

AMENDED IN SENATE APRIL 28, 2011

AMENDED IN SENATE MARCH 31, 2011

SENATE BILL

No. 676

Introduced by Senator Leno

February 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 amended, Leno. Industrial hemp.

~~(1) Existing~~

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, or both, 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 enact certain provisions relating to growing industrial hemp which would apply only in Imperial, Kern, Kings, San Joaquin, and Yolo Counties and which would be operative only until January 1, 2020. 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 samples to perform the testing be taken in the presence of, and be collected and transported only by, an employee or agent of a laboratory that is registered with the federal Drug Enforcement Administration.* 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~~ 2018, 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 *federal* Controlled Substances Act of 1970 specifies the
16 findings to which the government must attest in order to classify
17 a substance as a schedule I drug and those findings include that
18 the substance has a high potential for abuse, has no accepted
19 medical use, and has a lack of accepted safety for use, none of
20 which apply to industrial hemp.

21 (d) According to estimates by the Hemp Industries Association,
22 sales of industrial hemp products in the United States have grown
23 steadily since 1990 to more than \$400 million annually in 2009.

24 (e) California manufacturers of hemp products currently import
25 from around the world tens of thousands of acres’ worth of hemp
26 seed, oil, and fiber products that could be produced by California
27 farmers at a more competitive price, and the intermediate

1 processing of hemp seed, oil, and fiber could create jobs in close
2 proximity to the fields of cultivation.

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

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

16 ~~(g)~~

17 (h) It is the intent of the Legislature that law enforcement not
18 be burdened with tetrahydrocannabinol (THC) testing of industrial
19 hemp crops when cultivation is in compliance with Section
20 11018.5; therefore, the cultivation of industrial hemp will be tightly
21 controlled by requiring the following:

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

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

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

37 (4) Although they have no psychoactive effect, any resin,
38 flowering tops, or leaves of the industrial hemp plant that are
39 removed from the lawful field of cultivation shall be, by definition,
40 marijuana and subject to prosecution. Farmers should take care to

1 ensure that all flowering tops and leaves remain in the lawful field
2 of cultivation after the harvest of seed or fiber. There is no lawful
3 reason to harvest, collect, or process the flowering tops of industrial
4 hemp.

5 (5) Except for an agent or employee of a federally registered
6 laboratory involved in THC testing, no person may lawfully possess
7 the flowering tops or leaves of industrial hemp outside of the field
8 of cultivation and the flowering tops or leaves shall be considered
9 marijuana regardless of whether they are in fact industrial hemp.
10 Therefore, no testing of the flowering tops or leaves of any type
11 of cannabis found outside the lawful field of industrial hemp
12 cultivation need be tested by law enforcement for THC content to
13 determine during a drug seizure if the cannabis in question is
14 marijuana or industrial hemp.

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

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

23
24 DIVISION 24. INDUSTRIAL HEMP
25

26 81000. For purposes of this division, “industrial hemp” has the
27 same meaning as that term is defined in Section 11018.5 of the
28 Health and Safety Code.

29 81001. (a) Except when grown by an established agricultural
30 research institution, industrial hemp shall be grown only as a
31 densely planted fiber or oilseed crop, or both, in acreages of not
32 less than five acres, and no portion of an acreage of industrial hemp
33 shall include plots of less than one contiguous acre. Ornamental
34 and clandestine cultivation, as well as the pruning, culling, and
35 tending of individual plants, of industrial hemp ~~is prohibited~~ *are*
36 *prohibited. All plots shall have adequate signage indicating they*
37 *are industrial hemp.*

38 (b) Industrial hemp shall include products imported under the
39 first revision of the 2007 Harmonized Tariff Schedule of the United
40 States, Section 1202 et seq. of Title 19 of the United States Code,

1 including “hemp seed” per subheading 1207.99.02.20, “hemp oil”
2 per subheading 1515.90.80.10, “true hemp” per subheadings
3 5302.10.00.00 and 5302.90.00.00, “true hemp yarn” per subheading
4 5308.20.00.00, and “woven fabrics of true hemp fibers” per
5 subheading 5311.00.40.10.

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

11 (d) (1) *This section shall apply only in Imperial, Kerns, Kings,*
12 *San Joaquin, and Yolo Counties, except as otherwise provided in*
13 *paragraph (2).*

14 (2) *With respect to industrial hemp raw materials, if the*
15 *transportation of seed capable of germination within California,*
16 *or the transportation of samples for testing at a laboratory*
17 *registered with the federal Drug Enforcement Administration*
18 *pursuant to subdivision (e) is permissible under federal law, those*
19 *activities shall be permissible statewide.*

20 (d)

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

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

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

32 (3) Samples to perform the testing pursuant to this section shall
33 *be taken in the presence of, and shall be collected and transported*
34 *only by, an employee or agent of a laboratory that is registered*
35 *with the federal Drug Enforcement Administration.*

36 (4) The laboratory test report shall be issued by a laboratory
37 registered with the federal Drug Enforcement Administration, shall
38 state the percentage content of THC, shall indicate the date and
39 location of samples taken, and shall state the Global Positioning
40 System coordinates and total acreage of the crop. If the laboratory

1 test report indicates a percentage content of THC that is equal to
2 or less than three-tenths of 1 percent, the words “PASSED AS
3 CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the
4 top of the laboratory test report. If the laboratory test report
5 indicates a percentage content of THC that is greater than
6 three-tenths of 1 percent, the words “FAILED AS CALIFORNIA
7 INDUSTRIAL HEMP” shall appear at or near the top of the
8 laboratory test report.

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

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

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

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

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

38 (10) Paragraph (9) does not apply to industrial hemp grown by
39 an established agricultural research institution. Established
40 agricultural research institutions shall be permitted to cultivate or

1 possess industrial hemp with a laboratory test report that indicates
2 a percentage content of THC that is greater than three-tenths of 1
3 percent if that cultivation or possession contributes to the
4 development of types of industrial hemp that will comply with the
5 three-tenths of 1 percent THC limit established in this section.

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

14 *(f) This section shall become inoperative on January 1, 2020.*

15 81002. This division shall not be construed to authorize any
16 of the following, and all of the following are prohibited:

17 (a) The possession, outside of a field of lawful cultivation, of
18 resin, flowering tops, or leaves that have been removed from the
19 hemp plant, except as is necessary for an employee or agent of a
20 laboratory registered with the federal Drug Enforcement
21 Administration to perform the testing pursuant to subdivision-~~(d)~~
22 *(e)* of Section 81001.

23 (b) Any ornamental or clandestine cultivation of the industrial
24 hemp plant.

25 (c) Any pruning, culling, or tending of individual industrial
26 hemp plants, except when the action is necessary to perform the
27 THC testing pursuant to subdivision-~~(d)~~ *(e)* of Section 81001.

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

32 81003. Not later than January 1, ~~2017~~ 2018, the Attorney
33 General shall report to the Assembly and Senate Committees on
34 Agriculture and the Assembly and Senate Committees on Public
35 Safety the reported incidents, if any, of the following:

36 (a) A field of industrial hemp being used to disguise marijuana
37 cultivation.

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

1 81004. Not later than January 1, ~~2017~~ 2018, the Hemp
2 Industries Association shall report to the Assembly and Senate
3 Committees on Agriculture and the Assembly and Senate
4 Committees on Public Safety the following:

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

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

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

12 11018. “Marijuana” means all parts of the plant *Cannabis sativa*
13 L., whether growing or not; the seeds thereof; the resin extracted
14 from any part of the plant; and every compound, manufacture, salt,
15 derivative, mixture, or preparation of the plant, its seeds or resin.
16 It does not include industrial hemp, as defined in Section 11018.5,
17 except where the plant is cultivated or processed for purposes not
18 expressly allowed for by Division 24 (commencing with Section
19 81000) of the Food and Agricultural Code.

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

22 11018.5. “Industrial hemp” means a fiber or oilseed crop, or
23 both, that is limited to nonpsychoactive types of the plant *Cannabis*
24 *sativa* L. and the seed produced therefrom, having no more than
25 three-tenths of 1 percent tetrahydrocannabinol (THC) contained
26 in the dried flowering tops, and that is cultivated and processed
27 exclusively for the purpose of producing the mature stalks of the
28 plant, fiber produced from the stalks, oil or cake made from the
29 seeds of the plant, or any other compound, manufacture, salt,
30 derivative, mixture, or preparation of the mature stalks, except the
31 resin or flowering tops extracted therefrom, fiber, oil, or cake, or
32 the sterilized seed of the plant which is incapable of germination.

33 SEC. 6. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O