

# HOUSE BILL REPORT

## ESB 5372

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**As Reported by House Committee On:**  
Commerce & Gaming

**Title:** An act relating to a hemp processor registration process.

**Brief Description:** Concerning hemp processor registration and a hemp extract certification.

**Sponsors:** Senators Stanford, Warnick, Conway, Hasegawa, Saldaña and Wilson, J..

**Brief History:**

**Committee Activity:**

Commerce & Gaming: 3/19/21, 3/25/21 [DP].

**Brief Summary of Engrossed Bill**

- Allows a hemp processor to register with the Washington State Department of Agriculture (Department) for compliance with interstate or international hemp processing requirements or stipulations.
- Allows a hemp processor to obtain a hemp extract certification to certify that hemp extract exported to other states is in compliance with Washington inspection and sanitation requirements.
- Requires the Department to issue a hemp extract certification in lieu of a food processing license to a hemp processor meeting specified application requirements.

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### HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** Do pass. Signed by 9 members: Representatives Kloba, Chair; Wicks, Vice Chair; MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers, Kirby, Morgan, Vick and Wylie.

**Staff:** Kyle Raymond (786-7190).

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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 part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Federal and State Regulation of Hemp Production.

The federal Agricultural Act of 2014 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 growing and cultivating industrial hemp.

In 2016 the Legislature established the Industrial Hemp Research Pilot Program (IHRP) to begin pilot studies to research the cultivation and commercial viability of an industrial hemp industry in Washington. Under the research program, industrial hemp could be grown, produced, possessed, processed, and exchanged in the state solely as part of the IHRP. The Washington State Department of Agriculture (Department) established rules to implement the program and to license individual growers who may grow industrial hemp and transfer industrial hemp and industrial hemp products within the parameters of IHRP.

In 2017 the Legislature excluded industrial hemp from the state Controlled Substances Act schedule of controlled substances.

The federal Agriculture Improvement Act of 2018 (2018 Farm Bill) changed hemp's status under federal law by removing hemp from the schedules of controlled substances in the federal Controlled Substances Act. The 2018 Farm Bill also created a federal regulatory framework for hemp production that allows states and tribes to be the primary regulator of hemp production.

In 2019 the Legislature created a new agricultural commodity program for commercial hemp production in Washington, replacing the IHRP. The Department developed the state's hemp plan, and the plan includes elements required in the 2018 Farm Bill, including testing procedures and enforcement provisions. The Department administers the program and issues licenses to individual hemp producers. All rules relating to hemp under the program, including any testing of hemp, are outside of the control and authority of the Liquor and Cannabis Board.

Under the state hemp program, hemp is defined as the plant *Cannabis sativa L.* and any part of the plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

### Federal and State Regulation of Hemp Food Processing.

In addition to removing hemp from the federal list of controlled substances, the 2018 Farm Bill also preserved Federal Drug Administration (FDA) authority to regulate ingredients in food, including hemp and hemp extracts such as cannabidiol (CBD). The FDA has issued guidance prohibiting CBD from being used as a food additive, unless a new exception is created by FDA rule or congressional action.

The 2019 state hemp law provides that the whole hemp plant may be used as food, and that the Department must regulate the processing of hemp for food products, that are allowable under federal law, in the same manner as other food processing under the Food and Safety Act and the Washington Food Processing Act. Food processing means the handling or processing of any food in any manner of preparation for sale for human consumption. The Department issued a memorandum in August 2019 that specified hemp-derived CBD is not currently allowed as a food ingredient under state law.

Certain hemp components are currently authorized to be added to food consistent with FDA and Department rules, including hulled hemp seeds, hemp seed protein powder, and hemp seed oil. The FDA has issued notices for each of these hemp components, providing that these hemp components are generally recognized as safe and may be used as food ingredients without prior approval.

The Department administers a Food Safety Program that authorizes the Department to license and regulate any business entity that processes, manufactures, stores, or handles any food product that is subject to wholesale or retail distribution within the state. This regulatory authority includes the authority to inspect and analyze food products, and to regulate food processing, handling, and storage establishments and practices.

#### Liquor and Cannabis Board Marijuana Testing Requirements.

The Liquor and Cannabis Board (LCB) issues licenses for businesses to produce, process, and sell marijuana. On a schedule determined by the LCB, licensed marijuana producers and processors must submit representative samples of marijuana or marijuana products produced or processed by the licensee to an independent, third-party testing laboratory meeting accreditation requirements established by the LCB, for inspection and testing.

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

#### Hemp Processor Registration.

A hemp processor that processes hemp for commercial use or sale may register with the Washington State Department of Agriculture (Department). The Department may adopt rules as necessary to register hemp processors.

The registration application must include the physical address of all locations where hemp is processed or stored, a registration fee as set in rule, and any other information the Department requires.

A registered hemp processor is not required to obtain a hemp producer license. A registered hemp processor must be a registered business entity in Washington or a foreign entity compliant with state laws.

A hemp processor is a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

Hemp Extract Certification.

A hemp processor engaging in the production of hemp extract for use as a food ingredient may apply for hemp extract certification to certify the hemp processor's compliance with Washington's inspection and good manufacturing practices requirements. The certification is issued by the Department to hemp processors that manufacture hemp extract for export to other states that allow hemp extract as a food ingredient.

A hemp extract means a substance or compound intended for human ingestion that is derived from, or made by, processing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration.

The Department must regulate hemp extract processing the same as other food processing and issue a hemp extract certification in lieu of a food processing license to a hemp processor who meets application requirements. The Department's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements. The Department may adopt rules specific to hemp extract certification and must establish application, initial certification, and renewal fees.

A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

Applicants for certification must meet the same requirements as applicants for a food processing license including, but not limited to, successful completion of an inspection by the Department.

The Department may deny, suspend, or revoke a hemp extract certification on the same grounds that are used for denial, suspension, or revocation of a food processor's license.

*Federal Authorization for the Use of Hemp Extracts in Food Processing.* Until such time as hemp extract is federally authorized for use as a food ingredient, hemp extract is not an approved food ingredient in Washington. At such time as federal authorization of hemp extracts as a food ingredient occurs, the Department must cease issuance of hemp extract certifications, and hemp processors with a hemp extract certification must apply for a food processor license at renewal.

Liquor and Cannabis Board Hemp Testing Authority.

If a marijuana producer or marijuana processor licensed by the Liquor and Cannabis Board (LCB) is engaged in producing or processing hemp at the same location for which they are licensed to produce or process marijuana, the LCB may test samples represented as hemp that are obtained from a location licensed for marijuana production or marijuana processing

for the sole purpose of validating THC content of products represented as hemp. Any product with a delta-9 tetrahydrocannabinol concentration exceeding 0.3 percent on a dry weight basis is considered marijuana.

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**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 purpose of the bill is to allow hemp processors to export hemp to other states, which will create jobs and bring income to Washington. Hemp processors currently have a barrier to exporting hemp products to other states because a growing number of states require registration or certification. This bill sets up programs to remove these barriers. The programs are voluntary for processors that wish to participate.

Other states allow hemp extracts as food ingredients and require a form certification that ensures hemp is being handled consistent with food processing standards. A separate process for hemp is needed in Washington because a hemp extract is not allowed as a food ingredient in the state, except for the limited instances under which it is allowed federally. This bill does not change the status of hemp as a food ingredient in the state. The program created under the bill is set up to change with any federal changes made regarding the allowance of hemp extracts as food ingredients.

The Liquor and Cannabis Board (LCB) does not regulate hemp. Under current law, the LCB is explicitly excluded from regulating hemp. However, current law allows for the production or processing of hemp and cannabis at the same location, and there are a small number of producers and processors that currently do this. Hemp and cannabis plants look identical, so the LCB is not able to distinguish between the two plants without testing. The bill would remove a roadblock in statute through allowing the LCB to test a product represented as hemp from a location licensed for both hemp and cannabis production or processing.

The hemp extract certification will allow hemp processors to market Washington hemp in the states that require such inspection and sanitation certification. This bill will further open up currently closed interstate commerce opportunities for Washington hemp processors. This bill will help hemp processors obtain insurance because they are not able to obtain a food processing license from the state.

The bill should specify that the registration program is open to persons with felony

convictions consistent with the federal Agriculture Improvement Act of 2018 (2018 Farm Bill), which also matches the state hemp program currently in statute.

Washington's hemp program currently falls behind more progressive hemp programs in other states, such as Colorado and Oregon, due to lack of permissions across the supply chain. Without a clear hemp registration option, producers and manufacturers are often unable to ship transitional or final hemp products to other states or countries. The bill will particularly help Washington hemp producers new to the industry through increasing access to the number of potential buyers they have access to. This bill is a step forward in Washington becoming a national leader in the hemp industry.

(Opposed) None.

(Other) The state commercial hemp program established in 2019 replaced a pilot program, which included both hemp producers and processors. The new commercial program was created after the 2018 Farm Bill legalized hemp production. The 2018 Farm Bill did not specify that processors needed coverage, so hemp processor licensing was phased out in January 2020. Hemp processors have indicated some type of official registration or license would assist them in the domestic and international marketplace to provide assurances to buyers about the safety of both intermediary and final hemp products.

Washington does not allow most hemp extracts in food unless they are identified as a food ingredient federally. Other states allow hemp extracts as food ingredients beyond federal standards. Recently, some states have put in place food safety-like requirements for hemp extracts being imported from other states. In order to access those markets, stakeholders asked that a hemp extract program be created to certify that processors are meeting good manufacturing practices and sanitation practices.

The Washington State Department of Agriculture is supportive of creating these non-mandatory registration and certification options through rulemaking.

**Persons Testifying:** (In support) Senator Stanford, prime sponsor; Sativa Rasmussen, Dorsey & Whitney LLP; Chris Thompson, Liquor and Cannabis Board; Bonny Jo Peterson, Industrial Hemp Association of Washington; Joy Beckerman, Hemp Ace International; and Dylan Summers, Lazarus Naturals.

(Other) Kelly McLain, State Department of Agriculture.

**Persons Signed In To Testify But Not Testifying:** None.