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## Commerce & Gaming Committee

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### ESB 5372

**Brief Description:** Concerning hemp processor registration and a hemp extract certification.

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

#### Brief Summary of Engrossed Bill

- Allows a hemp processor to register with the Washington State Department of Agriculture (Department) for compliance with interstate or international hemp processing requirements.
- Allows a hemp processor to obtain a hemp extract certification to certify that hemp extract used as a food ingredient for export complies with state inspection requirements.
- Requires the Department to issue a hemp extract certification in lieu of a food processing license to a hemp processor meeting specified application requirements.

**Hearing Date:** 3/19/21

**Staff:** Kyle Raymond (786-7190).

#### **Background:**

##### Federal and State Regulation of Hemp Production.

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

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pilot studies to research the cultivation and commercial viability of an industrial hemp industry in Washington. Under the research program, industrial hemp could be grown, produced, possessed, processed, and exchanged in the state solely as part of the IHRP. The Washington State Department of Agriculture (Department) 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 IHRP.

In 2017, the Legislature excluded industrial hemp from the state Controlled Substances Act schedule of controlled substances.

The federal Agriculture Improvement Act of 2018 (2018 Farm Bill) changed hemp's status under federal law by removing hemp from the schedules of controlled substances in the federal Controlled Substances Act. The 2018 Farm Bill also created a federal regulatory framework for hemp production that allows states and tribes to be the primary regulator.

In 2019, the Legislature created a new agricultural commodity program for commercial hemp production in Washington, replacing the IHRP. The Department developed the state's hemp plan and the plan includes elements required in the 2018 Farm Bill, including testing procedures and enforcement provisions. The Department administers the program and issues licenses to individual hemp producers.

Under state law, hemp is defined as the plant *Cannabis sativa L.* and any part of the plant, including the seeds 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.

#### Federal and State Regulation of Hemp Food Processing.

In addition to removing hemp from the federal list of controlled substances, the 2018 Farm Bill also preserved Federal Drug Administration (FDA) authority to regulate ingredients in food, including hemp and hemp extracts such as cannabidiol (CBD). The FDA has issued guidance that federal law prohibits CBD from being used as a food additive unless a new exception is created by FDA rule or Congressional action.

The 2019 state hemp law provides that the whole hemp plant may be used as food, and that the Department must regulate the processing of hemp for food products, that are allowable under federal law, in the same manner as other food processing under the Food and Safety Act and the Washington Food Processing Act. Food processing means the handling or processing of any food in any manner of preparation for sale for human consumption. The Department issued a memorandum in August 2019 that specified hemp-derived CBD is not currently allowed as a food ingredient under state law.

Certain hemp components are currently authorized to be added to food consistent with FDA and Department rules, including hulled hemp seeds, hemp seed protein powder, and hemp seed oil. The FDA has issued notices for each of these hemp components, providing that these hemp

components are "generally recognized as safe" and may be used as food ingredients without prior approval.

#### Liquor and Cannabis Board Marijuana Testing Requirements.

The Liquor and Cannabis Board (LCB) issues licenses for businesses to produce, process, and sell marijuana. On a schedule determined by the LCB, licensed marijuana producers and processors must submit representative samples of marijuana or marijuana products produced or processed by the licensee to an independent, third-party testing laboratory meeting accreditation requirements established by the LCB, for inspection and testing.

#### **Summary of Engrossed Bill:**

#### Hemp Processor Registration.

A hemp processor that processes hemp for commercial use or sale may register with the Washington State Department of Agriculture (Department). The Department may adopt rules as necessary to register hemp processors.

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 the Department requires.

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 or a foreign entity compliant with state laws.

A hemp processor is a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

#### Hemp Extract Certification.

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.

A hemp processor engaging in the production of hemp extract for use as a food ingredient may apply for a hemp extract certification. The certification is issued by the Department to hemp processors that manufacture hemp extract for export to other states that allow hemp extract as a food ingredient, and the certification certifies the hemp processor's compliance with Washington's inspection and good manufacturing practices requirements.

A 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.

The Department must regulate hemp extract processing the same as other food processing and

issue a hemp extract certification in lieu of a food processing license to a hemp processor who meets application requirements. The Department's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements. The Department may adopt rules specific to hemp extract certification and must establish application, initial certification, and renewal fees.

A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

Applicants for certification must meet the same requirements as applicants for a food processing license including, but not limited to, successful completion of an inspection by the Department.

The Department may deny, suspend, or revoke a hemp extract certification on the same grounds that are used for denial, suspension, or revocation of a food processor's license.

At such time as federal authorization of hemp extracts as a food ingredient occurs, the Department must cease issuance of hemp extract certifications and at renewal, hemp processors with a hemp extract certification must apply for a food processor license.

Liquor and Cannabis Board Hemp Testing Authority.

If a marijuana producer or marijuana processor licensed by the LCB is engaged in producing or processing hemp at the same location for which they are licensed to produce or process marijuana, the LCB 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.