
Commerce & Gaming Committee

HB 1401

Brief Description: Concerning hemp production.

Sponsors: Representatives Shea, Blake, Chandler, Walsh, Eslick and Kloba.

Brief Summary of Bill

- Establishes a new hemp regulatory program, under the Washington State Department of Agriculture's (WSDA) jurisdiction, to license and regulate hemp producers and hemp production.
- Requires the WSDA to develop and submit Washington 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 hemp growers in the existing Industrial Hemp Research Program to transition into the new hemp program, and repeals the Industrial Hemp Research Program effective January 1, 2020.
- Deems specific seed cultivars approved for planting by licensed producers and directs the WSDA to develop rules authorizing additional seed cultivars.
- Directs the WSDA to develop and make accessible an Internet-based application to provide regional communications concerning recommended planting times for hemp crops in Washington state.
- Establishes a task force on the availability of crop insurance for hemp producers.
- Amends the Controlled Substances Act to expressly exclude the new definition of hemp from scheduled substances.

Hearing Date: 2/5/19

Staff: Peter Clodfelter (786-7127).

Background:

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.

Hemp, generally speaking, is defined as encompassing those *Cannabis* plant types intended for agricultural and industrial purposes. Although marijuana is also derived from the *Cannabis* plant, hemp is distinguishable from marijuana with respect to: (1) the types and percentages of organic compounds it contains; (2) its agricultural, industrial, and pharmaceutical uses; and (3) its observable physical characteristics.

For legal purposes, a key factor in distinguishing the two plants is the amounts of delta-9 tetrahydrocannabinol (THC) each contains. The THC is a psychoactive, organic compound that in sufficient concentrations will cause intoxication in humans. Hemp has low levels of THC and, accordingly, is considered not to have intoxicating effects. Throughout much of the world, the legal definition of hemp includes the requirement that the plant contains no more than 0.3 percent of THC. Marijuana, by contrast, typically has significantly higher concentrations of THC.

Until recently, federal law did not distinguish between hemp and marijuana, although 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 state, 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 state 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 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 to have primary regulatory authority over the production of hemp in the state or tribe's territory must submit to the 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, people 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 in the state or tribal jurisdiction. Additionally, 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 approval state regulatory plans, the authorization for industrial hemp research programs in the 2014 Farm Bill is repealed from federal law.

Summary of Bill:

Legislative intent and definitions are included. "Hemp" is defined as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof 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. Hemp is declared to be an agricultural product that may be legally grown, produced, processed, possessed, transferred, commercially sold, and traded. Hemp and hemp products produced in accordance with the new authorization may be transferred and sold within the state, outside of this state, and internationally.

The Washington State Department of Agriculture (WSDA) must develop an agricultural commodity program to replace the industrial hemp research pilot program, 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 Liquor and Cannabis Board (LCB). When the WSDA's rules implementing the new program become effective, people licensed to grow hemp under the industrial hemp research program may transfer into the new regulatory program and continue hemp production under the new program.

The WSDA must develop a proposal outlining Washington state's plan for regulating hemp production in accordance with the 2018 Farm Bill, for submission to the USDA. The proposal for Washington state'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, 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, including a process for licensees to comply with the program through a corrective action plan in appropriate circumstances;
- 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;
- a procedure for obtaining and submitting certain information described in the 2018 Farm Bill, including the contact information for each hemp producer, a legal description of the land on which hemp is grown, and the status of each hemp producer's license, to the Secretary of the USDA not more than 30 days after the date on which the information is received; and

- a certification that Washington state has the resources and personnel to carry out the above-listed practices and procedures.

A new hemp producer license is established, issued by the WSDA to applicants qualified under the new program and the 2018 Farm Bill. The WSDA must establish license fees in an amount that will fund the implementation of and sustain the hemp program. License fees and any money received by the WSDA under the program are deposited in the new Hemp Regulatory Account (non-appropriated).

Hemp produced must be propagated through certified, conventionally bred pedigreed seeds as determined by the WSDA through its rule-making authority. Except when grown by an accredited agricultural research institution or by a registered seed breeder developing a new Washington seed cultivar, hemp must be grown only from seed types listed by name in the act or included on a list of approved seed cultivars to be established by the WSDA by rule.

Additionally, until January 1, 2022, a licensed hemp producer may produce hemp from any cultivar brought into this state that has planting, growth, and stability records covering at least three years. Hemp seeds are subject to the WSDA's general regulatory authority with respect to agricultural seeds. Under this authority, the WSDA may sample, inspect, analyze, and generally regulate the hemp seeds used by licensed growers in Washington state. The WSDA may also charge fees and special assessments to licensed growers, as established by rule, related to the inspection, testing, and certification of hemp seeds.

For the purposes of the program, hemp seed samples collected for inspection and testing purposes must be directly taken into the custody of an authorized employee of the WSDA. Following collection, the WSDA employee must package and transport the seeds in a manner that ensures that the integrity of the sample is maintained until delivery to the testing facility.

The WSDA must develop a post-harvest test protocol for testing hemp under the new program that includes testing of whole plant samples. Cannabidiol (CBD) and CBD products derived from hemp are considered a food product that must be tested and treated in accordance with other agricultural crop derived food products for human and animal consumption.

The WSDA must 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 state. 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 Liquor and Cannabis Board, 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.

A legislative task force on the availability of crop insurance for hemp producers is established. Members must include one representative from each of the following:

- the two largest caucuses of the House of Representatives;
- the two largest caucuses of the Senate;
- the Farm Services Agency within the USDA;
- the Risk Management Agency within the USDA;
- the WSDA;
- a state farm bureau within the state; and
- the hemp industry.

The task force must review the following issue: Ensuring crop insurance is available in Washington state for hemp producers so hemp production can be expeditiously and successfully integrated into Washington state's economy and people in Washington can take full advantage of the agricultural and economic opportunities created for hemp production and commerce in the 2018 Farm Bill.

The task force must report its findings and recommendations by December 1, 2020.

Hemp and seeds used for licensed hemp production under the new program 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.

The sum of \$300,000, or as much thereof as may be necessary, is appropriated for the 2019-2021 biennium, from the General Fund to the WSDA for the purposes of the act.

Effective January 1, 2020, the industrial hemp research program is repealed from law.

Appropriation: \$300,000 to the Washington State Department of Agriculture.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.