

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL: SPB 7102

INTRODUCER: For consideration by the Committee on Innovation, Industry and Technology

SUBJECT: Hemp

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

I. Summary:

SPB 7102 authorizes the distribution and retail sale of hemp extract, which may not have a THC¹ concentration that exceeds 0.3 percent on a dry weight basis. Before hemp extract may be distributed or sold, it must be analyzed and certified by an independent testing laboratory to confirm that the THC concentration does not exceed 0.3 percent on a dry-weight basis. The bill also provides package labeling requirements for hemp extract products.

The bill exempts hemp from the definition of the controlled substance “cannabis” in s. 893.02(3), F.S.

The bill takes effect only on the same date that SB 1020 or similar legislation, if adopted during the 2019 Regular Session, or an extension thereof, becomes law.

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed) and pain relief as a topical oil.²

¹ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

² See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited Mar. 29, 2019).

Cannabis

Cannabis is a Schedule I controlled substance.³ It is a felony of the third degree⁴ to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁵

As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean:

all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986[, F.S., the Compassionate Medical Cannabis Act of 2014].⁶

Medical Marijuana

On November 4, 2016, Amendment 2 was adopted and codified at Article X, section 29, Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁷ The bill revised the Compassionate Medical Cannabis Act of 2014⁸ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC; and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol weight for weight.⁹

Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC, i.e., it is not associated with a “high” or other

³ Section 893.03(1)(c)7., F.S.

⁴ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁵ Section 893.13(1)(a)2., F.S.

⁶ Section 893.02(3), F.S.

⁷ Chapter 2017-232, Laws of Fla.

⁸ Chapter 2014-157, Laws of Fla.

⁹ See ss. 381.986(1)(e) and (f), F.S.

mind-altering affects. Proponents of CBD use note the substance's beneficial calming and anti-anxiety effects.¹⁰

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., is authorized by law to conduct medical marijuana research and education.¹¹

An MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹²

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹³

The 2014 Farm Bill defines “industrial hemp” to mean:

the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁴

Section 1004.4473, F.S., authorizes the Department of Agriculture and Consumer Services (department) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.¹⁵ The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁶

¹⁰ See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited Mar. 29, 2019).

¹¹ Section 1004.4351, F.S.

¹² See 381.986(14), F.S.

¹³ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s.7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

¹⁴ *Id.*

¹⁵ See University of Florida, *About the UF/IFAS Industrial Hemp Project*, at: <https://programs.ifas.ufl.edu/hemp/about-the-project/> (last visited Mar. 29, 2019).

¹⁶ Fla. Admin. Code R. 5B-57.013 (2018).

Section 1004.4473, F.S., does not provide a specific exemption from the criminal prohibition against the possession of cannabis in s. 893.13(1)(a)2., F.S.

2018 Federal Farm Bill

The 2018 Farm Bill legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁷ The 2018 Farm Bill defines "hemp" to mean: the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁸

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.¹⁹

Hemp Legislation in Other States

At least 38 states considered legislation related to industrial hemp in 2018. These bills ranged from clarifying existing laws to establishing new licensing requirements and programs. Alaska, Arizona, Kansas, Missouri, New Jersey, and Oklahoma enacted legislation in 2018 establishing hemp research and industrial hemp pilot programs.²⁰

CS/SB 1020 (2019 Regular Session)

CS/SB 1020 (2019 Regular Session) by the Senate Committee on Agriculture and Senator Bradley authorizes the department to administer a state industrial hemp program to regulate the cultivation, distribution, and retail sale of hemp, including hemp extract. CS/SB 1020 requires initial registration and renewal registration for participation in the state hemp program. CS/SB 1020 authorizes the department to adopt rules, in consultation with the Department of Health and the Department of Business and Professional Regulation, to administer the state hemp program.

¹⁷ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C 802(16)).

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²⁰ See <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Mar. 29, 2019).

The rules must include sampling and testing measures and nonrefundable fees for administering the program.

III. Effect of Proposed Changes:

The bill creates s. 581.218, F.S., to authorize the distribution and retail sale of hemp extract.

The bill defines hemp extract to mean a no-THC or low-THC substance or compound that:

- Is derived from or contains any part of the plant *Cannabis sativa L.* which meets the definition of industrial hemp under s. 1004.4473, F.S.;
- Contains a total THC concentration, including immediate precursors, that does not exceed 0.3 percent on a dry-weight basis; and
- Does not contain other controlled substances.

Hemp extract may be distributed and sold, if it is a product of a batch that is:

- Analyzed and certified by an independent testing laboratory confirming the batch as having a THC concentration that does not exceed 0.3 percent on a dry-weight basis; and
- The tested batch does not contain contaminants unsafe for human consumption.

The packaging for the hemp extract must include:

- A scannable barcode linked to the certificate of analysis;
- The batch number;
- The Internet address of a website where batch information may be obtained;
- The expiration date;
- The number of milligrams of no-THC or low-THC hemp extract; and
- A statement that the product contains a total THC concentration, including immediate precursors,²¹ which does not exceed 0.3 percent on a dry-weight basis.

The bill amends the definition of the controlled substance “cannabis” in s. 893.02(3), F.S., to exempt hemp, as defined in s. 581.218, F.S., and industrial hemp, as defined in s. 1004.4473, F.S., from the definition.

Chapter 581, F.S., relates to the regulation of the plant industry by the department. The bill does not authorize the department to adopt rules to administer its provisions. However, the bill is linked to CS/SB 1020 which authorizes the department to adopt rules to administer a state hemp program for the cultivation, distribution, and retail sale of hemp, including hemp extract.

The bill takes effect only on the same date that CS/SB 1020 or similar legislation, if adopted during the 2019 Regular Session, or an extension thereof, becomes law.

²¹ A "precursor" is an inactive, chemical substance that is converted (or transformed) into an active substance, such as an enzyme, vitamin, or hormone. See Medicinenet.com, *Medical Definition of Precursor*, at: <https://www.medicinenet.com/script/main/art.asp?articlekey=14105> (Last visited March 29, 2019).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not provide administrative duties to the department, such as rulemaking, which may incur a cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SPB is linked to CS/SB 1020, which is linked to SB 7088 by the Committee on Agriculture. SB 7088 amends s. 581.217, F.S., as created by CS/SB 1020, to authorize a fee for each application for initial registration and renewal registration for participation in the state hemp program created under CS/SB 1020. The fee authorized by SB 7088 must be specified in a rule adopted by the department, and may not exceed \$500 per application. SB 7088 allows the

department to waive payment of the fee by rule and requires fees collected to be deposited in the Plant Industry Trust Fund.²²

VIII. Statutes Affected:

This bill amends section 893.02 of the Florida Statutes.

This bill creates section 581.218 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Section 570.321, F.S., creates the Plant Industry Trust Fund to be administered by the department.