

ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020
COMMITTEE STATEMENT
LB1152

Hearing Date: Tuesday February 04, 2020
Committee On: Agriculture
Introducer: Halloran
One Liner: Change licensing, cultivation, testing, transportation, violation and penalty, and powers and duties provisions relating to hemp

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Brandt, Blood, Halloran, Hansen, B., Lathrop, Moser, Slama
Nay:
Absent: 1 Senator Chambers
Present Not Voting:

Oral Testimony:

Proponents:

Senator Steve Halloran
Steve Wellman
Ansley Fellers
John Hansen

Representing:

Introducer
Nebraska Department of Agriculture
Nebraska Farm Bureau
Nebraska Farmers Union

Opponents:

Neutral:

Gregory Lauby
Jacob Bish
Bill Hawkins
Annette Wiles

Representing:

self
Bish Enterprises
Nebraska Hemp Company
self

Summary of purpose and/or changes:

LB 1152 is brought to conform the authorities and duties of the Department of Agriculture (Department) under the Nebraska Hemp Farming Act to the requirements for state plans as provided under USDA's Interim Final Rule (IFR), 7 CFR part 990 IFR, for implementing the 2018 Farm Bill. The bill makes various other statutory adjustments to aid implementation of the Act and address matters that have arisen since enactment of the hemp licensure program.

Section-by-section summary:

Section 1: Amends section 2-501 to incorporate section 14 into the Hemp Farming Act

Section 2: Amends section 2-503, which sets out defined terms used in the Act to insert, delete or modify terms as used elsewhere in the Act as amended by LB 1152

Section 3: Amends section 2-504, which declares lawful acts with respect to growing or processing hemp and generally sets forth duties and authorities of the Department to regulate hemp producers and processors. LB 1152 deletes an

exclusion of non-commercial cultivation of Nebraska heirloom cannabis plants from regulation that otherwise applies to hemp cultivation. The definition of cultivation in section 2-503 is revised by section 2 of the bill to provide that the presence of feral hemp that grows as uncultivated, naturalized plants in the environment is not cultivation for purposes of the Hemp Farming Act. The bill also expands purposes for which rules and regulations may be adopted to include standards governing approval and denial of license applications, to develop bill of lading forms, and standards for transporting hemp.

Section 4: Amends section 2-505, which sets out the requirement for licensure under the Hemp Farming Act to cultivate hemp in this state and establishes procedures and documentation to apply for a license. LB 1152 adds USDA licensed hemp producers to persons who may cultivate hemp. (USDA licensure would be dormant unless at some point in the future Nebraska were to elect not to license cultivators. Also, under the 2018 Farm Bill and the IFR, tribal members in Nebraska may elect in some circumstances to be directly licensed by USDA.) The bill adds to information to be supplied for a cultivator license application, to include "key participants," which is a new requirement under the IFR. Finally, the revisions to this section strikes a requirement that license applicants submit site registration fees with the application. The bill does not eliminate the fees to register growing locations if a license is granted, but avoids administrative difficulty of holding payments for refundable registration fees if the application is eventually denied.

Section 5: Amends section 2-506, which set out the requirements for licensure under the Hemp Farming Act as a processor/handler or broker and establishes procedures and documentation to apply for a license. LB 1152 more precisely provides that the requirement for licensure applies to processing, handling or brokering hemp plants and plant parts excluding seeds. The bill also expands an exclusion from the requirement for licensure under this section for handling by licensed cultivators incidental to cultivation to include handling by cultivators licensed directly by USDA. Finally, LB 1152 removes the current requirement that licensure is only available if the state has a USDA approved hemp plan.

Section 6: Amends section 2-507, which authorizes the Department to promulgate rules and regulations governing approval or denial of license applications and prescribes that the Department deny licensure under certain circumstances. LB 1152 removes regulatory authority to define circumstances to deny licensure and adds conditions for which licensure shall be denied to include an applicant's ineligibility for licensure due to time periods of ineligibility arising from previously disqualifying circumstances.

Section 7: Amends section 2-510, which requires licensees to consent to a background check, and entry of the Department for purposes of inspection and testing, and destruction of hemp that is not in compliance with the Act, including that the hemp exceeds the maximum THC content. LB 1152 adopts the IFR standard that non-compliant hemp is hemp exceeding the "acceptable THC level." The bill further adopts the IFR standard designates "lots" of hemp as the regulatory unit. (The terms "acceptable THC level" and "lot" are new defined terms under section 2-503, as amended by section 2 of the bill.)

Section 8: Amends section 2-511, which sets forth enforcement options for persons who "unintentionally" violate the Act. LB 1152 replaces the term "unintentional violation" with the term "negligent violation" and incorporates text for acts that do not rise above negligent violations from the 2018 Farm Bill and the IFR.

Section 9: Amends section 2-512, which sets forth enforcement actions in the event of an "intentional violation," including potential administrative fines, referral to law enforcement, and potential ineligibility for licensure for 10 years. LB 1152 replaces the term "intentional" violation to provide that the enforcement mechanisms under this section apply to violations with a culpable mental state greater than negligence and defines culpable mental state.

Section 10: Amends section 2-514, which sets out standards for sampling and testing, to be consistent with the IFR. The substantive changes include: a) that a hemp lot is to be harvested within 15 days of testing, b) that testing is to determine total THC and the measurement of uncertainty to support determination whether the sample meets the acceptable THC standard, and c) deletes existing statutory prescription for test sample collection to allow sample collection methodology to be specified by the Department in conformity with the IFR.

Section 11: Amends section 2-515, which sets forth documentation to accompany hemp transported by licensees under the Hemp Farming Act, to include a copy of the license and the THC test results for each lot being transported. LB 1152 excludes hemp samples transported for any official or private testing purpose from the requirement to carry test results. The bill further inserts a new subsection (3) to require that a licensee provide at least 7-days notice to the Department prior to transporting hemp. Provisions of section 2-515 pertaining to documentation required by persons transporting hemp other than a licensee under the Hemp Farming Act are stricken from this provision and relocated to the Controlled Substances Act under sections 16-18 of the bill. Provisions of section 2-515, which authorize the Department in consultation with the State Patrol to develop bill-of-lading forms as documentation to accompany shipments of hemp, are relocated to section 2-504 by section 3 of the bill.

Section 12: Amends section 2-516 with non-substantive, harmonizing change

Section 13: Amends section 2-517, which creates the Hemp Commission and prescribes the Commission's membership, and its duties and authorities. New text pertaining to the time frame and process of appointment of Commission members is inserted to harmonize with the delayed effective date of this section under LB 657, as enacted last session, and section 19 of LB 1152.

Section 14: Inserts a new section stating legislative intent that all applications for licensure shall be accepted and all qualified applicants are issued a license. Section 14 further states legislative intent that \$50,000 of general funds be appropriated in each of FY2020-21 and FY2021-22.

Section 15: Amends section 2-5701 to sunset a pilot hemp research program on November 1, 2020

Sections 16-18: Relocates provisions currently in section 2-515 regarding requirements for transporting hemp into, through, and within the state by persons other than persons licensed under the Hemp Farming Act as a new section of the Criminal Code and the Controlled Substances Act. The relocated provisions set forth documentation to accompany shipments of hemp. The section further provides that if the hemp being transported originates in Nebraska, the hemp shall have been produced in compliance with the Hemp Farming Act. If the hemp originates outside the state, the hemp shall have been produced in compliance with the 2018 Farm Bill hemp provisions.

Section 19: Sets July 2021 as the operative date for sections 13 and 20

Sections 20-21: Repealers

Section 22: Emergency clause

Explanation of amendments:

The committee amendment (AM2581) makes a series of revisions to LB 1152 as follows:

-- Revises the definition of "handle or handling" to restore existing text in the definition excluding possession, storage or transport of finished hemp products, and eliminates undefined terminology of "post processed hemp" and "consumable hemp." The amendment also excludes the handling, storage etc. of hemp seeds so that seed storage and transportation, incidental to cultivation, would not require a processing license. A harmonizing revision is made to section 2-506.

-- The amendment eliminates a requirement from section 11 of LB 1152 that licensees give 7-days advance notice of shipments of hemp. AM2581 substitutes a requirement that licensees keep a record of shipments of hemp and inserts record-keeping requirements and procedures, as a purpose of regulatory authority the Department may exercise under section 2-504. The amendment provides that licensees may voluntarily give up to 7-days advance notice of shipments to the State Patrol by methodology provided by the patrol and provides that such notification is not public records for purposes of the Public Records Act. AM2581 further relocates the exclusion of hemp samples transported for testing to a new subsection (4). The exemption from documentation and record-keeping is expanded to also include

transportation between a licensee's registered locations, and hemp seedlings received for planting by a cultivator.

-- Strikes section 14 containing legislative intent language, but inserts new text in section 2-507 to instruct that the Department shall accept all applications for licensure and grant licensure to all qualified applicants. Section 2-5701 is amended to remove a provision giving the Department discretion to limit licensure under the hemp research pilot program.

-- Adds clarification to section 2-514 that while a licensee is free to privately have samples tested any number of times at the licensee's expense, the Department is obligated to provide only one official sampling and test submission

-- Adds preservation and development of Nebraska heirloom hemp varieties as an additional purpose of the Nebraska Hemp Commission

-- Inserts text into section 18 of the bill that recognizes that in addition to cultivation in compliance with the Hemp Farming Act, hemp could be legally grown in the state in compliance with the 2018 Farm Bill under a USDA approved tribal hemp plan or, in limited circumstances, by producers directly licensed under the USDA hemp licensure program

Steve Halloran, Chairperson