

AMENDED IN SENATE MAY 17, 2019

AMENDED IN SENATE MARCH 25, 2019

SENATE BILL

No. 153

Introduced by Senator Wilk
(Coauthors: Senators Caballero and Galgiani)

January 23, 2019

An act to amend Sections 81000, 81003, 81004, 81005, and 81006 of, and to add Sections 81012, 81013, 81014, and 81015 to, the Food and Agricultural Code, relating to industrial hemp, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 153, as amended, Wilk. Industrial hemp.

Existing federal law, the Agricultural Act of 2014, authorizes an institution of higher education, as defined, or a state department of agriculture, as defined, to grow or cultivate industrial hemp under an agricultural pilot program, as defined, under certain conditions. Existing federal law, the Agricultural Marketing Act of 1946, as amended by the Agriculture Improvement Act of 2018, requires a state or Indian tribe desiring to have primary regulatory authority over the production of industrial hemp in the state or territory of the Indian tribe to submit to the United States Secretary of Agriculture, through the state department of agriculture or the tribal government, as applicable, a plan, with specified contents, under which the state or Indian tribe monitors and regulates that production.

Existing state law regulates the cultivation and testing of industrial hemp, as defined. Existing state law requires an entity that is either a grower of industrial hemp for commercial purposes or a seed breeder that develops varieties of industrial hemp for sale or research to register

with the county agricultural commissioner of the county in which it intends to cultivate industrial hemp and to annually renew its registration. Existing state law exempts an established agricultural research institution, as defined, from these registration requirements. Existing state law requires the Department of Food and Agriculture to establish a registration fee and appropriate renewal fee to be paid by registrants. Under existing state law, these fees are deposited in the Department of Food and Agriculture Fund and continuously appropriated to the department for the administration and enforcement of this registration program and other provisions regulating the cultivation of industrial hemp. Existing state law requires a county agricultural commissioner to transmit information collected pursuant to these provisions to the department. Under existing state law, a violation of these provisions is a misdemeanor.

Under existing state law, these provisions are only operative to the extent authorized by federal law, as set forth in an opinion of the Attorney General. Before enactment of the federal Agriculture Improvement Act of 2018, an opinion of the Attorney General issued pursuant to existing state law concluded that industrial hemp may only be grown pursuant to these provisions to the extent authorized by the federal Agricultural Act of 2014.

This bill would revise the provisions regulating the cultivation and testing of industrial hemp to conform with the requirements for a state plan under the federal Agricultural Marketing Act of 1946, as amended by the federal Agriculture Improvement Act of 2018, by, among other things, revising the definition of industrial hemp, expanding the registration requirements to apply to growers of industrial hemp for noncommercial as well as commercial purposes, imposing new requirements on the department and county agricultural commissioners for the handling and transmittal of registration information, imposing new testing requirements, providing new enforcement procedures, to be operative as of the effective date of an approved state plan, as defined, and imposing new conditions on eligibility to participate in the industrial hemp program, as defined. By expanding registration requirements, including payment of registration fees, to growers of industrial hemp for noncommercial purposes, the bill would establish a new source of revenue for a continuously appropriated fund, thus making an appropriation.

The bill would require the Secretary of Food and Agriculture, in consultation with the Governor and the Attorney General, to develop

and submit a state plan to the United States Secretary of Agriculture, as provided, on or before January 31, 2020.

By imposing new registration requirements on growers of industrial hemp for noncommercial purposes, the violation of which would be a misdemeanor, this bill would impose a state-mandated local program.

By increasing the duties of county agricultural commissioners, 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 specified reasons.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 81000 of the Food and Agricultural Code
2 is amended to read:
3 81000. Definitions.
4 For purposes of this division, the following terms have the
5 following meanings:
6 (a) “Approved state plan” means a state plan that is approved
7 pursuant to Section 297B of the federal Agricultural Marketing
8 Act of 1946 (added by Section 10113 of the federal Agriculture
9 Improvement Act of 2018 (Public Law 115-334)) and in effect.
10 (b) “Board” means the Industrial Hemp Advisory Board.
11 (c) “Established agricultural research institution” means an
12 institution that is either of the following:
13 (1) A public or private institution or organization that maintains
14 land or facilities for agricultural research, including colleges,
15 universities, agricultural research centers, and conservation research
16 centers.
17 (2) An institution of higher education, as defined in Section 101
18 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001),
19 that grows, cultivates, or manufactures industrial hemp for purposes
20 of research conducted under an agricultural pilot program or other
21 agricultural or academic research.
22 (d) “Industrial hemp” means an agricultural product, whether
23 growing or not, that is limited to types of the plant *Cannabis sativa*

1 L. and any part of that plant, including the seeds of the plant and
2 all derivatives, extracts, the resin extracted from any part of the
3 plant, cannabinoids, isomers, acids, salts, and salts of isomers,
4 with a delta-9 tetrahydrocannabinol concentration of no more than
5 0.3 percent on a dry weight basis.

6 (e) “Industrial hemp program” means growth of industrial hemp
7 pursuant to this division and, if in effect, an approved state plan.

8 (f) “Seed breeder” means an individual or a public or private
9 institution or organization that is registered with the commissioner
10 to develop seed cultivars intended for sale or research.

11 (g) “Seed cultivar” means a variety of industrial hemp.

12 (h) “Seed development plan” means a strategy devised by a
13 seed breeder, or applicant seed breeder, detailing their planned
14 approach to growing and developing a new seed cultivar for
15 industrial hemp.

16 SEC. 2. Section 81003 of the Food and Agricultural Code is
17 amended to read:

18 81003. (a) (1) Except for an established agricultural research
19 institution or a seed breeder subject to Section 81004, and before
20 cultivation, a grower of industrial hemp shall register with the
21 commissioner of the county in which the grower intends to engage
22 in industrial hemp cultivation.

23 (2) The application shall include all of the following:

24 (A) The name, physical address, and mailing address of the
25 applicant.

26 (B) The legal description, Global Positioning System
27 coordinates, and map of the land area on which the applicant plans
28 to engage in industrial hemp cultivation, storage, or both.

29 (C) The approved seed cultivar to be grown, including the state
30 or county of origin.

31 (3) (A) The application shall be accompanied by a registration
32 fee, as determined pursuant to Section 81005.

33 (B) A registration issued pursuant to this section shall be valid
34 for one year, after which the registrant shall renew the registration
35 and pay an accompanying renewal fee, as determined pursuant to
36 Section 81005.

37 (b) If the commissioner determines that the requirements for
38 registration pursuant to this division are met and that the applicant
39 is eligible to participate in the industrial hemp program, the
40 commissioner shall issue a registration to the applicant.

1 (c) A registrant that wishes to alter the land area on which the
2 registrant conducts industrial hemp cultivation, storage, or both,
3 shall, before altering the area, submit to the commissioner an
4 updated legal description, Global Positioning System coordinates,
5 and map specifying the proposed alteration. Once the commissioner
6 has received the change to the registration, the commissioner shall
7 notify the registrant that it may cultivate industrial hemp on the
8 altered land area.

9 (d) A registrant that wishes to change the seed cultivar grown
10 shall submit to the commissioner the name of the new, approved
11 seed cultivar to be grown. Once the commissioner has received
12 the change to the registration, the commissioner shall notify the
13 registrant that it may cultivate the new seed cultivar.

14 (e) (1) The commissioner shall transmit information collected
15 under this section to the department.

16 (2) The following information shall be transmitted by the
17 commissioner to the department no more than five business days,
18 and submitted by the department to the United States Department
19 of Agriculture no more than 30 business days, after the date on
20 which it is collected, or, in the case of subparagraph (C), the date
21 of a change in registration status:

22 (A) Contact information for each grower of industrial hemp.

23 (B) A legal description of the land on which the grower engages
24 in industrial hemp cultivation.

25 (C) Registration status of the grower of industrial hemp.

26 (f) The department and the commissioner shall retain
27 information collected under this section for at least three years
28 after collecting or receiving it.

29 SEC. 3. Section 81004 of the Food and Agricultural Code is
30 amended to read:

31 81004. (a) (1) Except when grown by an established
32 agricultural research institution, and before cultivation, a seed
33 breeder shall register with the commissioner of the county in which
34 the seed breeder intends to engage in industrial hemp cultivation.

35 (2) The application shall include all of the following:

36 (A) The name, physical address, and mailing address of the
37 applicant.

38 (B) The legal description, Global Positioning System
39 coordinates, and map of the land area on which the applicant plans
40 to engage in industrial hemp cultivation, storage, or both.

1 (C) The approved seed cultivar to be grown for seed production,
2 including the state or county of origin.

3 (D) If an applicant intends to develop a new California seed
4 cultivar to be certified by a seed-certifying agency, the applicant
5 shall include all of the following:

6 (i) The name of the seed-certifying agency that will be
7 conducting the certification.

8 (ii) The industrial hemp varieties that will be used in the
9 development of the new California seed cultivar.

10 (iii) A seed development plan specifying how the listed
11 industrial hemp varieties will be used in the development of the
12 new seed cultivar, measures that will be taken to prevent the
13 unlawful use of industrial hemp or seed cultivars under this
14 division, and a procedure for the maintenance of records
15 documenting the development of the new seed cultivar.

16 (3) (A) The application shall be accompanied by a registration
17 fee, as determined pursuant to Section 81005.

18 (B) A registration issued pursuant to this section shall be valid
19 for one year, after which the registrant shall renew its registration
20 and pay an accompanying renewal fee, as determined pursuant to
21 Section 81005.

22 (b) If the commissioner determines that the requirements for
23 registration pursuant to this division are met and that the applicant
24 is eligible to participate in the industrial hemp program, the
25 commissioner shall issue a seed breeder registration to the
26 applicant.

27 (c) A registrant that wishes to alter the land area on which the
28 registrant conducts industrial hemp cultivation, storage, or both,
29 shall, before altering the area, submit to the commissioner an
30 updated legal description, Global Positioning System coordinates,
31 and map specifying the proposed alteration. Once the commissioner
32 has received the change to the registration, the commissioner shall
33 notify the registrant that it may cultivate industrial hemp on the
34 altered land area.

35 (d) A registrant that wishes to change the seed cultivar grown
36 shall submit to the commissioner the name of the new, approved
37 seed cultivar to be grown. Once the commissioner has received
38 the change to the registration, the commissioner shall notify the
39 registrant that it may cultivate the new seed cultivar.

1 (e) A registrant developing a new California seed cultivar who
2 wishes to change any provision of the seed development plan shall
3 submit to the commissioner the revised seed development plan.
4 Once the commissioner has received the change to the registration,
5 the commissioner shall notify the registrant that the registrant may
6 cultivate under the revised seed development plan.

7 (f) All records pertaining to the seed development plan shall be
8 kept and maintained by the seed breeder and be available upon
9 request by the commissioner, a law enforcement agency, or a seed
10 certifying agency.

11 (g) (1) The commissioner shall transmit information collected
12 under this section to the department.

13 (2) The following information shall be transmitted by the
14 commissioner to the department no more than five business days,
15 and submitted by the department to the United States Department
16 of Agriculture no more than 30 business days, after the date on
17 which it is collected, or, in the case of subparagraph (C), the date
18 of a change in registration status:

19 (A) Contact information for each seed breeder.

20 (B) A legal description of the land on which the seed breeder
21 engages in industrial hemp cultivation.

22 (C) Registration status of the seed breeder.

23 (h) The department and the commissioner shall retain
24 information collected under this section for at least three years
25 after collecting or receiving it.

26 SEC. 4. Section 81005 of the Food and Agricultural Code is
27 amended to read:

28 81005. (a) The department shall establish a registration fee
29 and appropriate renewal fee to be paid by growers of industrial
30 hemp and seed breeders, not including an established agricultural
31 research institution, to cover the actual costs of implementing,
32 administering, and enforcing the provisions of this division.

33 (b) Fees established pursuant to subdivision (a) that are collected
34 by the commissioners upon registration or renewal pursuant to
35 Section 81003 or 81004, except for amounts retained pursuant to
36 this subdivision, shall be forwarded, according to procedures set
37 by the department, to the department for deposit into the
38 Department of Food and Agriculture Fund to be used for the
39 administration and enforcement of this division. A commissioner
40 or the county, as appropriate, may retain the amount of a fee

1 necessary to reimburse direct costs incurred by the commissioner
2 in the collection of the fee.

3 (c) The board of supervisors of a county may establish a
4 reasonable fee, in an amount necessary to cover the actual costs
5 of the commissioner and the county of implementing,
6 administering, and enforcing the provisions of this division, except
7 for costs that are otherwise reimbursed pursuant to subdivision
8 (b), to be charged and collected by the commissioner upon
9 registrations or renewals required pursuant to Section 81003 or
10 81004 and retained by the commissioner or the county, as
11 appropriate.

12 SEC. 5. Section 81006 of the Food and Agricultural Code is
13 amended to read:

14 81006. Industrial Hemp Growth Limitations; Prohibitions;
15 Imports; Laboratory Testing.

16 (a) (1) Except when grown by an established agricultural
17 research institution or a seed breeder, industrial hemp shall be
18 grown in acreages of not less than one-tenth of an acre at the same
19 time.

20 (2) Seed breeders, for purposes of seed production, shall only
21 grow industrial hemp in acreages of not less than one-tenth of an
22 acre at the same time.

23 (3) Seed breeders, for purposes of developing a new California
24 seed cultivar, shall grow industrial hemp in dedicated acreage of
25 not less than one-tenth of an acre and in accordance with the seed
26 development plan. The entire area of the dedicated acreage is not
27 required to be used for the cultivation of the particular seed cultivar.

28 (b) Clandestine cultivation of industrial hemp is prohibited. All
29 plots shall have adequate signage indicating they are industrial
30 hemp.

31 (c) Industrial hemp shall include products imported under the
32 Harmonized Tariff Schedule of the United States (2013) of the
33 United States International Trade Commission, including, but not
34 limited to, hemp seed, per subheading 1207.99.03, hemp oil, per
35 subheading 1515.90.80, oilcake, per subheading 2306.90.01, true
36 hemp, per heading 5302, true hemp yarn, per subheading
37 5308.20.00, and woven fabrics of true hemp fibers, per subheading
38 5311.00.40.

39 (d) (1) Except when industrial hemp is grown by an established
40 agricultural research institution, a registrant that grows industrial

1 hemp under this section shall, before the harvest of each crop and
2 as provided below, obtain a laboratory test report indicating the
3 THC levels of a random sampling of the dried flowering tops of
4 the industrial hemp grown.

5 (2) Sampling shall occur no more than 30 days before harvest.

6 (3) The sample collected for THC testing shall be taken with
7 the grower or seed breeder present. The department shall establish,
8 by regulation, the sampling procedures, including all of the
9 following:

10 (A) The number of plants to be sampled per field, and any
11 composting of samples.

12 (B) The portions of the plant to be sampled.

13 (C) The plant parts to be included in a sample.

14 (D) Additional procedures as necessary to ensure accuracy and
15 the sanitation of samples and fields.

16 (4) The sample collected for THC testing shall be accompanied
17 by the following documentation:

18 (A) The registrant's proof of registration.

19 (B) Seed certification documentation for the seed cultivar used.

20 (C) The THC testing report for each certified seed cultivar used.

21 (5) The laboratory test report shall be issued by a laboratory
22 approved by the department, using a department-approved testing
23 method. The testing method shall use postdecarboxylation or
24 similarly reliable methods for determining THC concentration
25 levels. The laboratory test report shall indicate the percentage
26 concentration of THC on a dry-weight basis, indicate the date and
27 location of samples taken, and state the Global Positioning System
28 coordinates and total acreage of the crop. If the laboratory test
29 report indicates a percentage concentration of THC that is equal
30 to or less than 0.3 percent, the words "PASSED AS CALIFORNIA
31 INDUSTRIAL HEMP" shall appear at or near the top of the
32 laboratory test report. If the laboratory test report indicates a
33 percentage concentration of THC that is greater than 0.3 percent,
34 the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP"
35 shall appear at or near the top of the laboratory test report.

36 (6) If the laboratory test report indicates a percentage
37 concentration of THC that is equal to or less than 0.3 percent, the
38 laboratory shall provide the person who requested the testing not
39 less than 10 original copies signed by an employee authorized by
40 the laboratory and shall retain one or more original copies of the

1 laboratory test report for a minimum of two years from its date of
2 sampling.

3 (7) If the laboratory test report indicates a percentage
4 concentration of THC that is greater than 0.3 percent and does not
5 exceed 1 percent, the registrant that grows industrial hemp shall
6 submit additional samples for testing of the industrial hemp grown.

7 (8) A registrant that grows industrial hemp shall destroy the
8 industrial hemp grown upon receipt of a first laboratory test report
9 indicating a percentage concentration of THC that exceeds 1
10 percent or a second laboratory test report pursuant to paragraph
11 (7) indicating a percentage concentration of THC that exceeds 0.3
12 percent but is less than 1 percent. If the percentage concentration
13 of THC exceeds 1 percent, the destruction shall begin within 48
14 hours, and be completed within ~~7~~ seven days, after receipt of the
15 laboratory test report. If the percentage concentration of THC in
16 the second laboratory test report exceeds 0.3 percent but is less
17 than 1 percent, the destruction shall take place as soon as
18 practicable, but no later than 45 days after receipt of the second
19 test report.

20 (9) A registrant that intends to grow industrial hemp and who
21 complies with this section shall not be prosecuted for the cultivation
22 or possession of marijuana as a result of a laboratory test report
23 that indicates a percentage concentration of THC that is greater
24 than 0.3 percent but does not exceed 1 percent.

25 (10) Established agricultural research institutions shall be
26 permitted to cultivate or possess industrial hemp with a laboratory
27 test report that indicates a percentage concentration of THC that
28 is greater than 0.3 percent if that cultivation or possession
29 contributes to the development of types of industrial hemp that
30 will comply with the 0.3 percent THC limit established in this
31 division.

32 (11) Except for an established agricultural research institution,
33 a registrant that grows industrial hemp shall retain an original
34 signed copy of the laboratory test report for two years from its date
35 of sampling, make an original signed copy of the laboratory test
36 report available to the department, the commissioner, or law
37 enforcement officials or their designees upon request, and shall
38 provide an original copy of the laboratory test report to each person
39 purchasing, transporting, or otherwise obtaining from the registrant

1 that grows industrial hemp the fiber, oil, cake, or seed, or any
2 component of the seed, of the plant.

3 (e) If, in the Attorney General’s opinion issued pursuant to
4 Section 8 of Chapter 398 of the Statutes of 2013, it is determined
5 that the provisions of this section are not sufficient to comply with
6 federal law, the department, in consultation with the board, shall
7 establish procedures for this section that meet the requirements of
8 federal law.

9 SEC. 6. Section 81012 is added to the Food and Agricultural
10 Code, to read:

11 81012. (a) A grower of industrial hemp or seed breeder that
12 the secretary determines has violated a provision of this division
13 listed in the approved state plan or an additional requirement listed
14 pursuant to subdivision (b) of Section 81015, including, but not
15 limited to, by failing to provide a legal description of the land on
16 which industrial hemp is grown, failing to register as required, or
17 exceeding the 0.3 percent THC limit established in this division,
18 shall be subject to the following consequences:

19 (1) For a negligent violation, as determined by the secretary,
20 the sole consequences under state law, which shall occupy the field
21 to the exclusion of all consequences that may otherwise be imposed
22 by local ordinance or regulation, shall be as follows:

23 (A) If the violation is not a repeat violation subject to paragraph
24 (2), the grower of industrial hemp or seed breeder shall comply
25 with a corrective action plan, to be established by the secretary,
26 that includes both of the following:

27 (i) A reasonable date by which the grower of industrial hemp
28 or seed breeder shall correct the negligent violation.

29 (ii) A requirement that the grower of industrial hemp or seed
30 breeder shall periodically report to the secretary, for a period of
31 at least the next two calendar years, on the compliance of the
32 grower of industrial hemp or seed breeder with this division or the
33 approved state plan.

34 (B) If a grower of industrial hemp or seed breeder commits a
35 negligent violation three times in a five-year period, the grower
36 of industrial hemp or seed breeder shall be ineligible to participate
37 in the industrial hemp program for a period of five years beginning
38 on the date of the third violation.

39 (2) For a violation committed with a culpable mental state
40 greater than negligence, the secretary shall immediately report the

1 grower of industrial hemp or seed breeder to the Attorney General
2 of the United States and the Attorney General of this state, as
3 applicable.

4 (b) This section shall become operative as of the effective date
5 of an approved state plan.

6 SEC. 7. Section 81013 is added to the Food and Agricultural
7 Code, to read:

8 81013. (a) Except as provided in subdivision (b), any person
9 convicted of a felony relating to a controlled substance under state
10 or federal law before, on, or after January 1, 2020, shall be
11 ineligible, during the 10-year period following the date of the
12 conviction, to participate in the industrial hemp program.

13 (b) Subdivision (a) does not apply to a registrant lawfully
14 growing industrial hemp before December 20, 2018, under a pilot
15 program authorized by Section 7606 of the federal Agricultural
16 Act of 2014 (7 U.S.C. Sec. 5940).

17 SEC. 8. Section 81014 is added to the Food and Agricultural
18 Code, to read:

19 81014. A person that materially falsifies any information
20 contained in an application under Section 81003 or 81004, or other
21 application to participate in the industrial hemp program, shall be
22 ineligible to participate in the industrial hemp program.

23 SEC. 9. Section 81015 is added to the Food and Agricultural
24 Code, to read:

25 81015. (a) On or before January 31, 2020, the secretary, in
26 consultation with the Governor and the Attorney General, shall
27 develop and submit to the United States Secretary of Agriculture
28 a state plan, consistent with this division, pursuant to Section 297B
29 of the federal Agricultural Marketing Act of 1946 (added by
30 Section 10113 of the federal Agriculture Improvement Act of 2018
31 (Public Law 115-334)), including a certification that the state has
32 the resources and personnel to carry out the practices and
33 procedures described in clauses (i) through ~~(iv)~~ (iv), *inclusive*, of
34 subparagraph (A) of paragraph (2) of subsection (a) of that section.

35 (b) In an annex to the state plan, the secretary shall list the
36 provisions of this division that are included in the state plan, and
37 any additional requirements in the state plan, that shall be subject
38 to enforcement pursuant to Section 81012.

39 SEC. 10. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 a local agency or school district has the authority to levy service
2 charges, fees, or assessments sufficient to pay for the program or
3 level of service mandated by this act or because costs that may be
4 incurred by a local agency or school district will be incurred
5 because this act creates a new crime or infraction, eliminates a
6 crime or infraction, or changes the penalty for a crime or infraction,
7 within the meaning of Section 17556 of the Government Code, or
8 changes the definition of a crime within the meaning of Section 6
9 of Article XIII B of the California Constitution.

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