

Legislative Analysis



INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6330 (H-2) as passed by the House
Sponsor: Rep. Dan Lauwers

Analysis available at
<http://www.legislature.mi.gov>

House Bill 6331 (H-1) as passed by the House
Sponsor: Rep. Steven Johnson

House Bill 6380 (H-2) as passed by the House
Sponsor: Rep. Dan Lauwers

Committee: Agriculture
Complete to 10-29-18

BRIEF SUMMARY: Taken together, the bills would do all of the following:

- Amend the Industrial Hemp Research Act to allow the commercial farming and processing of industrial hemp under a licensing and registration program for hemp growers and processor-handlers.
- Exclude industrial hemp (any cannabis plant, extract, or product with a THC concentration of 0.3% or less) from the definitions of marijuana and marijuana plant in the Public Health Code and the Medical Marijuana Facilities Licensing Act (MMFLA).
- Amend the MMFLA to allow certain licensees to handle, process, or test industrial hemp.

FISCAL IMPACT: House Bill 6330 would affect expenditures and revenues for the Michigan Department of Agriculture and Rural Development (MDARD). The bills would not have a fiscal impact on any unit of local government. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

The Industrial Hemp Research Act, Public Act 547 of 2014,¹ allows industrial hemp to be grown and/or cultivated for research purposes by MDARD or a college or university, in accordance with provisions of the federal Agricultural Act of 2014 that exempted such state-sanctioned research programs from federal drug laws. (See *Background Information*, below.) Some feel that the opportunities for growing and using hemp should no longer be restricted to research programs and should be expanded to include commercial cultivation and processing. Because hemp can be used for a variety of purposes and in a wide range of products, they feel that allowing for the commercial production of hemp in Michigan, with appropriate regulatory controls, will create economic opportunities for many Michigan industries in addition to agriculture.

THE CONTENT OF THE BILLS:

House Bill 6330 would amend the Industrial Hemp Research Act to change its name to the Industrial Hemp Research *and Development* Act and would also rename the current Industrial Hemp Research Fund as the Industrial Hemp Research *and Development* Fund.

¹ <http://legislature.mi.gov/doc.aspx?2014-HB-5439>

The bill would revise the definition of *industrial hemp* to read as follows:

Industrial hemp means the plant *Cannabis sativa* L. and any part of that plant, including the viable seeds of that plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3% on a dry weight basis. Industrial hemp includes industrial hemp commodities and products and topical or indigestible animal and consumer products derived from the plant *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

House Bill 6330 would also add several new sections to the Act that would, in brief, do all of the following:

- Require MDARD to establish, operate, and administer an industrial hemp licensing and registration program.
- Create the Industrial Hemp Licensing and Registration Fund and authorize the state treasurer to receive license and registration fees and administrative fines established under the Act for deposit into the Fund. MDARD would spend money in the Fund to establish, operate, and enforce the licensing and registration program.
- Prohibit a person, other than a college or university as provided in the Act, from growing industrial hemp without being registered as a grower under the Act. An application for a grower registration would be filed with MDARD and would have to include, in addition to a \$100 application fee, information specified in the bill about the grower and about the site where the hemp will be grown. A grower registration could include a designation authorizing the sale of industrial hemp to a processor licensed under the MMFLA. A registration would be valid from December 1 to November 30. A renewal application submitted after November 30 would be subject to a late fee of \$250. A grower could modify a site listed in the grower's registration by submitting for MDARD approval a site modification request form and a \$50 fee for each alteration.
- Prohibit a person—other than a college or university as provided in the Act, a processor or safety compliance facility licensed under the MMFLA, or a testing facility approved by MDARD—from processing, handling, brokering, or marketing industrial hemp without being licensed as a processor-handler under the Act. An application for a processor-handler license would be filed with MDARD and would have to include, in addition to a \$1,350 application fee, information specified in the bill about the processor or handler and about the site where the hemp will be processed, handled, stored, or brokered. A license would be valid from December 1 to November 30. A renewal application submitted after November 30 would be subject to a late fee of \$250.
- Exempt applications for registration or licensure, and supporting documents, from disclosure under the Freedom of Information Act.

- Require MDARD to approve or deny a registration or license in a timely manner. MDARD would deny a complete application if it were from a minor, for an out-of-state site, or from an applicant who owed fees or fines, who made false statements, who failed to show a willingness to comply with rules, or who had had a license or registration revocation in the previous five years. Denials would be in writing and could be appealed.
- Require growers and processor-handlers to consent to site inspection by MDARD or law enforcement agencies, the collection of samples, and the forfeiture and destruction of cannabis or hemp that is not in compliance with provisions of the Act or the license or registration regarding how and where industrial hemp may be grown, handled, transported, transferred, brokered, or stored.
- Require MDARD to suspend the registration or license of a grower or processor-handler for up to 60 days if allegations are made that the grower or processor-handler violated the Act; intentionally grew or was in possession of cannabis with a delta-9-THC content greater than 0.3%; or made a false statement to, or failed to comply with an order of, MDARD or law enforcement. After a hearing, MDARD could either lift the suspension or permanently revoke the suspended license or registration. Upon revocation, all cannabis in the person's possession would be destroyed or confiscated, and the person could not participate in the licensing and registration program for at least five years.
- Require a grower that intends to harvest or destroy an industrial hemp crop to submit a sample of the crop to a safety compliance facility licensed under the MMFLA or another testing facility approved by MDARD to determine whether its delta-9-THC concentration is less than the 0.3% allowed for industrial hemp.

[Note: Although the definition of industrial hemp allows a concentration of “not more than” 0.3%, these provisions require a concentration of “less than” 0.3%, making for a discrepancy in the treatment of cannabis with a concentration of exactly 0.3%.]

- Impose administrative fines for violation of the Act or rules promulgated under it, subject to any requested hearing or to judicial review as provided by law. The fines would be \$100-\$500 for a first violation, \$500-\$1,000 for a second violation within five years of the first, and \$1,000-\$2,000 for a third or subsequent violation within five years of the first. Actual costs of an investigation and double the amount of any economic benefit associated with the violation would be added to these fines.
- Require MDARD to promulgate rules to implement the Act.
- Prohibit and preempt local ordinances or rules relating to industrial hemp.

[Note: The bill would define **handle** for purposes of the Act as “to possess, store, or transport industrial hemp on premises owned, operated, or controlled by a registered grower or licensed processor-handler.” It is unclear how this definition would work in the bill’s provision that “a person shall not... handle... industrial hemp in this state unless the person is licensed as a processor-handler under this act.” It appears to be circular with regard to processor-handlers

and less than clear with regard to registered growers or members of the public. The bill also contains definitions for terms—such as *propagule* and *volunteer cannabis plant*—that are not used in the bill or in the Act.]

MCL 286.841 et al.

House Bill 6331 would amend the Public Health Code to change the definition of *industrial hemp* to read as described above. The bill would also amend the definition of marijuana for purposes of the Code to expressly exclude all industrial hemp and not, as currently, only industrial hemp that is grown or cultivated for research purposes by MDARD or a college or university.

By including ingestible and topical consumer products with a THC concentration of up to 0.3% in the definition of industrial hemp, and excluding all (not just research) industrial hemp from the definition of marijuana, the bill would exempt such products as cannabidiol (CBD) oil from being defined and regulated as marijuana under the MMFLA and the Michigan Medical Marijuana Act.²

MCL 333.7106

House Bill 6380 would amend the MMFLA to do the following:

- Define *industrial hemp* as described above.
- Specify that the MMFLA does not prohibit a *processor* from handling, processing, marketing, or brokering industrial hemp, as those terms are defined in the Industrial Hemp Research and Development Act. (Under the MMFLA, a *processor* is a licensee that extracts resin from marijuana or creates a marijuana-infused product for sale to a provisioning center or another processor.)
- Specify that the MMFLA does not prohibit a *safety compliance facility* from testing industrial hemp under the Industrial Hemp Research and Development Act. (Under the MMFLA, a *safety compliance facility* is a licensee that tests marijuana for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids.)
- Require the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules, by March 1, 2019, that would establish standards, procedures, and requirements for the sale of industrial hemp from a provisioning center to a registered qualified patient under the MMFLA.

MCL 333.27102 and 333.27206

Each bill would take effect 90 days after its enactment. House Bills 6331 and 6380 are tie-barred to House Bill 6330, which means that they could not take effect unless House Bill 6330 were also enacted.

² This would remove the statutory grounds for a departmental finding that the possession, sale, or transfer of CBD is subject to state laws regulating marijuana.

https://www.michigan.gov/documents/lara/CBD_Hemp_Advisory_Bulletin_622872_7.pdf

BACKGROUND INFORMATION:

Section 7606 of the federal Agricultural Act of 2014, also known as the 2014 Farm Bill, allowed universities or state agricultural departments to grow or cultivate industrial hemp only for research purposes conducted under an agricultural pilot program or other agricultural or academic research and only if allowed under the laws of the state where the university or department is located and the research occurs.³ In response to this federal law, Michigan passed the Industrial Hemp Research Act to allow hemp to be grown and cultivated for research purposes. According to the National Conference of State Legislatures, Michigan is among 41 states that passed legislation related to industrial hemp and among 39 states that allow for hemp cultivation and production programs.⁴

The 2014 Farm Bill covered fiscal and crop years 2014-2018, and many of its provisions expired on September 30, 2018. Its proposed successor act, the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill,⁵ has not been enacted. The Senate-passed version of that bill would allow states to regulate the cultivation, processing, and sale of industrial hemp under certain conditions.⁶ However, federal law still currently authorizes hemp to be grown and cultivated only for agricultural research purposes.

FISCAL INFORMATION:

The Industrial Hemp Research Act established an Industrial Hemp Research Fund within the state treasury. The Act also directed MDARD to expend money from the Fund, upon appropriation, only for research into growing or cultivating industrial hemp and/or providing grants to colleges or universities in Michigan to conduct research into growing or cultivating industrial hemp. The Act did not identify revenue sources for the Industrial Hemp Research Fund, and through September 23, 2018, no money has been credited to the Fund.

House Bill 6330 would not make any substantive changes to either Section 3 or Section 4, regarding college and university industrial hemp research activities or the administration of the Industrial Hemp Research Fund. The bill also would not identify any specific fund source for credit to the Industrial Hemp Research and Development Fund.

The bill would establish an Industrial Hemp Licensing and Registration Fund within the state treasury and authorize the state treasurer to receive license fees and administrative fines established under the Act for deposit into the Industrial Hemp Licensing and Registration Fund. The bill would allow money or other assets from any other source to be credited to the fund. The bill would direct the state treasurer to credit to the Industrial Hemp Licensing and Registration Fund interest and earnings from Fund investments and would require that money in the Industrial Hemp Licensing and Registration Fund at the close of the fiscal year remain in the Fund and not lapse to the state general fund.

³ 7 USC 5940. <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title7/pdf/USCODE-2015-title7-chap88-subchapVII-sec5940.pdf>

⁴ <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx>

⁵ <https://www.agriculture.senate.gov/2018-farm-bill>

Also see <https://www.agriculture.senate.gov/imo/media/doc/ALL%20SBS%20S.3042.pdf>

⁶ See <https://www.forbes.com/sites/tomangell/2018/06/28/u-s-senate-votes-to-legalize-hemp-after-decades-long-ban-under-marijuana-prohibition/>

While the bill establishes the Industrial Hemp Licensing and Registration Fund in the state treasury, it provides for MDARD to be the administrator of the Fund for auditing purposes. The bill also requires MDARD to expend money from the Fund to administer and carry out the duties required by the Act.

As described in the body of this analysis, the bill would establish a number of new licensing, registration, and regulatory responsibilities for MDARD with respect to the growing, processing, and handing of industrial hemp. Those responsibilities would require additional department resources. The scope and cost of these regulatory activities have not been estimated at this time.

Section 16 of the bill establishes a schedule of nonrefundable regulatory fees:

Fee Type	Fee Amount	Basis of Fee Application
Processor-handler license application fee	\$1,350	
Grower registration fee	\$100	
Site modification fee	\$50	Each alteration to a site listed in a grower registration after the registration has been issued

Section 17 of the bill establishes various administrative fines for violation of the Act or a rule promulgated under the Act:

- (a) For a first violation, not less than \$100 or more than \$500, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.
- (b) For a second violation within 5 years after the first violation, not less than \$500 or more than \$1,000, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.
- (c) For a third or subsequent violation within 5 years after the date of the first violation, not less than \$1,000 or more than \$2,000, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

The bill directs that any administrative fine, investigation costs, or recovery of economic benefit associated with a violation collected under Section 17 be paid to the state treasury and deposited into the Industrial Hemp Licensing and Registration Fund.

The amount of revenue that would be generated for the Industrial Hemp Licensing and Registration Fund from the fees established in Section 16 and the fines established in Section 17 cannot be readily estimated at this time.

The bill does not appear to have a direct fiscal impact on local units of government.

House Bills 6331 and 6380 would not have an impact on expenditures or revenues for any unit of state or local government.

ARGUMENTS:

For:

Supporters of the bills argue that hemp should not be limited to research projects in Michigan, but expand to development for use in a variety of products. This will allow Michigan's agricultural industry and local manufacturers the opportunity to compete with other states that are already utilizing hemp products, which will in turn create Michigan jobs and boost Michigan's economy.

Additionally, supporters of the bills highlight the fact that hemp is different from marihuana and can be tested to ensure that hemp used in Michigan remains sufficiently different. The bills would regulate the differences, mandating a 0.3% THC cap (which is the federal level) to have safe hemp in the market with no drug-like properties.

Against:

Although opposing arguments were not presented during committee testimony, a representative from MDARD expressed concerns that the department lacked the staff to oversee the industrial hemp licensing and registration program mandated by the bills.

POSITIONS:

A representative of the U.S. Hemp Roundtable testified in support of the bills. (9-26-18; and indicated support 10-3-18)

The Michigan Farm Bureau indicated support in concept for the bills. (9-26-18)

A representative of MDARD testified with a neutral position regarding the bills. (9-26-18; and indicated a neutral position 10-3-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.