

Hemp Laws Relevant to Local Law Enforcement

HB2167 Effective April 18, 2019 [The Bill](#) [The Legislative Research Summary](#)
New Statutes Available at: <http://www.kansasleo.com/KSAs/Ch2Art39.htm>

Definition of terms [Section 7 amending KSA 2-3901 effective April 18,2019]:

“Hemp Producer”— Any individual, licensed or otherwise, engaging in the cultivation or production of industrial hemp for commercial purposes.

"Industrial hemp" means all parts and varieties of the plant *cannabis sativa* L., cultivated or possessed by a state educational institution or the department, whether growing or not, that contain delta-9 tetrahydrocannabinol concentration of no not more than 0.3% on a dry weight basis.

“Authorized seed or clone plants" means a source of industrial hemp seeds or clone plants that: (A) Has been certified by a certifying agency, as defined by K.S.A.2-1415, and amendments thereto; (B) has been produced from plants that were tested during the active growing season and were found to produce industrial hemp having a tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis and has been certified in writing by the grower or distributor of such seeds or clone plants to possess such qualities; or (C) meets any other authorized standards approved by the Kansas department of agriculture through rules and regulations, except that no seed or clone plants shall be considered authorized seed or clone plants if they do not meet any standard adopted by the United States department of agriculture pursuant to 7 U.S.C. § 1621 et seq.

Licensing Under the Research program Authorized in the 2018 Act

Prior to July 1, 2019, the persons participating in the cultivation, growth, research, oversight, study, analysis, transportation, processing or distribution of authorized seed or clone plants or industrial hemp must be licensed by the Department of Agriculture. [Section 2]

Registration Under the 2019 Commercial Industrial Hemp Act

All Hemp Producers (anyone involved in the cultivation or production of industrial hemp), except those holding a license under the 2018 Research program, must register with the Department of Agriculture. [Section 4]

Any individual employed or seeking employment under such registered hemp producer or a processor who would be engaged in extraction of cannabinoids, including through the disposal of cannabinoids from industrial hemp, must also be registered. Processors who are not engaged in the extraction process are exempt. [Section 4]

Distribution of Licensing and Registration Information

The Kansas department of agriculture shall provide an updated list of all hemp processors to the Kansas Bureau of Investigation and to the county sheriff in each county where a hemp processor is located as often as is reasonably required or requested. [Section 4, subsection (e) and (f)]

Ineligibility for License or Registration

The following are not eligible for a license or registration:

- An individual who has been convicted of a felony violation of Article 57 of Chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a substantially similar offense in another jurisdiction, within the immediately preceding 10 years. [Section 4, subsection (j)(5); Section 8, subsection (d)(2)]
 - This requires a conviction, excluding a juvenile adjudication, or diversion as an adult or juvenile.
- An individual who has submitted any materially false information in any application to become a licensed hemp producer. [Section 2, subsection (d)]

The bill requires local law enforcement to assist in the fingerprint records checks by assisting applicants to properly complete the fingerprint cards. The KBI has a published protocol for how the fingerprint cards and applications should be handled. [Section 4, subsection (j)(3)]

Requirement to Have License in Possession

The bill requires the state plan to monitor and regulate the commercial production of industrial hemp to include a “procedure for the creation of documentation that any person in possession of unprocessed industrial hemp may use to prove to any law enforcement officer that such industrial hemp was lawfully grown. [Section 2, subsection (b)(5)]

Current regulations implemented under the 2018 Act (KAR 4-34-5 subsection (f) requires anyone engaged in cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, researching, overseeing, studying, or analyzing industrial hemp plants, plant parts, grain or seeds to have their license in their possession. [https://www.agriculture.ks.gov/docs/default-source/statutes-ppwc/industrial-hemp-regulations.pdf?sfvrsn=20b185c1_12]

The Department of Agriculture must develop regulations by December 31, 2019, a requirement that license holders shall have a current license in their possession at all times that they are engaged in the cultivation, growth, research, oversight, study, analysis, transportation, processing or distribution of authorized seed or clone plants or industrial hemp. [Section 8, subsection (e) amending KSA 2-3902 effective July 1, 2019]

The current KSA 2-3902 subsection (e) includes that requirement for those licensed under the Hemp Research Act to possess their license whenever they are engaged in cultivation, growth, research, oversight, study, analysis, transportation, processing or distribution of certified seed or industrial hemp under current regulation.

Effects on Marijuana Definitions in Chapter 21 and Chapter 65

The definitions of marijuana are revised in both KSA 21-5701 (j) and KSA 65-4101 (aa) by adding an exclusion for “industrial hemp as defined in K.S.A. 2018 Supp. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities

authorized by the commercial industrial hemp act. [Section 10 amending KSA 21-5701; Section 12 amending KSA 65-4101]

Unlawful Acts

- The bill distinguishes between “negligent violations” and non-negligent violations. [Section 2, subsection (c)]
 - Negligent violations are things such as hemp plants slightly exceeding the 0.3% limit but can include other statutory or regulatory violations. Negligent violations are not subject to criminal sanctions.
 - Non-negligent violations discovered by the Department of Agriculture are reported to the KBI. [NOTE: If you believe you have a non-negligent violation, you might want to work with the Department of Agriculture and/or the KBI.]
- It is unlawful for any person to operate as a hemp processor without valid registration. The first conviction is a class A nonperson misdemeanor, the second or subsequent conviction is a severity level 9, nonperson felony. [Section 4, subsection (h)]
- Providing false information on an application is a class C misdemeanor. [Section 4, subsection (d)(4)]
- Disclosure or use of any information received by the hemp processor in the process of screening an employee or prospective employee for any purpose other than the purposes provided for in the commercial industrial hemp act is a class A nonperson misdemeanor. [Section 4, subsection (j)(2)]
- Disclosure or use of any information received by the Department of Agriculture in the process of screening an applicant for license or registration for any purpose other than the purposes provided for in the commercial industrial hemp act is a class A nonperson misdemeanor. [Section 2, subsection (e)(1) and KSA 2-3902, subsection (d)(1)]
- It is a crime to manufacture, market, sell, or distribute hemp products for any of the purposes listed below. The first conviction is a class A nonperson misdemeanor, the second or subsequent conviction is a severity level 9, nonperson felony. [Section 5, subsection (a) and (c)]
 - cigarettes containing industrial hemp;
 - cigars containing industrial hemp;
 - chew, dip or other smokeless material containing industrial hemp;
 - teas containing industrial hemp;
 - liquids, solids or gases containing industrial hemp for use in vaporizing devices; and
 - any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act, K.S.A. 65-636 et seq., and the commercial feeding stuffs act, K.S.A. 2-1001 et seq.
- It is a crime to market, sell, or distribute any of the listed below hemp products to any person who is not registered or licensed as a hemp processor for purposes authorized in the Act. The first conviction is a class A nonperson misdemeanor, the second or subsequent conviction is a severity level 9, nonperson felony. [Section 5, subsection (b) and (c)]
 - industrial hemp buds;

- ground industrial hemp floral material; or
- ground industrial hemp leaf material.

Waste Products and Hemp Exceeding Legal Limits of THC [Section 6]

- Waste can include extracted THC in any form.
- The bill requires all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act be managed in accordance with all applicable solid and hazardous waste laws and regulations.
- If the waste can be used in the same manner as, or has the appearance of, a controlled substance, the bill requires the waste to be rendered unusable and unrecognizable before being transported or disposed. This requirement does not apply to waste managed as a hazardous waste and sent to a hazardous waste facility.
- Unusable and unrecognizable means “such waste can not be used in the same manner as, and does not have the appearance of, a controlled substance, as defined in K.S.A. 65-4101” [Section 6, subsection (a)(3)]
- A method of effective disposal of hemp or hemp products not meeting the acceptable legal limits or otherwise violating the Act must be included in the State Plan. [Section 7, subsection (b)(3)]

Other Considerations

There are several issues relating to the legalization of hemp that will affect law enforcement operations. These are not answered by statute, but will require consideration from agency administration, prosecutors, and legal advisors.

- How will the presence of THC in hemp, affect the use of canines who cannot distinguish between legal cannabis and illegal cannabis?
 - Can the requirement for those authorized to engage in cultivation, growth, research, oversight, study, analysis, transportation, processing or distribution of authorized seed or clone plants or industrial hemp be used as a lead in question for use of a canine?
- How does an officer distinguish between hemp and illegal cannabis?
- Will field test kits react differently with low level THC hemp than higher THC content items?
- How does law enforcement proceed with information a licensed person may not meet the qualifications?
- What criminal activity can we expect surrounding the farms growing and processing hemp?