CHAPTER 4.1-18.1
HEMP

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 flowers, whether growing or not, with a total tetrahydrocannabinol concentration in an amount determined by the commissioner. The term does not include hemp extract, commodity or product using hemp, or a hemp substance or product prohibited by this chapter.
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.
6. "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.

7. "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.
8. "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.
9. "Isolate" means hemp extract or hemp commodity or product comprised of a single cannabinoid compound.
10. "Tetrahydrocannabinol" means delta-9 tetrahydrocannabinol and any structural, optical, or geometric isomers of tetrahydrocannabinol, including:
    a. Delta-7 tetrahydrocannabinol;
    b. Delta-8 tetrahydrocannabinol; or
    c. Delta-10 tetrahydrocannabinol.
11. "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.

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.

4.1-18.1-02. Hemp - Licensure.

Any person desiring to grow or process hemp shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. A license must be obtained before a person purchases or obtains hemp material for planting or propagation. The applicant is responsible for anyone working under the applicant's license for all sections of this chapter.

1. The application for a license must include the name and address of the applicant, and the legal description of the land area to be used to produce or process hemp.
2. The commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
3. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
4. The commissioner shall deny licensure to any person convicted of a felony relating to a controlled substance under state or federal law in the last ten years.
5. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license. A license issued under this chapter expires December thirty-first.
6. An application for a license under this subsection may be submitted to the commissioner anytime before the purchase of hemp seed or viable propagation material.

4.1-18.1-03. License fee.

The commissioner shall assess each producer and processor a fee not to exceed three hundred fifty dollars. The commissioner shall deposit fees collected under this chapter in the commissioner's operating fund which are appropriated to the commissioner on a continuing basis for the purpose of enforcing this chapter.

4.1-18.1-04. License - Grounds for denial.

1. The agriculture commissioner may deny or revoke a license to any person who:
   a. Repeatedly violates this chapter;
   b. Provides false or misleading information in connection with any application required by this chapter; or
   c. Has been convicted of a felony, as described in section 4.1-18.1-02, since the most recent criminal history background check.
2. Any person denied a license under this section may request a hearing before the commissioner within thirty days after the date of the denial.

4.1-18.1-04.1. Commissioner - Authority - Tetrahydrocannabinol concentration.

The commissioner shall determine the total tetrahydrocannabinol concentration under this chapter up to an amount not to exceed the federal Agriculture Improvement Act of 2018 [Pub. L. 115-334; 132 Stat. 4490] and federal domestic hemp production program regulations under title 7, Code of Federal Regulations, part 990.

4.1-18.1-04.2. Hemp testing - Fee - Exemption.

1. The commissioner may charge a fee of up to one hundred twenty-five dollars to inspect, sample, and test hemp under this chapter.
2. The commissioner shall deposit fees collected under this section in the commissioner's operating fund.
3. The provisions of chapter 54-44.4 do not apply to hemp testing under this section.

4.1-18.1-04.3. Prohibited acts - Licensee.

A licensee may not:

1. 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 by chemically modifying or converting a hemp extract.

4.1-18.1-04.4. 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.

4.1-18.1-05. Violations.

1. A producer found in violation of this chapter for negligently failing to provide the legal description of the land where the producer is growing hemp, failing to obtain a license,

or by producing hemp with a total tetrahydrocannabinol concentration greater than the amount determined by the commissioner is subject to:

a. Meeting a deadline set by the commissioner to come into compliance with this chapter; and
b. Additional reporting requirements set by the commissioner for a period of no less than two years.

2. An applicant or person licensed to grow hemp under this chapter found in violation of the chapter with a culpable mental state greater than negligence must be reported to the attorney general.

4.1-18.1-06. Confiscation and disposal.

1. Any hemp found to be in violation of this chapter is subject to confiscation and disposal by the commissioner.
2. Any disposal-related costs will be the responsibility of the producer, owner, or person responsible for the hemp.
3. The commissioner is not liable for any destruction of hemp or hemp products carried out under this chapter.

4.1-18.1-07. Commissioner powers.

The commissioner may enter on any land or areas where hemp is grown, stored, or processed for the purposes of inspections, sample collection, testing, or investigation for the purposes of enforcing this chapter.

4.1-18.1-07.1. 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.

4.1-18.1-08. Hemp - Research.

1. Any researcher associated with or operating under an institution under the control of the state board of higher education is exempt from obtaining a license described under section 4.1-18.1-02 to grow hemp. A researcher shall notify the commissioner of the researcher's intent to plant hemp and provide the following information to the commissioner:
   a. The name and contact information of the primary investigator; and
   b. The legal description of all land where hemp will be grown as part of the project.
2. The research institution shall ensure the primary investigator and all other project participants meet the criminal history background restrictions in section 4.1-18.1-02.

4.1-18.1-09. 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.

4.1-18.1-10. 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.

4.1-18.1-11. 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.

4.1-18.1-12. 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.

4.1-18.1-13. 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.

4.1-18.1-14. 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.

4.1-18.1-15. 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.