

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 566

Introduced by Senator Leno

(Principal coauthor: Assembly Member Mansoor)

February 22, 2013

An act to add Division 24 (commencing with Section 81000) to, and to repeal Section 81003 of, 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 566, as amended, Leno. Industrial hemp.

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 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 that is incapable of germination.

The bill would enact provisions relating to growing industrial hemp that would impose specified procedures and requirements on a person who grows industrial hemp, except when grown by an established agricultural research institution *or seed breeder, as defined*, that would become operative when authorized under federal law. The bill would require a person growing the industrial hemp to obtain, before the harvest of each crop, a laboratory test of a random sample of the crop to determine the amount of THC in the crop, ~~and would require the samples 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 the laboratory test report to be issued by a laboratory registered by the federal Drug Enforcement ~~Administration, Administration and~~ would require the person growing industrial hemp to make the report available to law enforcement officials and specified other persons. 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 require the Department of Food and Agriculture to regulate the development, growth, and sale of industrial hemp seed harvesting and activities regarding the sale of viable industrial hemp seeds, and would authorize the department to promulgate additional regulations to ensure compliance with these provisions or with federal law.*

The bill would provide that growing industrial hemp shall not be construed to authorize, *among other things*, 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 as necessary to perform the required laboratory testing.~~ This bill would require the Attorney General and the Hemp Industries Association to submit reports to the Legislature by January 1, 2019, or 5 years after the provisions of the measure are authorized

under federal law, whichever is later, 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.

This bill would provide that the provisions of this act would not become operative unless authorized under federal law, and, when the provisions become operative, would require the Attorney General to post the fact that this act has become operative on its Internet Web site.

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 *an agricultural crop* produced in at least
5 30 nations, including Canada, Great Britain, France, Germany,
6 Romania, Australia, and China, and is used by industry to produce
7 thousands of products, including paper, textiles, food, oils,
8 automotive parts, and personal care products.

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

16 (c) The federal Controlled Substances Act of 1970 specifies the
17 findings to which the government must attest in order to classify

1 a substance as a schedule I drug and those findings include that
2 the substance has a high potential for abuse, has no accepted
3 medical use, and has a lack of accepted safety for use, none of
4 which apply to industrial hemp.

5 (d) According to estimates by the Hemp Industries Association,
6 sales of industrial hemp products in the United States have grown
7 steadily since 1990 to more than ~~\$400~~ \$500 million annually in
8 ~~2009~~ 2012.

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

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

20 (g) Assessment of the economic benefits of industrial hemp
21 cultivation and determination of possible impacts on the
22 enforcement of laws prohibiting illicit marijuana cultivation are
23 important concerns.

24 (h) It is the intent of the Legislature that law enforcement not
25 be burdened with tetrahydrocannabinol (THC) testing of industrial
26 hemp crops when cultivation is in compliance with Section 11018.5
27 of the Health and Safety Code; therefore, the cultivation of
28 industrial hemp will be tightly controlled ~~by requiring~~ *and enforced*
29 *by the Department of Food and Agriculture consistent with the*
30 *following:*

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

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

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

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

15 ~~(5) Except for an agent or employee of a federally registered~~
16 ~~laboratory involved in THC testing, no person may lawfully possess~~
17 ~~the flowering tops or leaves of industrial hemp outside of the field~~
18 ~~of cultivation and the flowering tops or leaves shall be considered~~
19 ~~marijuana regardless of whether they are in fact industrial hemp.~~
20 ~~Therefore, no testing of the flowering tops or leaves of any type~~
21 ~~of cannabis found outside the lawful field of industrial hemp~~
22 ~~cultivation need be tested by law enforcement for THC content to~~
23 ~~determine during a drug seizure if the cannabis in question is~~
24 ~~marijuana or industrial hemp.~~

25 ~~(6)~~

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

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

34

35 DIVISION 24. INDUSTRIAL HEMP

36

37 81000. For purposes of this division, “industrial hemp” has the
38 same meaning as that term is defined in Section 11018.5 of the
39 Health and Safety Code.

1 81001. (a) Except when grown by an established agricultural
 2 research institution *or seed breeder*, industrial hemp shall be grown
 3 only as a densely planted fiber or oilseed crop, or both, in acreages
 4 of not less than five acres, and no portion of an acreage of industrial
 5 hemp shall include plots of less than one contiguous acre.
 6 Ornamental and clandestine cultivation, as well as the pruning,
 7 culling, and tending of individual plants, of industrial hemp is
 8 prohibited. All plots shall have adequate signage indicating they
 9 are industrial hemp.

10 (b) Industrial hemp shall include products imported under the
 11 Harmonized Tariff Schedule of the United States (2013) of the
 12 United States International Trade Commission, including hemp
 13 seed, per subheading 1207.99.03, hemp oil, per subheading
 14 1515.90.80, true hemp, per heading 5302, true hemp yarn, per
 15 subheading 5308.20.00, and woven fabrics of true hemp fibers,
 16 per subheading 5311.00.40.

17 ~~(e) For purposes of this section, “established agricultural~~
 18 ~~research institution” means a public or private institution or~~
 19 ~~organization that maintains land for agricultural research, including~~
 20 ~~colleges, universities, agricultural research centers, and~~
 21 ~~conservation research centers.~~

22 ~~(d)~~

23 (c) Except when industrial hemp is grown by an established
 24 agricultural research institution *or seed breeder*, a person who
 25 grows industrial hemp under this section shall, before the harvest
 26 of each crop and as provided below, obtain a laboratory test report
 27 indicating the tetrahydrocannabinol (THC) levels of a random
 28 sampling of the dried flowering tops of the industrial hemp grown.

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

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

36 ~~(3) Samples to perform the testing pursuant to this section shall~~
 37 ~~be taken in the presence of, and shall be collected and transported~~
 38 ~~only by, an employee or agent of a laboratory that is registered~~
 39 ~~with the federal Drug Enforcement Administration.~~

40 ~~(4)~~

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, shall indicate the date and
4 location of samples taken, and shall state the Global Positioning
5 System coordinates and total acreage of the crop. If the laboratory
6 test report indicates a percentage content of THC that is equal to
7 or less than three-tenths of 1 percent, the words “PASSED AS
8 CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the
9 top of the laboratory test report. If the laboratory test report
10 indicates a percentage content of THC that is greater than
11 three-tenths of 1 percent, the words “FAILED AS CALIFORNIA
12 INDUSTRIAL HEMP” shall appear at or near the top of the
13 laboratory test report.

14 (5)

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

22 (6)

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

27 (7)

28 (6) A person who grows industrial hemp shall destroy the
29 industrial hemp grown upon receipt of a first laboratory test report
30 indicating a percentage content of THC that exceeds 1 percent or
31 a second laboratory test report pursuant to paragraph—(6) (5)
32 indicating a percentage content of THC that exceeds three-tenths
33 of 1 percent. If the percentage content of THC exceeds 1 percent,
34 the destruction shall take place within 48 hours after receipt of the
35 laboratory test report. If the percentage content of THC in the
36 second laboratory test report exceeds three-tenths of 1 percent, the
37 destruction shall take place as soon as practicable, but no later than
38 45 days after receipt of the second test report.

39 (8)

1 (7) Paragraph ~~(7)~~ (6) does not apply to industrial hemp grown
2 by an established agricultural research institution *or seed breeder*
3 if the destruction of the industrial hemp grown will impede 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 ~~(9)~~

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

12 ~~(10)~~

13 (9) Paragraph ~~(9)~~ (8) does not apply to industrial hemp grown
14 by an established agricultural research institution *or seed breeder*.
15 Established agricultural research institutions shall be permitted to
16 cultivate or possess industrial hemp with a laboratory test report
17 that indicates a percentage content of THC that is greater than
18 three-tenths of 1 percent if that cultivation or possession contributes
19 to the development of types of industrial hemp that will comply
20 with the three-tenths of 1 percent THC limit established in this
21 section.

22 ~~(11)~~

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

31 (d) *The department shall regulate the development, growth, and*
32 *sale of industrial hemp seed harvesting and activities regarding*
33 *the sale of viable industrial hemp seeds.*

34 (e) *The department may promulgate additional regulations to*
35 *ensure compliance with this division or federal law.*

36 (f) *For purposes of this section, the following terms have the*
37 *following meanings:*

38 (1) *“Established agricultural research institution” means a*
39 *public or private institution or organization that maintains land*

1 *for agricultural research, including colleges, universities,*
2 *agricultural research centers, and conservation research centers.*

3 (2) “Seed breeder” means an individual or public or private
4 institution or organization that develops viable industrial hemp
5 seed intended for sale or research.

6 81002. This division shall not be construed to authorize any
7 of the following, and all of the following are prohibited:

8 (a) The possession, outside of a field of lawful cultivation, of
9 resin, flowering tops, or leaves that have been removed from the
10 hemp plant, except as is necessary for an employee or agent of a
11 laboratory registered with the federal Drug Enforcement
12 Administration to perform the testing pursuant to subdivision (d)
13 to perform testing pursuant to subdivision (c) of Section 81001.

14 (b) Any ornamental or clandestine cultivation of the industrial
15 hemp plant.

16 (c) Any pruning, culling, or tending of individual industrial
17 hemp plants, except when the action is necessary to perform the
18 THC testing pursuant to subdivision (d) (c) of Section 81001.

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

23 81003. (a) Not later than January 1, 2019, or five years after
24 the provisions of this division are authorized under federal law,
25 whichever is later, the Attorney General shall report to the
26 Assembly and Senate Committees on Agriculture and the Assembly
27 and Senate Committees on Public Safety the reported incidents,
28 if any, of the following:

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

31 (2) Claims in a court hearing by persons other than those
32 exempted in subdivision (d) (c) of Section 81001 that marijuana
33 is industrial hemp.

34 (b) A report submitted pursuant to subdivision (a) shall be
35 submitted in compliance with Section 9795 of the Government
36 Code.

37 (c) Pursuant to Section 10231.5 of the Government Code, this
38 section is repealed on January 1, 2023, or four years after the date
39 that the report is due, whichever is later.

1 81004. Not later than January 1, 2019, or five years after the
2 provisions of this division are authorized under federal law,
3 whichever is later, the Hemp Industries Association shall report
4 the following to the Assembly and Senate Committees on
5 Agriculture and the Assembly and Senate Committees on Public
6 Safety:

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

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

12 81005. This division shall not become operative unless
13 authorized under federal law.

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

16 11018. “Marijuana” means all parts of the plant *Cannabis sativa*
17 L., whether growing or not; the seeds thereof; the resin extracted
18 from any part of the plant; and every compound, manufacture, salt,
19 derivative, mixture, or preparation of the plant, its seeds or resin.
20 It does not include industrial hemp, as defined in Section 11018.5,
21 except where the plant is cultivated or processed for purposes not
22 expressly allowed for by Division 24 (commencing with Section
23 81000) of the Food and Agricultural Code.

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

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

37 SEC. 6. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

6 SEC. 7. (a) This act shall not become operative unless
7 authorized under federal law.

8 (b) When this act becomes operative, the Attorney General shall
9 post the fact that this act has become operative on its Internet Web
10 site.

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