

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2167**

As Agreed to April 3, 2019

Brief*

Senate Sub. for HB 2167 would require the Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, to submit a plan to the U.S. Department of Agriculture (USDA) regarding how the KDA will monitor and regulate the commercial production of industrial hemp within the state, in accordance with federal law. In addition, the bill would establish the Commercial Industrial Hemp Program; make changes to the Industrial Hemp Research Program; and establish hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Creation of the Commercial Industrial Hemp Program

Legislative Intent (New Sec. 1)

The bill would declare it is the intent of the Legislature that KDA's implementation of the Commercial Industrial Hemp Act (Act) will be conducted in the least restrictive manner allowed under federal law.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Commercial Plan Requirements (New Sec. 2(a)-(b))

The bill would require the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The plan would be required to include the following:

- A procedure to maintain relevant information regarding land on which industrial hemp is produced, including a legal description of the land, for a period of no less than three calendar years;
- A procedure for testing the delta-9 tetrahydrocannabinol (THC) concentration levels of industrial hemp produced by using post-decarboxylation or other similarly reliable methods;
- A procedure for the effective disposal of industrial hemp and hemp products found to be in violation of the Act;
- Any licensing requirements or other rules and regulations the KDA deems necessary for the proper monitoring and regulation of industrial hemp cultivation and production for commercial purposes, including, but not limited to, license fees, license renewals, and other necessary expenses to defray the cost of implementing and operating the plan on an ongoing basis;
- A procedure for creating documentation that all persons in possession of industrial hemp before being processed may use to prove to law enforcement officers the industrial hemp was lawfully grown under this section of the bill;

- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify industrial hemp is not produced in violation of the Act; and
- Any other necessary procedures to meet federal requirements.

Violations (New Sec. 2(c))

The bill would state a hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations relating to commercial hemp production under an approved commercial plan would not be subject to any state or local criminal enforcement action, but would be required to comply with the following corrective actions, as applicable:

- Establish a reasonable date by which the hemp producer must correct the negligent violation; and
- Require the hemp producer to periodically report to the KDA on compliance with the production laws and rules and regulations for a period of not less than the next two calendar years.

A hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations three times in a five-year period would be ineligible to produce industrial hemp for a period of five years from the date of the third violation.

The bill would require the KDA to immediately report any violation by a hemp producer with a greater culpable mental state than negligence to the Attorney General; the producer could be subject to criminal enforcement.

Ineligibility (New Sec. 2(d))

Under the bill, an individual would not be eligible to produce industrial hemp if the individual has submitted any materially false information in any application to become a licensed hemp producer.

Fingerprinting Requirements and Background Checks (New Sec. 2(e))

The bill would mandate the KDA to require, as a qualification for initial or continuing licensing, all individuals seeking a license or renewal as a hemp producer be fingerprinted and submit to a state and national criminal history background check. The KDA would be authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and Federal Bureau of Investigation (FBI) for the background checks.

The KDA would be allowed to use the information obtained from fingerprinting and background checks for verifying the identification of the individual and for making a determination of the qualifications for initial or continuing licensing as a hemp producer. Disclosure or use of any information received by the KDA for any purpose other than provided for in the Act would be a class A misdemeanor and would constitute grounds for removal from office or termination of employment.

The bill would disqualify an individual who has been convicted of a controlled substances felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

The KBI would be authorized to charge a reasonable fee for the background check, and the individual seeking a license or license renewal as a hemp producer would be

required to pay the costs of fingerprinting and the state and national background checks.

Rules and Regulations (New Sec. 2(f))

The bill would require the Secretary of Agriculture to promulgate rules and regulations to implement the plan submitted to the USDA and to otherwise effectuate the production of commercial industrial hemp.

Fees (New Sec. 2(h)-(i))

The bill would require any modification fee established by the KDA for any requested change to a license that was previously issued by the KDA to not exceed \$50.

The bill also would change the name of the Alternative Crop Research Act Licensing Fee Fund to the Commercial Industrial Hemp Act Licensing Fee Fund (Hemp Fund). Any licensing or other fees collected pursuant to the bill or any adopted rules and regulations would be deposited in the Hemp Fund for all administration costs of the commercial production of industrial hemp.

Changes to the Existing Industrial Hemp Research Program

Accepting Applications (New Sec. 3)

The bill would require the Secretary of Agriculture to continue accepting any applications for licensure submitted under the Industrial Hemp Research Program for the 2019 growing season from March 1, 2019, to June 1, 2019.

Modification Fee (Sec. 8(c))

The bill would require any modification fee established by the KDA for any requested change to a license previously issued by the KDA to not exceed \$50.

Disqualifications (Sec. 8(d)(2))

The bill would disqualify an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

Rules and Regulations (Sec. 8(e))

The bill would require the KDA to promulgate rules and regulations to carry out the provisions of Sec. 8 of the bill. The bill would prohibit the KDA from promulgating rules and regulations concerning the recording of license plates. The KDA would be required to promulgate the rules and regulations by December 31, 2019.

Discontinuing the Program (New Sec. 2(g))

The bill would allow the KDA to discontinue the existing Industrial Hemp Research Program if one or more of the following occurs:

- The federal law authorizing states to operate an industrial hemp research program is repealed;
- The adoption of a federal plan by the USDA allowing for the cultivation and production of commercial industrial hemp is adopted; or

- Rules and regulations by the KDA establishing commercial industrial hemp production in the state are adopted.

Effective Date

These changes to the Industrial Hemp Research Program would not go into effect until on or after July 1, 2019.

Definitions Applicable to Both the Commercial and Research Programs (Sec. 7)

The bill would make the following changes to definitions in the Act:

- Add the definitions of “commercial,” “effective disposal,” “hemp producer,” “hemp processor,” “person,” and “authorized seed or clone plants”;
- Delete the definitions of “certified seed” and “department”; and
- Amend the current definitions of “delta-9 tetrahydrocannabinol concentration,” “hemp products,” and “industrial hemp.”

Crimes and Controlled Substances Exceptions (Sec. 12(aa), Sec. 13(h)(1))

The bill would include “industrial hemp” as an exception to the definition of “marijuana” in the current definition sections of crimes involving controlled substances.

The bill would also exclude from the schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;

- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

Hemp Processors (New Sec. 4)

Hemp Processor Registration (New Sec. 4(a)-(h))

The bill would require the KDA to create and maintain a registry of all hemp processors operating within the state. Any person engaged in the process of industrial hemp would be required to register annually with the Secretary of Agriculture (Secretary) prior to processing industrial hemp. Such processors must apply for registration on a form provided by the Secretary, and the registration would expire on April 30 each year. The fee for registration could not be exceed \$200 and would be established by the Secretary through rules and regulations.

The bill would require the annual registration application, provided by the Secretary, to include at least the following:

- The name, address, and telephone number of the applicant;
- The physical location of any hemp processing operations;
- A brief description of the industrial hemp processing methods, activities, and products; and
- Certification that an applicant has fully complied with the fingerprinting and criminal history record

check requirements if applicable; any applicant providing a false statement of compliance is guilty of a class C nonperson misdemeanor.

The KDA would be required to provide, as often as is reasonably required or requested, an updated list of all hemp processors to the KBI and to the county sheriff in each county where a hemp processor is located.

Hemp processors licensed under the Alternative Crop Research Act (ACRA) would be exempt from the hemp processor registration requirements; however, the Secretary would be required to include the processors licensed under the ACRA in the list of registered hemp processors.

The bill would require all fees collected from the registrations to be deposited in the Commercial Industrial Hemp Act Licensing Fee Fund.

Violations (New Sec. 4(i))

The bill would make it unlawful for any person to operate as a hemp processor without valid registration and would provide the following sentencing guidelines:

- Upon first conviction for violation of this subsection, a person would be guilty of a class A nonperson misdemeanor; and
- Upon second or subsequent conviction for violation of this subsection, a person would be guilty of a severity level 9, nonperson felony.

Hemp Processor Employee Fingerprinting and Criminal Record History Checks (New Sec. 4(j))

The bill would require registered hemp processors, or those people applying to become a registered hemp

processor, to request the KBI to conduct state and national criminal record history checks on any employees who would be involved in the extraction of cannabinoids, including through the disposal of cannabinoids from industrial hemp under Sec. 6. The bill would require the criminal history record checks to include the individual's fingerprints and a copy of a completed and signed statement furnished by the hemp processor. The bill would require the signed statement to include:

- A waiver to permit the hemp processor to request and receive the criminal history record check for the purpose of determining the individual's qualification and fitness to process industrial hemp;
- The name, address, and date of birth of the individual as it appears on a valid identification document;
- A disclosure if the individual has ever been convicted, or the subject of pending charges, of a criminal offense and a description of the crime and result of conviction; and
- A notice to the individual subject to the criminal history record check the individual is entitled to obtain a copy of the criminal history record check report to challenge the accuracy and completeness of any information contained in the report before a final determination is made by the hemp processor.

The bill would require a registered hemp processor or an applicant to become a registered hemp processor to be fingerprinted and submit the fingerprints to the KBI and the FBI for a criminal history record check. Local and state law enforcement officers and agencies would be required to assist the hemp processor in taking and processing an individual's fingerprints.

The bill would require the registered hemp processor or applicant to use the individual's fingerprints to identify the individual and determine if the individual has a record of criminal history in Kansas or other jurisdictions or countries. The bill would authorize the processor or applicant to use information obtained by the criminal history checks in the official determination of the individual's qualifications and fitness to process industrial hemp. Disclosure or use of any information received by the processor or applicant for any purpose other than provided for in the Act would be a class A nonperson misdemeanor.

The KBI would be required to release to the registered hemp processor or applicant all records of the individual's adult convictions in Kansas and other states, jurisdictions, or countries in order to make a final determination of the individual's qualification to process industrial hemp.

The bill would disqualify an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from processing hemp.

The bill would require the hemp processor to make the sole determination of the individual's fitness to extract cannabinoids from industrial hemp and would not require the KBI to make such a determination on behalf of any hemp processor.

The bill would authorize the KBI to charge a reasonable fee to conduct a criminal history record check. The bill would require the hemp processor or applicant to pay the costs of fingerprinting and the state and national criminal history record check for the individual seeking employment under the hemp processor.

Rules and Regulations (New Sec. 4(k))

The bill would authorize the Secretary to promulgate rules and regulations for registration of hemp processors.

Prohibition on Products and Sentencing Guidelines

Prohibition on Products (New Sec. 5(a)-(b),(d))

The bill would prohibit the manufacture, marketing, selling, or distribution of the following hemp products:

- Cigarettes containing industrial hemp;
- Cigars containing industrial hemp;
- Chew, dip, or other smokeless material containing industrial hemp;
- Teas containing industrial hemp;
- Liquids, solids, or gases containing industrial hemp for use in vaporizing devices; and
- Any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs Act. This would not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

For the purpose of this subsection, the bill would define the terms “human or animal consumption” and “intended for human or animal consumption.”

In addition, the bill would prohibit the marketing, selling, or distribution of industrial hemp buds, ground industrial hemp floral material, or ground industrial hemp leaf material to any person in Kansas who is not registered as a hemp processor by the KDA under a commercial plan.

The bill would clarify this section would not prohibit a state educational institution or affiliated entity from using any hemp product for research purposes or the production, use, or sale of any hemp product otherwise not prohibited by Kansas or federal law.

Sentencing Guidelines (New Sec. 5(c))

The bill would state, upon first conviction for violation of the section, a person would be guilty of a class A nonperson misdemeanor and, upon second or subsequent conviction, a person would be guilty of a severity level 9, nonperson felony.

Research Purposes (New Sec. 5(d))

The bill would ensure nothing in the section would prohibit the use of any hemp product for research purposes by a state educational institution or affiliated entity or the production, use, or sale of any hemp product that is otherwise not prohibited by state or federal law.

Waste (New Sec. 6)

The bill would require all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act to be managed in accordance with all applicable solid and hazardous waste laws and regulations.

If the waste can be used in the same manner as, or has the appearance of, a controlled substance, the bill would require the waste to be rendered unusable and

unrecognizable before being transported or disposed. This requirement would not apply to waste managed as a hazardous waste and sent to a hazardous waste facility.

The bill would also define the term “usable and unrecognizable” with regard to waste derived from the cultivation, production, or processing of industrial hemp under the Act.

The bill would make any violation of this section unlawful under continuing law.

Technical Corrections

The bill would make numerous technical corrections.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the Senate Committee of the Whole version of the bill and agreed to additional amendments, including:

- Adding technical amendments suggested by the Office of the Revisor of Statutes staff;
- Removing provisions that would have established within the Kansas Department of Revenue an industrial hemp regulatory commission to implement and administer the provisions of the Act relating to the licensure and regulation of hemp processors;

- Adding requirements that the KDA create and maintain a registry of all hemp processors operating within the state, create registration requirements for hemp processors, and establish criminal history record checks and fingerprinting guidelines for hemp processors and employees involved in the extraction of cannabinoids;
- Clarifying nothing in the bill would prohibit a state educational institution or affiliated entity from using any hemp product for research purposes or the production, use, or sale of any hemp product otherwise not prohibited by Kansas or federal law;
- Clarifying provisions prohibiting hemp products from being manufactured, marketed, sold, or distributed by any person in Kansas that are intended for human or animal consumption containing any ingredient derived from industrial hemp, unless such ingredient is permitted under the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs Act. This would not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products;
- Clarifying any violation of Sec. 6 relating to industrial hemp waste would be unlawful under state solid and hazardous waste laws; and
- Amending the definitions of “delta-9 tetrahydrocannabinol concentration” to include any part of the plant *Cannabis sativa* L. on a percentage by weight basis in hemp products, waste, or substances resulting from the production or processing of industrial hemp.

Background

Senate Sub. for HB 2167 includes provisions of SB 233, relating to industrial hemp. The backgrounds of both bills are described below.

Senate Sub. for HB 2167

HB 2167, as introduced, would have allowed landowners or tenants possessing hunt-on-your-own-land big game permits for antlered and antlerless white-tailed deer to sell such permits to nonresidents in accordance with a transfer system to be established by the Secretary of Wildlife, Parks and Tourism. [Note: The substitute bill, as recommended by the Senate Committee on Agriculture and Natural Resources, does not contain the deer permit transfer provisions.]

On March 19, 2019, the Senate Committee on Agriculture and Natural Resources amended the bill to include registration requirements for wildlife guides and outfitters operating in Kansas and to change the effective date to January 2, 2020. The Senate Committee then tabled the bill.

The Senate Committee removed HB 2167 from the table and amended it by removing the contents of HB 2167, relating to deer permits, and inserting the contents of SB 233, relating to industrial hemp, into the bill. [Note: The Conference Committee retained this amendment.] The Senate Committee then passed HB 2167 as a substitute bill.

The Senate Committee of the Whole amended Senate Sub. for HB 2167 to:

- Clarify nothing in the bill would prohibit a state educational institution or affiliated entity from using any hemp product for research purposes or the production, use, or sale of any hemp product

otherwise authorized by Kansas or federal law [Note: The Conference Committee modified this provision to clarify the bill would not prohibit production, use, or sale of any hemp product otherwise not prohibited by Kansas or federal law.];

- Remove provisions requiring any individual working as an employee, agent, or unpaid worker of a hemp processor be fingerprinted and submit to a state and national criminal history record check; allowing the Industrial Hemp Regulatory Commission to use information obtained from such criminal background checks; and disqualifying such employee, agent, or unpaid worker for certain felony convictions [Note: The Conference Committee added similar provisions into the bill, requiring registration of hemp processors and requiring hemp processors to conduct such criminal background checks on any employees involved in the THC extraction process.]; and
- Change from December 31, 2018, to December 31, 2019, the date by which the KDA must promulgate rules and regulations for the commercial hemp program. [Note: The Conference Committee retained this amendment.]

No fiscal note was available on Senate Sub. for HB 2167 at the time the Senate Committee considered the bill.

SB 233 (Industrial Hemp)

SB 233 was introduced by the Senate Committee on Agriculture and Natural Resources. In the informational hearing before the Senate Committee on March 22, 2019, the Secretary of Agriculture and a representative of the Kansas Department of Agriculture testified as proponents of SB 233. A representative of the Kansas Farm Bureau submitted written-only proponent testimony. A representative of the

Kansas Bureau of Investigation provided neutral testimony.
No opponent testimony was provided.

agriculture; Secretary of Agriculture; industrial hemp; commercial hemp;
administrative rules and regulations; Kansas Bureau of Investigation; Kansas
Department of Agriculture; hemp processor; hemp processing; fingerprinting;
background checks

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