

2009 SESSION

09-0158

08/03

HOUSE BILL **399-FN-A**

AN ACT relative to industrial hemp and establishing an industrial hemp special program fund.

SPONSORS: Rep. Owen, Merr 4

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill permits the development of an industrial hemp industry in New Hampshire. The bill also establishes an industrial hemp special program fund, into which certain fees and seed sale revenues shall be deposited.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to industrial hemp and establishing an industrial hemp special program fund.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Industrial Hemp. Amend RSA by inserting after chapter 433-B the following new chapter:

CHAPTER 433-C

INDUSTRIAL HEMP

433-C:1 Purpose. The legislature finds that the development and use of industrial hemp can serve to improve the state's economy and agricultural viability and that the production of industrial hemp can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of this chapter is to permit the development in New Hampshire of an industrial hemp industry, and to assure that production of industrial hemp is in compliance with state laws.

433-C:2 Definitions. In this chapter:

I. "Commissioner" means the commissioner of agriculture, markets, and food.

II. "Industrial hemp" means all parts and varieties of the plant *Cannabis sativa* L., whether growing or not, that contain a tetrahydrocannabinol (THC) concentration of 0.3 percent or less by weight.

III. "Process" means to produce a product from harvested industrial hemp that may be transported off a licensed site which shall consist only of mature stalks, fiber produced from such stalks, oil or cake made from the seeds, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks except the resin extracted therefrom, fiber, oil or cake, or the sterilized seeds which are incapable of germination.

IV. "Records" means all documents related to the production of industrial hemp, including accounts, correspondence, declarations, purchase orders, registers, seed invoices, and THC concentration analysis reports, including all documentation required under this chapter and by any other state or federal law regarding the growing of industrial hemp.

433-C:3 Industrial Hemp an Agricultural Crop. Industrial hemp is recognized as an agricultural crop.

433-C:4 Licensing; Application.

I. A license from the commissioner shall authorize the holder to legally plant, grow, harvest, and process industrial hemp only at a site or sites as specified by the license. A license shall also allow the holder to transport industrial hemp seeds obtained from the commissioner to such sites.

II. A license from the commissioner shall be valid for 24 months and may be renewed, but shall not be transferable. An application for a license shall be filed with the commissioner on a form prescribed by the commissioner by January 1 and shall include a \$25 fee. Any license granted shall be issued by February 1 of the same calendar year.

III. To qualify for a license from the commissioner, an applicant shall demonstrate to the satisfaction of the commissioner, in a manner prescribed by the commissioner, that the

applicant intends to and is capable of planting, growing, harvesting, and processing on-site industrial hemp, and has adopted or will adopt methods to ensure its safe production, which at a minimum shall include:

- (a) Ensuring the integrity of the industrial hemp crop while it is in the field, which shall include filing with the commissioner the location and acreage of all parcels sown and other field reference information as may be required by the commissioner.
- (b) Ensuring that all parts of the industrial hemp plant not entering the stream of commerce, such as flowers and leaves, are destroyed or decomposed at the place of production.
- (c) Agreeing to the provisions of RSA 433-C:7, II and III, regarding inspections by the commissioner.
- (d) Maintaining records required by the commissioner that reflect compliance with the provisions of this chapter and with all other applicable state and federal laws.
- (e) Agreeing to the provisions of RSA 433-C:11, regarding testing of industrial hemp crop samples.

IV. Every licensee shall maintain all records for at least 3 years at the production site, including the names and addresses of the persons or entities to whom the industrial hemp was sold or distributed. An annual report shall be submitted to the commissioner by December 31 following each growing season containing information as required by the commissioner.

V. A licensee shall plant at least one acre of industrial hemp during a given growing season.

433-C:5 Seed Importation. The commissioner shall be the sole source and supplier of seed for use in industrial hemp production in the state. The commissioner is authorized to import viable hemp seed into the state. The commissioner shall secure all hemp seed and ensure that all hemp seed supplied to and used by growers is only the seed of the industrial hemp plant as defined in RSA 433-C:2, II.

433-C:6 Transportation.

I. All materials referenced in RSA 433-C:2, III shall not require a license for transportation.

II. A license holder may transport seed for planting under RSA 433-C:4, I.

III. A license holder shall not transport leaves and flowers of the marijuana plant.

433-C:7 Administration; Inspection.

I. The commissioner shall administer and enforce the provisions of this chapter.

II. The commissioner is authorized to investigate compliance with this chapter, and shall have access, subject to the provisions of paragraph III, to all land, buildings, or places where industrial hemp is grown, kept, stored, or handled, and to all records relating to hemp production. The commissioner may make copies of any records.

III. The commissioner shall have access to the properties and records specified in paragraph II during regular business hours, or when the commissioner has substantial justification to believe that any licensee is otherwise in violation of this chapter or rules adopted under it, or any condition of the license.

433-C:8 Rulemaking.

I. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to sampling and testing procedures for THC content, standards for licensure, fees, reports, and recordkeeping. The commissioner shall also adopt rules relative to the supervision of industrial hemp during sowing, growing season, harvest, storage, and processing.

II. This section shall be implemented when the commissioner determines:

(a) The definition of “marijuana” for purposes of the Controlled Substances Act, 21 U.S.C. section 802 (16), has been amended by the United States Congress to permit the production of industrial hemp; or

(b) The United States Drug Enforcement Agency has amended its interpretation of the existing definition in a manner allowing the issue of licenses to grow industrial hemp in accordance with 21 U.S.C. sections 821-830; or

(c) The United States Drug Enforcement Agency has taken affirmative steps to approve or deny a license to grow industrial hemp in another state.

433-C:9 Revocation and Suspension of License; Enforcement.

I. The commissioner shall deny, suspend, revoke, or refuse to renew a license in the following cases:

(a) If false or misleading information or statements, misrepresentations, or false or falsified documents have been submitted on or with an application or renewal for a license.

(b) If the licensee fails to take any action required by the commissioner under the provisions of this chapter.

(c) If the license holder or applicant, or in the case of a corporation, cooperative, partnership, limited liability company, or trust, any of its officers, directors, or partners,

has a record that includes within the previous 10 years:

- (1) Any designated drug offense as provided in RSA 318-B:26; or
- (2) If he or she ordinarily resides in a country other than the United States, an offense that, if committed in the United States, would constitute a designated drug offense.

II. The commissioner may suspend or revoke a license where it is necessary to protect the security, safety, or health of the public, if the commissioner has reasonable grounds to believe that the licensee has violated or failed to comply with any provision of this chapter or any rule adopted under it, or any condition of the license.

III. Revocation or suspension of a license may be in addition to any criminal penalties or fines imposed on a licensee under other state law.

433-C:10 Fee; Cost of Seed; Industrial Hemp Special Program Fund.

I. A fee shall be charged by the commissioner for each license granted to a licensee under this chapter. The fee amount charged per growing season shall be \$5 per acre of land under cultivation with a minimum fee of \$100, plus a sufficient amount for testing samples under RSA 433-C:10, as required by the commissioner. All fee revenue shall be deposited in the industrial hemp special program fund established in paragraph III.

II. The commissioner shall establish hemp seed prices to be charged growers equivalent to the cost of acquiring the seed as provided in RSA 433-C:5. The establishment of hemp seed prices shall be exempt from RSA 541-A. All proceeds, if any, of seed sales shall be deposited in the industrial hemp special program fund established in paragraph III.

III. An industrial hemp special program fund is established in the office of the state treasurer. All moneys in the fund shall be nonlapsing and continually appropriated to the commissioner and used to defray the cost of implementing this chapter.

433-C:11 Testing of Samples. Every licensee shall allow samples to be taken of the licensee's industrial hemp crop by the commissioner or persons designated by the commissioner. Such samples shall be tested for their THC concentrations at an independent testing laboratory designated by the commissioner. All costs of such testing shall be borne by the licensee. Copies of test results shall be provided to the licensee, the commissioner, and the commissioner of safety.

433-C:12 Report. The commissioner shall by February 15 of each year report to the appropriate house and senate committees of jurisdiction on implementation of this chapter and on the commercialization of industrial hemp, and recommend any changes to this chapter deemed appropriate.

2 New Subparagraph; Industrial Hemp Special Program Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (276) the following new subparagraph:

(277) Moneys received under RSA 433-C:10, I and II which shall be deposited in the industrial hemp special program fund established in RSA 433-C:10, III.

3 Effective Date. This act shall take effect July 1, 2009.

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HB 399-FN-A - FISCAL NOTE

AN ACT relative to industrial hemp and establishing an industrial hemp special program fund.

FISCAL IMPACT:

The Department of Agriculture, Markets and Food states this bill will increase state general fund revenue by \$5,250 in FY 2010, \$15,500 in FY 2011, \$20,500 in FY 2013 and \$25,750 in FY 2013 and increase state general fund expenditures by \$5,000 in FY 2010, \$15,000 in FY 2011, \$20,000 in FY 2012, and \$25,000 in FY 2013. State restricted revenue will increase by \$7,000 in FY 2010, \$21,000 in FY 2011, \$28,000 in FY 2012 and \$35,000 in FY 2013 and increase state restricted expenditures by \$6,000 in FY 2010, \$18,000 in FY 2011, \$24,000 in FY 2012 and \$30,000 in FY 2013. There will be no fiscal impact on county and local revenue or expenditures.

METHODOLOGY:

The Department states this bill permits the development of the industrial hemp industry in New Hampshire. The Department will collect a licensing fee of \$25 and be reimbursed by the licensee for costs associated with testing THC concentration of the industrial hemp crop. The Department assumes each license application is approved, the license is good for two years, and testing of THC will be done using two samples from each farm with tests costing \$250 per sample.

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General Fund	FY 2010	FY 2011	FY 2012	FY 2013
Revenue				

License Fee	\$25	\$25	\$25	\$25
Number of Applications	10	20	20	30
Total for License Fee Revenue	\$250	\$500	\$500	\$750
Sample tests reimbursed (see below for calculation)	\$5,000	\$15,000	\$20,000	\$25,000
Total Revenue	\$5,250	\$15,500	\$20,500	\$25,750
Expenditures				
Farms	10	30	40	50
Number of samples per farm	2	2	2	2
Fee per sample	\$250	\$250	\$250	\$250
Total Expenditures	\$5,000	\$15,000	\$20,000	\$25,000

The Department states this bill also establishes the Industrial Hemp Special Program Fund that will be funded by fees collected on acres of land under cultivation at \$5 per acre with a minimum fee of \$100 and fees collected through the sale of hemp seeds. The Department assumes each licensee’s farm is approved to plant 10 acres of hemp and seed will cost \$60 per acre with the seed sold to growers at cost.

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Restricted Special Fund	FY 2010	FY 2011	FY 2012	FY 2013
Revenue				
Acreage Fee (set at min. acreage fee)	\$100	\$100	\$100	\$100
Number of Licenses	10	30	40	50
Total Acreage Fee Revenue	\$1,000	\$3,000	\$4,000	\$5,000
Seed costs reimbursed (see below for calculation)	\$6,000	\$18,000	\$24,000	\$30,000
Total Restricted Revenue	\$7,000	\$21,000	\$28,000	\$35,000
Expenditures				
Number of Farms	10	30	40	50

Acres per Farm	10	10	10	10
Seed Cost per Acre	\$60	\$60	\$60	\$60
Total Restricted Expenditures	\$6,000	\$18,000	\$24,000	\$30,000

The Department states with the assumed low initial participation level, it will be able to administer the program with no additional staff.