

ASSEMBLY BILL

No. 684

Introduced by Assembly Members Leno and DeVore
(Coauthors: Assembly Members Adams and Berg)
(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 introduced, 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.

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 the test report to contain specified language. 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; 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; or any cultivation of the industrial hemp plant that is not grown in a research setting or as an agricultural field crop would be prohibited unless it is in accordance with federal law. 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 more than two hundred fifty
24 million dollars (\$250,000,000) in 2005, increasing at a rate of
25 approximately twenty-six million dollars (\$26,000,000) per year.

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

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

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

1 11018. “Marijuana” means all parts of the plant *Cannabis sativa*
2 L., whether growing or not; the seeds thereof; the resin extracted
3 from any part of the plant; and every compound, manufacture, salt,
4 derivative, mixture, or preparation of the plant, its seeds or resin.
5 ~~It does not include the mature stalks of the plant, fiber produced~~
6 ~~from the stalks, oil or cake made from the seeds of the plant, any~~
7 ~~other compound, manufacture, salt, derivative, mixture, or~~
8 ~~preparation of the mature stalks (except the resin extracted~~
9 ~~therefrom), fiber, oil, or cake, or the sterilized seed of the plant~~
10 ~~which is incapable of germination. It does not include industrial~~
11 ~~hemp, as defined in Section 11018.5, except where the plant is~~
12 ~~cultivated or processed for purposes not expressly allowed for by~~
13 ~~Section 11018.5.~~

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

16 11018.5. (a) “Industrial hemp” means an agricultural field
17 crop that is limited to nonpsychoactive types of the plant *Cannabis*
18 *sativa* L. and the seed produced therefrom, having no more than
19 three-tenths of 1 percent tetrahydrocannabinol (THC) contained
20 in the dried flowering tops, and that is cultivated and processed
21 exclusively for the purpose of producing the mature stalks of the
22 plant, fiber produced from the stalks, oil or cake made from the
23 seeds of the plant, or any other compound, manufacture, salt,
24 derivative, mixture, or preparation of the mature stalks (except the
25 resin or flowering tops extracted therefrom), fiber, oil, or cake, or
26 the sterilized seed of the plant which is incapable of germination.

27 (b) Industrial hemp shall be cultivated only from seeds imported
28 in accordance with the laws of the United States or from seeds
29 grown in California from feral plants, cultivated plants, or plants
30 grown in a research setting. All industrial hemp seed sold for
31 planting in California shall be from a crop having no more than
32 three-tenths of 1 percent THC contained in a random sampling of
33 the dried flowering tops and tested under the provisions of
34 subdivision (c).

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

39 (1) Sampling shall occur as practicable when the THC content
40 of the leaves surrounding the seeds is at its peak and shall

1 commence as the seeds begin to mature, when the first seeds of
2 approximately 50 percent of the plants are resistant to compression.

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

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

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

21 (5) A person who grows industrial hemp shall destroy the
22 industrial hemp grown upon receipt of a first laboratory test report
23 indicating a percentage content of THC that exceeds 1 percent or
24 a second laboratory test report pursuant to paragraph (4) indicating
25 a percentage content of THC that exceeds three-tenths of 1 percent.
26 The destruction shall take place as soon as practicable but no later
27 than 45 days after receipt of a laboratory test report that requires
28 crop destruction pursuant to this section.

29 (6) Paragraph (5) does not apply to industrial hemp grown in a
30 research setting if the destruction of the industrial hemp grown
31 will impede the development of types of industrial hemp that will
32 comply with the three-tenths of 1 percent THC limit established
33 in this section.

34 (7) The person who grows industrial hemp shall retain a copy
35 of the laboratory test report for two years from its date of sampling,
36 make the laboratory test report available to law enforcement
37 officials upon request, and shall provide a copy of the laboratory
38 test report to each person purchasing, transporting, or otherwise
39 obtaining from the person who grows industrial hemp the fiber,
40 oil, cake, or seed of the plant.

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

3 (1) The cultivation, production, or possession of resin, flowering
4 tops, or leaves that have been removed from the field of cultivation
5 and separated from the other constituent parts of the industrial
6 hemp plant, except as is necessary for a person who grows
7 industrial hemp, an agent of a person who grows industrial hemp,
8 or an employee or agent of a laboratory registered with the federal
9 Drug Enforcement Administration to perform the testing pursuant
10 to subdivision (c).

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

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

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