

Legislative Analysis



INDUSTRIAL HEMP GROWERS ACT

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

Senate Bill 852 (H-1) as reported from House committee

Sponsor: Sen. Dan Lauwers

1st House Committee: Agriculture

2nd House Committee: Ways and Means

Senate Committee: Agriculture

Complete to 9-22-20

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

(Enacted as Public Act 220 of 2020)

BRIEF SUMMARY:

Senate Bill 852 would repeal and replace 2020 PA 137, the Industrial Hemp Growers Act created by Senate Bill 850.¹

The bill would require MDARD to establish, operate, and administer an industrial hemp program and would provide a number of specific regulatory requirements related to growing industrial hemp in Michigan.

The bill is intended to bring Michigan into compliance with United States Department of Agriculture (USDA) regulations governing industrial hemp production and to provide MDARD with the framework necessary for USDA approval of Michigan's state hemp plan by codifying USDA requirements in state law.

Senate Bill 850, which is nearly identical to Senate Bill 852, was enacted as 2020 PA 137 with the same goal. Upon review, the USDA indicated that the act had a deficiency that required correction before Michigan's hemp plan could be approved. The USDA requires state plans to exclude anyone with a state or federal felony conviction related to a controlled substance from producing industrial hemp for 10 years following the date of the conviction. However, there is one exception to this requirement: any person who was lawfully growing hemp in any state under the federal 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

This exception, which Senate Bill 850 did not contain, is included in Senate Bill 852. Senate Bill 852 is otherwise identical to Senate Bill 850 (2020 PA 137), including being titled the Industrial Hemp Growers Act. Senate Bill 852 would repeal 2020 PA 137, essentially replacing it, to bring Michigan's industrial hemp program into compliance with USDA requirements. (See **Background**, below, for more information.)

Michigan's industrial hemp program must be in compliance with USDA regulations by November 1, 2020.

The bill is described in full below.

¹ More information can be found here, <http://legislature.mi.gov/doc.aspx?2020-SB-0850>.

DETAILED SUMMARY:

Senate Bill 852 would create a new act, the Industrial Hemp Growers Act, which would require MDARD to establish, operate, and administer an industrial hemp program. The bill also would establish a number of specific regulatory requirements related to growing *industrial hemp* in Michigan.

It should be noted that MDARD currently has an industrial hemp program established under the authority of the Industrial Hemp Research Act. Senate Bill 852 would integrate federal requirements into state law to allow Michigan to submit a state hemp plan for United States Department of Agriculture (USDA) approval. MDARD representatives indicate that the intention is that the new act created by Senate Bill 852 would eventually supersede the Industrial Hemp Research Act.

Industrial hemp would mean, as defined in the Public Health Code, 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 would include industrial hemp commodities and products and topical or ingestible 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.

Chapter I – General Provisions

Under the bill, MDARD also would be tasked with developing, and submitting to the USDA for approval, an industrial hemp plan that complies with Chapter 7, Sections 1639o to 1639s of the United States Code. Upon approval, MDARD would then use the plan to implement the program.

The bill would also create the Industrial Hemp Fund within the state treasury. MDARD would be the administrator of the fund for auditing purposes and could expend money from the fund to establish, operate, and enforce the program. The state treasurer could receive the fees collected under Chapter V, as outlined below, or assets from any other source for deposit into the fund. The state treasurer would have to credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the general fund.

Chapter II – Application and Registration

The bill would prohibit a person (an individual, partnership, corporation, association, or other legal entity) from growing industrial hemp in Michigan unless the person is a *grower*, which would mean a person that is registered under the act.

Application

A person applying for a registration would have to do so on an application and in a manner approved by MDARD. MDARD would have to maintain a submitted application for five years. The applicant would have to include all of the following information:

- For an individual, the applicant's full name, date of birth, mailing address, phone number, and email address. If the applicant is not an individual, the application would have to include its EIN and, for each *key participant*, his or her full name, date of birth, title, and email address. (*Key participant* would mean a sole proprietor for a sole proprietorship; a partner for a partnership; or an individual with executive managerial control, including a chief executive officer, chief operating officer, or chief financial officer, for a corporation.)
- The total acreage and greenhouse or other indoor square footage where industrial hemp will be grown.
- The address and legal description of and GPS coordinates for each field, greenhouse, building, or other location where industrial hemp will be grown.
- Maps depicting each field, greenhouse, building, or other location where industrial hemp will be grown that indicate entrances, field boundaries, and specific locations corresponding to the GPS coordinates provided above.
- A criminal history report (as prepared by the Federal Bureau of Investigation) for the applicant or, if the applicant is not an individual, a criminal history report for each key participant.

MDARD would have to grant a registration to grow industrial hemp if the applicant does all of the following:

- Submits a completed application, as specified above.
- Pays the applicable fees, as described below under Chapter V.
- Meets the qualifications for registration.

An initial registration granted by MDARD would expire at midnight on November 30 in the same year the registration was granted. All other registrations would be valid for one year beginning on December 1 and expire at midnight on November 30 of the following year.

To renew a registration, an applicant would have to submit an application, in a form and manner provided by MDARD, on or before November 30. Applications submitted after November 30 would be subject to a late fee of \$250.

An applicant's name, email address, and phone number could be disclosed to a grower or another person authorized by MDARD, but only if the applicant provided express written consent. If no express written consent were provided, then any information submitted by the applicant to MDARD would be exempt from disclosure under the Freedom of Information Act. However, this exemption would not apply to the disclosure of personal information to a law enforcement agency.

A grower that materially falsified information required above would be ineligible to participate in the program.

Registration

MDARD would approve or deny an application for a registration within 120 days after the completed application was submitted. If MDARD denied an application because it was incomplete, MDARD would have to notify the applicant of the denial within this same time frame, by letter or email, and state the deficiency as well as request additional information.

Denial of an application for a registration would have to occur if any of the following apply:

- The application is incomplete.
- An individual applicant is under the age of 18.
- The applicant's location for growing industrial hemp is not in Michigan.
- The applicant has not demonstrated, as determined by MDARD, a willingness to comply with the act or rules promulgated under the act.
- The applicant has unpaid fees or civil fines within the act that are owed to Michigan.
- The applicant has made a false statement or representation, as determined by MDARD, to MDARD or a law enforcement agency.
- The applicant had a registration revoked in the immediately preceding five-year period.
- The applicant or, if the applicant is not an individual, a key participant of the applicant was convicted of a ***controlled substance felony*** in the immediately preceding 10-year period. (***Controlled substance felony*** would mean a felony violation of federal law or the laws of any state having to do with controlled substances.) However, this provision would not apply if both of the following conditions were met:
 - The applicant or key participant grew industrial hemp before December 20, 2018, as a pilot program participant under the Agricultural Act of 2014 (Public Law 113-79).
 - The applicant's or key participant's conviction occurred before December 20, 2018.

MDARD would have to issue a document to a grower evidencing the granting of a registration. Registration would be nontransferable.

If MDARD denied an application, then the applicant could appeal by submitting a written request for a hearing to MDARD. The request would have to submit the request not more than 15 days after the date of the denial. MDARD would have to conduct the requested hearing pursuant to the Administrative Procedures Act.

Chapter III – Grower Registration

Grower Requirements and Responsibilities

After a grower was granted a registration, as outlined above, the grower would have to immediately report the following information to the USDA Farm Service Agency:

- The address and total acreage of and GPS coordinates for each field, greenhouse, building, or other location where industrial hemp will be grown.
- The grower's registration number.

A grower would also have to do all of the following:

- Allow MDARD or a law enforcement agency to enter onto and inspect all premises where industrial hemp is or will be located, with or without cause and with or without advance notice.

- Upon request from MDARD or a law enforcement agency, produce a copy of the grower's registration for inspection.
- Contact MDARD to collect a *sample*, as outlined under Chapter IV, below. (*Sample* would mean a sample from the floral material of a representative part of a homogenous cannabis variety taken from a grower at the location where the cannabis is growing.)
- Harvest the industrial hemp crop within 15 days after receiving a certified report, as outlined under Chapter IV, below.
- Destroy any of the following, without compensation, as outlined under Chapter IV, below:
 - If the results of the total delta-9-THC test indicated a concentration of more than the *acceptable THC level*, then all *cannabis* (the plant *Cannabis sativa* L. and any part of that plant, whether growing or not) grown within the contiguous area where the sample was taken. *Acceptable THC level* would mean the application of the *measurement of uncertainty* (the parameter association with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement) to the reported total delta-9-THC concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less total delta-9-THC.
 - Industrial hemp that is at a location that is not disclosed on the grower's application.
 - Industrial hemp that is grown in violation of the act.
- Report all of the following information from the immediately preceding growing season to MDARD by November 15 of each year:
 - Total acreage of industrial hemp that the grower grew.
 - Total acreage of industrial hemp that the grower harvested.
 - Total acreage of industrial hemp that the grower disposed of.

A grower could sell industrial hemp to a processor licensed under the Medical Marijuana Facilities Licensing Act.

Grower Prohibitions

A grower would be prohibited from doing the following:

- Growing industrial hemp that is not in compliance with the grower's registration or growing it in a location that is not disclosed on the grower's application.
- Growing industrial hemp in a location that is not owned or *completely controlled* by the grower. (*Completely controlled* would be defined as being solely responsible for all of the industrial hemp grown at a location.)
- Growing industrial hemp in a dwelling.
- Growing a variety of industrial hemp that is on the list created under Chapter V, as outlined below.
- Selling or transporting, or permitting the sale or transport of, viable industrial hemp plants or seed to a location that is not disclosed on the grower's application or to a person in Michigan that is not a grower.
- Harvesting industrial hemp before receiving the certified report of the total delta-9-THC test results as outlined under Chapter IV, below.

- Selling industrial hemp to a person in Michigan that has not been authorized by MDARD to receive it.
- Destroying industrial hemp without submitting a notice to MDARD under Chapter IV, as outlined below. (This provision would not apply to a grower that destroys male industrial hemp plants to prevent cross-pollination.)

Signage

A grower would have to post signage in a conspicuous location at each boundary line of each location where industrial hemp is grown and would have to include both of the following:

- The statement, “Industrial Hemp Registered with the Michigan Department of Agriculture and Rural Development.”
- The grower’s name and registration number.

The signage also would have to meet all of the following requirements:

- Be a minimum of eight inches wide and 10 inches tall.
- Use writing that is clearly legible.
- Be made of weather-resistant material.

Maintaining Records

A grower would have to provide a record of sale to each person that purchases industrial hemp from the grower and would have to include all of the following information:

- The name of the person purchasing the industrial hemp.
- Evidence that the person making the purchase is authorized by MDARD to purchase industrial hemp.
- The total weight of industrial hemp purchased.
- The total sale price of the industrial hemp.
- The certified report of the total delta-9-THC testing as outlined under Chapter IV, below.

Additionally, a grower would have to maintain records for five years and make the records available to MDARD upon request. The records would have to contain all of the following information:

- Each record of sale, as generated above.
- The name and mailing address of any person from whom the grower purchased viable industrial hemp seed.
- The name of each variety of industrial hemp the grower grows.
- Evidence that the information required to be reported to the USDA Farm Service Agency, as outlined above, was submitted and received.
- A destruction report generated under Chapter IV, as outlined below, if applicable.

Site Modification

Before implementing a modification to a site location listed in a registration, the grower would have to submit a site location modification request on a form provided by MDARD

and the required fee imposed under Chapter V, as outlined below, based on the number of requested modifications, and obtain written approval from MDARD.

MDARD could not approve a site location modification request unless the grower had paid the fee in full.

Chapter IV – Sampling, Testing, and Disposal

The provisions of this chapter would be effective beginning November 1, 2020.

Sampling

A grower intending to harvest or destroy an industrial hemp crop would have to contact MDARD at least 20 days in advance for the collection of a representative sample of each variety of industrial hemp. Sampling would have to be conducted at least 15 days before the anticipated harvest or destruction, and the grower or authorized representative would have to be present.

When MDARD conducts the sampling, the grower would have to provide MDARD with complete and unrestricted access, during business hours, to both of the following:

- All cannabis.
- All acreage, greenhouses, indoor square footage, fields, buildings, or other locations, including any location listed in the application, as outlined above under Chapter II, where cannabis is growing or stored.

MDARD would have to transport, or arrange for transportation, a sample collected, as outlined above, to a ***testing facility*** for total delta-9-THC testing, as outlined below.

Testing facility would mean a laboratory approved by this state and registered with the Drug Enforcement Agency (DEA) to conduct a chemical analysis of controlled substances pursuant to Chapter 12 of the Code of Federal Regulations, Section 1301.13, and that meets the requirements under Chapter IV.

Testing

MDARD's testing laboratory would be considered the official regulatory laboratory for testing. However, MDARD would be able to contract with a third-party laboratory to conduct testing under this chapter. The third-party laboratory would have to meet the standards under this chapter.

A testing facility that performs total delta-9-THC testing would have to do all of the following:

- Adopt the following:
 - A laboratory quality assurance program that ensures the validity and reliability of the total delta-9-THC test results.
 - An analytical method selection, validation, and verification procedure that ensures that the testing method is appropriate.
 - Method performance selection specifications that ensure that the testing methods are sufficient to detect the total delta-9-THC as required under the act.

- A total delta-9-THC testing method that includes a postdecarboxylation test or other similar method.
- Demonstrate that the testing ensures consistent and accurate analytical performance.
- Report the measurement of uncertainty on the certified report of the test.

A testing facility would also be required to ensure that a sample of industrial hemp is not commingled with any other sample of industrial hemp. Additionally, the facility would have to assign a sample identification number to each sample.

A testing facility would have to report all of the following information to MDARD as well as the USDA for each test performed:

- The grower's full name, mailing address, and registration number.
- Each sample identification number assigned.
- The testing facility's name and DEA registration number.
- The date the testing was completed.
- The certified report, as outlined below, of the testing.

Reporting, Harvesting, and Disposal

If the results of the test indicate a total delta-9-THC concentration of up to the acceptable THC level, then the testing facility would have to provide a certified report stating the results to the grower, MDARD, and the USDA. However, if the results indicate a concentration greater than the acceptable level, then the testing facility would have to provide a certified report only to the grower and MDARD, and the grower would have to destroy the industrial hemp crop, as outlined below.

If the grower received a certified report that the test results indicate a total delta-9-THC concentration of up to the acceptable THC level, the grower would have to harvest the crop within 15 days after receipt. If the grower failed to harvest the crop within the 15-day time frame, then the grower could submit a request for a second collection of a sample. The second sample would still have to be tested in the same manner outlined above, and the grower would have to harvest the remaining crop within 15 days after receiving a second certified report.

If a grower received a certified report that the test results indicate a total delta-9-THC concentration greater than the acceptable THC level, then the grower would have to destroy the crop within 15 days, so that the industrial hemp is rendered irretrievable or not ingestible, using one of the following methods:

- Plowing under using a curved plow blade to rotate the subsoil to the surface and bury the industrial hemp below the subsoil.
- Mulching, disking, or composting the industrial hemp and blending it with existing soils, manure, or other biomass material.
- Mowing, shredding, deep burial, or burning.

A grower that destroys industrial hemp would have to do both of the following:

- Submit a notice to MDARD at least 48 hours before destroying the industrial hemp. The notice would have to be submitted in a form and manner provided by MDARD and would also have to include the reason for the destruction.

- Submit to the USDA and MDARD a destruction report that contains all of the following:
 - The date and method of disposal.
 - The total acreage disposed of.
 - A copy of the certified report received, above.

Chapter V – Administration

Reporting to the USDA

By the first of each month, MDARD would have to report to the USDA all of the following:

- For each grower, the information provided on an application, as submitted under the guidelines above, plus any changes or updates to this information.
- Each grower’s registration number.
- The status of each grower registration.
- The date for which the information contained above is current.
- An indication that there were no changes or updates to the reports previously submitted, if applicable.
- The period covered by the report.

If a grower had to destroy an industrial hemp crop, as outlined under Chapter IV, above, then by the first of the month, MDARD would have to report to the USDA all of the following:

- The information provided on the grower’s application.
- The grower’s registration number.
- The total acreage of industrial hemp that was destroyed, as well as the date it was destroyed.

Additionally, MDARD would have to report to the USDA, no later than December 15 of each year, the total acreage of industrial hemp that was grown, harvested, and disposed of in the immediately preceding growing season.

Fees

A grower would be subject to the following fees, as applicable:

- A registration fee of \$1,200.
- A site location modification fee or \$500 for each location modification request form submitted under Chapter III.

A grower would have to pay a fee, with check or money order payable to the state of Michigan, required under the act at the time an application was submitted under Chapter II or at the time the location modification request form was submitted under Chapter III.

A fee charged for the total delta-9-THC testing under Chapter IV would be limited to the reasonable costs of conducting the testing.

MDARD could charge only a reasonable sampling fee not to exceed the costs of the sampling.

A required fee under the act would be nonrefundable and nontransferable.

Other Provisions

MDARD could promulgate rules to implement the act and could maintain on its website a list of prohibited industrial hemp varieties.

A political subdivision of this state could not adopt a rule, regulation, code, or ordinance that would restrict or limit requirements under the act.

Additionally, MDARD would have to conduct an annual inspection of randomly selected growers to verify that industrial hemp is being grown in compliance with the act.

Chapter VI – Violations and Penalties

Negligent Violations

If a grower does any of the following, the grower would be considered negligently violating the program:

- Fails to provide a legal description for each field, greenhouse, building, or other location where industrial hemp would be grown, as specified under Chapter II, above.
- Fails to obtain a registration.
- Grows industrial hemp that exceeds the acceptable THC level.

These negligent violations would not be subject to criminal enforcement. Instead, if a grower violated any of the above, MDARD would have to issue the grower a notice of violation and the terms of a corrective action plan. The grower would then have to comply with the terms of the plan. The corrective action plan developed by MDARD would include the following terms:

- A reasonable date by which the grower would have to correct the negligent violation.
- A requirement that, for at least two years after a violation of the above, the grower would have to make periodic reports to MDARD about the grower's progress and compliance with the requirements of the plan.

A grower that negligently violated the plan three times in a five-year period would be ineligible to grow hemp for five years from the date of the third violation.

Suspension and Revocation of Grower Registration

If any of the following allegations were made against a grower, MDARD would have to investigate and could suspend the grower's registration for up to 60 days:

- The grower intentionally grew or was in possession of cannabis with a total delta-9-THC content greater than the acceptable THC level.
- The grower violated a provision of this act.
- The grower made a false statement, as determined by MDARD, to MDARD or a law enforcement agency.
- The grower failed to comply with an order from MDARD or a law enforcement agency.

If MDARD suspended a registration due to the above allegations, MDARD would have to notify the grower in writing of the suspension. Additionally, the grower would be

prohibited from harvesting or removing industrial hemp from its location at the time MDARD issued the notice of suspension, except as otherwise authorized by MDARD.

After the investigation, if MDARD does not find by a preponderance of the evidence that an above allegation is true, then MDARD would have to remove the suspension within 24 hours of its determination. However, if MDARD finds by a preponderance of the evidence that an allegation listed above is true, then MDARD would have to revoke the grower's registration. The revocation would be effective immediately, and MDARD or a law enforcement agency would have to either order the grower to destroy all cannabis, as outlined in Chapter IV, that is in the grower's possession, or confiscate all cannabis that is in the grower's possession. The grower would not be compensated or indemnified for the value of the cannabis destroyed or confiscated. If MDARD revokes a registration, then the grower would be barred from participating in the program in any capacity for at least five years from the date of revocation.

MDARD could permanently revoke a registration suspended due to the above allegations, but only if MDARD first notifies the grower of the allegation against the grower and gives the grower an opportunity for a hearing to appeal the revocation. MDARD would have to schedule the hearing for a date as soon as practicable, but up to 60 days, after the date of notification. Additionally, MDARD would have to conduct the hearing pursuant to the Administrative Procedures Act.

If a grower violates the program three times within a five-year period, the grower would be barred from participating in the program in any capacity for at least five years from the date of the grower's third violation.

Fines

A person would be subject to an administrative fine if the person individually, or by the action of an agent or employee, or as the agent or employee of another, negligently or with a culpable mental state greater than negligence, violated the act or a rule promulgated under the act. If a person requested a hearing, MDARD would have to conduct a hearing pursuant to the Administrative Procedures Act. An MDARD decision also would be subject to judicial review, as provided by law. Additionally, any administrative fine, investigative costs, or recovery of an economic benefit associated with such a violation would have to be paid to the state treasury and deposited into the fund.

Administrative fines would be assessed as follows:

- For a first violation: a fine of at least \$100 or up to \$500, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.
- For a second violation that occurs within five years after the first: a fine of at least \$500 or up to \$1,000, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.
- For a third or subsequent violation that occurs within five years after the first: a fine of at least \$1,000 or up to \$2,000, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

MDARD would also have to advise the attorney general of the failure of any person to pay an administrative fine imposed above. The attorney general then would bring an action to recover the fine.

Any violation made with a culpable mental state greater than negligence would have to be reported to the attorney general, the USDA, and the chief law enforcement officer of Michigan.

Chapter VII – Emergency Rule Codification

For a grower registered under the Industrial Hemp Research and Development Act, beginning August 15, 2020 and until October 31, 2020, all of the following would apply to the sampling, testing, and disposal of industrial hemp:

- A grower that intends to harvest or destroy an industrial hemp crop would have to contact MDARD to schedule a total delta-9-THC test of a representative sample of each variety of industrial hemp by a testing facility. The grower would then have to submit a representative sample of each variety to MDARD, which would have to contain leaves and pistillate inflorescence; all representative samples would be considered property of MDARD. MDARD would then prescribe a sampling procedure and publish the sampling procedure on its website.
- A testing facility would have to perform testing on a representative sample of a variety of industrial hemp submitted to MDARD, above, up to 15 days before the grower intends to harvest or destroy the crop.
- A testing facility that performs as total delta-9-THC testing above would have to do all of the following:
 - Test representative samples of industrial hemp in accordance with ASTM International or other nationally or internally recognized test methods, or any other test method approved by MDARD.
 - Perform the test postdecarboxylation.
 - Make a quantitative laboratory determination of the total delta-9-THC on a dry weight basis.
- MDARD or a grower could conduct additional testing on a representative sample of industrial hemp, which could include testing for a list of things such as pesticides, chemical residue, fungicides, and water activity content.
- The testing facility that conducts total delta-9-THC testing on a representative sample of a variety of industrial hemp submitted to MDARD would have to provide to MDARD and the grower a certified report that includes the results of the total delta-9-THC, plus all of the following information:
 - The grower's registration number, name, and address.
 - The industrial hemp growing location.
 - The total delta-9-THC on a dry weight basis.
- Within 15 days after receipt of a certified report of ***compliant industrial hemp*** (industrial hemp with a total delta-9-THC concentration of up to 0.3% on a dry weight basis), above, the grower would have to harvest the compliant industrial hemp. If the grower is unable to complete harvesting within 15 days, the grower would have to contact MDARD to schedule an additional total delta-9-THC test of a representative sample of each variety of industrial hemp by a testing facility. A grower would then

- have to submit a representative sample of each variety of industrial hemp that has not been harvested to MDARD. Within 15 days after receipt of an additional certified report of compliant industrial hemp, the grower would have to harvest the remaining compliant industrial hemp.
- If the certified report of the total delta-9-THC test indicates a total delta-9-THC concentration that is more than 0.3% on a dry weight basis, then the grower could destroy the industrial hemp crop or repeat the total delta-9-THC testing up to two additional times. If a third total delta-9-THC test is conducted and the certified report of the total delta-9-THC test indicates a total delta-9-THC concentration that is more than 0.3% on a dry weight basis, then the testing facility would have to provide to MDARD and the grower a certified report that states the results, and MDARD would have to issue to the grower a destruction order that contains the following information:
 - The industrial hemp crop to be destroyed.
 - The date by which the destruction of the industrial hemp crop would have to occur.
 - If applicable, the method of destruction.
 - Whether MDARD oversight of the destruction is required.
 - All growers would be subject to inspection and sampling of industrial hemp by MDARD at reasonable times to ensure compliance with this chapter. If a grower fails to comply with an inspection, MDARD could initiate enforcement proceedings. The grower or an authorized agent of the grower would have to be present during an inspection or sampling and would have to provide the department with unrestricted access to all industrial hemp, including all buildings and structures used for the cultivation or storage of industrial hemp, and documents regarding the growing of industrial hemp.

BACKGROUND:

The United States 2018 Farm Bill legalized industrial hemp and provides a federal framework for industrial hemp production.² However, states wishing to regulate industrial hemp are required to have a plan approved by the United States Department of Agriculture (USDA).³

Senate Bill 852 is intended to bring Michigan into compliance with USDA regulations governing industrial hemp production, and to provide MDARD with the framework necessary for USDA approval of Michigan's state hemp plan, by codifying in state law USDA requirements.⁴ MDARD indicates that Michigan's industrial hemp program needs to be in compliance with USDA regulations by November 1, 2020.

As described above, Senate Bill 850, which originally created the Industrial Hemp Act, was enacted as 2020 PA 137 on July 22, 2020. The act was then reviewed by the USDA to

² See MDARD's industrial hemp webpage: https://www.michigan.gov/mdard/0,4610,7-125-1569_74018---,00.html

³ The USDA requires states and tribal authorities to submit industrial hemp program plans, <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>

⁴ Here is a resource page for the USDA Domestic Hemp Program: <https://www.ams.usda.gov/rules-regulations/hemp>

be approved. The USDA provided feedback indicating a deficiency in the act that needed to be corrected before the state plan could be approved. The USDA requires state plans to exclude anyone with a state or federal felony conviction related to a controlled substance from producing industrial hemp for 10 years following the date of the conviction. However, there is one exception to this requirement: any person who was lawfully growing hemp in any state under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date. This update is incorporated into Senate Bill 852.

For the current (2020) growing season, growers were licensed under current law, the Industrial Hemp Research Act, as amended by 2018 PA 641.⁵ MDARD representatives indicated that, after enactment of Senate Bill 850, Michigan's industrial hemp program would operate under the authority of the new act created by Senate Bill 850 and an anticipated USDA-approved state hemp plan. The intention is that for the 2021 growing season, growers would be licensed under the new act, now created by Senate Bill 852; growers would not be licensed or required to pay fees under both acts. MDARD anticipates that the Industrial Hemp Research Act would be repealed by subsequent legislation.⁶

FISCAL IMPACT:

Senate Bill 852 would establish an Industrial Hemp Fund within the state treasury and authorize the state treasurer to receive license fees established under the act for deposit into the 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 the fund interest and earnings from fund investments. The bill establishes MDARD as the fund administrator for auditing purposes and directs MDARD to expend money from the fund to establish, operate, and enforce the industrial hemp program.

As described above, the bill would establish a number of new licensing, registration, and regulatory responsibilities for MDARD with respect to the growing, processing, and handling of industrial hemp. Those responsibilities would require department resources. MDARD estimates that the industrial hemp program will require 6.0 full-time equated (FTE) positions with ongoing annual costs of \$1.0 million. However, the \$1.0 million in total program costs does not represent an additional \$1.0 million from the current program baseline. Some FTE positions and funding have already been provided in the MDARD budget for program activities under the Industrial Hemp Research Act.⁷

⁵ <http://legislature.mi.gov/doc.aspx?2018-HB-6330>.

⁶ For additional information on the current MDARD program, see the 2019 Industrial Hemp Ag Pilot Program Final Report: https://www.michigan.gov/documents/mdard/2019_Hemp_Final_Report_6.2.20_693291_7.pdf.

⁷ Note that the FY 2018-19 MDARD budget included funding for an industrial hemp program: \$150,000 General Fund/General Purpose (GF/GP) was included in supplemental appropriation act 2018 PA 618. An additional \$1,277,000 GF/GP was included in supplemental appropriation act 2018 PA 56, as a one-time appropriation. The entire one-time appropriation was subsequently carried forward as a work project. However, \$500,000 of this work project balance was lapsed in July 2020 as one of the actions taken to resolve a FY 2019-20 GF/GP budget shortfall. No FTE positions were established in the FY 2018-19 budget specific to the industrial hemp program. The FY 2019-20 MDARD budget included a \$360,000 appropriation (\$150,000 GF/GP) and 4.5 FTE positions to support the department's ongoing industrial hemp program under the Industrial Hemp Research Act, as amended by 2018 PA 641.

The bill establishes nonrefundable registration and regulatory fees: an annual grower registration fee of \$1,250, and a site location modification fee of \$50 assessed for each alteration to a site listed in a grower registration after the registration has been issued.

The bill also provides for testing and sampling fees to be set by MDARD, limited to reasonable costs, as well as a \$25 late fee for applications submitted after the November 30 registration deadline. The bill also establishes administrative fines for certain violations of the act. The fees and fines established in the bill would all be credited to the Industrial Hemp Fund.

MDARD estimates that the registration fee established in the bill would generate from \$600,000 to \$700,000 in annual revenue, depending on the number of licenses each year. The testing and sampling fees, and any administrative fines assessed and collected, would provide additional program revenue. Although revenue from fees and fines established in Senate Bill 852 would likely be less than total program costs, MDARD anticipates that subsequent legislation will provide for fees to be assessed on processors.

MDARD indicates that the intent is for the industrial hemp program to be supported by restricted revenue from the fees assessed on producers and processors.

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

The bill would have an indeterminate fiscal impact on local court systems if decisions made by MDARD went up for review by the courts. The fiscal impact would depend on how provisions of the bill affect court caseloads and the related administrative costs.

The Department of Attorney General (AG) would incur administrative expenses in enforcing the act and collecting fines. Costs would be dependent on the frequency to which violations of the act, or rules promulgated under the act, are reported to the AG. If the AG is not able to provide the services required under the bill with its existing personnel, it may need to hire an additional full-time or part-time employee. The annual cost of an FTE position for a state attorney is \$200,000. If AG expenses require additional support, they would be supported through appropriations to the AG or through a transfer from MDARD.

POSITIONS:

Representatives of the Michigan Department of Agriculture and Rural Development testified in support of the bill. (9-9-20)

Legislative Analyst: Emily S. Smith
Fiscal Analysts: William E. Hamilton
Robin Risko
Michael Cnossen

■ 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.