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**SENATE COMMITTEE ON AGRICULTURE**  
**Senator Andreas Borgeas, Chair**  
**2021 - 2022 Regular**

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**Bill No:** SB 235 **Hearing Date:** 4/15/21  
**Author:** Allen  
**Version:** 4/6/21 Amended  
**Urgency:** Yes **Fiscal:** Yes  
**Consultant:** Reichel Everhart

**Subject:** Industrial hemp products

**SUMMARY:**

This bill would establish a structure for the food, beverage, and cosmetic products containing industrial hemp, would require industrial hemp product manufacturers to register with the California Department of Public Health (CDPH), and would require industrial hemp to be tested prior to incorporating it into a product. This bill would impose a \$250 fee on each manufacturer who produces industrial hemp products to help fund an industrial hemp research program at the University of California. This bill would require the Department of Food and Agriculture (CDFA) and the State Department of Public Health, in consultation with the Bureau of Cannabis Control, if necessary, to develop a process to share license, registration, cultivar, and enforcement information to facilitate compliance and enforcement against unlicensed industrial hemp product and raw extract manufacturers and retailers. This bill would make communications shared between these agencies and local law enforcement for this purpose exempt from the California Public Records Act. This bill would amend the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) by changing the definition of "industrial hemp" to include cannabis plants and any part of that plant with a delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.

**BACKGROUND AND EXISTING LAW:**

**Existing state law:**

1. Establishes the Sherman Food, Drug, and Cosmetic Law to protect consumers against unlawful cosmetics and medical devices by regulating the packaging, labeling, and advertising of drugs and devices; and is administered by CDPH. [Health and Safety CCRs, 109875 et seq.]

2. Establishes a regulatory structure for the cultivation of industrial hemp and establishes the Industrial Hemp Advisory Board, under the California Department of Food and Agriculture. Requires a grower of industrial hemp for commercial purposes to register with the county agricultural commissioner. [FAC 81000]
3. Establishes the California Industrial Hemp Farming Act, which allows the cultivation and processing of hemp upon federal approval [FAC 81000 - 81015].
4. Establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act, a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and cannabis products, and adult-use cannabis and cannabis products for adults 21 years of age and over [BPC 26000].
5. Defines “industrial hemp” to mean an agricultural product, whether growing or not, that is limited to types of the *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, resin extracted from any part of the plant, the cannabinoids, isomers, acids, salts, and salts of isomers with a delta-9 THC concentration of no more than 0.3 percent on a dry-weight basis.
6. Establishes the California Uniform Controlled Substances Act (UCS Act) to define the following:
  - a. “Cannabis” means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Cannabis also means the separated resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or sterilized seed of the plant which is incapable of germination. For the purpose of this division, cannabis does not mean “industrial hemp,” as defined by Section 11018.5 of the Health and Safety Code [Business and Professions Code, Section 26001 (f)].

**Existing federal law:**

1. The federal Farm Bill is the omnibus bill for agricultural and food policy in the United States. It is renewed every five years, updating provisions that deal with agriculture and other issues under the purview of the United States

Department of Agriculture (USDA). Section 7606 of the 2014 Farm Bill authorized institutions of higher education or state departments of agriculture to conduct research and pilot programs on industrial hemp. The bill also defined industrial hemp as containing less than 0.3 percent tetrahydrocannabinol (THC) by weight.

2. The 2018 Farm Bill removed hemp from the Controlled Substances Act, which is under the purview of the Drug Enforcement Agency, and put it under the purview of the United States Department of Agriculture as an agricultural commodity. The Farm Bill lists hemp as a “covered commodity” under crop insurance and allows the states to regulate the industry.
3. USDA interim final rule (IFR) was published by the USDA on October 31, 2019. The IFR provided additional and specific details on the process and criteria for regulating the cultivation of hemp. The IFR went into effect on March 22, 2021.

### **PROPOSED LAW:**

This bill:

1. Revises the definition of “industrial hemp” to conform to the federal definition, which states “the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.
2. Defines the following:
  - a. “Established and approved industrial hemp program” means a program that meets any applicable requirements set forth in federal law regarding the lawful and safe cultivation of industrial hemp.
  - b. “Final form product” is a product intended for consumer use, to be sold at a retail premise.
  - c. “Hemp manufacturer” means either of the following:
    - i. A processor extracting cannabinoids from hemp biomass.
    - ii. A processor purchasing industrial hemp raw extract for the purpose of manufacturing a final form product.
  - d. “Independent testing laboratory” means a laboratory that meets all of the following requirements:
    - i. Does not have a direct or indirect interest in the entity for which testing is being done.
    - ii. Does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells raw hemp products in this state or in another jurisdiction.

- iii. Does not have a license issued pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code, other than as a licensed testing laboratory.
- iv. Is either of the following:
  - 1. A testing laboratory licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code, if the licensed testing lab has notified the Bureau of Cannabis Control.
  - 2. Accredited by a third-party accrediting body as a competent testing laboratory pursuant to ISO/IEC 17025 of the International Organization for Standardization.
- e. “Industrial hemp” has the same meaning as in Section 11018.5. “Industrial hemp” does not include cannabinoids produced through chemical synthesis.
- f. “Industrial hemp product” means a finished product containing industrial hemp that meets all of the following conditions:
  - i. Is a cosmetic, food, food additive, dietary supplement, or herb.
  - ii. Is for human or animal consumption.
- g. “Animal” does not include livestock or a food animal as defined in Section 4825.1 of the Business and Professions Code.
- h. “Industrial hemp product” does not include industrial hemp or a hemp product that has been approved by the United States Food and Drug Administration or a hemp product that includes industrial hemp or hemp that has received Generally Recognized As Safe (GRAS) designation. For purposes of nonfood applications, “industrial hemp product” does not include a hemp product that contains derivatives, substances, or compounds derived from the seed of industrial hemp.
- i. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare an industrial hemp product.
- j. “Manufacturing” includes all aspects of the extraction process, infusion process, and packaging and labeling processes, including processing, preparing, holding, and storing of industrial hemp products.
- k. “Manufacturing” also includes processing, preparing, holding, or storing hemp components and ingredients.
- l. “Manufacturing” does not include planting, growing, harvesting, drying, curing, grading, or trimming a plant or part of a plant.
- m. “Raw extract” or “industrial hemp raw extract” means extract not intended for consumer use and that contains a THC concentration of not more than an amount determined by the department in regulation.

- n. “Raw hemp product” means a product that is derived from industrial hemp that is intended to be included in a food, beverage, dietary supplement, or cosmetic.
  - o. “Retail” has the same meaning as in Section 113895.
  - p. “THC” and “delta-9 THC” means tetrahydrocannabinol, Chemical Abstracts Service (CAS) number 1972-08-3.
  - q. “THCA” means tetrahydrocannabinolic acid, CAS number 23978-85-0.
  - r. “Total THC” means the sum of THC and THCA. Total THC shall be calculated using the following equation: total THC concentration (mg/g) = (THCA concentration (mg/g) x 0.877) + THC concentration (mg/g).
3. Requires a manufacturer of dietary supplements and foods that include industrial hemp to demonstrate that all parts of the plant used come from an approved industrial hemp program.
  4. States that a dietary supplement, food, beverage, cosmetic, or pet food is not adulterated by the inclusion of industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp if those substances meet specified requirements; and would prohibit restrictions on the sale of dietary supplements, food, beverages, cosmetics, or pet food that include industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp based solely on the inclusion of those substances.
  5. Prohibits a manufacturer, distributor, or seller of an industrial hemp product from including on the label, or publishing or disseminating in advertising or marketing, a health-related statement that is untrue.
  6. Creates an authorization process for hemp regarding the testing and labeling of products.
  7. Imposes a \$250 fee on each manufacturer who produces industrial hemp or raw hemp extract to fund an Industrial Hemp Research Program at University of California.
  8. Requires the Department of Food and Agriculture and the State Department of Public Health, in consultation with the Bureau of Cannabis Control, if necessary, to develop a process to share license, registration, cultivar, and enforcement information to facilitate compliance and enforcement against unlicensed industrial hemp product and raw extract manufacturers and retailers. This bill would make communications shared between these agencies and local law enforcement for this purpose exempt from the California Public Records Act.
  9. Amends the Medicinal and Adult-Use Cannabis Regulation and Safety Act by changing the definition of “industrial hemp” to include cannabis plants

and any part of that plant with a delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.

**ARGUMENTS IN SUPPORT:**

According to the author:

“SB 235 provides legal clarity and strict regulation for the manufacture, sale, and use of hemp-derived products in California.”

“Hemp is a plant grown and processed throughout the world for thousands of consumer goods including food, textiles, cosmetics, and body care items. One of the most commonly known ingredients derived from hemp is cannabidiol, commonly known as CBD, a non-psychoactive derivative with no tetrahydrocannabinol.”

“As permitted under federal law, currently more than half of all states in the country permit hemp CBD to be included as an ingredient in food, beverages, and dietary supplements. California already permits and carefully regulates the manufacture and sale of cannabis-derived CBD products.”

“However, the state’s laws related to hemp-derived products are murky. In recent years, this has led the California Department of Public Health to issue numerous notices of violation, “voluntary condemnation and destruction” letters, and embargoes related to hemp-derived CBD products.”

“SB 235 establishes robust regulatory oversight of California’s hemp-derived CBD marketplace while elevating health and safety standards. With strictest-in-the-nation testing requirements that mirror those for cannabis alongside strong consumer protection and labeling protocols, this legislation ensures California plays a pivotal role in the responsible growth of the hemp industry.”

Canopy Growth writes that unregulated CBD products continue to put consumers at risk and the bill will allow “only the sale and marketing of regulated hemp-derived CBD food, beverages, dietary supplements and pet products that meet good manufacturing and labeling standards to offer California consumers highest quality, transparently-labeled products. Critically, the Bill also requires CBD product testing that mirrors comprehensive testing requirements for cannabis products and applies existing requirements of the Sherman Food, Drug and Cosmetics Act to all hemp-derived CBD consumer products and creates the opportunity to add abundant new consumer good lines to the marketplace as a sales tax revenue generator.”

The California Hemp Council writes in support of the bill stating that SB 235 would “clarify that a food, beverage, dietary supplement, or cosmetic is not adulterated by the inclusion of hemp extracts.” Their letter states that they “strongly believe safe and accurately-labeled CBD products should be mandatory,” which is why they support establishing comprehensive consumer protections for manufactured hemp products that include testing and labeling. The Hemp Council concludes their letter with their opinion on the authorization and use of inhalable hemp products. They state:

“Finally, while we are very supportive of this measure, we would like to identify an area that could make a strong bill even stronger. The current version of SB 235 places a delay on the authorization of the use of inhalable hemp products in California until those products are approved by federal Food and Drug Administration. We believe this prohibition is best suited for inhalable hemp products that contain nicotine and flavored vapes. We urge that the measure be amended to address this important issue and establish a regulatory structure similar to what is being proposed for the CBD market and apply it to non-nicotine and non-artificially flavored containing inhalable hemp products.”

**ARGUMENTS IN OPPOSITION:**

The California Farm Bureau Federation has an oppose unless amended position. They state:

“While we appreciate the author’s intention to address a necessary component of the nascent hemp industry, namely processing, manufacturing and retail sale, we do request that amendments are considered that achieve parity with the Federal Final Rule for domestic hemp production, reflect process improvements, and chart a pathway for a bona fide agricultural commodity, like hemp, consistent with agricultural industry standards.”

“Firstly, Farm Bureau requests that amendments be made ensure that state law is consistent with the Federal Final Rule for domestically produced hemp published by the USDA. They state parity allows for a more expedited review and approval of the state hemp plan, submitted by the Department of Food and Agriculture.”

“Additionally, the Farm Bureau states the definition of total THC should include a measurement of uncertainty, a federally recognized term allowing for standard but appropriately narrow deviations in testing totals achieved by different instrumentation and testing facilities.”

“Also, the totality of the legislation should consistently refer to the total THC threshold referred to in federal and state law, as not to exceed 0.3% total THC, rather than below or less than 0.3% total THC. This will allow for consistency with federal law and prohibit further unnecessary legislative remedying in future years.”

“Additionally, the bill, as drafted, proposes to require processed and raw hemp extract to be tested for contaminants in accordance with the standards required in regulation for commercial cannabis. This would require a distinct difference in contaminant testing protocols for hemp as opposed to all other agricultural commodities or food products and will present practical problems. Licensed laboratories test commercial cannabis for more than 100 different contaminants, including pathogens and pesticide residues. Within that testing protocol, because cannabis is not federally approved and no registered pesticides are eligible for use on cannabis, laboratories rightly require zero tolerance levels for pesticide residues. However, because hemp is federally recognized as an agricultural commodity and there are pesticides registered for use on hemp (with more to come), this zero-residue standard is inappropriate. Farm Bureau therefore asks that contaminant levels required for hemp be consistent with that required for food standards.”

“With respect to process improvements, this bill proposes that hemp manufacturers be assessed \$250 per year to support research on the health effects of hemp derived cannabinoids. The bill proposes to direct the dollars to the University of California to enable the California Industrial Hemp Research Program. While we agree that this nascent industry and commodity requires further study, Farm Bureau believes that the hemp industry, growers, processors, manufacturers regulators and retailers, should play an active role in advising and directing some academic research. In that vein, we request that the Industrial Hemp Advisory Board, made up of the broadest stakeholders, advise the University of California on such research endeavors and statute be reflected as so.”

“Finally, Farm Bureau would like to express concern about the proposed prohibition that hemp be included in smokable flower. We recognize the concern about inhalants and the potential for flavored smokable nicotine products to be attractive to children. However, smokable hemp has an existing market in California that supports small scale hemp farmers considering the oversupply of the hemp concentrates and does appeal to a subset of consumers seeking the therapeutic value from consumption. Beyond impacting those consumers, this broad provision allows for enforcement entities to interpret that all raw flower material is therefore smokable and prohibited for retail sale. This omits that it may,



in fact, be used for at home processing into an edible or topical personal use product. We, therefore, ask for deletion or further refinement of this language. For these reasons, we respectfully request consideration of these criteria and look forward to further discussions with the author and sponsors.”

### **COMMENTS:**

1. Industrial hemp is from the plant species *Cannabis sativa L* and has been used worldwide to produce a variety of industrial and consumer products. Hemp is a source of fiber and oilseed grown in more than 30 nations. The 2018 federal Farm Bill removed hemp from the Controlled Substances Act, which is under the purview of the Drug Enforcement Agency, and put it under the purview of the United States Department of Agriculture as an agricultural commodity. Should industrial hemp, then, be subjected to the same testing requirements as a federally recognized controlled substance?
2. In its final rule, published on January 19, 2021, USDA mandated that testing of THC levels must take into account not only the natural THC but also the THCA, such as with “post-decarboxylation or other similarly reliable methods.” Under the regulations, THCA converts to THC at a defined rate of 87.7% when the hemp sample is heated or burned; and tests must take into account the total available THC, including THCA [2018 Farm Bill Sec. 297B(a)(2)(A)(ii)].

The National Institute of Standards and Technology (NIST) Reference on Constants, Units, and Uncertainty states that “measurement result is complete only when accompanied by a quantitative statement of its uncertainty. The Uncertainty is required in order to decide if the result is adequate for its intended purpose and to ascertain if it is consistent with other similar results.” [<https://physics.nist.gov/cuu/Uncertainty/international1.html>]. The Farm Bill requires cannabis plants that have a THC concentration level of greater than 0.3% on a dry-weight basis to be disposed of in accordance with the plan. Thus, USDA believes that there must be a high degree of certainty that the THC concentration level is accurately measured and is above 0.3% on a dry-weight basis before requiring disposal of the crop [297B(a)(2)(A)(iii) and 297C(a)(2)(C)].

To establish the acceptable hemp THC level, USDA included an “uncertainty measurement” along with the test results in determining whether a sample contains a permissible level of THC [7 C.F.R. §990.1].

Therefore, to be consistent with federal regulations, the author may wish to consider including the USDA's "uncertainty measurement" to determine whether a sample contains a permissible level of THC or not.

3. Testing for contaminants in accordance with the testing standards for commercial cannabis: As the Farm Bureau states, cannabis is tested for 100 different contaminants, including pathogens and pesticide residues. Because cannabis is not federally approved and no registered pesticides are eligible for use on cannabis, laboratories require a zero tolerance level for pesticide residues. Hemp is federally recognized as an agricultural commodity, and there are pesticides registered for use on hemp. Therefore, the author may wish to consider if a "zero tolerance for pesticide residue" should be employed for industrial hemp.
4. As an agricultural commodity, the raw flower material can be used in many different products, not just in smokable products. It can be used in lotions and essential oils, to name a few, just like lavender may be used in lotions and essential oils as an agricultural product. The author may wish to work with stakeholders to craft language that will not disallow the raw flower material to be used in other non-smokable products.
5. Triple Referral: This bill was originally triple referred to the Senate committees on Health, Agriculture, and Judiciary. Referral to the third committee, Senate Judiciary, was rescinded because of the limitations placed on committee hearings due to the ongoing health and safety risks of the COVID-19 virus.

Senate Judiciary Committee provided the following comments relative to their jurisdiction:

“This bill touches on various issues within the jurisdiction of the Senate Judiciary Committee, most prominently the issue of the interplay between advertisements and free speech, and the issue of public access to records. With respect to the bill's provisions restricting advertisements, commercial speech is protected under the state and federal guarantees of free speech, but to a lesser degree than noncommercial speech. (See *Gerawan Farming, Inc. v. Lyons* (2004) 33 Cal.4th 1, 22.) Specifically, a court will review a restriction on commercial speech under an “intermediate scrutiny” analysis, which asks where the asserted government interest in the restriction is substantial; whether the regulation directly advances that asserted government interest; and whether it is not more extensive than necessary to

serve that interest. (Ibid.) California has, in the past, adopted advertising restrictions for products that may have negative or unknown health effects. (E.g., Bus. & Prof. Code, § 26150.) Based on representations from the author that there is little, if any, research on potential health effects of CBD on people who are pregnant, breastfeeding, or under 18, the speech-related restrictions relating to advertising to such persons could advance the government's interest in the health of its residents. If the federal government releases guidance permitting more lenient CBD advertising rules, the author may wish to reconsider these restrictions.

With respect to the right of public access, the California Constitution and the California Public Records Act (CPRA) recognize that Californians have a right to access information concerning the conduct of the people's business, and therefore grant the public access to a wide range of public records. (See Cal. Const., art. I, § 3(b)(1); Gov. Code, §§ 6250 et seq.) This grant is not absolute, however: the right of access is tempered by the competing right of privacy. (See Cal. Const., art. I, § 3(b)(3); Gov. Code, § 6254.) This bill would subject "[c]ommunications shared between state agencies and local and law enforcement officials regarding license, registration, cultivar, and enforcement information of manufacturers and retailers of industrial hemp products and raw extract" to a limited evidentiary privilege in court and, by extension, exclude them from disclosure under the CPRA. (See Evid. Code, § 1040; Gov. Code, § 6254(k).) This exclusion is arguably justified by the bill's finding that the covered communications would be proprietary business information. In order to strengthen the bill's explanation of why all such communications should be excluded from public access, the bill's author may wish to make more detailed findings regarding the nature of the information to be shared and why it will per se entail proprietary business information."

### **RELATED LEGISLATION:**

SB 566, The California Industrial Hemp Farming Act, (Chapter 398, Statutes of 2013) authorized the commercial production of industrial hemp in California, with federal approval.

SB 1409 (Chapter 986, Statutes of 2018) authorized a higher education institution or state agency to grow and cultivate industrial hemp if it is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research program.

SB 153 (Chapter 838, Statutes of 2019) revised provisions regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the Agriculture Improvement Act of 2018 (Farm Bill).

SB 292 (Wilk) of 2021 conforms current state law to the United States Department of Agriculture's Interim Final Rule regarding reporting and testing of industrial hemp in the United States (To be heard in Senate Appropriations 4/19/21).

**PRIOR ACTIONS:**

Senate Health Committee: 11-0

**SUPPORT:**

California Hemp Council  
Canopy Growth Corporation  
Charlotte's Web  
Cronos Group, Inc.  
Eden Enterprises, Inc.  
US Hemp Roundtable

**SUPPORT IF AMENDED:**

California Norml  
Osiris Ventures dba Norcal Cannabis

**OPPOSE UNLESS AMENDED:**

Angeles Emeralds  
California Farm Bureau Federation  
Capitol Compliance Management  
Coachella Valley Cannabis Alliance Network  
Long Beach Collective Association  
Pueblo Y Salud, Inc.  
San Francisco Cannabis Retailers Alliance  
Santa Ana Cannabis Association  
Social Equity LA  
South Bay Cities Council of Governments  
United Cannabis Business Association  
United Communities for Equitable Health Policies

**-- END --**