

HOUSE BILL REPORT

HB 1692

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to agriculture and farming.

Brief Description: Concerning agriculture and farming.

Sponsors: Representatives Buys, Sawyer, Chapman, Condotta, Stanford, Lytton, Vick, Blake and Fitzgibbon.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/15/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Adds marijuana, useable marijuana, and marijuana-infused products to the list of farm products whose production constitutes an "agricultural activity" so as to be presumed reasonable and not a nuisance.
- Provides that, for purposes of the nuisance statute, agricultural activities involving marijuana, useable marijuana, and marijuana-infused products must be considered to have been established as of the date they were licensed by the Liquor and Cannabis Board.
- Excludes the sale of marijuana, useable marijuana, and marijuana-infused products from the business and occupations tax exemption for agricultural products.
- Removes marijuana, useable marijuana, and marijuana-infused products from the scope of commodities whose production constitutes agricultural labor under the state unemployment compensation statute.
- Removes marijuana, useable marijuana, and marijuana-infused products from the scope of commodities whose production is exempt from the state overtime statute.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Fitzgibbon, Kretz, Lytton, Pettigrew, Robinson, Springer, Stanford and J. Walsh.

Minority Report: Do not pass. Signed by 4 members: Representatives Dent, Assistant Ranking Minority Member; Chandler, Orcutt and Schmick.

Staff: Robert Hatfield (786-7117).

Background:

Nuisance.

A nuisance is an activity that injures health, is indecent, offends the senses, or obstructs the free use of property so that it interferes with the comfortable enjoyment of life and property. In a nuisance lawsuit, a plaintiff may sue a property owner based on the claim that the property owner has made unreasonable use of his or her property to the detriment of the plaintiff's property.

Nuisance-Agricultural Activities Exemption.

Agricultural activities conducted on farmland are generally presumed to be reasonable and not a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. In order to be considered reasonable and thus not a nuisance, the agricultural activities must be consistent with good agricultural practices and established prior to surrounding nonagricultural activities. Agricultural activities that comply with all applicable laws and rules are presumed to be good agricultural practices.

For the purposes of nuisance law, "agricultural activities" are defined as activities that occur on a farm in connection with the commercial production of farm products.

For the purposes of nuisance law, "farm products" are defined to include certain specified products, including, among other things, livestock, vegetables, grasses, trees, and freshwater fish and fish products.

Liquor and Cannabis Board.

The Liquor and Cannabis Board (Board) issues various licenses and permits relating to the production, distribution, and retail sale of beer, wine, and spirits. It also issues licenses for the production, processing, and retail sale of marijuana under the Washington Controlled Substances Act (CSA). Each license and permit issued by the Board carries a fee, which is either fixed (as in the case of microbrewery licenses, for example) or varied depending on sales (as in the case of the spirits retail license fee).

Business and Occupation Tax.

A business and occupation (B&O) tax on the gross receipts of all in-state business activities, except utility activities, is imposed on every person who has a substantial nexus to the state for the act or privilege of doing business. The B&O tax does not apply to farmers (persons producing agricultural products for sale) selling agricultural products at wholesale or growing agricultural products owned by others, such as custom feed operations.

The B&O tax definition of "agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products.

Overtime Requirements.

State minimum wage laws establish requirements related to overtime work. These laws require that covered employees receive overtime pay for hours worked over 40 hours per week. Individuals who are exempt from state overtime requirements include certain truck and bus drivers, seamen, seasonal employees at a fair, certain agricultural workers, and employees who receive compensatory time off in lieu of overtime pay.

Unemployment Compensation.

Under the Employment Security Act, qualified individuals who have lost their job through no fault of their own, or for good cause, can collect unemployment insurance benefits. Benefits are funded by contributions collected from all employers in the state. Exemptions to unemployment insurance coverage are specified in statute and include an exemption for certain agricultural labor.

Summary of Substitute Bill:

The definition of "farm product" under the nuisance statute is expanded to include marijuana, useable marijuana, and marijuana-infused products.

For purposes of the nuisance statute, agricultural activities involving marijuana, useable marijuana, and marijuana-infused products must be considered to have been established as of the date they were licensed by the Liquor and Cannabis Board.

Sales of marijuana, useable marijuana, and marijuana-infused products are excluded from the business and occupations tax exemption for agricultural products.

Marijuana, useable marijuana, and marijuana-infused products are removed from the scope of commodities whose production constitutes agricultural labor under the state unemployment compensation statute.

Marijuana, useable marijuana, and marijuana-infused products are removed from the scope of commodities whose production is exempt from the state overtime statute.

Substitute Bill Compared to Original Bill:

The date of establishment of agricultural activities involving marijuana, useable marijuana, and marijuana-infused products is changed to the date that the activity was licensed by the Liquor and Cannabis Board. The exclusion of marijuana, useable marijuana, and marijuana-infused products from the definition of "agricultural products" under the business and occupation tax statute is removed. Sales of marijuana, useable marijuana, and marijuana-infused products are excluded from the business and occupations tax exemption for agricultural products. Marijuana, useable marijuana, and marijuana-infused products are

removed from the scope of commodities whose production constitutes agricultural labor under the state unemployment compensation statute. Marijuana, useable marijuana, and marijuana-infused products are removed from the scope of commodities whose production is exempt from the state overtime statute.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2017.

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

Staff Summary of Public Testimony:

(In support) Saying that cannabis is not agriculture will have an adverse effect on the industry. The industry needs to be established on a secure foundation. The industry needs sustainable, reasonable, conscientious growth. The Washington State Department of Agriculture regulates cannabis like an agricultural activity. Clarifying cannabis as an agricultural product is one of the cannabis industry's top issues. Cannabis has produced \$400 million in excise taxes since its legalization in Washington.

The work of growing cannabis is fundamentally an agricultural endeavor. Cannabis is, or soon will be, Washington's third most valuable cash crop. Classifying cannabis as an agricultural product stabilizes the industry. Grant County is looking at an ordinance that would prohibit cannabis farms from emitting odors, and require 100-foot setbacks from the property line and a minimum of one-half mile to the nearest residence. By contrast, cattle feedlots have a 10-foot setback, and must be a minimum of only 500 yards from the nearest residence.

Hops are considered an agricultural product, and hops produce a form of pollen that creates irritants and respiratory problems. If hops are defined as an agricultural product, then cannabis should be defined as an agricultural product, too. One cannabis farmer has 65 employees in Elma. An anti-marijuana neighbor has made approximately 60 calls to the local clean air agency, which has resulted in only two violations, both on harvest days. If cannabis is not classified as agriculture, the clean air agencies will make it harder and harder to farm. As farmers, they deal with the same challenges as others in agriculture; they can lose crops to rain, and there are times when they have to work long hours.

This bill benefits consumers by streamlining and normalizing outdoor production. Other agricultural operations, such as mushroom farms, put out offensive odors, but they are allowed to exist. Not being considered as agriculture is the biggest issue that cannabis farmers face. Not being considered agriculture lets jurisdictions pick and choose unfairly, and sometimes shoves production into the Urban Growth Area because that is where there are light-industrial zoned lands. Some cannabis producers are comfortable paying the business and occupation tax.

(Opposed) None.

(Other) There may be some unintended consequences with section 3 of the bill. Cannabis production should not be exempt from the overtime rules. Cannabis growing is more like production than growing, and so the labor rules for agriculture should not apply to cannabis production. Cannabis should be viewed more like a manufactured product.

There have been some disputes about what counties can and cannot do with regard to regulating cannabis production. Oftentimes, growing operations end up in the county, and the retail operations end up in the city. There are no sideboards on this bill, which will create neighbor versus neighbor issues. This bill creates a special class for cannabis farmers, but other farmers and ranchers don't get this special treatment.

Persons Testifying: (In support) Representative Buys, prime sponsor; Lara Kaminsky, The Cannabis Alliance; Alan Schreiber, Agriculture Development Group; Danielle Rosellison, The Cannabis Alliance and Cannabis Farmers Council; Ryan Sevigny, High Tide Ranch LLC; Steven McCombs, MC2 LLC; Jeff Merryman, IGrow LLC; Justin Wildhaber, Green Freedom; Bailey Hirschburg, Washington NORML PAC; David Burns, StarCrisp Farms LLC; Sean O'Leary, Arlington Cannabis Coalition; and Shawn Wagenseller, Cannabis Farmers Council and Cannabis Alliance.

(Opposed) None.

(Other) Seamus Petrie, United Food and Commercial Workers United Council; Samantha Skeens, United Food and Commercial Workers; Lara Berg, State Association of Counties; and Tom Davis, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.