A BILL FOR AN ACT

RELATING TO INDUSTRIAL HEMP.

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

 SECTION 1. According to the preamble to California's Industrial Hemp Farming Act, which was signed into law on September 27, 2013, industrial hemp is an agricultural crop produced in at least thirty nations, including Australia, Canada, China, France, Germany, Great Britain, and Romania, and is used by industry to produce thousands of products, including paper, textiles, food, oils, automotive parts, and personal care products.

   The United States Court of Appeals for the Ninth Circuit has ruled in Hemp Industries Association v. Drug Enforcement Administration, 357 F.3d 1012 (9th Cir. 2004), that the definition of tetrahydrocannabinols in schedule I refers only to synthetic tetrahydrocannabinols, and that any tetrahydrocannabinols occurring naturally within cannabis is banned only if it falls within the schedule I definition of marijuana. The court ruled that in accordance with schedule I, the Drug Enforcement Administration's relevant rules and
regulations may be enforced only insofar as they ban the presence of marijuana or synthetic tetrahydrocannabinols.

The federal Controlled Substances Act of 1970 (21 U.S.C. Section 812(b)) explicitly excludes nonpsychoactive hemp from the definition of marijuana, and the federal government has declined to appeal that decision. Hawaii law defines "marijuana" in chapter 329, Hawaii Revised Statutes, as follows: "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. It does not include the mature stalks of the plant, 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 is incapable of germination."

The federal Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a schedule I drug, and those findings include that the substance has a high potential for abuse, has
no accepted medical use, and has a lack of accepted safety for use, none of which apply to industrial hemp.

According to estimates by the Hemp Industries Association, sales of industrial hemp products in the United States have grown steadily since 1990 to more than $500,000,000 annually in 2012. For instance, California manufacturers of hemp products currently import from around the world tens of thousands of acres' worth of hemp seed, oil, and fiber products that could be produced by California farmers at a more competitive price, and the intermediate processing of hemp seed, oil, food ingredients, and fiber could create jobs in close proximity to the fields of cultivation.

The California legislature stated in the Industrial Hemp Farming Act that it is the intent of the legislature that law enforcement not be burdened with tetrahydrocannabinol testing of industrial hemp crops when cultivation is in compliance with state law.

The purpose of this Act is to allow the regulated cultivation of industrial hemp in similar fashion as California.

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

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"PART . INDUSTRIAL HEMP

§141- Definitions. As used in this part:

"Board" means the board of agriculture.

"Chairperson" means the chairperson of the board of agriculture.

"Established agricultural research institution" means a public or private institution or organization that maintains land for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.

"Industrial hemp" means a fiber or oilseed crop, or both, that is limited to nonpsychoactive types of the plant Cannabis sativa L. and the seed produced therefrom, having no more than three-tenths of one per cent tetrahydrocannabinol contained in the dried flowering tops, and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin or flowering tops extracted therefrom, fiber, oil, or cake, or the sterilized seed, or any component of the seed, of the plant that is incapable of germination.

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"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds of that plant; 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. It does not include industrial hemp, except where the plant is cultivated or processed for purposes not expressly allowed for under this part.

"Registered seed breeder" means an individual or public or private institution or organization that is registered with the chairperson to develop seed cultivars intended for sale or research.

"Seed cultivar" means a variety of industrial hemp.

"Seed development plan" means a strategy devised by a registered seed breeder, or applicant seed breeder, detailing the breeder's planned approach to growing and developing a new seed cultivar for industrial hemp.

§141- Industrial hemp advisory group. (a) There is established the industrial hemp advisory group which shall be placed under the board of agriculture for administrative purposes.
(b) The advisory group shall consist of eleven members who shall be exempt from section 26-34. The advisory group shall be selected as follows:

(1) Three members shall be selected by the board. These members shall be growers of industrial hemp who are registered pursuant to this part. These members shall be broadly representative of the following functions:

(A) Seed production;

(B) Seed condition;

(C) Marketing; and

(D) Seed utilization.

(2) Two members shall be members of an established agricultural research institution, to be selected by the board;

(3) One member shall represent state or county law enforcement, to be selected by the governor;

(4) One member shall represent the hemp industry in Hawaii, to be selected by the board;

(5) One member shall represent hemp research at the University of Hawaii, to be selected by the president of the university of Hawaii system;
(6) One member shall represent industrial hemp product processors or manufacturers in Hawaii, to be selected by the board;

(7) One member shall represent Hawaii businesses that sell industrial hemp products, to be selected by the board; and

(8) One member shall represent the general public, to be selected by the chairperson.

(c) Members of the advisory group shall serve at the pleasure of the board. Members of the advisory group shall not receive compensation but shall be reimbursed for necessary expenses incurred in the course of official advisory group duties.

(d) The advisory group shall advise the chairperson and may make recommendations on all matters pertaining to this part, including industrial hemp seed law administrative rules and hemp enforcement. The advisory group shall compile and maintain a list of approved seed cultivars.

(e) The advisory group shall annually elect a chairperson from among its membership.

(f) The advisory group shall meet at the call of the chairperson.
§141- Growing of industrial hemp for commercial purposes; registration. (a) Except when grown by an established agricultural research institution or by a registered seed breeder developing a new Hawaii seed cultivar, industrial hemp shall be grown only if it is on the list of approved seed cultivars. The advisory group may from time to time add or remove any seed cultivar from the list.

(b) The list of approved seed cultivars shall include all of the following:

(1) Industrial hemp seed cultivars that have been certified on or before January 1, 2013, by member organizations of the association of official seed certifying agencies, including the Canadian Seed Growers' Association;

(2) Industrial hemp seed cultivars that have been certified on or before January 1, 2013, by the Organization of Economic Cooperation and Development; and

(3) Hawaii varieties of industrial hemp seed cultivars that have been certified by the board.

(c) Except for an established agricultural research institution, and before cultivation, a grower of industrial hemp
for commercial purposes shall register with the board of
agriculture to engage in industrial hemp cultivation. The
application for registration shall include the following
information:

(1) The name, business address, and mailing address of the
applicants;

(2) The legal description, global positioning system
coordinates, and map of the land area on which the
applicant plans to engage in industrial hemp
cultivation or storage; and

(3) The approved seed cultivar to be grown and whether the
seed cultivar will be grown for its grain or fiber, or
as a dual purpose crop.

The application shall be accompanied by a registration fee, to
be established by rules of the board, which shall be used to
cover the costs of implementing, administering, and enforcing
this part. The registration shall be valid for two years, after
which the registrant shall renew the registration and pay the
renewal fee, to be established by rules of the board.

(d) If the chairperson determines that the requirements
for registration pursuant to this section are satisfied, the
chairperson shall issue a registration to the applicant.
(e) A registrant that wishes to alter the land area on which the registrant conducts industrial hemp cultivation or storage shall, before altering the area, submit to the chairperson an updated legal description, global positioning system coordinates, and map specifying the proposed alteration. When the chairperson receives and approves the updated information, the chairperson shall notify the registrant in writing that the registrant may cultivate industrial hemp on the altered land area.

(f) A registrant that wishes to change the seed cultivar grown shall submit to the chairperson the name of the new, approved seed cultivar to be grown. When the chairperson receives and approves the change to the registration, the chairperson shall notify the registrant in writing that the registrant may cultivate the new seed cultivar.

§141- Seed breeder registration. (a) Except when grown by an established agricultural research institution, and before cultivation, a seed breeder shall register with the chairperson to engage in industrial hemp cultivation. The application for registration shall include the following information:

(1) The name, physical address, and mailing address of the applicant;
(2) The legal description, global positioning system coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation or storage;

(3) The approved seed cultivar to be grown and whether the seed cultivar will be grown for its grain or fiber, as a dual purpose crop, or for seed production;

(4) If an applicant intends to develop a new Hawaii seed cultivar to be certified by a seed-certifying agency, the applicant shall include all of the following information:

(A) The name of the seed-certifying agency that will be conducting the certification;

(B) The industrial hemp varieties that will be used in the development of the new Hawaii seed cultivar; and

(C) A seed development plan specifying how the listed industrial hemp varieties will be used in the development of the new seed cultivar, measures that will be taken to prevent the unlawful use of industrial hemp or seed cultivars under this part, and a procedure for the maintenance of
records documenting the development of the new seed cultivar.

The application shall be accompanied by a registration fee, to be established by rules of the board, which shall be used to cover the costs of implementing, administering, and enforcing this part. The registration shall be valid for two years, after which the registrant shall renew the registration and pay the renewal fee, to be established by rules of the board.

(b) If the chairperson determines that the requirements for registration pursuant to this section are satisfied, the chairperson shall issue a seed breeder registration to the applicant.

(c) A registrant that wishes to alter the land area on which the registrant conducts industrial hemp cultivation or storage shall, before altering the area, submit to the chairperson an updated legal description, global positioning system coordinates, and map specifying the proposed alteration. When the chairperson receives and approves the updated information, the chairperson shall notify the registrant in writing that the registrant may cultivate industrial hemp on the altered land area.
(d) A registrant that wishes to change the seed cultivar grown shall submit to the chairperson the name of the new, approved seed cultivar to be grown. When the chairperson receives and approves the change to the registration, the chairperson shall notify the registrant that it may cultivate the new seed cultivar.

(e) A registrant developing a new Hawaii seed cultivar who wishes to change any provision of the seed development plan shall submit to the chairperson the revised seed development plan. When the chairperson receives and approves the change to the seed development plan, the chairperson shall notify the registrant in writing that it may cultivate under the revised seed development plan.

(f) All records pertaining to the seed development plan shall be kept and maintained by the seed breeder and be available upon request by the chairperson, a law enforcement agency, or a seed certifying agent.

§141- Restrictions on industrial hemp growing. (a) Except when grown by an established agricultural research institution or a registered seed breeder, industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than five acres at the same time,
and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre.

(b) Registered seed breeders, for purposes of seed production, shall grow only industrial hemp as a densely planted crop in acreages of not less than two acres at the same time, and no portion of the acreage of industrial hemp shall include plots of less than one contiguous acre.

(c) Registered seed breeders, for purposes of developing a new Hawaii seed cultivar, shall grow industrial hemp as densely as possible in dedicated acreage of not less than one acre and in accordance with the seed development plan. The entire area of the dedicated acreage is not required to be used for the cultivation of the particular seed cultivar.

(d) Ornamental and clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

(e) Pruning and tending of individual industrial hemp plants are prohibited, except when grown by an established agricultural research institution or when the action is necessary to perform tetrahydrocannabinols testing.

(f) The culling of industrial hemp is prohibited, except when grown by an established agricultural research institution,
when the action is necessary to perform tetrahydrocannabinol
testing, or for purposes of seed production and development by a
registered seed breeder.

(g) For purposes of this section, "industrial hemp"
includes products imported under the Harmonized Tariff Schedule
of the United States (2013) of the United States International
Trade Commission, including hemp seed, per subheading
1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per
subheading 2306.90.01, true hemp, per heading 5302, true hemp
yarn, per subheading 5308.20.00, and woven fabrics of true hemp
fibers, per subheading 5311.00.40.

(h) Except when industrial hemp is grown by an established
agricultural research institution and before the harvest of each
crop, a registrant that grows industrial hemp shall obtain a
laboratory test report indicating the tetrahydrocannabinol
levels of a random sampling of the dried flowering tops of the
industrial hemp grown.

(i) Sampling shall occur as soon as practicable when the
content of the tetrahydrocannabinol leaves surrounding the seeds
is at its peak and shall commence as the seeds begin to mature,
when the first seeds of approximately fifty per cent of the
plants are resistant to compression. The entire fruit-bearing
part of the plant including the seeds shall be used as a sample. The sample cut shall be made directly underneath the inflorescence found in the top one-third of the plant. Samples collected for tetrahydrocannabinol testing shall be accompanied by the following documentation:

(1) The registrant's proof of registration;

(2) Seed certification documentation for the seed cultivar used; and

(3) The tetrahydrocannabinol testing report for each certified seed cultivar used; provided that the laboratory test report shall be issued by a laboratory registered with the federal Drug Enforcement Administration, state the percentage content of tetrahydrocannabinol, indicate the date and location of samples taken, and state the global positioning system coordinates and total acreage of the crop.

(j) If the laboratory test report under subsection (i) indicates a percentage content of tetrahydrocannabinol that is equal to or less than three-tenths of one per cent, the words "PASSED AS HAWAII INDUSTRIAL HEMP" shall appear in capital letters at or near the top of the laboratory test report; provided that if the laboratory test report indicates a
percentage content of tetrahydrocannabinol that is greater than three-tenths of one per cent, the words "FAILED AS HAWAII INDUSTRIAL HEMP" shall appear in capital letters at or near the top of the laboratory test report.

If the laboratory test report indicates a percentage content of tetrahydrocannabinol that is equal to or less than three-tenths of one per cent, the laboratory shall provide the person who requested the testing not less than ten original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.

If the laboratory test report indicates a percentage content of tetrahydrocannabinol that is greater than three-tenths of one percent and does not exceed one per cent, the registrant that grows industrial hemp shall submit samples for a second testing of the industrial hemp grown.

(k) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage content of tetrahydrocannabinol that exceeds one per cent or a second laboratory test report pursuant to subsection (j) indicating a percentage content of tetrahydrocannabinol that exceeds three-
tenths of one per cent but is less than one per cent. Destruction of the industrial hemp shall take place within forty-eight hours after receipt of the first laboratory test report. If the percentage content of tetrahydrocannabinol in a second laboratory test report exceeds three-tenths of one per cent but is less than one per cent, the destruction shall take place as soon as practicable, but no later than forty-five days after receipt of the second test report.

A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage content of tetrahydrocannabinols that is greater than three-tenths of one per cent but does not exceed one per cent.

§141- Cultivation by established agricultural research institutions. Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of tetrahydrocannabinol that is greater than three-tenths of one per cent if that cultivation or possession contributes to the development of types of industrial hemp that is not more than a tetrahydrocannabinol limit of three-tenths of one per cent.
§141- Laboratory test reports; retention. Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the board, chairperson, or law enforcement officials or their designees upon request, and provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.

§141- Attorney general. If the state attorney general determines that the provisions of this part are not sufficient to comply with federal law, the board, in consultation with the attorney general, shall establish procedures for this section that meet the requirements of federal law.

§141- Prohibited activities. The possession outside of a field of lawful cultivation of resin, flowering tops, or leaves that have been removed from the hemp plant is prohibited; except that the presence of a de minimis amount, or insignificant number, of hemp leaves or flowering tops in hemp
bales that result from the normal and appropriate processing of
industrial hemp shall not constitute possession of marijuana.

§141- Rulemaking. The board shall adopt rules pursuant
to chapter 91 necessary for the purposes of this part.”

SECTION 3. Chapter 712, Hawaii Revised Statutes, is
amended by adding a new section to part IV to be appropriately
designated and to read as follows:

"§712- Industrial hemp. The possession, cultivation,
sale, receipt, or transfer of industrial hemp as authorized
under part of chapter 141, shall not constitute an offense
under this part.”

SECTION 4. Section 141-1 to section 141-10, Hawaii Revised
Statutes, shall be designated as follows:

"PART I. GENERAL PROVISIONS"

SECTION 5. (a) Not later than January 1, 2019, or four
years after the provisions of this Act are authorized under
federal law, whichever is later, the attorney general shall
report to the legislature the reported incidents, if any, of the
following:

(1) A field of industrial hemp being used to disguise
marijuana cultivation; and
(2) Claims in a court hearing by persons other than established agricultural research institutions that marijuana is industrial hemp;

(b) Not later than January 1, 2019, or four years after the provisions of this Act are authorized under federal law, whichever is later, the industrial hemp advisory group, in consultation with the Hemp Industries Association, or its successor industry association, shall report the following information to the legislature:

(1) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in Hawaii; and

(2) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in other states that permit industrial hemp cultivation.

SECTION 6. This Act shall not take effect unless authorized under federal law. When this Act takes effect, the state attorney general shall issue an opinion on the extent of that authorization under federal law and Hawaii law, the operative date of those provisions, and whether federal law imposes any limitations that are inconsistent with the provisions of this Act. The attorney general shall complete the opinion as soon as possible but no later than four months after
authorization under federal law. The attorney general shall electronically post the opinion on its internet website.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval and shall be repealed on January 1, 2023, or four years after this Act is authorized by federal law, whichever is later.

INTRODUCED BY: [Signatures]
Report Title:
Industrial Hemp; Agriculture

Description:
Authorizes the growing of industrial hemp for certain purposes under specified conditions.

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