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## **OLR Bill Analysis**

**sSB 893 (File 230, as amended by Senate "A")\***

### ***AN ACT CONCERNING A PILOT PROGRAM FOR HEMP PRODUCTION.***

#### **SUMMARY**

This bill requires the state Department of Agriculture (DoAg) commissioner to establish and operate a hemp research pilot program in Connecticut. Until he adopts related regulations, the commissioner must use procedures and guidance policies that meet specified minimum standards and are consistent with federal law (see BACKGROUND).

The bill also requires the DoAg commissioner to prepare a hemp production state plan in accordance with federal law for approval by the governor and attorney general. He must do this in consultation with the office of the chief state's attorney. (The bill does not specify a deadline for doing this.) Once approved, the commissioner must submit the plan to the U.S. Department of Agriculture (USDA) secretary for approval.

The bill establishes licensing requirements, qualifications, and fees for hemp growers, processors, and manufacturers. It requires DoAg to license and regulate growers and processors and the Department of Consumer Protection (DCP) to license and regulate manufacturers. (A manufacturer is one who converts hemp into a product intended for human consumption (i.e., "consumable").)

The bill also establishes inspection and testing requirements for growers and processors, as well as independent testing requirements for manufacturers, to ensure that hemp plants and products comply with state and federal requirements. It imposes penalties for violations.

Under the bill and federal law, "hemp" means the plant *Cannabis sativa* L. and any part of the plant, including seeds and 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.

The bill specifies that its hemp production and manufacturer provisions do not apply to palliative (i.e., medical) marijuana licensees.

Additionally, the bill requires the DoAg and DCP commissioners to report to the Environment Committee by February 1, 2020, on the status of the pilot program, the state plan, and regulations. The report must also provide any legislative recommendations, including any for requiring the registration of consumables offered for sale in the state.

Lastly, the bill makes minor and conforming changes to indicate that hemp is not a controlled substance, instead of industrial hemp, as under current law.

\*Senate Amendment "A" replaces the original bill (File 230), which required the DoAg commissioner to adopt regulations establishing an industrial hemp pilot program in Connecticut.

EFFECTIVE DATE: Upon passage

### **HEMP PRODUCTION PILOT PROGRAM**

Under the bill, the DoAg commissioner must establish and operate a hemp research pilot program that enables the department, and its licensees, to study ways to cultivate, process, and market hemp. The bill requires all grower and processor licensees to participate in the pilot program and be licensed in accordance with the bill's provisions (see below).

Until the commissioner adopts regulations as required under the bill, DoAg must use procedures and guidance policies that he deems to be consistent with federal law. At a minimum, the procedures and policies must require the following:

1. the DoAg commissioner to certify and register any site used to grow hemp;

2. anyone who grows hemp to produce plants that meet the definition of hemp (i.e., cannabis that does not exceed the required THC level) and verify as such;
3. hemp growers to maintain records and make them available to the commissioner for inspection; and
4. verification of compliance with the definition of hemp by a laboratory, at the licensee's expense.

The DoAg commissioner must operate the pilot program until the earlier of the date the USDA approves a hemp production state plan in accordance with federal law or the repeal of the federal law permitting a hemp production pilot program.

The commissioner may enter into an agreement with any state or federally recognized Indian tribe to assist the tribe in developing a pilot program under the federal law or to have applicants from the tribe participate in DoAg's pilot program.

#### **HEMP PRODUCTION STATE PLAN**

The bill requires the DoAg commissioner to prepare a hemp production state plan in accordance with federal law for approval by the governor and attorney general. He must do this in consultation with the office of the chief state's attorney. Once approved, the commissioner must submit the plan to the USDA secretary for approval.

The bill authorizes the commissioner to amend the state plan as needed to comply with the federal law. He must do this in consultation with the governor, attorney general, and office of the chief state's attorney.

#### **DOAG ENFORCEMENT POWER**

The bill grants the DoAg commissioner authority to enforce the relevant federal law, the state plan, the bill's provisions regarding hemp production, and related regulations. It also authorizes him to enforce the applicable processing standard for hemp products that are

not consumables.

Additionally, the bill allows the commissioner to consult, collaborate, and enter into cooperative agreements with any federal or state agency or state municipality as necessary to implement the bill's provisions.

## **HEMP GROWERS, PROCESSORS, AND SELLERS**

### ***Growers and Processors***

The bill requires anyone who cultivates or processes hemp to obtain a license from DoAg; only acquire certified seeds; and transport hemp and hemp samples in a way, and with documentation, the commissioner requires. "Certified seed" means hemp seed for which a certificate has been issued by an agency (1) authorized under the laws of a U.S. state, territory, or possession to officially certify hemp seed and (2) that has standards and procedures approved by the USDA secretary to assure the seed's genetic purity and identity.

### ***Sellers***

Under the bill, sellers of hemp products are not required to be licensed as long as they only engage in the following activities:

1. retail or wholesale sale of hemp or hemp products that require no further processing or manufacturing and that are obtained from someone authorized by law in Connecticut, another U.S. jurisdiction, or another country;
2. acquire hemp or hemp products for the sole purpose of resale; or
3. retail sale of hemp products that are authorized under federal or state law.

## **GROWER AND PROCESSOR REQUIREMENTS**

### ***License Application***

An applicant for a grower or processor license must submit an application to DoAg that contains the following information:

1. the applicant's name and address;

2. the name and address of the plot where hemp will be cultivated (i.e., planted, grown, and harvested) or processed (i.e., used or converted into a non-consumable commodity);
3. the global positioning system (GPS) coordinates, legal description, and acreage size of the plot where hemp will be cultivated;
4. written consent allowing the DoAg commissioner to conduct scheduled and random inspections of and around the premises where hemp will be cultivated, harvested, stored, and processed; and
5. any other information the commissioner requires.

All documents included in a license application are subject to disclosure under the Freedom of Information Act, except for any that describe or outline a licensee's security schematics and the results of any criminal history check.

### ***Grower License Requirements and Qualifications***

Anyone convicted of a felony is ineligible to obtain a grower license.

The bill requires the applicant, on-site manager, and signing authority for a grower license to submit to state and national fingerprint-based criminal history checks. They must pay for the checks themselves and provide the DoAg commissioner the results.

An "on-site manager" is the person the licensee designates as responsible for on-site management and operations. A "signing authority" is the applicant's agent authorized to commit the applicant to a binding agreement.

### ***Testing Expenses***

The bill requires each applicant for a grower or processor license to pay all costs of testing and resampling any hemp samples at a laboratory to determine THC levels.

Under the bill, a "laboratory" must be located in Connecticut and be

one of the following:

1. licensed by DCP to analyze controlled substances;
2. the University of Connecticut;
3. the Connecticut Agricultural Experiment Station;
4. the state Department of Public Health;
5. the U.S. Food and Drug Administration;
6. USDA; or
7. a testing laboratory that meets International Organization for Standardization (ISO) standard 17025, as accredited by a third-party accrediting body, such as the American Association for Laboratory Accreditation or the Assured Calibration and Laboratory Accreditation Select Services.

***License Approval***

The DoAg commissioner may grant a grower or processor license if he finds that the applicant meets the applicable requirements.

While the pilot program is operating, the commissioner may grant a conditional approval for a grower license, pending the receipt of the required criminal history check.

***License Duration and Fees***

A grower or processor license expires on the second December 31 after it is issued. A license may be renewed during the preceding October. Licenses are not transferable.

The bill establishes the following nonrefundable fees:

1. \$50 application fee;
2. grower license fee of \$50 per acre of planned hemp plantings;
3. \$250 processor license fee; and

4. if the DoAg commissioner has to resample hemp because a test shows a violation of the bill or regulation, a \$50 inspection fee, which the licensee must pay before the inspection and sample collection.

The bill waives application and license fees for a constituent unit of higher education and state agency or department if the hemp cultivation or processing is for research purposes.

**Penalties**

Any grower or processor licensee who violates the bill's provisions or any related regulation is subject to an administrative penalty of up to \$2,500 per violation. The commissioner may also suspend, revoke, or place conditions on a license. He may only impose such penalties following a hearing held in accordance with the Uniform Administrative Procedure Act (UAPA).

Under the bill, it is an infraction, punishable by a \$250 fine, for an individual to cultivate or process hemp without a license or when a license is suspended or revoked.

Any business entity (i.e., corporation, limited liability company, association, or partnership) that cultivates or processes hemp without a license or when a license is suspended or revoked is subject to a fine of up to \$2,500 per violation, after a UAPA hearing is held.

Under the bill, any negligent violation of the bill's provisions or the state plan is subject to enforcement in accordance with federal law. Under federal law, a negligent violation includes negligently (1) failing to provide a legal description of the land on which hemp is produced, (2) failing to obtain a license, or (3) producing hemp with a THC level above 0.3 percent on a dry weight basis. A violator must enter into a corrective action plan with DoAg and report on their compliance for at least two calendar years. Further, anyone who commits three negligent violations in a five-year period is ineligible to produce hemp for five years beginning with the date of the third violation.

Whenever the DoAg commissioner finds a violation of the bill's

provisions or related regulations, he must notify the violator in writing of the violation, any corrective action to be taken, and the time period to make the corrective action. The violator may request a UAPA hearing after receiving any such notice. (The bill does not specify a timeframe in which the commissioner must notify the violator.)

### ***Enforcement Orders***

The bill specifies that it does not limit the DoAg commissioner's authority to issue a cease and desist order, an emergency order in response to a public health hazard, or other orders needed to effectuate the bill's purposes. Such orders could require the embargo, destruction, or release of hemp or hemp products.

Cease and desist or emergency orders are effective once the commissioner serves them. Following service, subsequent proceedings must occur in accordance with state law and agency practice.

Anyone aggrieved by an order may appeal to the commissioner in accordance with the UAPA. An appeal must be made in writing and received within 15 days after the date of the order. If no appeal is made, the order is final.

### ***Inspection and Testing Program***

The bill requires the DoAg commissioner to establish an inspection and testing program to determine THC levels and ensure compliance with the required limits. It allows the commissioner to inspect, and grants him access to, buildings, equipment, supplies, vehicles, records, real property, and other information needed to carry out his duties.

The commissioner must adopt a pre-harvest hemp sampling protocol in accordance with the UAPA and publish it on DoAg's website.

The bill requires a grower to collect a pre-harvest sample no more than 15 days before the intended harvest date in accordance with the adopted protocol. Licensees are responsible for all costs of disposing of hemp samples and any hemp that violates law or regulations.



A hemp sample fails the testing if the sample contains an average THC level greater than 0.3 percent on a dry weight basis. The commissioner may order and conduct a post-harvest sample test if the pre-harvest test failed, unless the licensee destroys the crop before post-harvest testing.

***Record Retention***

All grower and processor licensees must maintain records as required in federal or state law or regulations and make them available to DoAg upon the commissioner’s request and in an electronic format, if available.

***Regulations***

The bill requires the DoAg commissioner to adopt implementing regulations, which must establish sampling and testing procedures and disposal procedures for plants grown in violation of federal law.

***Hemp is not a Controlled Substance***

The bill specifies that, regardless of any state law:

1. marijuana does not include hemp or hemp products;
2. THC that is in hemp but does not exceed 0.3 percent on a dry weight is not a controlled substance;
3. hemp-derived cannabidiols are not controlled substances or adulterants solely because they contain CBD (i.e., the non-psychoactive compound with THC level of not more than 0.3 percent on a dry weight basis); and
4. hemp products containing one or more cannabidiols, such as CBD, that are intended for ingestion are food and not controlled substances or adulterated products solely because they contain hemp-derived cannabidiols.

The bill requires the DoAg commissioner, whenever he has reasonable cause to believe that a licensee or a licensee’s employee is violating state law concerning marijuana, to notify the Department of

Emergency Services and Public Protection and the state police.

## **MANUFACTURER REQUIREMENTS**

### ***License and Application Requirements***

The bill prohibits anyone from manufacturing hemp or hemp products (i.e., converting hemp to create a consumable product) in Connecticut without a DCP-issued license.

Each applicant for a manufacturer license must submit an application on a form and in a manner the DCP commissioner prescribes.

### ***License Duration and Fees***

A manufacturer license expires biennially on June 30. Licenses are not transferrable. (The bill does not indicate if licenses are renewable.)

The bill establishes a nonrefundable \$50 application fee and \$250 license fee.

### ***Penalties***

Any manufacturer licensee who violates the bill's provisions or any related regulation is subject to a fine of up to \$2,500 per violation. The DCP commissioner may also deny, suspend, revoke, or place conditions on a license. She may only impose such penalties following a hearing held in accordance with the UAPA.

Under the bill, it is an infraction, punishable by a \$250 fine for an individual to manufacture hemp without a license or when a license is suspended or revoked.

Any business entity that manufactures hemp without a license or when a license is suspended is subject to a fine of up to \$2,500 per violation, after a UAPA hearing is held.

### ***Inspection***

The bill allows the DCP commissioner to inspect, and grants her access to, buildings, equipment, supplies, vehicles, records, real property, and other information needed to carry out her duties.

### ***Record Retention***

All manufacturer licensees must maintain records as required in federal or state law or regulations and make them available to DCP upon the commissioner's request and in an electronic format, if available.

### ***Regulations***

The bill authorizes the DCP commissioner to adopt implementing regulations, including sampling and testing procedures, disposal procedures for plants grown in violation of federal law, and advertising and labeling requirements for consumables.

### ***Advertising***

The bill prohibits manufacturers from placing any claim of health impacts, medical effects, or physical or mental benefits on the advertising, labeling, or marketing of consumables. Any violation violates the Connecticut Unfair Trade Practice Act (CUTPA) (see BACKGROUND).

## **DISPOSAL PROTOCOLS FOR MANUFACTURERS**

If the DCP commissioner determines hemp or hemp products exceed the required THC level or a manufacturer wants to dispose of obsolete, misbranded, excess, or undesired product, the manufacturer must follow the bill's disposal protocols. Each manufacturer licensee is responsible for all disposal costs for any hemp or hemp product that violates the bill or any related regulation.

A manufacturer must immediately embargo and label as adulterated any hemp or product with a THC level exceeding 0.3 percent on a dry weight basis. The manufacturer must immediately notify DoAg and DCP in writing of the adulterated product. The manufacturer must destroy and dispose of the hemp or product in the following manner, as the DCP commissioner determines:

1. surrender, without compensation, the hemp or product to the DCP commissioner, who must destroy and dispose of it, or

2. dispose of it in the presence of an authorized representative of the DCP commissioner in a way that makes it nonrecoverable.

In lieu of embargo or destruction, and upon written request of a manufacturer, the DCP commissioner may allow the manufacturer to combine batches to achieve a compliant THC level.

### ***Required Records***

The bill requires anyone disposing of hemp or hemp products to maintain and make available to the DCP commissioner the following records:

1. the date, time, location, and manner of disposal or destruction;
2. the batch or lot information and quantity of hemp or product disposed of or destroyed; and
3. the signatures of the people disposing of the hemp or products, the authorized DCP representative, and any other people present during the disposal.

### **INDEPENDENT TESTING OF CONSUMABLES**

The bill requires that any hemp intended to be manufactured as a consumable must be tested by an independent testing laboratory or any other ISO-accredited testing laboratory. An “independent testing laboratory” is an accredited laboratory for which no person with an interest in the laboratory also has a direct or indirect financial or managerial interest in a hemp or marijuana production facility in any U.S. state or territory.

A manufacturer licensee must make samples available, in an amount and type the DCP commissioner determines, for a laboratory’s employee to select random samples. The laboratory must test each sample for microbiological contaminants, mycotoxins, heavy metals, and pesticide chemical residue, as well as an active ingredient analysis if applicable, as determined by the DCP commissioner.

### ***Segregation During Testing***

While waiting for the testing results, the manufacturer must segregate and withhold from use the entire batch of hemp (except for the testing samples) and hemp product intended to be sold as a consumable. During segregation, the manufacturer must keep the hemp and product in a secure, cool, and dry location so that it does not become adulterated. The DCP commissioner must prescribe the type of location. Further, the manufacturer cannot manufacture or sell a consumable before the laboratory provides the testing results.

### ***Disposal of Samples***

A laboratory must immediately return or dispose of any hemp or product after completing the testing. If the laboratory disposes of hemp or product, it must do so in the following manner, as the DCP commissioner determines:

1. surrender, without compensation, the hemp or product to the DCP commissioner, who must destroy and dispose of it, or
2. dispose of it in the presence of an authorized representative of the DCP commissioner in a way that makes it nonrecoverable.

### ***Testing Results***

If a sample fails the testing based on standards the DCP commissioner prescribes in regulations and publishes on the DCP website, the manufacturer must dispose of the entire batch from which the sample was taken. It must do this in accordance with procedures the DCP commissioner adopts in regulations.

The laboratory must file with DCP an electronic copy of each test result for any batch that fails testing at the same time that it sends the results to the manufacturer. Each laboratory must maintain test results for three years and make them available to DCP upon request.

If a sample passes the testing, the laboratory must release the entire batch for manufacturing, processing, or sale.

## **BACKGROUND**

### ***Federal Law***

The federal 2014 Agricultural Act (P.L. 113-79), known as the 2014 farm bill, allows a higher education institution or state agriculture agency to grow or cultivate industrial hemp under a pilot program or other research program if also allowed by state law (§ 7606). Under such a program, any site used for growing or cultivating industrial hemp must be certified by, and registered with, the state's agriculture department.

The federal 2018 Agriculture Improvement Act (P.L. 115-334), known as the 2018 farm bill, allows states to regulate hemp production, but only under an enforcement plan the state agriculture department submits to the USDA for its approval (§ 10113).

***Connecticut Unfair Trade Practice Act***

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and up to \$25,000 for a restraining order violation.

***Related Bill***

sSB 598 (File 220), reported favorably by the Environment Committee, requires DoAg to submit a hemp production plan to the USDA for approval under the 2018 farm bill and adopt regulations establishing a licensing program for growing, cultivating, producing, and processing industrial hemp.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute  
Yea 28 Nay 0 (03/08/2019)