

HOUSE BILL REPORT

ESSB 6206

As Passed House:
March 1, 2016

Title: An act relating to authorizing the growing of industrial hemp.

Brief Description: Authorizing the growing of industrial hemp.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hasegawa, Takko, Chase, Schoesler and Sheldon).

Brief History:

Committee Activity:

Commerce & Gaming: 2/23/16 [DP].

Floor Activity:

Passed House: 3/1/16, 97-0.

Brief Summary of Engrossed Substitute Bill

- Declares industrial hemp to be an agricultural product that may be grown, produced, processed, possessed, and exchanged in the state exclusively as part of an industrial hemp research program supervised by the Washington State Department of Agriculture (WSDA).
- Gives rule-making authority and direction to the WSDA to establish an industrial hemp research pilot program.
- Requires the Washington State University to study the feasibility and desirability of industrial hemp production in the State of Washington, subject to receiving federal or private funding.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege and Vick.

Staff: Peter Clodfelter (786-7127).

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.

Background:

Industrial Hemp Defined and Described.

Industrial hemp is generally defined as encompassing those *Cannabis* plant types intended for agricultural and industrial purposes. Although marijuana is also derived from the *Cannabis* plant, industrial hemp is 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. Tetrahydrocannabinol is a psychoactive, organic compound that in sufficient concentrations will cause intoxication in humans. Industrial hemp has low levels of THC and, accordingly, does not have psychoactive effects or cause intoxication. Throughout much of the world, the legal definition of industrial hemp includes the requirement that the plant contains no more than 0.3 percent of THC. Marijuana, by contrast, has significantly higher concentrations of THC, typically ranging between 5 to 30 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 also 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 also 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 Law.

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). The federal CSA does not distinguish between industrial hemp and other varieties of *Cannabis* on the basis of THC content. Accordingly, under the federal CSA, it is illegal to grow *Cannabis* plants containing any level of THC without a permit from the United States Drug Enforcement Administration (DEA).

However, without changing the federal CSA prohibition, the federal Agricultural Act of 2014 (2014 Farm Bill) defined the term "industrial hemp" and explicitly authorized institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes, but only in states that have legalized the growing and cultivation of industrial hemp.

The State Controlled Substances Act.

Washington's Controlled Substances Act (state CSA) does not explicitly distinguish between industrial hemp and other varieties of *Cannabis*, although the state CSA's definition of "marijuana" includes a requirement that there be a THC concentration greater than 0.3 percent on a dry weight basis, effectively excluding industrial hemp.

Legalization and Regulation of Hemp in Other States.

In recent years, many state legislatures across the United States have considered legalizing or have legalized the agricultural production of industrial hemp. To date, approximately 12 states have legalized industrial hemp production, including: California, Colorado, Indiana, Maine, Montana, North Dakota, Oregon, South Carolina, Vermont, Virginia, Tennessee, and West Virginia. Other states have passed legislation authorizing the cultivation of industrial hemp for pilot projects or studies, including: Connecticut, Delaware, Hawaii, Illinois, Kentucky, Michigan, Nebraska, New Hampshire, New York, North Carolina, and Utah.

Summary of Bill:

Industrial Hemp Research Program Established Through Rule-Making.

Industrial hemp is designated as an agricultural product that may be grown, produced, processed, possessed, and exchanged in Washington solely as part of the industrial hemp research program supervised by the Washington State Department of Agriculture (WSDA).

Subject to the availability of amounts appropriated for this specific purpose, the WSDA must establish an industrial hemp research program pursuant to which persons grow or cultivate industrial hemp for researching the feasibility and desirability of industrial hemp production in Washington. The WSDA must supervise the program through licensure and seed certification but may not fund growing operations.

Processing any part of industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans is expressly prohibited.

Industrial hemp is defined as all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera *Cannabis* that meet the definition of "marijuana" in the state CSA.

The WSDA must adopt rules as necessary to license persons to grow industrial hemp under the industrial hemp research program. Rules must include, but are not limited to, the following: (1) fee amounts for license application, issuance, and renewal; (2) testing criteria and protocols for testing compliance with THC levels; and (3) grower qualifications consistent with the requirement that a person with a prior felony drug conviction within 10 years of applying for a license is ineligible. Additionally, the WSDA may adopt rules concerning the goals of the program and rules for administration of an industrial hemp seed certification program.

A person seeking to grow industrial hemp as part of the industrial hemp research program must apply to the WSDA for a license on a form provided by the WSDA, which at a minimum must include, among other things, the following:

- a signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor;
- written consent allowing the WSDA, if a license is ultimately issued to the applicant, to enter onto the industrial hemp production fields to conduct physical inspections of industrial hemp planted and grown by the applicant and to ensure compliance with the requirements of the act;

- any other information required by the WSDA; and
- the payment of a nonrefundable application fee, in an amount set by the WSDA.

All records, data, and information filed in support of a license application are exempt from disclosure under the state Public Records Act.

The industrial hemp research program is subject to a grant of necessary permissions, waivers, or other forms of valid legal status by the DEA or other appropriate federal agency.

All moneys collected by the WSDA under the program must be deposited in an account within the agricultural local fund and used solely for carrying out the program.

Washington State University Study.

Subject to receiving federal or private funds, the Washington State University must study the feasibility and desirability of industrial hemp production in the state.

Washington State University must report its findings to the Legislature by January 14, 2017, and include in the report recommendations for any legislative actions necessary to encourage and support the development of an industrial hemp industry in Washington.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The industrial hemp research program authorized in the bill would allow Washington to take advantage of Congress's recent broad grant of authority for states to license the production of industrial hemp. Numerous other states have already passed laws authorizing the production of industrial hemp under Congress's authorization; Washington is falling behind instead of leading the way. Washington farmers are ready to plant industrial hemp crops, and this bill is the most responsible path toward making that a reality. China, Russia, and South Korea are the leading producers of industrial hemp worldwide, and the United States is left to import hemp products to meet demand. Industrial hemp has numerous uses, including: biofuels, textiles, energy storage, nutrition, fiber, building materials, stream buffers, and carbon sequestration. Industrial hemp can also be used instead of plastics and other non-biodegradable products. There is also increasing demand for hemp-based foods and body care products made with extracted cannabidiol (CBD). Although an ideal program would allow collection of CBD from industrial hemp, which this bill does not allow, the authorization in the bill is at least a step in the right direction. The industrial hemp agricultural pilot program authorized in Kentucky is an example of a successful industrial hemp program under the federal authorization (and an example of a state program that prioritizes and authorizes CBD extraction). Under Kentucky's program, farmers enter a simple memorandum of understanding with the state Department of Agriculture and a separate memorandum of understanding with a state institution of higher learning. Farmers

then collect and report information to both the Department of Agriculture and the institution of higher learning. The WSDA is proactive on the issue of industrial hemp and feels the sense of urgency. There is hope that the WSDA can expedite its rule-making process to implement the program so that industrial hemp seeds are in the ground by the 2017 growing season. Issues that will need to be addressed in the future through rule-making or by the Legislature include the need for access to certified, pedigreed seeds, the need to prevent cross-pollination between industrial hemp crops and marijuana crops (although the risk of cross-pollination is overstated), and authorizing CBD extraction from industrial hemp.

(Opposed) None.

(Other) Although under the proposed program licensed farmers would be authorized to grow industrial hemp, ordinary people who may want to grow hemp plants in their yard are still prohibited from doing so. Also, the requirement that industrial hemp be not more than 0.3 percent THC by dry weight is not justified by health concerns and could be increased. Research conducted through the program should be broad and include studying the health effects of industrial hemp products, which is of interest to the average citizen. If the program is not started shortly, potential industrial hemp farmers will move to states that have developed programs and take their investments with them.

Persons Testifying: (In support) Senator Hasegawa, prime sponsor; Joy Beckerman Maher, Hemp Industries Association; Ah Warner, Cannabis Basics; Deandria Sanders; Ezra Eickmeyer; Elijah Eickmeyer; and Steve Fuller, Washington State Department of Agriculture.

(Other) Pamela Bosch, Hemp Dwellings; and Steve Sarich, Washington Hemp Commission.

Persons Signed In To Testify But Not Testifying: None.