Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023

SENATE BILL NO. 2096
(Agriculture and Veterans Affairs Committee)
(At the request of the Agriculture Commissioner)

AN ACT to create and enact section 4.1-18.1-01.1 and nine new sections to chapter 4.1-18.1 of the North Dakota Century Code, relating to administrative rules, hemp commodities or products, powers of the commissioner, and civil enforcement remedies; to amend and reenact sections 4.1-18.1-01 and 4.1-18.1-04.3, section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, and subparagraph a of paragraph 2 of subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code, relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols, and bonding requirements for grain buyers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-18.1-01. Definitions.

1. "Broad spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, but where tetrahydrocannabinol has been removed to nondetectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

2. "Chemically derived cannabinoid" means a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant cannabis. The term does not include cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

3. "Full spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, processed without intentional complete removal of any compound and without the addition of isolated cannabinoids, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.

4. "Hemp" means the plant cannabis sativa L. and any part of the plant, including the seeds and ~~all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers~~flowers, whether growing or not, with a total tetrahydrocannabinol concentration in an amount determined by the commissioner. The term does not include ~~any~~hemp extract, commodity or product using hemp ~~which exceeds the allowable amount of total tetrahydrocannabinol determined by the commissioner~~, or a hemp substance or product prohibited by this chapter.

~~2.~~5. "Hemp commodity or product" means a product made from hemp or hemp extract, including cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seeds, seed meal, and seed oil for consumption, a hemp tincture, and a hemp topical.

a. The term includes:

(1) Hemp processed through retting or other processing such that it is a suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber materials;

(2) Hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;

(3) Hemp seed pressed or otherwise processed into oil;

(4) Cannabidiol, also known as CBD, products and cannabigerol, also known as CBG, including broad spectrum, full spectrum, and isolate products, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner; and

(5) A hemp commodity or product approved in writing by the agriculture commissioner.

b. The term does not include:

(1) Hemp that has been chopped, separated, or dried for purposes of transfer or storage;

(2) A chemical compound extracted from hemp used to formulate, process, or otherwise make an inhalant;

(3) A product containing delta-8 tetrahydrocannabinol, also known as delta-8 THC;

(4) A product containing chemically derived cannabinoids. Including:

(a) Tetrahydrocannabinol acetate, also known as THC-O-Acetate and THC-O;

(b) Hexahydrocannabinol, also known as HHC; and

(c) Tetrahydrocannabiphorol, also known as THCP; or

(5) A psychotropic hemp commodity or product disapproved in writing by the commissioner.

4. "Hemp extract" means a concentrate or extract obtained by separating cannabinoids from hemp by a mechanical, chemical, or other process. The term does not include hemp seed pressed or otherwise processed into oil.

5. "Hemp tincture" means a solution that may not exceed thirty milliliters consisting of:

a. At least twenty-five percent of non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or

b. Glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion.

6. "Hemp topical" means a hemp commodity or product intended to be applied to the skin or hair. The maximum concentration or amount of total tetrahydrocannabinol permitted in a hemp topical is fifty milligrams per container.

7. "Isolate" means hemp extract or hemp commodity or product comprised of a single cannabinoid compound.

8. "Tetrahydrocannabinol" means delta-9 tetrahydrocannabinol and any structural, optical, or geometric isomers of tetrahydrocannabinol, including:

a. Delta-7 tetrahydrocannabinol;

b. Delta-8 tetrahydrocannabinol; ~~and~~or

c. Delta-10 tetrahydrocannabinol.

~~3.~~9. "Total tetrahydrocannabinol" means the sum of the percentage, by weight, of tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths plus the percentage of weight of tetrahydrocannabinol.

SECTION 2. Section 4.1-18.1-01.1 of the North Dakota Century Code is created and enacted as follows:

4.1-18.1-01.1. Administrative rules.

The commissioner may adopt and amend rules consistent with this chapter governing the sale, distribution, testing, labeling, and regulation of hemp and hemp commodities or products, and substances and products prohibited by this chapter.

SECTION 3. AMENDMENT. Section 4.1-18.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

4.1-18.1-04.3. Prohibited acts - Licensee.

A licensee may not:

1. ~~Engage in the isomerization of cannabinoids to create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10 tetrahydrocannabinol~~Chemically modify or convert a hemp extract, or engage in any process that converts cannabidiol into delta-9, delta-8, delta-10-tetrahydrocannabinol, or other tetrahydrocannabinol isomers, analogs, or derivatives; and

2. Sell or distribute hemp or hemp commodities or products that contain chemically derived cannabinoids or were created ~~using the isomerization of cannabinoids to create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10 tetrahydrocannabinol~~by chemically modifying or converting a hemp extract.

SECTION 4. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Hemp commodities or products - Allowable products - Retailers.

1. A person may only sell hemp and hemp commodities or products allowed under this chapter. All hemp and hemp commodities or products must undergo testing and report in a certificate of analysis and in the product label the testing results of the total tetrahydrocannabinol concentration amount. The certificate of analysis must be made available to the commissioner upon request.

2. A person may not sell hemp, or hemp commodities or products that contain chemically derived cannabinoids or delta-8 tetrahydrocannabinol.

3. All other cannabis- or hemp-derived products that are not allowable hemp commodities or products under this chapter must be regulated in accordance with chapter 19-24.1.

4. All hemp commodities or products sold pursuant to this section must comply with all product labeling rules as mandated by the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.] and related administrative rules, both the Act and rules incorporated by reference.

5. Under the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.], incorporated by reference, non-food and drug administration approved hemp-derived products may not be sold as dietary supplements, food or beverage products, or marketed with medical claims.

SECTION 5. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Powers of commissioner.

If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in, a violation of this chapter, the commissioner may:

1. Require the person to file, on forms the commissioner prescribes, a statement or report in writing, under oath or otherwise, of all the facts and circumstances concerning the creation, sale, distribution, or advertisement of the hemp commodity or product by the person, as well as other data;

2. Examine under oath the person in connection with the creation, sale, distribution, or advertisement of any hemp commodity or product;

3. Examine any merchandise or sample, record, book, document, account, or paper concerning the creation, sale, distribution, or advertisement of hemp commodity or product by the person; and

4. Pursuant to an order of a district court, seize and retain any merchandise or sample, record, book, document, account, paper, or other evidence as authorized by the order.

SECTION 6. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Subpoena - Hearing.

To regulate compliance with this chapter, the commissioner, in addition to other powers conferred upon the commissioner by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

SECTION 7. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Failure to supply information or obey subpoena.

If a person fails or refuses to file any statement or report requested by the commissioner, or obey any subpoena issued by the commissioner, the commissioner may, after notice, apply to a district court and request an order:

1. Granting injunctive relief, restraining the creation, sale, distribution, or advertisement of any hemp commodity or product merchandise by a person;

2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to a person which are used to violate this chapter; and

3. Granting such other relief as may be required.

SECTION 8. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Assurance of voluntary compliance.

The commissioner may accept an assurance of voluntary compliance for an act or practice the commissioner determines may be in violation of this chapter, from any person the commissioner alleges is about to engage in, engaging in, or has engaged in the violation. The assurance of voluntary compliance must be in writing and must be filed with and is subject to the approval of the district court

of the county in which the alleged violator resides or has as a principal place of business, conducts business, or in Burleigh County.

SECTION 9. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil penalties - Costs recoverable in adjudicative proceedings.

1. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a practice in violation of this chapter, the commissioner may seek and obtain in an action in a district court an injunction enjoining the person from engaging in the violation, continuing the violation, or doing any act in furtherance of the violation after proper notice to the person. The notice must state generally the relief sought and be served at least ten days before the hearing of the action.

2. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a violation of this chapter, and the person is about to conceal assets that may have been acquired in violating this chapter, conceal oneself, or leave the state, the commissioner may apply to the district court, ex parte, for an order appointing a receiver of the assets of the person.

3. Upon a showing made by affidavit or other evidence that shows reasonable grounds the person is about to engage in, has engaged in, or is engaging in a violation of this chapter and the person is about to conceal assets that may have been acquired in violating this chapter, conceal oneself, or leave the state, the court shall order the appointment of a receiver to receive the assets of the person. From the received assets, the court may make an order or judgment necessary to restore to another person who has suffered damages due to another person violating this chapter any money or property.

4. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a violation of this chapter, or by an order of the commissioner issued under this chapter, the commissioner, without notice and hearing, may issue a cease and desist order.

    a. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty against a person found in an adjudicative proceeding to have violated a cease and desist order issued pursuant to this section, in an amount not more than five thousand dollars for each violation.

    b. The person may request a hearing before the commissioner if a written request is made within ten days after the receipt of the order. Unless otherwise specifically provided, an adjudicative proceeding under this section must be conducted in accordance with chapter 28-32.

    c. If the commissioner prevails in an adjudicative proceeding pursuant to this section, the commissioner may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation expenses, costs, and other expenses of the investigation and action.

SECTION 10. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Powers of receiver.

1. When a receiver is appointed by the court pursuant to this chapter, the receiver may sue for, collect, receive, or take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of a violation of this chapter,

including property with which the property has been commingled if it cannot be identified in kind because of the commingling, and sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court.

2. A person who has suffered damages due to another person violating this chapter and submits proof to the satisfaction of the court that the person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent the person has sustained losses. The court has jurisdiction of all questions arising in these proceedings and may make orders and judgments as necessary.

SECTION 11. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Costs recoverable.

If the commissioner prevails in an action brought to district court under this chapter, the court shall award the commissioner reasonable attorney's fees, investigation expenses, costs, and other expenses associated with the action. All attorney's fees, investigation expenses, costs, and other expenses received by the commissioner under this section must be deposited into the attorney general's general operating fund.

SECTION 12. A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

Civil penalties.

The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter. The penalty must be awarded to the commissioner and deposited into the commissioner's general operating fund for use in regulating compliance with this chapter.

SECTION 13. AMENDMENT. Section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

4.1-59-09. Bond filed by grain buyer.

1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:

   a. Be in a sum not less than one hundred thousand dollars.

   b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.

   c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.

   d. Be conditioned:

      (1) For the faithful performance of the licensee's duties as a grain buyer.

      (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.

   e. Be for the specific purpose of:

      (1) Protecting the sellers of grain.

(2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.

f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.

2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.

4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.

5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.

6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts.

SECTION 14. AMENDMENT. Subparagraph a of paragraph 2 of subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

(a) The allowable amount of total tetrahydrocannabinol found in hemp or an allowed hemp commodity or product as defined in chapter 4.1-18.1; or

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2096.

Senate Vote:	Yeas 43	Nays 3	Absent 1
House Vote:	Yeas 75	Nays 15	Absent 4

Secretary of the Senate

Received by the Governor at _____M. on _____, 2023.

Approved at _____M. on _____, 2023.

Governor

Filed in this office this _____day of _____, 2023,

at _____ o'clock _____M.

Secretary of State