

Introduced by Senator LenoFebruary 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 introduced, 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, 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, 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 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, 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 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 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
18 a substance as a schedule I drug and those findings include that
19 the substance has a high potential for abuse, has no accepted
20 medical use, and has a lack of accepted safety for use, none of
21 which apply to industrial hemp.

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

25 (e) California manufacturers of hemp products currently import
26 from around the world tens of thousands of acres' worth of hemp

1 seed, oil, and fiber products that could be produced by California
2 farmers at a more competitive price, and the intermediate
3 processing of hemp seed, oil, and fiber could create jobs in close
4 proximity to the fields of cultivation.

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

10 (g) Assessment of the economic benefits of industrial hemp
11 cultivation and determination of possible impacts on the
12 enforcement of laws prohibiting illicit marijuana cultivation are
13 important concerns.

14 (h) It is the intent of the Legislature that law enforcement not
15 be burdened with tetrahydrocannabinol (THC) testing of industrial
16 hemp crops when cultivation is in compliance with Section 11018.5
17 of the Health and Safety Code; therefore, the cultivation of
18 industrial hemp will be tightly controlled by requiring the
19 following:

20 (1) Farmers shall not cultivate industrial hemp in acreages
21 smaller than five acres, and no acreage of industrial hemp shall be
22 comprised of plots smaller than one acre. The tending of individual
23 plants, as well as ornamental and clandestine cultivation, are
24 expressly prohibited.

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

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

35 (4) Although they have no psychoactive effect, any resin,
36 flowering tops, or leaves of the industrial hemp plant that are
37 removed from the lawful field of cultivation shall be, by definition,
38 marijuana and subject to prosecution. Farmers should take care to
39 ensure that all flowering tops and leaves remain in the lawful field
40 of cultivation after the harvest of seed or fiber. There is no lawful

1 reason to harvest, collect, or process the flowering tops of industrial
2 hemp.

3 (5) Except for an agent or employee of a federally registered
4 laboratory involved in THC testing, no person may lawfully possess
5 the flowering tops or leaves of industrial hemp outside of the field
6 of cultivation and the flowering tops or leaves shall be considered
7 marijuana regardless of whether they are in fact industrial hemp.
8 Therefore, no testing of the flowering tops or leaves of any type
9 of cannabis found outside the lawful field of industrial hemp
10 cultivation need be tested by law enforcement for THC content to
11 determine during a drug seizure if the cannabis in question is
12 marijuana or industrial hemp.

13 (6) In addition to plant structure, height, and method of planting,
14 the horticultural tending of cannabis plants indicates to law
15 enforcement that it is marijuana and not industrial hemp. Signs of
16 horticultural tending include, but are not limited to, pathways or
17 rows within the field to provide access to each plant, the pruning
18 of individual plants, or the culling of male plants from the field.

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

21
22 DIVISION 24. INDUSTRIAL HEMP
23

24 81000. For purposes of this division, “industrial hemp” has the
25 same meaning as that term is defined in Section 11018.5 of the
26 Health and Safety Code.

27 81001. (a) Except when grown by an established agricultural
28 research institution, industrial hemp shall be grown only as a
29 densely planted fiber or oilseed crop, or both, in acreages of not
30 less than five acres, and no portion of an acreage of industrial hemp
31 shall include plots of less than one contiguous acre. Ornamental
32 and clandestine cultivation, as well as the pruning, culling, and
33 tending of individual plants, of industrial hemp is prohibited. All
34 plots shall have adequate signage indicating they are industrial
35 hemp.

36 (b) Industrial hemp shall include products imported under the
37 Harmonized Tariff Schedule of the United States (2013) of the
38 United States International Trade Commission, including hemp
39 seed, per subheading 1207.99.03, hemp oil, per subheading
40 1515.90.80, true hemp, per heading 5302, true hemp yarn, per

1 subheading 5308.20.00, and woven fabrics of true hemp fibers,
2 per subheading 5311.00.40.

3 (c) For purposes of this section, “established agricultural
4 research institution” means a public or private institution or
5 organization that maintains land for agricultural research, including
6 colleges, universities, agricultural research centers, and
7 conservation research centers.

8 (d) Except when industrial hemp is grown by an established
9 agricultural research institution, a person who grows industrial
10 hemp under this section shall, before the harvest of each crop and
11 as provided below, obtain a laboratory test report indicating the
12 tetrahydrocannabinol (THC) levels of a random sampling of the
13 dried flowering tops of the industrial hemp grown.

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

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

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

25 (4) The laboratory test report shall be issued by a laboratory
26 registered with the federal Drug Enforcement Administration, shall
27 state the percentage content of THC, shall indicate the date and
28 location of samples taken, and shall state the Global Positioning
29 System coordinates and total acreage of the crop. If the laboratory
30 test report indicates a percentage content of THC that is equal to
31 or less than three-tenths of 1 percent, the words “PASSED AS
32 CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the
33 top of the laboratory test report. If the laboratory test report
34 indicates a percentage content of THC that is greater than
35 three-tenths of 1 percent, the words “FAILED AS CALIFORNIA
36 INDUSTRIAL HEMP” shall appear at or near the top of the
37 laboratory test report.

38 (5) If the laboratory test report indicates a percentage content
39 of THC that is equal to or less than three-tenths of 1 percent, the
40 laboratory shall provide the person who requested the testing not

1 less than 10 original copies signed by an employee authorized by
2 the laboratory and shall retain one or more original copies of the
3 laboratory test report for a minimum of two years from its date of
4 sampling.

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

9 (7) A person who grows industrial hemp shall destroy the
10 industrial hemp grown upon receipt of a first laboratory test report
11 indicating a percentage content of THC that exceeds 1 percent or
12 a second laboratory test report pursuant to paragraph (6) indicating
13 a percentage content of THC that exceeds three-tenths of 1 percent.
14 If the percentage content of THC exceeds 1 percent, the destruction
15 shall take place within 48 hours after receipt of the laboratory test
16 report. If the percentage content of THC in the second laboratory
17 test report exceeds three-tenths of 1 percent, the destruction shall
18 take place as soon as practicable, but no later than 45 days after
19 receipt of the second test report.

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

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

30 (10) Paragraph (9) does not apply to industrial hemp grown by
31 an established agricultural research institution. Established
32 agricultural research institutions shall be permitted to cultivate or
33 possess industrial hemp with a laboratory test report that indicates
34 a percentage content of THC that is greater than three-tenths of 1
35 percent if that cultivation or possession contributes to the
36 development of types of industrial hemp that will comply with the
37 three-tenths of 1 percent THC limit established in this section.

38 (11) The person who grows industrial hemp shall retain an
39 original signed copy of the laboratory test report for two years
40 from its date of sampling, make an original signed copy of the

1 laboratory test report available to law enforcement officials or their
2 designees upon request, and shall provide an original copy of the
3 laboratory test report to each person purchasing, transporting, or
4 otherwise obtaining from the person who grows industrial hemp
5 the fiber, oil, cake, or seed of the plant.

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 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) 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) of Section 81001 that marijuana is
33 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 ~~the mature stalks of the plant, fiber produced~~
21 ~~from the stalks, oil or cake made from the seeds of the plant, any~~
22 ~~other compound, manufacture, salt, derivative, mixture, or~~
23 ~~preparation of the mature stalks (except the resin extracted~~
24 ~~therefrom), fiber, oil, or cake, or the sterilized seed of the plant~~
25 ~~which is incapable of germination~~ *industrial hemp, as defined in*
26 *Section 11018.5, except where the plant is cultivated or processed*
27 *for purposes not expressly allowed for by Division 24 (commencing*
28 *with Section 81000) of the Food and Agricultural Code.*

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

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

1 resin or flowering tops extracted therefrom, fiber, oil, or cake, or
2 the sterilized seed of the plant that is incapable of germination.

3 SEC. 6. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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

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