
OLR Bill Analysis

HB 7003

Emergency Certification

AN ACT REVISING THE STATE HEMP PROGRAM IN ACCORDANCE WITH FEDERAL REQUIREMENTS.

SUMMARY

This bill revises the state's hemp program to comply with U.S. Department of Agriculture (USDA) regulations for hemp production. By law, the state Department of Agriculture (DoAg) commissioner must prepare a state hemp production plan and submit it to the USDA for approval. The bill requires the commissioner to operate the state plan, which must include specific federal regulatory requirements (e.g., hemp sampling and testing, recordkeeping and reporting, and enforcement provisions).

Current law requires DoAg to license and regulate hemp growers and processors. The bill combines these two licenses into one producer license. Existing law requires the Department of Consumer Protection (DCP) to license and regulate those who manufacture certain products from hemp ("manufacturers").

The bill extends the licensing period for producers and manufacturers from two to three years and increases the license fees. Under current law, it is an infraction punishable by a \$250 fine for someone to produce or manufacture hemp without the applicable license. The bill removes the set fine amount for an unlicensed individual producer, but keeps it for an individual manufacturer acting without a license.

The bill also expands the types of information generally exempt from disclosure under the Freedom of Information Act (FOIA) to include a producer's hemp testing results and location information. A

producer's security plans and criminal history check results are already exempt from disclosure. Under the bill, all of this information remains available for law enforcement purposes.

The bill authorizes, instead of requires, the DoAg commissioner to adopt producer regulations. Existing law authorizes the DCP commissioner to also adopt manufacturer regulations. The bill revises the minimum provisions that may be included in the regulations.

By law, the DoAg commissioner operates a hemp production pilot program until the date USDA approves the state plan for hemp. Current law allows him to enter into an agreement with a state or federally recognized Indian tribe to help it develop a pilot program or participate in the state's program. The bill removes this authorization.

Under state and federal law, "hemp" is the plant *Cannabis sativa* L. and any part of it, including seeds and derivatives, extracts, cannabinoids, isomers, acids, 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. By law, hemp is not a controlled substance. The bill also specifies that certain compounds derived from it (e.g., cannabidiol) are not controlled substances.

Lastly, the bill makes numerous technical and conforming changes.

EFFECTIVE DATE: October 31, 2020, except the provisions specifying that certain hemp-derived compounds are not controlled substances (§§ 3 & 4) are effective upon passage.

HEMP PRODUCTION STATE PLAN

Preparation and Approval

Current law requires the DoAg commissioner to prepare a hemp production state plan in accordance with federal law and in consultation with the Office of the Chief State's Attorney, for approval by the governor and attorney general. The bill instead requires him to prepare it according to federal law and regulation, in consultation with the attorney general and the Office of Chief State's attorney, for the governor's approval. Once approved, the law requires the

commissioner to submit the plan to the USDA for approval.

Minimum Requirements

Under the bill, the DoAg commissioner must operate the state plan, which must include at least the following provisions:

1. hemp sampling and testing requirements in accordance with federal regulations (e.g., law enforcement or another designated person must collect the samples within 15 days before the anticipated harvest date and have them tested for THC level), with sampling to be performed by the DoAg commissioner, his designated agents, or an authorized sampling agent;
2. control and disposal requirements for noncompliant plants (e.g., plants with excessive THC levels) in accordance with federal regulations;
3. DoAg recordkeeping and reporting requirements in accordance with federal law and regulations;
4. DoAg enforcement procedures in accordance with federal regulations;
5. annual DoAg inspections of a random sample of hemp producers to (a) verify their compliance with state and federal law and the state plan and (b) enforce violations; and
6. producer reporting to (a) USDA's Farm Service Agency of their license, lot, and hemp crop acreage information and (2) the DoAg commissioner of their total acreage of hemp planted, harvested, and disposed of, as well as other information he requires.

Sampling and Testing

Under the bill, all hemp sampling and testing must be done using protocols that are at least as statistically valid as the USDA's published protocols. The protocols must be posted on DoAg's website.

The bill requires a producer or an authorized representative to be

present during a scheduled sample collection. It prohibits (1) the producer from harvesting the crop before samples are taken and (2) samples from one lot (i.e., contiguous area in a field, greenhouse, or indoor growing structure with the same hemp variety or strain throughout) from being combined with samples from other lots.

Under the bill, lots that do not comply with the applicable THC level for hemp must be handled and disposed of in accordance with federal and state law and the state plan.

DoAg Reporting to USDA

The bill requires the DoAg commissioner to collect, maintain, and report to USDA at least monthly the following: (1) each hemp producer's license status, (2) contact information for each licensed hemp producer, (3) legal descriptions and locations of lots, (4) hemp test results, and (5) disposal information for noncompliant plants. The bill specifies that he may not give the USDA state and federal fingerprint-based records.

PRODUCER REQUIREMENTS

License Required

Under the bill, anyone who cultivates hemp or creates a producer hemp product must obtain a license from DoAg and comply with federal and state law and the state plan, as well as any related regulations the DoAg commissioner adopts. "Producer hemp products" include raw hemp, fiber-based hemp, or animal hemp food products made in the state.

The bill eliminates the requirement under current state law that hemp growers only acquire certified seeds.

As under existing law, hemp product sellers do not need a license if they only engage in the (1) retail or wholesale sale of hemp or hemp products that they do not further produce or manufacture and that they receive from authorized sellers, (2) acquisition of products only for resale, or (3) retail sale of hemp products authorized under federal or state law.

License Application

An applicant for a producer license, whether an individual or entity, must submit a license application to DoAg with specific information. An “entity” includes a corporation, joint stock company, association, limited partnership, limited liability partnership or company, irrevocable trust, estate, charitable organization, or other similar organization. It also includes an organization participating in hemp production as a partner in a general partnership or a participant in a joint venture or similar organization.

The license application must include the following information:

1. the applicant’s name, telephone number, email address, and business address;
2. if an individual applicant, the individual’s address;
3. if an entity applicant, the entity’s full name and principle business location, as well as the full name, title, and email address for each key participant (i.e., sole proprietor, partner in a partnership, or people with executive managerial control, including chief executive, operating, and financial officers);
4. the name and address of each lot or producing location;
5. each lot’s geospatial location by global positioning system (GPS) coordinates, legal description, and acreage size;
6. written consent for the commissioner to conduct scheduled and random inspections of the premises where the applicant will cultivate, harvest, store, and produce hemp; and
7. any other information the commissioner requires.

An individual or entity that materially falsifies information in an application is ineligible to obtain a producer license.

Licensee Requirements and Qualifications

Current law requires the applicant, on-site manager, and signing

authority for a grower license to submit to state and national fingerprint-based criminal history record checks at their own expense. Under the bill, an individual applicant and each key participant of an entity applicant must submit to these record checks for a producer license or renewal.

Current law requires the applicant to provide the record checks results to the DoAg commissioner for review. Under the bill, applicants and key participants must provide record checks results to the commissioner through December 31, 2021.

Currently, anyone who is convicted of a felony relating to a controlled substance is ineligible for a grower license. Under the bill, an individual, including an entity's key participant, who is convicted of a felony relating to a controlled substance is ineligible for a producer license, unless the individual, before December 20, 2018, lawfully grew hemp under a state hemp pilot program authorized by the federal 2014 Agricultural Act (i.e., the 2014 farm bill).

Sampling, Testing, and Disposal Expenses

Current law requires each grower or processor licensee to pay for testing and resampling hemp samples at a laboratory to determine THC levels. The bill instead requires each producer licensee to pay for sampling, resampling, testing, and retesting samples at a laboratory (described below) to determine the THC level of cannabis under their control or in their possession. It also requires each licensee to pay the costs of disposing of noncompliant cannabis plants.

Under current law, one type of laboratory is a facility that is 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. The bill requires a laboratory to (1) be this type of facility and (2) meet specified federal regulatory requirements. It eliminates the following as a laboratory, unless they meet the ISO standard and federal requirements: a laboratory located in Connecticut

and licensed by DCP to analyze controlled substances, University of Connecticut, Connecticut Agricultural Experiment Station, state Department of Public Health, U.S. Food and Drug Administration, and USDA.

License Approval

The bill authorizes the DoAg commissioner to grant a producer license to an applicant if he finds that the applicant meets the applicable requirements. As under current law, while the state's hemp production pilot program is in effect, the commissioner may grant a conditional license pending receipt of the required criminal history records check. The bill requires him to assign each producer a license or authorization identifier consistent with federal regulations.

Additionally, the bill requires a licensee to notify the commissioner of any changes to their application information within 15 days after a change occurs.

License Duration and Fees

Under the bill, a producer license, which is not transferable, expires on the third December 31 after its issuance and is renewable during the preceding October. Currently, grower and processor licenses expire after two years.

As under current law, the bill sets various nonrefundable fees, which are shown in the table below. The bill, as under current law, waives application and license fees for a constituent unit of higher education or state agency or department if production is for research.

| <i>Fee</i> | <i>Current Law</i> | <i>The Bill</i> |
|-----------------------|---|------------------------|
| Application fee | \$50 | \$50 |
| Grower license fee | \$50 per acre of planned hemp plantings | N/A |
| Processor license fee | \$250 | N/A |

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| Producer license fee | N/A | \$450 for the first acre of planned hemp production and \$30 for each additional acre, rounded to the nearest acre, but no more than \$3,000 |
| Inspection fee (if DoAg must resample due to a test result showing a violation) | \$50 | \$50 |

Penalties

Similar to current law, the bill subjects a licensee who violates the bill's provisions or any related regulation to an administrative penalty of up to \$2,500 per violation. It also allows the DoAg commissioner to suspend, revoke, or place conditions on a license. He may only impose penalties or take these actions after a hearing held in accordance with the Uniform Administrative Procedures Act (UAPA).

Under current law, an individual licensee who cultivates or processes hemp without a license, or when a license is suspended or revoked, may be charged a \$250 fine that may be paid by mail. The bill eliminates the specific fine and instead makes it an infraction to produce hemp without a license or when a license is suspended or revoked. (Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus a surcharge and an additional fee based on the amount of the fine. They are not crimes, and violators can pay the fines by mail without making a court appearance.)

Under current law, the commissioner, after holding a UAPA hearing, must impose a fine of up to \$2,500 per violation on a business entity who cultivates or processes hemp without a license, or when a license is suspended or revoked. The bill instead makes such a fine optional if an entity produces hemp without a license, when a license is suspended or revoked, or in violation of the bill's provisions. The commissioner must still conduct a UAPA hearing before imposing a fine.

Negligent Violations

Under existing law, a negligent violation of state law or the state plan is subject to enforcement in accordance with federal law. The bill also subjects it to enforcement under the state plan. Under federal law, a negligent violation includes negligently failing to provide a legal description of the land used to produce hemp, failing to obtain a license, or producing noncompliant plants.

The bill codifies certain federal law requirements, including the need for a corrective action plan when a negligent violation occurs. Specifically, it requires a producer to develop a corrective action plan that the DoAg commissioner approves. The plan must include a reasonable deadline to correct the violation, periodic reporting to the commissioner for at least two years, and compliance with the state plan. The bill requires the commissioner to do an inspection to ensure the plan is carried out properly.

The bill prohibits a producer that negligently violates the state plan three times in a five-year period from producing hemp for five years from the date of the third violation. But it also prohibits the commissioner from referring a producer who commits a negligent violation for criminal enforcement action.

Notice of Violations

By law, whenever the DoAg commissioner finds a violation of the state law or regulations, he must notify the violator in writing of any corrective action to be taken and the deadline for doing so. The bill extends this to violations of the state plan.

The bill also requires the commissioner to provide this notice by (1) certified mail, return receipt requested, to the violator's last known address; (2) in-hand service by the commissioner or his designated agent; (3) email, with the violator's consent; or (4) procedures set in state law for civil process and service.

The bill requires the commissioner to report producer violations made with a culpable mental state greater than negligence (i.e., acting

intentionally, knowingly, willfully, or recklessly) to the U.S. attorney general and state's attorney for the judicial district in which the violation occurred.

The bill also requires the commissioner, when he believes or has reasonable cause to believe that a licensee or a licensee's employee is violating federal law, the state plan, or any state marijuana law, to notify the Department of Emergency Service and Public Protection and the state police. Currently, he only has to notify them of a violation of a state marijuana law.

Enforcement Orders

By law, the DoAg commissioner may issue cease and desist orders, emergency orders in response to public health hazards, or other orders needed to carry out the law's purposes. The orders may require embargo, destruction, or release of hemp or hemp products. Under the bill, he may also order partial destruction.

The bill requires that these orders must be served by (1) certified mail, return receipt requested, to the recipient's last known address; (2) in-hand service by the commissioner or his designated agent; or (3) procedures set in state law for civil process and service.

As under existing law, cease and desist and emergency orders are effective upon service and 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 order's date. If no appeal is made the order is final.

Record Disclosure and Retention

Under the bill, all documents and records submitted or kept in accordance with it must be disclosed to a law enforcement agency upon the agency's request. By law, "law enforcement agency" includes the Connecticut state police; U.S. Drug Enforcement Administration; DCP Drug Control Division; or other federal, state, or local law enforcement agency or drug suppression unit. The bill adds DoAg to this list.

As under current law, all licensees must keep records as required in federal or state law or regulations and make them available to DoAg upon request and electronically, if available. But the bill also requires licensees to keep records as required in the state plan.

Agency Regulations

The bill authorizes, instead of requires, the DoAg commissioner to adopt implementing regulations, which may include labeling requirements for producer hemp products. The bill eliminates the requirement that regulations have sampling, testing, and noncompliant plant disposal procedures.

MANUFACTURER REQUIREMENTS

License Required

State law prohibits manufacturing hemp or hemp products in the state without a license from DCP.

The bill expands the definition of “manufacture.” Current law defines it as converting hemp to create a consumable product. The bill instead defines it as converting hemp into by-products by adding heat, using solvents, or extraction to convert the plant into manufacturer hemp products for commercial or research purposes. “Manufacturer hemp products” include products intended for human consumption, including by ingestion, inhalation, or absorption, that contain a THC concentration of no more than 0.3 percent on a dry weight basis or per volume or weight.

Under the bill, manufacturer hemp product sellers do not need a license if they only engage in the (1) retail or wholesale sale of the products that are not further manufactured and that are received from an authorized manufacturer, (2) acquisition of the products only for resale, or (3) retail sale of the products authorized under federal or state law.

License Duration and Fees

Under the bill, a manufacturer license, which is not transferable (and is, presumably, renewable), expires on the third June 30 after its

issuance. Manufacturer licenses currently expire after two years.

The bill proportionately increases the fees to apply for and obtain a manufacturer license. Under the bill, the fees, which are nonrefundable, are \$75 for filing an application, up from \$50, and \$375 for a license, up from \$250.

Disposal Protocols

By law, if any hemp or hemp product has a THC level exceeding the allowed amount or a manufacturer wants to dispose of obsolete, misbranded, excess, or undesired products, the manufacturer must follow specific disposal protocols.

Under the bill and similar to current law, the manufacturer must destroy and dispose of the adulterated or unwanted hemp or product by (1) surrendering it to the DCP commissioner, who must destroy and dispose of it, or (2) disposing of it in a way the commissioner prescribes. The bill eliminates the requirement that, if the manufacturer does the disposal, it must occur in the presence of the commissioner's authorized representative.

Current law requires the person disposing of the hemp or products to maintain and make available to the DCP commissioner certain records (e.g., date, time, location, and manner of disposal or destruction and the batch and quantity disposed of or destroyed). The bill instead requires the manufacturer or its authorized designee to do this.

Independent Testing of Hemp to be Manufactured

Current law requires any hemp intended to be manufactured as a consumable product to be tested by an independent testing laboratory or other ISO-accredited testing laboratory. The bill instead requires hemp intended to be manufactured into a manufacturer hemp product to be tested only by an "independent testing laboratory." This, by law, is generally an accredited laboratory in which no person with a financial or managerial interest also has an interest in a hemp, hemp product, or marijuana facility that cultivates, processes, produces,

manufactures, distributes, dispenses, or sells these items.

By law, an independent testing laboratory must immediately return or dispose of any hemp or products after completing testing. If disposing, the laboratory must do so using the manufacturer disposal protocols above.

Agency Regulations

By law, the DCP commissioner may adopt implementing regulations. Current law allows the regulations to set sampling and testing procedures to ensure compliance with federal law, disposal procedures for noncompliant plants, and advertising and labeling requirements for consumable products.

The bill instead allows the regulations to establish sampling and testing procedures to ensure compliance with the bill's provisions; storage and disposal procedures for hemp, marijuana, and manufacturer hemp products that fail DCP's prescribed independent testing standards; and advertising and labeling requirements for manufacturer hemp products.

Manufacturer Hemp Products are not Controlled Substances

The bill specifies that, regardless of any state law, (1) marijuana does not include manufacturer hemp products; (2) cannabidiol (CBD, i.e., the non-psychoactive compound) in manufacturer hemp products is not a controlled substance or legend drug (an FDA-approved prescription drug); and (3) hemp-derived cannabinoids in manufacturer hemp products are not controlled substances or adulterants.