

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5322

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5322, with committee amendments.

Assembly Bill No. 5322, as amended, would establish a program for the cultivation, handling, processing, transport, and sale of hemp and hemp products in the State in accordance with federal law.

The federal “Agricultural Improvement Act of 2018” (commonly known as the 2018 Farm Bill) was enacted in December 2018 and contains changes to the regulation of the production of hemp by the federal government. The 2018 Farm Bill significantly expands the states’ ability to regulate hemp production, and provides for an eventual repeal of the section of the 2014 Farm Bill that allowed for hemp pilot programs in the states. As New Jersey’s law establishing a hemp pilot program was consistent with the provision of the 2014 Farm Bill that will be repealed, an update to State law is required to ensure that the State’s law regulating hemp is consistent with federal law.

The bill would repeal New Jersey’s hemp pilot program, and replace it with a permanent program, administered by the Department of Agriculture (department), that complies with federal law. The bill would define “hemp” as the plant *Cannabis sativa* L., any part of the plant, and all derivatives thereof with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent, consistent with federal law. The bill would define “hemp producer” as a person or business entity authorized by the department to cultivate, handle, or process hemp in the State. The bill would define “hemp product” as a finished product with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale, and would include cannabidiol.

The bill would make it lawful for a hemp producer to cultivate, handle, or process hemp or hemp products in the State, and for any person to possess, transport, sell, and purchase legally-produced hemp products in the State. Any unauthorized person who cultivates, handles, or processes hemp would be subject to the same penalties as those related to marijuana.

The bill, as amended, would require the department to adopt regulations and submit a State plan for the regulation of hemp consistent with federal requirements. The regulations would be required to include: a procedure for maintaining information about hemp producers; provisions for the inspection and testing of hemp and disposal of noncompliant hemp; provisions for enforcement of the bill; a procedure for information sharing as required by federal law; provisions that require the department to certify that hemp and hemp products produced pursuant to the State program comply with federal law; and a certification that the department has the resources to implement the program. If the United States Department of Agriculture disapproves the State plan, the department would be required to amend the State plan and resubmit it for federal approval. The bill would not prevent any person from participating in a federally-administered hemp program if the State does not have an approved State plan.

Additionally, the department would be required to adopt rules and regulations to: establish application requirements for hemp producers; establish an appeal process with retesting; collect and share information about hemp producers pursuant to federal law; establish a licensing fee structure; and establish procedures governing hemp shipments within the State. The regulations would include a requirement that all shipments need only be accompanied by the originating hemp producer's proof of authorization to engage in the commercial sale of hemp, as well as a travel manifest that lists the origin, destination, product description, and date of transport. The bill prohibits the department from requiring third-party carriers to be authorized hemp producers in order to transport hemp.

If a hemp producer negligently violates the provisions in the bill or any rules or regulations adopted pursuant thereto, the producer would be subject to a corrective action plan designed to bring the producer into compliance with the hemp program. Three negligent violations in a five year period would result in a five year ban from participating in the hemp program. Any intentional violations would be referred to the Attorney General and the United States Attorney General. The department would be required to adopt rules and regulations establishing a penalty fee structure for violations under the bill.

The bill would establish a separate fund called the "New Jersey Hemp Farming Fund" which would be credited with all license fees, penalties, moneys made available to the department, including federal funds, for the purposes of the bill, any return on investment of moneys in the fund, and moneys appropriated by the Legislature to implement the hemp program.

The bill would provide that a person may possess, transport, buy, and sell hemp products in the State, including products containing cannabidiol derived from hemp, to the maximum extent permitted by federal law. The department, in consultation with the Department of

Health, would be permitted to adopt rules and regulations only to regulate the sale of hemp products that provide that hemp-derived cannabinoids, including cannabidiol, are not considered controlled substances or adulterants. Retail sales of hemp products processed outside the State may be conducted in the State when the products and the hemp used in the products were processed and cultivated legally in another state or jurisdiction that has substantially similar requirements for processing hemp products or cultivating hemp as provided in the bill.

The bill would also amend various sections of statutory law to remove references to the New Jersey Industrial Hemp Pilot Program, and replace them with the New Jersey Hemp Farming Act.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

(1) provide that a hemp producer may begin harvest of mature hemp plants within 30 days after the date of sampling, provided that the department may require any plant that is not harvested within thirty days after sampling to undergo retesting;

(2) add a provision that would allow hemp producers to use third-party laboratories, or their own laboratories for testing hemp and hemp products, provided that the laboratories meet certain registration and accreditation requirements;

(3) provide that the department may, but is not required to, consult with public agencies as well as private, nonprofit associations in the hemp industry when developing the rules and regulations necessary to implement the bill;

(4) remove the requirement for the department to define classes or categories of hemp products that are eligible for sale in the State;

(5) clarify that the department may impose civil administrative penalties for negligent violations of the bill;

(6) make technical corrections.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would result in an indeterminate increase in annual State expenditures arising from the development and implementation of a program to regulate hemp and the concomitant research, planning, administrative, and enforcement responsibilities for the Department of Agriculture. However, because the bill authorizes the imposition of application and licensing fees from hemp producers, the revenue from the fees will balance some or all of the administrative costs of the program.

In addition, the Department of Agriculture is authorized to impose civil administrative penalties for certain violations under the bill which will result in recurring revenue gains from those penalties. However, violations resulting from more serious violations may constitute an offense under existing criminal laws, and would be referred to the

Attorney General for prosecution. Thus, the bill may increase the expenditures of the Department of Law and Public Safety, the Judiciary, and the Department of Corrections for prosecuting, trying, and possibly incarcerating violators.

The OLS estimates that the bill will result in an increase in the Sales and Use Tax, Corporation Business Tax, and Gross Income Tax revenues by an indeterminate amount from permitting persons and businesses to sell products that are not currently legally produced or sold in the State, including hemp and hemp products such as cannabidiol (CBD). However, due to insufficient information, the OLS is unable to estimate the increase for several reasons. Agricultural producers of hemp will likely replace currently grown crops with hemp if hemp is estimated to be more profitable. However, the net impact is difficult to gauge without more information. Moreover, certain products derived from hemp such as CBD products intended for ingestion are not currently legally sold but are widely available. Thus, a certain amount of tax revenue from those sales may already be collected. However, the explicit legalization of hemp products may result in a greater willingness of sellers and buyers to enter the market for hemp products. Finally, CBD is an ingredient in several approved pharmaceuticals and as research advances in the area, and the federal Food and Drug Administration continues to evaluate its regulation of those products, the uses may expand, resulting in increased revenues in that sector of the economy.