THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

# S.B. NO. 2050 S.D. 2

# A BILL FOR AN ACT

RELATING TO INDUSTRIAL HEMP DERIVED PRODUCTS.

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

SECTION 1. The legislature finds that Act 228, Session Laws of Hawaii 2016, established the industrial hemp pilot program within the department of agriculture and has created the promise of a new form of diversified agriculture in Hawaii. Since the inception of the hemp pilot program, thirty-six industrial hemp farmers have registered with the department and are currently cultivating hemp for commercial use.

The legislature further finds that Congress passed the Agricultural Improvement Act of 2018, otherwise known as the Farm Bill, which removed hemp derived extracts, derivatives, and cannabinoids, such as cannabidiol (CBD) as schedule I substances in the Controlled Substances Act from hemp plants that contain no more than 0.3 per cent tetrahydrocannabinol. This effectively legalized the sale of cannabidiol products from the commercial cultivation of hemp in the United States.

The legislature finds that with the passage of the Farm Bill, over sixteen thousand hemp growers have emerged throughout

the United States. Industrial hemp is currently being used nationally in hundreds of different applications including consumer textiles, personal care, industrial components, and dietary supplements containing hemp product and cannabinoids. The hemp industry across the country has grown rapidly, and hemp-derived products are used by a wide range of consumers.

The legislature also finds that, while the United States Department of Agriculture has opened the industrial hemp market, the Food and Drug Administration has continued to exercise jurisdiction over the regulation of ingestible and topical hemp products. In 2019, the Food and Drug Administration, in its continuation of evaluating regulatory frameworks for hemp-derived compounds, held a public hearing, and opened a public docket for data gathering. The Food and Drug Administration has also issued non-legally binding public statements arguing that it is illegal to market cannabidiol as a food additive or dietary supplement because it is an active ingredient in a pharmaceutical drug.

The legislature additionally finds that, with the existence of competing federal frameworks, several states, such as Florida, Ohio, and Texas, have already acted to pass laws or

regulations that explicitly allow hemp-derived cannabidiol products to be produced and sold and to provide certainty for businesses and consumers. While it is expected that the Food and Drug Administration will eventually use its authority to regulate hemp-derived products, the only enforcement action it has taken to date is to send warning letters against improper disease remediation claims made by food and supplement companies. In Hawaii, the department of health has adhered to the Food and Drug Administration public guidance that products containing cannabidiol are adulterated food, beverage, or cosmetic products, and therefore, their sale in Hawaii is prohibited. Despite this suggested prohibition, cannabidiol products continue to be sold across Hawaii, with no regulatory oversight.

The legislature finds that, given the time expected for the Food and Drug Administration to act and the existing confusion among consumers and the industry, it is important that a timely regulatory framework be established around hemp products and cannabinoids, both to provide consumer safety requirements, and certainty for Hawaii hemp farmers to continue to viably operate their industrial hemp operations in the State.

The purpose of this Act is to:

(1) Establish a regulatory framework for consumer products containing hemp products and cannabinoids that were grown legally through approved government programs, which consists of labeling and independent laboratory testing to ensure products do not contain contaminants unfit for human consumption;

(2) Prohibit manufacturers of these products from making health-related claims;

(3) Require these products to be properly labeled to be legally allowed for sale in the State; and

(4) Clarifies that these products are not considered adulterated food, beverage, or cosmetic products.

SECTION 2. Chapter 328, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . INDUSTRIAL HEMP DERIVED PRODUCTS**

**§328- Definitions.** As used in this part:

"Industrial hemp" means 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, as measured post-decarboxylation or by other similarly reliable methods.

"Industrial hemp product" means a finished product containing industrial hemp that meets the following conditions:

(1) Is a hemp cosmetic for topical application to the skin, or a hemp supplement to be ingested orally by humans or animals;

(2) Contains any part of the hemp plant, including naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, resins, or derivatives; and

(3) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent as measured post-decarboxylation or other similarly reliable methods.

"Industrial hemp product" does not include any living hemp plants, viable seeds, leaf materials, or floral materials.

**§328- Manufacture, distribution, or sale of industrial hemp products.** Nothing in this part shall prohibit any individual or entity licensed pursuant chapter 329D from

manufacturing, distributing, or selling products that contain industrial hemp, cannabinoids, extracts, or derivatives from industrial hemp grown in compliance with section 141-32.

**§328- Labeling.** The label of any package of a food, beverage, or cosmetic containing cannabidiol derived from industrial hemp shall include the following statement or a substantially similar statement:

"CANNABIDIOL USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. KEEP OUT OF REACH OF CHILDREN."

**§328- Health-related statements.** A manufacturer, distributor, or seller of an industrial hemp product shall not include on the label of the product, or publish or disseminate in advertising or marketing, any health-related statement that is untrue in any particular manner or that tends to create a misleading impression as to the health effects of consuming products containing industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp.

For the purposes of this section, "health-related statement" means a statement related to health and includes a statement of a curative or therapeutic nature that, expressly or impliedly, suggests a relationship between the consumption of

industrial hemp or industrial hemp products and health benefits or effects on the diagnosis, cure, mitigation, treatment, or prevention of any disease.

**§328- Use in food products.** In order for industrial hemp to be used in food products, a manufacturer shall comply with the following:

(1) All parts of the hemp plant used in food shall come from a state or country that has an established and approved industrial hemp program that meets all of the federal requirements regarding the lawful and safe cultivation of industrial hemp and inspects or regulates hemp under a food safety program or equivalent criteria to ensure safety for human consumption;

(2) The industrial hemp cultivator or grower shall be in good standing and in compliance with the governing laws of the state or country of origin; and

(3) A raw hemp product shall not be distributed or sold in the State without a certificate of analysis from an independent testing laboratory that confirms the following:

(A) The raw hemp product is the product of a batch of industrial hemp that was tested by the independent testing laboratory in accordance with section 141-32;

(B) A tested random sample of the batch of industrial hemp contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 per cent on a dry-weight basis; and

(C) The tested sample of the batch did not contain contaminants that are unsafe for human consumption.

For the purposes of this section, "manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a product. "Manufacture" does not include planting, growing, harvesting, drying, curing, grading, or trimming a plant or part of a plant.

**§328- Hemp products; when adulterated or misbranded.** A food, beverage, or cosmetic product shall not be considered adulterated pursuant to sections 328-9 and 328-18 or misbranded pursuant to sections 328-10 and 328-19 solely by the inclusion

of industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp. The sale of food, beverages, or cosmetics that include industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp shall not be restricted or prohibited based solely on the inclusion of industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp.

**§328- Rulemaking.** The department shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this part."

SECTION 3. This Act shall take effect on July 1, 2050.

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**Report Title:**
Industrial Hemp; Derived Products; Labeling

**Description:**
Establishes a regulatory framework for products containing cannabidiol that were manufactured legally through approved government programs. Clarifies that these products are not considered adulterated food, beverage, or cosmetic products. Prohibits manufacturers from making health-related claims. Requires product labeling for the products to be legally allowed in the State. Takes effect 7/1/2050. (SD2)

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