

Introduced by Senator LenoFebruary 18, 2011

An act to add Division 24 (commencing with Section 81000) to the Food and Agricultural Code, and 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

SB 676, as introduced, Leno. Industrial hemp.

(1) Existing law makes it a crime to engage in any of various transactions relating to marijuana, as defined, 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, and 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 exclude industrial hemp, as defined, except where the plant is cultivated or processed for purposes not expressly allowed. 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.

The bill would 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 and cultivator retain an original signed copy for a minimum of 2 years. The report would be required 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 growing 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 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, 2017, regarding the economic and law enforcement impacts of industrial hemp cultivation.

The bill would state the findings and declarations of the Legislature relating to industrial hemp.

By revising the scope of application of existing crimes relating to marijuana, this bill would impose a state-mandated local program.

By specifying the conditions of cultivation, the violation of which would be a misdemeanor pursuant to other provisions of existing law, this bill would impose a state-mandated local program.

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, estimated sales of industrial hemp products in the
23 United States have grown steadily since 1990 to more than \$400
24 million annually in 2009.

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

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

36 (g) It is the intent of the Legislature that law enforcement not
37 be burdened with tetrahydrocannabinol (THC) testing of industrial
38 hemp crops when cultivation is in compliance with Section

1 11018.5; therefore, the cultivation of industrial hemp will be tightly
2 controlled by requiring the following:

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

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

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

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

26 (5) Except for an agent or employee of a federally registered
27 laboratory involved in THC testing, no person may lawfully possess
28 the flowering tops or leaves of industrial hemp outside of the field
29 of cultivation and the flowering tops or leaves shall be considered
30 marijuana regardless of whether they are in fact industrial hemp.
31 Therefore, no testing of the flowering tops or leaves of any type
32 of cannabis found outside the lawful field of industrial hemp
33 cultivation need be tested by law enforcement for THC content to
34 determine during a drug seizure if the cannabis in question is
35 marijuana or industrial hemp.

36 (6) In addition to plant structure, height, and method of planting,
37 the horticultural tending of cannabis plants indicates to law
38 enforcement that it is marijuana and not industrial hemp. Signs of
39 horticultural tending include, but are not limited to, pathways or

1 rows within the field to provide access to each plant, the pruning
2 of individual plants, or the culling of male plants from the field.

3 SEC. 3. Division 24 (commencing with Section 81000) is added
4 to the Food and Agricultural Code, to read:

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DIVISION 24. INDUSTRIAL HEMP

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81000. For purposes of this division, “industrial hemp” has the
same meaning as that term is defined in Section 11018.5 of the
Health and Safety Code.

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81001. (a) 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.

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(b) Industrial hemp shall include products imported under the
first revision of the 2007 Harmonized Tariff Schedule of the United
States, 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.

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(c) 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.

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(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.

- 1 (2) The entire fruit-bearing part of the plant including the seeds
2 shall be used as a sample. The sample cut shall be made directly
3 underneath the inflorescence found in the top one-third of the plant.
- 4 (3) Samples to perform the testing pursuant to this section shall
5 be collected and transported only by an employee or agent of a
6 laboratory that is registered with the federal Drug Enforcement
7 Administration.
- 8 (4) The laboratory test report shall be issued by a laboratory
9 registered with the federal Drug Enforcement Administration, shall
10 state the percentage content of THC, shall indicate the date and
11 location of samples taken, and shall state the Global Positioning
12 System coordinates and total acreage of the crop. If the laboratory
13 test report indicates a percentage content of THC that is equal to
14 or less than three-tenths of 1 percent, the words “PASSED AS
15 CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the
16 top of the laboratory test report. If the laboratory test report
17 indicates a percentage content of THC that is greater than
18 three-tenths of 1 percent, the words “FAILED AS CALIFORNIA
19 INDUSTRIAL HEMP” shall appear at or near the top of the
20 laboratory test report.
- 21 (5) If the laboratory test report indicates a percentage content
22 of THC that is equal to or less than three-tenths of 1 percent, the
23 laboratory shall provide the person who requested the testing not
24 less than 10 original copies signed by an employee authorized by
25 the laboratory and shall retain one or more original copies of the
26 laboratory test report for a minimum of two years from its date of
27 sampling.
- 28 (6) If the laboratory test report indicates a percentage content
29 of THC that is greater than three-tenths of 1 percent and does not
30 exceed 1 percent, the person who grows industrial hemp shall
31 submit additional samples for testing of the industrial hemp grown.
- 32 (7) A person who grows industrial hemp shall destroy the
33 industrial hemp grown upon receipt of a first laboratory test report
34 indicating a percentage content of THC that exceeds 1 percent or
35 a second laboratory test report pursuant to paragraph (6) indicating
36 a percentage content of THC that exceeds three-tenths of 1 percent.
37 The destruction shall take place as soon as practicable but no later
38 than 45 days after receipt of a laboratory test report that requires
39 crop destruction pursuant to this section.

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

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

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

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

27 81002. This division shall not be construed to authorize any
28 of the following, and all of the following are prohibited:

29 (a) The possession, outside of a field of lawful cultivation, of
30 resin, flowering tops, or leaves that have been removed from the
31 hemp plant, except as is necessary for an employee or agent of a
32 laboratory registered with the federal Drug Enforcement
33 Administration to perform the testing pursuant to subdivision (d)
34 of Section 81001.

35 (b) Any ornamental or clandestine cultivation of the industrial
36 hemp plant.

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

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

5 81003. Not later than January 1, 2017, the Attorney General
6 shall report to the Assembly and Senate Committees on Agriculture
7 and the Assembly and Senate Committees on Public Safety the
8 reported incidents, if any, of the following:

9 (a) A field of industrial hemp being used to disguise marijuana
10 cultivation.

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

13 81004. Not later than January 1, 2017, the Hemp Industries
14 Association shall report to the Assembly and Senate Committees
15 on Agriculture and the Assembly and Senate Committees on Public
16 Safety the following:

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

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

22 SEC. 4. Section 11018 of the Health and Safety Code is
23 amended to read:

24 11018. “Marijuana” means all parts of the plant *Cannabis sativa*
25 L., whether growing or not; the seeds thereof; the resin extracted
26 from any part of the plant; and every compound, manufacture, salt,
27 derivative, mixture, or preparation of the plant, its seeds or resin.
28 It does not include ~~the mature stalks of the plant, fiber produced~~
29 ~~from the stalks, oil or cake made from the seeds of the plant, any~~
30 ~~other compound, manufacture, salt, derivative, mixture, or~~
31 ~~preparation of the mature stalks (except the resin extracted~~
32 ~~therefrom), fiber, oil, or cake, or the sterilized seed of the plant~~
33 ~~which is incapable of germination~~ *industrial hemp, as defined in*
34 *Section 11018.5, except where the plant is cultivated or processed*
35 *for purposes not expressly allowed for by Division 24 (commencing*
36 *with Section 81000) of the Food and Agricultural Code.*

37 SEC. 5. Section 11018.5 is added to the Health and Safety
38 Code, to read:

39 11018.5. “Industrial hemp” means a fiber or oilseed crop that
40 is limited to nonpsychoactive types of the plant *Cannabis sativa*

1 L. and the seed produced therefrom, having no more than
2 three-tenths of 1 percent tetrahydrocannabinol (THC) contained
3 in the dried flowering tops, and that is cultivated and processed
4 exclusively for the purpose of producing the mature stalks of the
5 plant, fiber produced from the stalks, oil or cake made from the
6 seeds of the plant, or any other compound, manufacture, salt,
7 derivative, mixture, or preparation of the mature stalks, except the
8 resin or flowering tops extracted therefrom, fiber, oil, or cake, or
9 the sterilized seed of the plant which is incapable of germination.

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

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