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H.709

Introduced by Committee on Agriculture and Forestry

Date:

Subject: Agriculture; food safety; hemp; water quality

Statement of purpose of bill as introduced: This bill proposes to make miscellaneous changes to agricultural issues or programs administered by the Secretary of Agriculture, Food and Markets.

An act relating to miscellaneous agricultural subjects

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Agricultural Development * * *

Sec. 1. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

* * *

(11) Accessory on-farm businesses. No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.

(A) Definitions. As used in this subdivision (11):

(i) “Accessory on-farm business” means activity that is accessory to a farm and comprises one or both of the following:

1 (I) The storage, preparation, processing, and sale of qualifying
2 products, provided that more than 50 percent of the total annual sales are from
3 qualifying products that are principally produced on the farm at which the
4 business is located.

5 * * *

6 * * * General Powers; Administration * * *

7 Sec. 2. 6 V.S.A. § 1 is amended to read:

8 § 1. GENERAL POWERS OF AGENCY; SECRETARY OF
9 AGRICULTURE, FOOD AND MARKETS

10 (a) The Agency of Agriculture, Food and Markets shall be administered by
11 a Secretary of Agriculture, Food and Markets. The Secretary shall supervise
12 and be responsible for the execution and enforcement of all laws relating to
13 agriculture and standards of weight and measure. The Secretary may:

14 * * *

15 (15) Notwithstanding any law to the contrary in this title, Title 9, or
16 Title 20, whenever the Secretary is required or authorized to serve any person
17 or entity by any means, including by personal service or certified mail, the
18 Secretary may deliver service by electronic mail, provided that the Secretary
19 proves receipt of service or the person or entity agrees to accept electronic
20 service. The Secretary may prove receipt of service whenever the person or
21 entity acknowledges receipt or otherwise responds in a manner that

1 demonstrates actual service. Proof of service may not be solely demonstrated
2 by an automated electronic read receipt message. Any person or entity may
3 agree to accept service through electronic mail by written consent. The
4 agreement to accept electronic mail service may be communicated through
5 electronic mail and need not be signed.

6 * * *

7 Sec. 3. 6 V.S.A. § 22 is added to read:

8 § 22. LICENSE APPLICATIONS AND PENDING ALLEGATIONS OR
9 PAST VIOLATIONS

10 (a) Notwithstanding any law to the contrary in this title, Title 9, or Title 20,
11 the Agency may simultaneously evaluate pending applications and ongoing
12 compliance concerns, provided it affords proper notice and complies with
13 section 16 of this title.

14 (b) Whenever a person or entity is applying for or attempting to renew a
15 license, permit, registration, or other form of permission issued by the Agency,
16 the Agency may consider that person or entity's alleged or proven failure to
17 comply with related program requirements.

18 (c) If the Agency is considering denying an application or renewal request
19 for a license, permit, registration, or other form of permission issued by the
20 Agency because of pending allegations, proven violations, or any failure to
21 comply with a final order or assurance of discontinuance, the Agency shall

1 provide notice and an opportunity for hearing in accordance with section 16 of
2 this title.

3 (d) When a person or entity has made timely and sufficient application for
4 the renewal of a license, permit, registration, or other form of permission
5 issued by the Agency, or for a new license, permit, registration, or other form
6 of permission issued by the Agency with reference to any activity of a
7 continuing nature, the existing license, registration, permit, or other form of
8 permission does not expire until the application has been finally determined by
9 the Agency, and, in case the application is denied or the terms of the new
10 license, registration, permit, or other form of permission issued by the Agency
11 is limited, until the last day for seeking review of the Agency order or a later
12 date fixed by order of the reviewing court.

13 (e) This section shall not apply when the Agency previously revoked,
14 suspended, withdrew, or otherwise conditioned a license, permit, registration,
15 or other form of permission issued by the Agency and that final order remains
16 in effect.

17 (f) This section shall not apply when the Agency is contemplating taking
18 action against a person or entity's existing license, permit, registration, or
19 other form of permission issued by the Agency because of any alleged
20 violation. Any appropriate action against a person or entity's existing license,

1 permit, registration, or other permission issued by the Agency shall be taken
2 through the enforcement process related to the pending allegations.

3 * * * Produce Inspection * * *

4 Sec. 4. 6 V.S.A. § 851 is amended to read:

5 § 851. DEFINITIONS

6 As used in this chapter:

7 (1) “Adulterated” has the same meaning as in 18 V.S.A. § 4059 when
8 applied to produce and includes “adulteration” under rules adopted under
9 18 V.S.A. chapter 82.

10 (2) “Agency” means the Agency of Agriculture, Food and Markets.

11 ~~(2)(3)~~ “Farm” ~~means lands that are owned or leased by a person~~
12 ~~engaged in any of the activities stated in 10 V.S.A. § 6001(22)~~ has the same
13 meaning as used in 21 C.F.R. § 112.3.

14 ~~(3)(4)~~ “Produce” ~~shall have~~ has the same meaning as used in 21 C.F.R.
15 § 112.3.

16 ~~(4)(5)~~ “Produce farm” means any farm engaged in the growing,
17 harvesting, packing, or holding of produce.

18 ~~(5)(6)~~ “Secretary” means the Secretary of Agriculture, Food and
19 Markets.

20 Sec. 5. 6 V.S.A. § 852 is amended to read:

21 § 852. AUTHORITY

1 (a) The Secretary may enforce in the State the requirements of:

2 (1) the rules adopted under the U.S. Food and Drug Administration
3 Food Safety Modernization Act, Standards for Growing, Harvesting, Packing,
4 and Holding of Produce for Human Consumption, 21 C.F.R. part 112, using
5 the same or similar powers granted to the U.S. Food and Drug Administration
6 to enforce the Food Safety Modernization Act; and

7 (2) the rules adopted under this chapter.

8 (b) The Agency may collaborate with the Department of Health regarding
9 application of the U.S. Food and Drug Administration Food Safety
10 Modernization Act, Standards for Growing, Harvesting, Packing, and Holding
11 of Produce for Human Consumption, 21 C.F.R. part 112, and application of the
12 rules adopted under this chapter.

13 (c) The Secretary shall carry out the provisions of this chapter using:

14 (1) monies appropriated to the Agency by the federal government for
15 the purpose of administering the federal Food Safety Modernization Act and
16 the rules adopted thereunder;

17 (2) monies appropriated to the Agency by the State for the purpose of
18 administering this chapter; and

19 (3) other gifts, bequests, and donations by private entities for the
20 purposes of administering this chapter.

1 (d) The Secretary may apply the criteria and definitions in 21 C.F.R.
2 part 112 to determine whether produce is adulterated.

3 Sec. 6. 6 V.S.A. § 853 is amended to read:

4 § 853. FARM INSPECTIONS

5 (a)(1) The Secretary may inspect a produce farm during reasonable hours
6 for the purposes of ensuring compliance with:

7 (A) the federal standards for growing, harvesting, packing, and
8 holding of produce for human consumption, as adopted under 21 C.F.R. part
9 112; ~~or~~

10 (B) the rules adopted under this chapter; or

11 (C) eligibility for and conformity with the exemptions and modified
12 requirements adopted under 21 C.F.R. part 112.

13 (2) This section shall not limit the Secretary's authority to respond to an
14 emergency in order to prevent a public health hazard under section 21 of this
15 title.

16 (b) The Secretary may coordinate with other State agencies and
17 organizations to carry out inspections at or near the same time on a given
18 produce farm.

19 * * * Mosquito Control * * *

20 Sec. 7. 6 V.S.A. § 1085 is amended to read:

21 § 1085. MOSQUITO CONTROL GRANT PROGRAM

1 (a) A Mosquito Control District formed pursuant to 24 V.S.A. chapter 121
2 may apply, in a manner prescribed by the Secretary, in writing to the Secretary
3 of Agriculture, Food and Markets for a State assistance grant for mosquito
4 control activities.

5 (b) After submission of an application under subsection (a) of this section,
6 the Secretary of Agriculture, Food and Markets may award a grant of
7 75 percent or less of the project costs for the purchase and application of
8 larvicide and the costs associated with required larval survey activities within a
9 Mosquito Control District. The Mosquito Control District may provide
10 25 percent of the project costs through in-kind larvicide services, ~~including~~
11 ~~adulticide application~~ or the purchase of capital equipment used for larval
12 ~~mosquito control~~ activities. At the Secretary's discretion, costs associated with
13 capital equipment that may be required for larval control programs within a
14 Mosquito Control District may be eligible for grant awards up to 75 percent of
15 the total equipment costs.

16 * * *

17 * * * Hemp * * *

18 Sec. 8. 6 V.S.A. chapter 34 is amended to read:

19 CHAPTER 34. HEMP

20 § 561. FINDINGS; INTENT

21 (a) Findings.

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(5) Section 10113 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 authorizes the growing, cultivation, and marketing of industrial hemp under a U.S. Department of Agriculture approved State program.

(6) The federal Agricultural Act of 2014, Pub. L. No. 113-79, Sec. 7606, codified at 7 U.S.C. § 5940, authorized states, subject to certain requirements, to implement agricultural pilot programs for the growing, cultivation, and marketing of industrial hemp, notwithstanding restrictions under the federal Controlled Substances Act. The pilot program was previously set to expire in 2020, but states may now operate a pilot program in 2021. The pilot program and 7 U.S.C. § 5940 are currently scheduled for repeal on January 1, 2022.

* * *

§ 562. DEFINITIONS

As used in this chapter:

* * *

(5) “Hemp” or “~~industrial hemp~~” means the plant Cannabis sativa L. and any part of the plant, including the seeds and all derivatives, extracts, cannabinoids, acids, salts, isomers, and salts of isomers, whether growing or not, with the federally defined tetrahydrocannabinol concentration level of hemp. “Hemp” shall be considered an agricultural commodity.

1 (6) "Process" means the storing, drying, trimming, handling,
2 compounding, or converting of a hemp crop by a processor for a single grower
3 or multiple growers into hemp products or hemp-infused products. "Process"
4 includes transporting, aggregating, ~~or~~ packaging hemp from a single grower or
5 multiple growers, or manufacturing hemp products or hemp-infused products
6 from hemp concentrate.

7 * * *

8 § 563. HEMP; AN AGRICULTURAL PRODUCT

9 (a) ~~Industrial hemp~~ Hemp is an agricultural product that may be grown as a
10 crop produced, possessed, marketed, and commercially traded in Vermont
11 pursuant to the provisions of this chapter and section 10113 of the Agriculture
12 Improvement Act of 2018, Pub. L. No. 115-334.

13 * * *

14 (d) The cultivation of ~~industrial hemp~~ shall be subject to and comply with
15 the required agricultural practices adopted under section 4810 of this title, as
16 amended.

17 § 564. STATE HEMP PROGRAM; REGISTRATION; APPLICATION;
18 ADMINISTRATION

19 (a) The Secretary ~~shall~~ may establish and administer a State Hemp
20 Program to regulate the growing, processing, testing, ~~and or~~ or marketing of
21 ~~industrial hemp~~ and hemp products in the State.

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(d) A person registered under this section may purchase or import hemp genetics from any state that complies with the federal requirements for the cultivation of ~~industrial~~ hemp.

(e) A person registered with the Secretary under this section to grow, process, or test hemp crops or hemp products shall allow the Secretary to inspect hemp crops, processing sites, or laboratories registered under the State Hemp Program. The Secretary shall retain tests and inspection information collected under this section for the purposes of research of the growth and cultivation of ~~industrial~~ hemp.

* * *

§ 566. RULEMAKING AUTHORITY

* * *

(b) The Secretary ~~shall~~ may adopt rules establishing how the Agency of Agriculture, Food and Markets will conduct research within the Program for ~~industrial~~ hemp.

* * *

§ 568. TEST RESULTS; ENFORCEMENT

(a) ~~If the Secretary or a dispensary registered under 18 V.S.A. chapter 86 tests~~ When notified of a hemp crop and the hemp, hemp product, or hemp-infused product that has a delta-9 tetrahydrocannabinol concentration of ~~more~~

1 than 0.3 percent on a dry weight basis exceeding the applicable federally
2 defined tetrahydrocannabinol concentration level of hemp, the person
3 registered with the Secretary as growing or processing the hemp crop shall:

4 (1) ~~enter into an agreement with a dispensary registered under 18 V.S.A.~~
5 ~~chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the~~
6 ~~hemp crop, return of the hemp crop to the person registered with the Secretary,~~
7 ~~and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;~~

8 (2) ~~sell the hemp crop to a dispensary registered under 18 V.S.A.~~
9 ~~chapter 86; or~~

10 (3) ~~arrange for the Secretary to destroy~~ disposal, remediation, or order
11 the destruction of the hemp crop, hemp product, or hemp-infused product in a
12 manner consistent with applicable State and federal law.

13 (b) To enforce the provisions of this chapter, the Secretary, upon presenting
14 appropriate credentials, may conduct one or more of the following:

15 (1) Enter upon any premises where hemp is grown or processed and
16 inspect premises, machinery, equipment and facilities, any crop during any
17 growth phase, or any hemp product or hemp-infused product during processing
18 or storage. Inspection under this section may include the taking of samples,
19 inspection of records, and inspection of equipment or vehicles used in the
20 growing, processing, or transport of hemp crops, hemp products, or hemp-
21 infused products.

1 (2) Inspect any retail location offering hemp products or hemp-infused
2 products. Inspection under this section may include the taking of samples of
3 such products.

4 (3) Issue and enforce a written or printed “stop sale” order to the owner
5 or custodian of any hemp crop, hemp product, or hemp-infused product subject
6 to the requirements of this chapter or rules adopted under this chapter that the
7 Secretary finds is in violation of any of the provisions of this chapter or rules
8 adopted under this chapter. An order may prohibit further sale, processing,
9 and movement of the hemp crop, hemp product, or hemp-infused product until
10 the Secretary has approved and issued a release from the “stop sale” order.

11 (A) This order should include the reason for being issued, a
12 description of the crops or products at issue, instructions to separate all crops
13 or products subject to the order, and any recommended measures to remedy the
14 basis or bases for the order.

15 (B) A person issued a “stop sale” order may appeal that order to the
16 Secretary within 15 days after receipt. The person shall file any appeal by
17 -serving a letter on the Secretary, which shall state all grounds for the appeal
18 and identify the crops or products affected by the appeal.

19 ~~(c) A crop or product confirmed by the Secretary to meet the definition of~~
20 ~~hemp under State or federal law may be sold or transferred in interstate~~
21 ~~commerce to the extent authorized by federal law. [Repealed.]~~

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* * * Water Quality; Permitting; Certification * * *

Sec. 9. 6 V.S.A. § 4858(c)(1) is amended to read:

(c)(1) Medium farm general permit. The owner or operator of a medium farm seeking coverage under a general permit adopted pursuant to this section shall certify to the Secretary within a period specified in the permit, and in a manner specified by the Secretary, that the medium farm does comply with permit requirements regarding an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with required agricultural practices adopted under this chapter and current U.S. Department of Agriculture nutrient management standards. Any certification or notice of intent to comply submitted under this subdivision shall be kept on file at the Agency of Agriculture, Food and Markets. The Secretary of Agriculture, Food and Markets, in consultation with the Secretary of Natural Resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is seeking coverage, and, for farms that have never been permitted under the prior permit term, within 18 months of receiving the certification or notice of intent to comply, shall verify whether the owner or operator of the medium farm has established that there will be no

1 unpermitted discharge to waters of the State pursuant to the federal regulations
2 for concentrated animal feeding operations. If upon review of a medium farm
3 granted coverage under the general permit adopted pursuant to this subsection,
4 the Secretary of Agriculture, Food and Markets determines that the permit
5 applicant may be discharging to waters of the State, the Secretary of
6 Agriculture, Food and Markets and the Secretary of Natural Resources shall
7 respond to the discharge in accordance with the memorandum of
8 understanding regarding concentrated animal feeding operations under section
9 4810 of this title.

10 Sec. 10. 6 V.S.A. § 4871 is amended to read:

11 § 4871. SMALL FARM CERTIFICATION

12 (a) Small farm definition. As used in this section, “small farm” means a
13 parcel or parcels of land:

14 (1) on which 10 or more acres are used for farming;

15 (2) that house ~~no~~ not more than the number of animals specified under
16 section 4857 of this title; and

17 (3)(A) that house at least the number of mature animals that the
18 Secretary of Agriculture, Food and Markets designates by rule under the
19 required agricultural practices; or

20 (B) that are used for the preparation, tilling, fertilization, planting,
21 protection, irrigation, and harvesting of crops for sale.

1 (b) Required small farm certification. Beginning on July 1, 2017, a person
2 who owns or operates a small farm, as designated by the Secretary consistent
3 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
4 Secretary, certify compliance with the required agricultural practices. The
5 Secretary of Agriculture, Food and Markets shall establish the requirements
6 and manner of certification of compliance with the required agricultural
7 practices, provided that the Secretary shall require an owner or operator of a
8 farm to submit an annual certification of compliance with the required
9 agricultural practices.

10 * * *

11 ~~(f) Notice of change of ownership or change of lease. A person who owns~~
12 ~~or leases a small farm shall notify the Secretary of a change of ownership or~~
13 ~~change of lessee of a small farm within 30 days of the change. The~~
14 ~~notification shall include the certification of small farm compliance required~~
15 ~~under subsection (a) of this section. [Repealed.]~~

16 * * *

17 Sec. 11. 10 V.S.A. § 6001(42) is amended to read:

18 (42) “Small farm” has the same meaning as in 6 V.S.A. § 4871
19 and also means a small farm that is subject to the Required Agricultural
20 Practices Rule (RAPs) and is not required to certify as a small farm under
21 Section 4 of the RAPs, is not required to operate as a Medium Farm Operation

1 under 6 V.S.A. § 4858, and is not required to operate as a Large Farm

2 Operation under 6 V.S.A. § 4851.

3 * * * Effective Date * * *

4 ~~Sec. 12. EFFECTIVE DATE~~

5 ~~This act shall take effect on July 1, 2022.~~

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2022.