

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2244**

As Agreed to April 8, 2021

Brief*

HB 2244 would amend the Commercial Industrial Hemp Act (Act) to transfer registration and regulation of industrial hemp processors currently regulated by the Kansas Department of Agriculture (KDA) to the State Fire Marshal (Fire Marshal). The bill would also amend law regarding the disposal of industrial hemp; the definition of “hemp products”; unlawful marketing, selling, or distributing hemp products without registration or licensure; and an exception for transportation of industrial hemp between producers and processors.

The bill would be in effect upon publication in the *Kansas Register*.

Effective Disposal of Industrial Hemp

Effective Disposal Plan

The bill would require the KDA to develop a plan for effective disposal of industrial hemp in coordination with state or local law enforcement. The bill would require, when a licensed hemp processor is required to dispose of the industrial hemp, the KDA to notify state or local law

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enforcement in the jurisdiction where the industrial hemp is grown.

Effective Disposal

The bill would authorize the KDA to perform any action necessary to ensure effective disposal of industrial hemp occurs including, but not limited to, taking temporary possession of the industrial hemp, destroying the industrial hemp, or supervising and directing the appropriate method of effective disposal of the industrial hemp. The bill would require the state or local law enforcement agency to approve in advance any such action taken by KDA or any person under KDA's direction or supervision. The bill would state the KDA will have no authority to conduct effective disposal for any industrial hemp or cannabis plant produced by individuals not licensed under the Act.

The bill would allow the KDA and appropriate state or local law enforcement agency to seek reimbursement from any individual licensed under the Act for any costs incurred in conducting effective disposal of industrial hemp.

Fingerprinting and Criminal History Record Checks

The bill would authorize the Secretary of Agriculture (Secretary) to require any KDA employee or agent who participates in the effective disposal of industrial hemp to be fingerprinted and to submit to a state and national criminal history record check. The Secretary would be allowed to use the information obtained to verify the identity of the employee or agent and determine whether they have been convicted of a felony violation of crimes involving controlled substances or substantially similar offense in another jurisdiction, within the ten years immediately preceding submission of such criminal history record check.

The bill would authorize the KDA to submit fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) for a state and national criminal history record check. Local and state law enforcement officers and agencies would be required to assist in the taking and processing of fingerprints of KDA employees or agents. Local law enforcement officers and agencies could charge a fee as reimbursement for any expenses incurred in the taking and processing of fingerprints, and KDA would be required to pay the costs of fingerprinting and state and national criminal history record checks.

Law Enforcement

The bill would state that nothing in the provisions described above would limit the jurisdiction or authority of state or local law enforcement to enforce crimes involving controlled substances.

Sale of Hemp Products

The bill would allow the Fire Marshal, pursuant to the Kansas Fire Prevention Code, to issue a stop sale, use, or removal order whenever the Fire Marshal reasonably believes that hemp products are being produced, sold, or distributed in violation of the Act or promulgated rules and regulations. The stop sale, use, or removal order would be valid for up to seven calendar days. The bill would not allow a person who has been issued a stop sale, use, or removal order to process, sell, distribute, use, or remove industrial hemp, hemp products, or hemp waste until the stop sale, use, or removal order is revoked in writing by the Fire Marshal.

Definition of “Hemp Products”

The bill would add “any extract from industrial hemp intended for further processing” to the definition of “hemp

products” in continuing law. The bill would state final “hemp products” may contain a tetrahydrocannabinol (THC) concentration of not more than 0.3 percent. In addition, the bill would clarify that “tetrahydrocannabinol concentrate” would mean the same as defined in KSA 2020 Supp. 65-6235(b)(3).

Hemp Processors

References

The bill would remove references to the KDA in continuing law regarding hemp processors and replace them with references to the Fire Marshal. The bill also would remove a reference to the Commercial Industrial Hemp Act License Fee Fund and replace it with a reference to the Fire Marshal Fee Fund.

Registration Fee

The bill would change the date registrations for industrial hemp processors expire annually from April 30 to June 30. The bill would increase the cap on the registration fee from \$200 to \$1,000. The Fire Marshal would set the amount of the registration fees through rules and regulations; none of those amounts could exceed \$1,000.

Fingerprinting and Criminal History Record Checks

The bill would revise the fingerprinting and criminal history record check requirements for hemp processors by removing current requirements and replacing them with the following:

- All individuals applying for a hemp processor registration who seek to engage in the extraction of

cannabinoids from industrial hemp, including the disposal of cannabinoids, would be required to be fingerprinted and submit to a state and national criminal history record check;

- The Fire Marshal could require current employees or those applying to be employees of a hemp processor to be fingerprinted and submit to a state and national criminal history record check;
- Fingerprints would be used to identify the individual and determine whether the individual has a record of criminal history in Kansas or any other jurisdiction;
- The Fire Marshal would be authorized to submit fingerprints to KBI and FBI for a state and national criminal history check and could use the information obtained from the fingerprints and criminal history record check for purposes of verifying the identification of the individual and for making an official determination of the qualification and fitness of the individual to process industrial hemp pursuant to the Act and promulgated rules and regulations;
- Disclosure or use of any criminal history information for any purpose other than the purposes provided for in the Act would be a class A nonperson misdemeanor (current law) and shall constitute grounds for removal from office or termination of employment (new law);
- The Fire Marshal could deny registration to any individual who has violated the Act by operating as a hemp processor without valid registration or has violated any other provision of the Act;
- The KBI could charge a reasonable fee for conducting a criminal history record check and the

individual seeking authorization to extract or dispose of cannabinoids from industrial hemp would be required to pay this fee; and

- Local and state law enforcement officers and agencies would be required to assist in taking and processing an individual's fingerprints, as authorized by the bill.

Rules and Regulations; Coordination

The bill would require the Fire Marshal to promulgate rules and regulations on topics including, but not limited to:

- Denial, conditioning, renewal, or revocation of registration;
- Creation of multiple classes of registrations based upon the scope of hemp processing activities of an applicant;
- Security measures;
- Inventory control;
- Maintenance of records;
- Access to and inspection of records and processing facilities by the Fire Marshal and law enforcement agencies;
- Collection and disposal of any cannabinoids extracted during the processing of industrial hemp that cannot be lawfully sold in Kansas; and
- Transportation of industrial hemp or hemp products.

The bill would allow the Fire Marshal to grant an exemption from the application of a specific requirement of

rules and regulations, unless the Fire Marshal determines the condition, structure, or activity that is or would be in noncompliance with the requirement would constitute a distinct hazard to life or property. The bill would allow an exemption to be granted only upon the written request of a registrant or applicant for registration that clearly demonstrates enforcement would cause unnecessary hardship, as determined by the Fire Marshal.

The bill would require the KDA and the Fire Marshal to coordinate with one another, including providing any requested information from the other, regarding industrial hemp licensees, hemp processors, and hemp processor applicants necessary for the enforcement of any laws or rules and regulations relating to industrial hemp.

Unlawful Hemp Products; Exceptions

The bill would include any extract from industrial hemp with a delta-9 THC concentration greater than 0.3 percent that would be further processed in the list of hemp products that would be unlawful to be marketed, sold, or distributed to any person in Kansas who is not registered as a hemp processor or who does not possess a commercial plan license.

The bill would also state no license or registration would be required for the transport of hemp products if the products are transported between hemp producers and hemp processors or between more than one hemp processor. This transportation of hemp products would be subject to rules and regulations promulgated by the State Fire Marshal.

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2244, as amended by the Senate Committee of the Whole. The Conference Committee also added clarifying

language to the definition of “hemp products,” which would state that final “hemp products” may contain a THC concentration of not more than 0.3 percent. In addition, the clarifying language would state “tetrahydrocannabinol concentrate” would mean the same as continuing law in KSA 2020 Supp. 65-6235(b)(3).

Background

The bill was introduced by the House Committee on Agriculture at the request of Representative Rahjes on behalf of the KDA.

House Committee on Agriculture

In the House Committee hearing, the Chief Counsel of the KDA provided **proponent** testimony on the bill, stating the agency worked with the Kansas Sheriffs Association and the KBI to develop the legislation. The Fire Marshal also provided **proponent** testimony, stating the Office of the State Fire Marshal Prevention Division is a good fit for ensuring the processing and extraction operations are safe from fire and explosion. He added the Investigation Division currently inspects and regulates the state fireworks and explosive industries, part of which involves examining receipts, bills, and other records, and examination of hemp processing records would be within the scope of this division.

Other **proponents** included representatives of Heritage Farms, KBI, and Kansas Sheriffs Association, who stated the bill was a collaboration among agencies for the efficient oversight of industrial hemp processors.

Written-only **proponent** testimony was provided by the Sunflower Hemp Company.

No other testimony was provided.

The House Committee amended the bill to clarify disclosure by a Fire Marshal employee of the criminal history information of those applying to be hemp processors other than for the purposes provided for in the Act is grounds to be removed from office or termination of employment. [Note: The Conference Committee retained this amendment.]

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by the Chief Counsel of the KDA and the Fire Marshal. Additional **proponent** testimony was provided by representatives of High Plains Nutrition, Kancanna Hemp Processing, KBI, Kansas Sheriffs Association, and Sunflower Hemp Co.

Opponent testimony was provided by a private citizen.

No other testimony was provided.

The Senate Committee amended the bill to:

- Clarify the amount of the annual registration fee would vary depending on the use and outcome of the hemp plant;
- Clarify a registration fee could not exceed \$1,000;
- Add “any extract from industrial hemp intended for further processing” to the definition of “hemp products” in continuing law;
- Include any extract from industrial hemp with a delta-9 THC concentration greater than 0.3 percent that would be further processed in the list of hemp products that would be unlawful to market, sell, or distribute to any person in Kansas who is not registered as a hemp processor or who does not possess a commercial plan license; and

- State no license would be required for the transport of hemp products if the products are transported between hemp producers and hemp processors or between more than one hemp processor. This transportation of industrial hemp would be subject to rules and regulations promulgated by the Fire Marshal.

[*Note:* The Conference Committee retained these amendments.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to clarify no license or registration would be required for the transportation of hemp products if the hemp products are transported between hemp producers and hemp processors or between more than one hemp processor, and hemp products would be subject to rules and regulations promulgated by the Fire Marshal pursuant to the Act. [*Note:* The Conference Committee retained this amendment.]

Fiscal Information

According to the fiscal note provided by the Division of the Budget on the bill, as introduced, the Fire Marshal estimates enactment of the bill would result in approximately \$12,000 of revenues in FY 2022, based on 12 processors and an annual registration fee of \$1,000 each. The agency indicates administrative, inspection, and investigation costs would be paid from that revenue.

The KDA indicates it has not yet implemented a registry of hemp producers and, as a result, there would be no fiscal effect on agency expenditures or revenues.

Any fiscal effect associated with this bill is not reflected in *The FY 2022 Governor's Budget Report*.

Commercial Industrial Hemp Act; industrial hemp; industrial hemp processors; hemp products; Kansas Department of Agriculture; State Fire Marshal; fingerprinting; state and national criminal history record check; fees; rules and regulations

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