A BILL FOR AN ACT

RELATING TO INDUSTRIAL HEMP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature recognizes that the recently-enacted Agriculture Improvement Act of 2018, informally known as the "Farm Bill", among other matters, legalized hemp by removing hemp from the definition of "marijuana" contained in the federal Controlled Substances Act. Therefore, hemp is no longer classified as an illegal drug under federal law. The Agriculture Improvement Act also makes amendments to the Agricultural Marketing Act of 1946. These amendments authorize the department of agriculture of each state to submit to the federal Secretary of Agriculture a proposed plan for the state's department of agriculture to monitor and regulate hemp production within the state, including a procedure for conducting annual inspections of a random sample of hemp producers. After the federal Secretary of Agriculture approves a state plan, authorized entities within the respective state may engage in the production of hemp, including at the commercial level.
The legislature finds that the university of Hawaii's research on hemp shows that there is significant potential for a successful hemp agricultural industry in Hawaii. In addition to creating new agricultural commerce, hemp is also beneficial in removing toxins from the soil (phytoremediation), which is important because past agricultural operations in the State have deposited toxins in vast tracts of land. Hemp grows quickly and is a superior phytoremediation crop. The legislature also finds that hemp is an environmentally-friendly and efficient feedstock for biofuel. Hemp can be made into clothing and used in other products to promote the growth of small businesses.

The purpose of this Act is to facilitate the regulation and production of industrial hemp in the State by:

1. Requiring the department of agriculture to establish a permanent industrial hemp program to license individuals to cultivate industrial hemp in the State;
2. Authorizing licensees to utilize hemp genetics that meet federal definitions of hemp and other requirements;
(3) Imposing a monetary penalty on any person who produces hemp without authorization from a state or federal program;

(4) Establishing an affirmative defense to certain criminal drug promotion offenses;

(5) Authorizing the department of agriculture to use temporary inspectors to perform industrial hemp inspections;

(6) Exempting the transportation of certain hemp plant materials from penalties relating to the possession of those material outside of a field of lawful cultivation;

(7) Reducing or repealing certain regulatory requirements under the existing industrial hemp pilot program;

(8) Amending definitions of "marijuana" in state law to clarify that hemp is not marijuana and amending references to tetrahydrocannabinols in the state law to exclude tetrahydrocannabinols in hemp;

(9) Requiring the chairperson of the board of agriculture to:
(A) Prepare and submit a proposed state plan to monitor and regulate hemp production, including commercial production and research, to the federal Secretary of Agriculture pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended; and

(B) Report to the governor, speaker of the house of representatives, and president of the senate on the status of the federal Secretary of Agriculture's pending approval of the state plan and, if approved, the subsequent implementation of the plan; and

(10) Establishing an industrial hemp special fund for the purposes of the permanent industrial hemp program, appropriating moneys into that fund, and appropriating moneys from that fund for the establishment of positions relating to the regulation of industrial hemp.

SECTION 2. Chapter 141, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:
"PART . INDUSTRIAL HEMP PROGRAM

§141-A Definitions. As used in this part:

"Chairperson" means the chairperson of the board of agriculture or the chairperson's designee.

"Cultivar" means a variety of industrial hemp.

"Department" means the department of agriculture.

"Industrial hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis.

"Variety" means a group of individual plants that exhibit the same observable physical characteristics or have the same genetic composition.

§141-B Industrial hemp program; established. The department shall establish an industrial hemp program to authorize licensed persons to cultivate industrial hemp in the State.

§141-C Licensing. (a) A person who intends to grow industrial hemp in the State shall apply to the department for a
license on a form prescribed by the department and pay an
application fee.

(b) Each applicant for a license shall be either an
individual applicant or an applying entity. If the applicant
is:

(1) An individual, the application shall include
supporting documentation to establish that the
individual:

(A) Is not less than twenty-one years of age; and

(B) Has no drug felony convictions in the ten years
immediately preceding the date of submission of
the application; or

(2) An entity, the application shall be submitted to the
department and shall include supporting documentation
to establish that the entity:

(A) Has been organized under the laws of the State of
Hawaii;

(B) Has a Hawaii tax identification number;

(C) Has a department of commerce and consumer affairs
business registration division number and suffix;

(D) Has a federal employer identification number; and
(E) Is composed of principals or members, each of whom have had no drug felony convictions in the ten years immediately preceding the date of submission of the application.

(c) Licensees shall comply with all county zoning ordinances, rules, or regulations.

(d) If the chairperson determines that the requirements for a license pursuant to this part, and any other requirements established by rule, are satisfied, the chairperson shall issue a license to the applicant upon payment of the fee established in this section.

(e) Each license shall be valid for two years from the date of issuance, after which the licensee shall be required to renew the license and pay a renewal fee.

(f) The department may prescribe annual sampling, inspection, and reporting requirements for licensees, including a procedure for conducting annual inspections of a random sample of hemp producers to verify that hemp is not being produced in violation of this part; provided that the procedure shall ensure that a hemp producer is subject to not more than one inspection each calendar year.
(g) Any license issued under the industrial hemp pilot program shall have continued validity under the original terms and conditions of that license until it expires. Upon expiration, the licensee may renew that license under new terms and conditions that are compliant with this part, by paying a renewal fee and applying for license renewal pursuant to a process established by the chairperson.

(h) Licenses may be transferred upon approval by the board of agriculture.

§141-D Approved cultivars; hemp genetics. (a) Only industrial hemp on the list of cultivars approved by the chairperson shall be grown. Notwithstanding chapter 91, the chairperson or the board of agriculture may add or remove any cultivar from the list.

(b) The list of approved cultivars shall include the following:

(1) Industrial hemp cultivars that have been certified by the Organisation for Economic Co-operation and Development;

(2) Hawaii varieties of industrial hemp cultivars that have been certified by the board of agriculture; and
(3) Hemp genetics that are shown to:

(A) Meet federal definitions of hemp;

(B) Originate from any state with a federally approved industrial hemp program; and

(C) Utilize testing and sampling protocols similar to those used in Hawaii's program or utilize a nationally standardized sampling and testing protocol.

§141-E Inspections; fees. (a) A licensee shall permit the annual inspection and sampling of the licensee's hemp plants, plant material, seeds, growing area, equipment, and facilities incident to the cultivation of hemp.

(b) Any authorized member of the department, or any agent or third party authorized by the department, with prior notice to the applicable licensee, may enter between sunrise and sunset upon any property utilized for the cultivation of industrial hemp pursuant to this part in order to conduct the annual inspection and sampling pursuant to subsection (a).

(c) The department may set reasonable inspection and sampling fees.
(d) The department may employ temporary inspectors to assist in certification, audit, and inspection services under this part.

§141-F Transportation. A licensee may transport, to another site for processing and in a department-approved manner, the resin, flowering tops, and leaves of the licensee's crop that passed department-ordered compliance testing.

§141-G Violations. (a) In addition to any other violations of this part, the following acts and omissions by any licensee or authorized representative thereof constitute violations:

(1) Refusal or failure by a licensee or authorized representative to fully cooperate and assist the department with the inspection or sampling process;

(2) Failure to provide any information reasonably required or requested by the department for purposes pursuant to this part;

(3) Providing materially false information pertaining to the licensee's cultivation of industrial hemp to the department by any means, including information provided in any application form, report, record, or...
inspection required or maintained pursuant to this part;

(4) Failure to pay reasonable fees assessed by the department for inspection or laboratory analysis costs; or

(5) A material violation of any other state or federal law or regulation regarding industrial hemp.

(c) For any violation of this part, the department may impose civil penalties up to $500 and disciplinary sanctions, including denial or revocation of a license; provided that:

(1) If the department determines that a licensee has negligently violated this part, the licensee shall comply with a corrective action plan established by the department to correct the violation, which may include disposal of any industrial hemp crop, plant, plant material, or seed, whether growing or not, and products derived from those plants;

(2) An individual licensee that negligently violates this part three times in a five-year period shall be ineligible for the industrial hemp program, as either an individual or as a principal or member of an
entity, for a period of five years beginning on the
date of the third violation;

(3) Each principal or member of an entity licensee that
negligently violates this part three times in a five-
year period shall be ineligible for the industrial
hemp program, as either an individual or as a
principal or member of an entity, for a period of five
years beginning on the date of the third violation;
and

(4) Any applicant that materially falsifies any
information contained in an application shall be
ineligible to participate in the industrial hemp
program.

§141-H Rules. (a) The department shall adopt rules
pursuant to chapter 91 for the purposes of this part, which, at
a minimum, shall include:

(1) Annual inspection of a random sample of producers of
industrial hemp during growth or after harvest to
determine tetrahydrocannabinol levels; provided that
an analytical testing of tetrahydrocannabinol levels
greater than 0.3 per cent shall not result in
revocation of a license so long as the crop from which
the sample is taken is disposed of in a manner
provided by rule;

(2) Licensure requirements;

(3) Reporting requirements; provided that pre-planting
reporting shall not be required;

(4) A process to create standards for selecting licensees;

(5) Assessment and collection of fees for applications,
licenses, license renewals, inspections, and the
sampling and testing of industrial hemp;

(6) A procedure for the disposal of industrial hemp crop,
plant, plant material, or seed, whether growing or
not, found to be in violation of this part, and
products derived from those plants;

(7) Civil penalties for any violation of this part; and

(8) Any other rules and procedures necessary to carry out
this part.

(b) The department may adopt and amend interim rules to
effectuate the purposes of this part; provided that the interim
rules shall remain in effect until July 1, 2025, or until rules
are adopted pursuant to subsection (a), whichever occurs sooner.
§141-1 Authority to modify operations. Notwithstanding any other provision of this part to the contrary, the board of agriculture may authorize the chairperson to modify the industrial hemp program in order to effectuate any other federal or state industrial hemp law or regulations; provided that any license that has been issued as of that time shall remain in effect until its expiration.

§141-J Industrial hemp special fund; established. (a) There is created in the state treasury a special fund to be designated as the industrial hemp special fund to be administered by the department of agriculture. Moneys deposited in the special fund shall be used to fulfill the purposes of this part and shall include:

(1) Any moneys appropriated by the legislature to the special fund;

(2) Any fees collected by the department in relation to the industrial hemp pilot program or industrial hemp program, except for fees collected for the services provided by temporary inspectors, as specified in section 141-37; and
The interest or return on investments earned from moneys in the special fund.

(b) The department of agriculture may use the moneys in the special fund to carry out the purposes of this part, including hiring employees, specialists, and consultants necessary to complete projects related to the purposes of this part."

SECTION 3. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§141- Unauthorized cultivation of hemp. (a) A person engages in the unauthorized cultivation of hemp if the person plants, cultivates, grows, or harvests hemp without a license issued by the department of agriculture pursuant to chapter 141, with the intent to process, sell, or otherwise transfer the hemp.

(b) A person who engages in the unauthorized cultivation of hemp shall be subject to a fine of not less than $100 and not more than $500."
SECTION 4. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"§712- Cultivation of industrial hemp as an affirmative defense. (a) In any prosecution for an offense described in sections 712-1247, 712-1248, 712-1249, 712-1249.4, or 712-1249.5, a defendant may assert the affirmative defense that:

(1) The defendant:

(A) Possessed a valid hemp cultivation license issued by the department of agriculture; or

(B) Planted hemp varieties that are on a list of approved cultivars,

pursuant to chapter 141; and

(2) The cultivated hemp developed into plants with a delta-9 tetrahydrocannabinol concentration of more than 0.3 per cent on a dry weight basis.

(b) This affirmative defense applies to the cultivation and possession of marijuana within a licensed land area, but it does not extend to the distribution of any marijuana."

SECTION 5. Section 141-1, Hawaii Revised Statutes, is amended to read as follows:
§141-1  Duties in general. The department of agriculture shall:

(1) Gather, compile, and tabulate, from time to time, information and statistics concerning:

(A) Entomology and plant pathology: Insects, scales, blights, and diseases injurious or liable to become injurious to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the introduction of pests and diseases not yet here; and

(B) General agriculture: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries;

(2) Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an
experimental or educational character coming within
the scope of the subject matter of chapters 141, 142,
and 144 to 150A, and avoid, as far as practicable,
duplicating the work of those persons and
organizations;

(3) Enter into contracts, cooperative agreements, or other
transactions with any person, agency, or organization,
public or private, as may be necessary in the conduct
of the department's business and on such terms as the
department may deem appropriate; provided that the
department shall not obligate any funds of the State,
except the funds that have been appropriated to the
department. Pursuant to cooperative agreement with
any authorized federal agency, employees of the
cooperative agency may be designated to carry out, on
behalf of the State the same as department personnel,
specific duties and responsibilities under chapters
141, 142, 150A, and rules adopted pursuant to those
chapters, for the effective prosecution of pest
control and animal disease control and the regulation
of import into the State and intrastate movement of regulated articles;

(4) Secure copies of the laws of other states, territories, and countries, and other publications germane to the subject matters of chapters 141, 142, and 144 to 150A, and make laws and publications available for public information and consultation;

(5) Provide buildings, grounds, apparatus, and appurtenances necessary for the examination, quarantine, inspection, and fumigation provided for by chapters 141, 142, and 144 to 150A; for the obtaining, propagation, study, and distribution of beneficial insects, growths, and antidotes for the eradication of insects, blights, scales, or diseases injurious to vegetation of value and for the destruction of injurious vegetation; and for carrying out any other purposes of chapters 141, 142, and 144 to 150A;

(6) Formulate and recommend to the governor and legislature additional legislation necessary or desirable for carrying out the purposes of chapters 141, 142, and 144 to 150A;
(7) Publish at the end of each year a report of the expenditures and proceedings of the department and of the results achieved by the department, together with other matters germane to chapters 141, 142, and 144 to 150A and that the department may deem proper;

(8) Administer a program of agricultural planning and development, including the formulation and implementation of general and special plans, including but not limited to the functional plan for agriculture; administer the planning, development, and management of the agricultural park program; plan, construct, operate, and maintain the state irrigation water systems; review, interpret, and make recommendations with respect to public policies and actions relating to agricultural land and water use; assist in research, evaluation, development, enhancement, and expansion of local agricultural industries; and serve as liaison with other public agencies and private organizations for the above purposes. In the foregoing, the department shall act to conserve and protect agricultural lands and
irrigation water systems, promote diversified
agriculture, increase agricultural self-sufficiency,
and ensure the availability of agriculturally suitable
lands; [and]

(9) Manage, administer, and exercise control over any
public lands, as defined under section 171-2, that are
designated important agricultural lands pursuant to
section 205-44.5, including but not limited to
establishing priorities for the leasing of these
public lands within the department's jurisdiction[.]

and

(10) Have the authority to monitor and regulate hemp
production, including commercial production and
research, pursuant to section 297B of the Agricultural
Marketing Act of 1946, as amended, and part

SECTION 6. Section 141-33, Hawaii Revised Statutes, is
amended as follows:

1. By amending subsection (a) to read:

"(a) Each applicant for an industrial hemp license shall
submit a signed, complete, accurate, and legible application
form provided by the board and shall include the following:
(1) The applicant's name, mailing address, and phone number in Hawaii and, if applicable, electronic mail address;

(2) If the applicant is an individual or partnership, the date of birth of the individual or partners;

(3) If the applicant is any business entity other than an individual, partnership, or institution of higher education, documentation that the entity is authorized to do business in Hawaii;

(4) The cultivated variety that will be sown;

(5) The source and amount of certified seed to be used;

(6) The number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;

(7) [The global positioning system coordinates in decimal degrees from the central most point of the growing area to be cultivated] and a map showing the location of the growing area in terms of its address or legal description;

(8) A statement that the applicant is the owner, lessee, or occupier of the growing area to be used for the
cultural or a statement, signed by the owner of the growing area, indicating that the owner has consented to that use;

(9) The address of the place in Hawaii where the applicant will keep the records, books, electronic data, or other documents that are required by this part;

(10) The name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and

(11) The applicant's acknowledgment and agreement to the following terms and conditions:

(A) Any information obtained by the board may be publicly disclosed and provided to law enforcement agencies [without further] with notice to the applicant or licensee;

(B) The applicant agrees to allow any annual inspection and sampling that the board deems necessary;

(C) The applicant agrees to pay for any sampling and analysis costs that the board deems necessary;
(D) The applicant agrees to submit all required reports by the applicable due dates specified by the board; and

(E) The applicant and any partner, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country."

2. By amending subsection (c) to read:

"(c) Any materially incomplete application for a license shall may be denied."

3. By amending subsections (f), (g), and (h) to read:

"(f) All licenses shall be valid for two years from the date of issuance[, after which the licensee shall renew the license and pay the renewal fee, to be established by rules of the board].

(g) Any licensee who wishes to alter the growing areas on which the licensee will conduct industrial hemp cultivation shall, before altering the area, submit to the board an updated address[, global-positioning-system location,] and map specifying the proposed alteration. If the chairperson receives
and approves the updated information, the chairperson shall
notify the licensee in writing that the licensee may cultivate
industrial hemp on the altered land area.

(h) A licensee that wishes to change the seed cultivar
grown shall submit to the board or the chairperson the name of
the new, approved seed cultivar to be grown. If the board or
the chairperson receives and approves the change to the seed
cultivar, the board or the chairperson shall notify the licensee
that the licensee may cultivate the new, approved seed
cultivar."

SECTION 7. Section 141-35, Hawaii Revised Statutes, is
amended to read as follows:

"[[]§141-35[]] Approved [seed] cultivars[•]; hemp
genetics. (a) [Industrial] Only industrial hemp [shall be
grown only if it is] on the list of [approved-seed] cultivars[•]
approved by the board or the chairperson shall be grown. The
board or the chairperson may [from time to time] add or remove
any [seed] cultivar from the list if the cultivar is found to be
noncompliant with this part.

(b) The list of approved [seed] cultivars shall include
the following:
(1) Industrial hemp [seed] cultivars that have been certified by the Organisation for Economic Co-operation and Development; [and]

(2) Hawaii varieties of industrial hemp [seed] cultivars that have been certified by the board[; and]

(3) Hemp genetics that are shown to:

(A) Meet federal definitions of hemp;

(B) Originate from any state with a federally approved industrial hemp program; and

(C) Utilize testing and sampling protocols similar to those used in Hawaii's program or utilize a nationally standardized sampling and testing protocol."

SECTION 8. Section 141-37, Hawaii Revised Statutes, is amended by amending subsections (b) to (d) to read as follows:

"(b) During the annual inspection, the licensee or the licensee’s authorized representative shall be present at the growing area. The licensee or authorized representative shall provide the [board’s] inspector with complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested; all land, buildings, and other structures used for
the cultivation and storage of industrial hemp; and all
documents and records pertaining to the licensee's industrial
hemp business.

(c) [Sampling] Annual sampling of industrial hemp plants
shall occur according to sampling protocol for industrial hemp
set or adopted by the department of agriculture or in the
following manner:

(1) Samples of each variety of industrial hemp may be
sampled from the growing areas at the board's
discretion;

(2) Quantitative laboratory determination of the delta-9
tetrahydrocannabinol concentration on a dry weight
basis shall be performed according to protocols
approved by the chairperson;

(3) A sample test result greater than 0.3 per cent of
delta-9 tetrahydrocannabinol concentration or a
tetrahydrocannabinol concentration allowed by federal
law, whichever is greater, shall be considered
conclusive evidence that at least one cannabis plant
or part of a plant in the growing area contains a
delta-9 tetrahydrocannabinol concentration over the
limit allowed for industrial hemp and that the
licensee of that growing area [is therefore] may not
be in compliance with this part. Upon receipt of such
a test result, the [chairperson] board may [summarily
suspend and revoke the license of an industrial hemp
licensee] require appropriate remedial action. The
chairperson shall furnish to the licensee a portion of
the violative sample if the licensee requests it
within thirty days of notification; and

(4) Test results from an institution of higher education
may, at the chairperson's discretion, be accepted in
lieu of board sampling.

(d) Licensees shall pay a charge of [$35] $40 per hour per
inspector, or fees established pursuant to section 147-102 when
the services are performed by temporary inspectors, for actual
drive time, mileage, inspection, and sampling time[—], and
charges for traveling expenses and extraordinary services when
the performance of the services involves unusual costs."

SECTION 9. Section 141-38, Hawaii Revised Statutes, is
amended to read as follows:
"[§]141-38(4) Violations. In addition to any other violations of this part, the following acts and omissions by any licensee or authorized representative thereof constitute violations for which civil penalties up to $500 [and disciplinary sanctions, including revocation of a license,] may be imposed by the [chairperson+] board:

(1) Refusal or failure by a licensee or authorized representative to [fully] reasonably cooperate and assist the board with the inspection process;

(2) Failure to provide any relevant information reasonably required or requested by the board for purposes pursuant to this part;

(3) Providing materially false, misleading, or incorrect information pertaining to the licensee's cultivation of industrial hemp to the chairperson or the chairperson's designee by any means, including but not limited to information provided in any application form, report, record, or inspection required or maintained pursuant to this part;

(4) Growing industrial hemp that when tested is shown to have a delta-9 tetrahydrocannabinol concentration
greater than 0.3 per cent on a dry weight basis or a
tetrahydrocannabinol concentration allowed by federal
law, whichever is greater;
(5) Failure to pay fees assessed by the [chairperson]
board or the board's designee for inspection or
laboratory analysis costs; or
(6) Possessing, outside of a field of lawful
cultivation[7] or appurtenant storage or processing
area, resin, flowering tops, or leaves that have been
removed from the hemp plant; provided that [the]:
(A) The presence of a de minimis amount, or
insignificant number, of hemp leaves or flowering
tops in hemp bales [that result from the normal
and appropriate processing of industrial hemp];
and
(B) Transportation in a department-approved manner of
the resin, flowering tops, and leaves of a
licensee's crop that passed department-ordered
compliance testing to another site for
processing,
shall not apply to this paragraph."
SECTION 10. Section 141-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the state treasury a special fund to be designated as the industrial hemp special fund to be administered by the department of agriculture. Moneys deposited in this special fund shall be used to fulfill the purposes of this part and shall include:

(1) Any moneys appropriated by the legislature to the special fund;

(2) Any fees collected by the department of agriculture in relation to the industrial hemp pilot program[,] except for fees collected for the services provided by temporary inspectors, as specified in section 141-37;

and

(3) The interest or return on investments earned from moneys in the special fund."

SECTION 11. Section 147-101, Hawaii Revised Statutes, is amended to read as follows:

"§147-101 Certification services revolving fund. There is established a certification services revolving fund for use by the department of agriculture to support certification ["]."
audit, or inspection services established under parts I, III, IV, VIII, and IX[-], and section 141-37. Moneys in the fund may be expended for materials, salaries, equipment, training, travel, and other costs related to providing certification [ex], audit, or inspection services. Notwithstanding sections 147-10, 147-34, 147-64, 147-114 [and], 147-126, and 141-37, moneys derived from the certification [ex] audit, or inspection services provided by temporary inspectors employed under this part or from charges for traveling expenses or extraordinary services shall be deposited into the fund."

SECTION 12. Section 147-102, Hawaii Revised Statutes, is amended to read as follows:

"[\$] §147-102[\$] Certification [and], audit, and inspection services. The department of agriculture shall fix, assess, and collect fees for certification [ex] audit, or inspection services provided by temporary inspectors employed under this part. The fees shall be in amounts necessary to cover all costs of the administration and provision of the certification [ex] audit, or inspection services provided under this part; provided that the department of agriculture shall establish charges for traveling expenses and extraordinary services when the
performance of the services involves unusual cost. The fees and charges established by the department of agriculture, except for fees for temporary inspection services under section 141-37, shall not be subject to chapter 91. The department of agriculture may employ temporary inspectors to assist in providing certification, audit, or inspection services under parts I, III, IV, VIII, and IX, and section 141-37, and those temporary inspectors shall be exempt from chapter 76."

SECTION 13. Section 328-15, Hawaii Revised Statutes, is amended to read as follows:

"§328-15 Drugs or devices deemed misbranded when; prescriptions excepted, when. A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of section 328-19.1.

(2) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and
(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, provided that under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with rules adopted by the director.

An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count shall not be required for any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. §§151-158), commonly known as the Virus-Serum-Toxin Act.
(3) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by a person and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis[†] (except hemp as defined in section 329-1), cabromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or any chemical derivative of such the substance, which derivative, after investigation, has been found to be and designated as habit forming, by rules adopted by the director under this part, or by regulations issued pursuant to section 502(d) of the Federal Act, unless its label bears the name and quantity or proportion of the substance or derivative
and in juxtaposition therewith the statement "Warning-
-May be habit forming."

(5) (A) If it is a drug unless:

   (i) Its label bears, to the exclusion of any

       other nonproprietary name (except the

       applicable systematic chemical name or the

       chemical formula), the established name, as

       defined in subparagraph (B), of the drug, if

       [such there be,] any; and in case it is

       fabricated from two or more ingredients, the

       established name and quantity of each active

       ingredient, including the kind and quantity

       or proportion of any alcohol, and also

       including, whether active or not, the

       established name and quantity or proportion

       of any bromides, ether, chloroform,

       acetanilid, acetophenetidin, amidopyrine,

       antipyrine, atropine, hyoscine, hyoscyamine,

       arsenic, digitalis, glucosides, mercury,

       ouabain, strophanthin, strychnine, thyroid,

       or any derivative or preparation of any
[such] of those substances, contained
therein; provided that the requirement for
stating the quantity of the active
ingredients, other than the quantity of
these specifically named in this paragraph,
shall apply only to prescription drugs; and

(ii) For any prescription drug the established
name of [such] the drug or ingredient, as
the case may be, on [such] the label (and on
any labeling on which a name for [such] the
drug or ingredient is used) is printed
prominently and in type at least half as
large as that used thereon for any
proprietary name or designation for [such]
the drug or ingredient; provided further
that to the extent that compliance with the
requirements of this subparagraph is
impracticable, exemptions shall be allowed
under rules adopted by the director.
(B) As used in this paragraph, the term "established name", with respect to a drug or ingredient thereof, means:

(i) The applicable official name designated pursuant to section 508 of the Federal Act;

(ii) If there is no applicable name and the drug, or the ingredient, is an article recognized in an official compendium, then the official title thereof in the compendium; or

(iii) If neither clause (i) nor clause (ii) of this subparagraph applies, then the common or usual name, if any, of the drug or of the ingredient;

provided further that where clause (ii) of this subparagraph applies to an article recognized in the United States Pharmacopoeia, in the United States Pharmacopoeia Dispensing Information, and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it
is labeled and offered for sale as a homeopathic
drug, in which case the official title used in
the Homeopathic Pharmacopoeia shall apply.

(6) Unless its labeling bears adequate:

(A) [Adequate directions] Directions for use; and

(B) [Such adequate warnings] Warnings against use in

those pathological conditions or by children

where its use may be dangerous to health, or

against unsafe dosage or methods or duration of

administration or application, in [such] a manner

and form as necessary for the protection

of users; provided that where any requirement of

subparagraph (A), as applied to any drug or

device, is not necessary for the protection of

the public health, the director shall adopt rules

exempting the drug or device from the

requirements; provided further that articles

exempted under regulations issued under section

502(f) of the Federal Act may also be exempt.

(7) If it purports to be a drug the name of which is

recognized in an official compendium, unless it is
packaged and labeled as prescribed therein; provided
that the method of packaging may be modified with the
consent of the director, or if consent is obtained
under the Federal Act. Whenever a drug is recognized
in both the United States Pharmacopoeia and the
Homeopathic Pharmacopoeia of the United States, it
shall be subject to the requirements of the United
States Pharmacopoeia with respect to the packaging and
labeling unless it is labeled and offered for sale as
a homeopathic drug, in which case it shall be subject
to the Homeopathic Pharmacopoeia of the United States
and not to the United States Pharmacopoeia; provided
that in the event of inconsistency between the
requirements of this paragraph and those of paragraph
(5) as to the name by which the drug or its
ingredients shall be designated, the requirements of
paragraph (5) shall prevail.

(8) If it has been found by the director to be a drug
liable to deterioration, unless it is packaged in
[such] any form and manner, and its label bears a
statement of [such] any precautions, as the rules
adopted by the director or regulations issued under
the Federal Act require as necessary for the
protection of public health. No [such] applicable
rule shall be established for any drug recognized in
an official compendium until the director shall have
informed the appropriate body charged with the
revision of the compendium of the need for [such] the
packaging or labeling requirements and [such] the body
shall have failed within a reasonable time to
prescribe [such] the requirements.

(9) (A) If it is a drug and its container is so made,
formed, or filled as to be misleading;
(B) If it is an imitation of another drug; or
(C) If it is offered for sale under the name of
another drug.

(10) If it is dangerous to health when used in the dosage,
or with the frequency or duration prescribed,
recommended, or suggested in the labeling thereof.

(11) If it is, purports to be, or is represented as a drug
composed wholly or partly of insulin, unless:
(A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the Federal Act; and

(B) The certificate or release is in effect with respect to the drug.

(12) If it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:

(A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the Federal Act; and

(B) The certificate or release is in effect with respect to the drug; provided that this paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the Federal Act.

For the purpose of this paragraph, the term "antibiotic drug" means any drug intended for use by a person containing any quantity of any chemical
substance [which] that is produced by a microorganism
and which has the capacity to inhibit or destroy
microorganisms in dilute solution (including the
chemically synthesized equivalent of [any such] the
substance).

(13) If it is a color additive, the intended use of which
in or on drugs is for the purpose of coloring only,
unless its packaging and labeling are in conformity
with the packaging and labeling requirements
applicable to [such] a color additive prescribed under
section 328-13(b).

(14) In the case of any prescription drug distributed or
offered for sale in this State, unless the
manufacturer, packer, or distributor thereof includes
in all advertisements and other descriptive printed
matter issued or caused to be issued by the
manufacturer, packer, or distributor with respect to
that drug a true statement of:

(A) The established name, as defined in paragraph

(5)(B), printed prominently and in type at least
half as large as that used for any trade or brand name thereof;

(B) The formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the Federal Act; and

(C) Any other information in brief summary relating to side effects, contra-indications, and effectiveness as shall be required in rules adopted by the director.

(15) If a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(16) Drugs and devices [which] that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this part; provided that [such] those drugs and devices are being delivered,
manufactured, processed, labeled, repacked, or
otherwise held in compliance with rules adopted by the
director.

(17) If it has met or exceeded the expiration date
established by the manufacturer or principal labeler."

SECTION 14. Section 329-1, Hawaii Revised Statutes, is
amended as follows:

1. By adding a new definition to be appropriately inserted
and to read:

"Hemp" means the plant Cannabis sativa L. and any part of
that plant, including the seeds thereof and all derivatives,
extracts, cannabinoids, isomers, acids, salts, and salts of
isomers, whether growing or not, with a delta-9
tetrahydrocannabinol concentration of not more than 0.3 per cent
on a dry weight basis."

2. By amending the definition of "marijuana" to read:

"Marijuana" means all parts of the plant (genus) Cannabis
whether growing or not; the seeds thereof, the resin extracted
from any part of the plant; and every compound, manufacture,
salt, derivative, mixture, or preparation of the plant, its
seeds, or resin. [¶]
"Marijuana" does not include [the]:

(1) Hemp; or

(2) The mature stalks of the plant (genus) Cannabis, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant [which] that is incapable of germination."

SECTION 15. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic
substances, derivatives, and their isomers with 
similar chemical structure and pharmacological 
activity to those substances contained in the plant, 
such as the following: Delta 1 cis or trans 
tetrahydrocannabinol, and their optical isomers; Delta 
6 cis or trans tetrahydrocannabinol, and their optical 
isomers; and Delta 3,4 cis or trans-
tetrahydrocannabinol, and its optical isomers (since 
nomenclature of these substances is not 
internationally standardized, compounds of these 
structures, regardless of numerical designation of 
atomic positions, are covered); provided that 
tetrahydrocannabinols under this subsection shall 
exclude tetrahydrocannabinols in hemp;

(2) Naphthoylindoles; meaning any compound containing a 3-
(1-naphthoyl)indole structure with substitution at the 
nitrogen atom of the indole ring by a alkyl, 
haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 
1-(N-methyl-2-piperidinyl)methyl or 2-(4-
morpholiny1)ethyl group, whether or not further 
substituted in the indole ring to any extent and
whether or not substituted in the naphthyl ring to any extent;

(3) Naphthylmethyldindoles; meaning any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1- (N-methyl-2-piperidinyl) methyl or 2-(4-morpholiny1) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(4) Naphthoylpurroles; meaning any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1- (N-methyl-2-piperidinyl)methyl or 2-(4-morpholiny1) ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;

(5) Naphthylmethyldindenones; meaning any compound containing a naphthylideneindene structure with substitution at
the 3-position of the indene ring by a alkyl,
haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the
indene ring to any extent, whether or not substituted
in the naphthyl ring to any extent;

(6) Phenylacetylinodites; meaning any compound containing a
3-phenylacetylinodole structure with substitution at
the nitrogen atom of the indole ring by a alkyl,
haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the
indole ring to any extent, whether or not substituted
in the phenyl ring to any extent;

(7) Cyclohexylphenols; meaning any compound containing a
2-(3-hydroxycyclohexyl) phenol structure with
substitution at the 5-position of the phenolic ring by
a alkyl, haloalkyl, alkenyl, cycloalkylmethyl,
cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or
2-(4-morpholinyl) ethyl group whether or not
substituted in the cyclohexyl ring to any extent;
(8) Benzoylindoles; meaning any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone (another trade name is WIN 55,212-2);

(10) (6a,10a)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (Other trade names are: HU-210/HU-211);

(11) Tetramethylcyclopropanoylindoles; meaning any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl,
alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-
methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl,
1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-
morpholinyl)methyl, or tetrahydropyranethylmethyl group,
whether or not further substituted in the indole ring
to any extent and whether or not substituted in the
tetramethylecyclopropyl ring to any extent;
(12) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide,
its optical, positional, and geometric isomers, salts,
and salts of isomers (Other names: APINACA, AKB48);
(13) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its
optical, positional, and geometric isomers, salts, and
salts of isomers (Other names: PB-22; QUPIC);
(14) Quinolin-8-yl 1-(5fluoropentyl)-1H-indole-3-
carboxylate, its optical, positional, and geometric
isomers, salts, and salts of isomers (Other names: 5-
fluoro-PB-22; 5F-PB-22);
(15) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-
fluorobenzyl)-1H-indazole-3-carboxamide, its optical,
positional, and geometric isomers, salts, and salts of
isomers (Other names: AB-FUBINACA);
(16) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: ADB-PINACA);

(17) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-CHMINACA);

(18) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AB-PINACA);

(19) [1-(5-fluoropentyl)-1H-indazol-3-yl] (naphthalen-1-yl)methanone, and geometric isomers, salts, and salts of isomers (Other names: THJ-2201);

(20) Methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate, and geometric isomers, salts, and salts of isomers (Other names: FUB-AMB);

(21) (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-AMB, 5-fluoro-AMP);
(22) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-
indazole-3-carboxamide, and geometric isomers, salts,
and salts of isomers (Other names: AKB48 N-(5-
fluoropentyl) analog, 5F-AKB48, APINACA 5-fluoropentyl
analog, 5F-APINACA);

(23) N-adamantyl-1-fluoropentylindole-3-carboxamide, and
geometric isomers, salts, and salts of isomers (Other
names: STS-135, 5F-APICA; 5-fluro-APICA);

(24) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-
carboxylate, and geometric isomers, salts, and salts
of isomers (Other names: NM2201);

(25) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
(cyclohexylmethyl)-1H-indazole-3-carboxamide, and
geometric isomers, salts, and salts of isomers (Other
names: MAB-CHMINACA and ADB-CHMINACA);

(26) Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-
carboxamido]-3,3-dimethylbutanoate (Other names: 5F-
ADB, 5-flouro-ADB, and 5F-MDMB-PINACA), its optical,
positional, and geometric isomers, salts, and salts of
isomers; and
(27) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)indazole-3-carboxamide (CUMYL-4CN-BINACA), its optical, positional, and geometric isomers, salts, and salts of isomers; also known as SGT-78, 4-CN-CUMYL-BINACA; CUMYL-CB-PINACA; CUMYL-CYBINACA; 4-cyano CUMYL-BUTINACA."

SECTION 16. Section 712-1240, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Hemp" shall have the same meaning as in section 329-1.

"Tetrahydrocannabinol" means tetrahydrocannabinol naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and
its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered); provided that tetrahydrocannabinol shall exclude tetrahydrocannabinol in hemp."

2. By amending the definition of "marijuana" to read:

"Marijuana" means any part of the plant (genus) cannabis, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin[, except that, as used herein, "marijuana"]. "Marijuana" does not include hemp, hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol."

SECTION 17. (a) The chairperson of the board of agriculture shall prepare and submit a proposed state plan to monitor and regulate hemp production in the State pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended, to the federal Secretary of Agriculture within thirty days after the federal Secretary of Agriculture announces guidelines for state plans. The chairperson shall also submit a
copy of the proposed state plan to the governor, the president of the senate, and the speaker of the house of representatives.

(b) The chairperson of the board of agriculture shall submit reports on a quarterly basis to the governor, the president of the senate, and the speaker of the house of representatives concerning the status of the federal Secretary of Agriculture's pending approval of the state plan until the state plan is approved.

(c) The chairperson of the board of agriculture shall submit a report on the implementation of the state plan to the legislature no later than twenty days prior to the convening of the regular session of 2020. The report shall include any proposed legislation to facilitate the cultivation, monitoring, and regulation of hemp production in the State.

SECTION 18. There is appropriated out of the general revenues of the State of Hawaii the sum of $255,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 to be deposited into the industrial hemp special fund established pursuant to section 141-I, Hawaii Revised Statutes.
SECTION 19. There is appropriated out of the industrial hemp special fund established pursuant to section 141-I, Hawaii Revised Statutes, the sum of $255,000 or so much thereof as may be necessary for fiscal year 2019-2020 and the same sum or so much thereof as may be necessary for fiscal year 2020-2021 to be allocated as follows:

(1) $85,000 for the establishment of one full-time equivalent (1.0 FTE) program coordinator position;

(2) $120,000 for the establishment of two full-time equivalent (2.0 FTE) specialist positions; and

(3) $50,000 for administrative costs of the industrial hemp program.

The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 20. Upon the repeal of the industrial hemp pilot program pursuant to Act 228, Session Laws of Hawaii 2016, all unencumbered funds remaining in the industrial hemp special fund established pursuant to section 141-41, Hawaii Revised Statutes, shall be deposited into the industrial hemp special fund established pursuant to section 141-I, Hawaii Revised Statutes.
SECTION 21. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 22. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 24. This Act shall take effect on July 1, 2019.
Report Title:  
Industrial Hemp; State Plan; Appropriations

Description:  
Requires the Department of Agriculture to establish a permanent industrial hemp program pursuant to federal law, and a corresponding special fund. Reduces or repeals certain regulatory requirements under the existing industrial hemp pilot program. Establishes monetary penalties for the unauthorized cultivation of hemp. Establishes authorized cultivation of hemp as an affirmative defense to certain criminal offenses pertaining to marijuana. Excludes hemp from statutory definitions of marijuana. Requires the Chairperson of the Board of Agriculture to prepare a state plan for approval by the federal Secretary of Agriculture and report on the approval process to the Legislature and Governor. Appropriates funds. (CD1)

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