

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2173

As Amended by House Committee on
Agriculture

Brief*

HB 2173, as amended, would allow 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 make changes to the existing industrial hemp research program. The new sections of the bill would be part of and supplemental to the newly named Commercial Industrial Hemp Crop Act (Act).

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 Act will be conducted in the least restrictive manner allowed under federal law.

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

The bill would require the KDA, in consultation with the Attorney General and the Governor, 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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 that are found to be in violation of the Act;
- Any 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 a hemp producer could use to prove to law enforcement officers the hemp producer is authorized to engage in commercial hemp production;
- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that 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 the production of hemp for commercial purposes 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 correction 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 that 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 KDA would be required 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, a person would not be eligible to produce industrial hemp if:

- The person has been convicted of a felony relating to a controlled substance under state or federal law within the immediately preceding ten years; or
- A person has submitted any materially false information in any application to become a licensed hemp producer.

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

The bill would authorize 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(g)-(h))

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 Fund (Fund). Any licensing or other fees collected pursuant to the bill or any adopted rules and regulations would be deposited in the Fund for all administration costs of the commercial production of industrial hemp.

Definitions (Sec. 4)

The bill would add the following definitions to the Commercial Industrial Hemp Act:

- “Commercial” would mean the cultivation or production of industrial hemp for purposes other than research;
- “Hemp producer” would mean any individual, licensed or otherwise, engaging in the cultivation, production, distribution, or processing of industrial hemp for commercial purposes;
- “Effective disposal” would include, but not be limited to, destruction or any other method of clearing industrial hemp or hemp products found to be in violation of the Act that is permitted under

federal law and any rules and regulations adopted under federal law.

The bill would also delete the definition of “Department” and change the existing definition of “industrial hemp.”

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

In addition, the bill would exclude THC obtained from industrial hemp when cultivated, produced, possessed, or used for activities authorized by the Alternative Crop Act from THC as listed in current law under schedule I controlled substances.

Industrial Hemp Research Program Changes

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.

Fingerprinting and Background Checks (Sec. 5(d)-(e))

The bill would remove provisions in current law (KSA 2018 Supp. 2-3902) relating to the following:

- Fingerprinting and background check requirements for those participating in the industrial hemp research program;
- Restrictions on participants in the industrial hemp research program who have been convicted of controlled substances crimes; and

- Specific rules and regulations requirements KDA would be required to promulgate.

The bill would also prohibit the KDA from promulgating rules and regulations concerning fingerprinting, background checks, or the recording of license plates.

These changes to the current research program would not go into effect until on or after July 1, 2019.

Discontinuing Program (New Sec. 2(f))

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.

Technical Corrections

The bill would make numerous technical corrections.

Effective Date

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

Background

The bill was introduced by the House Committee on Agriculture upon request of the Chief Legal Counsel of the Kansas Department of Agriculture.

At the House Committee hearing, proponent testimony was provided by the Chief Legal Counsel of the Kansas Department of Agriculture and representatives of the Kansas Sierra Club and KMC Brands. Written-only proponent testimony was provided by a representative of the Kansas Farm Bureau. No opponent or neutral testimony was provided.

Staff of the Office of the Revisor of Statutes explained to the House Committee the bill would repeal KSA 21-5701a, 65-4101c, and 65-4105b, which were created after the 2018 Legislative Session. The three statutes are duplicate versions of KSA 21-5701, 65-4101, and 65-4105, as conflicting amendments to the statutes could not be reconciled. The bill would make the necessary adjustments to allow for repealing the duplicate versions.

The House Committee amended the bill by:

- Renaming the Alternative Crop Act Licensing Fee Fund and Alternative Crop Act to the Commercial Industrial Hemp Act Licensing Fee Fund and Commercial Industrial Hemp Act (Act), respectively;
- Adding the Legislature's intent that the KDA implement the Act in the least restrictive manner allowed under federal law;
- Requiring the KDA to submit a plan to monitor and regulate the commercial production of industrial hemp;

- Requiring the KDA to include in the plan submitted to the USDA a procedure for creating documentation that a hemp producer could use to prove the hemp producer is engaged in commercial industrial hemp production;
- Adding a cap of \$50 on any modification fee established by the KDA for a change to a license that was previously issued by the KDA;
- Requiring the Secretary of Agriculture to continue to accept applications for the industrial hemp research program from March 1, 2019, to June 1, 2019;
- Removing the definition for “Department”;
- Amending the definition of “industrial hemp”;
- Adding a definition of “commercial”, “hemp producer”, and “effective disposal”;
- Authorizing the KDA to begin on and after July 1, 2019, to cultivate industrial hemp grown from certified seed and promote the research and development of industrial hemp;
- Removing requirements for fingerprinting and background checks for participants in the industrial hemp research program on and after July 1, 2019;
- Removing specific requirements for rules and regulations promulgated by the KDA on and after July 1, 2019;
- Restricting the KDA from promulgating rules and regulations regarding fingerprinting, background checks, and recording of license plates on and after July 1, 2019; and
- Making numerous technical corrections.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General states it is unable to estimate any fiscal effect resulting from development and enforcement of the Act. The KDA estimates that expenditures related to enactment of the bill would amount to \$109,000 and revenue from application and license fees would be expected to total \$112,500. The Kansas Bureau of Investigation (KBI) estimates enactment of the bill would result in increased expenditures ranging from \$257,860 to \$1,005,319, all from the State General Fund. The KBI notes it does not have the resources or equipment to perform quantitative THC analysis. Any fiscal effect associated with the bill is not reflected in *The FY 2020 Governor's Budget Report*.