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LEGISLATURE OF NEBRASKA

ONE HUNDRED NINTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 316

Introduced by Kauth, 31.

Read first time January 16, 2025

Committee: Judiciary

A BILL FOR AN ACT relating to cannabis; to amend sections 2-503, 2-505, 2-515, and 28-401, Revised Statutes Cumulative Supplement, 2024; to redefine hemp under the Nebraska Hemp Farming Act; to define terms; to prohibit conduct relating to hemp other than cannabidiol products as prescribed; to change provisions relating to transportation of hemp; to provide for regulation of cannabidiol products; to redefine terms in the Uniform Controlled Substances Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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Section 1. Section 2-503, Revised Statutes Cumulative Supplement, 2024, is amended to read:

2-503 For purposes of the Nebraska Hemp Farming Act:

(1) Agriculture Improvement Act of 2018 means section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, and any regulations adopted and promulgated under such section, as such section, act, and regulations existed on January 1, 2024;

(2) Cannabidiol product means a finished hemp consumer product that contains, as a primary ingredient, cannabidiol extracted or derived from hemp and that complies with the tetrahydrocannabinol concentration limits provided in subdivision (4)(a) of this section;

(3) ~~(2)~~ Cultivate or cultivating means planting, watering, growing, and harvesting a hemp plant or crop. The presence of plants of the plant Cannabis sativa L. growing as uncultivated, naturalized plants in the environment is not cultivating hemp for purposes of the Nebraska Hemp Farming Act;

(4)(a) ~~(3)~~ Hemp means the plant Cannabis sativa L. and any part of such plant, including the viable seeds of such plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total ~~delta-9~~ tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis for raw hemp and not more than 0.3 percent on a total weight basis for processed hemp.

(b) Hemp includes cannabidiol products.

(c) Hemp does not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks; or the sterilized seed of such plant that is incapable of germination ~~Hemp shall be considered an agricultural commodity. Notwithstanding any other provision of law, hemp shall not be considered a controlled substance under the Uniform Controlled Substances~~

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~~Act~~;

(5) ~~(4)~~ Person means an individual, partnership, corporation, limited liability company, association, postsecondary institution, or other legal entity;

(6) Raw hemp means hemp that has been harvested and dried but is otherwise unprocessed;

(7) ~~(5)~~ State-program-licensed hemp producer means a person licensed under a USDA-approved state or tribal program as authorized under the Agriculture Improvement Act of 2018 and includes the authorized employees or agents of such person;

(8) Tetrahydrocannabinol concentration refers to the concentration of tetrahydrocannabinol as measured through procedures that use post-decarboxylation or other similarly reliable measures to account for any chemical precursors to cannabinoids, including tetrahydrocannabinolic acid. Such chemical precursors, including tetrahydrocannabinolic acid, shall be included in the total tetrahydrocannabinol concentration measurement;

(9) ~~(6)~~ USDA means the United States Department of Agriculture; and

(10) ~~(7)~~ USDA-licensed hemp producer means a person licensed by the USDA to produce hemp as provided in 7 C.F.R. part 990, subpart C, as such regulations existed on January 1, 2024, and includes the authorized employees or agents of such person.

Sec. 2. Section 2-505, Revised Statutes Cumulative Supplement, 2024, is amended to read:

2-505 (1) Hemp, other than cannabidiol products, shall not be cultivated, possessed, handled, transported, processed, used, or consumed in this state, except that:

(a) ~~(1)~~ Hemp may be cultivated in this state by a USDA-licensed hemp producer, in accordance with such producer's USDA-issued license, or by a state-program-licensed hemp producer, in accordance with such producer's license under a USDA-approved tribal program; and ~~.~~

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(b) ~~(2)~~ Hemp shall ~~may only~~ be transported pursuant to section 2-515.

(2) Any cannabidiol product shall be possessed, handled, transported, used, and consumed in accordance with:

(a) The Nebraska Pure Food Act; and

(b) The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., and any regulations adopted and promulgated under such act, as such act and regulations existed on January 1, 2025.

Sec. 3. Section 2-515, Revised Statutes Cumulative Supplement, 2024, is amended to read:

2-515 (1) Except as provided in subsection (3) of this section, any USDA-licensed hemp producer or state-program-licensed hemp producer transporting hemp shall carry with the hemp being transported a copy of the USDA license or state program license under which it was cultivated and a copy of the test results pertaining to each lot of hemp being transported.

(2) A USDA-licensed hemp producer or state-program-licensed hemp producer under a USDA-approved tribal program cultivating hemp in this state shall maintain a record of shipments of hemp shipped from or received by such producer. Such record shall, for each shipment of hemp, indicate the date of shipment, identify the point of origin and destination, identify the name of the person sending and receiving the shipment, and include the vehicle identification number of the vehicle transporting the hemp.

(3) Any USDA-licensed hemp producer or state-program-licensed hemp producer transporting hemp cultivated under such producer's USDA license or state program license shall not be required to carry a copy of the test results relating to such hemp as provided in subsection (1) of this section if such producer carries with the hemp being transported a copy of the applicable USDA license or state program license and is transporting:

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(a) Hemp between two registered sites listed on the producer's USDA or state program license application;

(b) Samples of hemp for testing to determine the tetrahydrocannabinol level; or

(c) Live hemp plants to a registered site listed on the producer's USDA or state program license application prior to cultivating such hemp plants.

(4)(a) For purposes of this subsection, federally-compliant hemp means hemp that complies with the requirements of the Agriculture Improvement Act of 2018.

(b) Federally-compliant hemp may be transported in interstate commerce for any lawful purpose ~~(4) Any person who is carrying or transporting hemp who is not a USDA-licensed hemp producer or state-program-licensed hemp producer shall only carry or transport hemp~~ if such hemp meets the following requirements:

(i) ~~(a)~~ The hemp is carried or transported with a bill of lading stating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp; and

~~(b) The hemp is carried or transported with a copy of the valid USDA or state program license under which the hemp was cultivated;~~

~~(c) The hemp is carried or transported with a copy of the test results pertaining to each lot of hemp being transported; and~~

(ii) ~~(d)~~ The hemp is not unloaded or in any way removed from the vehicle transporting such hemp unless authorized by state or federal law enforcement.

~~(5) No person shall transport or carry hemp in this state concurrently with any other plant material that is not hemp.~~

Sec. 4. Section 28-401, Revised Statutes Cumulative Supplement, 2024, is amended to read:

28-401 As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

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(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling,

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or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds.

(b) Marijuana does not include:

(i) The ~~the~~ mature stalks of such plant; ~~,~~

(ii) Hashish;

(iii) Tetrahydrocannabinols ~~hashish, tetrahydrocannabinols~~ extracted or isolated from the plant; ~~,~~

(iv) Fiber ~~fiber~~ produced from such stalks; ~~,~~

(v) Oil ~~oil~~ or cake made from the seeds of such plant; ~~,~~

(vi) Any ~~any~~ other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks; ~~,~~

(vii) The ~~the~~ sterilized seed of such plant which is incapable of

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germination; ~~, or~~

(viii) Cannabidiol ~~cannabidiol~~ contained in a drug product approved by the federal Food and Drug Administration; or ~~.~~

(ix) Any cannabidiol product.

(c) Marijuana includes ~~does not include~~ hemp, except for hemp possessed in compliance with the Nebraska Hemp Farming Act.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(15) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy

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straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(18) Opium poppy means the plant of the species Papaver somniferum L., except the seeds thereof;

(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(21) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(22) Production includes the manufacture, planting, cultivation, or

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harvesting of a controlled substance;

(23) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(24) State means the State of Nebraska;

(25) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(26) Hospital has the same meaning as in section 71-419;

(27) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(28) Cannabidiol product has the same meaning as in section 2-503;

(29)(a) ~~(28)(a)~~ Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act.

(c) Hashish or concentrated cannabis does not include any cannabidiol product or cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(30) ~~(29)~~ Exceptionally hazardous drug means (a) a narcotic drug,

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(b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(31) ~~(30)~~ Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(32)(a) ~~(31)(a)~~ Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal

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Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(33) ~~(32)~~ Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(34) ~~(33)~~ Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(35) ~~(34)~~ Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(36) ~~(35)~~ Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(37) ~~(36)~~ Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(38) ~~(37)~~ Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(39) ~~(38)~~ Signature means the name, word, or mark of a person

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written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(40) ~~(39)~~ Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(41) ~~(40)~~ Electronic signature has the definition found in section 86-621;

(42) ~~(41)~~ Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(43) ~~(42)~~ Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(44) ~~(43)~~ Compounding has the same meaning as in section 38-2811;

(45) ~~(44)~~ Cannabinoid receptor agonist means any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body. Cannabinoid receptor agonist does not include any cannabidiol product or cannabidiol contained in a drug product approved by the federal Food and Drug Administration; and

(46) ~~(45)~~ Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following

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indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical

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compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.

Sec. 5. Original sections 2-503, 2-505, 2-515, and 28-401, Revised Statutes Cumulative Supplement, 2024, are repealed.