

115TH CONGRESS
2D SESSION

S. _____

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

Mr. McCONNELL (for himself, Mr. WYDEN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on _____

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”.

6 **SEC. 2. HEMP PRODUCTION.**

7 The Agricultural Marketing Act of 1946 (7 U.S.C.
8 1621 et seq.) is amended by adding at the end the fol-
9 lowing:

1 **“Subtitle G—Hemp Production**

2 **“SEC. 297A. DEFINITIONS.**

3 “In this subtitle:

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

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

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

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

18 “(A) a State;

19 “(B) the District of Columbia;

20 “(C) the Commonwealth of Puerto Rico;

21 and

22 “(D) any other territory or possession of
23 the United States.

24 “(5) STATE DEPARTMENT OF AGRICULTURE.—

25 The term ‘State department of agriculture’ means

1 the agency, commission, or department of a State
2 government responsible for agriculture in the State.

3 “(6) TRIBAL GOVERNMENT.—The term ‘Tribal
4 government’ means the governing body of an Indian
5 tribe.

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

7 “(a) SUBMISSION.—

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

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

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

21 “(i) a practice to maintain relevant in-
22 formation regarding land on which hemp is
23 produced in the State or territory of the
24 Indian tribe, including a legal description

1 of the land, for a period of not less than
2 3 calendar years;

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

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

11 “(iv) a procedure to comply with the
12 enforcement procedures under subsection
13 (d); and

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

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

19 “(A) NO PREEMPTION.—Nothing in this
20 subsection preempts or limits any law of a
21 State or Indian tribe regulating the production
22 of hemp, to the extent that law is consistent
23 with this subtitle.

24 “(B) REFERENCES IN PLANS.—A State or
25 Tribal plan referred to in paragraph (1) may

1 include a reference to a law of the State or In-
2 dian tribe regulating the production of hemp, to
3 the extent that law is consistent with this sub-
4 title.

5 “(b) APPROVAL.—

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

9 “(A) approve the State or Tribal plan if
10 the State or Tribal plan complies with sub-
11 section (a); or

12 “(B) disapprove the State or Tribal plan
13 only if the State or Tribal plan does not comply
14 with subsection (a).

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

23 “(c) TECHNICAL ASSISTANCE.—The Secretary may
24 provide technical assistance to a State or Indian tribe in

1 the development of a State or Tribal plan under subsection
2 (a).

3 “(d) VIOLATIONS.—

4 “(1) IN GENERAL.—A violation of a State or
5 Tribal plan approved under subsection (b) shall be
6 subject to enforcement solely in accordance with this
7 subsection.

8 “(2) NEGLIGENT VIOLATIONS.—

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

18 “(i) failing to provide a legal descrip-
19 tion of land on which the producer pro-
20 duces hemp;

21 “(ii) failing to obtain a license or
22 other required authorization from the
23 State department of agriculture or Tribal
24 government, as applicable; or

1 “(iii) producing *Cannabis sativa* L.
2 with a delta-9 tetrahydrocannabinol con-
3 centration of more than 0.3 percent on a
4 dry weight basis.

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

11 “(i) a reasonable date by which the
12 hemp producer shall correct the negligent
13 violation; and

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

21 “(C) RESULT OF NEGLIGENT VIOLA-
22 TION.—Except as provided in subparagraph
23 (D), a hemp producer that negligently violates
24 a State or Tribal plan under subparagraph (A)
25 shall not be subject to any criminal or civil en-

1 enforcement action by the Federal Government or
2 any State government, Tribal government, or
3 local government other than the enforcement
4 action authorized under subparagraph (B).

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

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

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

22 “(i) the Attorney General; and

23 “(ii) in the case of a State department
24 of agriculture, the chief law enforcement
25 officer of the State; and

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

3 “(e) **AUTHORIZATION OF APPROPRIATIONS.**—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out this section.

6 “(f) **EFFECT.**—Nothing in this section prohibits the
7 production of hemp in a State or the territory of an Indian
8 tribe for which a State or Tribal plan is not approved
9 under this section in accordance with other Federal laws
10 (including regulations).

11 **“SEC. 297C. AUTHORITY TO ISSUE REGULATIONS AND**
12 **GUIDELINES.**

13 “The Secretary shall have sole authority to issue Fed-
14 eral regulations and guidelines that relate to the produc-
15 tion of hemp, including Federal regulations and guidelines
16 that relate to the implementation of section 297B.”.

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

18 (a) **SUPPLEMENTAL AND ALTERNATIVE CROPS.**—
19 Section 1473D(c)(3)(E) of the National Agricultural Re-
20 search, Extension, and Teaching Policy Act of 1977 (7
21 U.S.C. 3319d(c)(3)(E)) is amended by inserting “(includ-
22 ing hemp (as defined in section 297A of the Agricultural
23 Marketing Act of 1946))” after “material”.

24 (b) **CRITICAL AGRICULTURAL MATERIALS.**—Section
25 5(b)(9) of the Critical Agricultural Materials Act (7

1 U.S.C. 178c(b)(9)) is amended by inserting “, and includ-
2 ing hemp (as defined in section 297A of the Agricultural
3 Marketing Act of 1946)” after “hydrocarbon-containing
4 plants”.

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

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

8 (1) by redesignating subsections (a) and (b) as
9 subsections (b) and (a), respectively, and moving the
10 subsections so as to appear in alphabetical order;

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

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

15 “(c) STUDY AND REPORT.—

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

18 “(A) to determine the economic viability of
19 the domestic production and sale of industrial
20 hemp; and

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

22 “(i) each agricultural pilot program;

23 and

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

1 “(2) REPORT.—Not later than 120 days after
2 the date of enactment of this subsection, the Sec-
3 retary shall submit to Congress a report describing
4 the results of the study conducted under paragraph
5 (1).”.

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

9 **SEC. 5. FEDERAL CROP INSURANCE.**

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

13 (1) by redesignating paragraphs (8) through
14 (11) as paragraphs (9) through (12), respectively;
15 and

16 (2) by inserting after paragraph (7) the fol-
17 lowing:

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

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

1 (e) SUBMISSION OF POLICIES AND MATERIALS TO
2 BOARD.—Section 508(h) of the Federal Crop Insurance
3 Act (7 U.S.C. 1508(h)) is amended—

4 (1) in paragraph (1)(B)—

5 (A) by redesignating clauses (i) through
6 (iii) as subclauses (I) through (III), respec-
7 tively, and indenting appropriately;

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

11 “(i) IN GENERAL.—The Corporation
12 shall”;

13 (C) in clause (i)(I) (as so redesignated), by
14 inserting “subject to clause (ii),” before “will
15 likely”; and

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

17 “(ii) WAIVER FOR HEMP.—The Cor-
18 poration may waive the viability and mar-
19 ketability requirement under clause (i)(I)
20 in the case of a policy or pilot program re-
21 lating to the production of hemp.”; and

22 (2) in paragraph (3)(C)—

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

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

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

4 “(iv) in the case of reviewing policies
5 and other materials relating to the produc-
6 tion of hemp, may waive the viability and
7 marketability requirement under subpara-
8 graph (A)(ii)(I).”.

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

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

15 (1) in paragraph (2), by adding at the end the
16 following:

17 “(K) WAIVER FOR HEMP.—The Board
18 may waive the viability and marketability re-
19 quirements under this paragraph in the case of
20 research and development relating to a policy to
21 insure the production of hemp.”; and

22 (2) in paragraph (3)—

23 (A) by striking “The Corporation” and in-
24 serting the following:

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the Corporation”; and

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

4 “(B) WAIVER FOR HEMP.—The Corpora-
5 tion may waive the marketability requirement
6 under subparagraph (A) in the case of research
7 and development relating to a policy to insure
8 the production of hemp.”.

9 **SEC. 6. CONFORMING CHANGES TO CONTROLLED SUB-**
10 **STANCES ACT.**

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

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

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

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

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

20 “(ii) the”.

21 (b) TETRAHYDROCANNABINOL.—Schedule I, as set
22 forth in section 202(c) of the Controlled Substances Act
23 (21 U.S.C. 812(c)), is amended in subsection (c)(17) by
24 inserting after “Tetrahydrocannabinols” the following: “,
25 except for tetrahydrocannabinols in hemp (as defined

1 under section 297A of the Agricultural Marketing Act of
2 1946)”.
3

3 **SEC. 7. RULE OF CONSTRUCTION.**

4 Nothing in this Act authorizes interference with the
5 interstate commerce of hemp (as defined in section 297A
6 of the Agricultural Marketing Act of 1946, as added by
7 section 2).