

September 2, 2021

Karen Ross
Secretary of the California Department of Food and Agriculture
1220 N Street
Sacramento, California, 95814

**RE: SENATE BILL NO. 292 INDUSTRIAL HEMP CALIFORNIA LEGISLATURE —
2021–2022 REGULAR SESSION**

Dear Secretary Ross,

On behalf of the California industrial hemp industry and greater public interests, the Industrial Hemp Advisory Board (IHAB), with voting membership comprised of industrial hemp growers, processors, and manufacturers as well as representatives of local government and established agricultural research institutions, writes to you in support of Senate Bill (SB) 292 and the lawmakers efforts therein as well as to provide comments on the language proposed within the Bill. As you are aware, per the Food and Agriculture Code section 81001 (7)(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”. Given that SB 292 proposes legislative changes related to industrial hemp cultivation in California, it is within the scope or rather the responsibility of the Board to prepare this letter as a form of recommendation on the legislation currently under review by the senate during the 2021-2022 regular session; legislation that will affect the California industrial hemp industry. The comments included within this letter were collectively agreed upon by IHAB membership, and the comments are purposed with proposing amendments to and/or seeking greater clarification on language presented within the Bill.

SEC. 3. Section 81001

SB 292 would change the membership of the Board by increasing the number of members who are registered growers of industrial hemp to six and removing a member who is a representative of the Hemp Industries Association from the Board.

Comment: IHAB endorses the amendment as currently written; however, IHAB proposes that additional amendments to membership structure be considered. Currently, of a total of 13 seats on the Board, one seat is reserved for both a county agricultural commissioner and representative of the California State Sheriffs' Association while two seats are reserved for members of an established agricultural research institution. IHAB proposes that seats reserved

for members of an established agricultural institution be reduced from two seats to one seat, and that the resulting unaccounted seat be reserved for either a registered grower of industrial hemp, representative of “businesses that sell industrial hemp products”, or a member with technical knowledge and experience in analytical testing of cannabis.

SEC 9. Section 81006

Current law states that “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.” In addition: “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.”

SB 292 would revise some enforcement procedures to conform to the requirements for a state plan under that federal law by specifying that a grower of industrial hemp, established 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.

Comment: It is unclear whether the language presented within the Bill would relieve farmers from criminal enforcement should a laboratory test indicate that a crop exceeds 1% THC; therefore, IHAB recommends that a more granular definition of “recklessness or gross negligence” be addressed within the Bill (e.g. some greater threshold of THC concentration). Available genetics may be heterogeneous, testing and sampling to monitor for cannabinoid accumulation during the production season can be cost prohibitive, and most hemp farmers are relatively inexperienced when it comes to farming hemp. A crop that results in a laboratory test that indicates a percent concentration of THC that is greater than 1% should not alone constitute criminal enforcement of hemp farmers.

Opportunity for Additional Food and Agricultural Code (FAC) Amendments:

Background: The USDA final rule retains the disposal requirements explained in the interim final rule (IFR) but clarifies what “disposal” means and explains how the process must be conducted. The final rule also includes remediation as an option to remove non-compliant plants.¹ Remediation and Disposal Guidelines for Hemp Growing Facilities U.S. Domestic Hemp Production Program Issued January 15, 2021.²

¹ <https://www.federalregister.gov/documents/2021/01/19/2021-00967/establishment-of-a-domestic-hemp-production-program>.

² <https://www.ams.usda.gov/sites/default/files/media/HempRemediationandDisposalGuidelines.pdf>.

Comment: IHAB recommends that the FAC be amended to align with the USDA Final Rule and regulations, specifically pertaining to the options for disposal and allowances for remediation. Given that a county agricultural commissioner and representative of the California State Sheriffs' Association reside on IHAB, IHAB is uniquely positioned to develop and recommend the establishment of disposal and remediation regulations based on USDA guidelines.

IHAB sincerely thanks you for your continued advocacy for California agriculture and efforts in the development of regulatory frameworks surrounding hemp cultivation in California; regulatory frameworks that are in alignment with USDA guidelines. The Board will continue to advocate for laws and regulations that are found to be in the greater interests of industrial hemp growers, processors, manufacturers and the general public. Thank you for your consideration, and please always feel welcome to contact the Board and the members serving therein for any insights into the industrial hemp industry in California.

Warm regards,

Richard Soria
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