
Commerce & Gaming Committee

E2SSB 5276

Brief Description: Concerning hemp production.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ericksen, Takko and Wellman).

Brief Summary of Engrossed Second Substitute Bill

- Establishes a hemp agricultural commodity program, under the Washington State Department of Agriculture's (WSDA) jurisdiction, to replace the Industrial Hemp Research Program, which is repealed January 2020.
- Requires the WSDA to develop and submit the state's plan for regulating hemp production to the United States Department of Agriculture, with certain minimum components, under a process included in the 2018 Farm Bill.
- Authorizes Washington State University to develop and make accessible an Internet-based application to provide regional communications concerning recommended planting times for hemp crops in Washington.
- Amends the Controlled Substances Act to expressly exclude hemp from scheduled substances.

Hearing Date: 3/25/19

Staff: Peter Clodfelter (786-7127).

Background:

Congress authorized states to establish limited industrial hemp pilot programs in the 2014 Farm Bill. By 2016 Washington and other states across the United States authorized limited agricultural pilot programs, called the Industrial Hemp Research Program in Washington, to authorize hemp production and commerce through research programs connected to institutions of higher education. The Washington State Department of Agriculture (WSDA) administers the

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program in Washington and licenses individual hemp producers and processors who produce and process hemp and hemp products for research-related purposes.

Federally, although the 2014 Farm Bill authorized these state pilot programs for hemp production and commerce, the federal Controlled Substances Act of 1970 continued to effectively outlaw hemp as a Schedule 1 controlled substance because it did not distinguish between hemp and other varieties of *Cannabis* on the basis of delta-9 tetrahydrocannabinol (THC) content.

Federal law regarding hemp substantially changed with the enactment of the 2018 Farm Bill (also called the federal Agriculture Improvement Act of 2018). Hemp is now expressly excluded from the federal Controlled Substances Act, is declared a legal agricultural commodity eligible for crop insurance, and is made subject to a new federal-state and federal-tribal regulatory framework. Under this framework, states and Indian tribes may choose how they wish to authorize, prohibit, or regulate hemp production.

A state or tribe desiring primary regulatory authority over hemp production in the state or tribe's territory must submit to the United States Department of Agriculture (USDA) a plan under which the state or tribe monitors and regulates hemp production. The USDA has 60 days to approve a compliant plan or disapprove of a noncompliant plan. The 2018 Farm Bill includes certain minimum requirements for state and tribal plans, although states and tribes may regulate hemp production more stringently than the federal government otherwise would.

If a state or tribe does not have its own plan for regulating hemp production, persons in the state or tribe's jurisdiction qualifying for a hemp producer license developed by the USDA would be authorized under federal law to produce hemp. States and tribes are prohibited from stopping the transportation or shipment of hemp or hemp products produced under the new federal authorization through the state or tribal territory. Effective one year after the date the USDA establishes a plan for regulating hemp and reviewing and approving state regulatory plans, the authorization for industrial hemp research programs in the 2014 Farm Bill is repealed from federal law.

Summary of Bill:

The Washington State Department of Agriculture (WSDA) must develop an agricultural commodity program to replace the Industrial Hemp Research Program (IHRP), in accordance with the federal Agriculture Improvement Act of 2018 (also called the 2018 Farm Bill). The WSDA is granted sole regulatory authority over the production of hemp and may adopt rules to implement the new program.

All rules relating to hemp, including any testing of hemp, are outside of the control and authority of the Washington State Liquor and Cannabis Board (LCB). When the WSDA's rules implementing the new program become effective, persons licensed to grow hemp under the IHRP may transfer into the new regulatory program and continue hemp production under the new program. Additionally, immediately upon the act's effective date, persons licensed to grow hemp under the IHRP may produce hemp in a manner otherwise consistent with the requirements of the new hemp program and the 2018 Farm Bill.

The WSDA, in consultation with the Governor and the Attorney General, must develop Washington's plan to conform to the 2018 Farm Bill. The proposal for Washington's plan may include any practice or procedure to the extent the practice or procedure is consistent with the 2018 Farm Bill, and the proposal must include the following minimum components:

- a practice for hemp producers to maintain relevant information regarding land on which hemp is produced including a legal description of the land, for a period of not less than three calendar years;
- a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol (THC) concentration levels of hemp, without the application of heat;
- a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of the new authorization, and products derived from the plants;
- a procedure for enforcement required under the 2018 Farm Bill; and
- a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not produced in violation of the authorization.

The WSDA must issue hemp producer licenses to applicants qualified under the program requirements and as provided in the 2018 Farm Bill. The plan must identify qualifications for license applicants, to include adults and corporations and to exclude persons with felony convictions as required under the 2018 Farm Bill. The WSDA may adopt rules establishing fees for THC testing, inspections, and additional services required by the USDA. License fees and any money received by the WSDA under the program are deposited in the new Hemp Regulatory Account (nonappropriated).

A person producing hemp under the program must notify the WSDA of the source of their hemp seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones used for hemp production in Washington. The WSDA must develop a postharvest test protocol for testing hemp that includes testing of whole plant samples or other testing protocol identified in regulations established by the USDA.

Hemp may be produced into food. The WSDA may regulate the processing of hemp food products that are allowable under federal law to the same extent as the WSDA regulates other food processing under the Food Safety and Security Act and the Washington Food Processing Act.

Washington State University may develop and make accessible an Internet-based application designed to assist hemp producers by providing regional communications concerning recommended planting times for hemp crops in Washington.

It is provided there is no distance requirement, limitation, or buffer zone between any licensed hemp producer or hemp processing facility and any marijuana producer or marijuana processor, and no such rule may be established without the evaluation of sufficient data showing impacts to either crop as a result of cross-pollination. In an effort to prevent cross-pollination between hemp plants produced under the program and marijuana plants produced within the regulated marijuana system, the WSDA, in consultation with the LCB, must review the state's policy regarding cross-pollination and pollen capture to ensure an appropriate policy is in place, and must modify policies or establish new policies as appropriate. Under any such policy, when a documented conflict involving cross-pollination exists between two farms or production facilities

growing or producing hemp or marijuana, the farm or production facility operating first in time shall have the right to continue operating and the farm or production facility operating second in time must cease growing or producing hemp or marijuana, as applicable.

Upon approval of Washington's plan by the USDA, the WSDA is required and authorized to engage in expedited rulemaking to develop the state's plan and to begin issuing hemp licenses without delay.

Hemp and seeds used for licensed hemp production are excluded from the definition of "Marijuana" in the Controlled Substances Act. Similarly, hemp is excluded from the listing for "Tetrahydrocannabinols" in the Controlled Substances Act, and from the definition of "Controlled substance."

Effective January 1, 2020, the IHRP is repealed from law. No law or rule related to certified or interstate hemp seeds applies to or may be enforced against a person with a license to produce or process hemp under the new hemp program or, until it is repealed from law, the IHRP.

A savings clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 14, relating to the repeal of the Industrial Hemp Research Program, which takes effect January 1, 2020.