

ASSEMBLY BILL

No. 1137

Introduced by Assembly Member Mansoor

February 22, 2013

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 1137, as introduced, Mansoor. 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. The Legislature finds and declares all of the
 2 following:

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

6 (b) The United States Court of Appeals for the Ninth Circuit
7 has ruled in *Hemp Industries v. Drug Enforcement Administration*
8 (9th Cir. 2003) 333 F.3d 1082 that the federal Controlled
9 Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes
10 nonpsychoactive hemp from the definition of marijuana, and the
11 federal government has declined to appeal that decision.

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

18 (d) According to a study commissioned by the Hemp Industries
19 Association, sales of industrial hemp products in the United States
20 have grown steadily since 1990 to more than two hundred fifty
21 million dollars (\$250,000,000) in 2005, increasing at a rate of
22 approximately twenty-six million dollars (\$26,000,000) per year.

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

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

34 SEC. 2. Section 11018 of the Health and Safety Code is
35 amended to read:

36 11018. "Marijuana" means all parts of the plant *Cannabis sativa*
37 L., whether growing or not; the seeds thereof; the resin extracted
38 from any part of the plant; and every compound, manufacture, salt,
39 derivative, mixture, or preparation of the plant, its seeds or resin.
40 It does not include ~~the mature stalks of the plant, fiber produced~~

1 from the stalks, oil or cake made from the seeds of the plant, any
 2 other compound, manufacture, salt, derivative, mixture, or
 3 preparation of the mature stalks (except the resin extracted
 4 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
 5 which is incapable of germination *industrial hemp, as defined in*
 6 *Section 11018.5, except where the plant is cultivated or processed*
 7 *for purposes not expressly allowed for by Section 11018.5.*

8 SEC. 3. Section 11018.5 is added to the Health and Safety
 9 Code, to read:

10 11018.5. (a) "Industrial hemp" means an agricultural field
 11 crop that is limited to nonpsychoactive types of the plant *Cannabis*
 12 *sativa* L. and the seed produced therefrom, having no more than
 13 three-tenths of 1 percent tetrahydrocannabinol (THC) contained
 14 in the dried flowering tops, and that is cultivated and processed
 15 exclusively for the purpose of producing the mature stalks of the
 16 plant, fiber produced from the stalks, oil or cake made from the
 17 seeds of the plant, or any other compound, manufacture, salt,
 18 derivative, mixture, or preparation of the mature stalks (except the
 19 resin or flowering tops extracted therefrom), fiber, oil, or cake, or
 20 the sterilized seed of the plant which is incapable of germination.

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

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

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

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

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

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

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

24 (6) Paragraph (5) does not apply to industrial hemp grown in a
25 research setting if the destruction of the industrial hemp grown
26 will impede the development of types of industrial hemp that will
27 comply with the three-tenths of 1 percent THC limit established
28 in this section.

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

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

38 (1) The cultivation, production, or possession of resin, flowering
39 tops, or leaves that have been removed from the field of cultivation
40 and separated from the other constituent parts of the industrial

1 hemp plant, except as is necessary for a person who grows
2 industrial hemp, an agent of a person who grows industrial hemp,
3 or an employee or agent of a laboratory registered with the federal
4 Drug Enforcement Administration to perform the testing pursuant
5 to subdivision (c).

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

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

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.