

Bill Introduced in General Assembly to Create NC Hemp Commission and Promote Private Hemp Industry

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Today, Senators Brent Jackson (R-Sampson), Norman Sanderson (R-Pamlico) and Todd Johnson (R-Union) introduced S.B. 315 (the “North Carolina Farm Act of 2019”), a bill to create the North Carolina Hemp Commission. The Commission would implement new federal law contained in the Agriculture Improvement Act of 2018 (colloquially, the “2018 Farm Bill”) in order to permit and regulate a broad statewide industry in hemp (a variety of the cannabis plant with low THC concentrations). This is an important development because North Carolina already is estimated to have the sixth-most acres in hemp production of any state in the country, and the coming legal regime will make hemp a larger driver of the state’s agricultural economy.

A brief history is in order: North Carolina was on the forefront of creating a legal hemp industry under a “pilot program” authorized by the 2014 federal Farm Bill. Congress expressly limited that pilot program to state agriculture departments and universities wishing to study the growth, cultivation, and marketing of hemp. Several states – including North Carolina – implemented the pilot program by licensing private entities to grow and sell hemp under the auspices of the state government. In 2015, the General Assembly created an Industrial Hemp Commission to regulate industrial hemp production, and removed industrial hemp from the state’s definition of marijuana (and thus from being a controlled substance under state law). And, in 2017, the Industrial Hemp Commission adopted a regulatory framework and began licensing private parties to grow industrial hemp under the guise of a license for “Research with Intent to Market.” Perhaps not surprisingly, the developments in North Carolina and other states led to intense disagreements between states and the hemp industry, on the one hand, and the Drug Enforcement Agency and other federal agencies, on the other, about the proper scope of the hemp industry under the early 2014 federal Farm Bill, resulting in efforts by the Drug Enforcement Agency to discourage any interstate commerce in hemp. And, within the federal government, they led to similar disagreements between the Congressional promoters of the hemp industry and the enforcement agencies.

The federal 2018 Farm Bill authorized replacing the murky private operation under “pilot programs” with a broadly-authorized private hemp industry. In general, hemp grown pursuant to the 2018 Farm Bill will be exempt from the Controlled Substances Act and the reach of the Drug Enforcement Agency. In place of Controlled Substances Act penalties for production of hemp that falls outside of regulatory requirements (such as being produced without a license or having a THC

concentration above the legal limit), the 2018 Farm Bill instituted an administrative penalty scheme to be administered at the state level for merely negligent violations.

But, in order to qualify for the protections of the federal 2018 Farm Bill, the production must take place under a regulatory plan adopted by the state and approved by the federal Department of Agriculture (or a default federal plan, in the event that the state does not adopt its own plan). The 2018 Farm Bill set forth certain general requirements for state plans (such as that they must have procedures for testing THC levels), but left each state with some discretion in how to implement those requirements, subject to approval of the plan by the federal Department of Agriculture under rules that have not yet been adopted.

The introduction of S.B. 315 is the General Assembly's first step toward creation of a state plan that would satisfy the requirements of the federal 2018 Farm Bill and allow the hemp industry to operate within its protection. S.B. 315 proposes to accomplish the following:

- Creation of the North Carolina Hemp Commission, whose members would be appointed by the Governor, the General Assembly and the Commissioner of Agriculture, and would include law enforcement, agricultural professors, farmers, agricultural consultants and agribusiness professionals, and which would be authorized to employ a small staff. This Commission would replace the existing North Carolina Industrial Hemp Commission on a schedule set out in the bill. The bill encourages the appointment of existing Industrial Hemp Commissioners to the new Hemp Commission, but does not require it.
- Licensing of the cultivation and handling of hemp, which is defined to include not only growing and possession of hemp by farmers, but transporting hemp between licensees. The bill would not require a license for those possessing finished hemp products or hemp extracts, such as hemp or CBD stores.
- Authorization for the Commission to adopt rules required to secure the protections of the 2018 Farm Bill, such as sampling and testing procedures for THC content. The bill specifies that decarboxylation testing shall be preferred, unless the federal Department of Agriculture specifies a different method.
- Requirements that license applicants provide the Commission with certain information required by the 2018 Farm Bill (such as GPS coordinates for cultivation locations) and provide prior written consent for the Commission and other law enforcement agencies to perform inspections required to be part of the state plans by the 2018 Farm Bill.
- Requirement that the Commission require corrective action plans from licensees who negligently violate the state plan. The bill also proposes certain minimum requirements for such corrective action plans and penalties for negligent violations. All of these are 2018 Farm

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Bill requirements to remove the criminal penalties for negligent violation of state plans. S.B. 315 provides that intentional violations of the state plan will be reported to criminal law enforcement authorities.

- Institution of heavy civil and criminal penalties for certain violations, including growing marijuana under the cover of legal hemp production and providing false information to the Commission.
- Disqualification of certain felons from licensing, as required by the 2018 Farm Bill.
- Requirements of a bond to secure the legal obligations of hemp handlers to cultivators, including bonds for certain losses that the handlers may cause to hemp being handled.
- Authorization of interstate and international distribution, subject to the laws of the receiving jurisdiction. (Of course, a number of federal non-hemp-specific laws also govern the distribution of products in interstate and international commerce, and those laws cannot be disturbed by state law.)
- Requirement that a state plan in conformity with the 2018 Farm Bill be submitted to the federal Department of Agriculture within six months of the adoption of federal rules governing hemp production.
- Eligibility of hemp for state agricultural marketing plans, including the “Got to Be NC” marketing campaign

Note that S.B. 315 has not yet been adopted, and the state plan has not yet been proposed, much less adopted or approved. Therefore hemp production in North Carolina is still regulated by the Industrial Hemp Commission and governed by pre-existing state law. Likewise, because there is no state plan or default federal plan, production of hemp in North Carolina does not yet fall within the safeguards adopted in the federal 2018 Farm Bill.

Because S.B. 315 was introduced today, the time is now for any interested parties to provide input on the legislation. Brooks Pierce lawyers stand ready to advise their clients on this important legislation, as well as their rights and obligations under existing law, and to advocate on their behalf.

For more information on the hemp industry in North Carolina, contact Clint Pinyan, linked below.

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