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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hemp Farming Act of 2018”.
SEC. 2. HEMP PRODUCTION.

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

“Subtitle G—Hemp Production

“SEC. 297A. DEFINITIONS.

“In this subtitle:

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

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

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

“(4) STATE.—The term ‘State’ means—

“(A) a State;

“(B) the District of Columbia;

“(C) the Commonwealth of Puerto Rico; and
“(D) any other territory or possession of
the United States.

“(5) STATE DEPARTMENT OF AGRICULTURE.—
The term ‘State department of agriculture’ means
the agency, commission, or department of a State
government responsible for agriculture in the State.

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

“SEC. 297B. STATE AND TRIBAL PLANS.

“(a) SUBMISSION.—

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

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

“(A) shall only be required to include—
“(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

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

“(iii) a procedure for the effective disposal of products that are produced in violation of this subtitle; and

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

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

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

“(A) No Preemption.—Nothing in this subsection preempts or limits any law of a State or Indian tribe regulating the production
of hemp, to the extent that law is consistent with this subtitle.

“(B) REFERENCES IN PLANS.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

“(b) APPROVAL.—

“(1) IN GENERAL.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

“(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or

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

“(2) AMENDED PLANS.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, may submit to the
Secretary an amended State or Tribal plan that complies with subsection (a).

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

“(d) VIOLATIONS.—

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

“(2) NEGLIGENT VIOLATIONS.—

“(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

“(i) failing to provide a legal description of land on which the producer produces hemp;
“(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

“(iii) producing Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

“(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—

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

“(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.
“(C) Result of negligent violation.—Except as provided in subparagraph (D), a hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not be subject to any criminal or civil enforcement action by the Federal Government or any State government, Tribal government, or local government other than the enforcement action authorized under subparagraph (B).

“(D) Repeat violations.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

“(3) Other violations.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—
“(A) the State department of agriculture or Tribal government, as applicable, shall im-
mediately report the hemp producer to—

“(i) the Attorney General; and

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

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

“(e) Authorization of Appropriations.—There
are authorized to be appropriated such sums as are nec-
essary to carry out this section.

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

“SEC. 297C. AUTHORITY TO ISSUE REGULATIONS AND
GUIDELINES.

“The Secretary shall have sole authority to issue Fed-
eral regulations and guidelines that relate to the produc-
tion of hemp, including Federal regulations and guidelines
that relate to the implementation of section 297B.”.
SEC. 3. FUNDING FOR HEMP RESEARCH.

(a) Supplemental and Alternative Crops.—Section 1473D(e)(3)(E) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3319d(e)(3)(E)) is amended by inserting “(including hemp (as defined in section 297A of the Agricultural Marketing Act of 1946))” after “material”.

(b) Critical Agricultural Materials.—Section 5(b)(9) of the Critical Agricultural Materials Act (7 U.S.C. 178c(b)(9)) is amended by inserting “, and including hemp (as defined in section 297A of the Agricultural Marketing Act of 1946)” after “hydrocarbon-containing plants”.

SEC. 4. LEGITIMACY OF INDUSTRIAL HEMP RESEARCH.

(a) In General.—Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) is amended—

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

(2) in subsection (b) (as so redesignated), in the subsection heading, by striking “In General” and inserting “Industrial Hemp Research”; and

(3) by adding at the end the following:

“(c) Study and Report.—

“(1) In General.—The Secretary shall conduct a study of agricultural pilot programs—
“(A) to determine the economic viability of
the domestic production and sale of industrial
hemp; and
“(B) that shall include a review of—
“(i) each agricultural pilot program;
and
“(ii) any other agricultural or aca-
demic research relating to industrial hemp.
“(2) REPORT.—Not later than 120 days after
the date of enactment of this subsection, the Sec-
etary shall submit to Congress a report describing
the results of the study conducted under paragraph
(1).”.
(b) REPEAL.—Effective on the date that is 1 year
after the date of enactment of this Act, section 7606 of
the Agricultural Act of 2014 (7 U.S.C. 5940) is repealed.

SEC. 5. FEDERAL CROP INSURANCE.

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

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

(2) by inserting after paragraph (7) the fol-
lowing:
“(8) HEMP.—The term ‘hemp’ has the meaning
given the term in section 297A of the Agricultural
Marketing Act of 1946.”.

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

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

(1) in paragraph (1)(B)—

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

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

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

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

(D) by adding at the end the following:

“(ii) WAIVER FOR HEMP.—The Cor-
poration may waive the viability and mar-
ketability requirement under clause (i)(I)
in the case of a policy or pilot program re-

tating to the production of hemp.”; and

(2) in paragraph (3)(C)—

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

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

(C) by adding at the end the following:

“(iv) in the case of reviewing policies

and other materials relating to the produc-

tion of hemp, may waive the viability and

marketability requirement under subpara-

graph (A)(ii)(I).”.

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

(e) RESEARCH AND DEVELOPMENT AUTHORITY.—

Section 522(b) of the Federal Crop Insurance Act (7 U.S.C. 1522(b)) is amended—

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

“(K) WAIVER FOR HEMP.—The Board may waive the viability and marketability re-

quirements under this paragraph in the case of

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research and development relating to a policy to
insure the production of hemp.”; and
(2) in paragraph (3)—
(A) by striking “The Corporation” and in-
serting the following:
“(A) IN GENERAL.—Subject to subpara-
graph (B), the Corporation”; and
(B) by adding at the end the following:
“(B) WAIVER FOR HEMP.—The Corpora-
tion 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 SUB-
STANCES 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”.

•S 2667 PCS
(b) **TETRAHYDROCANNABINOL.**—Schedule I, as set forth in section 202(e) of the Controlled Substances Act (21 U.S.C. 812(e)), is amended in subsection (c)(17) by inserting after “Tetrahydrocannabinols” the following: “, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)”.

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

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

S. 2667

115th CONGRESS

Calendar No. 380

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