SB 676 (Leno)

As amended 4-28-11

The California Industrial Hemp Farming Act

FACT SHEET

PURPOSE

SB 676 clarifies that California state law allows the agricultural production of industrial hemp.

California farmers would be permitted to grow industrial hemp for sale of seed, oil and fiber to manufacturers.

SUMMARY

SB 676 clarifies that California law permits the cultivation of industrial hemp, a variety of Cannabis that has no psychoactive qualities because it contains less than three-tenths of one percent tetrahydrocannabinol (THC). Marijuana usually ranges from 3 to 15 percent THC.

Industrial hemp cultivation would be limited to pilot programs in five counties: Imperial, Kern, Kings, San Joaquin and Yolo. After eight years, the bill sunsets unless further action is taken by the Legislature. The Attorney General is required to report law enforcement impacts to the Legislature after six years and the Hemp Industries Association must report to the Legislature the economic impacts also after six years.

Current state and federal law exempt industrial hemp stalk, fiber, oil, and non-viable seed from the definition of marijuana, and these products are legally imported into the United States for commercial use.

This bill moves the exemption for legal industrial hemp products into a new subdivision of law defining industrial hemp and expressly permits its cultivation under restricted circumstances.

LAW ENFORCEMENT PROVISIONS

The growing of industrial hemp would only be permitted in acreages larger than five acres or in a research setting. Any other cultivation remains illegal and shall be treated as marijuana. Any clandestine grove of cannabis would be considered illegal marijuana regardless of THC content.

Prior to harvest, farmers would be required to obtain a laboratory test report from a federal Drug Enforcement Agency (DEA) registered laboratory documenting the THC content of their crop. Farmers must destroy industrial hemp crop that fail the THC test.

Farmers must retain original copies of the THC test report for two years from its date of sampling, make an original signed copy available to law enforcement officials upon request, and are required to provide an original copy to each person purchasing, transporting, or otherwise obtaining the fiber, oil, cake, or seed of the plant.

Farmers must also post signs surrounding the field of cultivation to indicate the crop grown is industrial hemp.

Although they contain no psychoactive properties and have no legal commercial application, all industrial hemp resin, flowering tops and leaves that are removed from the field of cultivation are still defined as marijuana in the bill. This ensures that, in the event of a drug bust, law enforcement does not need to question if cannabis leaves or resin are hemp or marijuana.

The bright-line definitions and requirements in SB 676 ensure that marijuana eradication and enforcement will not be impacted by the cultivation of industrial hemp in California.

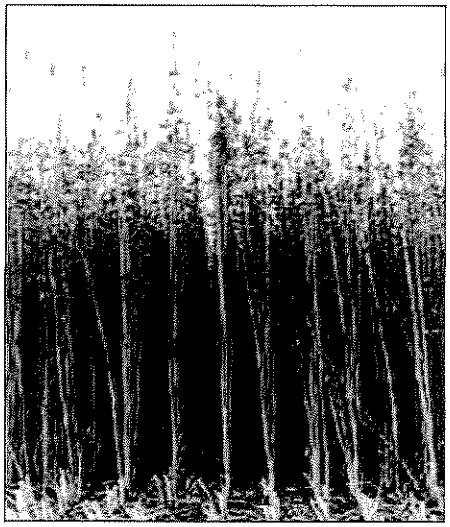
COMMENTS

HEMP IS NOT MARIJUANA

Industrial hemp is a crop that is grown and processed throughout the world for paper, clothing, canvas, rope, food products and many other commercial uses. It has no psychoactive properties in any part of the plant, is cultivated as an agricultural field crop, and grows as a stalk to a height of 12 to 16 feet.

Although both are the same species, *cannabis sativa*, industrial hemp and marijuana are grown differently and have a different appearance. Marijuana is a tropical variety of cannabis that grows to a height of six feet and is carefully tended as a horticultural plant. It has been cultivated to grow as a bush with many branches and leaves to maximize the number of flowers where THC potency is the strongest.

Hemp has an appearance similar to bamboo with few branches and leaves. Unlike marijuana, hemp leaves tend to cluster at the crown of the plant. The most important distinction is that hemp has less than three tenths of one percent THC while marijuana contains five to 25 percent THC.



Industrial hemp stalks grow similar to bamboo.

THOUSANDS OF PRODUCTS CAN BE MADE FROM HEMP

Hemp seed, seed oil and fiber have countless uses in consumer products such as food items, building materials, paper, clothing, and body care products.

Hemp seed oil is an excellent replacement for unhealthy fats in foods due to its excellent balance of the essential fatty acids linoleic acid (omega-6) and alpha-linolenic acid (omega-3). Consuming the right balance of essential fatty acids found in hemp seed oil offers significant health benefits, including an improved HDL/LDL cholesterol ratio, reducing the symptoms of dermatitis, of rheumatoid arthritis and other inflammatory diseases, as well as improving and optimizing development in

infants. Because of its great health benefits, hemp is commonly found in foods such as bread, energy bars, waffles, granola, coffee, beer, veggie burgers, pretzels, salad dressings, milk and many other products.

Hemp is also a great moisturizer and is found in body care products such as lotions, lip balms, conditioners, shampoos, and soaps.

Hemp fibers are some of the strongest natural fibers and can be used for building materials including reinforcement fiber in "biocomposites," or the press-molded parts used in doors car panels, that are used as replacements for fiberglass or more expensive plastics.

Brochure on the benefits of industrial hemp:
http://www.thehia.org/PDF/hemp_is_hip_utne.pdf

INDUSTRIAL HEMP IN CALIFORNIA

Hemp is already a market commodity. According to estimates by the Hemp Industries Association, the annual United States retail market for hemp products has grown steadily since 1990 to approximately $400 million in 2009, increasing at a rate of about $26 million annually.

The hemp products industry is particularly strong in the Golden State, where over 50 percent of U.S. sales of hemp food and personal care products are earned by California companies. Dr. Bronner's Magic Soaps, for instance, is a California business based in Escondido that is the number one producer of natural soap in the world, project selling about $42 million worth of soap for 2011.

More on Dr. Bronner's hemp products:
http://www.drbronner.com *

Dr. Bronner's is just one of the many California businesses that could support local farmers in growing hemp with the passage of this bill by purchasing from Californian rather than Canadian farmers.

Consumers are benefiting from healthy industrial hemp products and manufacturers are enjoying a rapidly growing market. The only ones not benefiting from industrial hemp are California farmers.

The Canadian industrial hemp crop is limited by a short growing season, dependency on rainfall, and cooler temperatures. California's warm climate and use of irrigation would enable hemp farmers to achieve significantly higher seed and fiber yields than in Canada.

Good for Agriculture & Good for the Environment

In addition to economic benefits, hemp has strong agricultural benefits as well. It requires little or no pesticides and herbicides and improves soil conditions making it an excellent rotational crop of particular interest to organic farmers.

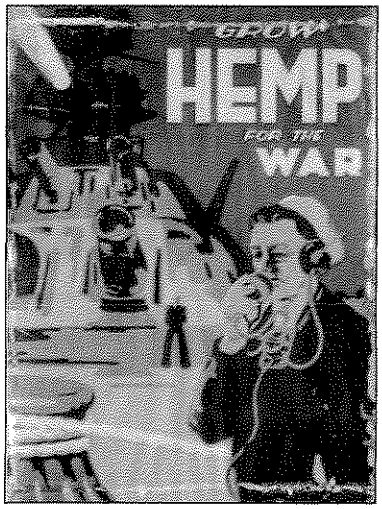
Hemp's dense growth smothers out competing plants and delivers a field ready for the next rotation that is virtually free of weeds. This is particularly helpful in rotation with weeding-intensive crops like strawberries. The positive role hemp plays in sustainable crop rotations reduces chemical use and saves farmers money. Industrial hemp has many environmental benefits.

Hemp is a source for paper, building insulation, and fiber board. As our demand for wood products grows we could save our trees for higher-end uses such as lumber, and supplement paper and fiber board production with hemp. An acre of hemp produces two to four times more fiber than an acre of timber and it grows from seeding to maturity in just 90 days. Hemp also can be used as a raw material for ethanol fuel

and is particularly promising for emerging cellulostic ethanol technologies due to its rapid growth.

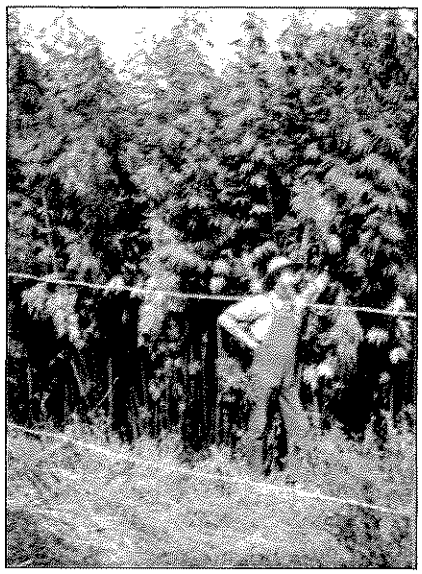
HEMP NOT NEW TO THE UNITED STATES OR CALIFORNIA

Industrial hemp has a long history of commercial use and cultivation in California and the United States. In colonial Virginia and Connecticut the cultivation of hemp was mandatory for farmers. Both Thomas Jefferson and George Washington grew hemp on their plantations. As recently as World War II the U.S. government encouraged farmers to grow hemp in the "Hemp for Victory" campaign to supply cordage for the war effort.



World War II era U.S. government poster

Between 1900 and 1920, hemp was grown as a commercial crop in California in Butte County, the lower Sacramento Valley, Solano County, and Lerdo near Bakersfield.



The 1903 USDA Yearbook shows industrial hemp grown in Gridley, CA that was well over 10 feet tall.

HEMP AND THE FEDERAL GOVERNMENT

In 1937, the U.S. Congress passed the Marijuana Tax Act to tax the sale of any___-cannabis including hemp; however, the act never, nor was it the intent of the measure, prohibited the cultivation of hemp and the federal government distinguished hemp from marijuana at several instances. During World War II, the USDA produced a promotional film, "Hemp for Victory," to encourage American farmers to grow hemp and support the war effort. The crop continued to be grown in the United States until the mid-1950s when soft markets and increasing government harassment made other crops more desirable.

Today, the 1970 Controlled Substances Act is the federal statute that regulates industrial hemp. While the act classifies marijuana as a psychoactive drug, the sterilized hemp seed, seed oil and fiber have been clearly exempted from regulations and are considered a non-psychoactive crop. The U.S. Congress has never voted to make the cultivation of industrial hemp illegal.

CONTROLLED SUBSTANCE?

The federal Drug Enforcement Administration (DEA) tried to classify industrial hemp as a controlled substance by regulation. In 2004, however, the Ninth Circuit Court of Appeals ruled that the DEA did not have the authority to regulate hemp under the 1970 Controlled Substances Act since hemp seed, fiber, and oil are excluded. The DEA dropped its appeal of that decision and the 9th Circuit Court ruling now stands as U.S. law on the issue.

United States Court of Appeals Ninth Circuit Ruling in *Hemp Industries v DEA*:
http://www.ca9.uscourts.gov/ca9/newopinions.nsf/90DC066FE8E8955688256E31007ACE3B/$file/0371366.pdf?openelement

NO CONFLICT WITH FEDERAL LAW

Under SB 676 only the excluded, non-federally-regulated parts of the plant would enter commerce of any kind, whether in-state or interstate, except for an in-state market for viable hemp planting seed for which there is no national market. For that reason, the U.S. Supreme Court's medical marijuana decision in *Gonzales v. Raich*, 545 U.S. 1 (2005) does not in any way suggest a pre-emption problem with SB 676.

In *Raich* the Court reasoned that the interstate market for marijuana would exert a "pull" on in-state medical marijuana because the commodities were fungible. However, this reasoning cannot be applied to the cultivation of industrial hemp authorized by SB 676 because:

1. Only non-regulated parts of the plant would enter interstate commerce, and
2. No part of the non-psychoactive industrial hemp plant, including the flowers and seeds, is fungible in the interstate market for psychoactive marijuana.

Because industrial hemp cannot get you high, there is no interstate "pull" that could divert non-psychoactive industrial hemp plants, flowers, or seeds as they are useless in the illegal interstate market for marijuana.

HEMP CANNOT BE USED TO DISGUISE MARIJUANA

Hemp cannot be used to disguise marijuana for many reasons. Hemp grows densely and the shade works effectively as a smother crop not only for weeds, but marijuana, which needs lots of sunlight. Marijuana plants grow, flower and mature later than hemp and would be overtaken and shaded out if planted in a field of hemp.

Cross pollination by industrial hemp pollen would result in seed production in the marijuana flowers. This makes them not sellable as an illegal drug. The flowering tops are the harvested part of the marijuana plant and flowering is reduced once the plant has been pollinated.

To avoid seeding, reduced flowering, and less THC production, illegal marijuana growers destroy male plants before they can pollinate the females and render their product less desirable. Blowing hemp pollen would result in particularly heavy seed production in a marijuana grove. Finally, if marijuana plants have been cross-pollinated by hemp, the resulting seeds would produce, in the next generation, plants of uncertain and generally lower THC drug potency.

Thus, there is no logical reason for growing hemp alongside marijuana. The pollination of marijuana plants by male hemp plants reduces the amount of flowers, the amount of THC containing resin produced per flower, and results in the production of undesirable seeds - all of which impairs the commercial value of a marijuana plant.

The last thing a clandestine marijuana grower wants is a field of industrial hemp

shading out and smothering marijuana plants, blowing pollen that will produce seeds in marijuana flowers, and reducing the potency of their next crop.

MOVEMENT TO BRING BACK INDUSTRIAL HEMP FARMING

Industrial Hemp is currently legal to grow in more than 30 countries including Canada, Germany, England, France, Spain, Australia, New Zealand, the Russian Federation, China, Hungary and Romania.

California is one of fifteen states (the others are Arkansas, Hawaii, Illinois, Kentucky, Maine, Maryland, Minnesota, Montana, New Mexico, North Dakota, North Carolina, Vermont, Virginia, and West Virginia) that have passed pro-hemp laws or resolutions. An additional thirteen states have considered pro-hemp legislation or resolutions.

INDUSTRIAL HEMP PRODUCTION MAKES SENSE FOR CALIFORNIA

Among the more than 300 member companies of the Hemp Industries Association, 46 of them are based right here in California. These companies are importing or buying a Canadian product that can be easily grown in California. Nutiva, an organic food company based in Sebastopol, CA believes they can save more than $100,000 per year in transportation costs if they could buy hemp seeds from California farmers.

More on The Hemp Industries Association:
http://www.thehia.org

More on Nutiva's hemp products:
http://www.nutiva.com *

With so many hemp product manufacturers based in California and with a large number of acres planted in crops that could benefit in rotation with hemp, this region is particularly well-suited industrial hemp cultivation. The California Industrial Hemp Farming Act makes sense for California farmers, businesses, and consumers.

*** Links to commercial websites are intended for demonstration purposes and do not constitute an official endorsement of companies or their products.**

STATUS

Assembly – Pending Referral

SUPPORT

Hemp Industries Association (co-sponsor)
Vote Hemp (co-sponsor)
American Hemp Inc.
Asher Hemp Gelato
Azida, Inc.
Business Alliance for Commerce in Hemp
California Conference of Machinists
California Certified Organic Farmers
California State Grange
California Teamsters Public Affairs Council
Calyx Clotying
Colorgranics Inc.
Dash Hemp Santa Cruz
Dr. Bronner's Magic Soaps
Drug Policy Alliance
Green Field Paper Company
Hemp.com
Hemp House
Hemp Shield
Hemp Technologies
Hemp Traders
High Grade Distribution
Instituto Laboral De La Raza
Jugmaven Ltd.
Living Harvest Foods
Nutiva
Santa Barbara Hemp
Santori Movement, Inc.
Skin & Coat Supplement
UFCW– Local 5
UFCW – Western States Conference
35 Individuals

Contact: Christine Hironaka 916-651-4003
Version: June 2, 2011

SB 676 (Leno)
California Industrial Hemp Farming Act
Questions and Answers

Table of Contents:

1. Who will be able to grow industrial hemp?

Industrial hemp cultivation would be limited to pilot programs in five counties: Imperial, Kern, Kings, San Joaquin and Yolo. Within the pilot program, the bill only permits the cultivation of industrial hemp when grown as an agricultural field crop on a minimum of five acres or by an established agricultural research institution. Any other cultivation remains illegal and shall be treated as marijuana. Any ornamental cultivation or any clandestine groves of hemp is strictly prohibited and would be considered marijuana regardless of the THC content.

2. How does SB 676 ensure that farmers are not growing marijuana?

The bill requires farmers, prior to harvest, to obtain a laboratory test report from a federal DEA registered laboratory documenting the THC content of their crop does not exceed the 0.3% maximum standard. Farmers must destroy crops that fail the THC test.

SB 676 further requires farmers to retain an original copy of the THC test report for two years from its date of sampling, make it available to law enforcement officials upon request, and are required to provide an original signed copy to each person purchasing, transporting, or otherwise obtaining from the farmer the fiber, oil, cake, or seed of the plant.

In short, if you fail the THC test, you cannot sell your product and it must be destroyed as any industrial hemp over 0.3% THC will be considered marijuana under the law.

3. Could an industrial hemp field be used to disguise marijuana?

No. There is no logical reason for growing marijuana alongside hemp. The cross-pollination of marijuana plants by male hemp plants reduces the amount of flowers, reduces the amount of THC-containing resin produced per flower, and

results in the production of undesirable seeds - all of which greatly impairs the commercial value of a marijuana plant.

The last thing a clandestine marijuana grower wants is a field of industrial hemp shading out and smothering marijuana plants, blowing pollen that will produce seeds in marijuana flowers, and reducing the potency of their next crop. It is important to note that in Canada and the European Union, where industrial hemp has been grown for years and where there is no shortage of clandestine marijuana growers; marijuana has not been found growing in fields of industrial hemp.

4. How can you tell the difference between industrial hemp and marijuana?
Aside from the differing levels in THC, industrial hemp and marijuana are physically distinct. The industrial hemp plant is a stalk similar to bamboo, has few branches, has been bred for maximum production of seed, and grows to a height up to16 feet. Marijuana is a tropical variety of cannabis that grows to a height of only 6 feet tall and has been bred to have many branches to maximize flowering and minimize seeding. Marijuana is planted with several feet between each plant to ensure branching and flowering, while industrial hemp is planted inches apart with 100-300 plants per square yard.

In addition to plant structure, height, and method of planting, the tending of individual cannabis plants indicates to law enforcement that it is marijuana and not industrial hemp. Signs of tending individual plants include, but are not limited to, pathways or rows within the field to provide access to each plant, the pruning of individual plants, or the culling of male plants from the field.

These plants have a very different appearance and their method of planting is very different. However, if a law enforcement officer has concerns, they may require the farmer to show the DEA registered lab's original THC content report for either his crop (if it just prior to harvest) or the source crop from which the planted seed was derived.

5. Will people steal hemp in mistaken belief they are obtaining marijuana and thereby creating property crime?
Agricultural theft occurs with many crops from apples to corn to strawberries. To prevent any potential theft, an industrial hemp farmer need only post signs indicating that the crop is industrial hemp. SB 676 requires that farmers post signage indicating that they are growing industrial hemp. Similar signage provisions in Canada have been effective in preventing industrial hemp crop thefts.

6. Will this bill require law enforcement to test every marijuana seizure for THC content?

No. SB 676 has been carefully drafted to prevent spurious claims that marijuana is industrial hemp. The psychoactive part of the marijuana plant is the flowering tops. All flowering tops of the cannabis sativa species (including both hemp and marijuana) that are located outside a research setting or not in a field of industrial hemp are still considered marijuana under the terms of SB 676. The flowering tops of industrial hemp have no legal commercial application and farmers will simply harvest their crop with a combine, leaving the flowering tops shredded in the field.

Anyone transporting legal industrial hemp product sold to them by a farmer, including hemp fiber, oil, cake or seeds is required to have a laboratory test report documenting that these items have "PASSED AS CALIFORNIA INDUSTRIAL HEMP." Therefore, if a seizure involves the flowering tops found outside the field of cultivation, then under the law it is considered marijuana and no test by law enforcement is necessary. If the material in question is fiber, oil, or seeds a DEA registered laboratory's test report must accompany the shipment.

The bright-line definitions and requirements in SB 676 ensure that marijuana eradication and enforcement will not be impacted by the cultivation of industrial hemp in California.

7. Is this a step toward marijuana legalization?

No. This bill is about applying common sense to our marijuana enforcement efforts. Why should California businesses pay a premium to import hemp fiber, seed, and oil if our own farmers can grow it? Denying farmers the ability to grow a profitable and legal commodity does nothing to reduce marijuana cultivation or use. As mentioned previously, marijuana growers do not want hemp because it reduces the THC levels in their crop.

In the UK, France, Germany, Australia, and Canada where industrial hemp farming is flourishing, marijuana has not been legalized and marijuana has not been found growing in hemp fields. Once again, this is a common sense step for California farmers.

8. What happens if a farmer's crop tests slightly above the strict 0.3% THC requirement?

If the laboratory test report indicates a percentage content of THC that is greater than 0.3%, but does not exceed 1%, the farmer can test a second time to ensure the results were accurate.

If a first test exceeds one percent or if the second test fails to indicate a THC content of three-tenths of one percent or less, then the farmer must destroy his crop within 45 days. Please note that in Canada and the European Union, crops that fail the THC test are very rare.

SB 676 includes a provision protecting farmers from prosecution if their crop tests between 0.3 % THC the legal limit and 1% THC. At either level of THC, it is not possible to get high from these very small amounts.

9. Is there a market for industrial hemp in California?

Yes. One major advantage California farmers will have is the proximity of buyers. The US hemp product industry has grown to over approximately $400 million in the last ten years. Nationally-known California companies like Alterna, Dr. Bronner's and Nutiva currently import thousands of acres worth of hemp from Canada and Europe are already on record demanding a change in state law that would allow them to access a locally-grown supply. SB 676 will lower costs for these companies and allow them to share their remarkable success with California farmers. California farmers would also help meet the demands of other US manufacturer located outside of the state.

10. What are the environmental benefits of growing industrial hemp and using its products?

Hemp has many environmental benefits. It is a source for paper, building insulation, and fiber board. As our demand for wood products grows we could save our trees for higher-end uses such as lumber, and supplement paper and fiber board production with hemp. An acre of hemp produces 2 to 4 times more fiber than an acre of timber and it grows from seeding to maturity in just 90 days.

Hemp requires little or no pesticides and herbicides and improves soil conditions making it an excellent rotational crop of particular interest to organic farmers. Hemp shades out weed growth and delivers a field free of weeds for the next crop. The positive role hemp plays in crop rotations reduces chemical use and saves farmers money.