

Proposed Amendment – SB281 (2021)

Plant Industry Division



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Purpose of the amendment:

The Nevada Department of Agriculture (NDA) is putting forward this amendment due to the following:

- The current definition for “consumable hemp products” would include all hemp products. It is the NDA’s understanding that the goal of this bill is to tax consumable products that contain “hemp-derived compounds (cannabidiol (CBD) specifically)” which are considered a drug under FDA and not hemp products that are Generally Recognized as Safe (GRAS) such as hemp seed-oil and protein powders. As a result, the definition of “consumable hemp product” in Section 26 has been revised to encompass hemp-derived compounds (cannabidiol) which would remove the tax and label requirements for products that do not contain hemp derived compounds.
- The Department of Health and Human Services currently has the authority in NRS 439.532, granted through 2019 SB209 to require labeling and testing of hemp intended for human consumption that purports to contain cannabidiol. This amendment removes the repealed language from NRS439.532 in addition to labeling, testing, and inspection language specific to the NDA. This proposed amendment would remove the fiscal note submitted by the NDA.
- Part of this bill is aimed at addressing public health concerns specific to unregulated “consumable hemp products,” which was demonstrated through incorporating testing and labeling criteria. Nevada 2021 Senate Bill 114 includes language that would allow cannabidiol and other hemp products to be used by health permitted facilities in Nevada and existing NRS439.532 captures testing and labeling requirements for products not manufactured but sold in Nevada.
- Sections 34-36 were revised to include “or health authority” to allow other health districts to share authority in pursuing investigations.

FORMATTING EXPLANATION:

- (1) ***blue bold italics*** is new language in the original bill;
- (2) variations of **green bold underlining** is language proposed to be added in this amendment;
- (3) **~~red strikethrough~~** is deleted language in the original bill;
- (4) **~~purple double strikethrough~~** is language proposed to be deleted in this amendment;
- (5) **orange underlining** is deleted language in the original bill proposed to be

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405 South 21st St.
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4780 East Idaho St.
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retained in this amendment.

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. “Consumable hemp product” has the meaning ascribed to it in section 26 of this act.

Sec. 4. 1. “Consumable hemp product retailer” means any person who makes any retail sale or sales of consumable hemp products.

2. The term does not include a cannabis establishment, as defined in NRS 678A.095.

Sec. 5. “Excise tax on consumable hemp products” means the excise tax imposed by section 11 of this act.

Sec. 6. “Retail sale” means any sale for any purposes other than for resale.

Sec. 7. “Sales price” has the meaning ascribed to it in
19 NRS 372A.247.

Sec. 8. The provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise tax on consumable hemp products to the extent that those provisions do not conflict with the provisions of this chapter.

Sec. 9. 1. Each person responsible for maintaining the

records of a consumable hemp product retailer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the consumable hemp product retailer pursuant to the provisions of this chapter;

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to the provisions of this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

2. Any person who violates the provisions of subsection 1 is guilty of misdemeanor.

Sec. 10. 1. To verify the accuracy of any return filed by a consumable hemp product retailer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise tax on consumable hemp product.

2. Any person who may be liable for the excise tax on consumable hemp products-and who keeps outside of this State any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he or she is absent from his or her regular place of employment to examine those documents.

Sec. 11. 1. An excise tax is hereby imposed on each retail sale in this State of consumable hemp products by consumable hemp product retailer at the rate of 1 percent of the sales price of

the consumable hemp product. The excise tax imposed pursuant to this subsection:

(a) Is the obligation of the consumable hemp product retailer; and

(b) Is separate from and in addition to any general and local sales and use taxes that apply to retail sales of tangible personal property.

2. The revenues collected from the excise tax imposed pursuant to subsection 1 must be distributed to:

~~*(a) The State Department of Agriculture in an amount determined to be necessary by the State Department of Agriculture to pay the costs of carrying out the provisions of the chapter consisting of sections 25 to 37, inclusive, of this act; and*~~

~~*(b) If any money remains after the revenues are distributed pursuant to paragraph (a), to the State Treasurer to be deposited to the credit of the State Education Fund.*~~

Sec. 12. If the Department determines that the excise tax on consumable hemp products or any penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must, after being credited against any

amount then due from the person in accordance with NRS 360.236, be refunded to the person or his or her successors in interest.

Sec. 13. 1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund of the excise tax consumable hemp products may be allowed unless a claim for refund is filed with the Department within 3 years after the last day of the month following the month for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. The failure to file a claim within the time prescribed in subsection 1 constitutes a waiver of any demand against the State on account of any overpayment.

Sec. 14. 1. Except as otherwise provided in subsection 2, NRS 360.320 or any other specific statute, interest must be paid upon any overpayment of the excise tax on consumable hemp products at the rate set forth in, and in accordance with the provisions of, NRS 360.2937.

2. If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.

Sec. 15. 1. Within 30 days after rejecting a claim for refund or credit in whole or in part, the Department shall serve written notice of its action on the claimant in the manner prescribed for

service of a notice of deficiency determination. Within 30 days after the date of service of the notice, a claimant who is aggrieved by the action of the Department may file an appeal with the Nevada Tax Commission.

2. If the Department fails to serve notice of its action on a claim for refund or credit within 6 months after the claim is filed, the claimant may consider the claim to be disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

3. The final decision of the Nevada Tax Commission on an appeal is a final decision for the purposes of judicial review pursuant to chapter 233B of NRS.

Sec. 16. 1. A proceeding for judicial review of a decision of the Nevada Tax Commission may not be commenced or maintained by an assignee of the claimant or by any other person other than the person who paid the amount at issue in the claim.

2. The failure of a claimant to file a timely petition for judicial review constitutes a waiver of any demand against the State on account of any overpayment.

Sec. 17. 1. If judgment is rendered for the claimant in a proceeding for judicial review, any amount found by the court to have been erroneously or illegally collected must first be credited to any tax due from the claimant. The balance of the amount must be refunded to the claimant.

2. In any such judgment, interest must be allowed at the rate of 3 percent per annum upon any amount found to have been erroneously or illegally collected from the date of payment of the amount to the date of allowance of credit on account of the

judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

Sec. 18. 1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection of the excise tax on consumable hemp products or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding, including, without limitation, a proceeding for judicial review, may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed within the time prescribed in section 13 of this act.

Sec. 19. 1. A person shall not, with intent to defraud the State or evade payment of the excise tax on consumable hemp products or any part of the tax:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any return or declaration.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 20. The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or

the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in those sections.

Sec. 21. NRS 360.2937 is hereby amended to read as follows:

360.2937 1. Except as otherwise provided in this section, NRS 360.320 or any other specific statute, and notwithstanding the provisions of NRS 360.2935, interest must be paid upon an overpayment of any tax provided for in chapter 362, 363A, 363B,

1 363C, 369, 370, 372, 372B, 374, 377, 377A, 377C or 377D of NRS ~~†~~ or the chapter consisting of sections 2 to 20, inclusive, of this act, any of the taxes provided for in NRS 372A.290, any fee provided for in NRS 444A.090 or 482.313, or any assessment provided for in NRS 585.497, at the rate of 0.25 percent per month from the last day of the calendar month following the period for which the overpayment was made.

2. No refund or credit may be made of any interest imposed on the person making the overpayment with respect to the amount being refunded or credited.

3. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which

interest is computed on the tax or the amount against which the credit is applied.

Sec. 22. NRS 360.417 is hereby amended to read as follows:

360.417 Except as otherwise provided in NRS 360.232 and

360.320, and unless a different penalty or rate of interest is

specifically provided by statute, any person who fails to pay any tax 25 provided for in chapter 362, 363A, 363B, 363C, 369, 370, 372, 26 372B, 374, 377, 377A, 377C, 377D, 444A or 585 of NRS ~~H~~ or the

chapter consisting of sections 2 to 20, inclusive, of this act, any of the taxes provided for in NRS 372A.290, or any fee provided for in NRS 482.313, and any person or governmental entity that fails to pay any fee provided for in NRS 360.787, to the State or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee which is owed, as determined by the Department, in addition to the tax or fee, plus interest at the rate of 0.75 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment. The amount of any penalty imposed must be based on a graduated schedule adopted by the Nevada Tax Commission which takes into consideration the length of time the tax or fee remained unpaid.

Sec. 23. NRS 387.1212 is hereby amended to read as follows:

387.1212 1. The State Education Fund is hereby created as a special revenue fund to be administered by the Superintendent of Public Instruction for the purpose of supporting the operation of the public schools in this State. The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund.

- 2. Money which must be deposited for credit to the State Education Fund includes, without limitation:**
- (a) All money derived from interest on the State Permanent School Fund, as provided in NRS 387.030;**
 - (b) The proceeds of the tax imposed pursuant to NRS 244.33561 and any applicable penalty or interest, less any amount retained by the county treasurer for the actual cost of collecting and administering the tax;**
 - (c) The proceeds of the tax imposed pursuant to subsection 1 of 12 NRS 387.195;**
 - (d) The portion of the money in each special account created pursuant to subsection 1 of NRS 179.1187 which is identified in paragraph (d) of subsection 2 of NRS 179.1187;**
 - (e) The money identified in subsection 1 of NRS 328.450;**
 - (f) The money identified in subsection 1 of NRS 328.460;**
 - (g) The money identified in paragraph (a) of subsection 2 of 19 NRS 360.850;**
 - 20 (h) The money identified in paragraph (a) of subsection 2 of 21 NRS 360.855;**
 - (i) The money required to be paid over to the State Treasurer for deposit to the credit of the State Education Fund pursuant to subsection 4 of NRS 362.170;**
 - (j) The portion of the proceeds of the tax imposed pursuant to subsection 1 of NRS 372A.290 identified in paragraph (b) of subsection 4 of NRS 372A.290;**
 - (k) The proceeds of the tax imposed pursuant to subsection 3 of 29 NRS 372A.290;**
 - (l) The proceeds of the fees, taxes, interest and penalties**

imposed pursuant to chapter 374 of NRS, as transferred pursuant to subsection 3 of NRS 374.785;

(m) The money identified in paragraph (b) of subsection 3 of 34 NRS 678B.390;

(n) The portion of the proceeds of the excise tax imposed pursuant to subsection 1 of NRS 463.385 identified in paragraph (c) of subsection 5 of NRS 463.385;

(o) The money required to be distributed to the State Education Fund pursuant to subsection 3 of NRS 482.181;

(p) The portion of the net profits of the grantee of a franchise, right or privilege identified in NRS 709.110;

(q) The portion of the net profits of the grantee of a franchise identified in NRS 709.230;

(r) The portion of the net profits of the grantee of a franchise identified in NRS 709.270; ~~and~~

(s) The portion of the proceeds of the tax imposed pursuant to subsection 1 of section 11 of this act identified in paragraph (b) of subsection 2 of section 11 of this act; and

(t) The direct legislative appropriation from the State General Fund required by subsection 3.

3. In addition to money from any other source provided by law, support for the State Education Fund must be provided by direct legislative appropriation from the State General Fund in an amount determined by the Legislature to be sufficient to fund the operation of the public schools in this State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably

estimated for that biennium. Money in the State Education Fund does not revert to the State General Fund at the end of a fiscal year, and the balance in the State Education Fund must be carried forward to the next fiscal year.

4. Money in the Fund must be paid out on claims as other claims against the State are paid.

5. The Superintendent of Public Instruction may create one or more accounts in the State Education Fund for the purpose of administering any money received from the Federal Government for the support of education and any State money required to be administered separately to satisfy any requirement imposed by the Federal Government. The money in any such account must not be considered when calculating the statewide base per pupil funding amount or appropriating money from the State Education Fund pursuant to NRS 387.1214. The interest and income earned on the money in any such account, after deducting any applicable charges, must be credited to the account.

Sec. 24. Title 49 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 25 to 37, inclusive, of this act.

Sec. 25. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 26 to 29, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 26. “consumable hemp product” means a commodity or product that contains a hemp derived compound such as cannabidiol, and:

1. Has a THC concentration that does not exceed the maximum THC concentration established by federal law for

hemp; and

2. Is intended for ingestion or inhalation by a human or for topical application to the skin or hair of a human.

*Sec. 27. “Department” means the State Department of Agriculture. **Health and Human Services.***

Sec. 28. “Hemp” has the meaning ascribed to it in NRS 557.160.

Sec. 29. “THC” has the meaning ascribed to it in NRS 453.139.

Sec. 30. The provisions of this chapter do not apply to a cannabis establishment, as defined in NRS 678A.095.

Sec. 31. A person shall not sell or offer to sell a consumable hemp product this State unless the consumable hemp product complies with NRS 439.532.

~~1.—Has been tested in accordance with section 32 of this act and satisfies the requirements set forth in that section; and~~

~~2.—Is labeled in accordance with the requirements set forth by regulation of the Department pursuant to section 33 of this act.~~

Sec. 32.——1. Each consumable hemp product sold in this State must:

(a) Have a THC concentration that does not exceed the maximum THC concentration established by federal law for hemp; and

(b) Meet all standards for content, quality and potency established by regulation of the Department pursuant to subsection 3.

~~2.—A person who wishes to sell a consumable hemp product shall, before the sale, submit the product to the Department or a cannabis independent testing laboratory approved by the~~

~~Department for testing to determine whether the product satisfies the requirements set forth in subsection 1. The Department may adopt regulations relating to such testing which include, without limitation:~~

~~(a) Protocols and procedures for the testing of a consumable hemp product; and~~

~~(b) A requirement that a cannabis independent testing laboratory provide the results of the testing directly to the Department in a manner prescribed by the Department.~~

~~3. The Department shall adopt regulations establishing standards for content, quality and potency of consumable hemp products sold in this State.~~

~~4. As used in this section, “cannabis independent testing laboratory” has the meaning ascribed to it in NRS 678A.115.~~

~~Sec. 33. The Department shall adopt regulations establishing requirements for the labeling of consumable hemp products. Such regulations must require, without limitation, a consumable hemp product to be labeled in a manner that is not false or misleading in accordance with the applicable provisions of chapters 446 and 585 of NRS.~~

~~Sec. 34. 1. The Department shall receive reports and~~ **or health authority may** ~~investigate apparent violations of the provisions of this chapter or the regulations adopted pursuant thereto-~~

~~2. Any duly authorized officer, employee or representative of the Department may enter into and inspect at any reasonable time any premises at which a consumable hemp product is sold for purposes of ascertaining compliance with the provisions of this chapter.~~

~~3. A person shall not:~~

(a) Refuse entry or access to any authorized representative of the Department or health authority who requests entry for the purposes of inspection, as provided in this section, and who presents appropriate credentials; or

(b) Obstruct, hamper or interfere with any such inspection.

Sec. 35. 1. If the Department or health authority determines that a person has violated or is about to violate any provision of this chapter, the Department may bring an action in a court of competent jurisdiction to enjoin the person from engaging in or continuing the violation.

2. An injunction:

(a) May be issued without proof of actual damage sustained by any person.

(b) Does not prohibit the criminal prosecution and punishment of the person who commits the violation.

Sec. 36. Any person violating the provisions of this chapter, or the regulations adopted pursuant thereto, is guilty of a misdemeanor and, in addition to any criminal penalty, shall pay to the Department an administrative fine of not more than \$2,500 per violation. If an administrative fine is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Department.

Sec. 37. The Board of Health shall adopt such regulations as it determines are necessary to carry out the provisions of this chapter.

Sec. 38. NRS 557.270 is hereby amended to read as follows:

557.270 1. A grower, handler or producer may submit hemp or a commodity or product made using hemp-l, other than a

commodity or product described in subsection 1 of NRS 439.532,]

to a cannabis independent testing laboratory for testing pursuant to this section and a cannabis independent testing laboratory may perform such testing.

2. A grower or producer shall, before harvesting, submit a sample of each crop to the Department or a cannabis independent testing laboratory approved by the Department to determine whether the crop has a THC concentration that exceeds the maximum THC concentration established by federal law for hemp. The Department may adopt regulations relating to such testing which include, without limitation:

(a) Protocols and procedures for the testing of a crop, including, without limitation, determining appropriate standards for sampling and for the size of batches for testing; and

(b) A requirement that a cannabis independent testing laboratory provide the results of the testing directly to the Department in a manner prescribed by the Department.

3. A crop which is harvested before the testing required by subsection 2 is completed shall be deemed to have failed the testing and may be detained, seized or embargoed by the Department. The Department shall not renew the registration of a grower or producer who harvests a crop before the testing required by subsection 2 is completed.

4. Except as otherwise provided in subsection 3 and by federal law, a grower or producer whose crop fails a test prescribed by the Department pursuant to this section may submit that same crop for retesting. The Department shall adopt regulations establishing protocols and procedures for such retesting.

5. As used in this section, “cannabis independent testing laboratory” has the meaning ascribed to it in NRS 678A.115.

Sec. 39. NRS 678B.290 is hereby amended to read as follows:

678B.290 1. The Board shall establish standards for and certify one or more cannabis independent testing laboratories to:

(a) Test cannabis for adult use and adult-use cannabis products that are to be sold in this State;

(b) Test cannabis for medical use and medical cannabis products that are to be sold in this State; and

(c) In addition to the testing described in paragraph (a) or (b), test ~~commodities~~ :

(1) *Commodities* or products containing hemp, as defined in NRS 557.160, or cannabidiol which are intended for human or animal consumption and sold by a cannabis establishment ~~+~~ ; and

(2) consumable hemp products, as defined in section 26 of this act, in accordance with the provisions of the chapter consisting of sections 25 to 37, inclusive, of this act.

2. Such a cannabis independent testing laboratory must be able to:

(a) Determine accurately, with respect to cannabis or cannabis products that are sold or will be sold at cannabis sales facilities in this State:

(1) The concentration therein of THC and cannabidiol.

(2) The presence and identification of microbes, molds and fungi.

(3) The composition of the tested material.

(4) The presence of chemicals in the tested material, including, without limitation, pesticides, heavy metals, herbicides or

growth regulators.

(b) Demonstrate the validity and accuracy of the methods used by the cannabis independent testing laboratory to test cannabis and cannabis products.

3. To obtain a license to operate a cannabis independent testing laboratory, an applicant must:

(a) Apply successfully as required pursuant to NRS 678B.210 or 678B.250, as applicable.

(b) Pay the fees required pursuant to NRS 678B.390.

(c) Agree to become accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization within 1 year after licensure.

Sec. 40. NRS 439.532 is hereby repealed.

Sec. 41. This act becomes effective on January 1, 2022.

TEXT OF REPEALED SECTION

~~439.532 Testing and labeling of certain products containing cannabidiol; regulations.~~

~~Unless federal law or regulation otherwise requires, a person shall not sell or offer to sell any commodity or product containing hemp which is intended for human consumption or any other commodity or product that purports to contain cannabidiol with a THC concentration that does not exceed the maximum THC concentration established by federal law for hemp unless such a commodity or product:~~

~~Has been tested by an independent testing laboratory and meets the standards established by regulation of the Department pursuant to subsection 3; and~~

~~Is labeled in accordance with the regulations adopted by the Department pursuant to subsection 3.~~

~~A person who produces or offers for sale a commodity or product described in subsection 1 may submit such a commodity or product to a cannabis independent testing laboratory for testing pursuant to this section and a cannabis independent testing laboratory may perform such testing.~~

~~The Department shall adopt regulations requiring the testing and labeling of any commodity or product described in subsection 1. Such regulations must:~~

~~Set forth protocols and procedures for the testing of the commodities and products described in subsection 1; and~~

~~Require that any commodity or product described in subsection 1 is labeled in a manner that is not false or misleading in accordance with the applicable provisions of chapters 446 and 585 of NRS.~~

~~As used in this section:~~

~~“Cannabis independent testing laboratory” has the meaning ascribed to it in NRS 678A.115.~~

~~“Hemp” has the meaning ascribed to it in NRS 557.160.~~

~~“Intended for human consumption” means intended for ingestion or inhalation by a human or for topical application to the skin or hair of a human.~~

~~“THC” has the meaning ascribed to it in NRS 453.139.~~