

1 H.663

2 Introduced by Representatives Smith of New Haven, Partridge of Windham,
3 Beck of St. Johnsbury, Buckholz of Hartford, Graham of
4 Williamstown, Hooper of Randolph, Lawrence of Lyndon, and
5 Norris of Shoreham

6 Referred to Committee on

7 Date:

8 Subject: Conservation and development; natural resources; municipal planning
9 and development; agriculture; municipal land use bylaws

10 Statement of purpose of bill as introduced: This bill proposes to direct that no
11 municipal land use bylaw may have the effect of prohibiting an accessory on-
12 farm business at the same location as a farm regulated under the rules for
13 required agricultural practices adopted by the Secretary of Agriculture, Food
14 and Markets. The bill also proposes to define and set forth requirements for
15 what constitutes an accessory on-farm business. The bill does not affect
16 existing exemptions for agriculture under 10 V.S.A. chapter 151 or 24 V.S.A.
17 chapter 117.

18 An act relating to municipal ~~land use~~ regulation of accessory on-farm
19 businesses *and to hemp cultivation*

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

1 Sec. 1. PURPOSE

2 The General Assembly adopts this act to:

3 (1) promote and facilitate the economic viability of Vermont's
4 farms; and

5 (2) increase the consistency across the State of municipal regulation and
6 permitting of accessory activity that supports those farms.

7 Sec. 2. 24 V.S.A. § 4412 is amended to read:

8 § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

9 Notwithstanding any existing bylaw, the following land development
10 provisions shall apply in every municipality:

11 * * *

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

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

15 (i) "Accessory on-farm business" means activity that is accessory
16 to a farm and comprises one or more of the following:

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

21 (II) Educational, recreational, or social events that feature

1 ~~agricultural practices or qualifying products, or both. Such events may include~~
2 tours of the farm, tastings and meals featuring qualifying products, and classes
3 or exhibits in the preparation, processing, or harvesting of qualifying products.

4 (III) Private events, such as conferences or weddings, in which
5 the farm is leasing space to others who control and present the event. Such
6 events must occur at the same location as the farm operation. An event shall
7 not be considered private if the attendees must pay in order to attend.

8 (ii) "Farm" means a parcel or parcels owned, leased, or managed
9 by a person, devoted primarily to farming, and subject to the RAP rules. For
10 leased lands to be part of a farm, the lessee must exercise control over the
11 lands to the extent they would be considered as part of the lessee's own farm.
12 Indicators of such control include whether the lessee makes day-to-day
13 decisions concerning the cultivation or other farming-related use of the leased
14 lands and whether the lessee manages the land for farming during the lease
15 period.

16 (iii) "Farming" shall have the same meaning as in 10 V.S.A.
17 § 6001.

18 (iv) "Qualifying product" means a product that is wholly:

19 (I) an agricultural, horticultural, viticultural, or dairy
20 commodity, or maple syrup;

21 ~~(II) livestock or cultured fish or a product thereof,~~

1 ~~(III) a product of poultry, bees, an orchard, or fiber crops;~~

2 ~~(IV) a commodity otherwise grown or raised on a farm; or~~

3 ~~(V) a product manufactured on one or more farms from~~

4 ~~commodities wholly grown or raised on one or more farms.~~

5 ~~(v) "RAP rules" means the rules on required agricultural practices~~
6 ~~adopted pursuant to 6 V.S.A. chapter 215, subchapter 2.~~

7 ~~(B) Eligibility. For an accessory on-farm business to be eligible for~~
8 ~~the benefit of this subdivision (11), the business shall comply with each of the~~
9 ~~following:~~

10 ~~(i) The business is operated by the farm owner, one or more~~
11 ~~persons residing on the farm parcel, or the lessee of a portion of the farm.~~

12 ~~(ii) The farm meets the threshold criteria for the applicability of~~
13 ~~the RAP rules as set forth in those rules.~~

14 ~~(C) Use of existing structures or land. An accessory on-farm~~
15 ~~business may take place inside any existing structures or on the land.~~

16 ~~(D) Review; permit. Activities of an accessory on-farm business that~~
17 ~~are not exempt under section 4413 of this title may be subject to site plan~~
18 ~~review pursuant to section 4416 of this title. A bylaw may require that such~~
19 ~~activities meet the same performance standards otherwise adopted in the bylaw~~
20 ~~for similar commercial uses pursuant to subdivision 4414(5) of this title.~~

21 ~~(E) Less restrictive. A municipality may adopt a bylaw concerning~~

1 ~~accessory on-farm businesses that is less restrictive than the requirement of~~
2 ~~this subdivision (11).~~

3 (F) Notification; training. The Secretary of Agriculture, Food and
4 Markets shall provide periodic written notification and training sessions to
5 farms subject to the RAP rules on the existence and requirements of this
6 subdivision (11) and the potential need for other permits for an accessory on-
7 farm business, including a potable water and wastewater system permit under
8 10 V.S.A. chapter 64.

9 Sec. 3. EFFECTIVE DATE

10 ~~This act shall take effect on July 1, 2018.~~

Sec. 1. PURPOSE

The General Assembly adopts Sec. 2 of this act to:

(1) promote and facilitate the economic viability of Vermont's
farms; and

(2) increase the consistency across the State of municipal regulation and
permitting of accessory activity that supports those farms.

Sec. 2. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development
provisions shall apply in every municipality:

* * *

(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:

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

~~(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.~~

(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), "farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that

feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

(ii) "Farm" means a parcel or parcels owned, leased, or managed by a person, devoted primarily to farming, and subject to the RAP rules. For leased lands to be part of a farm, the lessee must exercise control over the lands to the extent they would be considered as part of the lessee's own farm. Indicators of such control include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the lease period.

(iii) "Farming" shall have the same meaning as in 10 V.S.A. § 6001.

(iv) "Qualifying product" means a product that is wholly:

(I) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;

(II) livestock or cultured fish or a product thereof;

(III) a product of poultry, bees, an orchard, or fiber crops;

(IV) a commodity otherwise grown or raised on a farm; or

(V) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

(v) "RAP rules" means the rules on required agricultural

practices adopted pursuant to 6 V.S.A. chapter 215, subchapter 2.

(B) Eligibility. For an accessory on-farm business to be eligible for the benefit of this subdivision (11), the business shall comply with each of the following:

(i) The business is operated by the farm owner, one or more persons residing on the farm parcel, or the lessee of a portion of the farm.

(ii) The farm meets the threshold criteria for the applicability of the RAP rules as set forth in those rules.

(C) Use of structures or land. An accessory on-farm business may take place inside new or existing structures or on the land.

(D) Review; permit. Activities of an accessory on-farm business that are not exempt under section 4413 of this title may be subject to site plan review pursuant to section 4416 of this title. A bylaw may require that such activities meet the same performance standards otherwise adopted in the bylaw for similar commercial uses pursuant to subdivision 4414(5) of this title.

(E) Less restrictive. A municipality may adopt a bylaw concerning accessory on-farm businesses that is less restrictive than the requirement of this subdivision (11).

(F) Notification; training. The Secretary of Agriculture, Food and Markets shall provide periodic written notification and training sessions to farms subject to the RAP rules on the existence and requirements of this

subdivision (11) and the potential need for other permits for an accessory on-farm business, including a potable water and wastewater system permit under 10 V.S.A. chapter 64.

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2018.~~

Sec. 3. 6 V.S.A. § 1113 is added to read:

§ 1113. ACCESSORY ON-FARM BUSINESSES; PESTICIDES; POSTING

When an agricultural pesticide is applied on a farm in an area in which an accessory on-farm business operates or conducts activity, the accessory on-farm business shall post the same warning signs that would be posted for agricultural workers under the rules of the U.S. Environmental Protection Agency adopted pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. chapter 6, subchapter II (environmental pest control). The manner and duration of posting shall be the same as under those rules. As used in this section:

(1) “Accessory on-farm business” and “farm” shall have the same meaning as in 24 V.S.A. § 4412(11).

(2) “Agricultural pesticide” means any pesticide labeled for use in or on a farm, forest, nursery, or greenhouse.

Sec. 4. PURPOSE

The purpose of this section and Secs. 5–6 of this act is to amend the laws of

Vermont regarding the cultivation of industrial hemp to conform with federal requirements for industrial hemp research set forth in section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79, codified at 7 U.S.C. § 5940.

Sec. 5. 6 V.S.A. chapter 34 is amended to read:

CHAPTER 34. HEMP

§ 561. FINDINGS; INTENT

(a) Findings.

(1) Hemp has been continuously cultivated for millennia, is accepted and available in the global marketplace, and has numerous beneficial, practical, and economic uses, including: high-strength fiber, textiles, clothing, ~~bio-fuel~~ biofuel, paper products, protein-rich food containing essential fatty acids and amino acids, biodegradable plastics, resins, nontoxic medicinal and cosmetic products, construction materials, rope, and value-added crafts.

(2) The many agricultural and environmental beneficial uses of hemp include: livestock feed and bedding, stream buffering, erosion control, water and soil purification, and weed control.

(3) The hemp plant, an annual herbaceous plant with a long slender stem ranging in height from four to 15 feet and a stem diameter of one-quarter to three-quarters of an inch is morphologically distinctive and readily identifiable as an agricultural crop grown for the cultivation and harvesting of

its fiber and seed.

(4) Hemp cultivation will enable the State of Vermont to accelerate economic growth and job creation, promote environmental stewardship, and expand export market opportunities.

(5) The federal Agricultural Act of 2014, Pub. L. No. 113-79 authorized the growing, cultivation, and marketing of industrial hemp, notwithstanding restrictions under the federal Controlled Substances Act, if certain criteria are satisfied.

(b) Purpose. The intent of this chapter is to establish policy and procedures for growing hemp in Vermont that comply with federal law so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity.

§ 562. DEFINITIONS

As used in this chapter:

(1) [Repealed.]

(2) “Hemp products” or “hemp-infused products” means all products made from hemp, including cloth, cordage, fiber, food, fuel, paint, paper, construction materials, plastics, seed, seed meal, seed oil, and certified seed for cultivation.

*(3) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, with a delta-9*

tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(4) "Secretary" means the Secretary of Agriculture, Food and Markets.

§ 563. HEMP; AN AGRICULTURAL PRODUCT

~~Hemp~~ Industrial hemp is an agricultural product ~~which~~ that may be grown as a crop; produced, possessed, marketed, and commercially traded in Vermont pursuant to the provisions of this chapter. The cultivation of industrial hemp shall be subject to and comply with ~~the requirements of~~ the required agricultural practices adopted under section 4810 of this title.

§ 564. REGISTRATION; ADMINISTRATION; PILOT PROJECT

(a) The Secretary shall establish a pilot program to research the growth, cultivation, and marketing of industrial hemp. Under the pilot program, the Secretary shall register persons who will participate in the pilot program through growing or cultivating industrial hemp. The Secretary shall certify the site where industrial hemp will be cultivated by each person registered under this chapter. A person who intends to participate in the pilot program and grow industrial hemp shall register with the Secretary and submit on a form provided by the Secretary the following:

(1) the name and address of the person;

(2) a statement that the seeds obtained for planting are of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol

set forth in subdivision 562(3) of this title; and

(3) the location and acreage of all parcels sown and other field reference information as may be required by the Secretary.

(b) The form provided by the Secretary pursuant to subsection (a) of this section shall include a notice statement that, ~~until current federal law is amended to provide otherwise:~~

(1) cultivation and possession of industrial hemp in Vermont is a violation of the federal Controlled Substances Act unless the industrial hemp is grown, cultivated, or marketed under a pilot program authorized by section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79; and

(2) federal prosecution for growing hemp in violation of federal law may include criminal penalties, forfeiture of property, and loss of access to federal agricultural benefits, including agricultural loans, conservation programs, and insurance programs; and

(3) registrants may purchase or import hemp genetics from any state that complies with federal requirements for the cultivation of industrial hemp.

(c) A person registered with the Secretary pursuant to this section shall allow industrial hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected and tested by and at the discretion of the Secretary or ~~his or her~~ designee. 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.

(d) The Secretary may assess an annual registration fee of \$25.00 for the performance of his or her duties under this chapter.

§ 566. RULEMAKING AUTHORITY

(a) The Secretary may adopt rules to provide for the implementation of this chapter and the pilot project authorized under this chapter, which may include rules to require hemp to be tested during growth for tetrahydrocannabinol levels and to require inspection and supervision of hemp during sowing, growing season, harvest, storage, and processing. The Secretary shall not adopt under this or any other section a rule that would prohibit a person to grow hemp based on the legal status of hemp under federal law.

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

(c) The Secretary shall adopt rules establishing requirements for the registration of processors of hemp and hemp-infused products.

Sec. 6. TRANSITION; IMPLEMENTATION

All persons registered prior to July 1, 2018 with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp shall be deemed to be registered with the Secretary of Agriculture, Food and Markets as participants in the industrial hemp pilot project established by

this act under 6 V.S.A. § 564, and those previously registered persons shall not be required to reregister with the Secretary of Agriculture, Food and Markets.

Sec. 7. 6 V.S.A. §§ 567 and 568 are added to read:

§ 567. AGENCY OF AGRICULTURE, FOOD AND MARKETS; TESTING

The Agency of Agriculture, Food and Markets shall establish a cannabis quality control program for the following purposes:

(1) to develop potency and contaminant testing protocols for hemp and hemp-infused products;

(2) to verify cannabinoid label guarantees of hemp and hemp-infused products;

(3) to test for pesticides, solvents, heavy metals, mycotoxins, and bacterial and fungal contaminants in hemp and hemp-infused products; and

(4) to certify testing laboratories that can offer the services in subdivisions (2) and (3) of this section.

§ 568. TEST RESULTS; ENFORCEMENT

(a) If the Secretary or a dispensary registered under 18 V.S.A. chapter 86 tests a hemp crop and the hemp has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis, the person registered with the Secretary as growing the hemp crop shall:

(1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the

hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;

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

(3) arrange for the Secretary to destroy or order the destruction of the hemp crop.

(b) A person registered with the Secretary as growing the hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 18 V.S.A. chapter 84 if the tested industrial hemp has a delta-9 tetrahydrocannabinol concentration of one percent or less on a dry weight basis.

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

Sec. 8. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, process, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her

registered caregiver for the registered patient's use for symptom relief.

* * *

(5) Acquire, possess, manufacture, process, transfer, transport, market, and test hemp provided by persons registered with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp.

* * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2018.