

AMENDED IN SENATE JUNE 28, 2007

AMENDED IN SENATE JUNE 13, 2007

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 684

Introduced by Assembly Members Leno and DeVore
(Coauthors: Assembly Members Adams, Beall, Berg, Huffman, and
Saldana)
(Coauthor: Senator McClintock)

February 21, 2007

An act to amend Section 11018 of, and to add Section 11018.5 to, the Health and Safety Code, relating to industrial hemp.

LEGISLATIVE COUNSEL'S DIGEST

AB 684, as amended, Leno. Industrial hemp.

(1) Existing law makes it a crime to engage in any of various transactions relating to marijuana, except as otherwise authorized by law, such as the medical marijuana program. For the purposes of these provisions, marijuana is defined as not including the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

This bill would revise the definition of marijuana so that the term would instead not include industrial hemp, as defined, except where the plant is cultivated or processed for purposes not expressly allowed for. The bill would define industrial hemp as an agricultural field crop

that is limited to the nonpsychoactive types of the plant *Cannabis sativa* L. and the seed produced therefrom, having no more than $\frac{3}{10}$ of 1% tetrahydrocannabinol (THC) contained in the dried flowering tops, and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin or flowering tops extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. This bill would also include specified products listed in the Harmonized Tariff Schedule of the United States within the definition of industrial hemp.

This bill would authorize a pilot program for the cultivation of industrial hemp in 5 counties, as specified, until January 1, 2013.

The bill would require industrial hemp to be cultivated only from seeds imported in accordance with federal law or from seeds grown in California, as specified. The bill would also require the person growing the industrial hemp to obtain, prior to the harvest of each crop, a laboratory test of a random sample of the crop to determine the amount of THC in the crop. The bill would require *that* the test report ~~to~~ contain specified language, *that the testing laboratory provide not less than 10 original signed copies to the cultivator, and that the testing laboratory retain an original signed copy for a minimum of 2 years.* The report would be required to be retained for 2 years, and to be made available to law enforcement officials and provided to purchasers, as specified. The bill would require all industrial hemp seed sold for planting in California to be from a crop having no more than $\frac{3}{10}$ of 1% THC contained in a random sampling of the dried flowering tops and tested under these provisions, and would require the destruction of crops exceeding that content, as specified.

The bill would provide that this definition of industrial hemp shall not be construed to authorize the cultivation, production, or possession of resin, flowering tops, or leaves that have been removed from the field of cultivation and separated from the other constituent parts of the industrial hemp plant except to perform required testing *by an employee or agent of the testing laboratory*; the transportation or sale across state borders of any living plant of *Cannabis sativa* L. or any seed of any type of *Cannabis sativa* L. that is capable of germination, except in accordance with federal law; or any cultivation of the industrial hemp plant that is not grown in a research setting or as an agricultural field crop. *This bill would require the Attorney General and the Hemp*

Industries Association to submit reports to the Legislature by January 1, 2012, regarding the economic and law enforcement impacts of industrial hemp cultivation. By revising the scope of application of existing crimes relating to marijuana, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 “California Industrial Hemp Farming Act.”

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) Industrial hemp is produced in at least 30 nations, including
5 Canada, Great Britain, France, Germany, Romania, Australia, and
6 China, and is used by industry to produce thousands of products,
7 including paper, textiles, food, oils, automotive parts, and personal
8 care products.

9 (b) The United States Court of Appeals for the Ninth Circuit
10 has ruled in *Hemp Industries v. Drug Enforcement Administration*,
11 (9th Cir. 2004) 357 F.3d 1012, that the federal Controlled
12 Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes
13 nonpsychoactive hemp from the definition of marijuana, and the
14 federal government has declined to appeal that decision.

15 (c) The Controlled Substances Act of 1970 specifies the findings
16 to which the government must attest in order to classify a substance
17 as a schedule I drug and those findings include that the substance
18 has a high potential for abuse, has no accepted medical use, and
19 has a lack of accepted safety for use, none of which apply to
20 industrial hemp.

21 (d) According to a study commissioned by the Hemp Industries
22 Association, sales of industrial hemp products in the United States
23 have grown steadily since 1990 to two hundred seventy million
24 dollars (\$270,000,000) in 2005, increasing at a rate of
25 approximately twenty-six million dollars (\$26,000,000) per year.

1 (e) California manufacturers of hemp products currently import
 2 from around the world tens of thousands of acres’ worth of hemp
 3 seed, oil, and fiber products that could be produced by California
 4 farmers at a more competitive price, and the intermediate
 5 processing of hemp seed, oil, and fiber could create jobs in close
 6 proximity to the fields of cultivation.

7 (f) In 1999, the Assembly passed House Resolution 32, which
 8 resolved that “the domestic production of industrial hemp can help
 9 protect California environment, contribute to the growth of the
 10 state economy, and be regulated in a manner that will not interfere
 11 with the enforcement of marijuana laws.”

12 (g) *Assessment of the economic benefits of industrial hemp*
 13 *cultivation and determination of possible impacts on the*
 14 *enforcement of laws prohibiting illicit marijuana cultivation are*
 15 *important concerns; and, therefore, it is the intent of the*
 16 *Legislature to assess these benefits and impacts by creating a pilot*
 17 *program for both industrial hemp research by established*
 18 *agricultural research institutions and for the agricultural*
 19 *production of industrial hemp in five counties.*

20 SEC. 3. Section 11018 of the Health and Safety Code is
 21 amended to read:

22 11018. “Marijuana” means all parts of the plant *Cannabis sativa*
 23 L., whether growing or not; the seeds thereof; the resin extracted
 24 from any part of the plant; and every compound, manufacture, salt,
 25 derivative, mixture, or preparation of the plant, its seeds or resin.
 26 It does not include industrial hemp, as defined in Section 11018.5,
 27 except where the plant is cultivated or processed for purposes not
 28 expressly allowed for by Section 11018.5.

29 SEC. 4. Section 11018.5 is added to the Health and Safety
 30 Code, to read:

31 11018.5. (a) (1) “Industrial hemp” means an agricultural field
 32 crop that is limited to nonpsychoactive types of the plant *Cannabis*
 33 *sativa* L. and the seed produced therefrom, having no more than
 34 three-tenths of 1 percent tetrahydrocannabinol (THC) contained
 35 in the dried flowering tops, and that is cultivated and processed
 36 exclusively for the purpose of producing the mature stalks of the
 37 plant, fiber produced from the stalks, oil or cake made from the
 38 seeds of the plant, or any other compound, manufacture, salt,
 39 derivative, mixture, or preparation of the mature stalks (except the

1 resin or flowering tops extracted therefrom), fiber, oil, or cake, or
2 the sterilized seed of the plant which is incapable of germination.

3 ~~(b)~~

4 (2) Industrial hemp shall include products imported under the
5 first revision of the 2007 Harmonized Tariff Schedule of the United
6 States (HTSUS), Section 1202 et seq. of Title 19 of the United
7 States Code, including “hemp seed” per subheading 1207.99.02.20,
8 “hemp oil” per subheading 1515.90.80.10, “true hemp” per
9 subheadings 5302.10.00.00 and 5302.90.00.00, “true hemp yarn”
10 per subheading 5308.20.00.00, and “woven fabrics of true hemp
11 fibers” per subheading 5311.00.40.10.

12 ~~(e)~~

13 *(b) The provisions of this section shall apply only in Butte,*
14 *Imperial, Kings, Mendocino, and Yolo Counties, except in the case*
15 *of industrial hemp raw materials already legal under federal law,*
16 *the transportation of seed capable of germination within*
17 *California, and the transportation samples for testing at a*
18 *laboratory registered with the federal Drug Enforcement*
19 *Administration pursuant to subdivision (c). Industrial hemp shall*
20 *be cultivated only from seeds imported in accordance with the*
21 *laws of the United States or from seeds grown in California from*
22 *feral plants, cultivated plants, or plants grown in a research setting.*
23 *All industrial hemp seed sold for planting in California shall be*
24 *from a crop having no more than three-tenths of 1 percent THC*
25 *contained in a random sampling of the dried flowering tops and*
26 *tested under the provisions of subdivision (c).*

27 ~~(d)~~

28 (c) A person who grows industrial hemp under this section shall
29 prior to the harvest of each crop and as provided below obtain a
30 laboratory test report indicating the THC levels of a random
31 sampling of the dried flowering tops of the industrial hemp grown.

32 (1) Sampling shall occur as practicable when the THC content
33 of the leaves surrounding the seeds is at its peak and shall
34 commence as the seeds begin to mature, when the first seeds of
35 approximately 50 percent of the plants are resistant to compression.

36 (2) The entire fruit-bearing part of the plant including the seeds
37 shall be used as a sample. The sample cut shall be made directly
38 underneath the inflorescence found in the top one-third of the plant.

39 (3) *Samples to perform the testing pursuant to this section shall*
40 *be collected and transported only by an employee or agent of a*

1 *laboratory that is registered with the federal Drug Enforcement*
 2 *Administration.*

3 ~~(3)~~

4 (4) The laboratory test report shall be issued by a laboratory
 5 registered with the federal Drug Enforcement Administration, shall
 6 state the percentage content of THC, shall indicate the date and
 7 location of samples taken, and shall state the Global Positioning
 8 System (GPS) coordinates and total acreage of the crop. If the
 9 laboratory test report indicates a percentage content of THC that
 10 is equal to or less than three-tenths of 1 percent, the words
 11 “PASSED AS CALIFORNIA INDUSTRIAL HEMP” shall appear
 12 at or near the top of the laboratory test report. If the laboratory test
 13 report indicates a percentage content of THC that is greater than
 14 three-tenths of 1 percent, the words “FAILED AS CALIFORNIA
 15 INDUSTRIAL HEMP” shall appear at or near the top of the
 16 laboratory test report.

17 (5) *If the laboratory test report indicates a percentage content*
 18 *of THC that is equal to or less than three-tenths of 1 percent, the*
 19 *laboratory shall provide the person who requested the testing not*
 20 *less than 10 original copies signed by an employee authorized by*
 21 *the laboratory and shall retain one or more original copies of the*
 22 *laboratory test report for a minimum of two years from its date of*
 23 *sampling.*

24 ~~(4)~~

25 (6) If the laboratory test report indicates a percentage content
 26 of THC that is greater than three-tenths of 1 percent and does not
 27 exceed 1 percent, the person who grows industrial hemp shall
 28 submit additional samples for testing of the industrial hemp grown.

29 ~~(5)~~

30 (7) A person who grows industrial hemp shall destroy the
 31 industrial hemp grown upon receipt of a first laboratory test report
 32 indicating a percentage content of THC that exceeds 1 percent or
 33 a second laboratory test report pursuant to paragraph ~~(4)~~ (6)
 34 indicating a percentage content of THC that exceeds three-tenths
 35 of 1 percent. The destruction shall take place as soon as practicable
 36 but no later than 45 days after receipt of a laboratory test report
 37 that requires crop destruction pursuant to this section.

38 ~~(6) Paragraph (5)~~

39 (8) *Paragraph (7)* does not apply to industrial hemp grown in
 40 a research setting if the destruction of the industrial hemp grown

1 will impede the development of types of industrial hemp that will
2 comply with the three-tenths of 1 percent THC limit established
3 in this section.

4 ~~(7)~~

5 (9) The person who grows industrial hemp shall retain ~~a~~ *an*
6 *original signed* copy of the laboratory test report for two years
7 from its date of sampling, make *an original signed copy of* the
8 laboratory test report available to law enforcement officials upon
9 request, and shall provide ~~a~~ *an original* copy of the laboratory test
10 report to each person purchasing, transporting, or otherwise
11 obtaining from the person who grows industrial hemp the fiber,
12 oil, cake, or seed of the plant.

13 ~~(e)~~

14 (d) Notwithstanding subdivision (a), this section shall not be
15 construed to authorize and thereby prohibits the following:

16 (1) The cultivation, production, or possession of resin, flowering
17 tops, or leaves that have been removed from the field of cultivation
18 and separated from the other constituent parts of the industrial
19 hemp plant, except as is necessary ~~for a person who grows~~
20 ~~industrial hemp, an agent of a person who grows industrial hemp,~~
21 ~~a researcher conducting industrial hemp research, or an employee~~
22 ~~or agent of a laboratory registered with the federal Drug~~
23 ~~Enforcement Administration to perform the testing pursuant to~~
24 ~~subdivision (c).~~

25 (2) The transportation or sale across state borders of any living
26 plant of *Cannabis sativa L.* or any seed of any type of *Cannabis*
27 *sativa L.* that is capable of germination, except in accordance with
28 the laws of the United States.

29 (3) Any cultivation of the industrial hemp plant that is not grown
30 in a research setting or as an agricultural field crop.

31 (e) *Not later than January 1, 2012, the Attorney General shall*
32 *report to the Assembly and Senate Committees on Agriculture and*
33 *the Assembly and Senate Committees on Public Safety the reported*
34 *incidents, if any, of the following:*

35 (1) *A field of industrial hemp being used to disguise marijuana*
36 *cultivation.*

37 (2) *Claims in a court hearing by person other than those*
38 *exempted in subdivision (d) that marijuana is industrial hemp.*

39 (f) *Not later than January 1, 2012, the Hemp Industries*
40 *Association shall report to the Assembly and Senate Committees*

1 on Agriculture and the Assembly and Senate Committees on Public
2 Safety the following:

3 (1) The economic impacts of industrial hemp cultivation,
4 processing, and product manufacturing in California.

5 (2) The economic impacts of industrial hemp cultivation,
6 processing, and product manufacturing in other states that may
7 have permitted industrial hemp cultivation.

8 (g) This section shall remain in effect until January 1, 2013,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2013, deletes or extends that date.

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.