

Calendar No. 380

115TH CONGRESS
2D SESSION

S. 2667

To amend the Agricultural Marketing Act of 1946 to provide for State and Tribal regulation of hemp production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2018

Mr. McCONNELL (for himself, Mr. WYDEN, Mr. MERKLEY, and Mr. PAUL)
introduced the following bill; which was read the first time

APRIL 16, 2018

Read the second time and placed on the calendar

A BILL

To amend the Agricultural Marketing Act of 1946 to provide for State and Tribal regulation of hemp production, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hemp Farming Act
5 of 2018”.

1 **SEC. 2. HEMP PRODUCTION.**

2 The Agricultural Marketing Act of 1946 (7 U.S.C.
3 1621 et seq.) is amended by adding at the end the fol-
4 lowing:

5 **“Subtitle G—Hemp Production**

6 **“SEC. 297A. DEFINITIONS.**

7 “In this subtitle:

8 “(1) HEMP.—The term ‘hemp’ means the plant
9 Cannabis sativa L. and any part of that plant, in-
10 cluding the seeds thereof and all derivatives, ex-
11 tracts, cannabinoids, isomers, acids, salts, and salts
12 of isomers, whether growing or not, with a delta-9
13 tetrahydrocannabinol concentration of not more than
14 0.3 percent on a dry weight basis.

15 “(2) INDIAN TRIBE.—The term ‘Indian tribe’
16 has the meaning given the term in section 4 of the
17 Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 5304).

19 “(3) SECRETARY.—The term ‘Secretary’ means
20 the Secretary of Agriculture.

21 “(4) STATE.—The term ‘State’ means—

22 “(A) a State;

23 “(B) the District of Columbia;

24 “(C) the Commonwealth of Puerto Rico;

25 and

1 “(D) any other territory or possession of
2 the United States.

3 “(5) STATE DEPARTMENT OF AGRICULTURE.—

4 The term ‘State department of agriculture’ means
5 the agency, commission, or department of a State
6 government responsible for agriculture in the State.

7 “(6) TRIBAL GOVERNMENT.—The term ‘Tribal
8 government’ means the governing body of an Indian
9 tribe.

10 **“SEC. 297B. STATE AND TRIBAL PLANS.**

11 “(a) SUBMISSION.—

12 “(1) IN GENERAL.—A State or Indian tribe de-
13 siring to have primary regulatory authority over the
14 production of hemp in the State or territory of the
15 Indian tribe shall submit to the Secretary, through
16 the State department of agriculture (in consultation
17 with the Governor and chief law enforcement officer
18 of the State) or the Tribal government, as applica-
19 ble, a plan under which the State or Indian tribe
20 monitors and regulates that production as described
21 in paragraph (2).

22 “(2) CONTENTS.—A State or Tribal plan re-
23 ferred to in paragraph (1)—

24 “(A) shall only be required to include—

1 “(i) a practice to maintain relevant in-
 2 formation regarding land on which hemp is
 3 produced in the State or territory of the
 4 Indian tribe, including a legal description
 5 of the land, for a period of not less than
 6 3 calendar years;

7 “(ii) a procedure for testing, using
 8 post-decarboxylation or other similarly reli-
 9 able methods, delta-9 tetrahydrocannabinol
 10 concentration levels of hemp produced in
 11 the State or territory of the Indian tribe;

12 “(iii) a procedure for the effective dis-
 13 posal of products that are produced in vio-
 14 lation of this subtitle; and

15 “(iv) a procedure to comply with the
 16 enforcement procedures under subsection
 17 (d); and

18 “(B) may include any other practice or
 19 procedure established by a State or Indian
 20 tribe, as applicable, to the extent that the prac-
 21 tice or procedure is consistent with this subtitle.

22 “(3) RELATION TO STATE AND TRIBAL LAW.—

23 “(A) NO PREEMPTION.—Nothing in this
 24 subsection preempts or limits any law of a
 25 State or Indian tribe regulating the production

1 of hemp, to the extent that law is consistent
2 with this subtitle.

3 “(B) REFERENCES IN PLANS.—A State or
4 Tribal plan referred to in paragraph (1) may
5 include a reference to a law of the State or In-
6 dian tribe regulating the production of hemp, to
7 the extent that law is consistent with this sub-
8 title.

9 “(b) APPROVAL.—

10 “(1) IN GENERAL.—Not later than 60 days
11 after receipt of a State or Tribal plan under sub-
12 section (a), the Secretary shall—

13 “(A) approve the State or Tribal plan if
14 the State or Tribal plan complies with sub-
15 section (a); or

16 “(B) disapprove the State or Tribal plan
17 only if the State or Tribal plan does not comply
18 with subsection (a).

19 “(2) AMENDED PLANS.—If the Secretary dis-
20 approves a State or Tribal plan under paragraph
21 (1)(B), the State, through the State department of
22 agriculture (in consultation with the Governor and
23 chief law enforcement officer of the State) or the
24 Tribal government, as applicable, may submit to the

1 Secretary an amended State or Tribal plan that
 2 complies with subsection (a).

3 “(c) TECHNICAL ASSISTANCE.—The Secretary may
 4 provide technical assistance to a State or Indian tribe in
 5 the development of a State or Tribal plan under subsection
 6 (a).

7 “(d) VIOLATIONS.—

8 “(1) IN GENERAL.—A violation of a State or
 9 Tribal plan approved under subsection (b) shall be
 10 subject to enforcement solely in accordance with this
 11 subsection.

12 “(2) NEGLIGENT VIOLATIONS.—

13 “(A) IN GENERAL.—A hemp producer in a
 14 State or the territory of an Indian tribe for
 15 which a State or Tribal plan is approved under
 16 subsection (b) shall be subject to subparagraph
 17 (B) of this paragraph if the State department
 18 of agriculture or Tribal government, as applica-
 19 ble, determines that the hemp producer has
 20 negligently violated the State or Tribal plan, in-
 21 cluding by negligently—

22 “(i) failing to provide a legal descrip-
 23 tion of land on which the producer pro-
 24 duces hemp;

1 “(ii) failing to obtain a license or
2 other required authorization from the
3 State department of agriculture or Tribal
4 government, as applicable; or

5 “(iii) producing *Cannabis sativa* L.
6 with a delta-9 tetrahydrocannabinol con-
7 centration of more than 0.3 percent on a
8 dry weight basis.

9 “(B) CORRECTIVE ACTION PLAN.—A hemp
10 producer described in subparagraph (A) shall
11 comply with a plan established by the State de-
12 partment of agriculture or Tribal government,
13 as applicable, to correct the negligent violation,
14 including—

15 “(i) a reasonable date by which the
16 hemp producer shall correct the negligent
17 violation; and

18 “(ii) a requirement that the hemp
19 producer shall periodically report to the
20 State department of agriculture or Tribal
21 government, as applicable, on the compli-
22 ance of the hemp producer with the State
23 or Tribal plan for a period of not less than
24 the next 2 calendar years.

1 “(C) RESULT OF NEGLIGENT VIOLA-
2 TION.—Except as provided in subparagraph
3 (D), a hemp producer that negligently violates
4 a State or Tribal plan under subparagraph (A)
5 shall not be subject to any criminal or civil en-
6 forcement action by the Federal Government or
7 any State government, Tribal government, or
8 local government other than the enforcement
9 action authorized under subparagraph (B).

10 “(D) REPEAT VIOLATIONS.—A hemp pro-
11 ducer that negligently violates a State or Tribal
12 plan under subparagraph (A) 3 times in a 5-
13 year period shall be ineligible to produce hemp
14 for a period of 5 years beginning on the date
15 of the third violation.

16 “(3) OTHER VIOLATIONS.—If the State depart-
17 ment of agriculture or Tribal government in a State
18 or the territory of an Indian tribe for which a State
19 or Tribal plan is approved under subsection (b), as
20 applicable, determines that a hemp producer in the
21 State or territory has violated the State or Tribal
22 plan with a culpable mental state greater than neg-
23 ligence—

1 “(A) the State department of agriculture
2 or Tribal government, as applicable, shall im-
3 mediately report the hemp producer to—

4 “(i) the Attorney General; and

5 “(ii) in the case of a State department
6 of agriculture, the chief law enforcement
7 officer of the State; and

8 “(B) paragraph (1) of this subsection shall
9 not apply to the violation.

10 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such sums as are nec-
12 essary to carry out this section.

13 “(f) EFFECT.—Nothing in this section prohibits the
14 production of hemp in a State or the territory of an Indian
15 tribe for which a State or Tribal plan is not approved
16 under this section in accordance with other Federal laws
17 (including regulations).

18 **“SEC. 297C. AUTHORITY TO ISSUE REGULATIONS AND**
19 **GUIDELINES.**

20 “The Secretary shall have sole authority to issue Fed-
21 eral regulations and guidelines that relate to the produc-
22 tion of hemp, including Federal regulations and guidelines
23 that relate to the implementation of section 297B.”.

1 **SEC. 3. FUNDING FOR HEMP RESEARCH.**

2 (a) SUPPLEMENTAL AND ALTERNATIVE CROPS.—

3 Section 1473D(c)(3)(E) of the National Agricultural Re-
 4 search, Extension, and Teaching Policy Act of 1977 (7
 5 U.S.C. 3319d(c)(3)(E)) is amended by inserting “(includ-
 6 ing hemp (as defined in section 297A of the Agricultural
 7 Marketing Act of 1946))” after “material”.

8 (b) CRITICAL AGRICULTURAL MATERIALS.—Section
 9 5(b)(9) of the Critical Agricultural Materials Act (7
 10 U.S.C. 178c(b)(9)) is amended by inserting “, and includ-
 11 ing hemp (as defined in section 297A of the Agricultural
 12 Marketing Act of 1946)” after “hydrocarbon-containing
 13 plants”.

14 **SEC. 4. LEGITIMACY OF INDUSTRIAL HEMP RESEARCH.**

15 (a) IN GENERAL.—Section 7606 of the Agricultural
 16 Act of 2014 (7 U.S.C. 5940) is amended—

17 (1) by redesignating subsections (a) and (b) as
 18 subsections (b) and (a), respectively, and moving the
 19 subsections so as to appear in alphabetical order;

20 (2) in subsection (b) (as so redesignated), in
 21 the subsection heading, by striking “IN GENERAL”
 22 and inserting “INDUSTRIAL HEMP RESEARCH”; and

23 (3) by adding at the end the following:

24 “(c) STUDY AND REPORT.—

25 “(1) IN GENERAL.—The Secretary shall con-
 26 duct a study of agricultural pilot programs—

1 “(A) to determine the economic viability of
 2 the domestic production and sale of industrial
 3 hemp; and

4 “(B) that shall include a review of—

5 “(i) each agricultural pilot program;
 6 and

7 “(ii) any other agricultural or aca-
 8 demic research relating to industrial hemp.

9 “(2) REPORT.—Not later than 120 days after
 10 the date of enactment of this subsection, the Sec-
 11 retary shall submit to Congress a report describing
 12 the results of the study conducted under paragraph
 13 (1).”.

14 (b) REPEAL.—Effective on the date that is 1 year
 15 after the date of enactment of this Act, section 7606 of
 16 the Agricultural Act of 2014 (7 U.S.C. 5940) is repealed.

17 **SEC. 5. FEDERAL CROP INSURANCE.**

18 (a) DEFINITION OF HEMP.—Section 502(b) of the
 19 Federal Crop Insurance Act (7 U.S.C. 1502(b)) is amend-
 20 ed—

21 (1) by redesignating paragraphs (8) through
 22 (11) as paragraphs (9) through (12), respectively;
 23 and

24 (2) by inserting after paragraph (7) the fol-
 25 lowing:

1 “(8) HEMP.—The term ‘hemp’ has the meaning
2 given the term in section 297A of the Agricultural
3 Marketing Act of 1946.”.

4 (b) INSURANCE PERIOD.—Section 508(a)(2) of the
5 Federal Crop Insurance Act (7 U.S.C. 1508(a)(2)) is
6 amended by striking “and sweet potatoes” and inserting
7 “sweet potatoes, and hemp”.

8 (c) SUBMISSION OF POLICIES AND MATERIALS TO
9 BOARD.—Section 508(h) of the Federal Crop Insurance
10 Act (7 U.S.C. 1508(h)) is amended—

11 (1) in paragraph (1)(B)—

12 (A) by redesignating clauses (i) through
13 (iii) as subclauses (I) through (III), respec-
14 tively, and indenting appropriately;

15 (B) in the matter preceding subclause (I)
16 (as so redesignated), by striking “The Corpora-
17 tion shall” and inserting the following:

18 “(i) IN GENERAL.—The Corporation
19 shall”;

20 (C) in clause (i)(I) (as so redesignated), by
21 inserting “subject to clause (ii),” before “will
22 likely”; and

23 (D) by adding at the end the following:

24 “(ii) WAIVER FOR HEMP.—The Cor-
25 poration may waive the viability and mar-

1 ketability requirement under clause (i)(I)
 2 in the case of a policy or pilot program re-
 3 lating to the production of hemp.”; and

4 (2) in paragraph (3)(C)—

5 (A) in clause (ii), by striking “and” at the
 6 end;

7 (B) in clause (iii), by striking the period at
 8 the end and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(iv) in the case of reviewing policies
 11 and other materials relating to the produc-
 12 tion of hemp, may waive the viability and
 13 marketability requirement under subpara-
 14 graph (A)(ii)(I).”.

15 (d) AGRICULTURAL COMMODITY.—Section 518 of the
 16 Federal Crop Insurance Act (7 U.S.C. 1518) is amended
 17 by inserting “hemp,” before “aquacultural species”.

18 (e) RESEARCH AND DEVELOPMENT AUTHORITY.—
 19 Section 522(b) of the Federal Crop Insurance Act (7
 20 U.S.C. 1522(b)) is amended—

21 (1) in paragraph (2), by adding at the end the
 22 following:

23 “(K) WAIVER FOR HEMP.—The Board
 24 may waive the viability and marketability re-
 25 quirements under this paragraph in the case of

research and development relating to a policy to insure the production of hemp.”; and

(2) in paragraph (3)—

(A) by striking “The Corporation” and inserting the following:

“(A) IN GENERAL.—Subject to subparagraph (B), the Corporation”; and

(B) by adding at the end the following:

“(B) WAIVER FOR HEMP.—The Corporation may waive the marketability requirement under subparagraph (A) in the case of research and development relating to a policy to insure the production of hemp.”.

SEC. 6. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended—

(1) by striking “(16) The” and inserting “(16)(A) Subject to subparagraph (B), the”; and

(2) by striking “Such term does not include the” and inserting the following:

“(B) The term ‘marihuana’ does not include—

“(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

“(ii) the”.

1 (b) TETRAHYDROCANNABINOL.—Schedule I, as set
2 forth in section 202(c) of the Controlled Substances Act
3 (21 U.S.C. 812(c)), is amended in subsection (c)(17) by
4 inserting after “Tetrahydrocannabinols” the following: “,
5 except for tetrahydrocannabinols in hemp (as defined
6 under section 297A of the Agricultural Marketing Act of
7 1946)”.

8 **SEC. 7. RULE OF CONSTRUCTION.**

9 Nothing in this Act authorizes interference with the
10 interstate commerce of hemp (as defined in section 297A
11 of the Agricultural Marketing Act of 1946, as added by
12 section 2).

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