

---

2019

## Hemp: Connecting Kentucky's Past with its Future

Ryan Quarles  
*Kentucky Department of Agriculture*

Follow this and additional works at: <https://digitalcommons.murraystate.edu/jahr>

---

### Recommended Citation

Quarles, Ryan (2019) "Hemp: Connecting Kentucky's Past with its Future," *Journal of Agricultural Hemp Research*: Vol. 1 : Iss. 1 , Article 4.

Available at: <https://digitalcommons.murraystate.edu/jahr/vol1/iss1/4>

This Feature/Perspective is brought to you for free and open access by Murray State's Digital Commons. It has been accepted for inclusion in Journal of Agricultural Hemp Research by an authorized editor of Murray State's Digital Commons. For more information, please contact [msu.digitalcommons@murraystate.edu](mailto:msu.digitalcommons@murraystate.edu).

---

## Hemp: Connecting Kentucky's Past with its Future

### Cover Page Footnote

The author would like to thank Sean Southard and Joe Bilby for their contribution to this work.

December 2, 2019

Since Kentucky became a Commonwealth in 1792, she has been defined by its rich farming heritage and is known throughout the world for her agricultural products such as thoroughbred race horses, Kentucky Fried Chicken, bourbon, and yes, hemp as well. Throughout the entire 1800's, Kentucky was the leading hemp producing state in the country; even legendary statesman Henry Clay grew hemp on his farm in central Kentucky. Many Kentucky farmers, including my great-grandfather, grew hemp for rope during World War II. In fact, the U.S. Department of Agriculture (USDA) produced a 1942 promotional video encouraging farmers to grow hemp. In it, a patriotic narrator describes how "in Kentucky, much of the seed hemp acreage is on river bottom lands . . . along the Kentucky River gorge." With more than 26,000 acres of hemp planted for cultivation in 2019 by Kentucky farmers, it's clear that hemp is a crop that connects our past to our future.

The story of hemp is as much as a legal history as it is a story about cultivation. Hemp has been in the news frequently of late, especially since the passage of the 2018 Farm Bill, which included *The Hemp Farming Act of 2018*. As one can imagine, legal issues abound when discussing the laws and regulations governing cannabis cultivation and marketing in the United States. To give an overview of the laws, history, and future of Kentucky's hemp program, I thought I would begin by looking at the program in its infancy, then proceed to discuss what my administration has done since 2016 to expand the program to benefit farmers and businesses, and conclude by with some comments about what comes next.

After several previous attempts, in 2013 the General Assembly enacted Senate Bill 50, which represented the product of considerable negotiations between the two legislative chambers. The Senate's initial version of the bill would have vested primary responsibility for hemp program design and development in the Kentucky Department of Agriculture with oversight from the Commissioner of Agriculture.<sup>1</sup> Essentially, SB 50 created a framework for growers if the federal government allowed permission; the wait did not last long. In early 2014, Congress included within the Agricultural Improvement Act (the "Farm Bill") a two-page section that created an opportunity for state-level "agricultural pilot programs" to study the "growth, cultivation, or marketing" of hemp.<sup>2</sup> For the first time in generations, farmers in Kentucky and across the nation would have an opportunity to experiment with a crop whose history was as old as the Commonwealth itself.

With the 2014 Farm Bill, Congress adopted the "pilot program", which had important implications for the development of Kentucky's hemp program; there were at least two notable points. The first was Congress's definition of hemp as "the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."<sup>3</sup> Today, that definition remains unchanged. Second, unlike the "program of licensure" for individual farmers that the 2013 General Assembly had authorized with SB 50, Congress did not create a federal system of licensure for

---

<sup>1</sup> See 2013 Ky. Acts ch. 134, §§ 1-14.

<sup>2</sup> Section 7606 of the 2014 Farm Bill is codified as 7 U.S.C. 5940.

<sup>3</sup> *Id.* at (b)(2).

private citizens. Indeed, Congress authorized only “agricultural pilot programs” conducted by a state department of agriculture and institutions of higher education.<sup>4</sup>

The first planting season was limited in scope, and of the 33 acres that were planted in 2014, none resulted in a successful harvest. In 2015, 922 acres were planted, with more than 500 acres harvested. One notable development from the 2015 growing season was the emergence of a new application of the plant—extracting certain chemical compounds, known as cannabinoids, from the floral part of the plant—alongside the traditional components of fiber and grain. One of those cannabinoids was cannabidiol (CBD), a chemical compound that was said to hold great promise in health and wellness products. To the surprise of many, almost half of the acreage planted in 2015 was attributed to farmers growing hemp for CBD rather than grain or fiber. Whether CBD and other cannabinoids would prove commercially viable—and what CBD’s legal status was under federal law—remained unclear.

When I took office as Agriculture Commissioner in 2016, Kentucky’s hemp program remained in its infancy. Even then, it was evident that fundamental changes were needed if hemp were to become viable. Although SB 50 placed responsibility for hemp program oversight and management Industrial Hemp Commission, its 26-member board had not convened for a meeting since May 2014. With no staff support, the Commission was unable to carry out its duties, which meant that responsibility fell to KDA and its employees to keep the program running throughout the latter half of 2014 and all of 2015.

It was obvious that big changes were needed if Kentucky’s hemp program would be able to survive—let alone for it to be able to grow to meet the needs of a widening community of Kentucky farmers and entrepreneurs who wanted to experiment with this new crop. Shortly after taking office, I directed my senior leadership team to work with KDA’s hemp program staff to undertake a top-to-bottom review of the program as it then existed, and to come forward with recommendations for how we could strengthen it. In short, my administration’s aim was to build the best hemp program in the United States, with the strategic objective of making Kentucky an epicenter for hemp production in the decades to come. With other states hesitating to embrace hemp, I believed that Kentucky could use the first-mover advantage to build a critical mass of farmers and processors here in the Commonwealth. I wanted to establish a leading position so that if Congress chose to permit hemp’s full-scale legalization and commercialization at some point in the future, Kentucky would have a head start in the race to attract investments from around the world.

The next step was to ask the General Assembly for some help in revising Kentucky’s legislative framework. Senate Bill 50 just wasn’t working, and this was true for at least three major reasons. The first reason was the structural misalignment between state law and federal law. While the 2013 General Assembly had enacted SB 50 with the expectation that Congress would adopt a system of individualized licensure of farmers, the 2014 Farm Bill’s “agricultural pilot programs” had restricted participation to state departments of agriculture and universities. The second reason arose from structural deficiencies within Senate Bill 50. For instance, that the Industrial Hemp Commission had not convened for a meeting since May 2014, in part because it was a major undertaking simply to achieve a simple-majority quorum of its 26 members. Responsibilities that should have been assigned to an executive-branch agency with full-time

---

<sup>4</sup> See Section 7606(a)(1).

employees, such as the promulgation of administrative regulations, had instead been placed in the Commission's hands with nowhere to go. The third reason why SB 50 was deficient was that it did not answer important public-policy questions that needed a clear answer. For instance, after a hemp harvest was taken out of the fields, what rules would apply to the handling and possession of its components? Could any member of the public keep the leaf and floral materials? And what about live plants and viable seeds—would it be lawful for those to be in the possession of people who were not affiliated with KDA's pilot program? SB 50 did not answer any of these questions.

The 2017 General Assembly enacted a sweeping overhaul by passing Senate Bill 218 at our request.<sup>5</sup> Without the enactment of SB 218, the subsequent explosive growth in Kentucky's hemp program would not have been possible. The bill contained several important features that had emerged from the top-to-bottom review I ordered shortly after taking office the previous year. First, the Industrial Hemp Commission was scrapped; instead, its powers would be fully transferred to KDA.<sup>6</sup> Importantly, this transfer of responsibilities included the authority to promulgate administrative regulations. SB 218 also drew a clear line separating from those activities that required a license (growing, handling, and processing it into a marketable product; and possessing living plants, viable seeds, leaf material, and floral material) from those that did not (buying a finished product derived from hemp; and possessing parts of the harvested plant other than viable seeds, leaf material, and floral material).<sup>7</sup> This separation was key towards early commercialization efforts.

Shortly after the Governor signed SB 218 into law on March 20, 2017, the KDA was able to move quickly. With the statutory and regulatory framework in place, KDA's hemp program was ready for significant growth. In 2018, the number of acres planted more than doubled over the previous year, jumping from 3,200 to 6,700. In the 2019 growing season, the acreage is likely to double again, and the number of licensed growers has more than quadrupled, jumping from 210 in 2018 to almost 1,000 in 2019. The economic impact numbers speak for themselves. At the end of 2017, Kentucky's licensed processors reported \$16.7M in gross product sales; in 2018, that number jumped to \$57.75M. In 2018, the processors' reported payments to farmers exceeded \$17.5M, more than double the \$7.5M that had been reported the previous year. And the number of full-time jobs reported by processors in 2018 was 281, more than triple the number (81) that had been reported the previous year. To date, more than \$100,000,000 in capital investments has been reported by Kentucky processors, and that number is only expected to grow in the years to come.<sup>8</sup> It is predicted that over \$100 million in legal hemp sales coming from Kentucky will occur in 2019 and an estimated 1000 full time jobs-beyond the farm gate-have been created.

In April 2018, Senate Majority Leader Mitch McConnell introduced his Hemp Farming Act of 2018 during a joint press conference at KDA's campus in Frankfort. It was a tremendous

---

<sup>5</sup> See 2017 Ky. Acts ch. 45, §§ 1-14.

<sup>6</sup> See KRS 260.862.

<sup>7</sup> See KRS 260.858(3).

<sup>8</sup> See KDA Press Release, March 18, 2019, "Quarles: Kentucky Hemp Industry's Economic Impact Showed Explosive Growth in 2018," *available at*: <http://www.kyagr.com/KY-AgNews/press-releases/2019/Quarles-Kentucky-Hemp-Industry-s-Economic-Impact-Showed-Explosive-Growth-in-2018.html>.

honor for us to host the Leader for this important event. McConnell's bill was later included in the 2018 Farm Bill, which President Trump signed into law on December 20, 2018.

The 2018 Farm Bill lays the groundwork for even more expansion of Kentucky's hemp industry by making some important changes in federal law. First, it removes hemp from the list of substances that are subject to the Controlled Substances Act of 1970,<sup>9</sup> perhaps the single biggest accomplishment of the legislation. Second, it makes hemp growers eligible to participate, on equal terms with other crops, in funded research programs at USDA and for coverage under federal crop insurance programs.<sup>10</sup> Third, it prohibits states from interfering with interstate shipments of hemp harvests passing through their jurisdictions.<sup>11</sup>

Instead of mandating a one-size-fits-all program for the regulation of hemp at the federal level, the Farm Bill instead adopts a "cooperative federalism" approach by allowing state departments of agriculture to remain in the primary regulatory role over the production of hemp within their jurisdictions. A state can submit a "state plan" for the regulation of hemp that is tailored to meet its unique needs. So long as the state plan meets certain minimal criteria established by Congress (for example, a sampling and testing program to verify that harvested hemp materials comply with the 0.3% delta-9 THC limit), each state remains free to regulate the crop as it sees fit.<sup>12</sup>

Now that hemp surpasses a new legal milestone, much work is left to be done to truly commercialize this historic crop to 21<sup>st</sup> century farming. To say the legal impediments are gone would not be accurate. Many issues must be resolved with interstate transportation of legal hemp, banking regulations that cater to this new industry, approval of modern crop technology from the EPA, the formulation of product standards, the need for robust peer-reviewed medical studies, the creation of USDA crop insurance, the eventual FDA jurisdiction over hemp-derived products and perhaps the biggest roadblock to overcome is treating hemp as an equitable agricultural commodity compared to other staple crops in America. Despite these many challenges that remain before us, Kentucky continues to lead the way with hemp, just like it did in the era when my great-grandfather grew it generations ago.

---

<sup>9</sup> See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 12619 (2018).

<sup>10</sup> See *id.* §§ 7129, 7501, 11102.

<sup>11</sup> See *id.* § 10114.

<sup>12</sup> See *id.* § 10113 (creating a new Section 297B, "State and Tribal Plans").