

AMENDED IN ASSEMBLY AUGUST 30, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE APRIL 28, 2011

AMENDED IN SENATE MARCH 31, 2011

**SENATE BILL**

**No. 676**

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**Introduced by Senator Leno**

February 18, 2011

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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.

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, and San Joaquin Counties, except when grown by an established agricultural institution, and which would be operative only until January 1, 2020. The bill would require industrial hemp to be cultivated only from seeds imported in accordance with laws of the United States or from seeds grown in California from ~~feral~~ *industrial hemp* plants or *grown from industrial hemp* plants grown by an established agricultural research institution. The bill would require, except as specified, 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, 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

1 medical use, and has a lack of accepted safety for use, none of  
2 which apply to industrial hemp.

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

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

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

17 (g) Assessment of the economic benefits of industrial hemp  
18 cultivation and determination of possible impacts on the  
19 enforcement of laws prohibiting illicit marijuana cultivation are  
20 important concerns and, therefore, it is the intent of the Legislature  
21 to assess these benefits and impacts by creating a pilot program  
22 for both industrial hemp research by established agricultural  
23 research institutions and for the agricultural production of industrial  
24 hemp in four counties.

25 (h) It is the intent of the Legislature that law enforcement not  
26 be burdened with tetrahydrocannabinol (THC) testing of industrial  
27 hemp crops when cultivation is in compliance with Section 11018.5  
28 of the Health and Safety Code; therefore, the cultivation of  
29 industrial hemp will be tightly controlled by requiring 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, prior to 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) In addition to plant structure, height, and method of planting,  
26 the horticultural tending of cannabis plants indicates to law  
27 enforcement that it is marijuana and not industrial hemp. Signs of  
28 horticultural tending include, but are not limited to, pathways or  
29 rows within the field to provide access to each plant, the pruning  
30 of individual plants, or the culling of male plants from the field.

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

33  
34 DIVISION 24. INDUSTRIAL HEMP  
35

36 81000. For purposes of this division, “industrial hemp” has the  
37 same meaning as that term is defined in Section 11018.5 of the  
38 Health and Safety Code.

39 81001. (a) Except when grown by an established agricultural  
40 research institution, industrial hemp shall be grown only as a

1 densely planted fiber or oilseed crop, or both, in acreages of not  
2 less than five acres, and no portion of an acreage of industrial hemp  
3 shall include plots of less than one contiguous acre. Ornamental  
4 and clandestine cultivation, as well as the pruning, culling, and  
5 tending of individual plants, of industrial hemp are prohibited. All  
6 plots shall have adequate signage indicating they are industrial  
7 hemp.

8 (b) Industrial hemp shall include products imported under the  
9 first revision of the 2007 Harmonized Tariff Schedule of the United  
10 States, Section 1202 et seq. of Title 19 of the United States Code,  
11 including “hemp seed” per subheading 1207.99.02.20, “hemp oil”  
12 per subheading 1515.90.80.10, “true hemp” per subheadings  
13 5302.10.00.00 and 5302.90.00.00, “true hemp yarn” per subheading  
14 5308.20.00.00, and “woven fabrics of true hemp fibers” per  
15 subheading 5311.00.40.10.

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

21 (d) Industrial hemp shall be cultivated only from seeds imported  
22 in accordance with laws of the United States or from seeds grown  
23 in California from ~~feral plants or~~ *industrial hemp plants or grown*  
24 *from industrial hemp* plants grown by an established agricultural  
25 research institution.

26 (e) (1) Except when industrial hemp is grown by an established  
27 agricultural research institution and as otherwise provided in  
28 paragraph (2), this section shall apply only in Imperial, Kern,  
29 Kings, and San Joaquin Counties.

30 (2) With respect to industrial hemp raw materials, if the  
31 transportation of seed capable of germination within California;  
32 or the transportation of samples for testing at a laboratory registered  
33 with the federal Drug Enforcement Administration pursuant to  
34 subdivision (f) is permissible under federal law, those activities  
35 shall be permissible statewide.

36 (f) Except when industrial hemp is grown by an established  
37 agricultural research institution, a person who grows industrial  
38 hemp under this section shall, prior to the harvest of each crop and  
39 as provided below, obtain a laboratory test report indicating the

1 THC levels of a random sampling of the dried flowering tops of  
2 the industrial hemp grown.

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

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

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

14 (4) The laboratory test report shall be issued by a laboratory  
15 registered with the federal Drug Enforcement Administration, shall  
16 state the percentage content of THC, shall indicate the date and  
17 location of samples taken, and shall state the Global Positioning  
18 System coordinates and total acreage of the crop. If the laboratory  
19 test report indicates a percentage content of THC that is equal to  
20 or less than three-tenths of 1 percent, the words "PASSED AS  
21 CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the  
22 top of the laboratory test report. If the laboratory test report  
23 indicates a percentage content of THC that is greater than  
24 three-tenths of 1 percent, the words "FAILED AS CALIFORNIA  
25 INDUSTRIAL HEMP" shall appear at or near the top of the  
26 laboratory test report.

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

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

38 (7) A person who grows industrial hemp shall destroy the  
39 industrial hemp grown upon receipt of a first laboratory test report  
40 indicating a percentage content of THC that exceeds 1 percent or

1 a second laboratory test report pursuant to paragraph (6) indicating  
2 a percentage content of THC that exceeds three-tenths of 1 percent.  
3 If the percentage content of THC exceeds 1 percent, the destruction  
4 shall take place within 48 hours after receipt of the laboratory test  
5 report. If the percentage content of THC in the second laboratory  
6 test report exceeds three-tenths of 1 percent, the destruction shall  
7 take place as soon as practicable, but no later than 45 days after  
8 receipt of the second test report.

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

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

19 (10) Paragraph (9) does not apply to industrial hemp grown by  
20 an established agricultural research institution. Established  
21 agricultural research institutions shall be permitted to cultivate or  
22 possess industrial hemp with a laboratory test report that indicates  
23 a percentage content of THC that is greater than three-tenths of 1  
24 percent if that cultivation or possession contributes to the  
25 development of types of industrial hemp that will comply with the  
26 three-tenths of 1 percent THC limit established in this section.

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

35 (g) This section shall become inoperative on January 1, 2020.  
36 81002. This division shall not be construed to authorize any  
37 of the following, and all of the following are prohibited:

38 (a) The possession, outside of a field of lawful cultivation, of  
39 resin, flowering tops, or leaves that have been removed from the  
40 hemp plant, except as is necessary for an employee or agent of a



1 laboratory registered with the federal Drug Enforcement  
2 Administration to perform the testing pursuant to subdivision (f)  
3 of Section 81001.

4 (b) Any ornamental or clandestine cultivation of the industrial  
5 hemp plant.

6 (c) Any pruning, culling, or tending of individual industrial  
7 hemp plants, except when the action is necessary to perform the  
8 THC testing pursuant to subdivision (f) of Section 81001.

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

13 81003. Not later than January 1, 2018, the Attorney General  
14 shall report to the Assembly and Senate Committees on Agriculture  
15 and the Assembly and Senate Committees on Public Safety the  
16 reported incidents, if any, of the following:

17 (a) A field of industrial hemp being used to disguise marijuana  
18 cultivation.

19 (b) Claims in a court hearing by persons other than those  
20 exempted in subdivision (f) of Section 81001 that marijuana is  
21 industrial hemp.

22 81004. Not later than January 1, 2018, the Hemp Industries  
23 Association shall report to the Assembly and Senate Committees  
24 on Agriculture and the Assembly and Senate Committees on Public  
25 Safety the following:

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

28 (b) The economic impacts of industrial hemp cultivation,  
29 processing, and product manufacturing in other states that may  
30 have permitted industrial hemp cultivation.

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

33 11018. "Marijuana" means all parts of the plant *Cannabis sativa*  
34 L., whether growing or not; the seeds thereof; the resin extracted  
35 from any part of the plant; and every compound, manufacture, salt,  
36 derivative, mixture, or preparation of the plant, its seeds or resin.  
37 It does not include industrial hemp, as defined in Section 11018.5,  
38 except where the plant is cultivated or processed for purposes not  
39 expressly allowed for by Division 24 (commencing with Section  
40 81000) of the Food and Agricultural Code.

1 SEC. 5. Section 11018.5 is added to the Health and Safety  
2 Code, to read:  
3 11018.5. “Industrial hemp” means a fiber or oilseed crop, or  
4 both, that is limited to nonpsychoactive types of the plant *Cannabis*  
5 *sativa* L. and the seed produced therefrom, having no more than  
6 three-tenths of 1 percent tetrahydrocannabinol (THC) contained  
7 in the dried flowering tops, and that is cultivated and processed  
8 exclusively for the purpose of producing the mature stalks of the  
9 plant, fiber produced from the stalks, oil, or cake made from the  
10 seeds of the plant, or any other compound, manufacture, salt,  
11 derivative, mixture, or preparation of the mature stalks, except the  
12 resin or flowering tops extracted therefrom, fiber, oil, or cake, or  
13 the sterilized seed of the plant which is incapable of germination.  
14 SEC. 6. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.