

HOUSE BILL REPORT

HB 1552

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to industrial hemp.

Brief Description: Concerning industrial hemp.

Sponsors: Representatives Shea, Taylor, Condotta, Pike, Goodman, G. Hunt, Scott, Buys, Holy, Griffey, Blake, Fitzgibbon, Hurst, Ormsby, Young and Magendanz.

Brief History:

Committee Activity:

Commerce & Gaming: 1/26/15, 2/10/15 [DPS].

Brief Summary of Substitute Bill

- Legalizes industrial hemp and removes it from coverage under the state Controlled Substances Act.
- Designates industrial hemp as an agricultural product which may be grown, produced, possessed, and commercially traded.
- Establishes regulations designed to ensure that the tetrahydrocannabinol content of industrial hemp grown in this state is consistent with international standards.
- Authorizes the Department of Agriculture to issue licenses for the growing of industrial hemp and to regulate the industrial hemp industry.
- Creates standards and requirements that a grower must meet in order to be an industrial hemp grower.
- Imposes a fee on growers to cover regulatory costs.
- Creates a dedicated industrial hemp account in the State Treasury that is funded by licensing fees and other revenues.
- Authorizes the Washington State University to undertake research regarding industrial hemp production.
- Requires that the Liquor Control Board and the Department of Agriculture collaborate in rule-making to address issues relating to cross-pollination between industrial hemp and marijuana plants.

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.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Scott and Vick.

Staff: Thamas Osborn (786-7129).

Background:

Industrial Hemp Defined and Described.

Industrial hemp is generally defined as encompassing those *Cannabis sativa* plant types intended for agricultural and industrial purposes. Although marijuana is also derived from the *Cannabis sativa* plant, industrial hemp is readily 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, the key factors in distinguishing the two plants are the amounts of delta-9 tetrahydrocannabinol (THC) and cannabinoids each contains, with the THC level being the most important measure. Tetrahydrocannabinol is a psychoactive, organic compound that in sufficient concentrations will cause intoxication in humans. Industrial hemp has very low levels of THC and thus does not have psychoactive effects or cause intoxication. Throughout most of the world, the legal definition of industrial hemp includes the requirement that the plant contain no more than 0.3 percent THC. Marijuana, by contrast, has much higher concentrations of THC, ranging anywhere from 5 to 25 percent.

In those countries where it is legal to do so, industrial hemp is grown primarily as a source of fiber principally used for textiles, rope, paper, and building materials. Hemp seed is increasingly used for food, feed, and oil. Hemp seed oil is low in saturated fats and may be used in pharmaceuticals, cosmetics, inks, lubrication, household detergents, varnishes, resins, and paints. Hemp plants are increasingly used as a source of livestock feed and bedding.

Approximately 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp.

Federal Statute and Regulations.

Industrial hemp and all other *Cannabis* plant types, including those falling within the definition of marijuana, are considered a Schedule I controlled substance under the federal Controlled Substances Act of 1970 (federal CSA) and are, therefore, illegal to either cultivate or possess. The federal CSA does not distinguish between industrial hemp and other varieties of *Cannabis* on the basis of THC content. It is illegal, therefore, to grow *Cannabis* plants containing any level of THC without a permit from the Drug Enforcement Agency.

Notwithstanding the federal CSA's prohibition against the cultivation or possession of hemp, with the passage of the Agricultural Act of 2014 (2014 Farm Bill) the legal status of industrial hemp under federal law has become ambiguous. Without changing the federal CSA prohibition, the 2014 Farm Bill explicitly authorizes institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes,

but only in those states that have legalized the growing and cultivation of hemp. This would seem to implicitly authorize individual states to enact statutory schemes legalizing the cultivation of industrial hemp, but the true legal status of industrial hemp under federal law remains unclear.

Washington State Controlled Substances Act.

As is the case under the federal CSA, Washington's Controlled Substances Act (CSA) does not distinguish between industrial hemp and other varieties of *Cannabis* on the basis of THC content, and thus industrial hemp is categorized as a Schedule I controlled substance, along with marijuana. Accordingly, in this state it remains illegal to cultivate or possess industrial hemp.

Legalization and Regulation of Hemp in Other States.

During recent years there has been considerable legislative activity throughout the United States with respect to legalizing the agricultural production of industrial hemp. To date, approximately 11 states have legalized industrial hemp production, including: California, Colorado, Indiana, Maine, Montana, North Dakota, Oregon, South Carolina, Vermont, West Virginia, and Tennessee. Many other states have passed legislation authorizing the cultivation of industrial hemp for pilot projects or studies, including: Connecticut, Delaware, Hawaii, Illinois, Kentucky, Nebraska, and Utah. Additionally, the National Association of State Departments of Agriculture and the National Conference of State Legislatures have both adopted resolutions supporting revisions to the federal rules and regulations authorizing commercial production of industrial hemp.

Industrial Hemp Cultivars.

There are hundreds of industrial hemp cultivars that have been developed over many centuries of hemp cultivation worldwide. "Cultivar" is a botanical term used to describe a variation of the *Cannabis* plant that has been developed through cultivation by selective breeding. Many of the countries that produce industrial hemp have developed their own cultivars designed to maximize specific, desirable plant traits related to local growing conditions and/or the specific industrial or agricultural uses intended for the crop. In most countries, industrial hemp cultivars are limited to a maximum THC content of 0.3 percent, although some countries set the standard as low as 0.2 percent or as high as 1.0 percent. In addition, some cultivars result in plants with a very stable and predictable THC content, whereas other cultivars may have a more variable THC content. Accordingly, many countries impose THC testing requirements upon specified cultivars.

Summary of Substitute Bill:

Overview of the Act.

The act legalizes the agricultural production of industrial hemp and designates it as an agricultural product that may be produced, processed, and commercially traded pursuant to specified regulatory requirements. Industrial hemp cultivation is regulated by the Department of Agriculture (Department), which is granted broad rule-making authority as necessary to implement the provisions of the regulatory scheme.

"Industrial hemp" is defined as all parts and varieties of the *Cannabis* plant, whether growing or not, that contain a THC concentration of 0.3 percent or less by weight and are cultivated or possessed by a licensed grower in compliance with the act. The definition allows the 0.3 percent THC concentration limit to be exceeded in industrial *Cannabis* seeds used for licensed industrial hemp research.

The Department is authorized to issue licenses to qualified growers permitting them to cultivate industrial hemp. The license authorizes the grower to produce industrial hemp at a specified site, or sites, as identified in the license. The license is valid for 36 months and may be renewed. The licensing fee is \$10 per acre of land under cultivation for the first growing season, and thereafter the fee is determined by the Department by rule. Fee revenue must be deposited in an "industrial hemp account," which may be used only to defray costs associated with the regulation of industrial hemp production.

The Department is granted the power and authority to:

- promulgate the administrative rules necessary to regulate the industry;
- investigate a grower's compliance with legal requirements;
- gain access to a grower's property and buildings;
- take and test samples of a crop;
- access a grower's agricultural records; and
- impose sanctions on a grower for licensing and regulatory violations.

After the third growing season, the Department must report to the Legislature regarding the fee amount, total acreage in production, and total revenues generated from industrial hemp. The Department must also report annually to the Legislature regarding the implementation of the act and other related topics.

Licensing Requirements and Provisions.

In order to obtain a license, the applicant must meet specified qualifications showing that he or she is capable of growing industrial hemp and can ensure its safe production. To qualify, the prospective licensee must:

- prove his or her ability to secure all industrial hemp seed needed for planting;
- ensure the integrity of the crop while it is in the field;
- provide the Department with notice of the locations of all industrial hemp fields;
- agree to inspections of property, buildings, and records as required by the Department;
- maintain all production records for at least three years; and
- erect signs identifying the crop as industrial hemp and which meet other specified requirements.

The Department may deny, suspend, revoke, or refuse to renew a grower's license for false or misleading statements or other violations of regulatory requirements.

Amendment of the State Controlled Substances Act.

Industrial hemp plants and seeds are exempted from the definition of "marijuana" under the CSA. In addition, the CSA is amended so as to legalize the production and possession of industrial hemp by exempting it from regulation as a controlled substance.

Approval and Regulation of Industrial Hemp Cultivars.

The various types of industrial hemp cultivars that may be produced by a grower are subject to regulation by the Department. A "cultivar" is defined as a variation of the *Cannabis* plant that has been developed through cultivation by selective breeding. The industrial hemp cultivars authorized for production under the act must be propagated through certified, conventionally bred pedigreed seeds as determined by the Department 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, industrial hemp must be grown only from seed types identified on a list of approved seed cultivars established either by statute or by the Department by rule. The act contains a list of approved seed cultivars consisting of varieties currently approved in Canada and in many other countries, some of which require regular THC testing and others do not. In addition, the Department is granted broad authority to approve the use of other types of seed cultivars in the future.

Testing of Industrial Hemp Plants and Seeds.

For those cultivars requiring THC testing, industrial hemp growers are required to annually submit plant samples to an independent, Department-certified testing laboratory for the testing of THC levels. The annual test results must be retained by the grower for a period of three years. The costs of the testing must be borne by the producer, and the test results must be provided to the Department by either the laboratory or the grower, or both, at the request of the Department. The Department has discretionary authority to require random testing at any time.

The Department is also granted general regulatory authority regarding the industrial hemp seeds used by licensed growers. Pursuant to this authority, the Department may sample, inspect, and test the seeds used by growers.

Rule-Making Regarding Cross Pollination Issues.

The Department and the Liquor Control Board (LCB) are required to collaborate in the development of rules addressing the prevention of cross-pollination between industrial hemp plants and marijuana plants.

Industrial Hemp Account.

The act creates a dedicated industrial hemp account in the State Treasury consisting of all moneys received by the Department from industrial hemp-related regulatory activities. Expenditures from the account by the Department may only be used to implement the provisions of the act and to defray the costs of regulatory activities and expenditures.

Washington State University Research Project.

The Washington State University is authorized to undertake wide-ranging research regarding the feasibility and desirability of industrial hemp production and marketing in this state. Such research must include the study of issues related to the potential for cross-pollination between industrial hemp and marijuana plants. The research is subject to specified guidelines and must include the review of information gathered from agricultural and scientific literature and the examination of the practices of other states and countries regarding the marketing of industrial hemp. The Washington State University must report its findings and recommendations to the Legislature by January 14, 2016.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- requires the Department and the LCB to each adopt rules addressing the prevention of cross-pollination between industrial hemp plants and marijuana plants;
- adds to the definition of "industrial hemp" to state that it does not include plants of the genera *Cannabis* that meet the definition of "marijuana" under the CSA;
- requires growers who are corporate entities to maintain records either at the production site or at an in-state corporate office;
- adds several additional industrial hemp cultivars to the list of cultivars that are pre-approved by the Department;
- establishes that the Department has regulatory authority over the industrial hemp seeds cultivated by licensed growers and that the Department may sample, inspect, and analyze such seeds;
- establishes that the Department is not responsible for determining whether a particular hemp product has been derived from approved cultivars;
- requires the Washington State University to study issues related to the potential for cross-pollination between industrial hemp and marijuana plants;
- requires that raw hemp seeds intended for human consumption be subject to heat sufficient to kill the seed so as to ensure it is incapable of germination;
- creates a dedicated industrial hemp account consisting of all moneys received from industrial hemp-related activities and requires that the account be used by the Department only to defray the costs of regulatory activities and expenditures; and
- excludes industrial hemp plants and seeds from the definition of "marijuana" under the CSA.

Appropriation: None.

Fiscal Note: Available.

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) Industrial hemp is an agricultural product of enormous value that, as a practical matter, has nothing in common with marijuana with respect to its uses or psychoactive affects. Making hemp illegal along with marijuana makes no legal or scientific sense. Before hemp was made illegal in the 1930s, Washington was a major producer and one of the country's largest exporters. Hemp has a wide range of agricultural, industrial, and medical uses and could produce considerable revenue for the citizens of this state. Hemp oil is a particularly valuable commodity and can be used to make hundreds of products. It is legally grown worldwide and many other countries produce hemp products which are marketed here, yet our farmers are prohibited from growing it. The American Farm Bureau is strongly in favor of legalizing industrial hemp production. This bill would resolve all of these issues by legalizing the cultivation of industrial hemp and thus allow this state to become a major

producer. The bill creates a stringent regulatory system to ensure that industrial hemp production is carefully monitored by the Department. One issue that needs to be addressed in the bill is cross-pollination between industrial hemp and marijuana plants. Some farmers are concerned about licensing requirements insofar as no other agricultural crop requires such licensing. Such licensing is not necessary insofar as hemp is not a drug and does not pose any risk with respect to public health and safety.

(Opposed) None.

Persons Testifying: Representative Matt Shea, prime sponsor; Steve Sarich, Washington State Cannabis Action Coalition; Joy Beckerman Maher, Washington Hemp Industries Association; Steve Fuller, Washington State Department of Agriculture; Ah Warner, Cannabis Basics and Washington Hemp Industries Association; Sandy Soderberg, Evergreen Hemp Company; and Dawn Darington, Choice Wellness Center.

Persons Signed In To Testify But Not Testifying: None.