

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2173

As Further Amended by House Committee on
Agriculture

Brief*

HB 2173, as further amended, 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, create the Industrial Hemp Regulatory Commission, create the Hemp Processor License, establish prohibitions on specific products, establish sentencing guidelines, and establish 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.

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

*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>

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 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 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 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 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.

Fingerprinting and Background Checks (Sec. 8(d)-(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 KBI and FBI for the background checks.

The KDA would be allowed to use the information obtained from fingerprinting and the 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 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.

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 (Sec. 8(e))

The bill would require rules and regulations promulgated by the KDA to include, but not be limited to, a requirement that all license holders always have a current license in their possession if they are engaged in activities allowed under the provisions relating to the Industrial Hemp Research Program.

The bill would also prohibit the KDA from promulgating rules and regulations concerning the recording of license plates.

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 existing definitions of “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 on a dry weight basis; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

Industrial Hemp Regulatory Commission

The bill would create the Industrial Hemp Regulatory Commission (Commission) within the Kansas Department of Revenue (KDOR).

Administration (New Sec. 4(a))

The Commission would be administered by the Director of the Commission (Director), who would be appointed by and serve at the pleasure of the Secretary of Revenue. The Director would be in the unclassified service and would receive an annual salary fixed by the Secretary of Revenue

and approved by the Governor. The Director would be responsible for all powers, duties, and functions assigned to KDOR under the Act.

In addition, the bill would require the Commission to adopt rules and regulations as necessary to implement and administer the provisions of the Act relating to the licensing and regulation of hemp processor. The bill would allow the Commission to advise and consult with the Kansas Department of Health and Environment (KDHE) and KDA on the rules and regulations.

The bill would apply the provisions of this section and rules and regulations promulgated by the Commission to any individual licensed by the KDA to process, manufacture, produce, or distribute industrial hemp under the Industrial Hemp Research Program, except the individual would not be subject to license application or renewal fees established by the Commission.

Electronic Database (New Sec. 4(b))

The bill would require the Commission to establish an electronic database to store information regarding each license issued to a hemp processor; each individual working as an employee, agent, or unpaid worker of a hemp processor; and other information deemed necessary or appropriate by the Director. In addition, information in the database would be shared with law enforcement in a manner prescribed by the KBI for the purpose of verifying the validity of any identification card or license issued or the location of any operations authorized by the Act.

Hemp Processor License

Hemp Processor Application Requirements (New Sec. 4(c))

The bill would allow a person to apply to the Commission for initial or renewed licensure as a hemp processor in a manner prescribed by the Commission and accompanied by a fee not to exceed \$5,000. An applicant would be required to submit information and documentation for the licensure, as specified in the bill. Under the bill, the hemp processor license would authorize the licensee to process industrial hemp into hemp products and to perform other acts deemed necessary and incidental to by the Commission, as established in rules and regulations adopted by the Commission. (New Sec. 4(c)(1))

The bill would prohibit a person not in current compliance with any Kansas tax law administered by the Director of Taxation, KDOR; tax, fee, or payment administered by the Department of Labor; or any charge administered by any other state agency, from having an ownership interest in a hemp processor. (New Sec. 4(c)(2))

An applicant would be required to provide information and documentation on an application for licensure as a hemp processor, as specified in the bill. (New Sec. 4(c)(3))

Within 60 calendar days of receiving any hemp processor application, the Commission would be required to issue a decision to grant or deny licensure to the applicant. If the Commission denies licensure to a hemp processor, the bill would require the Commission to refund half of the applicant's application or renewal fee. (New Sec. 4(c)(5)-(6))

Fingerprinting and Background Checks (New Sec. 4(c)(4))

The bill would mandate the Commission to require all individuals working as employees, agents, or unpaid workers of a hemp processor to be fingerprinted and submit to a state

and national criminal history background check. The Commission would be authorized to submit the fingerprints to the KBI and FBI for the background checks.

The Commission would be allowed to use the information obtained from fingerprinting and the 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 processor. Disclosure or use of any information received by the Commission 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 processor.

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

Hemp Processor License (New Sec. 4(c))

Under the bill, a hemp processor license would be effective for a two-year period. If the Commission grants licensure, the Commission would require the applicant or licensee to:

- Pay a licensure fee not exceeding \$5,000; and
- Provide satisfactory evidence the hemp processor has obtained a surety bond in an amount required by the Commission based on the size and actual and projected yield of the hemp processor

operations, the number of facilities operated by the hemp processor, and other factors established by the Commission through rules and regulations.

The Commission would be required to remit all moneys from any fees to the State Treasurer, who would deposit the amount into the State Treasury to the credit of the Commercial Industrial Hemp Processor Fund (Processor Fund). (New Sec. 4(c)(7))

Documentation (New Sec. 4(c)(8))

The bill would mandate the Commission to require all individuals working as employees, agents, or unpaid workers of a hemp processor to have documentation in their possession at all times they are engaged in the processing, manufacturing, or distribution of industrial hemp or hemp products that would prove to any law enforcement officer the individual is authorized to engage in such activities.

The bill would require all actions by the Commission be in accordance with the Kansas Administrative Procedure Act and reviewable in accordance with the Kansas Judicial Review Act.

Violations (New Sec. 4(d))

The bill would make it unlawful for a person to process, manufacture, or distribute industrial hemp or hemp products in violation of this section. The bill would state:

- Upon first conviction for violation of the section, a person would be guilty of a class A nonperson misdemeanor and sentenced to not more than one year confinement and fined between \$1,000 to \$2,500;
- Upon second conviction, a person would be guilty of a severity level 9, nonperson felony and fined a

sum between \$10,000 to \$100,000 and sentenced according to continuing law; and

- Upon third or subsequent conviction, a person would be guilty of a severity level 9, nonperson felony and fined between \$50,000 to \$100,000 and sentenced according to continuing law.

The penalties provided would be cumulative to the remedies or penalties, including all civil penalties, under all other Kansas laws.

Commercial Industrial Hemp Processor Fund (New Sec. 4(e))

The bill would create the Commercial Industrial Hemp Processor Fund, which would be administered by the Commission. All expenditures from the Processor Fund would be used for costs related to hemp processor regulation.

Prohibition on Products and Sentencing Guidelines

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

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 hemp product intended for human or animal consumption, as defined by in the bill, containing any ingredient derived from industrial hemp, unless it is generally recognized as safe by the U.S. Food and Drug Administration under the federal Drug and Cosmetic Act.

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 operating under a hemp processor license or does not possess a license by the KDA under a commercial plan.

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 sentenced to not more than one year confinement and fined between \$1,000 to \$2,500;
- Upon second conviction, a person would be guilty of a severity level 9, nonperson felony and fined a sum between \$10,000 to \$100,000 and sentenced according to continuing law; and
- Upon third or subsequent conviction, a person would be guilty of a severity level 9, nonperson felony and fined between \$50,000 to \$100,000 and sentenced according to continuing law.

The penalties provided would be cumulative to the remedies or penalties, including all civil penalties, under all other Kansas laws.

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.

Technical Corrections

The bill would make numerous technical corrections.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*, except for the Industrial Hemp Research Program portion of the bill, which would take effect on and after July 1, 2019.

Background

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

At the House Committee hearing on February 13, 2019, proponent testimony was provided by the Chief Legal Counsel of the KDA 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 to the Commercial Industrial Hemp Act Licensing Fee Fund and the Alternative Crop Act to the Commercial Industrial Hemp Act (Act);
- 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 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 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.

The bill was passed by the House Committee on February 22, 2019. The bill was placed on General Orders for debate on February 26, 2019, but a motion to pass over the bill and have it retained on the House Calendar was approved by the House Committee of the Whole that same day.

On February 27, 2019, the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations. The bill was then withdrawn from the House Committee on Appropriations and rereferred to the House Committee on Agriculture on March 6, 2019. The House Committee again passed the bill with further amendments on March 19, 2019.

The House Committee further amended the bill by:

- Requiring the KDA to include licensing requirements and rules and regulations in the proposed plan for the production of commercial industrial hemp;
- Clarifying the KDA must include in the state plan a procedure for the creation of documentation that any person in possession of industrial hemp prior to being processed may use to prove said industrial hemp was lawfully grown;
- Creating certain requirements for licensure of hemp producers, under the Commercial Industrial Hemp Program, relating to fingerprinting and criminal history checks;
- Requiring the KDA to promulgate rules and regulations for the implementation of a state commercial industrial hemp plan;
- Establishing an Industrial Hemp Regulatory Commission (Commission) within KDOR, and providing for certain authority of the Commission, requirements for employees of the Commission,

and requirements for hemp processors and their employees;

- Removing the definition of the term “certified seed”;
- Replacing the term “clearing” with the term “disposing of” when referring to effective disposal methods;
- Expanding the definition of “hemp products” to include authorized seed or clone plants.
- Removing distribution or processing from the definition of the term “hemp producer”;
- Defining the terms “hemp processor,” “person,” and “authorized seed or clone plants”;
- Allowing the cultivation of industrial hemp in the Industrial Hemp Research Program from authorized seed or clone plants;
- Creating certain requirements for licensure of hemp producers, under the Industrial Hemp Research Program, relating to fingerprinting and criminal history checks;
- Requiring regulations for the Industrial Hemp Research Program to include license holders to have a current license in their possession when engaged in activities related to hemp production;
- Making certain changes to the exemption of THC from the Kansas Controlled Substance Act to include waste products derived from industrial hemp and industrial hemp products, as defined by Kansas law;
- Making it unlawful to manufacture, market, sell, or distribute certain hemp products by any person in Kansas;

- Establishing a procedure for the disposal of waste from the production or processing of industrial hemp; and
- Incorporating numerous technical changes.

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 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 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 enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.