

SENATE BILL REPORT

ESB 5372

As Passed Senate, March 9, 2021

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: Agriculture, Water, Natural Resources & Parks: 2/02/21, 2/04/21
[DP, w/oRec].

Floor Activity: Passed Senate: 3/9/21, 49-0.

Brief Summary of Engrossed Bill

- Allows a hemp processor to register with the Department of Agriculture.
- Allows a hemp processor to obtain a hemp extract certification.
- Requires the Department of Agriculture to issue hemp extract certification in lieu of a food processing license.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Rolfes, Short and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Karen Epps (786-7424)

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: 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. Washington State Department of Agriculture (WSDA) 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 the research program. In 2017, the Legislature excluded industrial hemp from the state-controlled substances act schedule of controlled substances.

The federal Agriculture Improvement Act of 2018, changed certain federal authorities relating to producing and marketing hemp, defined as cannabis—*Cannabis sativa* L.— and derivatives of cannabis with extremely low—less than 0.3 percent on a dry weight basis—concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC). These changes include allowing hemp cultivation with certain regulations and removing hemp from the Federal Controlled Substances Act.

In 2019, the Legislature created a new agricultural commodity program for commercial hemp production in Washington, replacing the IHRP. WSDA developed the state's hemp plan and the plan includes elements required in the Agriculture Improvement Act of 2018, including testing and enforcement. WSDA administers the program and licenses individual hemp producers.

Food Processing. Food processing is the handling or processing of any food in any manner of preparation for sale for human consumption. Under the Washington Food Processing Act, WSDA is charged with the regulation of food processing.

Liquor and Cannabis Board. 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.

Summary of Engrossed Bill: Hemp Processor Registration. A hemp processor that processes hemp for commercial use or sale may register with WSDA. WSDA 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 required by WSDA.

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 State or a foreign entity compliant with state laws. Hemp processor is defined as 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. Until hemp extract is federally authorized for use as a food ingredient, hemp extract is not an approved food ingredient in the state. A hemp processor may obtain a hemp extract certification to allow its use as a food ingredient in another state that allows the use of hemp extract as a food ingredient.

WSDA 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. WSDA's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements. WSDA 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 WSDA. WSDA 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.

At such time as federal authorization of hemp extracts as a food ingredient occurs, WSDA must cease issuance of hemp extract certifications and at renewal, hemp processors with a hemp extract certification must apply for a food processor license.

Liquor and Cannabis Board. If a marijuana producer or marijuana processor licensed by the 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.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill sets up a voluntary mechanism for processors to register if they need it for export purposes. Without a hemp processor registration option, producers and manufacturers are often unable to ship transitional and final hemp products to other states and countries that require a hemp processor license or registration. The registration process will reduce barriers to entry for hemp producers in the state who have recently been left with very few buyer options for their hemp crops. This bill is necessary to allow processors of various hemp products to ship their products out of state and internationally. Processors have lost contracts because they were not registered with WSDA. This bill is an opportunity for rural business development. Processors need to be able to show they are a state-compliant business and this bill will do that. The production of industrial hemp is an industry with serious growth potential and this bill will allow for further development of the hemp industry.

OTHER: The Farm Bill of 2018 did not require processors be licensed or registered, but it is a limiting factor for producers and processors selling transitional and end products. Voluntary registration will provide assurances to the buyer.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Dylan Summers, Lazarus Naturals; Bonny Jo Peterson, Industrial Hemp Association of Washington; Brant Mayo, Grant County Economic Development Council.

OTHER: Kelly McLain, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: No one.