

SENATE BILL REPORT

E2SSB 5276

As Amended by House, April 23, 2019

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: Agriculture, Water, Natural Resources & Parks: 1/29/19, 2/07/19 [DPS-WM, w/oRec].

Ways & Means: 2/18/19, 2/25/19 [DP2S].

Floor Activity:

Passed Senate: 3/12/19, 49-0.

Passed House: 4/23/19, 89-7.

Brief Summary of Engrossed Second Substitute Bill

- Requires the Department of Agriculture (WSDA) to develop an agricultural commodity program to regulate hemp production.
- 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 Agriculture Improvement Act of 2018.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5276 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford and McCoy.

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.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5276 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Bailey, Becker, Billig, Carlyle, Hasegawa, Hunt, Keiser, Lias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Jed Herman (786-7346)

Background: Industrial hemp is grown primarily as a source of fiber principally used for textiles, rope, paper, and building materials. Hemp seed is also used for food, feed, and oil. Hemp seed oil may be used in pharmaceuticals, cosmetics, inks, lubrication, household detergents, varnishes, resins, and paints. Hemp plants are also used as a source of livestock feed and bedding.

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. Industrial hemp may be grown, produced, possessed, processed, and exchanged in the state solely as part of the IHRP. 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.

Summary of Engrossed Second Substitute Bill: WSDA must develop an agricultural commodity program to replace the industrial hemp research pilot program, in accordance with the Agriculture Improvement Act of 2018. WSDA must develop the state's hemp plan in consultation with the governor and the attorney general and to include the plan elements required in the Agriculture Improvement Act of 2018. The state's plan must include procedures for:

- testing delta-9 tetrahydrocannabinol concentration levels of hemp;
- the effective disposal of plants and products produced that are not hemp;

- enforcement of the plan and for corrective action plans for licensees; and
- conducting annual inspections of, at a minimum, a random sample of hemp.

Under the plan, WSDA must certify the state has the resources and personnel to carry out the program. Hemp producers must maintain relevant information regarding land on which hemp is produced. Hemp and processed hemp produced under the hemp program or produced lawfully in another state, tribe, or country may be transferred and sold within the state, outside the state, and internationally. WSDA must regulate hemp processing for food products, allowable under federal law, in the same manner as other processed food and may adopt rules as necessary to properly regulate hemp food products including, but not limited to, establishing standards for creating hemp extracts used for food. WSDA must issue a hemp producer license to applicants who qualify to produce hemp and must establish license fees to fund implementation of the program and sustain the program. 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 this state.

A person producing hemp must notify WSDA of the source of the hemp seed or clones solely for maintaining a record of the source. WSDA must develop a post-harvest test protocol for testing hemp. WSDA may adopt rules establishing fees for THC testing, inspections, and additional services required by USDA. There is no distance requirement between a hemp producer or processor and a marijuana producer or processor and rules may not establish a distance requirement without the evaluation of sufficient data showing impacts to either crop as a result of cross-pollination. WSDA must, in consultation with the Liquor and Cannabis Board, review the state's policy on cross-pollination and pollen capture to ensure an appropriate policy is in place.

WSDA must use expedited rule making to adopt the state hemp plan once approved by USDA and, initially, when establishing rules to allow hemp licenses to be issued without delay. A licensed hemp grower under the IHRP may immediately produce hemp consistent with the hemp program and the Agriculture Improvement Act. No law or rule related to certified or interstate hemp seeds or a distance or buffer zone requirement applies to or may be enforced against a person with a license under the IHRP.

Appropriation: The bill contains an appropriation totaling \$300,000 from the general fund.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Proposed Substitute (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: This bill will allow hemp to get to farmers who want to grow hemp in Washington State without impacting people who are growing medicinal or recreational strains of a similar product. First nations history with hemp dates back at least 10,000 years so this plant has a historical and cultural significance to tribes. Hemp can be

used for textiles, food and health care needs, body care products, livestock feed, and solar panels. The bill allows states to move seed across state lines. This bill goes into effect immediately and provides WSDA with tools they need to establish a commercial hemp program so farmers can grow hemp in 2019. This is a strong bill that will move the hemp industry forward in Washington State. The bill designates CBD as a food product which will leverage existing safety regulations while opening this market for hemp. A cross pollination policy should not include a buffer zone between hemp and marijuana which would be a significant impediment to Washington farmers wishing to cultivate hemp. This bill emphasizes the most important component in this emerging industry, the farmer.

OTHER: This legislation may have an impact on research because state institutions could do research on hemp that would be helpful to the marijuana market. The bill allows for the processing of cannabinoids which will propel research. There are still some changes needed to the substitute bill, including creating a crosswalk between the new 2018 Farm Bill language and additional language needed in statute to create a self-sustaining commercial hemp program. This bill will create a commercial hemp program that allows Washington farmers the opportunity to participate in an emerging agricultural market.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Doug Ericksen, Prime Sponsor; Justin Hobson, Attorney, Lane Powell PC; Joshua Ashby, Attorney, Lane Powell PC; Nikie Walters, citizen; Tonia Farman, Hemp Northwest; Stephen Rowland, Rowland Green Fields; Kristofer Plunkett, Pacific Northwest Hemp Industries Association; Bonny Jo Peterson, Industrial Hemp Association of Washington; James McKee, Hemp Solutions Washington.

OTHER: Jessica Tonani, Verda Bio Research CEO; Kelly McLain, Washington State Department of Agriculture; Jay Gordon, Farmer.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We like the one-time funding support. The industry agreed to a fee-based approach which will become self-sustaining. We collaborated with the Colville Tribe, we support this bill. An amendment is needed to allow the industry to find and procure their own seed sources.

Persons Testifying (Ways & Means): PRO: Bonny Jo Peterson, Industrial Hemp Association of Washington; Gregg Gnecco, Hemp Northwest, Queen of Hearts Hemp Foods.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Amends the definition of postharvest test 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.

- Removes the prohibition in the existing Industrial Hemp Research Program on processing industrial hemp as food or other preparations for topical use, oral consumption, or inhalation by humans.
- Provides 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.
- Eliminates the requirement 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.