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.


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

SECTION 1. Section 81000 of the Food and Agricultural Code is amended to read:

81000. Definitions.
For purposes of this division, the following terms have the following meanings:
(a) “Approved state plan” means a state plan that is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)) and in effect.
(b) “Board” means the Industrial Hemp Advisory Board.
(c) “Established agricultural research institution” means an institution that is either of the following:
1 (1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.
(2) An institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.
(d) “Industrial hemp” means an agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa
L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

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

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

(g) "Seed cultivar" means a variety of industrial hemp.

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

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

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

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

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

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

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

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

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

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the industrial hemp program, the commissioner shall issue a registration to the applicant.
(c) A registrant that wishes to alter the land area on which the registrant conducts industrial hemp cultivation, storage, or both, shall, before altering the area, submit to the commissioner an updated legal description, Global Positioning System coordinates, and map specifying the proposed alteration. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate industrial hemp on the altered land area.

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

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

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

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

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

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

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

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

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

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

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

   (B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.
(C) The approved seed cultivar to be grown for seed production, including the state or county of origin.

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

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

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

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

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

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

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

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

(d) A registrant that wishes to change the seed cultivar grown shall submit to the commissioner the name of the new, approved seed cultivar to be grown. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that it may cultivate the new seed cultivar.
(e) A registrant developing a new California seed cultivar who wishes to change any provision of the seed development plan shall submit to the commissioner the revised seed development plan. Once the commissioner has received the change to the registration, the commissioner shall notify the registrant that the registrant may cultivate under the revised seed development plan.

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

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

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

(A) Contact information for each seed breeder.

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

(C) Registration status of the seed breeder.

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

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

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

(b) Fees established pursuant to subdivision (a) that are collected by the commissioners upon registration or renewal pursuant to Section 81003 or 81004, except for amounts retained pursuant to this subdivision, shall be forwarded, according to procedures set by the department, to the department for deposit into the Department of Food and Agriculture Fund to be used for the administration and enforcement of this division. A commissioner or the county, as appropriate, may retain the amount of a fee
necessary to reimburse direct costs incurred by the commissioner
in the collection of the fee.
(c) The board of supervisors of a county may establish a
reasonable fee, in an amount necessary to cover the actual costs
of the commissioner and the county of implementing,
administering, and enforcing the provisions of this division, except
for costs that are otherwise reimbursed pursuant to subdivision
(b), to be charged and collected by the commissioner upon
registrations or renewals required pursuant to Section 81003 or
81004 and retained by the commissioner or the county, as
appropriate.
SEC. 5. Section 81006 of the Food and Agricultural Code is
amended to read:
81006. Industrial Hemp Growth Limitations; Prohibitions;
Imports; Laboratory Testing.
(a) (1) Except when grown by an established agricultural
research institution or a seed breeder, industrial hemp shall be
grown in acreages of not less than one-tenth of an acre at the same
time.
(2) Seed breeders, for purposes of seed production, shall only
grow industrial hemp in acreages of not less than one-tenth of an
acre at the same time.
(3) Seed breeders, for purposes of developing a new California
seed cultivar, shall grow industrial hemp in dedicated acreage of
not less than one-tenth of an acre and in accordance with the seed
development plan. The entire area of the dedicated acreage is not
required to be used for the cultivation of the particular seed cultivar.
(b) Clandestine cultivation of industrial hemp is prohibited. All
plots shall have adequate signage indicating they are industrial
hemp.
(c) Industrial hemp shall include products imported under the
Harmonized Tariff Schedule of the United States (2013) of the
United States International Trade Commission, including, but not
limited to, hemp seed, per subheading 1207.99.03, hemp oil, per
subheading 1515.90.80, oilcake, per subheading 2306.90.01, true
hemp, per heading 5302, true hemp yarn, per subheading
5308.20.00, and woven fabrics of true hemp fibers, per subheading
5311.00.40.
(d) (1) Except when industrial hemp is grown by an established
agricultural research institution, a registrant that grows industrial
hemp under this section shall, before the harvest of each crop and
as provided below, obtain a laboratory test report indicating the
THC levels of a random sampling of the dried flowering tops of
the industrial hemp grown.
(2) Sampling shall occur no more than 30 days before harvest.
(3) The sample collected for THC testing shall be taken with
the grower or seed breeder present. The department shall establish,
by regulation, the sampling procedures, including all of the
following:
(A) The number of plants to be sampled per field, and any
composting of samples.
(B) The portions of the plant to be sampled.
(C) The plant parts to be included in a sample.
(D) Additional procedures as necessary to ensure accuracy and
the sanitation of samples and fields.
(4) The sample collected for THC testing shall be accompanied
by the following documentation:
(A) The registrant’s proof of registration.
(B) Seed certification documentation for the seed cultivar used.
(C) The THC testing report for each certified seed cultivar used.
(5) The laboratory test report shall be issued by a laboratory
approved by the department, using a department-approved testing
method. The testing method shall use postdecarboxylation or
similarly reliable methods for determining THC concentration
levels. The laboratory test report shall indicate the percentage
concentration of THC on a dry-weight basis, indicate the date and
location of samples taken, and state the Global Positioning System
coordinates and total acreage of the crop. If the laboratory test
report indicates a percentage concentration of THC that is equal
to or less than 0.3 percent, the words “PASSED AS CALIFORNIA
INDUSTRIAL HEMP” shall appear at or near the top of the
laboratory test report. If the laboratory test report indicates a
percentage concentration of THC that is greater than 0.3 percent,
the words “FAILED AS CALIFORNIA INDUSTRIAL HEMP”
shall appear at or near the top of the laboratory test report.
(6) If the laboratory test report indicates a percentage
concentration of THC that is equal to or less than 0.3 percent, the
laboratory shall provide the person who requested the testing not
less than 10 original copies signed by an employee authorized by
the laboratory and shall retain one or more original copies of the
laboratory test report for a minimum of two years from its date of sampling.

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

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

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

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

(11) Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant
that grows industrial hemp the fiber, oil, cake, or seed, or any
component of the seed, of the plant.
(e) If, in the Attorney General’s opinion issued pursuant to
Section 8 of Chapter 398 of the Statutes of 2013, it is determined
that the provisions of this section are not sufficient to comply with
federal law, the department, in consultation with the board, shall
establish procedures for this section that meet the requirements of
federal law.
SEC. 6. Section 81012 is added to the Food and Agricultural
Code, to read:
81012. (a) A grower of industrial hemp or seed breeder that
the secretary determines has violated a provision of this division
listed in the approved state plan or an additional requirement listed
pursuant to subdivision (b) of Section 81015, including, but not
limited to, by failing to provide a legal description of the land on
which industrial hemp is grown, failing to register as required, or
exceeding the 0.3 percent THC limit established in this division,
shall be subject to the following consequences:
(1) For a negligent violation, as determined by the secretary,
the sole consequences under state law, which shall occupy the field
to the exclusion of all consequences that may otherwise be imposed
by local ordinance or regulation, shall be as follows:
(A) If the violation is not a repeat violation subject to paragraph
(2), the grower of industrial hemp or seed breeder shall comply
with a corrective action plan, to be established by the secretary,
that includes both of the following:
(i) A reasonable date by which the grower of industrial hemp
or seed breeder shall correct the negligent violation.
(ii) A requirement that the grower of industrial hemp or seed
breeder shall periodically report to the secretary, for a period of
at least the next two calendar years, on the compliance of the
grower of industrial hemp or seed breeder with this division or the
approved state plan.
(B) If a grower of industrial hemp or seed breeder commits a
negligent violation three times in a five-year period, the grower
of industrial hemp or seed breeder shall be ineligible to participate
in the industrial hemp program for a period of five years beginning
on the date of the third violation.
(2) For a violation committed with a culpable mental state
greater than negligence, the secretary shall immediately report the
grower of industrial hemp or seed breeder to the Attorney General of the United States and the Attorney General of this state, as applicable.

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

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

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

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

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

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

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

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

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

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because
a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.