



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

**SB-1409 Industrial hemp.** (2017-2018)

SHARE THIS:  

Date Published: 10/01/2018 09:00 PM

**Senate Bill No. 1409**

**CHAPTER 986**

An act to amend Sections 81002, 81003, 81004, 81005, and 81006 of, and to add Sections 81007 and 81011 to, the Food and Agricultural Code, and to amend Section 11018.5 of the Health and Safety Code, relating to industrial hemp, and making an appropriation therefor.

[ Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1409, Wilk. Industrial hemp.

(1) Existing law governs the growth of industrial hemp and imposes specified procedures and requirements on a person who grows industrial hemp, not including an established agricultural research institution, as defined. Existing law defines "industrial hemp" to be the same as that term is defined in the California Uniform Controlled Substances Act, which defines that term as a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa* L. with a tetrahydrocannabinol (THC) content that does not exceed a specified THC limit, the plant's seeds or resin, and specified substances and mixtures of the plant or its seeds or resin. Existing law requires that industrial hemp only be grown if it is on the list of approved hemp seed cultivars, which includes industrial hemp seed cultivars certified on or before January 1, 2013, by specific organizations, except as specified. Existing law requires industrial hemp to be grown only as a densely planted fiber or oilseed crop, or both. Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), added by Proposition 64 at the November 8, 2016, statewide general election, requires this crop to be grown in minimum acreages of  $\frac{1}{10}$  of an acre, except as specified. Existing law prohibits the ornamental and clandestine cultivation of industrial hemp plants, and, except under specified circumstances, pruning and tending of individual industrial hemp plants and culling of industrial hemp. Existing law requires sampling and laboratory testing of industrial hemp, as provided, to determine compliance with THC limits and destruction of industrial hemp that exceeds those limits. Existing law establishes timeframes for sampling of industrial hemp and, if applicable, destruction of industrial hemp that exceeds THC limits.

Existing law requires a grower of industrial hemp for commercial purposes and a seed breeder, as defined, to register with the county agricultural commissioner and to pay a registration or renewal fee, as specified. Existing law exempts established agricultural institutions from these registration requirements. Existing law requires that registration fees be deposited into the Department of Food and Agriculture Fund and continuously appropriated for use in the administration and enforcement of these provisions. Existing law requires that an application for registration include information about 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, or, in the case of a seed breeder, for seed production. Under existing law, a registration issued pursuant to these provisions is valid for 2 years.

This bill would delete the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013, in order to be included on the list of approved hemp seed cultivars. The bill would authorize industrial hemp to be produced by clonal propagation, as provided, of industrial hemp that is on the list of approved seed cultivars. The bill would also delete the

prohibitions on ornamental cultivation of industrial hemp plants, pruning and tending of individual industrial hemp plants, and culling of industrial hemp. By removing limitations on the types of industrial hemp seed cultivars that may be cultivated, the means by which industrial hemp may be produced, and the purposes for which industrial hemp may be cultivated, with payment of a registration or renewal fee, the bill would establish new sources of revenue for a continuously appropriated fund, thereby making an appropriation. The bill would authorize a county agricultural commissioner or a county, as appropriate, to retain the amount of a registration or renewal fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee. The bill would also authorize the board of supervisors of a county to establish a registration or renewal fee to cover other costs of the county agricultural commissioner and the county of implementing, administering, and enforcing these provisions, as provided.

Under the bill, "industrial hemp" would no longer be defined in the California Uniform Controlled Substances Act as a fiber or oilseed crop. The bill would delete the requirement that industrial hemp be grown as a densely planted fiber or oilseed crop. By modifying the characterization of a crop for which AUMA sets a minimum acreage, the bill would amend AUMA. The bill would also delete the requirement that an application for registration include information about whether a seed cultivar is being grown for its grain or fiber, or as a dual purpose crop. However, the bill would require that an application include the seed cultivar's state or county of origin. Under the bill, a registration issued pursuant to these provisions would be valid for one year instead of 2 years. The bill would require a sample of industrial hemp collected for THC testing to be taken with the grower or seed breeder present, and would require the Department of Food and Agriculture to establish, by regulation, procedures for sampling of industrial hemp, as provided. The bill would require a laboratory test report on the sample to be issued by a department-approved laboratory, and would require the sample to be tested using a department-approved testing method. The bill would require THC content to be measured on a dry-weight basis for purposes of determining whether a sample exceeds THC limits. The bill would establish new timeframes for sampling of industrial hemp and, if applicable, destruction of industrial hemp that exceeds THC limits.

The bill would require established agricultural research institutions, before cultivating industrial hemp, to provide the Global Positioning System coordinates of the planned cultivation site to the county agricultural commissioner of the county in which the site is located.

(2) 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.

This bill would also authorize the Department of Food and Agriculture, 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.

(3) The Control, Regulate and Tax Adult Use of Marijuana Act, an initiative measure, authorizes the Legislature to amend the act to further the purposes and intent of the act with a  $\frac{2}{3}$  vote of the membership of both houses of the Legislature, except as provided.

This bill would declare that its provisions further specified purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

---

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 81002 of the Food and Agricultural Code is amended to read:

**81002.** (a) Except when grown by an established agricultural research institution or by a seed breeder developing a new California seed cultivar, industrial hemp shall only be grown if it is on the list of approved seed cultivars, or produced by clonal propagation of industrial hemp that is on the list of approved seed cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.

(b) The list of approved seed cultivars shall include all of the following:

(1) Industrial hemp seed cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies, including, but not limited to, the Canadian Seed Growers' Association.

(2) Industrial hemp seed cultivars that have been certified by the Organization of Economic Cooperation and Development.

(3) California varieties of industrial hemp seed cultivars that have been certified by a seed-certifying agency pursuant to Article 6.5 (commencing with Section 52401) of Chapter 2 of Division 18.

(c) (1) Upon recommendation by the board or the department, the secretary may update the list of approved seed cultivars by adding, amending, or removing seed cultivars.

(2) The adoption, amendment, or repeal of the list of approved seed cultivars, and the adoption of a methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed cultivars, pursuant to this section shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(3) The department, in consultation with the board, shall hold at least one public hearing with public comment to determine the methodology and procedure by which a seed cultivar is added, amended, or removed from the list of approved seed cultivars.

(4) The department shall finalize the methodology and procedure to add, amend, or remove a seed cultivar from the list of approved seed cultivars and send the methodology and procedure to the Office of Administrative Law. The Office of Administrative Law shall file the methodology and procedure promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The methodology and procedure shall do all of the following:

(A) Indicate that the methodology and procedure are adopted pursuant to this division.

(B) State that the methodology and procedure are being transmitted for filing.

(C) Request that the Office of Administrative Law publish a notice of the filing of the methodology and procedure and print an appropriate reference in Title 3 of the California Code of Regulations.

(d) The department, in consultation with the board, may determine the manner in which the public is given notice of the list of approved seed cultivars, and any addition, amendment, or removal from that list.

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

**81003.** (a) (1) Except for an established agricultural research institution, and before cultivation, a grower of industrial hemp for commercial purposes 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 his or her 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, 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) The commissioner shall transmit information collected under this section to the department.

**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, 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 he or she 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) The commissioner shall transmit information collected under this section to the department.

**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 for commercial purposes 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, and indicate the percentage content 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 content of THC that is equal to or less than three-tenths of 1 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 content of THC that is greater than three-tenths of 1 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 content of THC that is equal to or less than three-tenths of 1 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 content of THC that is greater than three-tenths of 1 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 content of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (7)

indicating a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent. If the percentage content of THC exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within 7 days, after receipt of the laboratory test report. If the percentage content of THC in the second laboratory test report exceeds three-tenths of 1 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 content of THC that is greater than three-tenths of 1 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 content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 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 the act that added this division, 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 81007 is added to the Food and Agricultural Code, to read:

**81007.** As part of the registration program established pursuant to this division, the department may establish and carry out, by regulation, an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) in accordance with the purposes of that section.

**SEC. 7.** Section 81011 is added to the Food and Agricultural Code, to read:

**81011.** Before cultivating industrial hemp, an established agricultural research institution shall provide the Global Positioning System coordinates of the planned cultivation site to the commissioner of the county in which the site is located.

**SEC. 8.** Section 11018.5 of the Health and Safety Code is amended to read:

**11018.5.** (a) "Industrial hemp" means a crop 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.

(b) Industrial hemp shall not be subject to the provisions of this division or of Division 10 (commencing with Section 26000) of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 (commencing with Section 81000) of the Food and Agricultural Code, inclusive.

**SEC. 9.** The Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act, for the following reason:

By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research.