

ACT 199

S.B. NO. 773

A Bill for an Act Relating to Agriculture.

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 an industrial hemp pilot program to allow the cultivation of industrial hemp and distribution of its seed in Hawaii through limited activities by licensee-agents of the board of agriculture for purposes of agricultural or academic research. The industrial hemp pilot program has since been developing rules, but in order to prepare the pilot program for implementation, further amendments to state law need to be made to address the program's commencement.

The purpose of this Act is to amend the requirements of the industrial hemp pilot program to:

- (1) Allow applicants to the industrial hemp pilot program to apply for a license at any time during the year in which the applicant plans to grow industrial hemp;
- (2) Require each county to recognize the cultivation of industrial hemp for the purposes of the pilot program as an agricultural product, use, and activity;
- (3) Specify that any agricultural land used for cultivation of industrial hemp for the purposes of the pilot program shall qualify for the minimum dedication period and be assessed at the lowest percentage of fair market value;
- (4) Limit the cultivation of industrial hemp to licensed owners, lessees, or occupiers of lands within the state agricultural land use district; and
- (5) Amend the physical facility requirements for pilot program licensees and repeal the requirement for a movement permit to transport plants or plant material.

SECTION 2. Section 141-33, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§141-33~~ **Licensing.** (a) Each applicant for an industrial hemp license shall submit a signed, complete, accurate, and legible application form provided by the board ~~[between January 1 and April 1 of the year in which the applicant plans to grow industrial hemp, which]~~ 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 cultivation 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 notice to the applicant or licensee;

- (B) The applicant agrees to allow any 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.

(b) An application may be ~~received beginning on January 1 of each year~~ submitted to the board at any time during the year in which the applicant plans to grow industrial hemp and shall be signed by the applicant or, in the case of a business entity, one of its officers, directors, or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of the applicant's knowledge.

(c) Any incomplete application for a license ~~or an application received after April 1 of any year,~~ shall be denied.

(d) In addition to the application form, each applicant for a license shall submit a fee set by the chairperson. If the fee does not accompany the application, the application for a license will be deemed incomplete.

(e) The annual license fee for production of industrial hemp shall be \$250 plus \$2 per acre. Moneys collected from license fees shall be used to cover the costs of implementing, administering, and enforcing this part.

(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 chairperson the name of the new, approved seed cultivar to be grown. If the chairperson receives and approves the change to the seed cultivar, the chairperson shall notify the licensee that the licensee may cultivate the new, approved seed cultivar.

(i) If the chairperson determines that the requirements for a license pursuant to this part are satisfied, the chairperson shall issue a license to the applicant.

(j) The cultivation of industrial hemp in accordance with this part shall qualify as an agricultural product, use, and activity by each relevant county for the effective period of the license.

(k) Any agricultural land used for the cultivation of industrial hemp in accordance with this part shall:

- (1) Qualify for the minimum dedication period; and
- (2) Be assessed at the lowest percentage of fair market value or other calculation provided for by ordinance,

for the effective period of the license.

(l) The cultivation of industrial hemp in accordance with this part shall be limited to licensed owners, lessees, or occupiers of lands situated within the state agricultural land district."

SECTION 3. Section 141-34, Hawaii Revised Statutes, is amended to read as follows:

~~“[§141-34]~~ **Reports.** (a) At least seven days prior to harvest, each industrial hemp licensee shall file a report with the board that includes documentation that the licensee has entered into a purchase agreement with an industrial hemp processor. If the licensee has not entered into such an agreement, the licensee shall include a statement of intended disposition of its industrial hemp crop.

(b) Licensees shall report any subsequent changes to the purchase agreement or disposition statement to the board within ten days of the change.

~~(c) Two business days prior to the movement of the industrial hemp grain or plant material from the permitted location, the licensee shall submit to the board an application for movement permit. The application shall include the mode and location to which the product is to be transported. An inspection of the product may occur prior to movement.] and shall submit any other reports as required by the board.”~~

SECTION 4. Section 141-36, Hawaii Revised Statutes, is amended to read as follows:

~~“[§141-36]~~ **Growing of industrial hemp; licensee responsibilities.** The licensee shall:

- (1) Assume a limited agency relationship with the board for the sole purpose of research of industrial hemp and its growth, cultivation, and marketability. The licensee shall conduct all agricultural operations in a lawful manner consistent with the standards befitting of an official of the State; provided that such standards are subject to the sole discretion and direction of the board;
- (2) Abide by applicable laws and regulations incident to the growth, cultivation, or marketing of industrial hemp;
- (3) Acknowledge that any action, intended or incidental, that is contrary to such laws and regulations, known or unknown, falls outside the agency relationship of the licensee with the board and the licensee's participation in the industrial hemp pilot program; provided that this paragraph applies to all actions incident to the licensed production of industrial hemp, including but not limited to any sale or disposition of the resulting plants, plant materials, or seeds for which the licensee may otherwise receive some benefit or consideration;
- (4) 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 licensee's actions involving the growth, cultivation, or marketing of industrial hemp;
- (5) Warrant that the licensee is not an employee of the State and shall assume total and sole responsibility for any of the licensee's acts or omissions involving the growth or production of industrial hemp or arising out of the licensee's participation in the industrial hemp pilot program;
- (6) Allow any institution of higher education in the State to access those sites registered by the licensee with the board for production of industrial hemp; provided that such access shall be allowed upon notice from the board to the licensee and shall extend for all pur-

- poses determined at the discretion of the board related to research of industrial hemp and its growth, cultivation, and marketing;
- (7) Upon request, allow federal, state, or local authorities to inspect and sample the industrial hemp growing area, plants, plant materials, seeds, equipment, or facilities incident to the growth or production of industrial hemp;
 - (8) Remit to the board all license fees and other expenses of the pilot program, including but not limited to all fees related to sampling and analysis of hemp plants and plant materials and destruction of resulting hemp crops found by the board to be noncompliant with applicable laws and regulations;
 - (9) Agree that with respect to the licensee's production of industrial hemp, the board's role is to fulfill regulatory oversight of the production and, where possible, to facilitate receipt of viable seed; provided that the licensee understands and agrees that the licensee shall not receive compensation or wages from the board and the board shall not offer financial resources, tangible products, or commercial labor in support of the licensee's industrial hemp crop;
 - (10) Adhere narrowly to the research focus for which the licensee is participating in the industrial hemp pilot program, if applicable, to include one or more of the following:
 - (A) Planting and growing—tracking vital statistics and yield rates with respect to industrial hemp varieties and growing variables, including seed planting rate, soil composition, water usage, and planting and growing season;
 - (B) Pest—tracking the occurrence of pests and effectiveness of various preventative measures in correlation with industrial hemp varieties;
 - (C) Cost centers and financing—tracking average cost estimates of producing industrial hemp varieties, taking into account costs of participation in the industrial hemp pilot program, product acquisition, water usage, equipment, labor, and security measures and reporting financial resources available for production of industrial hemp; or
 - (D) Marketing and industry development—reporting market demand for industrial hemp varieties' raw materials and end products, including identification of actual or potential hemp products, processors, product manufacturers, wholesalers, retailers, and targeted consumers;
 - (11) Complete and submit all reports and statements requested by the board relative to the licensee's production of industrial hemp; provided that a failure to submit any required or requested report may result in revocation of the licensee's industrial hemp license;
 - (12) Understand and agree that any industrial hemp grown in Hawaii without an active industrial hemp license issued by the board falls outside the licensee's limited agency with the board, is considered to be marijuana under state law, and constitutes impermissible growth of industrial hemp under federal law; provided that the licensee shall understand that such action will be prosecuted in accordance with all applicable laws;
 - (13) At the discretion of the board, destroy or dispose of any industrial hemp crop, plant, plant material, or seed determined by the board or law enforcement to be noncompliant with applicable laws or regulations;

- (14) Use best management practices for growth and production of industrial hemp, as available, and take reasonable precaution to prevent unauthorized growth or distribution of industrial hemp, including but not limited to:
- (A) Keeping records of all persons with access to the growing area or hemp plants, plant materials, or seeds;
 - ~~[(B) Using case-hardened locks and chains to limit access to storage areas where hemp plants, plant materials, or seeds are kept;~~
 - (C) Marking equipment and plants, if possible, with owner applied numbers;
 - ~~[(D) Blocking private access roads to the growing area with gates or barricades and posting "No Trespassing" signs on gates, barricades, and other landmarks near the growing area and facilities;~~
 - (B) Installing reasonable security measures to prevent theft and posting signs indicating that cameras are used to record activity on the growing area property;
 - ~~[(F)] (C) Inspecting and recording regularly the condition of the growing area, facilities, and equipment used in the production of industrial hemp;~~
 - ~~[(G)] (D) Conducting regular inventory counts of hemp plants, plant materials, and seeds in order to recognize more quickly if a theft has occurred;~~
 - ~~[(H)] (E) Contacting local law enforcement to help identify additional security measures and encourage patrols near the growing area;~~
 - ~~[(I)] (F) Reporting to local law enforcement any suspicious activity and the presence of strangers near the growing area or facility;~~
 - ~~[(J)] (G) Reporting stolen, lost, or missing hemp plants, plant materials, or seeds to the board and law enforcement authorities as soon as the items are noticed to be missing; and~~
 - ~~[(K)] (H) Reducing the likelihood of cross pollination between varieties of industrial hemp and among other plants by:

 - (i) Separating any growing area from other self-pollinating plants by more than ten feet; and
 - (ii) Separating any growing area from other wind and insect pollinating plants by more than three hundred feet; and
 - ~~[(iii) Employing a physical barrier such as a hoop house or row cover to isolate industrial hemp from other plants; and]~~~~
- (15) Comply with any direction of the chairperson with respect to the growth, cultivation, or marketing of industrial hemp not otherwise contemplated in this section."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 2017.)