

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5322

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 5322 (1R).

As amended and reported, Assembly Bill No. 5322 establishes 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New Jersey’s law establishing a hemp pilot program was consistent with the provision of the 2014 Farm Bill that will be repealed, an update to State law is required to ensure that the State’s law regulating hemp is consistent with federal law.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 repeals New Jersey’s hemp pilot program, and replaces it with a permanent program, administered by the Department of Agriculture (department), that complies with federal law. The bill defines “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 defines “hemp producer” as a person or business entity authorized by the department to cultivate, handle, or process hemp in the State. The bill defines “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 makes 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 is to be subject to the same penalties as those related to marijuana.

The bill, requires the department to adopt regulations and submit a State plan for the regulation of hemp consistent with federal requirements. The regulations are 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; 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 does 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 is 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 are to 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 is to 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 are to result in a five year ban from participating in the hemp program. Any other violations are to be referred to the Attorney General and the United States Attorney General. The department is required to adopt rules and regulations establishing a penalty fee structure for violations under the bill, but in order to impose a penalty on a violator, the violator is required to have had a culpable mental state greater than negligence. The bill specifies that interim rules and regulations establishing civil and civil administrative penalties for violations under the bill do not conflict with the provisions of the bill.

The bill is to 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 provides that a person may possess, transport, buy, and sell hemp products in the State, including products containing cannabidiol derived from hemp. The department, in consultation with the Department of Health, is 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 also amends 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.

As amended and reported by the committee, Assembly Bill No. 5322 (1R) is identical to Senate Bill No. 3686 (1R), which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS

The committee amendments:

(1) clarify in the definitions of “hemp” and “hemp product” that they are not controlled substances due to the presence of hemp or hemp derived cannabinoids;

(2) delete a requirement that the Department of Agriculture certify that hemp or hemp products produced under the State program comply with federal law and any rule or regulation adopted pursuant thereto;

(3) allow the Department of Agriculture to adopt measures that may be included in a corrective action plan to ensure compliance with the plan;

(4) prohibit the imposition of civil penalties for negligent violations of the provisions of the bill;

(5) provide that the interim rules and regulations establishing civil and civil administrative penalties for violations under the bill do not conflict with the provisions of the bill;

(6) authorize the imposition of civil or civil administrative penalties for a violation of the provisions in the bill with a greater mental state than negligence;

(7) clarify that hemp and hemp products are not controlled substances or additives and may be added as an ingredient to cosmetics, personal care products, or products intended for human or animal consumption; and

(8) make technical corrections to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in annual State expenditure

arising from new research, planning, administrative, and enforcement responsibilities for the Department of Agriculture (department).

The OLS estimates that the bill will result in State revenue increases from the collection of application and licensing fees from hemp producers. The bill provides for fees to cover the cost of administering a program to cultivate, handle, process, transport, and sell hemp in the State.

Additionally, the OLS estimates the bill will result in an indeterminate increase in sales tax, corporation business tax, and gross income tax revenue as it permits the sale of products that are not currently legally produced or sold in the State, including hemp and hemp products.

The OLS estimates there may be recurring revenue gains from civil penalties associated with the bill. However, as certain violations may constitute an offense under criminal law, 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.