

HOUSE BILL REPORT

E2SSB 5276

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to hemp production.

Brief Description: Concerning hemp production.

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

Brief History:

Committee Activity:

Commerce & Gaming: 3/25/19, 3/26/19 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)**

- 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State Department of Agriculture's (WSDA) jurisdiction, to replace the Industrial Hemp Research Program, which is repealed January 2020.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.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass as amended. Signed by 10 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan 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:

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 (IHRP) 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 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 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.

In Washington's existing IHRP, 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 prohibited. Additionally, current agency rules administering the IHRP provide that industrial hemp may not be grown within four miles of any field or facility being used to grow marijuana within the regulated marijuana system.

Summary of Amended 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. Fees 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 to the same extent as the WSDA regulates other food processing under the Food

Safety and Security Act and the Washington Food Processing Act. The WSDA may not consider foods containing hemp to be adulterated when produced in compliance with state law and WSDA rules.

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 has 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.

The WSDA must use expedited rulemaking to adopt the state hemp plan submitted to the USDA and may conduct initial expedited rulemaking to establish rules to allow hemp licenses to be issued 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."

The prohibition in the existing IHRP on 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 removed, so the prohibition no longer applies.

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.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill makes the following changes to the engrossed second substitute bill:

- The definition of "postharvest test" is amended to specify that one of the authorized postharvest tests of hemp is a test of hemp based on whole ground plant samples without heat applied.
- A reference to federally allowed hemp food products is removed from the food processing provisions so that the Washington State Department of Agriculture (WSDA) must regulate the processing of hemp for food products in the same manner as other food processing without regard to whether the food products are allowable under federal law.
- The WSDA is prohibited from considering foods containing hemp to be adulterated when produced in compliance with state law and the WSDA's rules
- It is provided that all receipts from fees established under the new hemp program are deposited in the Hemp Regulatory Account, rather than referencing only receipts from license fees.
- The requirement is removed that the United States Department of Agriculture (USDA) must have approved Washington's hemp plan submitted to the USDA before the WSDA must engage in expedited rule making to adopt the state hemp plan. The WSDA may engage in initial expedited rulemaking to issue hemp licenses without delay upon submitting Washington's hemp plan to the USDA.
- The prohibition is removed from the existing Industrial Hemp Research Program (IHRP) on processing industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 27, 2019.

Effective Date of Amended Bill: 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.

Staff Summary of Public Testimony:

(In support) People in Washington are excited about new opportunities involving hemp and to bring Washington up to speed relative to other states with more established hemp programs. This bill positions Washington to be a leader in the hemp industry. There is tremendous revenue potential from hemp commerce within Washington, nationally, and internationally. Stakeholders support the amendment proposed in the House Commerce and Gaming Committee that would bring administration of food safety standards to the state level and align standards for hemp food products with the established federal Food and Drug Administration (FDA) process for ensuring consumer protection. Federal law and federal agencies are still catching up to the changes in the 2018 federal Farm Bill that make clear hemp is not a scheduled substance. The FDA has already waded into CBD-derived medications. The proposed amendment provides Washington with the authority to ensure consumer product safety at the state level.

(Opposed) None.

(Other) The Washington State Department of Agriculture (WSDA) has worked closely with stakeholders and legislators on this bill to create a framework for commercial hemp production in Washington, and is signed in as "other" only because the program's costs are not included in the Governor's proposed budget. Costs to the WSDA for establishing a commercial hemp production program are first-year impacts. After the first year, the program is expected to be fully self sustaining. The bill, with the amendments, will allow Washington hemp producers the opportunity to participate in this new and emerging market. A previous bill created the existing Industrial Hemp Research Program developed by the WSDA under the 2014 federal Farm Bill. The new hemp program in this bill will meet the less restrictive standards for state hemp programs under the 2018 federal Farm Bill.

Persons Testifying: (In support) Josh Ashby, Lane Powell, PC.

(Other) Kelly McLain, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.