practices in the evasion or
 4.31 attempted evasion of a provision of chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92,
 4.32 or associated rules.

5.1 Sec. 13. Minnesota Statutes 2010, section 18J.07, subdivision 4, is amended to read:

5.2 Subd. 4. **Service of order or notice.** (a) If a person is not available for service
5.3 of an order, the commissioner may attach the order to the facility, site, seed or seed
5.4 container, plant or other living or nonliving object regulated under chapter 18G ~~or~~, 18H, or
5.5 18K, sections 21.80 to 21.92, or associated rules and notify the owner, custodian, other
5.6 responsible party, or registrant.

5.7 (b) The seed, seed container, plant, or other living or nonliving object regulated
5.8 under chapter 18G ~~or~~, 18H, or 18K, sections 21.80 to 21.92, or associated rules may not
5.9 be sold, used, tampered with, or removed until released under conditions specified by the
5.10 commissioner, by an administrative law judge, or by a court.

5.11 Sec. 14. Minnesota Statutes 2010, section 18J.07, subdivision 5, is amended to read:

5.12 Subd. 5. **Unsatisfied judgments.** (a) An applicant for a license, permit, registration,
5.13 or certification under provisions of this chapter, chapter 18G ~~or~~, 18H, or 18K, sections
5.14 21.80 to 21.92, or associated rules may not allow a final judgment against the applicant
5.15 for damages arising from a violation of those statutes or rules to remain unsatisfied for
5.16 a period of more than 30 days.

5.17 (b) Failure to satisfy, within 30 days, a final judgment resulting from a violation
5.18 of this chapter results in automatic suspension of the license, permit, registration, or
5.19 certification.

5.20 Sec. 15. Minnesota Statutes 2010, section 18J.09, is amended to read:

5.21 **18J.09 CREDITING OF PENALTIES, FEES, AND COSTS.**

5.22 Penalties, cost reimbursements, fees, and other money collected under this chapter
5.23 must be deposited into the state treasury and credited to the appropriate nursery and
5.24 phytosanitary, industrial hemp, or seed account.

5.25 Sec. 16. Minnesota Statutes 2010, section 18J.11, subdivision 1, is amended to read:

5.26 Subdivision 1. **General violation.** Except as provided in subdivisions 2 ~~and~~, 3, and
5.27 4, a person is guilty of a misdemeanor if the person violates this chapter or an order,
5.28 standard, stipulation, agreement, or schedule of compliance of the commissioner.

5.29 Sec. 17. Minnesota Statutes 2010, section 18J.11, is amended by adding a subdivision
5.30 to read:

5.31 Subd. 4. **Controlled substance offenses.** Prosecution under this section does not
5.32 preclude prosecution under chapter 152.

6.1 Sec. 18. **[18K.01] SHORT TITLE.**

6.2 This chapter may be referred to as the "Industrial Hemp Development Act."

6.3 Sec. 19. **[18K.02] PURPOSE.**

6.4 The legislature finds that the development and use of industrial hemp can improve
6.5 the state's economy and agricultural vitality and the production of industrial hemp can
6.6 be regulated so as not to interfere with the strict regulation of controlled substances in
6.7 this state. The purpose of the Industrial Hemp Development Act is to promote the state
6.8 economy and agriculture industry by permitting the development of a regulated industrial
6.9 hemp industry while maintaining strict control of marijuana.

6.10 Sec. 20. **[18K.03] DEFINITIONS.**

6.11 Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

6.12 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

6.13 Subd. 3. **Industrial hemp.** "Industrial hemp" means all parts and varieties of
6.14 the plant Cannabis sativa L. containing no greater than three-tenths of one percent
6.15 tetrahydrocannabinol.

6.16 Subd. 4. **Marijuana.** "Marijuana" has the meaning given in section 152.01,
6.17 subdivision 9.

6.18 Sec. 21. **[18K.04] INDUSTRIAL HEMP AUTHORIZED AS AGRICULTURAL**
6.19 **CROP.**

6.20 Industrial hemp is considered an agricultural crop in this state if grown in
6.21 compliance with this chapter. A person may possess, process, sell, or buy industrial
6.22 hemp that is planted, grown, and harvested in accordance with the provisions of sections
6.23 18K.05 and 18K.06.

6.24 Sec. 22. **[18K.05] LICENSING.**

6.25 (a) A person growing or seeking to grow industrial hemp for commercial purposes
6.26 must apply to the commissioner for license on a form prescribed by the commissioner.

6.27 (b) The application for a license must include the name and address of the applicant
6.28 and the legal description of the land area to be used for the production of industrial hemp.

6.29 (c) The commissioner must require each first-time applicant for a license to submit
6.30 to a background investigation conducted by the Bureau of Criminal Apprehension as a
6.31 condition of licensure. As part of the background investigation, the Bureau of Criminal
6.32 Apprehension must conduct criminal history checks of Minnesota records and is authorized

7.1 to exchange fingerprints with the Federal Bureau of Investigation for the purpose of a
 7.2 criminal background check of the national files. The cost of the investigation must be paid
 7.3 by the applicant. Criminal history records provided to the department under this section
 7.4 must be treated as private data on individuals, as defined in section 13.02, subdivision 12.

7.5 (d) Prior to issuing a license under the provisions of this chapter, the commissioner
 7.6 must determine that the applicant has complied with all applicable requirements of
 7.7 the United States Department of Justice, Drug Enforcement Administration, for the
 7.8 production, distribution, and sale of industrial hemp.

7.9 (e) If the applicant has completed the application process to the satisfaction of the
 7.10 commissioner, the commissioner must issue a license which is valid until December 31
 7.11 of the year of application. An individual licensed under this section is presumed to be
 7.12 growing industrial hemp for commercial purposes.

7.13 **Sec. 23. [18K.06] INDUSTRIAL HEMP PRODUCTION; NOTIFICATION.**

7.14 (a) Annually, a licensee must file with the commissioner:

7.15 (1) documentation showing that the seeds planted are of a type and variety certified
 7.16 to contain no more than three-tenths of one percent tetrahydrocannabinol; and

7.17 (2) a copy of any contract to grow industrial hemp.

7.18 (b) A licensee must notify the commissioner of the sale or distribution of any
 7.19 industrial hemp grown by the licensee, including, but not limited to, the name and address
 7.20 of the person or entity receiving the industrial hemp and the amount of industrial hemp
 7.21 sold.

7.22 **Sec. 24. [18K.07] RULEMAKING.**

7.23 (a) The commissioner shall make rules dealing with, but not limited to:

7.24 (1) supervising and inspecting industrial hemp during its growth and harvest;

7.25 (2) testing industrial hemp during growth to determine tetrahydrocannabinol levels;

7.26 (3) assessing a fee commensurate with the costs of the commissioner's activities in
 7.27 licensing, testing, and supervising industrial hemp production;

7.28 (4) using the results of the background checks authorized in section 18K.05 as
 7.29 criteria for approving or denying an application for industrial hemp licensure; and

7.30 (5) any other rule or procedure necessary to carry out the purposes of this chapter.

7.31 (b) Rules made under this section must be consistent with the rules of the United
 7.32 States Department of Justice, Drug Enforcement Administration, regarding the production,
 7.33 distribution, and sale of industrial hemp.

8.1 Sec. 25. **[18K.08] FEES.**

8.2 Fees collected under this chapter must be credited to the industrial hemp account,
8.3 which is hereby established in the agricultural fund in the state treasury. Interest earned in
8.4 the account accrues to the account. Funds in the industrial hemp account are continuously
8.5 appropriated to the commissioner to implement and enforce this chapter.

8.6 Sec. 26. **[18K.09] DEFENSE FOR POSSESSION OF MARIJUANA.**

8.7 It is an affirmative defense to a prosecution for the possession of marijuana under
8.8 chapter 152 if:

8.9 (1) the defendant was growing industrial hemp pursuant to the provisions of this
8.10 chapter;

8.11 (2) the defendant has a valid applicable controlled substances registration from the
8.12 United States Department of Justice, Drug Enforcement Administration;

8.13 (3) the defendant fully complied with all of the conditions of the controlled
8.14 substances registration; and

8.15 (4) the substance in possession is industrial hemp, as defined in section 18K.03.

8.16 Sec. 27. Minnesota Statutes 2010, section 152.01, subdivision 9, is amended to read:

8.17 Subd. 9. **Marijuana.** "Marijuana" means all parts of the plant of any species of
8.18 the genus Cannabis, including all agronomical varieties, whether growing or not; the
8.19 seeds thereof; the resin extracted from any part of such plant; and every compound,
8.20 manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but
8.21 shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made
8.22 from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture,
8.23 or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or
8.24 cake, or the sterilized seed of such plant which is incapable of germination. Marijuana
8.25 does not include industrial hemp as defined in section 18K.03.

8.26 Sec. 28. Minnesota Statutes 2010, section 375.30, subdivision 2, is amended to read:

8.27 Subd. 2. **Wild hemp.** A county board, by resolution, may appropriate and spend
8.28 money as necessary to spray and otherwise eradicate wild hemp, commonly known as
8.29 marijuana, on private property within the county. The county board may authorize the
8.30 use of county equipment, personnel and supplies and materials to spray or otherwise
8.31 eradicate wild hemp on private property, and may pro rate the expenses involved between
8.32 the county and owner or occupant of the property. Wild hemp does not include industrial
8.33 hemp grown by a person licensed under chapter 18K.