CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5372**

67th Legislature

2021 Regular Session

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| Passed by the Senate March 9, 2021Yeas 49 Nays 0**President of the Senate**Passed by the House April 6, 2021Yeas 96 Nays 2**Speaker of the House of Representatives** | CERTIFICATEI, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5372** as passed by the Senate and the House of Representatives on the dates hereon set forth.Secretary |
| Approved  |  |
| **Governor of the State of Washington** | **Secretary of State** **State of Washington** |

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**ENGROSSED SENATE BILL 5372**

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Passed Legislature - 2021 Regular Session

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Stanford, Warnick, Conway, Hasegawa, Saldaña, and Wilson, J.

AN ACT Relating to hemp processor registration and a hemp extract certification; amending RCW 15.140.020, 15.140.060, 15.140.120, and 69.07.020; reenacting and amending RCW 69.07.010; adding a new section to chapter 69.07 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature intends to authorize and establish hemp processor registration and hemp extract certification necessary for entrance and compliance with interstate and international commerce and business requirements or stipulations in regard to hemp processing. A voluntary processor registration or hemp extract certification in lieu of a hemp processor license will allow persons or companies to ship transitional or final hemp products to states and countries that require a hemp processor license or registration.

**Sec.**  RCW 15.140.020 and 2019 c 158 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agriculture improvement act of 2018" means sections 7605, 10113, 10114, and 12619 of the agriculture improvement act of 2018, P.L. 115-334.

(2) "Crop" means hemp grown as an agricultural commodity.

(3) "Cultivar" means a variation of the plant *Cannabis sativa L.* that has been developed through cultivation by selective breeding.

(4) "Department" means the Washington state department of agriculture.

(5) "Food" has the same meaning as defined in RCW 69.07.010.

(6) "Hemp" means 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 concentration of not more than 0.3 percent on a dry weight basis.

((~~(6)~~)) (7) "Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

(8)(a) "Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a tetrahydrocannabinol concentration of 0.3 percent or less by dry weight that was grown under the industrial hemp research program as it existed on December 31, 2019.

(b) "Industrial hemp" does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101.

((~~(7)~~)) (9) "Postharvest test" means a test of delta-9 tetrahydrocannabinol concentration levels of hemp after being harvested based on:

(a) Ground whole plant samples without heat applied; or

(b) Other approved testing methods.

((~~(8)~~)) (10) "Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

((~~(9)~~)) (11) "Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp including hemp seed.

**Sec.**  RCW 15.140.060 and 2019 c 158 s 6 are each amended to read as follows:

(1) The department must issue hemp producer licenses to applicants qualified under this chapter and the agriculture improvement act of 2018. The department may adopt rules pursuant to this chapter and chapter 34.05 RCW as necessary to license persons to grow hemp under a commercial hemp program. The department may adopt rules pursuant to this chapter and chapter 34.05 RCW as necessary to register hemp processors.

(2) A hemp processor that processes hemp for commercial use or sale may register with the department. The registration application must include the physical address of all locations where hemp is processed or stored, a registration fee as set in rule, and any other information required by the department by rule. A registered hemp processor is not required to obtain a hemp producer license. A registered hemp processor must be a registered business entity in Washington state or a foreign entity compliant with state laws.

(3) The plan must identify qualifications for license applicants, to include adults and corporate persons and to exclude persons with felony convictions as required under the agriculture improvement act of 2018.

((~~(3)~~)) (4) The department must establish license fees in an amount that will fund the implementation of this chapter and sustain the hemp program. The department may adopt rules establishing fees for tetrahydrocannabinol testing, inspections, and additional services required by the United States department of agriculture. License fees and any money received by the department under this chapter must be deposited in the hemp regulatory account created in RCW 15.140.080.

**Sec.**  RCW 15.140.120 and 2019 c 158 s 16 are each amended to read as follows:

Beginning on April 26, 2019:

(1) No law or rule related to certified or interstate hemp seeds applies to or may be enforced against a person with a license to produce or process hemp issued under this chapter ((~~or chapter 15.120 RCW~~)); and

(2) No department or other state agency rule may establish or enforce a buffer zone or distance requirement between a person with a license or authorization to produce or process hemp under this chapter ((~~or chapter 15.120 RCW~~)) and a person with a license to produce or process marijuana issued under chapter 69.50 RCW. The department may not adopt rules without the evaluation of sufficient data showing impacts to either crop as a result of cross-pollination.

(3) Notwithstanding the rule-making provisions of RCW 15.140.030(2), if a marijuana producer or marijuana processor licensed by the liquor and cannabis board under chapter 69.50 RCW is engaged in producing or processing hemp at the same location for which they are licensed to produce or process marijuana, the liquor and cannabis board may test samples represented as hemp that are obtained from a location licensed for marijuana production or marijuana processing for the sole purpose of validating THC content of products represented as hemp. Any product with a delta-9 tetrahydrocannabinol concentration exceeding 0.3 percent on a dry weight basis is considered marijuana and is subject to the provisions of chapter 69.50 RCW.

**Sec.**  RCW 69.07.010 and 2017 c 138 s 1 are each reenacted and amended to read as follows:

((~~For the purposes of this chapter:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state liquor and cannabis board;

(2) "Department" means the department of agriculture of the state of Washington;

(3) "Director" means the director of the department;

(4) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Hemp extract" means a substance or compound intended for human ingestion that is derived from, or made by, processing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States food and drug administration.

(9) "Hemp extract certification" means a certification issued by the department to a hemp processor manufacturing hemp extract for export to other states, which certifies the hemp processor's compliance with Washington state's inspection and sanitation requirements.

(10) "Hemp processor" has same meaning as defined in RCW 15.140.020.

(11) "Marijuana" has the definition in RCW 69.50.101;

((~~(9)~~)) (12) "Marijuana-infused edible" has the same meaning as "marijuana-infused products" as defined in RCW 69.50.101, but limited to products intended for oral consumption;

((~~(10)~~)) (13) "Marijuana-infused edible processing" means processing, packaging, or making marijuana-infused edibles using marijuana, marijuana extract, or marijuana concentrates as an ingredient. The term does not include preparation of marijuana as an ingredient including, but not limited to, processing marijuana extracts or marijuana concentrates;

((~~(11)~~)) (14) "Marijuana processor" has the definition in RCW 69.50.101;

((~~(12)~~)) (15) "Person" means an individual, partnership, corporation, or association;

((~~(13)~~)) (16) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

NEW SECTION. **Sec.**  A new section is added to chapter 69.07 RCW to read as follows:

(1) Until such time as hemp extract is federally authorized for use as a food ingredient, hemp extract is not an approved food ingredient in Washington state. A hemp processor who wishes to engage in the production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient may apply for a hemp extract certification to certify the hemp processor's compliance with Washington's inspection and good manufacturing practices requirements. The department shall regulate hemp extract processing the same as other food processing under chapters 15.130, 69.07, and 69.22 RCW with the exceptions contained in subsections (2) through (6) of this section.

(2) The department's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements as adopted by the department under chapter 15.130 RCW.

(3) The department must issue a hemp extract certification in lieu of a food processing license under RCW 69.07.040 to a hemp processor who meets the application requirements described in subsection (4) of this section. A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(4) The application, initial certification, and renewal fees must be in an amount established by the department. Applicants for certification otherwise must meet the same requirements as applicants for a food processing license under chapter 69.07 RCW including, but not limited to, successful completion of an inspection by the department.

(5) The department may deny, suspend, or revoke a hemp extract certification on the same grounds as the department may deny, suspend, or revoke a food processor's license under this chapter.

(6) At such time as federal authorization of hemp extracts as a food ingredient occurs, the department must cease issuance of certifications under this chapter. At renewal, hemp processors certified under this section must apply for a food processor license in accordance with RCW 69.07.040.

**Sec.**  RCW 69.07.020 and 2017 c 138 s 2 are each amended to read as follows:

(1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods.

(3) The department may adopt rules specific to marijuana-infused edibles. Such rules must be written and interpreted to be consistent with rules adopted by the board and the department of health.

(4) The department may adopt rules specific to hemp extract certification to implement section 6 of this act.

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