

**Assembly Bill No. 684**

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Passed the Assembly September 12, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate September 11, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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

## LEGISLATIVE COUNSEL'S DIGEST

AB 684, 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 a fiber or oilseed 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 4 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 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 possession, outside of a field of lawful cultivation, of resin, flowering tops, or leaves that have been removed from the 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 by an established agricultural research institution. 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.

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

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

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

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

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

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

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

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

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

(g) Assessment of the economic benefits of industrial hemp cultivation and determination of possible impacts on the

enforcement of laws prohibiting illicit marijuana cultivation are important concerns; and, therefore, it is the intent of the Legislature to assess these benefits and impacts by creating a pilot program for both industrial hemp research by established agricultural research institutions and for the agricultural production of industrial hemp in four counties.

(h) It is the intent of the Legislature that law enforcement not be burdened with tetrahydrocannabinol (THC) testing of industrial hemp crops when cultivation is in compliance with Section 11018.5, therefore, the cultivation of industrial hemp will be tightly controlled by requiring the following:

(1) Farmers shall not cultivate industrial hemp in acreages smaller than five acres and no acreage of industrial hemp shall be comprised of plots smaller than one acre. The tending of individual plants as well as ornamental and clandestine cultivation are expressly prohibited.

(2) Farmers are required prior to harvest to obtain a laboratory test report from a federally registered laboratory documenting that the THC content of their crop is within the legal limit and farmers must destroy crops that fail the THC test.

(3) Farmers must retain an original copy of the THC test report for the planting seed and the harvested crop for two years, make original copies available to law enforcement officials upon request, and are required to provide an original copy to each person purchasing, transporting, or otherwise obtaining the fiber, oil, cake, or seed of the plant from the farmer.

(4) Although they have no psychoactive effect, any resin, flowering tops, or leaves of the industrial hemp plant that are removed from the lawful field of cultivation shall be, by definition, marijuana and subject to prosecution. Farmers should take care to ensure that all flowering tops and leaves remain in the lawful field of cultivation after the harvest of seed or fiber. There is no lawful reason to harvest, collect, or process the flowering tops of industrial hemp.

(5) Except for an agent or employee of a federally registered laboratory involved in THC testing, no person may lawfully possess the flowering tops or leaves of industrial hemp outside of the field of cultivation and the flowering tops or leaves shall be considered marijuana regardless of whether they are in fact industrial hemp. Therefore, no testing of the flowering tops or leaves of any type

of cannabis found outside the lawful field of industrial hemp cultivation need be tested by law enforcement for THC content to determine during a drug seizure if the cannabis in question is marijuana or industrial hemp.

(6) In addition to plant structure, height, and method of planting, the horticultural tending of cannabis plants indicates to law enforcement that it is marijuana and not industrial hemp. Signs of horticultural tending include, but are not limited to, pathways or rows within the field to provide access to each plant, the pruning of individual plants, or the culling of male plants from the field.

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

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

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

11018.5. (a) (1) “Industrial hemp” means a fiber or oilseed crop that is limited to nonpsychoactive types of the plant *Cannabis sativa* L. and the seed produced therefrom, having no more than three-tenths of 1 percent 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, or 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.

(2) Except when grown by an established agricultural research institution, industrial hemp shall be grown only as a densely planted fiber or oilseed crop in acreages of not less than five acres, and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre. Ornamental and clandestine cultivation, as well as the pruning, culling, and tending of individual plants, of industrial hemp is prohibited.

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

(4) For the purposes of this section, “established agricultural research institution” means a public or private institution or organization that maintains land for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.

(b) The provisions of this section shall apply only in Imperial, Kings, Mendocino, and Yolo Counties, except in the case of industrial hemp raw materials already legal under federal law, the transportation of seed capable of germination within California, and the transportation of samples for testing at a laboratory registered with the federal Drug Enforcement Administration pursuant to subdivision (d).

(c) Industrial hemp shall be cultivated only from seeds imported in accordance with the laws of the United States or from seeds grown in California from feral plants, cultivated plants, or plants grown by an established agricultural research institution.

(1) All industrial hemp seed sold for planting in California shall be from a crop that is grown in California, has no more than three-tenths of 1 percent THC contained in a random sampling of the dried flowering tops and that is tested under the provisions of subdivision (d). A person who purchases industrial hemp seed for planting shall retain for two years following the harvest the original laboratory test report provided at purchase pursuant to subdivision (d), and shall make the test report available for inspection by law enforcement upon request.

(2) All industrial hemp seed from a crop or source not tested under subdivision (d) because it was produced by feral plants or because it is the initial California seed stock of a type of planting seed imported in accordance with the laws of the United States, shall be planted and cultivated only by an established agricultural research institution.

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

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

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

(3) Samples to perform the testing pursuant to this section shall be collected and transported only by an employee or agent of a laboratory that is registered with the federal Drug Enforcement Administration.

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

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

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

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

(8) Paragraph (7) does not apply to industrial hemp grown by an established agricultural research institution if the destruction of the industrial hemp grown will impede the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this section.

(9) A person who intends to grow industrial hemp and complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent but does not exceed 1 percent.

(10) Paragraph (9) does not apply to industrial hemp grown by an established agricultural research institution. Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this section.

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

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

(1) The possession, outside of a field of lawful cultivation, of resin, flowering tops, or leaves that have been removed from the hemp plant, except as is necessary for an employee or agent of a

laboratory registered with the federal Drug Enforcement Administration to perform the testing pursuant to subdivision (d).

(2) 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 the laws of the United States.

(3) Any ornamental or clandestine cultivation of the industrial hemp plant.

(4) Any pruning, culling, or tending of individual industrial hemp plants, except when the action is necessary to perform the THC testing pursuant to subdivision (d).

(5) Any cultivation of industrial hemp in acreages of less than five acres, or any acreage comprised of plots of less than one contiguous acre, except when the industrial hemp is grown by an established agricultural research institution.

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

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

(2) Claims in a court hearing by persons other than those exempted in subdivision (e) that marijuana is industrial hemp.

(g) Not later than January 1, 2012, the Hemp Industries Association shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the following:

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

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

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

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.









Approved \_\_\_\_\_, 2007

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*Governor*