

Representative Brad M. Daw proposes the following substitute bill:

CANNABIS CULTIVATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill deals with the cultivation, processing, and sale of cannabis.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Agriculture and Food, by January 1, 2019, to ensure the cultivation and processing of cannabis in the state for academic or medical research purposes;
- ▶ authorizes the Department of Agriculture and Food to:
 - contract with a third party to cultivate or process cannabis; and
 - make rules;
- ▶ establishes a state dispensary for cannabis that has been processed into a medical dosage form;
- ▶ states that an individual who possesses, processes, or grows cannabis does not violate the Controlled Substances Act if the individual is authorized to possess, process, or grow cannabis for academic or medical research purposes;
- ▶ directs the Department of Financial Institutions to issue cannabis payment processor licenses and enforce cannabis payment processor operating requirements;



57 4-41-201. Title.

58 This part is known as "Cannabis Cultivation."

59 Section 2. Section **4-41-202** is enacted to read:

60 4-41-202. Definitions.

61 As used in this part:

62 (1) "Cannabis" means any part of a cannabis plant, whether growing or not, with
63 tetrahydrocannabinol content greater than 0.3%.

64 (2) "Medicinal dosage form" means the same as that term is defined in Section

65 58-37-3.6.

66 Section 3. Section **4-41-203** is enacted to read:

67 4-41-203. Department to cultivate cannabis.

68 (1) The department shall, by January 1, 2019:

69 (a) ensure the cultivation of cannabis in the state for academic or medical research
70 purposes; and

71 (b) ensure that cannabis grown in the state pursuant to Subsection (1)(a) may be
72 processed into a medicinal dosage form.

73 (2) The department may contract with a private entity to fulfill the duty described in
74 Subsection (1).

75 (3) In issuing a contract to a private entity as described in Subsection (2), the
76 department shall:

77 (a) comply with Title 63G, Chapter 6a, Utah Procurement Code; and

78 (b) provide regular, strict oversight of a private entity awarded a contract to ensure that
79 the private entity complies with the awarded contract, state law, and department rules.

80 (4) The Department shall set a fee, to be paid by a person who is awarded a contract
81 under Subsections (2) and (3), consistent with Section 4-2-103.

82 Section 4. Section **4-41-204** is enacted to read:

83 4-41-204. Department to make rules regarding cultivation and processing.

84 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
85 Administrative Rulemaking Act:

86 (1) to ensure:

87 (a) cannabis cultivated in the state pursuant to this chapter is cultivated from

88 state-approved seed sources; and

89 (b) a private entity contracted to cultivate cannabis has sufficient security protocols;

90 and

91 (2) governing an entity that puts cannabis into a medicinal dosage form, including

92 standards for health and safety.

93 Section 5. Section **4-41-301** is enacted to read:

94 **4-41-301. Department to establish a state dispensary.**

95 (1) The department shall by July 1, 2019, establish a state dispensary as described in

96 this section.

97 (2) The state dispensary shall:

98 (a) receive cannabis that has been processed into a medicinal dosage form by a private

99 entity with a contract pursuant to Section [4-41-203](#) from the private entity; and

100 (b) sell the cannabis that has been processed into a medicinal dosage form at the price

101 set by the department pursuant to Section [4-41-303](#) to any of the following purchasers:

102 (i) a qualified academic research institution, as described in Section [4-41-304](#);

103 (ii) a qualified medical research institution, as described in Section [4-41-304](#); or

104 (iii) a patient with a recommendation to try cannabis from the patient's physician or

105 advanced practice nurse practitioner.

106 (3) In selling cannabis that has been processed into a medicinal dosage form to a

107 patient, as described in Subsection (2)(b)(iii), the state dispensary shall only sell up to the

108 amount of cannabis recommended by the patient's physician or advanced practice nurse

109 practitioner.

110 (4) (a) The department may contract with a private entity to serve as a courier for the

111 state dispensary, delivering purchased cannabis that has been processed into a medicinal

112 dosage form to a purchaser described in Subsection (2).

113 (b) In issuing the contract described in Subsection (4)(a), the department shall comply

114 with Title 63G, Chapter 6a, Utah Procurement Code and provide regular oversight of the

115 private entity.

116 Section 6. Section **4-41-302** is enacted to read:

117 **4-41-302. Labeling.**

118 The department shall, in conjunction with the Department of Professional Licensing,

119 establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
120 Act, standards for labeling cannabis that has been processed into a medicinal dosage form and
121 is being sold at the state dispensary established in Section [4-41-301](#).

122 Section 7. Section **4-41-303** is enacted to read:

123 **4-41-303. Department to set prices.**

124 (1) The department shall set a price schedule for cannabis that has been processed into
125 a medicinal dosage form and sold at the state dispensary.

126 (2) The price schedule described in Subsection (1) shall take into consideration:

127 (a) the demand for the product;

128 (b) the labor required to cultivate and process the product into a medicinal dosage
129 form;

130 (c) the regulatory burden involved in the creation of the product; and

131 (d) any other consideration the department considers necessary.

132 (3) The price set by the department under Subsection (1) shall include:

133 (a) sales tax, to be remitted by the state dispensary to the Tax Commission; and

134 (b) a set fee, to be retained by the department to fund the state dispensary and the
135 courier described in Subsection [4-41-301](#)(3), if any.

136 Section 8. Section **4-41-304** is enacted to read:

137 **4-41-304. Department to make rules regarding purchasers.**

138 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
139 Administrative Rulemaking Act, to determine whether an entity engaged in academic or
140 medical research qualifies to purchase cannabis pursuant to this chapter.

141 Section 9. Section **7-1-401** is amended to read:

142 **7-1-401. Fees payable to commissioner.**

143 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
144 institution under the jurisdiction of the department shall pay an annual fee:

145 (a) computed by averaging the total assets of the depository institution shown on each
146 quarterly report of condition for the depository institution for the calendar year immediately
147 proceeding the date on which the annual fee is due under Section [7-1-402](#); and

148 (b) at the following rates:

149 (i) on the first \$5,000,000 of these assets, the greater of:

- 150 (A) 65 cents per \$1,000; or
151 (B) \$500;
152 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
153 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
154 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
155 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
156 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
157 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.
- 158 (2) A financial institution with a trust department shall pay a fee determined in
159 accordance with Subsection (7) for each examination of the trust department by a state
160 examiner.
- 161 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
162 pay a basic fee of \$25 instead of the fee required under Subsection (1).
- 163 (4) A trust company that is not a depository institution or a subsidiary of a depository
164 institution holding company shall pay:
- 165 (a) an annual fee of \$500; and
166 (b) an additional fee determined in accordance with Subsection (7) for each
167 examination by a state examiner.
- 168 (5) Any person or institution under the jurisdiction of the department that does not pay
169 a fee under Subsections (1) through (4) shall pay:
- 170 (a) an annual fee of \$200; and
171 (b) an additional fee determined in accordance with Subsection (7) for each
172 examination by a state examiner.
- 173 (6) A person filing an application or request under Section [7-1-503](#), [7-1-702](#), [7-1-703](#),
174 [7-1-704](#), [7-1-713](#), [7-5-3](#), [~~or~~] [7-18a-202](#), or [7-26-201](#) shall pay:
- 175 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
176 person:
- 177 (A) is a person with authority to transact business as:
178 (I) a depository institution;
179 (II) a trust company; or
180 (III) any other person described in Section [7-1-501](#) as being subject to the jurisdiction

181 of the department; and

182 (B) has total assets in an amount less than \$5,000,000; or

183 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

184 (b) all reasonable expenses incurred in processing the application.

185 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
186 per hour:

187 (i) for each examiner; and

188 (ii) per hour worked.

189 (b) For an examination of a branch or office of a financial institution located outside of
190 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
191 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
192 conducting the examination.

193 (8) In addition to a fee under Subsection (5), a person registering under Section
194 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

195 (9) In addition to a fee under Subsection (5), a person applying for licensure under
196 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

197 Section 10. Section 7-26-101 is enacted to read:

198 **7-26-101. Title.**

199 This chapter is known as "Cannabis Payment Processor."

200 Section 11. Section 7-26-102 is enacted to read:

201 **7-26-102. Definitions.**

202 As used in this chapter:

203 (1) "Cannabis" has the same meaning as that term is defined in Section 4-41-202.

204 (2) "Cannabis payment processor" means a person that facilitates payment:

205 (a) without using cash;

206 (b) electronically; and

207 (c) between a cannabis producer and an entity engaged in academic or medical
208 research.

209 (6) "Cannabis producer" means:

210 (a) a private entity that is contracted with the Department of Agriculture and Food,

211 pursuant to Section 4-41-203, to cultivate cannabis or process it into a medicinal dosage form;

212 and

213 (b) the Department of Agriculture and Food, if the Department of Agriculture and Food
214 is engaged in the cultivation or processing of cannabis.

215 Section 12. Section **7-26-201** is enacted to read:

216 **7-26-201. Cannabis payment processor -- License.**

217 (1) A person may not act as a cannabis payment processor without a license issued by
218 the department under this section.

219 (2) An applicant for a cannabis payment processor license shall:

220 (a) submit to the department:

221 (i) the applicant's name, business address, and place of incorporation;

222 (ii) the name of each owner, officer, director, board member, shareholder, agent,
223 employee, or volunteer of the applicant; and

224 (iii) a fee in accordance with Section [7-1-401](#); and

225 (b) present evidence to the department that:

226 (i) the applicant is capable of electronically receiving funds from, and distributing
227 funds to:

228 (A) a cannabis producer; and

229 (B) an entity engaged in academic or medical research;

230 (ii) the applicant has a partnership, service agreement, or service contract with a
231 federally insured depository institution that agrees to clear cannabis product transactions; and

232 (iii) the applicant is, at minimum:

233 (A) a level one payment card industry data security standard-validated provider;

234 (B) certified by Europay, MasterCard, and Visa; and

235 (C) capable of integrating with 50 payment processors.

236 (3) A license issued under this section is valid for two years.

237 (4) The department may determine, by rule made in accordance with Title 63G,
238 Chapter 3, Utah Administrative Rulemaking Act:

239 (a) any additional information an applicant for a cannabis payment processor is
240 required to submit to the department; and

241 (b) procedural requirements for an applicant for a license under this chapter.

242 (5) An applicant for a cannabis payment processor license under this section may

243 request that the department treat information that the applicant submits to the department as
244 confidential under Section [7-1-802](#).

245 Section 13. Section **7-26-202** is enacted to read:

246 **7-26-202. Renewal -- Abandonment.**

247 The department shall renew a person's cannabis payment processor license every two
248 years if, at the time of renewal, the person:

249 (1) meets the requirements of Section [7-26-201](#);

250 (2) demonstrates the criteria described in Subsection [7-26-203\(2\)](#);

251 (3) pays the department a license renewal fee in an amount that is the same as the
252 licensing fee determined by the department in accordance with Section [7-1-401](#).

253 Section 14. Section **7-26-203** is enacted to read:

254 **7-26-203. Number of licenses -- Criteria for awarding a license.**

255 (1) The department may issue up to a number of cannabis payment processor licenses
256 determined by the department.

257 (2) The department shall evaluate an applicant for a cannabis payment processor
258 license to determine to what extent the applicant has demonstrated:

259 (a) experience with:

260 (i) establishing and running a business in a related field;

261 (ii) operating a payment processing system;

262 (iii) complying with a regulatory environment; and

263 (iv) training, evaluating, and monitoring employees;

264 (b) connections to the local community;

265 (c) that the applicant will keep the cost of the applicant's products or services low; and

266 (d) that the applicant will maximize convenience, efficiency, and security for

267 processing cannabinoid product payments.

268 (3) After an appropriate supervisor reviews an applicant's application under Section
269 [7-26-201](#) and evaluates the application for the criteria described in Subsection (2), the

270 appropriate supervisor shall submit the department's findings and recommendations to the
271 commissioner.

272 (4) After reviewing the findings and recommendations described in Subsection (3), the
273 commissioner shall make a final determination that awards or denies a cannabis payment

274 processor license to an applicant.

275 (5) In making a recommendation of which applicant to award a cannabis payment
276 processor license under Subsection (1), the department shall consult, to the extent that the
277 consultation involves compatibility and coordination of a cannabis payment processor licensee
278 with other state cannabinoid medicine regulation, with:

279 (a) the executive director of the Department of Commerce or the executive director's
280 designee;

281 (b) the chair of the State Tax Commission or the chair's designee;

282 (c) the chief information officer of the Department of Technology Services or the chief
283 information officer's designee;

284 (d) the executive director of the Department of Health or the executive director's
285 designee;

286 (e) the commissioner of the Department of Agriculture and Food or the commissioner's
287 designee; and

288 (f) the commissioner of the Department of Public Safety or the commissioner's
289 designee.

290 (6) An applicant for which the department denies an application is entitled to judicial
291 review under Section [7-1-714](#).

292 Section 15. Section **7-26-204** is enacted to read:

293 **7-26-204. Cash system if no cannabis payment processor available.**

294 (1) The department shall determine if no qualified cannabis payment processor
295 submitted an application for a license under this chapter.

296 (2) If the department makes the determination described in Subsection (1), the
297 department shall issue a statement that a cannabis payment processor is not available and that
298 an academic of medical research entity may use cash to pay for products and services related to
299 cannabinoid products.

300 Section 16. Section **7-26-301** is enacted to read:

301 **7-26-301. Operating requirements.**

302 (1) Except as provided in Section [7-26-204](#), a cannabis payment processor may not
303 accept or disburse cash in a transaction involving cannabis.

304 (2) A cannabis payment processor may not act as a cannabis payment processor for a

305 person unless the person is:

306 (a) a cannabis cultivator; or

307 (b) an academic or medical research entity.

308 Section 17. Section **7-26-401** is enacted to read:

309 **Part 4. Enforcement**

310 **7-26-401. Examination -- Administrative action.**

311 (1) The department may examine the records or activities of a cannabis payment
312 processor at any time in order to determine if the cannabis payment processor is complying
313 with this chapter.

314 (2) If the department determines that a person is acting as a cannabis payment
315 processor without a license issued under this section, the department may:

316 (a) order the person to cease and desist from acting as a cannabis payment processor;

317 and

318 (b) assess the person a fine in an amount determined by the department by rule made in
319 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

320 (3) If the department determines that a person with a cannabis payment processor
321 license issued by the department has violated this chapter, the department may:

322 (a) order the person to cease and desist from the violation;

323 (b) assess the person a fine in an amount determined by the department by rule made in
324 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

325 (c) revoke the person's license.

326 Section 18. Section **58-37-3.6** is amended to read:

327 **58-37-3.6. Exemption for possession or distribution of a cannabinoid product or**
328 **expanded cannabinoid product pursuant to an approved study.**

329 (1) As used in this section:

330 (a) "Cannabinoid product" means a product intended for human ingestion that:

331 (i) contains an extract or concentrate that is obtained from cannabis;

332 (ii) is prepared in a medicinal dosage form; and

333 (iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

334 (b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.

335 (c) "Drug paraphernalia" means the same as that term is defined in Section [58-37a-3](#).

336 (d) "Expanded cannabinoid product" means a product intended for human ingestion
337 that:

- 338 (i) contains an extract or concentrate that is obtained from cannabis;
- 339 (ii) is prepared in a medicinal dosage form; and
- 340 (iii) contains less than 10 units of cannabidiol for every one unit of
341 tetrahydrocannabinol.

342 (e) "Medicinal dosage form" means:

- 343 (i) a tablet;
- 344 (ii) a capsule;
- 345 (iii) a concentrated oil;
- 346 (iv) a liquid suspension;
- 347 (v) a transdermal preparation; or
- 348 (vi) a sublingual preparation.

349 (f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the
350 description in Subsection [58-37-4\(2\)\(a\)\(iii\)\(AA\)](#).

351 (2) Notwithstanding any other provision of this chapter, an individual who possesses or
352 distributes a cannabinoid product or an expanded cannabinoid product is not subject to the
353 penalties described in this title for the possession or distribution of marijuana or
354 tetrahydrocannabinol to the extent that the individual's possession or distribution of the
355 cannabinoid product or expanded cannabinoid product complies with Title 26, Chapter 61,
356 Cannabinoid Research Act.

357 (3) Notwithstanding any other provision of this chapter, an individual who grows,
358 processes, or possesses cannabis is not subject to the penalties described in this title for the
359 growth, processing, or possession of marijuana to the extent that the individual is authorized to
360 grow, process, or possess the cannabis under Section [4-41-203](#) and is in compliance with any
361 rules made pursuant to Section [4-41-204](#).