

S.B. NO. 2834

JAN 23 2020

A BILL FOR AN ACT

RELATING TO HEMP.

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

1 SECTION 1. The purpose of this Act is to establish a
2 program for the production of hemp in the State.

3 SECTION 2. Chapter 141, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . HAWAII HEMP PRODUCTION PROGRAM

7 §141-A Definitions. As used in this part:

8 "Cannabis" means the genus of flowering plants in the
9 family Cannabaceae. For the purposes of this part, cannabis
10 refers to any form of the plant where the delta-9
11 tetrahydrocannabinol concentration on a dry weight basis has
12 not yet been determined.

13 "Chairperson" means the chairperson of the board of
14 agriculture or their designee.

15 "Corrective action plan" means a plan established by the
16 department of agriculture for a licensed hemp producer to
17 correct a negligent violation or non-compliance with a hemp
18 production plan and this part.

1 "Daycare" means a place of daytime training, supervision,
2 recreation, and or medical services for children of preschool
3 age, for the disabled, or for the elderly.

4 "Decarboxylated" means the completion of the chemical
5 reaction that converts delta-9 tetrahydrocannabinol's acids
6 (THCA) into delta-9 tetrahydrocannabinol. The decarboxylated
7 value may be calculated using a conversion formula that sums
8 delta-9 tetrahydrocannabinol and eighty-seven and seven tenths
9 (87.7) per cent of THCA.

10 "Delta-9 tetrahydrocannabinol" or "THC" is the primary
11 psychoactive component of cannabis.

12 "Department" means the department of agriculture.

13 "Dry weight basis" refers to a method of determining the
14 percentage of a chemical in a substance after removing the
15 moisture from the substance.

16 "Entity" means a corporation, joint stock company,
17 association, limited partnership, limited liability partnership,
18 limited liability company, irrevocable trust, estate, charitable
19 organization, or other similar organization, including any such
20 organization participating in the hemp production as a partner
21 in a general partnership, a participant in a joint venture, or a
22 participant in a similar organization.

1 "Executive officer" means a president, chairperson of an
2 executive committee, senior officer responsible for the
3 applicant or licensee's business, chief financial officer, chief
4 operating officer, or any other person who performs similar
5 functions related to the licensee or applicant.

6 "GPS coordinates" means a location designated through a
7 global system of navigational satellites used to determine
8 the precise ground position of a place or object.

9 "Handle" refers to the actions of cultivating or storing
10 hemp plants or hemp plant parts prior to the delivery of such
11 plant or plant part for further processing. In cases where
12 cannabis plants exceed the acceptable hemp THC level, handle may
13 also refer to the disposal of those plants.

14 "Hemp" means cannabis sativa L. and any part of that plant,
15 including the seeds thereof and all derivatives, extracts,
16 cannabinoids, isomers, acids, salts, and salts of isomers,
17 whether growing or not, with a delta-9-tetrahydrocannabinol
18 concentration of not more than 0.3 per cent on a dry weight
19 basis, as measured post-decarboxylation or by other similarly
20 reliable method. "Hemp" as used in this part does not include
21 hemp products.

22 "Hemp product" means a product containing hemp, or any
23 product derived from, or made by, processing hemp, including but

1 not limited to consumables, cosmetics, personal care products,
2 food intended for animal or human consumption, supplements,
3 cloth, cordage, fiber, fuel, paint, paper, particleboard,
4 plastics, and any product containing one or more hemp-derived
5 cannabinoids such as cannabidiol that:

6 (1) Does not include any living hemp plants, viable seeds,
7 leaf materials, or floral materials; and

8 (2) Has a delta-9-tetrahydrocannabinol concentration of
9 not more than 0.3 per cent on a dry weight basis, as
10 measured post-decarboxylation or by other similarly
11 reliable method.

12 "Key participants" means a person or group of persons
13 acting in concert who exercises control over or has a twenty-
14 five per cent ownership interest or more in an applicant or
15 licensee under this chapter, such as an owner or partner in a
16 partnership. A key participant also includes persons in a
17 corporate entity at executive levels including managers and
18 executive officers. This does not include management such as
19 farm, field, or shift managers.

20 "Lot" refers to a contiguous area in a field, greenhouse,
21 or indoor growing structure containing the same variety or
22 strain of cannabis throughout.

1 "Licensed land area" means a contiguous parcel or tract of
2 land authorized by the department for the production of hemp.

3 "Negligence" means failure to exercise the level of care
4 that a reasonably prudent person would exercise in complying
5 with the regulations set forth under this part.

6 "Licensee" means a person or entity authorized to grow
7 hemp under the terms established in this part.

8 "Playground" means any public outdoor facility, including
9 any parking lot appurtenant thereto, that is intended for
10 recreation, with any portion thereof containing three or more
11 separate apparatus intended for the recreation of children,
12 including but not limited to sliding boards, swing sets, and
13 teeterboards.

14 "Post-decarboxylation" means testing methodologies for THC
15 concentration levels in hemp, where the total potential delta-9-
16 tetrahydrocannabinol content, derived from the sum of the THC
17 and THCA content, is determined and reported on a dry weight
18 basis.

19 "Processor" means an individual or entity authorized by the
20 State of Hawaii if in the State or another receiving state if
21 applicable to receive harvested hemp from a licensed producer
22 for the purpose of transformation of the harvested hemp into a
23 hemp product.

1 "Produce" refers to the propagation or cultivation of
2 hemp.

3 "Producer" means a person or entity with a share in a hemp
4 crop and shares in the risk or production of hemp under the
5 program.

6 "Program" means the Hawaii hemp production program.

7 "School" means any public or private preschool,
8 kindergarten, elementary, intermediate, middle, secondary, or
9 high school.

10 "State" means the State of Hawaii unless specified
11 otherwise.

12 "Store" is part of the term "handle" under this part and
13 means to deposit harvested hemp in a storehouse, warehouse, or
14 other identified location within the producer's licensed land
15 area prior to delivery to a recipient for further processing.

16 "USDA" means the United States Department of Agriculture.

17 "Varietal" means a group of plants or an individual plant
18 that exhibits distinctive observable physical characteristics or
19 has a distinct genetic composition and includes viable seeds and
20 a plant or plant part that can be utilized to grow a new plant.

21 **§141-B Hawaii hemp production program.** (a) There is
22 established within the department the Hawaii hemp production
23 program.

1 (b) The department shall administer hemp production
2 licensure and regulation, pursuant to this part.

3 (c) No person or entity shall produce hemp in the State
4 unless the person or entity has a valid license issued by the
5 department pursuant to this part.

6 **§141-C License applicants.** (a) If the applicant is an
7 individual, the application shall include supporting
8 documentation to establish that the individual:

9 (1) Is not less than twenty-one years of age;

10 (2) Has been a legal resident of the State of Hawaii for
11 not less than three years preceding the date of
12 application;

13 (3) Has no felony convictions related to a controlled
14 substance under state or federal law in the ten years
15 immediately preceding the date of submission of the
16 application;

17 (4) Has a Hawaii tax identification number; and

18 (5) Has a federal employer identification number.

19 (b) If the applicant is an entity, the application shall
20 include supporting documentation to establish that the entity:

21 (1) Is organized under the laws of the State of Hawaii;

22 (2) Has a Hawaii tax identification number;

(3) Is registered with the business registration division of the Hawaii department of commerce and consumer affairs to do business in this State;

(4) Has a federal employer identification number;

(5) Is not less than fifty-one per cent held by Hawaii legal residents or entities wholly controlled by Hawaii legal residents who have been Hawaii legal residents for not less than three years immediately preceding the date the application was submitted; and

(6) Is composed of key participants each of whom has had no felony convictions related to a controlled substance under state or federal law in the ten years immediately preceding the date of submission of the application.

(c) Each applicant, including an individual applicant and all key participants of an entity applicant, shall be subject to background checks conducted by the department or its designee, including but not limited to criminal history records checks in accordance with section 846-2.7. The person undergoing the background check shall provide written consent and all applicable processing fees to the department or its designee to conduct the criminal history record checks.

1 (d) Pursuant to, and in accordance with, section 846-2.7,
2 the department or its designee is authorized to conduct state
3 and national criminal history record checks on all license
4 applicants, including an individual applicant and all key
5 participants of an entity applicant, and participate in the rap
6 back program, for the purpose of determining suitability or
7 fitness for a license under this part.

8 (e) If an individual or one or more of an applying
9 entities' key participants had a hemp production license revoked
10 or non-renewed due to a violation, whether as an individual or
11 as a key participant of an entity, the individual or applying
12 entity is ineligible for a license under the program for a
13 period of five years from the date of the revocation or
14 nonrenewal.

15 (f) Any person convicted of a felony related to a
16 controlled substance under state or federal law is prohibited
17 from producing hemp for ten years following the date of
18 conviction.

19 **§141-D License applications.** (a) An individual or entity
20 that intends to produce hemp in the State shall apply to the
21 department for a license on an application form prescribed by
22 the department.

(b) The application form shall request information necessary to verify that applicants meet the required qualifications pursuant to section 141-C. Applicants shall provide, at a minimum, the following information:

(1) The exact name of the applicant, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(2) If the applicant is an individual, the applicant's mailing address, phone number, and email address;

(3) If the applicant is a business entity: the address of the principal business location, full name and title of key participants, phone number, an email address, and federal employer identification number of the business entity;

(4) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority for the five-year period prior to the date of the application;

(5) The legal description of the proposed licensed land area on which the hemp will be produced and stored incident to production as applicable;

(6) The GPS coordinates in decimal degrees from the central most point of the proposed licensed land area on which the hemp will be produced and stored incident to production as applicable;

(7) Certification that the proposed licensed land area is under the legal control of the applicant and that the applicant has the authority to produce and store hemp incident to production as applicable on the proposed licensed land area;

(8) Certification that applicable zoning or land use restrictions allow for the production of hemp and storage incident to the production of hemp on the proposed licensed land area;

(9) Certification that the licensee shall indemnify, hold harmless, and release forever the State and its departments, agencies, officers, employees, and agents of any kind from all liability claims arising out of the licensees' actions involving the production of hemp;

(10) Certification that the applicant and key participants of the applicant have not personally nor as a key participants of an entity previously had a license or equivalent authorization to produce hemp revoked, or

1 non-renewed under any state, tribal, or USDA hemp
2 production program or hemp pilot program; and

3 (11) Any other information required by the department.

4 (c) In addition to the application form, the applicant
5 shall submit a non-refundable application fee set by the
6 department by certified or cashier's check. If, for any reason,
7 the application fee is not submitted with the application, or
8 not available for deposit, the application for a license shall
9 be deemed void and the department shall inform the applicant in
10 writing that its application has been rejected.

11 (d) If an applicant submits an application form in which
12 all required information is not complete and valid, the
13 application shall not be granted.

14 (e) Any person found to have made any fraudulent or false
15 statement or misrepresentation in the information submitted in
16 the person's application or in violation of this chapter will be
17 ineligible to participate in the program, shall be subject to
18 denial of an application or immediate revocation of a license,
19 and may be referred to law enforcement.

20 **§141-E Licensing.** (a) If the department determines that
21 all requirements for a license are satisfied, the department may
22 offer a license agreement to the applicant. The license
23 agreement shall set forth the terms and conditions for

1 participation in the program. Failure to comply with any of the
2 terms and conditions of the license agreement and this part
3 shall constitute grounds for the department to impose the
4 penalties and sanctions set forth in section 141-M.

5 (b) Within seven days of being offered a license
6 agreement, a nonrefundable license fee shall be submitted to the
7 department by certified or cashier's check or the department
8 shall revoke its offer of the license agreement unless the
9 department, in its sole discretion and for good cause shown,
10 decides otherwise.

11 (c) Upon the receipt of a properly executed license
12 agreement and the license fee, the department shall issue a
13 license authorizing the applicant to produce hemp in accordance
14 with the terms and conditions of the license agreement.

15 (d) A license shall be valid for three years from the date
16 of issuance subject to the payment of an annual license fee
17 prior to the beginning of each license year. Prior to the
18 expiration of a license, within a time set by the department, a
19 licensee may apply to renew the license, subject to any renewal
20 requirements and renewal fees set by the department.

21 (e) Licenses shall not be transferrable.

22 (f) If a licensed entity's key participants change or the
23 licensed entity is sold or otherwise transferred to new key

1 participants, the licensed entity shall submit a request to the
2 department for approval at least thirty days prior to any
3 change, sale, or transfer. Any request shall include
4 information sufficient to establish the new key participants
5 meet all the requirements under this part and shall have had no
6 felony controlled substance convictions within the last ten year
7 preceding the date of transfer. The department may deny a
8 request if it deems any key participant has failed to meet all
9 the requirements under this part.

10 **§141-F Tracking.** (a) The department shall establish,
11 maintain, and control a computer software tracking system that
12 shall have real time, twenty-four-hour access to the data of all
13 licensees.

14 (b) The computer software tracking system shall collect
15 data relating to, at a minimum:

16 (1) The total amount of cannabis or hemp in possession of
17 a licensee from either seed or immature plant state,
18 including all plants that are derived from cuttings or
19 cloning, until the cannabis or hemp is harvested or
20 destroyed;

21 (2) The amount of waste produced by each harvest or
22 disposal process; and

1 (3) The transport of hemp between a licensee and an
2 authorized processor, including the identity of the
3 person transporting the hemp, and the make, model, and
4 license number of the vehicle being used for the
5 transport.

6 (c) The procurement of the computer software tracking
7 system established pursuant to this section shall be exempt from
8 chapter 103D; provided that:

9 (1) The department shall publicly solicit at least three
10 proposals for the computer software tracking system;
11 and

12 (2) The selection of the computer software tracking system
13 shall be approved by the chairperson of the
14 department.

15 (d) The department may establish fees necessary to
16 implement, operate, and maintain the computer software tracking
17 system.

18 (e) A licensee shall purchase, operate, and maintain a
19 computer software tracking system that shall interface with the
20 department's computer software tracking system.

21 **§141-G Confidential information.** (a) The following
22 information relating to a licensee or applicant for a license
23 that is in the department's possession for the purposes of this

1 part shall be considered confidential and shall not be made
2 available to the public unless authorized by the licensee or
3 applicant; provided that the information shall be made available
4 to any law enforcement agency or officer, third party authorized
5 by the state to test and sample cannabis for the purposes of
6 this program, the USDA, and another Hawaii state agency:

7 (1) Information identifying the legal address and GPS
8 coordinates of the locations of licensed land areas;

9 (2) Information obtained about an individual as a result
10 of a criminal history record check;

11 (4) Any financial data received from an applicant or
12 licensee; and

13 (3) Data collected by the department's computer software
14 tracking system.

15 **§141-H Information sharing and collection.**

16 Notwithstanding section 141-G, licensees shall be required to
17 report the following information to the department to be shared
18 with the USDA:

19 (a) Hemp crop acreage;

20 (b) Total acreage of hemp planted, harvested, and
21 disposed;

22 (c) License or authorization number;

23 (d) Street address of the licensed land area;

(e) GPS coordinates of each lot or greenhouse where hemp will be produced;

(f) Acreage of greenhouse or indoor square footage dedicated to the production of hemp; and

(g) Any other information required by the department or USDA.

§141-I Licensed land areas. (a) Licensees shall be authorized to produce hemp only within the licensed land area approved by the department in the licensees' license. The licensed land area approved by the department may be less than the acreage proposed in the licensees' application.

(b) A licensee shall not store or produce hemp outside of its licensed land area.

(c) A licensee shall not handle or possess hemp outside of its licensed land area except for the purpose of transportation to an authorized processor or to another licensee's licensed land area as authorized by the department.

(d) A licensed land area, as described in a license, shall not be modified in any way without the prior written approval of the department.

(e) The production of hemp in accordance with this part shall be limited to lands situated within the state agricultural land district.

1 (f) No land area shall be licensed for hemp production
2 within 1,000 feet of the real property comprising a playground,
3 school, state park, state recreation area, residential
4 neighborhood, hospital, or daycare.

5 (g) A licensed land area shall not exceed forty acres;
6 however, the chairperson may authorize a licensed land area
7 greater than forty acres if hemp in the licensed land area is to
8 be produced solely for one or more of the following purposes:

- 9 (1) Hemp fiber;
10 (2) Hemp hurd;
11 (3) Hemp grain; or
12 (4) Phytoremediation.

13 **§141-J Transport.** (a) A licensee shall not transport
14 hemp outside of the licensed land area; provided that a licensee
15 may transport hemp to an authorized processor or to another
16 licensee's licensed land area as authorized by the department.

17 (b) The department and law enforcement may require
18 movement reports, inspections, sampling, or testing, and may
19 impose other conditions or restrictions on the transport of
20 hemp.

21 **§141-K Inspection, sampling, testing.** (a) All licensees
22 shall allow federal, state, and county law enforcement
23 authorities to inspect the records, licensed land area,

1 equipment, facilities, and areas incident to the production or
2 storage of hemp to verify compliance with the requirements of
3 this part, and to sample and test cannabis plants, plant
4 materials, and seeds possessed under the license.

5 (b) The department, law enforcement, and third party
6 agents authorized by the department may enter during business
7 hours upon any licensed land area or place of business
8 associated with the license to inspect the records, licensed
9 land area, equipment, facilities, and areas incident to the
10 production or storage of hemp to verify compliance with the
11 requirements of this part, and to sample and test any cannabis
12 plants, plant materials, or seeds.

13 (c) An authorized representative of the licensee or the
14 licensee shall be present at the growing site during sample
15 collection.

16 (d) Licensees shall pay the department or third-parties
17 authorized by the department for the performance of inspections
18 of a licensee's licensed land area and records to ensure
19 compliance with the license, and for sample collection and
20 testing of cannabis plants, plant materials, or seeds for the
21 purposes of this part.

22 (e) The department shall establish sample collection
23 protocols that shall be used for the purpose of collecting

1 representative amounts of cannabis from licensed land areas for
2 testing to measure delta-9-tetrahydrocannabinol concentration.
3 The protocols must adhere to USDA's sampling guidelines for hemp
4 growing.

5 (f) The department shall establish laboratory standards
6 and testing protocols that shall be used to determine delta-9-
7 tetrahydrocannabinol concentration measured post decarboxylation
8 or by other similarly reliable methods. The protocols must
9 adhere to USDA standards of performance for detecting THC
10 concentration including measurement of uncertainty.

11 **§141-L Disposal of non-compliant plants.** (a) If a
12 producer has produced cannabis exceeding the acceptable hemp THC
13 level, the material must be disposed of in accordance with the
14 law. The material must be collected by or destroyed under the
15 supervision of a person authorized under the law to handle
16 marijuana, such as a Drug Enforcement Agency registered reverse
17 distributor, or a duly authorized federal, state, or local law
18 enforcement officer. The licensee shall be responsible for the
19 cost of disposal.

20 (b) USDA shall be notified of non-compliant plants and
21 subsequent disposals as necessary.

22 **§141-M Revocation and suspension of licenses; other**
23 **penalties.** (a) In addition to any other actions authorized by

1 law, the department may deny, revoke, or suspend any license
2 applied for or issued by the department in accordance with this
3 part, and to fine or otherwise discipline a licensee for any
4 cause authorized by law, including but not limited to the
5 following:

- 6 (1) Procuring a license through fraud, misrepresentation,
7 or deceit;
- 8 (2) Violation of any of the provisions of this chapter or
9 the rules adopted thereto;
- 10 (3) Failure to comply with a department order;
- 11 (4) Making a false statement on any document submitted or
12 required to be filed by this chapter, including
13 furnishing false or fraudulent material information in
14 any application;
- 15 (5) Refusal or failure to fully cooperate and assist the
16 department or authorized third party with any
17 inspection, sampling, or testing process;
- 18 (6) Failure to provide any information required by the
19 department pursuant to this part;
- 20 (7) Providing false, misleading, or incorrect information
21 to the department by any means, including in any
22 application, report, record, or inspection;

(8) Cultivating hemp that when tested is shown to have a delta-9 tetrahydrocannabinol concentration greater than 0.3 per cent on a dry weight basis;

(9) Harvesting cannabis prior to sample collection and testing;

(10) Handling, processing, or putting into the stream of commerce any cannabis from a lot where the acceptable THC level is noncompliant with the threshold for hemp;

(11) Commingling the hemp or cannabis plant material from one lot with the hemp plant material from other lots.

(12) Failure to pay any fee assessed by the department or third-party inspector or laboratory authorized by the department; or

(13) Failure to comply with any other applicable federal, state, or county law, ordinance, rule, or regulation.

(b) For any violation of this part, including any rule adopted pursuant thereto, the department may impose civil penalties up to \$1,000 for each separate offense. Each day or instance of a violation shall constitute a separate offense.

(c) The department may issue immediate temporary cease and desist orders as necessary to prevent immediate harm to the public.

1 (d) If the department revokes or suspends a license under
2 this section, the licensee shall not sell, transfer, or
3 otherwise dispose of any hemp owned by or in the possession of
4 the licensee.

5 (e) A licensee whose license has been revoked in
6 accordance with this part shall be ineligible for a new license
7 under the program for a period of five years from the date of
8 revocation.

9 (f) All proceedings for denial, suspension, fine, or
10 revocation of a license on any ground specified in subsection
11 (a) shall be conducted pursuant to chapter 91, including the
12 right to judicial review.

13 **§141-N Corrective action plans.** (a) Notwithstanding
14 section 141-M, if the department, in its sole discretion,
15 determines that a licensee has negligently violated this part,
16 or any rules adopted pursuant thereto, the department shall
17 require the licensee to comply with a corrective action plan
18 established by the department to correct the violation, which
19 may include disposal of a hemp crop, plant, plant material, or
20 seed, whether growing or not, and the products derived from
21 those plants; provided that failure to fully comply with a
22 corrective action plan established by the department shall
23 constitute a violation.

1 (b) Hemp producers do not commit a negligent violation if
2 they use reasonable efforts to grow hemp and the plant produced
3 has a THC concentration less than 0.5 per cent on a dry weight
4 basis.

5 (c) A producer who negligently violates this part, or any
6 rules adopted pursuant thereto, three times in a five-year
7 period will be ineligible to produce hemp for a period of five
8 years from the date of the third violation.

9 (d) If it is determined by the department, in its sole
10 discretion, that a violation was committed with a culpable
11 mental state greater than negligence, the department shall
12 immediately report the license applicant, licensee, or
13 producer to the United States Attorney General, USDA, and the
14 state attorney general, and the department may take any other
15 action it deems necessary including summary suspension or
16 revocation of a license.

17 **§141-0 Affirmative defense.** (a) A licensee or an
18 employee of a licensee that is licensed under this part may
19 assert the cultivation and possession of hemp as an affirmative
20 defense to any prosecution involving marijuana under section
21 712-1247, 712-1248, 712-1249, 712-1249.4, or 712-1249.5. A
22 defendant may assert the affirmative defense that the defendant
23 or defendant's employer:

(1) Possessed and was in compliance with a valid hemp production license issued by the department pursuant to this part;

(2) Planted hemp varieties of cannabis that are allowed by the department within a licensed land area pursuant to this part; and

(3) The produced cannabis developed into plants with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent, but less than 3 per cent, on a dry weight basis.

(b) This affirmative defense applies only to the production and possession of marijuana within a licensed land area, but it does not extend to the sale or distribution of marijuana.

§141-P Rulemaking. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this part, which shall include but not be limited to:

(1) Procedures for inspection by the department or its agents of licensee records and licensed land areas licensed pursuant to this part;

(2) Laboratory standards related to the sampling and testing of hemp and hemp products;

- (3) Certification requirements for labs conducting testing of hemp and hemp products;
- (4) Limitations on the number of licenses issued per year;
- (5) Criteria and standards for the consideration and selection of qualified licensees;
- (6) Rules related to licensed land areas, including acreage limits, modifications of licensed land areas, divisions between breeding and nursery activities, and indoor cultivation;
- (7) Rules related to the transportation of hemp;
- (8) Specific requirements regarding reports and records required from each licensee licensed pursuant to this part;
- (9) Rules related to the purchase and sale of varieties by licensees and varietal usage in the program, including prohibiting the usage of certain varieties, conditionally allowing the usage of certain varieties, or approving varieties for usage;
- (10) Rules related to the number of licenses that an entity may hold in the program, with entities limited to a maximum of one license on each island;
- (11) A fee structure for the submission of applications, initial licenses, and renewal of licenses;

- 1 (12) A fee structure for licensed land area modification
- 2 fees;
- 3 (13) A fee structure for the inspection of licensees and
- 4 for the sampling, and testing of hemp and hemp
- 5 products;
- 6 (14) A fee structure for criminal history record checks;
- 7 (15) A fee structure as necessary to implement, operate,
- 8 and maintain the computer software tracking system;
- 9 (16) The disposal or destruction of unwanted or unused hemp
- 10 crops, plants, plant materials, seeds whether growing
- 11 or not, and hemp products derived from those plants,
- 12 including a fee structure;
- 13 (17) The disposal of hemp crops, plants, plant materials,
- 14 or seeds, whether growing or not, found to be in
- 15 violation of this part, and products derived from
- 16 those plants including a fee structure;
- 17 (18) The establishment of a range of penalties for
- 18 violations of this part or rules adopted pursuant to
- 19 this part;
- 20 (19) Requirements regarding transportation requests and
- 21 conditions related to the transportation of hemp and
- 22 products derived from hemp; and
- 23 (20) Any other rules necessary to carry out this part.

1 (b) The department shall adopt interim rules, which shall
2 be exempt from chapters 91 and 201M, to effectuate the purposes
3 of this part; provided that the interim rules shall remain in
4 effect until July 1, 2025, or until rules are adopted pursuant
5 to subsection (a), whichever occurs sooner.

6 (c) The department may amend the interim rules, and the
7 amendments shall be exempt from chapters 91 and 201M, to
8 effectuate the purposes of this chapter; provided that any
9 amended interim rules shall remain in effect until July 1, 2025,
10 or until rules are adopted pursuant to subsection (a), whichever
11 occurs sooner.

12 **§141-Q Hawaii hemp production program special fund;**
13 **established.** (a) There is established within the state treasury
14 the Hawaii hemp production program special fund, into which
15 shall be deposited:

16 (1) Appropriations made by the legislature to the special
17 fund;

18 (2) Other grants and gifts made to the fund;

19 (3) Any income and capital gains earned by the fund; and

20 (4) Any fees or fines collected by the department pursuant
21 to this part.

22 (b) Moneys in the Hawaii hemp production program special
23 fund shall be used by the department for the following purposes:

(1) To establish and regulate a system of licensed hemp cultivators in the State;

(2) To fund positions and operating costs authorized by the legislature; and

(3) For any other expenditure necessary, consistent with this part, to implement the program.

§141-R Resource certification. The department has the authority to take reasonable actions to ensure it can certify and maintain a certification that it has the resources and personnel necessary to carry out procedures for hemp production as required by this part."

SECTION 3. Chapter 328, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . HAWAII HEMP PROCESSORS

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

"Applicant" means the person applying to register as a hemp processor under this chapter.

"Cannabinoids" means a group of twenty-one carbon compounds present in the genus cannabis. Cannabinoids includes their analogs and transformation products.

1 "Cannabis" means the genus of the flowering plant in the
2 family Cannabaceae. For the purpose of this part, cannabis
3 refers to any form of the plant where the delta-9
4 tetrahydrocannabinol concentration on a dry weight basis has
5 not yet been determined.

6 "Delta-9 tetrahydrocannabinol" or "THC" means the primary
7 psychoactive component of cannabis.

8 "Decarboxylated" means the completion of the chemical
9 reaction that converts tetrahydrocannabinol-acid into delta-9-
10 tetrahydrocannabinol. The decarboxylated value may also be
11 calculated using a conversion formula that sums delta-9-
12 tetrahydrocannabinol and eighty-seven and seven tenths (87.7)
13 percent of tetrahydrocannabinol-acid.

14 "Department" means the department of health.

15 "Director" means the director health.

16 "Enclosed indoor facility" means a permanent, stationary
17 structure with a solid floor, rigid exterior walls that
18 encircle the entire structure on all sides, and a roof that
19 protects the entire interior area from the elements of weather.
20 Nothing in this definition shall be construed to relieve the
21 registered applicant from the applicant's duty to comply with
22 all applicable building codes and regulations.

1 "Hemp" means Cannabis sativa L. and any part of that
2 plant, including the seeds thereof and all derivatives,
3 extracts, cannabinoids, isomers, acids, salts, and salts of
4 isomers, whether growing or not, with a delta-9-
5 tetrahydrocannabinol concentration of not more than 0.3 per
6 cent on a dry weight basis, as measured post-decarboxylation or
7 by other similarly reliable methods.

8 "Hemp product" means a product containing hemp, or any
9 product derived from, or made by, processing hemp, including
10 but not limited to consumables, cosmetics, personal care
11 products, food intended for animal or human consumption,
12 supplements, cloth, cordage, fiber, fuel, paint, paper,
13 particleboard, plastics, and any product containing one or
14 more hemp-derived cannabinoids such as cannabidiol, that:

- 15 (1) Does not include any living Hemp plants, viable
16 seeds, leaf materials, or floral materials; and
17 (2) Has a delta-9-tetrahydrocannabinol concentration
18 of not more than 0.3 per cent on a dry weight
19 basis, as measured post-decarboxylation or other
20 similarly reliable methods.

21 "Hemp processor" means a person processing hemp to
22 manufacture a hemp product.

1 "Key participants" means a person or group of persons
2 acting in concert who exercises control over or has a twenty-
3 five per cent ownership interest or more in a firm,
4 corporation, partnership, association, or any form of business
5 or legal entity, such as an owner or partner in a partnership.
6 A key participant also includes persons in a corporate entity
7 at executive levels including managers and executive officers.
8 This does not include management such as facility managers,
9 shift managers, or employees.

10 "Person" means an individual, firm, corporation,
11 partnership, association, or any form of business or legal
12 entity.

13 "Processing" means making a transformative change to the
14 hemp plant following harvest by converting an agricultural
15 commodity into a hemp product.

16 "Synthetic cannabinoid" means a cannabinoid that is (1)
17 produced in a laboratory, whether from chemicals or from
18 biological agents including but not limited to yeast and algae;
19 and (2) not derived from the genus cannabis. This includes
20 biosynthetic cannabinoids.

21 "State" means the State of Hawaii.

1 §328-B Hemp processing; sale; labelling. (a) No
2 person shall process hemp without being registered by the
3 department as a hemp processor pursuant to this part and any
4 rules adopted pursuant thereto.

5 (b) Hemp shall only be processed, and all hemp for
6 processing shall be stored, within an enclosed indoor
7 facility that has been secured to prevent unauthorized
8 entry.

9 (c) Hemp shall not be processed within 1,000 feet of an
10 existing playground, school, state park, state recreation area,
11 residential neighborhood, hospital, or daycare.

12 (d) Hemp shall not be processed using butane or any
13 other method the department determines poses a risk to
14 health and safety.

15 (e) Any person, including all key participants of an
16 entity, convicted of a felony related to a controlled substance
17 under state or federal law is prohibited from processing hemp
18 for 10-years following the date of conviction.

19 (f) Any person, including all key participants of an
20 entity, may be subject to background checks conducted by the
21 department or its designee, including but not limited to
22 criminal history records checks in accordance with section 846-

1 2.7. The person undergoing the background check shall provide
2 written consent and all applicable processing fees to the
3 department or its designee to conduct the criminal history
4 record checks.

5 (g) Pursuant to, and in accordance with, section 846-2.7,
6 the department or its designee is authorized to conduct state
7 and national criminal history record checks on any person,
8 including all key participants of an entity, and participate in
9 the rap back program, for the purpose of determining
10 suitability or fitness for registration under this part.

11 (h) No person shall sell, hold, offer or distribute for
12 sale, hemp products without a label prescribed by the
13 department identifying the hemp product has been tested and
14 satisfies the criteria for quality control established by
15 the department pursuant to this part.

16 (i) No person shall sell, hold, offer, or distribute
17 for sale, any food into which a cannabinoid, synthetic
18 cannabinoid, or other hemp product has been added.

19 **§328-C Hemp processor registry.** (a) The department
20 shall create a registry for hemp processors.

21 (b) No person shall process hemp in the State unless the
22 person is registered by the department pursuant to this part.

(c) A person who intends to process hemp in the State shall apply to the department for registration on an application form created by the department.

(d) The applicant shall provide, at a minimum, the following information:

- (1) The applicant's name, mailing address, and phone number in Hawaii;
- (2) The legal description of the land on which the hemp is to be processed or stored;
- (3) A description of the enclosed indoor facility where hemp processing will occur;
- (4) Documentation that the indoor facility and planned hemp processing operation, comply with all zoning ordinances, building codes, and fire codes;
- (5) Certification that the applicant, including all key participants of an entity, has had no felony convictions related to a controlled substance under state or federal law in the ten years immediately preceding the date of submission of the application;
- (6) A copy of a certificate of registration from the department of public safety narcotics enforcement division for the manufacture of delta-9 tetrahydrocannabinol as a byproduct of any hemp

1 processing. A certificate from the narcotics
2 enforcement division shall not issue until the
3 department has certified that the processor
4 otherwise meets the requirements of registration
5 under this part; and

6 (7) Any other information required by the department.

7 (e) In addition to the application form, each
8 applicant shall submit a non-refundable application fee
9 established by the department. If the fee does not
10 accompany the application, the application for registration
11 shall be deemed incomplete.

12 (f) Any incomplete application shall be denied.

13 (g) Upon the department receiving a complete and
14 accurate application, and remittal of the application fee,
15 the applicant shall be sent a notice that it is registered
16 to process hemp in the State.

17 (h) No person shall process hemp without receiving a
18 notice that it is registered to process hemp in the State.

19 (i) All hemp processors shall allow federal, state,
20 or local authorities to inspect, sample and test the hemp
21 processing area, plants, plant materials, seeds, equipment,
22 or facilities incident to the processing or storage of
23 hemp.

(j) Any member of the department, or any agent or third party authorized by the department, may enter at reasonable times upon any private property in order to inspect, sample, and test the hemp processing area, hemp products, plants, plant materials, seeds, equipment, facilities incident to the processing or storage of hemp, or records.

(k) The department may remove any person from the registry for failure to comply with any law or regulation. It is the responsibility of the hemp processor to make sure it is registered and legally allowed to process hemp and in compliance with any and all laws and regulations. The removal of a hemp processor from the registry shall be accompanied by a cease and desist order, any violation of which constitutes a violation of this part that may be enforced pursuant to section 328-F.

§328-D Rulemaking. (a) The department shall adopt rules pursuant to chapter 91 that include but are not limited to:

- (1) Inspection and sampling requirements of any hemp or hemp products;
- (2) Testing protocols, including certification by independent third-party laboratories, to determine

1 delta-9-tetrahydrocannabinol concentration of hemp or
2 hemp products and screen for contaminants;

3 (3) Reporting and record-keeping requirements;

4 (4) Assessment of fees for application, inspecting,
5 sampling, and testing hemp processing;

6 (5) A procedure for the disposal of hemp or hemp products,
7 found to be in violation of this chapter;

8 (6) Penalties for any violation; and

9 (7) Any other rules and procedures necessary to carry out
10 this chapter.

11 (b) The department may adopt and amend interim rules,
12 which shall be exempt from chapter 91 and chapter 201M, to
13 effectuate the purposes of this part; provided that any interim
14 rules shall only remain in effect until July 1, 2025, or until
15 rules are adopted pursuant to subsection (a), whichever occurs
16 sooner.

17 **§328-E Laboratory standards and testing; certification.**

18 (a) The department shall establish and enforce standards for
19 laboratory-based testing of the hemp products for content,
20 contamination, and consistency; provided that in establishing
21 these standards, the department shall:

22 (1) Review and consider the testing programs and standards
23 utilized in other jurisdictions;

(2) Consider the impact of the standards on the retail cost of the product;

(3) Review and consider the testing programs and standards for pesticides under the regulations of the United States Environmental Protection Agency; and

(4) For the testing for microbiological impurities, consider the benefits of organically grown hemp that features the use of bacteria in lieu of pesticides.

(b) The department may certify laboratories that are qualified to test hemp products for quality control prior to sale.

(c) If a hemp processor obtains a laboratory result indicating that a sample of a batch of its hemp product does not meet the department's standards, the hemp processor, at its own expense, may have the same sample or a different sample from the same batch retested by the same laboratory or a different laboratory, both of which must be certified or otherwise approved by the department. If a retest at a different laboratory yields a different result, the department shall determine which result controls whether the batch may be approved for sale or whether further testing shall be required.

1 (d) Any hemp product that fails to meet the standard for
2 testing and re-testing established by the department pursuant to
3 this chapter shall be destroyed in a manner prescribed by the
4 department in accordance with rules adopted pursuant to this
5 chapter.

6 **§328-F Enforcement; penalty.** (a) Any person who
7 violates this part or any rule adopted by the department
8 pursuant to this part shall be fined not more than \$10,000
9 for each separate offense. Any action taken to collect the
10 penalty provided for in this subsection shall be considered a
11 civil action. In addition to any other administrative or
12 judicial remedy provided by this part, or by rules adopted
13 pursuant to this part, the director may impose by order the
14 administrative penalty specified in this section. Factors to
15 be considered in imposing the administrative penalty include
16 the nature and history of the violation and of any prior
17 violation, and the opportunity, difficulty, and history of
18 the violation and of any prior violation, and the
19 opportunity, difficulty, and history of corrective action.

20 (b) For any judicial proceeding to recover an
21 administrative penalty imposed by order or to enforce a cease
22 and desist order against a hemp processor removed from the
23 registry, the director may petition any court of appropriate

jurisdiction and need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed or the hemp processor was removed from the registry, and that the penalty remains unpaid or the hemp processor continues to process hemp.

(c) Nothing in this part shall limit any other legal remedy, or limit any civil or criminal action, available under any other statute, rule, or ordinance.

§328-G Hawaii hemp processing special fund; established.

(a) There is established within the state treasury the Hawaii hemp processing special fund into which shall be deposited:

(1) Appropriations made by the legislature to the special fund;

(2) Any income and capital gains earned by the fund; and

(3) Any fees or fines collected by the department pursuant to this part.

(b) Moneys in the Hawaii hemp processing special fund shall be used by the department for the following purposes:

(1) To establish and regulate a system of registering hemp processors in the State;

(2) To fund positions and operating costs authorized by the legislature;

1 (3) For any other expenditure necessary, consistent with
2 this part, to implement the Hawaii hemp processing
3 program."

4 SECTION 4. Section 329-1, Hawaii Revised Statutes, is
5 amended as follows:

6 (1) By adding a new definition to be appropriately
7 inserted and to read:

8 "Hemp" means all parts of the plant cannabis sativa L.,
9 whether growing or not, including the seeds thereof and all
10 derivatives, extracts, cannabinoids, isomers, acids, salts,
11 and salts of isomers, whether growing or not with a delta-9-
12 tetrahydrocannabinol concentration of not more than 0.3 per
13 cent on a dry weight basis, as measured post-decarboxylation
14 or other similarly reliable methods."

15 (2) By amending the definition of "marijuana" to read:

16 "Marijuana" means all parts of the plant (genus)
17 Cannabis whether growing or not; the seeds thereof, the
18 resin extracted from any part of the plant; and every
19 compound, manufacture, salt, derivative, mixture, or
20 preparation of the plant, its seeds, or resin. [It]

21 "Marijuana" does not include [the]:

22 (1) The mature stalks of the plant, fiber produced from
23 the stalks, oil, or cake made from the seeds of the

1 plant, any other compound, manufacture, salt,
2 derivative, mixture, or preparation of the mature
3 stalks (except the resin extracted therefrom),
4 fiber, oil, or cake, or the sterilized seed of the
5 plant [~~which~~] that is incapable of germination[-];

6 (2) Hemp that is in the possession, custody, or
7 control of a person or entity that holds a license
8 issued by the Hawaii department of agriculture
9 permitting that person or entity to produce hemp;

10 (3) Hemp that is in the possession, custody, or
11 control of a person or entity that is authorized
12 under state law to process hemp; or

13 (4) A product containing or derived from hemp,
14 including but not limited to consumables,
15 cosmetics, personal care products, food intended
16 for animal or human consumption, supplements,
17 cloth, cordage, fiber, fuel, paint, paper,
18 particleboard, plastics, and any product
19 containing one or more hemp-derived cannabinoids
20 such as cannabidiol, that:

21 (A) Does not include any living hemp plants,
22 viable seeds, leaf materials, or floral
23 materials; and

1 (B) Has a delta-9-tetrahydrocannabinol
2 concentration of not more than 0.3 per cent
3 on a dry weight basis, as measured post-
4 decarboxylation or other similarly reliable
5 methods.

6 SECTION 5. Section 712-1240, Hawaii Revised Statutes, is
7 amended as follows:

8 (1) By adding a new definition to be appropriately
9 inserted and to read:

10 "Hemp" means all parts of the plant (genus) cannabis,
11 whether growing or not, including the seeds thereof and all
12 derivatives, extracts, cannabinoids, isomers, acids, salts,
13 and salts of isomers, with a delta-9-tetrahydrocannabinol
14 concentration of not more than 0.3 per cent on a dry weight
15 basis, as measured post-decarboxylation or other similarly
16 reliable methods."

17 (2) By amending the definition of "marijuana" to read:

18 "Marijuana" means all parts of the plant (genus)
19 cannabis, whether growing or not, including the seeds and
20 the resin, and every alkaloid, salt, derivative,
21 preparation, compound, or mixture of the plant, its seeds
22 or resin, except that, as used herein, "marijuana" does
23 not include:

1 (1) Hashish, tetrahydrocannabinol, and any alkaloid,
2 salt, derivative, preparation, compound, or
3 mixture, whether natural or synthesized, of
4 tetrahydrocannabinol[+];

5 (2) Hemp that is in the possession, custody, or
6 control of a person or entity that holds a license
7 issued by the Hawaii department of agriculture
8 permitting that person or entity to produce hemp;

9 (3) Hemp that is in the possession, custody, or
10 control of a person or entity that is authorized
11 under state law to process hemp; or

12 (4) A product containing or derived from hemp,
13 including any product containing one or more hemp-
14 derived cannabinoids such as cannabidiol, that:

15 (A) Does not include any leaf materials, or
16 floral materials; and

17 (B) Has a delta-9-tetrahydrocannabinol
18 concentration of not more than 0.3 per cent
19 on a dry weight basis, as measured post-
20 decarboxylation or other similarly reliable
21 methods.

22 (3) By amending the definition of "marijuana
23 concentrate" to read:

1 "Marijuana concentrate" means hashish,
2 tetrahydrocannabinol, or any alkaloid, salt, derivative,
3 preparation, compound, or mixture, whether natural or
4 synthesized, of tetrahydrocannabinol[+] except that, as used
5 herein, "marijuana concentrate" does not include:

- 6 (1) Hemp that is in the possession, custody, or
7 control of a person or entity that is authorized
8 under state law to process hemp; or
9 (2) A product containing or derived from hemp,
10 including any product containing one or more hemp-
11 derived cannabinoids such as cannabidiol, that:
12 (A) Does not include any leaf materials, or
13 floral materials; and
14 (B) Has a delta-9-tetrahydrocannabinol
15 concentration of not more than 0.3 per cent
16 on a dry weight basis, as measured post-
17 decarboxylation or other similarly reliable
18 methods.

19 SECTION 6. Chapter 141, part II, Hawaii Revised Statutes,
20 is repealed on October 31, 2020. All licenses issued under
21 chapter 141, part II, Hawaii Revised Statutes shall be valid
22 until October 31, 2020, at which time all licenses issued under
23 part II of chapter 141 shall expire.

SECTION 7. There is appropriated out of the general fund the sum of \$1,195,144 or so much thereof as may be necessary for fiscal year 2020-2021, and the same sum or so much as may be necessary for fiscal year 2021-2022 to be allocated as follows:

- (1) \$92,000 for the establishment of one full-time equivalent (1.0 FTE) program manager position;
- (2) \$147,000 for the establishment of three full-time equivalent (3.0 FTE) general professional positions;
- (3) \$33,000 for the establishment of one full-time equivalent (1.0 FTE) office assistant position;
- (4) \$385,000 for the establishment of four full time equivalent (4.0 FTE) investigator positions and operating expenses to be expended by the department of public safety for the purposes of this act;
- (5) \$288,144 for the establishment of three (3 FTE) Food Safety Specialist positions; one (1 FTE) office assistant position; and one (1 FTE) accountant position to be expended by the department of health;
- (6) \$100,000 for the procurement and establishment of a data tracking system for the hemp production program; and
- (7) \$150,000 for the administrative costs of the program.

1 Unless otherwise specified, the sums appropriated shall be
2 expended by the department of agriculture for the purposes of
3 this Act.

4 SECTION 8. If any provision of this part is declared
5 invalid or the applicability thereof to any person or
6 circumstances is held invalid, the validity of the remainder of
7 this part or the applicability thereof to other persons or
8 circumstances shall not be affected thereby.

9 SECTION 9. In codifying the new sections added to chapters
10 141 and 328, Hawaii Revised Statutes, by this Act, the revisor
11 of statutes shall substitute appropriate section numbers for the
12 letters used in designating and referring to the new sections in
13 this Act.

14 SECTION 10. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 11. This Act shall take effect upon its approval.

17
18
19 INTRODUCED BY: _____

20 BY REQUEST
21

Report Title:

Hemp Program

Description:

Establishes programs for the production and processing of hemp in Hawaii.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO HEMP.

PURPOSE: To create programs for the production and processing of hemp in the State of Hawaii.

MEANS: Add a new part to chapter 141 Hawaii Revised Statutes (HRS), add a new part to chapter 328 HRS. Amend section 329-1 HRS, and amend section 712-1240 HRS. Repeal Part II of chapter 141 HRS.

JUSTIFICATION: Changes to federal regulations relating to hemp allow for the legal production of hemp outside of pilot research programs. State law must accordingly be created and adjusted to allow hemp to be produced as permitted by federal law.

Impact on the public: Removes hemp from the definition of marijuana, allowing production, processing and sale of hemp in the State.

Impact on the department and other agencies: The Department of Agriculture will be required to prepare, submit, and implement a federally approved plan for the regulation of hemp production in the State. Law enforcement will be required to oversee destruction of non-compliant cannabis crops. The State is given the personnel and resources adequate for the implementation of any approved plan for the regulation of hemp production. The Department of Health will address processing of hemp and the quality of hemp-derived food, drug, and cosmetic products.

GENERAL FUND: \$1,195,144

OTHER FUNDS:

PPBS PROGRAM

DESIGNATION: AGR 151.

OTHER AFFECTED

AGENCIES: Department of Health, Department of Public
Safety, Department of the Attorney General.

EFFECTIVE DATE: Upon approval.