

# HOUSE BILL REPORT

## SSB 5012

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**As Reported by House Committee On:**  
Commerce & Gaming

**Title:** An act relating to authorizing the growing of industrial hemp.

**Brief Description:** Authorizing the growing of industrial hemp.

**Sponsors:** Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hatfield, Honeyford, Rolfes, Ericksen, Kohl-Welles, Hasegawa, Chase and Hobbs).

**Brief History:**

**Committee Activity:**

Commerce & Gaming: 3/16/15, 3/23/15 [DPA].

**Brief Summary of Substitute Bill  
(As Amended by Committee)**

- Legalizes industrial hemp and removes it from coverage under the state Controlled Substances Act.
- Designates industrial hemp as an agricultural product that 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 Washington State University to undertake research regarding industrial hemp production.

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*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.*

- 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.

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## HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege 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 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.

#### Washington State Controlled Substances Act.

As is the case under the federal CSA, Washington's Controlled Substances Act 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 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.

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### **Summary of Amended 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 \$30 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 Control Substances Act (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.

**Amended Bill Compared to Substitute Bill:**

The amendment makes the following changes to the substitute bill:

- designates industrial hemp as an agricultural product that may be legally grown, possessed, and commercially traded;
- legalizes industrial hemp by removing it from coverage under the state Controlled Substances Act;
- authorizes the Washington State Department of Agriculture (WSDA) 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 consisting of all moneys received from industrial hemp-related activities and requires that the account be used by the WSDA only to defray the costs of regulatory activities and expenditures;
- authorizes Washington State University to undertake research regarding industrial hemp production;
- requires the WSDA and the Liquor Control Board to each adopt rules addressing the prevention of cross-pollination between industrial hemp plants and marijuana plants;
- identifies specific varieties of industrial hemp that are pre-approved for cultivation and establishes a process for WSDA approval of additional varieties; and
- establishes regulations designed to ensure that the THC content of industrial hemp grown in this state is consistent with international standards.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended 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) This is good legislation that must be enacted. Legalizing industrial hemp production will greatly benefit farmers, create jobs, and provide economic benefits to the state. Other states are moving forward with industrial hemp production and, if it is not legalized here soon, Washington farmers will be at a competitive disadvantage. Delay will only hurt the farmers in this state. Hundreds of useful, and profitable, products can be made from industrial hemp, and we should be involved in the industry. Prior to industrial hemp being outlawed, Washington used to be one of the national leaders in hemp production. Obtaining seeds is currently a big legal problem, and the striking amendment must be passed

in order for growers to get seed import permits from the federal Drug Enforcement Agency. In order to simplify the regulatory role of the state Department of Agriculture, private labs should be employed for crop- and seed-testing purposes.

(Neutral) The state Department of Agriculture would support the striking amendment, provided some amendatory changes are made. The fiscal note is indeterminate, insofar as it is difficult to estimate how many acres of industrial hemp will be cultivated if the bill is passed.

(Opposed) There is no reason to subject industrial hemp cultivation to this level of regulatory oversight. It should be treated like any other agricultural crop. The stringent regulations in the striking amendment will prevent many farmers from engaging in hemp cultivation.

**Persons Testifying:** (In support) Sandy Soderberg, Evergreen Hemp Co.; Ezra Eickmeyer, P & E Strategic Consulting; and Steve Sarich, Washington Hemp Commission.

(Neutral) Steve Fuller, Washington State Department of Agriculture.

(Opposed) Joy Beckerman Maher, Ah Warner, and Kathleen Bohnsack, Washington Hemp Industries Association.

**Persons Signed In To Testify But Not Testifying:** None.