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**MEMORANDUM**

To: Senate Committee on Agriculture and Natural Resources

From: Kyle Hamilton, Assistant Revisor of Statutes

Date: March 22, 2019

Subject: Bill Brief on SB 233

The 2018 United States Farm Bill requires any state wishing to regulate the commercial production of industrial hemp within such state to submit a regulatory plan to the United States department of agriculture for approval. In cases where a state plan is not approved, the USDA would create its own regulatory plan for the state and would license commercial hemp producers within the state.

New Section 1 was added by the house agriculture committee back in February and states that it is the intent of the legislature that the implementation of the commercial industrial hemp act by the KDA shall be conducted in the least restrictive manner allowed under federal law.

New Sec. 2 concerns requirements for the submission of a state plan to the USDA and the KDA's regulatory power over growers who would be licensed under such plan. Subsection (a) would require the Kansas department of agriculture to submit a state plan to the USDA in consultation with the governor and the attorney general. Subsection (b), lists different measures that would be required to be included in the proposed state plan. Subsection (c), on page 2, concerns negligent violations committed by hemp producers. A negligent violation would require corrective action but would not result in a local or state criminal enforcement action. Subsection (d) states that an applicant will not be eligible to become a producer if the applicant submitted false information in their application. Subsection (e) would require all individuals seeking a producer license or license renewal to undergo fingerprinting and to submit to a state and national criminal history record check. An individual who has been convicted of a felony concerning controlled substances within the preceding 10 years would be prohibited from being

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a licensed producer. Subsection (f), on page 3, would give the secretary of agriculture the authority to promulgate rules and regulations to implement the state commercial industrial hemp plan. Subsection (g) concerns the discontinuation of the current research program. If the federal statutory provision that authorized the research program in the 2014 farm bill is repealed or if a federal commercial plan or state commercial plan is adopted, then the state department of agriculture may discontinue the research program. Subsection (h) would limit any KDA license modification fee to \$50 or less. Under subsection (i), any license fees collected pursuant to the section would be deposited into the commercial industrial hemp licensing fee fund. The fund was established last year as the alternative crop research act licensing fee fund and is renamed in section 9. Subsection (i) would make section 1 part of the alternative crop research act.

New Sec. 3. was added in by the house agriculture committee back in February, and would require the secretary of agriculture to keep accepting license applications for the research program from March 1, 2019 through June 1, 2019.

New Sec. 4 begins on page 4 and would give the department of revenue licensing and regulatory authority over hemp processors. While “hemp producer” is defined later in Section 7 as “individuals” who engage in cultivation or production of industrial hemp; “hemp processors” would be defined as a “person” who processes, manufactures and distributes industrial hemp and hemp products. The term “person” is defined to include individuals and business entities. Subsection (a) would establish the industrial hemp regulatory commission within the department of revenue. The commission would be authorized to adopt rules and regulations relating to the licensure and regulation of hemp processors. The commission would work with KDHE and the KDA to create those regulations. Under paragraph (4), the regulations would also apply to processor, manufacturers and distributors licensed under the current research program, but those individuals would not have to pay an additional licensing fee to the commission. Subsection (b) would require the commission to establish an electronic data base relating to licensed hemp processors and the individuals working for a hemp processor. Subsection (c) concerns the requirements for applying for a hemp processor license. The licensure fee could not exceed \$5,000. On page 5, paragraph (3), subparagraph (C), states that an applicant would have to submit documentation that the applicant is a resident of the state of Kansas. As I read that language, if a business were interested in becoming licensed, it would only be the agent of the business filling out the application who would have to be a resident. Paragraph (4) would require

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any individual working as an employee, agent or unpaid worker of a hemp processor to be fingerprinted and to submit to a state and national criminal history record check, just like hemp producers licensed under the KDA. Under paragraph (7), on page 6, hemp processor licenses would last for two years. Under paragraph (8), the commission would require anyone working under a hemp processor to have documentation in their possession to prove to law enforcement that such individual is authorized to engage in such activities. Subsection (d), on page 7, would put criminal penalty provisions in place for the unlawful processing, manufacturing or distribution of industrial hemp or hemp products. Subsection (e) would create a commercial industrial hemp processor fund.

New Sec. 5 would institute a ban on certain hemp products. Paragraph (1) would make it unlawful for the products listed in (A) through (F) to be manufactured, marketed, sold or distributed by any person in the state of Kansas. Subparagraph (F) lists “any hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp unless any such ingredient is generally recognized as safe under its intended conditions of use or otherwise approved by the United States food and drug administration under the federal drug and cosmetic act. On the day the 2018 farm bill was enacted, the FDA released a statement that it still has jurisdiction to regulate foods and drugs being sold across state lines that contain any amount of CBD or THC. That same day, the FDA stated that it had already approved hulled hemp seed; hemp seed protein powder; and hemp seed oil for use as ingredients in products. Subsection (b) would make it unlawful for industrial hemp buds, ground floral material and ground leaf material to be marketed, sold or distributed to anyone not operating under a KDOR processor license or a KDA producer or research license. The criminal penalties for such unlawful activities are listed in subsection (c).

New Section 6. concerns the disposal of any waste that is produced during any part of the process by any person licensed under the act. Such waste would be the materials that are produced by a licensee that would not be used by the licensee; it would be thrown away. Under the added language, such waste would be disposed according to current waste laws, however, if such waste could be used in the same manner as, or has the appearance of a controlled substance, the waste would have to be rendered unusable and unrecognizable before the waste is transported or disposed of.

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Section 7 is the definitions section of the act. The definition for “certified seed” would be stricken and replaced with a definition for “authorized seed or clone plants” on page 10, line 30.

Section 8 would make amendments to the current research program. While the rest of the bill would go into effect upon publication in the register, this section would become effective on July 1, 2019. At the bottom of page 11, and carrying over to page 12, a limit of \$50 or less for license modification fees would be put in place. In February, the house agriculture committee struck the language starting on line 3 concerning criminal history record checks. The committee later restored the criminal history record check requirement and added that individuals would be disqualified from the program for not only committing a Kansas felony related to controlled substances within the immediately preceding 10 years, but also any substantially similar felony in another jurisdiction. This is the same background check language that is used in the sections concerning hemp producers and hemp processors. Subsection (e), on page 13, would prohibit the secretary of agriculture from promulgating regulations concerning the recording of license plates. It also restores language originally stricken by the house agriculture committee that the regulations shall require the licensees to possess a current license at all times they are engaged in authorized activities.

Section 9 would amend the name of the fund used by the KDA under the act.

Sections 10 and 11 would amend statutes that concern crimes involving controlled substances to exempt industrial hemp that is used for authorized activities under the commercial industrial hemp act. Those exemptions are on page 17 and 19.

Sections 12 and 13 would similarly amend provisions of the controlled substances act to exempt industrial hemp that is authorized under the act. Those exemptions are on page 22 and 32. The exemption under the definition of THC on page 32 would include THC contained in industrial hemp; waste; or hemp products, unless otherwise deemed unlawful under Section 5.

SB 233 would become effective upon publication in the Kansas Register.