

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 1, 2006

AMENDED IN ASSEMBLY JANUARY 23, 2006

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AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1147

**Introduced by Assembly Members Leno and DeVore
(Coauthors: Assembly Members Berg and Saldana)**

February 22, 2005

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 1147, as amended, 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 ~~varieties~~ *types* of the plant *Cannabis sativa* L. and the ~~seeds~~ *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 ~~or of any variety 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 upon local governments.

(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:

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

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

15 (c) The *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 a study commissioned by the Hemp
22 *Industries Association*, sales of industrial hemp products in the
23 United States have grown steadily since 1990 to more than two
24 hundred fifty million dollars (\$250,000,000) in 2005, increasing
25 at a rate of approximately twenty-six million dollars
26 (\$26,000,000) per year.

1 (e) California manufacturers of hemp products currently
2 import from around the world tens of thousands of acres' worth
3 of hemp seed, oil, and fiber products that could be produced by
4 California farmers at a more competitive price, and *the*
5 intermediate processing of hemp seed, oil, and fiber could create
6 jobs in close proximity to the fields of cultivation.

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

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

14 11018. “Marijuana” means all parts of the plant *Cannabis*
15 *sativa* L., whether growing or not; the seeds thereof; the resin
16 extracted from any part of the plant; and every compound,
17 manufacture, salt, derivative, mixture, or preparation of the plant,
18 its seeds or resin. It does not include industrial hemp, as defined
19 in Section 11018.5, except where the plant is cultivated or
20 processed for purposes not expressly allowed for by Section
21 11018.5.

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

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

36 (b) Industrial hemp shall be cultivated only from seeds
37 imported in accordance with the laws of the United States or
38 from seeds grown in California from feral plants, cultivated
39 plants, or plants grown in a research setting. *All industrial hemp*
40 *seed sold for planting in California shall be from a crop having*

1 *no more than three-tenths of 1 percent THC contained in a*
2 *random sampling of the dried flowering tops and tested under the*
3 *provisions of subdivision (c).*

4 (c) A person who grows industrial hemp under this section
5 shall prior to the harvest of each crop and as provided below
6 obtain a laboratory test report indicating the ~~tetrahydrocannabinol~~
7 THC levels of a random sampling of the dried flowering tops of
8 the industrial hemp grown.

9 (1) *Sampling shall occur as practicable when the THC content*
10 *of the leaves surrounding the seeds is at its peak and shall*
11 *commence as the seeds begin to mature, when the first seeds of*
12 *approximately 50 percent of the plants are resistant to*
13 *compression.*

14 (2) *The entire fruit-bearing part of the plant including the*
15 *seeds shall be used as a sample. The sample cut shall be made*
16 *directly underneath the inflorescence found in the top one-third*
17 *of the plant.*

18 (3) The laboratory test report shall be issued by a laboratory
19 registered with the federal Drug Enforcement Administration,
20 shall state the percentage content of THC, and shall indicate the
21 date and location of samples taken. If the laboratory test report
22 indicates a percentage content of THC that is equal to or less than
23 three-tenths of ~~one~~ 1 percent, the words "PASSED AS
24 CALIFORNIA INDUSTRIAL HEMP" shall appear at or near
25 the top of the laboratory test report. If the laboratory test report
26 indicates a percentage content of THC that is greater than
27 three-tenths of ~~one~~ 1 percent, the words "FAILED AS
28 CALIFORNIA INDUSTRIAL HEMP" shall appear at or near
29 the top of the laboratory test report.

30 ~~(2)~~

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

36 (5) *A person who grows industrial hemp shall destroy the*
37 *industrial hemp grown upon receipt of a first laboratory test*
38 *report indicating a percentage content of THC that exceeds 1*
39 *percent or a second laboratory test report pursuant to paragraph*
40 *(4) indicating a percentage content of THC that exceeds*

1 *three-tenths of 1 percent. The destruction shall take place as*
2 *soon as practicable but no later than 45 days after receipt of a*
3 *laboratory test report that requires crop destruction pursuant to*
4 *this section.*

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

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

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

19 (1) The cultivation, production, or possession of resin,
20 flowering tops, or leaves that have been removed from the field
21 of cultivation and separated from the other constituent parts of
22 the industrial hemp plant, except as is necessary for a person who
23 grows industrial hemp, an agent of a person who grows industrial
24 hemp, or an employee or agent of a laboratory registered with the
25 federal Drug Enforcement Administration to perform the testing
26 pursuant to subdivision (c).

27 (2) The transportation or sale across state borders of *any living*
28 *plant of Cannabis sativa L. or any seed of any ~~variety~~ type* of
29 *Cannabis sativa L. that is capable of germination, except in*
30 *accordance with the laws of the United States.*

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

33 SEC. 4. 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
38 penalty for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition of a

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

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