

**ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB657**

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**Hearing Date:** Tuesday February 12, 2019  
**Committee On:** Agriculture  
**Introducer:** Wayne  
**One Liner:** Adopt the Nebraska Hemp Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Blood, Brandt, Chambers, Halloran, Hansen, B., Lathrop, Moser, Slama  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Oral Testimony:**

**Proponents:**

Senator Justin Wayne  
Andrew Bish  
Jacob Bish  
Allan Jenkins  
Roger Harmon  
Ansley Mick  
James Wilson  
John Hansen  
Todd Thompson  
Bill Hawkins  
Gregory Lauby  
Dillon Cornett  
Jim Kuntz  
Julie Mills

**Representing:**

Introducer  
Bish Enterprises  
Self  
Self  
Self  
Nebraska Farm Bureau  
Self  
Nebraska Farmers Union  
Christo, YST  
Nebraska Hemp Company  
Self  
Self  
Self  
Self

**Opponents:**

**Representing:**

**Neutral:**

Amelia Breinig

**Representing:**

Nebraska Department of Agriculture

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**Summary of purpose and/or changes:**

LB 657 provides for the growing and processing/handling of industrial hemp under regulation of the Nebraska Department of Agriculture (Department), and provides the authorities necessary for the Department to prepare and implement a state plan for purposes of the hemp provisions of the federal Agriculture Improvement Act of 2018 (2018 Farm Bill). The bill defines hemp as cannabis sativa L and any part of the plant and derivatives having a delta-9 tetrahydrocannabinol (THC) of not more than 0.3% by dry weight, distinguishes hemp from marijuana and excludes hemp from the definition of marijuana for purposes of the Uniform Controlled Substances Act. Additionally, LB 657 creates a commission to advise the governor and legislature regarding policies to remove constraints to hemp

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production and to coordinate programs to promote the hemp industry.

Section-by-section summary:

Section 1: Names sections 1 through 23 the Nebraska Hemp Act

Section 2: Defines terms utilized throughout the Act

Section 3: Requires certain documentation to accompany shipments of hemp

Sections 4 and 5: Requires registration of growers and grower sites to grow hemp, and licensure to process, handle, broker or market hemp. Prescribes information and application fees to be provided with a registration or license application. Registrations and licenses are valid for one year and renewed annually. Authorizes a late fee for late renewal applications. Provides that applications and supporting documentation supplied by applicants are not public records.

Sections 6 and 7: Requires the Department to determine action on applications for registration or licensure in a timely manner and lists criteria by which the Department shall deny licensure or registration. Provides for the manner of notification of denial of licensure or registration and the procedure for requesting a hearing conducted according to Administrative Procedure Act to contest the denial.

Sections 8 and 9: Provides that growers and processor-handlers consent to entry by Department or law enforcement entry of registered premises, testing of cannabis samples, and forfeiture and destruction of non-conforming materials. Lists prohibited acts and assigns a duty to show registration documentation upon request by the Department or law enforcement.

Section 10: Directs the Department to suspend for up to 60 days a registration or license upon allegation of certain acts of misconduct described. Prohibits growers and processor-handler licenses from harvesting, moving or processing hemp while under suspension.

Section 11: Provides for permanent revocation of registration or licensure only after notification of the suspension and hearing held not more than 60 days after notification of suspension. The registration or licensure shall be revoked if the Director finds by preponderance of evidence that an allegation of misconduct is true. Upon such finding, the Department or law enforcement shall confiscate and destroy cannabis in the possession of the registrant or licensee. Provides that the Department or law enforcement are not liable for the value of cannabis seized or destroyed. Bars persons having a registration or license revoked from participation as a grower or processor-handler for a period of 5 years.

Section 12: Assigns a duty to growers to submit samples for THC content testing before growing, harvesting or destroying a crop and provides the grower is subject to suspension and revocation of registration for failing to comply. Requires the testing facility to provide test reports to the grower and the Department, and allows two retests if the THC concentration exceeds the 0.3% threshold. Confiscation and destruction of cannabis is authorized upon a third testing result. The Department is required to prescribe rules for testing performed and the producer is liable for the costs of testing. Submitting falsified samples for testing is declared as Class IV felony.

Section 13: Requires a grower to submit a request for modification of growing sites registered and requires payment of a fee before the Department may modify a site registration.

Section 14: Sets out registration, licensing and other fees assessed. Provides that fees are non-refundable and directs fee revenues be remitted to the Nebraska Hemp Program Fund.

Sections 15 - 18: Creates the Nebraska Hemp Commission and prescribes its membership. Assigns the Commission to the Department for administrative purposes. Defines a quorum, names the Director of Agriculture as vice-chair, and directs that the chair be elected from the membership of the Commission. Requires the Commission to meet quarterly

or upon the call of the Chair or majority of members that the Commission is formed and conducts its first meeting by September 1, 2019. Authorizes administrative expenses to be paid from the Nebraska Hemp Program Cash Fund. Assigns duties to the Commission, including a report and development of programs to support small scale business participation in hemp production and processing.

Section 19: Creates the Nebraska Hemp Program Cash Fund

Section 20: Authorizes administrative fines to be assessed against persons in violation of the Act and prescribes the amount of fines assessed. Decisions of the Director to assess a fine may be appealed according to the Administrative Procedures Act. Unpaid fines are to be collected by an action brought by the Attorney General. Any fines collected are to be remitted for distribution according to Article VII, Sec 5 of the state constitution.

Section 21: Declares preemption of local regulation of hemp

Section 22: Provides that the Act constitutes the state plan for purposes of meeting requirements for hemp production under the 2018 Farm Bill and requires the Department to submit it to the USDA for approval within thirty days after the effective date of the bill.

Section 23: Excludes hemp from sales and income taxes assessed against controlled substances

Section 24: Amends Section 28-401 of the Uniform Controlled Substances Act to define hemp by reference to its definition under Section 2 of the bill. Hemp is excluded from the definition of marijuana and existing obsolete language limiting the exclusion of hemp is stricken. Excludes resins extracted from hemp from the definition of hashish or concentrated cannabis.

Section 25: Repealer

Section 26: Emergency clause

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**Explanation of amendments:**

The committee amendment (AM988) is a white copy amendment that strikes the original provisions and becomes the bill. The amendment retains key elements of the original bill, but addresses certain elements in a modified manner, with overall reorganization of the bill for clarity and readability. The most significant changes from LB 657 as introduced include:

- Temporarily expands participation in the hemp research pilot program authorized under Section 2-5701 to enable wider participation for the 2019 growing season. It is anticipated that the hemp program authorized by the bill would provide the structure needed to prepare and implement a state plan to conform to 2018 Farm Bill hemp provisions for the 2020 growing season and beyond;
- Delegates more discretion to the Department regarding the contents of the state plan submitted for purposes meeting the requirements of the 2018 Farm Bill;
- Reorganizes the Hemp Commission as a checkoff program, creating a separate fund and revenue stream to support promotional aspects of the bill; and
- Inserts additional provisions to be consistent with the hemp provisions of the 2018 Farm Bill including the enforcement of negligent violations and prohibiting persons having prior felony drug convictions from obtaining licensure.

Section-by-section summary:

Section 1: Names Sections 1-20 as the Nebraska Hemp Farming Act

Section 2: Declares legislative intent and purposes of the Act

Section 3: Defines terms utilized throughout the Act

Section 4: Authorities of the Department: Provides that it is lawful for a licensee to cultivate, process or broker hemp, to transport products and to possess, transport, sell lawfully produced hemp products. Assigns a duty to the Department to establish and administer a program to regulate hemp production and related commercial activity in conformity with the 2018 Farm Bill hemp provisions. Authorizes regulations regarding: a) growing and processing location information; b) procedures for sampling and testing; c) procedures for destruction of hemp in violation of the Act; d) enforcement; e) random inspections; and f) procedures for submitting required information to USDA.

Sections 5 and 6: Cultivator, processor, handler and broker licensing: Requires that hemp may only be cultivated processed in accordance with Section 2-5701 or as provided in these sections. Prescribes information to be provided with an application for licensure and application and site registration fees to be provided with the application. Authorizes the application for licensure under these sections upon approval of a state plan pursuant to the 2018 Farm Bill, and provides procedures for annual renewal of licensure. Provides for lapsing of a license upon change of ownership. Provides that information submitted for licensure application are not public record but may be submitted to the USDA for purpose of 2018 Farm Bill compliance and to law enforcement.

Section 7: Consideration of license applications: Authorizes Department rulemaking governing license applications. Prescribes grounds for denial. For incomplete applications, the Department is directed to notify the applicant and afford an opportunity to correct. Persons aggrieved by a denial may request a hearing pursuant to Section 12.

Section 8: Fees: Establishes parameters for setting fees, and fees will be set annually. Prescribes the fee schedule as follows:

	Initial	Statutory Maximum
License application fee (all)	\$100	\$150
Cultivator (grower) site registration	\$400 / site	\$600 / site
Processor/handler site registration	\$800 / site	\$1200 / site
Site modification fee	\$50	\$75

Provides for a late/delinquent fee of 25% of fees due. All fees are to be remitted to the Nebraska Hemp Program Fund established in this section.

Section 9: Creates the Nebraska Hemp Program Fund

Section 10: Licensee consents: Provides that a licensee consents to: a) a background check; b) entry and inspection; c) hemp sample testing; d) destruction of hemp exceeding 0.3% THC or otherwise grown in violation of the Act. Directs the Department to conduct at least annual inspections of a sample of licensees. Licensees acknowledge that risk of loss is borne by the licensee and licensees are not indemnified by the state for hemp destroyed pursuant to this section.

Section 11: Enforcement, unintentional violations: For unintentional violations of the Act, the state plan, rules or regulations, a corrective action plan, or an order of the Director. The Director is authorized to issue orders, including cease and desist and corrective action orders. Violations subject to enforcement provisions of this section shall not be subject to criminal or civil enforcement. Persons having three violations within a 5-year period are disqualified from growing, processing, handling or brokering hemp for a period of 5 years. Elements of a corrective action plan are prescribed. Persons aggrieved by an order of the Director may request a hearing pursuant to section 12.

Section 12: Enforcement, intentional violations: For intentional violations, a violator would be subject to enforcement provisions including administrative fine, injunctive relief, or referral for any relevant criminal enforcement. Upon a determination of an intentional violation, the Department shall notify the Attorney General and the county attorney. The Attorney General shall bring an action for unpaid administrative fine assessments and any fines collected are remitted for distribution according to Article VII, Section 5 of the state constitution.

Section 13: Appeals: Persons aggrieved by an order of the Director issued without prior hearing may submit a written

request for a hearing within 30 days. Appeals of final orders issued after a hearing may be appealed pursuant to the Administrative Procedures Act and the District Court for Lancaster County shall have exclusive jurisdiction for appeals arising under the Act.

Section 14: Hemp testing: Requires hemp from each registered site to be tested for THC content prior to harvest and certified to the Department. Additionally, the Department is authorized to collect and test samples at its discretion. The Department is authorized to promulgate rules governing sampling consistent with certain specified parameters for sample collection, testing methods and certification of lab results, and approve labs utilized for testing. Upon an adverse result, the Department may require additional tests or destruction of plants.

Section 15: Transport of hemp: Assigns a duty to growers or processors/handlers transporting hemp to carry a copy of the transporter's license and test results of the hemp in transport. Persons other than a licensee transporting hemp shall have bill of lading documentation regarding owner, point of origin and destination, and test results. Assigns authority to the Department to conduct inspections at its discretion. The Department shall conduct annual inspections of a random sample.

Section 16: State Plan: Directs the Department of Agriculture, in consultation with the Attorney General, to submit a state plan for regulation of hemp cultivation and processing of hemp on or before December 31, 2019. Such plan is to include listed elements consistent with minimal requirements of state plans under the 2018 Farm Bill. Requires resubmission of an amended plan within 90 days if disapproved. Directs that the Act shall not be construed to be less restrictive than the 2018 Farm Bill hemp provisions.

Section 17: Hemp Commission: Creates the Nebraska Hemp Commission with membership as prescribed. The Commission is housed in the Department of Agriculture for administrative purposes. Provides for the organization of the Commission with the first meeting of the Commission to begin September 1, 2019. Assigns powers and duties necessary to the function of the Commission, assigns advisory and reporting duties, and further authorizes the Commission to develop programs to promote hemp, particularly development that favors small and medium businesses.

Section 18: Creates the Hemp Promotion Fund

Section 19: Establishes a hemp checkoff program modeled after existing commodity checkoff programs. Levies an excise fee of 1 cent / lb. upon all hemp seed and \$1 / ton on hemp fiber sold in commercial channels. Two-thirds of the fee is paid by seller and collected by the first purchaser, and one third of the fee is paid by the first purchaser. Inserts provisions for collection procedure.

Section 20: Expand existing research provision: Amends Section 2-5701 which currently authorizes research colleges to conduct hemp research. The amendment expands permitted participation to allow growers and processors to enter licensing agreements with the Director to conduct research plantings and marketing as a licensee of the Department. Such cultivation and marketing would be consistent with the hemp research provisions of the 2014 Farm Bill. Such licensure agreement would include the fees and application information, and testing procedures applicable to licensees under the Act.

Section 21: Severability clause

Section 22: Repealer

Section 23: Emergency clause

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Steve Halloran, Chairperson