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**Commerce & Gaming Committee**

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**HB 1552**

**Brief Description:** Concerning industrial hemp.

**Sponsors:** Representatives Shea, Taylor, Condotta, Pike, Goodman, G. Hunt, Scott, Buys, Holy, Griffey, Blake, Fitzgibbon, Hurst, Ormsby, Young and Magendanz.

**Brief Summary of Bill**

- Legalizes industrial hemp and removes it from coverage under the state Controlled Substances Act.
- Designates industrial hemp as an agricultural product which may be grown, produced, possessed, and commercially traded.
- Establishes regulations designed to ensure that the THC content of industrial hemp grown in this state is consistent with international standards.
- Authorizes the Department of Agriculture to issue licenses for the growing of industrial hemp and to regulate the industrial hemp industry.
- Creates standards and requirements that a grower must meet in order to be an industrial hemp grower.
- Imposes a fee on growers to cover regulatory costs.
- Creates an industrial hemp account in the State Treasury that is funded by licensing fees.
- Authorizes the Washington State University to undertake research regarding industrial hemp production.

**Hearing Date:** 1/26/15

**Staff:** Thamas Osborn (786-7129).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Industrial Hemp Defined and Described.

Industrial hemp is generally defined as encompassing those *Cannabis sativa* plant types intended for agricultural and industrial purposes. Although marijuana is also derived from the *Cannabis sativa* plant, industrial hemp is readily distinguishable from marijuana with respect to: (1) the types and percentages of organic compounds it contains; (2) its agricultural, industrial and pharmaceutical uses; and (3) its observable physical characteristics. For legal purposes, the key factors in distinguishing the two plants are the amounts of delta-9 tetrahydrocannabinol (THC) and cannabinoids each contains, with the THC level being the most important measure. THC is a psychoactive, organic compound that in sufficient concentrations will cause intoxication in humans. Industrial hemp has very low levels of THC and thus does not have psychoactive effects or cause intoxication. Throughout most of the world, the legal definition of industrial hemp includes the requirement that the plant contain no more than 0.3 percent THC. Marijuana, by contrast, has much higher concentrations of THC, ranging anywhere from 5 to 25 percent.

In those countries where it is legal to do so, industrial hemp is grown primarily as a source of fiber principally used for textiles, rope, paper, and building materials. Hemp seed is increasingly used for food, feed, and oil. Hemp seed oil is low in saturated fats and may be used in pharmaceuticals, cosmetics, inks, lubrication, household detergents, varnishes, resins, and paints. Hemp plants are increasingly used as a source of livestock feed and bedding.

Approximately 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp.

### Federal Statute and Regulations.

Industrial hemp and all other *Cannabis* plant types, including those falling within the definition of marijuana, are considered a Schedule I controlled substance under the federal Controlled Substances Act of 1970 (federal CSA) and are, therefore, illegal to either cultivate or possess. The federal CSA does not distinguish between industrial hemp and other varieties of *Cannabis* on the basis of THC content. It is illegal, therefore, to grow *Cannabis* plants containing any level of THC without a permit from the Drug Enforcement Agency.

Notwithstanding the CSA's prohibition against the cultivation or possession of hemp, with the passage of the Agricultural Act of 2014 (2014 Farm Bill) the legal status of industrial hemp under federal law has become ambiguous. Without changing the CSA prohibition, the 2014 Farm Bill explicitly authorizes institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes, *but only in those states that have legalized the growing and cultivation of hemp*. This would seem to implicitly authorize individual states to enact statutory schemes legalizing the cultivation of industrial hemp, but the true legal status of industrial hemp under federal law remains unclear.

### Washington State Controlled Substances Act.

As is the case under the federal CSA, Washington's Controlled Substances Act (state CSA) does not distinguish between industrial hemp and other varieties of *Cannabis* on the basis of THC content, and thus industrial hemp is categorized as a Schedule I controlled substance, along with marijuana. Accordingly, in this state it remains illegal to cultivate or possess industrial hemp.

### Legalization and Regulation of Hemp in Other States.

During recent years there has been considerable legislative activity throughout the United States with respect to legalizing the agricultural production of industrial hemp. To date, approximately 11 states have legalized industrial hemp production, including: California, Colorado, Indiana, Maine, Montana, North Dakota, Oregon, South Carolina, Vermont, West Virginia, and Tennessee. Many other states have passed legislation authorizing the cultivation of industrial hemp for pilot projects or studies, including: Connecticut, Delaware, Hawaii, Illinois, Kentucky, Nebraska, and Utah. Additionally, the National Association of State Departments of Agriculture and the National Conference of State Legislatures have both adopted resolutions supporting revisions to the federal rules and regulations authorizing commercial production of industrial hemp.

#### Industrial Hemp Cultivars.

There are hundreds of industrial hemp cultivars that have been developed over many centuries of hemp cultivation worldwide. "Cultivar" is a botanical term used to describe a variation of the *Cannabis* plant that has been developed through cultivation by selective breeding. Many of the countries that produce industrial hemp have developed their own cultivars designed to maximize specific, desirable plant traits related to local growing conditions and/or the specific industrial or agricultural uses intended for the crop. In most countries, industrial hemp cultivars are limited to a maximum THC content of 0.3 percent, although some countries set the standard as low as 0.2 percent or as high as 1.0 percent. In addition, some cultivars result in plants with a very stable and predictable THC content, whereas other cultivars may have a more variable THC content. Accordingly, many countries impose THC testing requirements upon specified cultivars.

#### **Summary of Bill:**

##### Overview of the Act.

The act legalizes the agricultural production of industrial hemp and designates it as an agricultural product that may be produced, processed, and commercially traded pursuant to specified regulatory requirements. Industrial hemp cultivation is regulated by the Department of Agriculture (Department), which is granted broad rule-making authority as necessary to implement the provisions of the regulatory scheme.

"Industrial hemp" is defined as all parts and varieties of the *Cannabis* plant, whether growing or not, that contain a THC concentration of 0.3 percent or less by weight and are cultivated or possessed by a licensed grower in compliance with the act. The definition allows the 0.3 percent THC concentration limit to be exceeded in industrial *Cannabis* seeds used for licensed industrial hemp research.

The state CSA is amended so as to legalize the production and possession of industrial hemp by exempting it from regulation as a controlled substance.

The Department is authorized to issue licenses to qualified growers permitting them to cultivate industrial hemp. The license authorizes the grower to produce industrial hemp at a specified site, or sites, as identified in the license. The license is valid for 36 months and may be renewed. The licensing fee is \$10 per acre of land under cultivation for the first growing season, and thereafter the fee is determined by the Department by rule. Fee revenue must be deposited in an "industrial hemp account," which may be used only to defray costs associated with the regulation of industrial hemp production.

The Department is granted the power and authority to:

- promulgate the administrative rules necessary to regulate the industry;
- investigate a grower's compliance with legal requirements;
- gain access to a grower's property and buildings;
- take and test samples of a crop;
- access a grower's agricultural records; and
- impose sanctions on a grower for licensing and regulatory violations.

After the third growing season, the Department must report to the Legislature regarding the fee amount, total acreage in production, and total revenues generated from industrial hemp. The Department must also report annually to the Legislature regarding the implementation of the act and other related topics.

#### Licensing Requirements and Provisions.

In order to obtain a license, the applicant must meet specified qualifications showing that he or she is capable of growing industrial hemp and can ensure its safe production. To qualify, the prospective licensee must:

- prove his or her ability to secure all industrial hemp seed needed for planting;
- ensure the integrity of the crop while it is in the field;
- provide the Department with notice of the locations of all industrial hemp fields;
- agree to inspections of property, buildings, and records as required by the Department;
- maintain all production records for at least three years; and
- erect signs identifying the crop as industrial hemp and which meet other specified requirements.

The Department may deny, suspend, revoke, or refuse to renew a grower's license for false or misleading statements or other violations of regulatory requirements.

#### Approval and Regulation of Industrial Hemp Cultivars.

The various types of industrial hemp cultivars that may be produced by a grower are subject to regulation by the Department. A "cultivar" is defined as a variation of the *Cannabis* plant that has been developed through cultivation by selective breeding. The industrial hemp cultivars authorized for production under the act must be propagated through certified, conventionally bred pedigreed seeds as determined by the Department through its rule-making authority. Except when grown by an accredited agricultural research institution or by a registered seed breeder developing a new Washington seed cultivar, industrial hemp must be grown only from seed types identified on a list of approved seed cultivars established either by statute or by the Department by rule. The act contains a list of approved seed cultivars consisting of varieties currently approved in Canada and in many other countries, some of which require regular THC testing and others do not. In addition, the Department is granted broad authority to approve the use of other types of seed cultivars in the future.

#### Testing of Industrial Hemp Plants.

For those cultivars requiring THC testing, industrial hemp growers are required to annually submit plant samples to an independent, Department-certified testing laboratory for the testing of THC levels. The annual test results must be retained by the grower for a period of three years. The costs of the testing must be borne by the producer, and the test results must be provided to

the Department by either the laboratory or the grower, or both, at the request of the department. The Department has discretionary authority to require random testing at any time.

Industrial Hemp Account.

The act creates an industrial hemp account in the State Treasury. All revenue derived from licensing fees must be deposited in the account, and expenditures require an appropriation by the Legislature. Such expenditures may only be used for defraying the costs of implementing the act.

Washington State University Research Project.

The Washington State University is authorized to undertake wide-ranging research regarding the feasibility and desirability of industrial hemp production and marketing in this state. The research is subject to specified guidelines and must include the review of information gathered from agricultural and scientific literature and the examination of the practices of other states and countries regarding the marketing of industrial hemp. The university must report its findings and recommendations to the Legislature by January 14, 2016.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.