

JAN 22 2021

A BILL FOR AN ACT

RELATING TO INDUSTRIAL HEMP DERIVED PRODUCTS.

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

1 SECTION 1. The legislature recognizes that the
2 Agriculture Improvement Act of 2018, informally known as the
3 2018 "Farm Bill", removed hemp derived extracts, derivatives,
4 and cannabinoids, such as cannabidiol (CBD) as schedule I
5 substances in the Controlled Substances Act from hemp plants
6 that contain no more than 0.3 per cent tetrahydrocannabinol.
7 This effectively legalized the sale of cannabidiol products from
8 the commercial cultivation of hemp in the United States, and
9 superseded prior federal authority upon which Act 228, Session
10 Laws of Hawaii 2016 (Act 228) was established. Further, in
11 October 2019, the United States Department of Agriculture
12 established new regulations through which states may monitor and
13 regulate hemp production. In light of these federal actions,
14 Act 14, Session Laws of Hawaii 2020, was passed to expedite the
15 repeal of the state industrial hemp pilot program established in
16 2016 by Act 228 and allow the growth of hemp in the State



1 through the United States Department of Agriculture (USDA) hemp
2 production program.

3 The legislature also finds that with the passage of the
4 Farm Bill, over sixteen thousand hemp growers have emerged
5 throughout the United States. Industrial hemp is currently
6 being used nationally in hundreds of different applications
7 including consumer textiles, personal care, industrial
8 components, and dietary supplements containing hemp products and
9 cannabinoids. The hemp industry across the country has grown
10 rapidly, and hemp-derived products are used by a wide range of
11 consumers.

12 The legislature also finds that, while the United States
13 Department of Agriculture has opened the industrial hemp market,
14 the Food and Drug Administration has continued to exercise
15 jurisdiction over the regulation of ingestible and topical hemp
16 products. In 2019, the Food and Drug Administration, in its
17 continuation of evaluating regulatory frameworks for hemp-
18 derived compounds, held a public hearing and opened a public
19 docket for data gathering. The Food and Drug Administration has
20 also issued non-legally binding public statements arguing that
21 it is illegal to market cannabidiol as a food additive or



1 dietary supplement because it is an active ingredient in a
2 pharmaceutical drug.

3 The legislature additionally finds that, with the existence
4 of competing federal frameworks, several states have already
5 acted to pass laws or regulations that explicitly allow hemp-
6 derived cannabidiol products to be produced and sold to provide
7 certainty for businesses and consumers. While it is expected
8 that the Food and Drug Administration will eventually use its
9 authority to regulate hemp-derived products, the only
10 enforcement action it has taken to date is to send warning
11 letters against improper disease remediation claims made by food
12 and supplement companies. In Hawaii, the department of health
13 has adhered to the Food and Drug Administration's public
14 guidance providing that products containing cannabidiol are
15 adulterated food, beverage, or cosmetic products, and therefore,
16 their sale in Hawaii is prohibited. Despite this suggested
17 prohibition, cannabidiol products continue to be sold across
18 Hawaii, with no regulatory oversight.

19 The legislature further finds that, given the time expected
20 for the Food and Drug Administration to act and the existing
21 confusion among consumers and the industry, it is important that



1 a timely regulatory framework be established around hemp
2 products and cannabinoids to provide consumer safety
3 requirements and certainty for Hawaii hemp farmers to continue
4 to viably operate their industrial hemp operations in the State.

5 The purpose of this Act is to:

- 6 (1) Establish a regulatory framework for consumer products
7 containing hemp products and cannabinoids that were
8 grown legally through approved government programs,
9 which consists of labeling and independent laboratory
10 testing to ensure products do not contain contaminants
11 unfit for human consumption;
- 12 (2) Require these products to be properly labeled to be
13 legally allowed for sale in the State;
- 14 (3) Prohibit manufacturers of these products from making
15 health-related claims;
- 16 (4) Exempt industrial hemp products that are generally
17 recognized as safe by the Food and Drug Administration
18 from the new regulatory framework; and
- 19 (5) Clarify that hemp products, including food, beverage,
20 or cosmetic products, are not considered adulterated.



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

4 "PART . INDUSTRIAL HEMP DERIVED PRODUCTS

5 §328- Definitions. As used in this part:

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

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

- 15 (1) Is a hemp cosmetic for topical application to the
16 skin, or a hemp supplement to be ingested orally by
17 humans or animals;
- 18 (2) Contains any part of the hemp plant, including
19 naturally occurring cannabinoids, compounds,
20 concentrates, extracts, isolates, resins, or
21 derivatives; and



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

4 **§328- Manufacture, distribution, or sale of industrial**
5 **hemp products.** Nothing in this part shall prohibit any
6 dispensary licensed pursuant chapter 329D, individual, or entity
7 from manufacturing, distributing, or selling products that
8 contain industrial hemp, cannabinoids, extracts, or derivatives
9 from industrial hemp grown in compliance with chapter 328G.

10 **§328- Labeling.** The label of any package of a food,
11 beverage, or cosmetic containing cannabidiol derived from
12 industrial hemp shall include the following statement or a
13 substantially similar statement:

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

16 **§328- Industrial hemp flowers; prohibition.** Industrial
17 hemp flowers that have not been significantly physically
18 altered, including by shredding and pulverizing, and not labeled
19 as hemp shall not be sold in Hawaii.

20 **§328- Health-related statements.** A manufacturer,
21 distributor, or seller of an industrial hemp product shall not



1 include on the label of the product, or publish or disseminate
2 in advertising or marketing, any health-related statement that
3 is untrue in any particular manner or that tends to create a
4 misleading impression as to the health effects of consuming
5 products containing industrial hemp or cannabinoids, extracts,
6 or derivatives from industrial hemp.

7 For the purposes of this section, "health-related
8 statement" means a statement related to health and includes a
9 statement of a curative or therapeutic nature that, expressly or
10 impliedly, suggests a relationship between the consumption of
11 industrial hemp or industrial hemp products and health benefits
12 or effects on the diagnosis, cure, mitigation, treatment, or
13 prevention of any disease.

14 **§328- Use in food products.** In order for industrial
15 hemp to be used in food products, a manufacturer shall comply
16 with the following:

17 (1) All parts of the hemp plant used in food shall come
18 from a state or country that has an established and
19 approved industrial hemp program that meets all of the
20 federal requirements regarding the lawful and safe
21 cultivation of industrial hemp and inspects or



1 regulates hemp under a food safety program or
2 equivalent criteria to ensure safety for human
3 consumption;

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

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

11 (A) The raw hemp product is the product of a batch of
12 industrial hemp that was tested by the
13 independent testing laboratory in accordance with
14 chapter 328G;

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



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

4 For the purposes of this section, "manufacturer" means a
5 person who compounds, blends, extracts, juices, packages,
6 infuses, or otherwise makes or prepares a product.

7 "Manufacturer" does not include a person who plants, grows,
8 harvests, dries, cures, grades, or trims a plant or part of a
9 plant.

10 §328- Safe hemp products; exemption. The requirements
11 of this part shall not apply with respect to any industrial hemp
12 product if the product is:

- 13 (1) Hulled hemp seed;
- 14 (2) Hemp seed protein powder;
- 15 (3) Hemp seed oil; or
- 16 (4) Any other industrial hemp product that is generally
17 recognized as safe by the Food and Drug
18 Administration.

19 §328- Hemp products; when adulterated or misbranded. A
20 food, beverage, or cosmetic product shall not be considered
21 adulterated pursuant to sections 328-9 and 328-18 or misbranded



1 pursuant to sections 328-10 and 328-19 solely by the inclusion
2 of industrial hemp or cannabinoids, extracts, or derivatives
3 from industrial hemp. The sale of food, beverages, or cosmetics
4 that include industrial hemp or cannabinoids, extracts, or
5 derivatives from industrial hemp shall not be restricted or
6 prohibited based solely on the inclusion of industrial hemp or
7 cannabinoids, extracts, or derivatives from industrial hemp.

8 **§328- Rulemaking.** The department shall adopt rules
9 pursuant to chapter 91 necessary to carry out the purposes of
10 this part."

11 SECTION 3. This Act shall take effect upon its approval.

12

INTRODUCED BY: *Arsely & Bell*



S.B. NO. 252

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. Exempts industrial hemp products that are generally recognized as safe by the Food and Drug Administration from the new regulatory framework.

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