

SENATE BILL NO. 850

March 17, 2020, Introduced by Senator LAUWERS and referred to the Committee on Agriculture.

A bill to create an industrial hemp program; to authorize certain activities involving industrial hemp to require the registration of persons engaged in certain activities; to provide for the sampling and testing of industrial hemp; to provide for the collection of fees; to create certain funds; to provide for the powers and duties of certain state departments and officers and state agencies and officials; to prohibit certain acts; and to prescribe penalties and civil sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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Chapter I

1 (k) "GPS coordinates" means latitude and longitude coordinates
2 derived from a global positioning system.

3 (l) "Grow" or "growing", unless the context requires otherwise,
4 means to plant, propagate, cultivate, or harvest live plants or
5 viable seed. Grow or growing includes drying, storing, or
6 possessing live plants or viable seed on a premises where the live
7 plants or viable seed are grown before the live plants or viable
8 seed are transported to the first point of sale.

9 (m) "Grower" means a person that is registered under section
10 201.

11 (n) "Industrial hemp" means that term as defined in section
12 7106 of the public health code, 1978 PA 368, MCL 333.7106.

13 (o) "Industrial hemp plan" means the plan created under
14 section 105.

15 (p) "Key participant" means any of the following:

16 (i) For a sole proprietorship, a sole proprietor.

17 (ii) For a partnership, a partner.

18 (iii) For a corporation, an individual with executive managerial
19 control including, but not limited to, a chief executive officer, a
20 chief operating officer, or a chief financial officer.

21 (q) "Marihuana" means that term as defined in section 7106 of
22 the public health code, 1978 PA 368, MCL 333.7106.

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

27 (s) "Person" means an individual, partnership, corporation,
28 association, or other legal entity.

29 (t) "Preharvest sample" means a sample from the floral

1 material of a representative part of a homogenous cannabis variety
2 taken from a grower at the location where the cannabis is growing.

3 (u) "Program" means the industrial hemp program established by
4 this act.

5 (v) "Postdecarboxylation test" means a test for the chemical
6 reaction that converts delta-9-THC acid into delta-9-THC by
7 eliminating a carboxyl group.

8 (w) "Registration" means a grower registration granted under
9 this act.

10 (x) "Sampling" means the process of taking a preharvest
11 sample.

12 (y) "Testing facility" means a laboratory registered with the
13 DEA to conduct chemical analysis of controlled substances pursuant
14 to 21 CFR 1301.13 and that meets the requirements under section
15 403.

16 (z) "THC" means tetrahydrocannabinol.

17 (aa) "Total delta-9-THC" means the total available
18 tetrahydrocannabinol measured as the sum of delta-9-
19 tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol
20 acid reported on a dry weight basis.

21 (bb) "USDA" means the United States Department of Agriculture.

22 (cc) "Variety" means a subdivision of a species that has the
23 following characteristics:

24 (i) The subdivision is uniform, in the sense that variations
25 between the subdivision and other subdivisions in essential and
26 distinctive characteristics are describable.

27 (ii) The subdivision is distinct, in the sense that the
28 subdivision can be differentiated by 1 or more identifiable
29 morphological, physiological, or other characteristics from all

1 other known subdivisions.

2 (iii) The subdivision is stable, in the sense that the
3 subdivision will remain uniform and distinct if reproduced.

4 (dd) "Viable seed" means seed that has a germination rate of
5 greater than 0.0%.

6 Sec. 105. (1) The department shall establish, operate, and
7 administer an industrial hemp program.

8 (2) The department shall develop and submit to the USDA for
9 approval an industrial hemp plan for this state that complies with
10 7 USC 1639o to 1639s. Upon approval, the department shall use the
11 industrial hemp plan to implement the program.

12 Sec. 107. (1) The industrial hemp fund is created within the
13 state treasury.

14 (2) The state treasurer may receive the fees collected under
15 section 511 for deposit into the fund. The state treasurer may also
16 receive money or other assets from any other source for deposit
17 into the fund. The state treasurer shall credit to the fund
18 interest and earnings from fund investments.

19 (3) Money in the fund at the close of the fiscal year remains
20 in the fund and does not lapse to the general fund.

21 (4) The department is the administrator of the fund for
22 auditing purposes.

23 (5) The department shall expend money from the fund to
24 establish, operate, and enforce the program.

25 Chapter II

26 Application and Registration

27 Sec. 201. (1) A person shall not grow industrial hemp in this
28 state unless the person is a grower.

29 (2) A person applying for a registration under this section

1 shall do so on an application and in a manner provided by the
2 department. The applicant shall include with the application all of
3 the following information:

4 (a) The applicant's full name, date of birth, mailing address,
5 telephone number, and electronic mail address. If the applicant is
6 not an individual, the application must include the EIN number of
7 the applicant and for each key participant, his or her full name,
8 date of birth, title, and electronic mail address.

9 (b) The total acreage and greenhouse or other indoor square
10 footage where industrial hemp will be grown.

11 (c) The address and legal description of and GPS coordinates
12 for each field, greenhouse, building, or other location where
13 industrial hemp will be grown.

14 (d) Maps depicting each field, greenhouse, building, or other
15 location where industrial hemp will be grown that indicate
16 entrances, field boundaries, and specific locations corresponding
17 to the GPS coordinates provided under subdivision (c).

18 (e) A criminal history report for the applicant, or, if the
19 applicant is not an individual, a criminal history report for each
20 key participant.

21 (f) If the applicant intends to sell industrial hemp to a
22 processor under section 313, a request by the applicant that the
23 registration granted under this section include a designation
24 authorizing the applicant to sell industrial hemp to a processor
25 under section 313.

26 (3) The department shall grant an applicant described in this
27 section a registration to grow industrial hemp if the applicant
28 does all of the following:

29 (a) Submits a completed application under subsection (2).

1 (b) Pays the applicable fees under section 511.

2 (c) Meets the qualifications for registration.

3 Sec. 211. (1) An initial registration granted by the
4 department under this act expires at midnight on November 30 in the
5 year in which the registration is granted.

6 (2) Other than a registration granted under subsection (1), a
7 registration is valid for 1 year beginning on December 1 and
8 expiring at midnight on the following November 30.

9 (3) To renew a registration, an applicant must submit an
10 application in a form and manner provided by the department. The
11 application must be submitted on or before November 30. An
12 application submitted after November 30 is subject to a late fee of
13 \$250.00.

14 (4) If an applicant provides express written consent to
15 disclose personal information on an application, the applicant's
16 name, electronic mail address, and telephone number may be
17 disclosed to a grower or another person authorized by the
18 department. If the applicant does not provide express written
19 consent to disclose personal information on the application, any
20 information submitted by the applicant to the department is exempt
21 from disclosure under the freedom of information act, 1976 PA 442,
22 MCL 15.231 to 15.246.

23 (5) A registration is nontransferable.

24 Sec. 213. (1) The department shall approve or deny an
25 application for a registration within 120 days after the
26 application is submitted.

27 (2) The department shall deny an application for a
28 registration if any of the following apply:

29 (a) The application is incomplete.

1 (b) If the applicant is an individual, the applicant is under
2 the age of 18.

3 (c) The applicant's location for growing industrial hemp is
4 not located in this state.

5 (d) The applicant has not demonstrated, as determined by the
6 department, a willingness to comply with this act or rules
7 promulgated under this act.

8 (e) The applicant has unpaid fees or civil fines owed to this
9 state under this act.

10 (f) The applicant has made a false statement or
11 representation, as determined by the department, to the department
12 or a law enforcement agency.

13 (g) The applicant had a registration revoked in the
14 immediately preceding 5-year period.

15 (h) The applicant or, if the applicant is not an individual, a
16 key participant was convicted of a controlled substance felony in
17 the immediately preceding 10-year period.

18 (3) If the department denies an application because it is
19 incomplete, the department shall notify the applicant of the denial
20 within 120 days after the application is submitted, by letter or by
21 electronic mail, and state the deficiency and request additional
22 information.

23 Sec. 215. The department shall issue a document to a grower
24 that evidences the granting of a registration.

25 Sec. 217. (1) If the department denies an application for a
26 registration, the applicant may appeal the denial by submitting a
27 written request for a hearing to the department. The applicant must
28 submit the request to the department not more than 15 days after
29 the date of the denial.

1 (2) The department shall conduct a hearing requested under
2 this section pursuant to the administrative procedures act of 1969,
3 1969 PA 306, MCL 24.201 to 24.328.

4 Chapter III

5 Grower Registration

6 Sec. 301. (1) A grower shall report the following information
7 to the USDA Farm Service Agency immediately after the grower is
8 granted a registration under chapter II:

9 (a) The address and total acreage of and GPS coordinates for
10 each field, greenhouse, building, or other location where
11 industrial hemp will be grown.

12 (b) The grower's registration number.

13 (2) A grower shall do all of the following:

14 (a) Allow the department or a law enforcement agency to enter
15 onto and inspect all premises where industrial hemp is or will be
16 located, with or without cause and with or without advance notice.

17 (b) On request from the department or a law enforcement
18 agency, produce a copy of the grower's registration for inspection.

19 (c) Contact the department to collect a preharvest sample
20 under section 401.

21 (d) Harvest the industrial hemp crop within 15 days after
22 receiving a certified report under section 405.

23 (e) Destroy any of the following, without compensation, under
24 section 407:

25 (i) Cannabis that has a total delta-9-THC content greater than
26 0.3% on a dry weight basis.

27 (ii) Industrial hemp that is at a location that is not
28 disclosed on the grower's application under section 201.

29 (iii) Industrial hemp that is grown in violation of this act.

1 Sec. 303. A grower shall not do any of the following:

2 (a) Grow industrial hemp that is not in compliance with the
3 grower's registration.

4 (b) Grow industrial hemp in a location that is not disclosed
5 on the grower's application under section 201.

6 (c) Grow industrial hemp in a location that is not owned or
7 completely controlled by the grower. As used in this subdivision,
8 "completely controlled" means to be solely responsible for all of
9 the industrial hemp grown at a location.

10 (d) Grow industrial hemp in a dwelling.

11 (e) Grow a variety that is on the list created under section
12 505.

13 (f) Sell or transport, or permit the sale or transport of,
14 viable industrial hemp plants to a location that is not disclosed
15 on the grower's application under section 201 or to a person in
16 this state that is not a grower.

17 (g) Harvest or destroy industrial hemp before receiving the
18 certified report of the total delta-9-THC test results under
19 section 405.

20 (h) Sell industrial hemp to a person in this state that is not
21 authorized by the department to receive industrial hemp.

22 Sec. 305. (1) A grower shall post signage in a conspicuous
23 location at each boundary line of each location where industrial
24 hemp is grown. The signage must include all of the following:

25 (a) The statement, "Industrial Hemp Registered with the
26 Michigan Department of Agriculture and Rural Development".

27 (b) The grower's name.

28 (c) The grower's registration number.

29 (2) The signage described under subsection (1) must meet all

1 of the following requirements:

2 (a) Be a minimum of 8 inches wide and 10 inches tall.

3 (b) Use writing that is clearly legible.

4 (c) Be made of weather-resistant material.

5 Sec. 307. A grower shall provide a record of sale to each
6 person that purchases industrial hemp from the grower. The record
7 of sale must contain all of the following information:

8 (a) The name of the person purchasing the industrial hemp.

9 (b) Evidence that the person purchasing the industrial hemp is
10 authorized by the department to purchase industrial hemp.

11 (c) The total weight of industrial hemp purchased.

12 (d) The total sale price of the industrial hemp.

13 (e) The date of the sale.

14 (f) The certified report of the total delta-9-THC testing
15 under section 405 for each variety of industrial hemp purchased.

16 Sec. 309. (1) A grower shall maintain records containing all
17 of the following information:

18 (a) Each record of sale generated under section 307.

19 (b) The name and mailing address of any person from whom the
20 grower purchased viable industrial hemp seed.

21 (c) The name of each variety of industrial hemp the grower
22 grows.

23 (d) Evidence that the information required to be reported
24 under section 301 was submitted and received by the USDA Farm
25 Service Agency.

26 (e) A destruction report generated under section 407, if
27 applicable.

28 (2) A grower shall maintain the records under subsection (1)
29 for 3 years and make the records available to the department upon

1 (3) The department shall transport a preharvest sample
2 collected under this section to a testing facility for total delta-
3 9-THC testing under section 403.

4 Sec. 403. (1) A testing facility that performs total delta-9-
5 THC testing must do all of the following:

6 (a) Adopt a laboratory quality assurance program that ensures
7 the validity and reliability of the total delta-9-THC test results.

8 (b) Adopt an analytical method selection, validation, and
9 verification procedure that ensures that the total delta-9-THC
10 testing method is appropriate.

11 (c) Demonstrate that the total delta-9-THC testing ensures
12 consistent and accurate analytical performance.

13 (d) Adopt method performance selection specifications that
14 ensure that the total delta-9-THC testing methods are sufficient to
15 detect the total delta-9-THC as required under this act.

16 (e) Report the measurement of uncertainty on the certified
17 report of the total delta-9-THC test.

18 (f) Adopt a total delta-9-THC testing method that includes a
19 postdecarboxylation test or other similar method.

20 (2) A testing facility shall ensure that a preharvest sample
21 of industrial hemp is not commingled with any other preharvest
22 sample of industrial hemp.

23 (3) A testing facility shall assign a sample identification
24 number to each preharvest sample of industrial hemp.

25 (4) A testing facility shall report all of the following
26 information to the department and to the USDA for each test
27 performed:

28 (a) The grower's full name and mailing address.

29 (b) The grower's registration number.

1 (c) Each sample identification number assigned under
2 subsection (3).

3 (d) The testing facility's name and DEA registration number.

4 (e) The date the total delta-9-THC testing was completed.

5 (f) The certified report under section 405 of the total delta-
6 9-THC testing.

7 Sec. 405. (1) If the results of a THC total delta-9-THC test
8 indicate a total delta-9-THC concentration of not more than 0.3% on
9 a dry weight basis, the testing facility shall provide to the
10 grower, the department, and the USDA a certified report stating the
11 results of the total delta-9-THC test.

12 (2) If the results of the total delta-9-THC test indicate a
13 total delta-9-THC concentration that is greater than 0.3% on a dry
14 weight basis, the testing facility shall provide the grower and the
15 department a certified report stating the results of the total
16 delta-9-THC test, and the grower must destroy the industrial hemp
17 crop under section 407.

18 (3) The grower shall harvest an industrial hemp crop within 15
19 days after receiving the certified report under subsection (1). If
20 the grower fails to harvest the industrial hemp crop within the 15
21 days, the grower may submit a request for a second collection of a
22 preharvest sample. The second preharvest sample must be tested
23 under section 403, and the grower must harvest the remaining
24 industrial hemp crop within 15 days after receiving a second
25 certified report.

26 Sec. 407. (1) A grower that receives a certified report under
27 section 405(2) shall destroy that crop within 15 days using 1 of
28 the following methods:

29 (a) Plowing under using a curved plow blade to rotate the

1 subsoil to the surface and bury the industrial hemp below the
2 subsoil.

3 (b) Mulching, disking, or composting the industrial hemp and
4 blending the industrial hemp with existing soil, manure, or other
5 biomass material.

6 (c) Mowing, shredding, deep burial, or burning.

7 (2) The industrial hemp destroyed under subsection (1) must be
8 rendered irretrievable or not ingestible.

9 (3) A grower that destroys industrial hemp under this section
10 shall create and submit to the USDA and the department a
11 destruction report that contains all of the following information:

12 (a) The date of the disposal.

13 (b) The method of disposal.

14 (c) The total acreage disposed of.

15 (d) A copy of the certified report under section 405(2).

16 Chapter V

17 Administration

18 Sec. 501. The department may promulgate rules to implement
19 this act under the administrative procedures act of 1969, 1969 PA
20 306, MCL 24.201 to 24.328.

21 Sec. 503. (1) By the first of each month, the department shall
22 report all of the following to the USDA:

23 (a) For each grower, the information provided on an
24 application submitted under section 201.

25 (b) Each grower's registration number.

26 (c) The status of each grower registration.

27 (d) Any changes or updates to a grower's information provided
28 under subdivision (a).

29 (e) An indication that there were no changes or updates to the

1 reports previously submitted under this subsection, if applicable.

2 (f) The date for which the information contained in
3 subdivisions (a), (b), (c), and (d) is current.

4 (g) The period covered by the report.

5 (2) If a grower is required to destroy an industrial hemp crop
6 under section 407, by the first of each month, the department shall
7 report all of the following to the USDA:

8 (a) The information provided on the grower's application
9 submitted under section 201.

10 (b) The grower's registration number.

11 (c) The total acreage of industrial hemp that was destroyed.

12 (d) The date on which the industrial hemp was destroyed.

13 (3) Not later than December 15 of each year, the department
14 shall report all of the following information to the USDA:

15 (a) The total acreage of industrial hemp that was grown in the
16 immediately preceding growing season.

17 (b) The total acreage of industrial hemp that was harvested in
18 the immediately preceding growing season.

19 (c) The total acreage of industrial hemp that was disposed of
20 in the immediately preceding growing season.

21 Sec. 505. The department may create and maintain on its
22 website a list of prohibited industrial hemp varieties.

23 Sec. 507. The department shall maintain an application
24 submitted under section 201 for 3 years.

25 Sec. 509. (1) The department's testing laboratory is the
26 official regulatory laboratory for testing under chapter IV.

27 (2) The department may contract with a third-party laboratory
28 to conduct the testing under chapter IV. A third-party laboratory
29 must meet the standards under chapter IV.

1 (c) Grows industrial hemp that exceeds the acceptable THC
2 level.

3 (2) If a grower violates subsection (1), the department shall
4 issue the grower a notice of violation and the terms of a
5 corrective action plan. The grower must comply with the terms of
6 the corrective action plan.

7 (3) The department shall develop a corrective action plan
8 under subsection (2) that includes the following terms:

9 (a) A reasonable date by which the grower will correct the
10 negligent violation.

11 (b) A requirement that for not less than 2 years after a
12 violation under subsection (1), the grower shall make periodic
13 reports to the department about the grower's progress and
14 compliance with the requirements of the corrective action plan.

15 (4) A grower that negligently violates the industrial hemp
16 plan 3 times in a 5-year period is ineligible to grow hemp for 5
17 years from the date of the third violation.

18 (5) A negligent violation under this section is not subject to
19 criminal enforcement.

20 Sec. 603. (1) If any of the following allegations are made
21 concerning a grower, the department shall investigate and may
22 suspend the grower's registration for not more than 60 days:

23 (a) The grower intentionally grew or was in possession of
24 cannabis with a total delta-9-THC content greater than 0.3% on a
25 dry weight basis.

26 (b) The grower violated a provision of this act.

27 (c) The grower made a false statement, as determined by the
28 department, to the department or a law enforcement agency.

29 (d) The grower failed to comply with an order from the

1 department or a law enforcement agency.

2 (2) If the department suspends a registration under this
3 section, the department shall notify the grower in writing that the
4 registration is suspended.

5 (3) If a registration is suspended under this section, the
6 grower shall not harvest or remove industrial hemp from the
7 location where the industrial hemp was located at the time the
8 department issued the notice of suspension, except as authorized in
9 writing by the department.

10 Sec. 605. (1) The department shall not permanently revoke a
11 registration suspended under section 603 unless the department
12 notifies the grower of the allegation against the grower and gives
13 the grower an opportunity for a hearing to appeal the revocation.

14 (2) The department shall schedule a hearing on a revocation
15 under subsection (1) for a date as soon as practicable that is not
16 more than 60 days after the date of notification of a registration
17 suspension.

18 (3) The department shall conduct the hearing required under
19 this section pursuant to the administrative procedures act of 1969,
20 1969 PA 306, MCL 24.201 to 24.328.

21 (4) If the department finds by a preponderance of the evidence
22 that an allegation under section 603(1) is true, the department
23 shall revoke the registration. The revocation is effective
24 immediately, and the department or a law enforcement agency must do
25 either of the following:

26 (a) Order the grower to destroy all cannabis that is in the
27 grower's possession under section 407.

28 (b) Confiscate all cannabis that is in the grower's
29 possession.

1 (5) The department or a law enforcement agency shall not
2 compensate or indemnify the value of the cannabis that is destroyed
3 or confiscated under this section.

4 (6) If the department revokes a registration, the grower is
5 barred from participating in the program in any capacity for a
6 minimum of 5 years from the date on which the registration was
7 revoked.

8 (7) If the department does not find by a preponderance of the
9 evidence that an allegation under section 603(1) is true, the
10 department shall remove the suspension imposed under section 603
11 within 24 hours of the department's determination.

12 (8) If a grower violates the program 3 times within a 5-year
13 period, the grower is barred from participating in the program in
14 any capacity for a minimum of 5 years from the date of the grower's
15 third violation.

16 Sec. 607. (1) A grower shall not allow a falsified preharvest
17 sample to be tested by a testing facility under chapter IV. A
18 grower that violates this subsection is guilty of a felony and may
19 be imprisoned for not more than 5 years.

20 (2) A grower shall not materially falsify information required
21 under section 201. A grower that violates this subsection is
22 ineligible to participate in the program.

23 Sec. 609. (1) A person that individually, or by the action of
24 an agent or employee, or as the agent or employee of another,
25 negligently or with a culpable mental state greater than
26 negligence, violates this act or a rule promulgated under this act
27 is subject to an administrative fine. On the request of a person to
28 whom an administrative fine is issued, the department shall conduct
29 a hearing pursuant to the administrative procedures act of 1969,

1 1969 PA 306, MCL 24.201 to 24.328. The department shall impose an
2 administrative fine authorized under this section as follows:

3 (a) For a first violation, an administrative fine of not less
4 than \$100.00 or more than \$500.00, plus the actual costs of the
5 investigation and double the amount of any economic benefit
6 associated with the violation.

7 (b) For a second violation that occurs within 5 years after a
8 violation under subdivision (a), an administrative fine of not less
9 than \$500.00 or more than \$1,000.00, plus the actual costs of the
10 investigation and double the amount of any economic benefit
11 associated with the violation.

12 (c) For a third or subsequent violation that occurs within 5
13 years after a violation under subdivision (a), an administrative
14 fine of not less than \$1,000.00 or more than \$2,000.00, plus the
15 actual costs of the investigation and double the amount of any
16 economic benefit associated with the violation.

17 (2) Any violation made with a culpable mental state greater
18 than negligence must be reported to the attorney general, the USDA,
19 and the chief law enforcement officer of this state.

20 (3) A decision of the department under this section is subject
21 to judicial review as provided by law.

22 (4) The department shall advise the attorney general of the
23 failure of any person to pay an administrative fine imposed under
24 this section. The attorney general shall bring an action to recover
25 the fine.

26 (5) Any administrative fine, investigation costs, or recovery
27 of an economic benefit associated with a violation that is
28 collected under this section must be paid to the state treasury and
29 deposited into the fund.