

JAN 16 2014

S.B. NO. 2175

A BILL FOR AN ACT

RELATING TO INDUSTRIAL HEMP.

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

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

9 The United States Court of Appeals for the Ninth Circuit
10 has ruled in *Hemp Industries Association v. Drug Enforcement*
11 *Administration*, 357 F.3d 1012 (9th Cir. 2004), that the
12 definition of tetrahydrocannabinols in schedule I refers only to
13 synthetic tetrahydrocannabinols, and that any
14 tetrahydrocannabinols occurring naturally within cannabis is
15 banned only if it falls within the schedule I definition of
16 marijuana. The court ruled that in accordance with schedule I,
17 the Drug Enforcement Administration's relevant rules and



1 regulations may be enforced only insofar as they ban the
2 presence of marijuana or synthetic tetrahydrocannabinols.

3 The federal Controlled Substances Act of 1970 (21 U.S.C.
4 Section 812(b)) explicitly excludes nonpsychoactive hemp from
5 the definition of marijuana, and the federal government has
6 declined to appeal that decision. Hawaii law defines
7 "marijuana" in chapter 329, Hawaii Revised Statutes, as follows:
8 ""Marijuana" means all parts of the plant (genus) Cannabis
9 whether growing or not; the seeds thereof, the resin extracted
10 from any part of the plant; and every compound, manufacture,
11 salt, derivative, mixture, or preparation of the plant, its
12 seeds, or resin. It does not include the mature stalks of the
13 plant, fiber produced from the stalks, oil, or cake made from
14 the seeds of the plant, any other compound, manufacture, salt,
15 derivative, mixture, or preparation of the mature stalks (except
16 the resin extracted therefrom), fiber, oil, or cake, or the
17 sterilized seed of the plant which is incapable of germination."

18 The federal Controlled Substances Act of 1970 specifies the
19 findings to which the government must attest in order to
20 classify a substance as a schedule I drug, and those findings
21 include that the substance has a high potential for abuse, has



1 no accepted medical use, and has a lack of accepted safety for
2 use, none of which apply to industrial hemp.

3 According to estimates by the Hemp Industries Association,
4 sales of industrial hemp products in the United States have
5 grown steadily since 1990 to more than \$500,000,000 annually in
6 2012. For instance, California manufacturers of hemp products
7 currently import from around the world tens of thousands of
8 acres' worth of hemp seed, oil, and fiber products that could be
9 produced by California farmers at a more competitive price, and
10 the intermediate processing of hemp seed, oil, food ingredients,
11 and fiber could create jobs in close proximity to the fields of
12 cultivation.

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

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

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



1 **"PART . INDUSTRIAL HEMP**

2 **§141- Definitions.** As used in this part:

3 "Board" means the board of agriculture.

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

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

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



1 "Marijuana" means all parts of the plant *Cannabis sativa*
2 L., whether growing or not; the seeds of that plant; the resin
3 extracted from any part of the plant; and every compound,
4 manufacture, salt, derivative, mixture, or preparation of the
5 plant, its seeds, or resin. It does not include industrial
6 hemp, except where the plant is cultivated or processed for
7 purposes not expressly allowed for under this part.

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

12 "Seed cultivar" means a variety of industrial hemp.

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

17 **§141- Industrial hemp advisory group.** (a) There is
18 established the industrial hemp advisory group which shall be
19 placed under the board of agriculture for administrative
20 purposes.



1 (b) The advisory group shall consist of eleven members who
2 shall be exempt from section 26-34. The advisory group shall be
3 selected as follows:

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

- 8 (A) Seed production;
- 9 (B) Seed condition;
- 10 (C) Marketing; and
- 11 (D) Seed utilization.

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

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

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

19 (5) One member shall represent hemp research at the
20 University of Hawaii, to be selected by the president
21 of the university of Hawaii system;



1 (6) One member shall represent industrial hemp product
2 processors or manufacturers in Hawaii, to be selected
3 by the board;

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

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

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

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

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

21 (f) The advisory group shall meet at the call of the
22 chairperson.



1 §141- **Growing of industrial hemp for commercial**
2 **purposes; registration.** (a) Except when grown by an
3 established agricultural research institution or by a registered
4 seed breeder developing a new Hawaii seed cultivar, industrial
5 hemp shall be grown only if it is on the list of approved seed
6 cultivars. The advisory group may from time to time add or
7 remove any seed cultivar from the list.

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

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

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

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

21 (c) Except for an established agricultural research
22 institution, and before cultivation, a grower of industrial hemp



1 for commercial purposes shall register with the board of
2 agriculture to engage in industrial hemp cultivation. The
3 application for registration shall include the following
4 information:

5 (1) The name, business address, and mailing address of the
6 applicant;

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

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

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

20 (d) If the chairperson determines that the requirements
21 for registration pursuant to this section are satisfied, the
22 chairperson shall issue a registration to the applicant.



1 (e) A registrant that wishes to alter the land area on
2 which the registrant conducts industrial hemp cultivation or
3 storage shall, before altering the area, submit to the
4 chairperson an updated legal description, global positioning
5 system coordinates, and map specifying the proposed alteration.
6 When the chairperson receives and approves the updated
7 information, the chairperson shall notify the registrant in
8 writing that the registrant may cultivate industrial hemp on the
9 altered land area.

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

16 **§141- Seed breeder registration.** (a) Except when grown
17 by an established agricultural research institution, and before
18 cultivation, a seed breeder shall register with the chairperson
19 to engage in industrial hemp cultivation. The application for
20 registration shall include the following information:

21 (1) The name, physical address, and mailing address of the
22 applicant;



- 1 (2) The legal description, global positioning system
2 coordinates, and map of the land area on which the
3 applicant plans to engage in industrial hemp
4 cultivation or storage;
- 5 (3) The approved seed cultivar to be grown and whether the
6 seed cultivar will be grown for its grain or fiber, as
7 a dual purpose crop, or for seed production;
- 8 (4) If an applicant intends to develop a new Hawaii seed
9 cultivar to be certified by a seed-certifying agency,
10 the applicant shall include all of the following
11 information:
 - 12 (A) The name of the seed-certifying agency that will
13 be conducting the certification;
 - 14 (B) The industrial hemp varieties that will be used
15 in the development of the new Hawaii seed
16 cultivar; and
 - 17 (C) A seed development plan specifying how the listed
18 industrial hemp varieties will be used in the
19 development of the new seed cultivar, measures
20 that will be taken to prevent the unlawful use of
21 industrial hemp or seed cultivars under this
22 part, and a procedure for the maintenance of



1 records documenting the development of the new
2 seed cultivar.

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

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

13 (c) A registrant that wishes to alter the land area on
14 which the registrant conducts industrial hemp cultivation or
15 storage shall, before altering the area, submit to the
16 chairperson an updated legal description, global positioning
17 system coordinates, and map specifying the proposed alteration.
18 When the chairperson receives and approves the updated
19 information, the chairperson shall notify the registrant in
20 writing that the registrant may cultivate industrial hemp on the
21 altered land area.



1 (d) A registrant that wishes to change the seed cultivar
2 grown shall submit to the chairperson the name of the new,
3 approved seed cultivar to be grown. When the chairperson
4 receives and approves the change to the registration, the
5 chairperson shall notify the registrant that it may cultivate
6 the new seed cultivar.

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

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

18 **§141- Restrictions on industrial hemp growing. (a)**
19 Except when grown by an established agricultural research
20 institution or a registered seed breeder, industrial hemp shall
21 be grown only as a densely planted fiber or oilseed crop, or
22 both, in acreages of not less than five acres at the same time,



1 and no portion of an acreage of industrial hemp shall include
2 plots of less than one contiguous acre.

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

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

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

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

21 (f) The culling of industrial hemp is prohibited, except
22 when grown by an established agricultural research institution,



1 when the action is necessary to perform tetrahydrocannabinol
2 testing, or for purposes of seed production and development by a
3 registered seed breeder.

4 (g) For purposes of this section, "industrial hemp"
5 includes products imported under the Harmonized Tariff Schedule
6 of the United States (2013) of the United States International
7 Trade Commission, including hemp seed, per subheading
8 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per
9 subheading 2306.90.01, true hemp, per heading 5302, true hemp
10 yarn, per subheading 5308.20.00, and woven fabrics of true hemp
11 fibers, per subheading 5311.00.40.

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

18 (i) Sampling shall occur as soon as practicable when the
19 content of the tetrahydrocannabinol leaves surrounding the seeds
20 is at its peak and shall commence as the seeds begin to mature,
21 when the first seeds of approximately fifty per cent of the
22 plants are resistant to compression. The entire fruit-bearing



1 part of the plant including the seeds shall be used as a sample.
2 The sample cut shall be made directly underneath the
3 inflorescence found in the top one-third of the plant. Samples
4 collected for tetrahydrocannabinol testing shall be accompanied
5 by the following documentation:

- 6 (1) The registrant's proof of registration;
- 7 (2) Seed certification documentation for the seed cultivar
8 used; and
- 9 (3) The tetrahydrocannabinol testing report for each
10 certified seed cultivar used; provided that the
11 laboratory test report shall be issued by a laboratory
12 registered with the federal Drug Enforcement
13 Administration, state the percentage content of
14 tetrahydrocannabinol, indicate the date and location
15 of samples taken, and state the global positioning
16 system coordinates and total acreage of the crop.

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



1 percentage content of tetrahydrocannabinol that is greater than
2 three-tenths of one per cent, the words "FAILED AS HAWAII
3 INDUSTRIAL HEMP" shall appear in capital letters at or near the
4 top of the laboratory test report.

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

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

17 (k) A registrant that grows industrial hemp shall destroy
18 the industrial hemp grown upon receipt of a first laboratory
19 test report indicating a percentage content of
20 tetrahydrocannabinol that exceeds one per cent or a second
21 laboratory test report pursuant to subsection (j) indicating a
22 percentage content of tetrahydrocannabinol that exceeds three-



1 tenths of one per cent but is less than one per cent.
2 Destruction of the industrial hemp shall take place within
3 forty-eight hours after receipt of the first laboratory test
4 report. If the percentage content of tetrahydrocannabinol in a
5 second laboratory test report exceeds three-tenths of one per
6 cent but is less than one per cent, the destruction shall take
7 place as soon as practicable, but no later than forty-five days
8 after receipt of the second test report.

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

15 **§141- Cultivation by established agricultural research**
16 **institutions.** Established agricultural research institutions
17 shall be permitted to cultivate or possess industrial hemp with
18 a laboratory test report that indicates a percentage content of
19 tetrahydrocannabinol that is greater than three-tenths of one
20 per cent if that cultivation or possession contributes to the
21 development of types of industrial hemp that is not more than a
22 tetrahydrocannabinol limit of three-tenths of one per cent.



1 **§141- Laboratory test reports; retention.** Except for an
2 established agricultural research institution, a registrant that
3 grows industrial hemp shall retain an original signed copy of
4 the laboratory test report for two years from its date of
5 sampling, make an original signed copy of the laboratory test
6 report available to the board, chairperson, or law enforcement
7 officials or their designees upon request, and provide an
8 original copy of the laboratory test report to each person
9 purchasing, transporting, or otherwise obtaining from the
10 registrant that grows industrial hemp the fiber, oil, cake, or
11 seed, or any component of the seed, of the plant.

12 **§141- Attorney general.** If the state attorney general
13 determines that the provisions of this part are not sufficient
14 to comply with federal law, the board, in consultation with the
15 attorney general, shall establish procedures for this section
16 that meet the requirements of federal law.

17 **§141- Prohibited activities.** The possession outside of
18 a field of lawful cultivation of resin, flowering tops, or
19 leaves that have been removed from the hemp plant is prohibited;
20 except that the presence of a de minimis amount, or
21 insignificant number, of hemp leaves or flowering tops in hemp



1 bales that result from the normal and appropriate processing of
2 industrial hemp shall not constitute possession of marijuana.

3 **§141- Rulemaking.** The board shall adopt rules pursuant
4 to chapter 91 necessary for the purposes of this part."

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

8 "§712- Industrial hemp. The possession, cultivation,
9 sale, receipt, or transfer of industrial hemp as authorized
10 under part of chapter 141, shall not constitute an offense
11 under this part."

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

14 **"PART I. GENERAL PROVISIONS"**

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

- 20 (1) A field of industrial hemp being used to disguise
21 marijuana cultivation; and



1 (2) Claims in a court hearing by persons other than
2 established agricultural research institutions that
3 marijuana is industrial hemp;

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

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

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

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



1 authorization under federal law. The attorney general shall
2 electronically post the opinion on its internet website.

3 SECTION 7. New statutory material is underscored.

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

7

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S.B. NO. 2175

Report Title:

Industrial Hemp; Agriculture

Description:

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

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