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SB-292 Industrial hemp. (2021-2022)

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Senate Bill No. 292

CHAPTER 485

An act to amend Sections 81000, 81001, 81002, 81003, 81004, 81004.5, 81006, 81008, and 81012 of, to amend and repeal Sections 81007 and 81011 of, and to add Section 81004.6 to, the Food and Agricultural Code, relating to industrial hemp.

[Approved by Governor October 04, 2021. Filed with Secretary of State October 04, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 292, Wilk. Industrial hemp.

(1) Existing law governs the cultivation of industrial hemp in this state and establishes a registration program administered by county agricultural commissioners and the Department of Food and Agriculture for growers of industrial hemp, hemp breeders, and established agricultural research institutions, as defined. Existing law requires specified registrants that grow industrial hemp, before the harvest of each crop, to obtain a laboratory test report indicating the THC (delta-9 tetrahydrocannabinol) levels of a random sampling of the industrial hemp, and requires that sampling to occur no more than 30 days before harvest. Existing law requires a registrant that grows industrial hemp to destroy the industrial hemp grown upon receipt of a laboratory test report indicating a percentage concentration of THC that exceeds a specified level. Unless otherwise provided, a violation of these provisions is a crime.

This bill would instead require the sampling to occur within a timeframe determined by the department. The bill would require a registrant to destroy or dispose of the industrial hemp grown upon receipt of a laboratory test result described above. The bill would require that laboratory test reports of hemp include the measurement of uncertainty, as defined, associated with the test results. The bill would also require laboratories to use appropriate, validated methods and procedures for all testing activities, including when estimating the measurement of uncertainty. By adding new requirements for hemp testing, the violation of which could be a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the registration application for an established agricultural research institution and hemp breeder to include, among other things, a plan for testing all of the plants cultivated. Existing law requires the registration application for a grower of industrial hemp to include, among other things, the approved cultivar to be grown, including the state or county of origin.

This bill would require the testing plan of an established agricultural research institution and hemp breeder to provide for testing of a representative sample, instead of all, of the plants cultivated. The bill would require a grower of industrial hemp to include the country of origin, instead of the county of origin, of the approved cultivar in the registration application.

(3) Existing law creates the Industrial Hemp Advisory Board, consisting of 13 members appointed by the Secretary of Food and Agriculture, to advise the secretary and make recommendations on all matters pertaining to industrial hemp. Under existing law,

the membership of the board includes, among other members, 5 members who are registered growers of industrial hemp and one member who is a representative of the Hemp Industries Association or its successor industry association.

This bill would change the membership of the board by increasing the number of members who are registered growers of industrial hemp to 6 and eliminating the member who is a representative of the Hemp Industries Association from the board.

(4) Existing law requires the Department of Food and Agriculture to submit specified registration information to the United States Department of Agriculture.

This bill would instead require the department to submit information relating to registrations described in a specified federal regulation to the United States Department of Agriculture.

The bill would require each registered established agricultural research institution, registered grower of industrial hemp, and registered hemp breeder to report to the Farm Service Agency of the United States Department of Agriculture specified information regarding its hemp production in the state, including the location, acreage, and license or registration number associated with each location in the state where hemp will be produced. By imposing new reporting requirements, the violation of which could be a crime, this bill would impose a state-mandated local program.

(5) 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 desiring to have primary regulatory authority over the production of industrial hemp in the state to submit to the United States Secretary of Agriculture, through the state department of agriculture, a plan, with specified contents, under which the state monitors and regulates hemp production.

Existing state law authorizes the Department of Food and Agriculture to establish and carry out an agricultural pilot program in accordance with the above-described provision of the federal Agricultural Act of 2014. Before cultivating industrial hemp, existing state law requires an established agricultural research institution 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.

This bill would make both of these provisions of state law inoperative on the date on which a state plan for California is approved by the United States Secretary of Agriculture, and would repeal these provisions on January 1 of the following year.

(6) Existing law establishes certain enforcement procedures with respect to industrial hemp that become operative as of the effective date that a state plan to regulate the production of industrial hemp is approved pursuant to the federal Agricultural Marketing Act of 1946, as amended by the federal Agriculture Improvement Act of 2018. Under existing law, these procedures require the enforcement of the approved state plan to comply with specified provisions of that federal law. In accordance with that federal law, these procedures require a grower of industrial hemp, established agricultural research institution, or hemp breeder that the Secretary of Food and Agriculture determines has violated the approved state plan to be subject to certain consequences depending on whether the violation is negligent or whether the violation is committed intentionally or with recklessness or gross negligence.

This bill would revise these enforcement procedures to conform to the requirements for a state plan under that federal law by specifying that a grower of industrial hemp, established agricultural research institution, or hemp breeder, as a result of a negligent violation, is not subject to any criminal enforcement action by the state or a local government.

(7) This bill would make other related changes to provisions governing the cultivation of industrial hemp.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 81000 of the Food and Agricultural Code, as amended by Section 2 of Chapter 838 of the Statutes of 2019, is amended to read:

81000. Definitions.

(a) For purposes of this division, the following terms have the following meanings:

(1) "Approved state plan" means a state plan for California 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.

(2) "Board" means the Industrial Hemp Advisory Board.

(3) "Cultivar" means a variety of industrial hemp.

(4) "Disposal" has the same meaning as defined in Section 990.1 of Title 7 of the Code of Federal Regulations.

(5) "Established agricultural research institution" means an institution that is either of the following:

(A) 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.

(B) 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.

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

(7) "Industrial hemp" or "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.

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

(9) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(10) "Premises" has the same meaning as defined in subdivision (ap) of Section 26001 of the Business and Professions Code.

(11) "THC" means delta-9 tetrahydrocannabinol.

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

(b) This section shall remain operative only until the date on which a state plan for California 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 as of January 1 of the following year is repealed.

SEC. 2. Section 81000 of the Food and Agricultural Code, as added by Section 3 of Chapter 838 of the Statutes of 2019, is amended to read:

81000. Definitions.

(a) For purposes of this division, the following terms have the following meanings:

(1) "Approved state plan" means a state plan for California 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.

(2) "Board" means the Industrial Hemp Advisory Board.

(3) "Cultivar" means a variety of industrial hemp.

(4) "Disposal" has the same meaning as defined in Section 990.1 of Title 7 of the Code of Federal Regulations.

(5) "Established agricultural research institution" means 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 agricultural or academic research.

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

(7) "Industrial hemp" or "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.

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

(9) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(10) "Premises" has the same meaning as defined in subdivision (ap) of Section 26001 of the Business and Professions Code.

(11) "Research plan" means a strategy devised by an established agricultural research institution, or applicant established agricultural research institution, detailing its planned approach to growing or cultivating hemp for academic or agricultural research.

(12) "THC" means delta-9 tetrahydrocannabinol.

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

(b) This section shall become operative as of the date on which a state plan for California 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)).

SEC. 3. Section 81001 of the Food and Agricultural Code is amended to read:

81001. (a) There is in the department an Industrial Hemp Advisory Board. The board shall consist of 13 members, appointed by the secretary as follows:

(1) Six of the board members shall be growers of industrial hemp that are registered pursuant to the provisions of this division.

(2) Two of the board members shall be members of an established agricultural research institution.

(3) One member of the board shall be a representative as provided by the California State Sheriffs' Association and approved by the secretary.

(4) One member of the board shall be a county agricultural commissioner.

(5) Two members of the board shall be representatives of businesses that sell industrial hemp products.

(6) One member of the board shall be a member of the public.

(b) It is hereby declared, as a matter of legislative determination, that growers and representatives of industrial hemp product manufacturers and businesses appointed to the board pursuant to this division are intended to represent and further the interest of a particular agricultural industry, and that the representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that persons who are appointed to the board shall be subject to the conflict-of-interest provisions described in Sections 87100 and 87103 of the Government Code.

(c) The term of office for a member of the board is three years. If a vacancy exists, the secretary shall, consistent with the membership requirements described in subdivision (a), appoint a replacement member to the board for the duration of the term.

(d) A member of the board shall not receive a salary but may be reimbursed by the department for attendance at meetings and other board activities authorized by the board and approved by the secretary.

(e) The board shall advise the secretary and may make recommendations on all matters pertaining to this division, including, but not limited to, industrial hemp seed law and regulations, enforcement, annual budgets required to accomplish the purposes of this division, and the setting of an appropriate assessment rate necessary for the administration of this division.

(f) The board shall annually elect a chair from its membership and, from time to time, other officers as it deems necessary.

(g) The board shall meet at the call of its chair or the secretary, or at the request of any four members of the board. The board shall meet at least once a year to review budget proposals and fiscal matters related to the proposals.

SEC. 4. Section 81002 of the Food and Agricultural Code is amended to read:

81002. (a) Except when grown by a registered established agricultural research institution or by a registered hemp breeder developing a new cultivar, industrial hemp shall be grown only if it is on the list of approved cultivars, or produced by clonal propagation of industrial hemp that is on the list of approved cultivars.

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

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

(3) California varieties of industrial hemp 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 cultivars by adding, amending, or removing cultivars.

(2) The adoption, amendment, or repeal of the list of approved cultivars, and the adoption of a methodology and procedure to add, amend, or remove a cultivar from the list of approved 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 cultivar is added, amended, or removed from the list of approved cultivars.

(4) The department shall finalize the methodology and procedure to add, amend, or remove a cultivar from the list of approved 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 cultivars, and any addition, amendment, or removal from that list.

SEC. 5. Section 81003 of the Food and Agricultural Code is amended to read:

81003. (a) (1) Except for an established agricultural research institution subject to Section 81004.5 or a hemp 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 cultivar to be grown, including the state or country of origin.

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

(4) 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, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts industrial hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal

description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate industrial hemp on the changed or altered land area.

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

(e) (1) The commissioner shall transmit information collected under this section to the department no more than 10 business days after the date on which it is collected or the date of a change in registration status occurred.

(2) The department shall submit the information described in paragraph (a) of Section 990.70 of Title 7 of the Code of Federal Regulations to the United States Department of Agriculture no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred.

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

SEC. 6. Section 81004 of the Food and Agricultural Code is amended to read:

81004. (a) (1) Except when grown by an established agricultural research institution subject to Section 81004.5, and before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp 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) A variety development plan, which shall include all of the following:

(i) If a new cultivar is to be certified by a seed-certifying agency, the name of the seed-certifying agency that will be conducting the certification.

(ii) The industrial hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar.

(iii) A plan for testing a representative sample of the plants grown.

(iv) The measures that will be taken to destroy or dispose of any plants with THC concentrations that test above 0.3 percent.

(v) The measures that will be taken to prevent the unlawful use of industrial hemp under this division.

(vi) A procedure for the maintenance of records documenting the development of the new cultivar.

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

(4) 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, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a hemp breeder registration to the applicant.

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

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

(e) A registrant developing a new cultivar who wishes to change any provision of the variety development plan shall submit to the commissioner the revised variety development plan. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that the registrant may cultivate under the revised variety development plan.

(f) All records pertaining to the variety development plan shall be kept and maintained by the hemp 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 no more than 10 business days after the date on which it is collected or the date of a change in registration status occurred.

(2) The department shall submit the information described in paragraph (a) of Section 990.70 of Title 7 of the Code of Federal Regulations to the United States Department of Agriculture no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred.

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

SEC. 7. Section 81004.5 of the Food and Agricultural Code is amended to read:

81004.5. (a) (1) Before cultivating hemp for agricultural or academic research, an established agricultural research institution shall register with the commissioner of the county in which it intends to cultivate.

(2) The registration 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 geographic area where the applicant plans to engage in hemp cultivation or storage, or both.

(C) A research plan that shall include all of the following:

(i) The hemp varieties that will be used and, if applicable, how those varieties will be used for purposes of agricultural or academic research.

(ii) A plan for testing a representative sample of the plants cultivated.

(iii) The measures that will be taken to destroy or dispose of any plants with THC concentrations that test above 0.3 percent.

(iv) A procedure for the maintenance of records documenting the agricultural or academic research.

(3) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration if it will continue cultivating hemp beyond that term.

(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 hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue an established agricultural research institution registration to the applicant.

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

(d) A registrant conducting agricultural or academic research who wishes to change any provision of the research plan shall submit to the commissioner a revised research plan. Once the commissioner has received the revised research plan, and the commissioner determines that the requirements of this division are met, the commissioner shall notify the registrant that it may cultivate under the revised research plan.

(e) All records pertaining to the research plan shall be kept and maintained by the established agricultural research institution and be available upon request by the commissioner or a law enforcement agency.

(f) (1) The commissioner shall transmit information collected under this section to the department no more than 10 business days after the date on which it is collected or the date of a change in registration status occurred.

(2) The department shall submit the information described in paragraph (a) of Section 990.70 of Title 7 of the Code of Federal Regulations to the United States Department of Agriculture no more than 30 business days after the date on which it is collected or the date of a change in registration status occurred.

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

(h) This section shall become operative as of the date on which a state plan for California 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)).

SEC. 8. Section 81004.6 is added to the Food and Agricultural Code, to read:

81004.6. Each registered established agricultural research institution, registered grower of industrial hemp, and registered hemp breeder shall report on its hemp production in the state and any changes to the location where it will produce hemp to the Farm Service Agency of the United States Department of Agriculture and shall provide, at minimum, all of the following information:

(a) Street address and, to the extent practicable, geospatial location of the lot, parcel, greenhouse, building, or site of all locations in the state where hemp will be produced.

(b) The acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp, for each location in the state where hemp will be produced.

(c) The license or registration number associated with each location in the state where hemp will be produced.

SEC. 9. Section 81006 of the Food and Agricultural Code, as amended by Section 101 of Chapter 70 of the Statutes of 2021, is amended to read:

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

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

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

(c) Industrial hemp shall not be cultivated on a premises licensed by the Department of Cannabis Control to cultivate or process cannabis. Industrial hemp, regardless of its THC content, that is cultivated on a premises licensed by the Department of Cannabis Control for cannabis cultivation shall be considered cannabis as defined in Section 26001 of the Business and Professions Code and subject to licensing and regulatory requirements for cannabis pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(d) 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.

(e) (1) Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, 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 within the timeframe established by the department.

(3) The sample collected for THC testing shall be taken with the grower or hemp 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 compositing 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 registrant's proof of registration.

(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. The laboratory test report shall also include an estimate of the measurement of uncertainty associated with the test results. A laboratory shall use appropriate, validated methods and procedures for all testing activities and estimates of the measurement of uncertainty.

(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 or dispose of 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 or disposal 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 or disposal 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) A registered established agricultural research institution or a registered hemp breeder shall obtain laboratory results in accordance with its approved research plan or variety development plan. The secretary may authorize a registered established agricultural research institution or hemp breeder 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 in accordance with its approved research plan or variety development plan 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) 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.

SEC. 10. Section 81007 of the Food and Agricultural Code is amended to read:

81007. (a) 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.

(b) This section shall remain operative only until the date on which a state plan for California 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 as of January 1 of the following year is repealed.

SEC. 11. Section 81008 of the Food and Agricultural Code is amended to read:

81008. Attorney General Reports; Requirements.

(a) Not later than January 1, 2019, the Attorney General shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the reported incidents, if any, of the following:

(1) A field of industrial hemp being used to disguise marijuana cultivation.

(2) Claims in a court hearing by persons other than those exempted in paragraph (1) of subdivision (e) of Section 81006 that marijuana is industrial hemp.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023, or four years after the date that the report is due, whichever is later.

SEC. 12. Section 81011 of the Food and Agricultural Code is amended to read:

81011. (a) 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.

(b) This section shall remain operative only until the date on which a state plan for California 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 as of January 1 of the following year is repealed.

SEC. 13. Section 81012 of the Food and Agricultural Code is amended to read:

81012. (a) Enforcement of the approved state plan shall comply with subsection (e) of 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)).

(b) A grower of industrial hemp, established agricultural research institution, or hemp 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 consequences under state laws for a violation of this division shall be as follows:

(A) If the violation is not a repeat violation subject to subparagraph (B), the grower of industrial hemp, established agricultural research institution, or hemp 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, established agricultural research institution, or hemp breeder shall correct the negligent violation.

(ii) A requirement that the grower of industrial hemp, established agricultural research institution, or hemp breeder shall periodically report to the secretary, for a period of at least the next two calendar years, on its compliance with this division or the approved state plan.

(B) A grower of industrial hemp, established agricultural research institution, or hemp breeder that commits a negligent violation three times in a five-year period shall be ineligible to participate in the industrial hemp program for a period of five years beginning on the date of the finding of the third violation.

(C) A grower of industrial hemp, established research institution, or hemp breeder shall not, as a result of a negligent violation, be subject to any criminal enforcement action by the state or a local government.

(2) For a violation committed intentionally, or with recklessness or gross negligence, the secretary shall immediately report the grower of industrial hemp, established agricultural research institution, or hemp breeder to the Attorney General of the United States and the Attorney General of this state, as applicable.

(c) This section shall become operative as of the date on which a state plan for California 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)).

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only 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.