

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 Criminal Justice

BILL: SB 902

INTRODUCER: Senator Clemens

SUBJECT: Hemp Production

DATE: March 27, 2015

REVISED: 03/30/15

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Becker | Becker | AG | Favorable |
| 2. | Erickson | Cannon | CJ | Favorable |
| 3. | | | RI | |
| 4. | | | AP | |

I. Summary:

SB 902 creates the Hemp Industry Development Act, which proposes a means whereby hemp can be legally grown as an agricultural crop in Florida. The bill defines “hemp,” provides findings and legislative intent relevant to its use as an agricultural crop, and provides that, upon meeting specified requirements, an individual in this state may plant, grow, or harvest hemp.

The bill requires an individual who intends to grow hemp to register with the Department of Agriculture and Consumer Services (department) and establishes the requirements and procedures for doing so. The bill also requires the department to adopt rules that include testing and inspection of hemp and assessment of a fee commensurate with the department’s costs for testing and inspection. The bill also provides affirmative defenses to *Cannabis*-related criminal charges or prosecutions.

II. Present Situation:

It is estimated that hemp has been grown for at least 12,000 years for textiles, paper, and food.¹ Industrial hemp and marijuana are both classified as *Cannabis sativa*, but industrial hemp is bred to maximize fiber and seed/oil, while marijuana is bred to maximize delta-9 tetrahydrocannabinol (THC). Industrial hemp has a THC content of between 0.05-1 percent and marijuana has a THC content of 3-20 percent.²

¹ North American Industrial Hemp Council, Inc., *Hemp Facts*, http://naihc.org/hemp_information/hemp_facts.html (last viewed on March 24, 2015).

²² *Id.*

Chapter 893, F.S., designates *Cannabis* plants and the THC as Schedule I substances.³ These are illegal to possess in Florida,⁴ aside from a low-THC strain for medical use.⁵

The 2014 Farm Bill included a provision that would allow institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp.⁶ As of September 2014, nineteen states had laws to provide for hemp pilot studies and/or for production.⁷

III. Effect of Proposed Changes:

Section 1 cites this act as the “Hemp Industry Development Act.”

Section 2 creates s. 581.301, F.S., which defines “hemp” as all parts of any plant of the genus *Cannabis* containing no more than 0.3 percent delta-9 tetrahydrocannabinol. The bill states that hemp is considered an agricultural crop in Florida and that hemp produces a viable, environmentally sound crop. The bill further states the Legislature intends to promote economic development and job growth through the cultivation, processing, distribution, manufacturing, and sale of hemp.

The bill creates procedures for individuals intending to grow hemp to register with the Department of Agriculture and Consumer Services (department). The individual must submit a form to the department with the name and address of the individual, a statement that the seeds obtained for planting meet the requirements set forth in the bill, and the location and acreage of all parcels sown with hemp. An individual registered with the department must allow hemp crops to be inspected and tested by and at the discretion of the department at all stages of hemp production and distribution. The bill authorizes the department to assess an annual registration fee of up to \$100 for the performance of its duties under the bill. The bill exempts from the registration requirements of this section employees of the Experiment Station of the University of Florida, Extension Service of the University of Florida, or the State University System involved in research or extension-related activities.

The bill gives the department rulemaking authority including, but not limited to:

- Testing of the hemp during growth to determine delta-9 tetrahydrocannabinol levels;
- Inspection of hemp during the sowing, growing season, harvest, storage, processing, manufacturing, and distribution; and
- Assessment of a fee to offset the costs of the department’s activities in the testing and inspection of hemp production.

The bill prohibits the department from adopting a rule that prohibits an individual from growing, processing, distributing, manufacturing, or selling hemp based on its legal status under federal law.

³ Section 893.03(1)(c)7., F.S.

⁴ See ss. 893.13 and 893.135, F.S.

⁵ See ss. 381.986, 381.987, and 893.02(3), F.S.

⁶ National Conference of State Legislatures, *State Industrial Hemp Statutes*, September 15, 2014, <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last viewed on March 24, 2015).

⁷ *Id.*

The bill provides that it is an affirmative defense⁸ to a charge or prosecution for the possession, cultivation, manufacturing, delivery, distribution or sale of *Cannabis* under ch. 893 that:

- The defendant was growing, processing, distributing, manufacturing, or selling hemp pursuant to this section; or
- The defendant had valid applicable controlled substances registrations from the United States Drug Enforcement Administration.

The bill states that it is not a violation of state or local law for an individual to grow, possess, distribute, move, manufacture, dispose of, sell, purchase, or possess hemp.

Section 3 provides the bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to the Department of Revenue (DOR), federal law prohibits financial institutions from accepting funds from the sale of Schedule I controlled substances. Taxpayers would be unable to submit any applicable sales tax to the DOR using electronic methods, given these banking restrictions. In addition, it is unclear whether accepting cash payments of sales tax on these federally restricted items, and then processing and distributing the funds, would cause the DOR to be in violation of federal law.⁹

There is pending federal legislation in Congress to provide that the scheduling of marijuana in Schedule I of the federal Controlled Substance Act (CSA) does not apply to industrial hemp. “The Industrial Hemp Farming Act of 2015 (H.R. 525; S. 134) would

⁸ An “affirmative defense” is “[a] defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts.” Legal Information Institute, Cornell University Law School, https://www.law.cornell.edu/wex/affirmative_defense (last viewed on March 25, 2015).

⁹ Analysis of SB 902 (February 19, 2015), Florida Department of Revenue (on file with the Senate Committee on Criminal Justice).

amend the CSA to specify that the term ‘marijuana’ does not include industrial hemp, thus excluding hemp from the CSA as a controlled substance subject to DEA regulation.”¹⁰ If this legislation were to become law, the DOR analysis relevant to federal Schedule I substances would not be relevant to industrial hemp.

B. Private Sector Impact:

The bill authorizes the Department of Agriculture and Consumer Services to assess an annual registration fee of up to \$100 for the performance of its duties under the bill.

C. Government Sector Impact:

See “Tax/Fee Issues” regarding the Department of Revenue. The bill would require the Department of Agriculture and Consumer Services to regulate the growth and distribution of hemp and a fee is associated to offset the cost of doing so.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Agriculture and Consumer Services raises a number of questions, including:

- Would large plantings of industrial grade *Cannabis* pose an invasive plant threat?
- What are the standards that should apply to cultivation and cultivation containment?
- What will the scope of interest in production be, which in-turn will determine the level of resources needed to oversee it?¹¹

The department suggests the need for more research to determine the true impact of hemp as an agricultural crop.¹²

VIII. Statutes Affected:

This bill creates section 581.301 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.

¹⁰ Johnson, Renée. *Hemp as an Agricultural Commodity* (February 2, 2015) (Summary). Congressional Research Service.

¹¹ Analysis of SB 902 (February 24, 2015), Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).

¹² *Id.*

B. Amendments:

None.

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