SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1409	**Hearing Date:**	April 24, 2018
Author:	Wilk		
Version:	April 2, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Industrial Hemp***

HISTORY

Source: Vote Hemp
Ojai Energetics

Prior Legislation: Proposition 64, approved by the voters on November 8, 2016
SB 566 (Leno), Ch. 398, Stats. of 2013
SB 676 (Leno), vetoed in 2011
AB 684 (Leno), vetoed in 2007
AB 1147 (Leno), vetoed in 2006
AB 388 (Strom-Martin), vetoed in 2002

Support: American Herbal Products Association; California Certified Organic Farmers; Hemp Traders; National Electrical Contractors Association; four individuals

Opposition: California Hemp Association

PURPOSE

The purpose of this bill is to: 1) no longer define industrial hemp as a fiber or oilseed crop; 2) to delete the requirement that industrial hemp be grown as a fiber or oilseed crop; and 3) to amend or repeal other provisions related to the cultivation of industrial hemp.

Existing federal law classifies marijuana as a Schedule I controlled substance. (18 U.S.C. § 812, subd. (c)(10).)

Existing federal law classifies tetrahydrocannabinol (THC) as a Schedule I controlled substance. (18 U.S.C. § 812, subd. (c)(17).)

Existing law classifies THC as a Schedule I controlled substance. (Health & Saf. Code § 11054, subd.(d)(20).)

Existing law defines industrial hemp as a fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. (Health & Saf. Code, § 11018.5, subd. (a).)

This bill amends the definition of industrial hemp so that is it no longer defined as a fiber or oilseed crop.

Existing law provides that industrial hemp is regulated by the Department of Food and Agriculture (CDFA) in accordance with the provisions of the Food and Agricultural Code. (Health & Saf. Code, § 11018.5, subd. (b).)

Existing law provides that except when grown by an established agricultural research institution or by a registered seed breeder developing a new California seed cultivar, industrial hemp shall only be grown if it is on the list of approved seed cultivars. (Food & Agr. Code, § 81002, subd. (a).)

Existing law provides that the list of approved seed cultivars includes the following:

Industrial hemp seed cultivars that have been certified on or before January 1, 2013, by member organizations of the Association of Official Seed Certifying Agencies, including, but not limited to, the Canadian Seed Growers' Association.
Industrial hemp seed cultivars that have been certified on or before January 1, 2013, by the Organization of Economic Cooperation and Development.
California varieties of industrial hemp seed cultivars that have been certified by a seed-certifying agency, as specified. (Food & Agr. Code, § 81002, subd. (b).)

This bill deletes the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013.

Existing law provides that except for an established agricultural research institution, and before cultivation, a grower of industrial hemp for commercial purposes must register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation. The application must specify several things, including whether the approved seed cultivar to be grown and whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop. (Food & Agr. Code, § 81003, subd. (a).)

This bill deletes the requirement that the application include information about whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop.

This bill provides that a city or county may prohibit growers from conducting, or otherwise limit growers' conduct of, industrial hemp cultivation in the city or county by local ordinance, regardless of whether growers meet, or are exempt from, requirements for registration pursuant to this division or any other law. A limitation pursuant to this subdivision shall be effective as of the date on which the city or county notifies the CDFA, secretary, and applicable commissioner of the limitation.

Existing law provides that except when grown by an established agricultural research institution, and before cultivation, a seed breeder must register with the commissioner of the county in which the seed breeder intends to engage in industrial hemp cultivation. The application must specify several things, including whether the seed cultivar will be grown for its grain or fiber, as a dual purpose crop, or for seed production. (Food & Agr. Code, § 81004, subd. (a).)

This bill deletes the requirement that the application include information about whether the seed cultivar will be grown for its grain or fiber, or as a dual purpose crop.

This bill provides that a city or county may prohibit seed breeders from conducting, or otherwise limit seed breeders' conduct of, industrial hemp cultivation in the city or county by local ordinance, regardless of whether the seed breeders meet, or are exempt from, requirements for registration pursuant to this division or any other law. A limitation pursuant to this subdivision shall be effective as of the date on which the city or county notifies the CDFA, secretary, and applicable commissioner of the limitation.

Existing law provides that except when grown by an established agricultural research institution or a registered seed breeder, industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than one-tenth of an acre at the same time. (Food & Agr. Code, § 81006, subd. (a).)

This bill deletes the requirement that industrial hemp be grown as a fiber or oilseed crop.

Existing law prohibits ornamental and clandestine cultivation of industrial hemp. (Food & Agr. Code, § 81006, subd. (b).)

This bill deletes the prohibition on ornamental cultivation of industrial hemp.

Existing law prohibits pruning and tending of individual industrial hemp plants, except when grown by an established agricultural research institution or when the action is necessary to perform THC testing, as described. (Food & Agr. Code, § 81006, subd. (c).)

This bill deletes this provision.

Existing law prohibits culling of industrial hemp, except when grown by an established agricultural research institution, when the action is necessary to perform THC testing, as described, or for purposes of seed production and development by a registered seed breeder. (Food & Agr. Code, § 81006, subd. (d).)

This bill deletes this provision.

Existing law provides that any person authorized to enforce any provision of the Food and Agriculture Code is authorized, as a public officer, to arrest, without a warrant, another person whenever such officer has reasonable cause to believe that the person to be arrested has, in his presence, violated any provision of this code, the violation of which is declared to be public offense. (Food & Agr. Code, § 7, subd. (a).)

Existing law provides that unless a different penalty is expressly provided, a violation of any provision of the Food and Agriculture Code is a misdemeanor. (Food & Agr. Code, § 9.)

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, including the condition that a state department of agriculture is authorized to promulgate regulations to carry out the pilot program in accordance with specified purposes. (7 U.S.C. § 5940.)

The bill authorizes the CDFA, as part of the industrial hemp registration program, to establish and carry out, by regulation, an agricultural pilot program pursuant to the federal Agricultural Act of 2014 in accordance with those specified purposes.

COMMENTS

1. Need for This Bill

According to the author:

> With over 30 other nations and 19 states in the U.S. growing industrial hemp and California representing the largest consumer and industrial market for hemp raw materials and products in the U.S., we are poised to take advantage of an unprecedented opportunity. Senate Bill 1409 would update current law to streamline the production and cultivation of industrial hemp in California. The measure would remove remaining "fiber and oilseed" language appearing to limit the use of the crop and authorize the California Department of Food and Agriculture to run a pilot program to ensure California is consistent with the federal Farm Bill of 2014 which authorized State departments of agriculture to promulgate regulations to carry out industrial hemp pilot programs and research. SB 1409 would also enable local jurisdictions to "opt out" of the hemp registration program in an effort to avoid cross-pollination with medical and adult-use cannabis. Lastly, the bill would delete the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013 to open up access to farmers and increase seed options.
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> Industrial hemp is a variety of the species Cannabis sativa L. that has no psychoactive qualities because it contains less than three-tenths of one percent THC.
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> Hemp has absolutely no use as a recreational drug. Industrial hemp varieties of Cannabis, also referred to as "fiber" or "non-drug" hemp, should not be confused with marijuana. It is not possible to extract a drug from the industrial hemp plant, and industrial hemp can't "get you high." Industrial hemp contains virtually no THC (delta-9-tetrahydrocannabinol), the active ingredient in marijuana. Industrial hemp has less than 0.3% THC, while marijuana typically has 10-25% THC. Additionally, industrial hemp contains a relatively high percentage of CBD (cannabidiol), which negates THC's psychoactive effects.
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> Every other industrialized nation in the world permits the farming of industrial hemp and the crop is recognized in international law. Article 28(2) of the 1961 United Nations' Single Convention on Narcotic Drugs, to which the U.S. is a signatory, states "This Convention shall not apply to the cultivation of the Cannabis plant exclusively for industrial purposes (fiber and seed) or horticultural purposes." In spite of this, the U.S. Drug Enforcement Administration (DEA) continues to intentionally conflate industrial hemp and marijuana. This has resulted in an absurd policy: hemp seed, oil and fiber are all currently legal for trade in the U.S., and domestic industry imports more than $600 million worth of industrial hemp for diverse uses. Yet, at the same time, U.S. farmers are prevented from producing industrial hemp for the domestic market at a commercial scale. It is time to remove unnecessary barriers to the domestic production of legal industrial hemp.

2. Background

Industrial hemp is a variety of the plant *Cannabis sativa L* and has been grown for thousands of years as a seed crop and for fiber. It is used for products such as paper, textiles, cosmetics and body care, food, and fabric. Currently, 23 countries grow hemp for commercial use. The United States, Japan, and the Netherlands are researching and piloting hemp programs. Because of its similarity to marijuana, also a variety of *Cannabis sativa L*, and the presence of THC, a Schedule I controlled substance (a substance that has been deemed to have no medical utility and has a high potential for abuse), hemp cannot be grown within the United States. (21 U.S.C. § 812; Health & Safe. Code, § 11054).

The California Industrial Hemp Farming Act (SB 566, Chapter 398, Statutes of 2013) established an industrial hemp farming program for fiber and oilseed production, contingent upon federal authorization. SB 566 created a regulatory framework for the commercial cultivation of industrial hemp and established the Industrial Hemp Advisory Board (board) within CDFA. Among other things, the bill provided that industrial hemp only be grown if it is on the list of approved seed cultivars, except when grown by an established agricultural research institution or by a registered seed breeder developing a new California seed cultivar.

The federal Agricultural Act of 2014 authorized an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp if: (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and (2) the growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.

In 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act. The proposition legalized the personal use of cannabis for persons 21 and older, as specified. It also removed the federal authorization requirement contained in SB 566, expanded the definition of industrial hemp to include extracts and derivatives, and struck the prohibition against the use of the flowers and leaves.

Currently, all commercial growers of industrial hemp must register with the county agricultural commissioner prior to cultivation. CDFA's website indicates that registration is not yet available, and that the fees and process for registration will be developed in conjunction with the board. Current law states industrial hemp shall only be grown if it is on the list of approved seed cultivars. This list includes only those hemp seed cultivars that were certified on or before January 1, 2013. An established agricultural research institution is exempt from registration and may currently grow industrial hemp in California. (Food & Agr. Code, § 81002, subd. (a).) Current law also states that the CDFA secretary, upon recommendation by the board or the department, may update the list of seed cultivars by adding, amending, or removing seed cultivars. (Food & Agr. Code, § 81002, subd. (c).)

3. Effect of This Legislation

This bill updates California law by adding the pilot program to CDFA's registration program and removes language that conflicts with Proposition 64's expanded definition of hemp, which includes extracts and derivatives from the non-psychoactive flowers and leaves. Additionally, this bill removes the restriction that the approved list of seed cultivars only include those that were certified on or before January 1, 2013. The bill also deletes the prohibition on ornamental

cultivation of industrial hemp, pruning and tending of individual industrial hemp plants, and culling of industrial hemp. Finally, the bill authorizes a city or county to "opt out" of the hemp registration program. According to the author's office, this provision will be particularly helpful if growers are trying to avoid cross-pollination with medical and adult-use marijuana.

4. Argument in Support

Vote Hemp, the sponsor of this bill, writes:

> While all hemp products are legally sold in California, outdated state law hinders hemp cultivation in California. Thus, the annual $680 million U.S. hemp product industry is completely reliant upon imported hemp from other nations and a handful of U.S. states. California hemp product manufacturers make up a large part of the industry's annual revenues. A domestic source of raw hemp materials would result in lower process for consumers, higher revenues for California businesses, California jobs and increased state revenues.
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> The benefits for farmers are not only financial, but also practical. Industrial hemp requires less water and agricultural chemicals than many other crops and has deep roots that leave the soil in excellent condition for the next crop. In addition, farming industrial hemp fiber can contribute significantly to reductions in atmospheric carbon. The benefits of opening up California farms to the industrial hemp industry are numerous.
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> California was actually ahead of the curve relating to industrial hemp when it enacted SB 566 (Leno - 2013) which established an industrial hemp farming program for fiber and oilseed production…
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> …SB 1409 brings California's hemp laws up to date by adding pilot program status to California Department of Food and Agriculture's registration program and striking legacy language left over from SB 566 that conflicts with the Prop 64 expanded definition of hemp that includes extracts and derivatives from the non-psychoactive flowers and leaves.
>
> SB 1409 provides vital cleanup legislation that will allow California farmers to enter the industrial hemp market and meet the growing demands of U.S. and California hemp product companies.

5. Argument in Opposition

The California Hemp Association writes:

> [The bill] seeks to add additional provisions to California's innovative industrial hemp regulations. The additional provisions sought do little to help California's farmers and have the potential to overwhelm the industry before it is even given the opportunity to proceed.
>
> The additional provisions seek to add prohibitive measures, which are likely to undermine the growth of industrial hemp in urban centers and may have a

negative impact on rural communities, which still associate industrial hemp cultivation with cannabis cultivation.

California's current regulations are unique in that they treat industrial hemp as an agricultural commodity in a fashion similar to everyday fruits and vegetables, with some additional oversight coming from county agricultural commissioners. California's current industrial hemp regulations are on the verge of unleashing an incredible economic boom for the State's agricultural community. The proposed changes put forth by SB 1409 will create a patchwork of rules and regulations, which will vary by city and county. If the same restrictions were being placed on tomatoes, the absurdity of such a bill would be noted immediately.

In fact, these are public safety concerns, and rightly so. Allowing for un-certified, or un-tested hemp seed, could easily introduce "hot" hemp, meaning hemp seed that has a THC content above the federal limit.

…Public safety is imperiled by having an uncontrolled market for the "foundation" seed we require for this new Ag Industry to grow and flourish in California…We believe a well thought out program of importation of "good" seed is preferred to the wild west type situation that id likely to occur as the bill is written currently….

The California Hemp Association does strongly oppose this bill in its current form. We do find there is consensus on aspects of this bill that can be developed into being a better bill for California farmers and stakeholders.

Industrial hemp has the potential to flourish under the State's current regulations and the proposed changes being advanced in SB 1409 will undermine this opportunity. This miracle plant has the potential to energize a green revolution and positively impact everything from community gardens in impoverished inner-city neighborhoods to increased prosperity and sustainable agriculture in rural communities. SB 1409 undermines all of this while doing little to advance public safety.

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