

A Bill for an Act Relating to Hemp.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes that the Agriculture Improvement Act of 2018, informally known as the 2018 “Farm Bill”, legalized hemp by removing hemp from the definition of “marihuana” contained in the federal Controlled Substances Act. Further, in October 2019, the United States Department of Agriculture established new regulations through which states may monitor and regulate hemp production. The Farm Bill superseded prior federal authority under which the State created the existing industrial hemp pilot program. The legislature believes that, in light of these federal reforms, state laws regarding hemp should also be reformed to allow the growth of hemp in the State through the United States Department of Agriculture (USDA) hemp production program.

Accordingly, the purpose of this Act is to:

- (1) Allow the growth of hemp in the State through the USDA hemp production program;
- (2) Allow the processing and sale of certain hemp products in the State; and
- (3) Expedite the substitution of the USDA hemp production program for the existing industrial hemp pilot program as required by federal law.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HEMP PROCESSORS

§ -A Definitions. As used in this chapter:

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

“Cannabinoids” means any of the various naturally occurring, biologically active, chemical constituents of cannabis that bind to or interact with receptors of the endogenous cannabinoid system.

“Cannabis” means the genus of the flowering plant in the family Cannabaceae. For the purpose of this chapter, cannabis refers to any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

“Certificate of Registration” means the certificate issued by the department attesting that the applicant is registered to process hemp.

“Decarboxylated” means the completion of the chemical reaction that converts delta-9 tetrahydrocannabinol’s acids (THCA) into delta-9-tetrahydrocannabinol. The decarboxylated value may be calculated using a conversion formula that sums delta-9-tetrahydrocannabinol and eighty-seven and seven tenths (87.7) percent of THCA.

“Delta-9 tetrahydrocannabinol” or “THC” means the primary psychoactive component of cannabis.

“Department” means the department of health.

“Director” means the director of health.

“Dry weight basis” refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance.

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

“FDA” means the United States Food and Drug Administration.

“Hemp” means *Cannabis sativa* L. and any part of that plant, whether growing or not, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, 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.

“Hemp processor” means a person processing hemp to manufacture a hemp product.

“Hemp product” means a product that:

- (1) Contains naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, resins or derivatives from processed hemp;
- (2) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials;
- (3) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation, or other similarly reliable methods;
- (4) Is intended to be consumed orally to supplement the human or animal diet; and
- (5) Is in the form of a tablet, capsule, powder, softgel, gelcap, or liquid form (e.g. hemp oil) to be used by the consumer to infuse edible items at home for personal use or for topical application to the skin or hair.

For purposes of this chapter, a hemp product shall be considered as intended for oral ingestion in liquid form only if it is formulated in a fluid carrier and it is intended for ingestion in daily quantities measured in drops or similar small units of measure per labeled directions for use.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a hemp product, but does not include planting, growing, harvesting, drying, curing, grading, or trimming a hemp plant or part of a hemp plant.

“Person” means an individual, firm, corporation, partnership, association, or any form of business or legal entity.

“Processing” means making a transformative change to the hemp plant following harvest by converting an agricultural commodity into a hemp product.

“Synthetic cannabinoid” means a cannabinoid that is:

- (1) Produced artificially, whether from chemicals or from recombinant biological agents including but not limited to yeast and algae; and
- (2) Not derived from the genus *cannabis*, including biosynthetic cannabinoids.

§ -B Hemp processor registry; application; removal from registry. (a)

No person shall process hemp without first obtaining a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q.

(b) No person shall process hemp without being registered by the department as a hemp processor pursuant to this part and any rules adopted pursuant this chapter.

(c) A person who intends to process hemp 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 complies with all zoning ordinances, building codes, and fire codes;
- (5) Documentation showing that the applicant has obtained a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q; and
- (6) Any other information required by the department.

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

(f) Any incomplete application shall be denied.

(g) Upon the department's receipt of a complete and accurate application and remittal of the application fee, the applicant shall be registered and shall be issued a certificate of registration to process hemp.

(h) The certificate of registration shall be renewed annually by payment of the annual renewal fee to be determined by the department.

(i) Hemp processors shall allow any member of the department, or any agent or third party authorized by the department, to enter at reasonable times upon any private property in order to inspect, sample, and test the hemp processing area, hemp products, equipment, facilities incident to the processing or storage of hemp, and review all pertinent records.

(j) The department may remove any person from the registry for failure to comply with any law or regulation under this chapter. 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 in accordance with the procedures set forth in section 328H-F.

§ -C Hemp processing; hemp product sale and prohibitions; labeling.

(a) No hemp shall be processed into hemp products, nor shall any hemp processor hold for processing or sale any hemp, unless lawfully obtained from a person approved or otherwise authorized by applicable federal, state or local law to cultivate hemp plants.

(b) Hemp and hemp products shall be processed within an enclosed indoor facility secured to prevent unauthorized entry. Hemp, hemp products, and any toxic or otherwise hazardous by-products of hemp processing, or by-products, including but not limited to delta-9 tetrahydrocannabinol, shall be stored within an enclosed indoor facility, secured to prevent unauthorized entry in a manner that prevents cross-contamination and unintended exposures.

(c) Hemp shall not be processed within 500 feet of a pre-existing playground, school, state park, state recreation area, residential neighborhood, hospital, or daycare facility.

(d) Hemp shall not be processed using butane in an open system where fumes are not contained or by use of any other method of processing the department determines poses a risk to health and safety.

(e) No person shall sell, hold, offer, or distribute for sale any food, as that term is defined in section 328-1, into which a cannabinoid, synthetic cannabinoid, hemp extract, hemp derivatives or other hemp product that has been added as an ingredient or component. This section shall not apply to hemp that is generally recognized as safe (GRAS) by FDA for use in foods, as intended, in a public GRAS notification.

(f) No person shall sell, hold, offer, or distribute for sale any hemp product into which a synthetic cannabinoid has been added.

(g) No person shall sell, hold, offer, or distribute for sale any cannabinoid products used to aerosolize for respiratory routes of delivery, such as an inhaler, nebulizer or other device designed for such purpose.

(h) No person shall sell, hold, offer, or distribute for sale, any hemp leaf or hemp floral material that is intended to be smoked or inhaled, including but not limited to hemp cigars or hemp cigarettes.

(i) Except for hemp products intended for external topical application to the skin or hair, no person shall sell, hold, offer, or distribute for sale any products containing hemp or hemp derivatives that are intended to be introduced via non-oral routes of entry to the body, including but not limited to, use in eyes, ears, and nasal cavities.

(j) No person shall sell, hold, offer or distribute for sale, hemp products without a label, in a form prescribed by the department, affixed to the packaging that identifies the hemp product as having been tested pursuant to department rules.

§ -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 hemp products;
- (2) Testing protocols, including certification by state laboratories or independent third-party laboratories, to determine delta-9-tetrahydrocannabinol concentration and screening for contaminants of hemp products;
- (3) Reporting and record-keeping requirements;
- (4) Assessment of fees for application, inspecting, sampling, and other fees as deemed necessary;
- (5) Penalties for any violation; and
- (6) Any other rules and procedures necessary to carry out this chapter.

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

§ -E Laboratory standards and testing; certification. (a) The department shall establish and enforce standards for laboratory-based testing of the hemp products for content, contamination, and consistency.

(b) The department may certify laboratories and recognize certifications from other jurisdictions of laboratories that are qualified to test hemp products for quality control prior to sale.

§ -F Enforcement; penalty. (a) Any person who violates this chapter or any rule adopted by the department pursuant to this chapter shall be fined

not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action. In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the director may impose by order the administrative penalty specified in this section.

(b) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed, including removal from the registry, shall become final, and any monetary penalty shall become due and payable twenty days after the order is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested, the penalty imposed, including removal from the registry, shall become final, and any monetary penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Any hearing shall be in accordance with chapter 91.

(c) For any judicial proceeding to recover an administrative penalty imposed by order or to enforce a cease and desist order against a hemp processor removed from the registry, the director may petition any court of appropriate jurisdiction and need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing has expired without such a request;
- (3) The administrative penalty was imposed or the hemp processor was removed from the registry; and
- (4) The penalty remains unpaid or the hemp processor continues to process hemp.

(d) The director, in the event there is deemed a potential health hazard, may take precautionary measures to protect the public through imposition of an embargo, the detention and removal of hemp products from the market, and the sequestration of hemp products suspected to be contaminated or otherwise harmful to human health. In the event of any embargo or detention of hemp products, the person or persons so named in the order imposing the embargo or detention shall be afforded an opportunity to contest the findings of the department in a hearing pursuant to chapter 91.

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

§ -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;
- (2) To fund positions and operating costs authorized by the legislature; and
- (3) For any other expenditure necessary, consistent with this chapter, to implement the Hawaii hemp processing program.”

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

“PART . COMMERCIAL HEMP PRODUCTION

§141-A Commercial hemp production. (a) It shall be legal for an individual or entity to produce hemp, as defined in title 7 United States Code section 1639o, if that individual or entity has a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q; provided that:

- (1) Any person convicted of a felony related to a controlled substance under state or federal law is prohibited from producing hemp, or being a key participant in an entity producing hemp, for a period of ten years following the date of conviction;
 - (2) Hemp shall not be grown outside of a state agricultural district;
 - (3) Hemp shall not be grown within 500 feet of pre-existing real property comprising a playground, childcare facility, or school; provided that this restriction shall not apply to an individual or entity licensed to grow hemp in those areas under the State industrial hemp pilot program prior to the effective date of this Act;
 - (4) Hemp shall not be grown within 500 feet of any pre-existing house, dwelling unit, residential apartment, or other residential structure that is not owned or controlled by the license holder; provided that this restriction shall not apply to an individual or entity licensed to grow hemp in those areas under the State industrial hemp pilot program prior to the effective date of this Act; and
 - (5) Hemp shall not be grown in any house, dwelling unit, residential apartment, or other residential structure.
- (b) An individual or entity licensed to produce hemp pursuant to paragraph (a) may transport hemp within the state to a facility authorized by law to process hemp or to another licensed producer's grow area, provided that:
- (1) The hemp to be transported has passed all compliance testing required by the United States Department of Agriculture; and
 - (2) The transportation has been authorized by the department. The department may require movement reports, inspections, sampling, and testing of the hemp to be transported and may deny authorization if the hemp is found to not comply with any law or regulation.
- (c) An individual or entity licensed to produce hemp pursuant to paragraph (a) may export hemp; provided that:
- (1) The hemp to be exported has passed all compliance testing required by the United States Department of Agriculture; and
 - (2) The licensed producer complies with all laws relating to the exportation of hemp, including state and federal laws and the laws of the state or country of import.
- (d) Any individual or entity who violates this section or any rule adopted pursuant to this section shall be fined not more than \$10,000 for each separate offense. Any notice of violation of this section may be accompanied by a cease and desist order, the violation of which constitutes a further violation of this section. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.
- (e) For any judicial proceeding to recover an administrative penalty imposed by order or to enforce a cease and desist order against a hemp producer, the department may petition any court of appropriate jurisdiction and need only show that:
- (1) Notice was given;
 - (2) A hearing was held or the time granted for requesting a hearing has expired without such a request;

- (3) The administrative penalty was imposed on the individual or entity producing hemp; and
- (4) The penalty remains unpaid or the individual or entity continues to produce hemp.

§141-B Rulemaking authority. (a) The department of agriculture shall adopt rules pursuant to chapter 91 to effectuate the purpose of this part, including any rules necessary to address any nuisance issues, including smell, noise, and excessive lighting arising out of the activities of hemp growers licensed under the State's industrial hemp pilot program who grow hemp within areas prohibited under section 141-A(a)(3) and (4).

(b) No later than September 30, 2020, the department of agriculture shall adopt interim rules, which shall be exempt from chapters 91 and 201M to effectuate the purposes of this part; provided that the interim rules shall remain in effect through June 30, 2022, or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

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

1. By adding a new definition to be appropriately inserted and to read:
““Hemp” means all parts of the plant cannabis sativa L., whether growing or not, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or other similarly reliable methods.”

2. By amending the definition of “marijuana” to read:
““Marijuana” means all parts of the plant (genus) Cannabis whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. [H]

Marijuana [does] shall not include [the]:

- (1) The mature stalks of the plant[;] (genus) Cannabis, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant [which] that is incapable of germination[;];
- (2) Hemp that is in the possession, custody, or control of an individual or entity that holds a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q;
- (3) Hemp that is in the possession, custody, or control of a person or entity that is authorized under state law to process hemp; and
- (4) A product containing or derived from hemp that:
 - (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and
 - (B) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or other similarly reliable methods.”

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

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

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

2. By amending the definition of “marijuana” to read:

““Marijuana” means any part of the plant (genus) cannabis, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, “marijuana” [does] shall not include:

- (1) [hashish,] Hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol[-];
- (2) Hemp that is in the possession, custody, or control of an individual or entity that holds a license to produce hemp issued by the United States Department of Agriculture pursuant to title 7 United States Code section 1639q;
- (3) Hemp that is in the possession, custody, or control of a person or entity that is authorized under state law to process hemp; or
- (4) A product containing or derived from hemp that:
 - (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and
 - (B) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation or other similarly reliable methods.”

3. By amending the definition of “marijuana concentrate” to read:

““Marijuana concentrate” means hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol[-], except that, as used herein, “marijuana concentrate” shall not include:

- (1) Hemp that is in the possession, custody, or control of an individual or entity that holds a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q; or
- (2) A product containing or derived from hemp, including any product containing one or more hemp-derived cannabinoids such as cannabidiol, that:
 - (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and
 - (B) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation or other similarly reliable methods.”

SECTION 6. Act 228, Session Laws of Hawaii 2016, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 2016, and shall be repealed on [June 30, 2021.] October 31, 2020.”

SECTION 7. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in the Act.

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SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval, and shall be repealed on June 30, 2022; provided that the definition of “marijuana” in section 329-1, Hawaii Revised Statutes, and the definitions of “marijuana” and “marijuana Concentrate” in section 712-1240, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved August 27, 2020.)