

Commercial Industrial Hemp Program; Senate Sub. for HB 2167

Senate Sub. for HB 2167 requires 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 establishes the Commercial Industrial Hemp Program; makes changes to the Industrial Hemp Research Program; and establishes hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Creation of the Commercial Industrial Hemp Program

Legislative Intent [New Section 1]

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

Commercial Plan Requirements [New Section 2(a)-(b)]

The bill requires 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 bill requires the plan 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 it is 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 Section 2(c)]

The bill states 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 is not subject to any state or local criminal enforcement action, but is 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 is ineligible to produce industrial hemp for a period of five years from the date of the third violation.

The bill requires 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 may be subject to criminal enforcement.

Ineligibility [New Section 2(d)]

The bill provides an individual is not 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 Section 2(e)]

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

The KDA is 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 is a class A misdemeanor and constitutes grounds for removal from office or termination of employment.

The bill disqualifies 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 is authorized to charge a reasonable fee for the background check, and the individual seeking a license or license renewal as a hemp producer must pay the costs of fingerprinting and the state and national background checks.

Rules and Regulations [New Section 2(f)]

The bill requires the Secretary of Agriculture (Secretary) 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 Section 2(h)-(i)]

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

The bill also changes 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 will be deposited in the Hemp Fund for all administration costs of the commercial production of industrial hemp.

Changes to the Industrial Hemp Research Program

Accepting Applications [New Section 3]

The bill requires the Secretary to continue accepting any applications for licensure submitted under the Industrial Hemp Research Program enacted in 2018 for the 2019 growing season from March 1, 2019, through June 1, 2019.

Modification Fee [Section 8(c)]

The bill requires any modification fee established by the KDA for any requested change to a license previously issued by the KDA under the Industrial Hemp Research Program to not exceed \$50.

Disqualifications [Section 8(d)(2)]

The bill disqualifies 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 [Section 8(e)]

The bill requires the KDA to promulgate rules and regulations to carry out the provisions regarding the research and development of industrial hemp by December 31, 2019, rather than December 31, 2018. The bill prohibits the KDA from promulgating rules and regulations concerning the recording of license plates.

Discontinuing the Program [New Section 2(g)]

The bill allows the KDA to discontinue the 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;
- 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

Changes to the Industrial Hemp Research Program become effective July 1, 2019, except for changes in application deadlines that took effect April 18, 2019.

Definitions Applicable to Both the Commercial and Research Programs [Section 7]

The bill makes the following changes to definitions in the Act:

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

Crimes and Controlled Substances Exceptions [Section 12(aa), Section 13(h)(1)]

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

The bill also excludes 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 Section 4]

Hemp Processor Registration [New Section 4(a)-(h)]

The bill requires the KDA to create and maintain a registry of all hemp processors operating within the state. Any person engaged in the processing of industrial hemp must register annually with the Secretary prior to processing industrial hemp. Such processors must apply for registration on a form provided by the Secretary, and the registration expires on April 30 each year. The fee for registration cannot exceed \$200 and will be established by the Secretary through rules and regulations.

The bill requires 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 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 is 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) are exempt from the hemp processor registration requirements; however, the Secretary must include the processors licensed under the ACRA in the list of registered hemp processors.

The bill requires all fees collected from the registrations to be deposited in the Hemp Fund.

Violations [New Section 4(i)]

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

- Upon first conviction for operating as a hemp processor without valid registration, a person is guilty of a class A nonperson misdemeanor; and
- Upon second or subsequent conviction for this violation, a person is guilty of a severity level 9 nonperson felony.

Hemp Processor Employee Fingerprinting and Criminal Record History Checks [New Section 4(j)]

The bill requires registered hemp processors, or those people applying to become registered hemp processors, to request the KBI to conduct state and national criminal record history checks on any employees who will be involved in the extraction of cannabinoids, including through the disposal of cannabinoids from industrial hemp under Section 6. The bill requires 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 requires the signed statement to include:

- A waiver permitting 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 is the subject of pending charges, of a criminal offense and, if convicted, a description of the crime and result of conviction; and
- A notice to the individual subject to the criminal history record check that 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 requires 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. The bill requires local and state law enforcement officers and agencies to assist the hemp processor in taking and processing an individual's fingerprints.

The bill requires the registered hemp processor or applicant to use the individual's fingerprints to identify the individual and determine whether the individual has a record of criminal history in Kansas or other jurisdictions or countries. The bill authorizes 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 is a class A nonperson misdemeanor.

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

The bill authorizes the KBI to charge a reasonable fee to conduct a criminal history record check. The bill requires 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 Section 4(k)]

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

Prohibition on Products; Sentencing Guidelines

Prohibition on Products [New Section 5(a)-(b),(d)]

The bill prohibits 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 does not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

For this purpose, the bill defines the terms “human or animal consumption” and “intended for human or animal consumption.”

In addition, the bill prohibits 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 clarifies this section does 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 Section 5(c)]

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

Research Purposes [New Section 5(d)]

The bill ensures nothing in the section prohibits 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 Section 6]

The bill requires 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 requires the waste to be rendered unusable and unrecognizable before being transported or disposed. This requirement does not apply to waste managed as a hazardous waste and sent to a hazardous waste facility.

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

The bill makes any violation of this section unlawful under continuing law regarding solid waste.