

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

GLENN K. MURANAKA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

**MARCH 18, 2019
2:05 P.M.
CONFERENCE ROOM 325**

**SENATE BILL NO. 1353 SD3 HD1
RELATING TO AGRICULTURE**

Chairperson Lee and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1353 SD3 HD1, which mandates the department submit a plan for hemp regulation for USDA and changes the definition of marijuana. The department has strong concerns with this measure as written and asks the committee on Judiciary to replace language in this bill to reflect SB1353 SD3.

Regarding Section 3 of this bill, the department opposes the addition of the language “: (c) Licensees may utilize hemp genetics, from any state, that meet federal definitions of hemp” for the following reasons:

- (1) Testing methods are not standardized state to state, so a genetic which tests as hemp under one state’s testing regime may easily test as marijuana under another state’s testing method.
- (2) For example: some states test only the leafy material of the plant, resulting in a test result that meets the federal definition of hemp, but if the flower material of the same plant was tested (as it is tested in



Hawaii), it has a high likelihood of being marijuana. HDOA does not believe it is prudent to allow the importation or usage of hemp genetics which are not tested according to protocols similar to its own, or a national standardized testing protocol.

Regarding section 4:

The department strongly opposes (b) as it may make administration of the program impracticable to impossible. If the department is unable to make administratively necessary requirements for its program because they are seen as “more restrictive than Federal law requires,” it will not be able to run the program in an efficient or effective manner. For example, a requirement that applicants to the hemp program have landowner permission to grow hemp on the land may be construed as more stringent than federal law requires, but it is administrative insanity to not ensure growers have permission from the landowner to grow cannabis on the land they intend to use for hemp cultivation.

The department strongly opposes (c), as it would (1) be hard to determine exactly what is voided, and (2) voiding existing administrative rules would create a regulatory hole, removing protections, guidance, and instructions from both the department and licensees before assuring something else will be in place to provide guidance, protections and instructions. Even if the department sets out to put new administrative rules in place as fast as possible to close the regulatory/guidance hole, the new rules would likely take at least 6 months. During those six months, the program will be further hamstrung and confusing for the licensees and nearly impossible to logically administer. If some of the current administrative rules governing the pilot program are to be voided, the department must either be given enough time to put new rules in place before the voiding occurs or be given interim administrative rulemaking authority to fill the regulatory gap as soon as possible, for both its own legal protection and the ability of its licensees to grow hemp under the pilot program’s protections.

The department respectfully defers Section 5 of this bill to the Department of Health.

The department defers Sections 6, 7, and 8 of this bill to the Department of Public Safety but notes that Sections 6 and 8 of this bill, which seek to change the definition of marijuana to exclude hemp are almost certain to create confusion for the following reason:

1. The definition of marijuana includes all the parts of the plant (genus) Cannabis whether growing or not; “the seeds thereof...,” but then defines cannabis seeds which do not have more than 0.3% delta-9 tetrahydrocannabinol concentration on a dry weight basis as hemp, effectively defining all cannabis seeds as hemp rather than marijuana since cannabis seeds themselves do not contain delta-9 tetrahydrocannabinol. Under this definition, viable cannabis seeds which could produce high THC plants would qualify as hemp simply by being a seed.

The department believes adjusting the definition of marijuana to specifically exclude hemp is unnecessary as hemp is already distinguished from marijuana by definition. If adjustments to the definition are to be made, however, a more workable definition of marijuana which does not create automatic legal and enforcement issues must be devised.

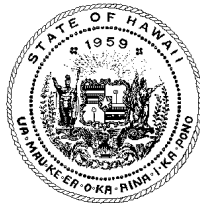
Regarding Section 9 of this bill, which requires that the department submit a plan for hemp regulation to USDA, the department has the following comments:

(1) USDA has declared it intends to release commercial production guidelines in Fall 2019 and will not review any submitted plans prior to their release of guidelines in Fall 2019. USDA has asked that states not submit plans until after it release guidelines in the fall. Timing-wise, it seems wisest and most practicable to follow USDA’s advice, and prepare but not submit a plan to USDA until after USDA promulgates hemp production regulations. After USDA promulgates regulations, the state can review USDA’s regulations and make appropriate adjustments to its plans for hemp regulation in the state.

(2) The state's hemp pilot program is currently run by one DOA employee. Leading hemp production states have 10-18 employees for their hemp programs. It a federal requirement that a state certify they have the personnel and resources to administer its plan for hemp regulation. Depending on the size of Hawaii's program, even the three proposed staff may be inadequate. The department must be able to limit its program size to its available resources to maintain the certification necessary to receive USDA approval, or be given the ability and resources to instantly add staff as its program grows to maintain the certification necessary to have an approved plan.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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Maria C. Cook
Deputy Director
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Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL (SB) 1353, SENATE DRAFT (SD) 3, HOUSE DRAFT (HD)

1

RELATING TO INDUSTRIAL HEMP

By

Nolan P. Espinda, Director

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Monday, March 18, 2019; 2:05 p.m.
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of Senate Bill (SB)1353, Senate Draft (SD) 3, House Draft (HD) 1, which proposes, among many things, to legalize hemp to the extent legalized under federal law.

PSD recognizes that the 2018 Federal Farm bill removed hemp from the federal definition of marijuana. Our department supports the need for the State of Hawaii to have robust agricultural industries that will bring increased economic growth and important jobs to the community. PSD also recognizes that with the passage of the 2018 Federal Farm Bill, the federal government has laid the foundation for Hawaii to build what is intended to be a successful commercial industrial hemp program.

Pursuant to the 2018 Federal Farm Bill, the State of Hawaii is required to submit a plan to regulate the future state commercial hemp program to the United States Department of Agriculture before moving forward with a commercial hemp program. PSD looks forward to such discussions on a comprehensive plan.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1353, RELATING TO INDUSTRIAL HEMP.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, March 18, 2019

TIME: 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Andrew Goff, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General makes the following comments.

It appears one of the purposes of this bill is to create a hemp regulatory program that will be no more stringent than what is allowed by the Agriculture Improvement Act of 2018 (2018 Farm Bill). However, the bill only authorizes the Department of Agriculture (DOA) to regulate hemp “pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended.” That is insufficient to create a hemp regulatory program and consequently, the proposed bill does not clearly establish a specific program that DOA is authorized to implement.

The proposed bill also creates an unworkable rulemaking process. On the one hand, on page 10, lines 3 to 7, the bill prohibits the DOA from adopting rules that are more stringent than federal law. On the other hand, the DOA must base those rules on the existing industrial hemp pilot program statutes, which are more stringent than current federal law. An administrative rule that conflicts with the statute it attempts to implement is invalid as outside of the scope of the agency’s authority. Tamashiro v. Dep’t of Human Servs., 112 Haw. 388, 427, 146 P.3d 103, 142 (2006) (“When the legislature authorized the [agency] to promulgate rules, it could not delegate to the [agency] the power to establish a rule contrary to its enabling law”). Accordingly, the DOA will not be able to adopt rules that are stringent based upon existing state statutes but not more stringent than federal law.

The bill also amends section 141-35, HRS, to allow Pilot Program licensees to use hemp genetics from any state that meet the federal definition of hemp. This creates an inconsistency with subsection (a), which prohibits growing hemp varieties that are not on a list approved by the board of agriculture. To resolve this issue, it is recommended that hemp genetics from any state that meets the federal definition of hemp be added to the list of approved hemp varieties.

With these changes, page 9, lines 6 through 14 would state:

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

- (1) Industrial hemp seed cultivars that have been certified by the Organisation for Economic Co-operation and Development; ~~and~~
- (2) Hawaii varieties of industrial hemp seed cultivars that have been certified by the board~~[-];~~ and
- (3) Hemp genetics, from any state, that meet the federal definition of hemp."

Furthermore, this bill decriminalizes industrial hemp. The current Industrial Hemp Pilot Program does not include penalties for unlicensed production in its violations section. See section 141-38, HRS. Without either a criminal or civil penalty for unauthorized production of hemp, the DOA will not be able to get a regulatory plan approved by the USDA.

To resolve these concerns, we recommend the following wording be added to part IV of the Hawaii Penal Code:

"§712- Unauthorized production of hemp. (a) A person shall not produce hemp unless authorized pursuant to a state or federal program.

(b) A person who violates this section shall be subject to a monetary penalty of \$_____."

Thank you for the opportunity to testify.



Akamai Cannabis Clinic

3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON SENATE BILL 1353 SD3 HD1
RELATING TO INDUSTRIAL HEMP

By
Clifton Otto, MD

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Monday, March 18, 2019; 2:05 PM
State Capitol, Conference Room 325

Thank you for the opportunity to provide testimony on this measure, which is an amended version of HB131 HD2. Please consider the following comments:

Comment #1 - This bill seems to be based upon the assumption that hemp farmers in Hawaii will only be growing hemp for fiber and seed. As a result, this bill is lacking any provisions for the state regulation of cannabinoids derived from hemp that are already FDA-approved drug products in the United States. This is something that the U.S. Department of Agriculture (USDA) will likely be looking at when it evaluates new state hemp program proposals.

The [Agriculture Improvement Act of 2018](#) provides a new definition for hemp within the Agricultural Marketing Act of 1946:

“SEC. 297A. DEFINITIONS.

“In this subtitle:

“(1) HEMP.—The term ‘hemp’ means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

This Act also removes hemp from the federal Controlled Substances Act (CSA) by separating hemp from the definition of marihuana, and exempts tetrahydrocannabinols found in hemp from federal Schedule I:

“An Accepted Medical Use Supporter”

SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended—

(1) by striking “(16) The” and inserting “(16)(A) Subject to subparagraph (B), the”; and

(2) by striking “Such term does not include the” and inserting the following:

“(B) The term ‘marihuana’ does not include—

“(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

“(ii) the”.

(b) TETRAHYDROCANNABINOL.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)(17) by inserting after “Tetrahydrocannabinols” the following: “, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)”.

However, the Agriculture Improvement Act of 2018 does not lessen the authority of the Food and Drug Administration (FDA) to regulate cannabinoids found in hemp that have been approved for or are being investigated for inter-state marketing as approved drug products:

“(c) EFFECT ON OTHER LAW.—Nothing in this subtitle shall affect or modify—

“(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

“(2) section 351 of the Public Health Service Act (42 U.S.C. 262); or

“(3) the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services—

“(A) under—

“(i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); ...”

This provision is necessary in order to prevent state hemp producers from extracting and marketing delta-9-tetrahydrocannabinol (THC) found in hemp.

This provision is also necessary to prevent state hemp producers from extracting and marketing other cannabinoids found in hemp, such as Cannabidiol (CBD), that are already FDA-approved drug products.

The [FDA](#) is very clear about the situation with CBD: now that it is an approved drug product it cannot be marketed for inter-state commerce as a food additive or a dietary supplement:

“Under the FD&C Act, it’s illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements. This is a requirement that we apply across the board to food products that contain substances that are active ingredients in any drug.”

Perhaps the regulation of hemp-derived CBD would be less of a concern if CBD had zero risk to public health. However, the [FDA](#) has already shown that many of these unregulated hemp CBD products entering inter-state commerce do not contain what is being advertised, and several of these products have been marketed with false claims for medical use.

CBD has also been shown to affect human [Cytochrome P450](#) liver enzymes, which are responsible for the metabolism of a broad range of pharmaceutical prescription medications. This could be especially dangerous for patients on Coumadin, since taking CBD at the same time could potentially cause excessive anti-coagulation and result in life-threatening internal bleeding. [One study](#) found that as little as 25 mg of CBD can impact human P450 function.

Unfortunately, all the unregulated Hemp CBD products that we have seen being sold in Hawaii have been devoid of any warnings about these potential drug interactions, and most do not provide third party laboratory testing for heavy metals and pesticides. This is a serious consideration given hemp's known [phytoremediation](#) properties.

CBD can also be readily [converted to THC](#), as demonstrated by the United States patent held by the discoverer of THC himself, which could provide a source for illicit THC production if hemp-derived CBD is not properly regulated at the state level.

In addition, the clinical studies conducted for FDA approval of Epidiolex demonstrated that CBD is not without [adverse reactions](#):

“The most common adverse reactions (10% or more for EPIDIOLEX and greater than placebo) are: somnolence; decreased appetite; diarrhea; transaminase elevations; fatigue, malaise, and asthenia; rash; insomnia, sleep disorder, and poor quality sleep; and infections.”

Clearly, our state Legislature needs to address the issue of hemp-derived CBD in order to craft a state hemp program proposal that will meet with the approval of the USDA. Addressing this issue is not only required to comply with the federal regulation of approved drug products, but also to control the unapproved and unregulated CBD snake oils that are flooding our state commercial market and threatening the safety of our consumers and patients.

Other states have already started to address this situation:

In July of 2018, the [California Department of Public Health](#) issued a FAQ on Industrial Hemp and CBD in food products based on federal law, which clearly prohibits the use of hemp-derived CBD as a food additive or dietary supplement in that state.

Testimony on SB1353 SD3 HD1
House Committee on Judiciary
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Page 4

New York's [Department of Health and Mental Hygiene](#) has also started prohibiting the addition of CBD to food products, a clear signal that other states are starting to recognize that regulation in this area is necessary in order to protect consumers and comply with federal law.

Please do not allow this bill to pass out of your committee without addressing the intra-state and inter-state regulation of hemp-derived CBD products being manufactured inside and outside of Hawaii.

Comment #2 - The outdoor cultivation of hemp in Hawaii will inevitably mean that the dispersion of male hemp pollen will be widespread wherever hemp is being cultivated. Potential [cross pollination](#) could [severely restrict](#) the ability of patients and dispensaries to produce high quality outdoor cannabis, which will only increase the costs of medical use production, reduce patient access, and increase dependence upon the black market.

This is something the Legislature needs to address in order to protect our patients and Hawaii's Medical Use of Cannabis Program.

One solution would be to restrict hemp cultivation to at least 10 miles away from any dispensary cultivation facility or registered patient grow site. Requiring all hemp licensees to use feminized hemp seeds would be another solution. Whatever the solution may be, please do not ignore the impact that outdoor hemp cultivation will have upon the already established legal cultivation of cannabis for medical use in Hawaii.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: March 18, 2019, 2:05PM
RE: SB1353 SD3 HD1, RELATING TO INDUSTRIAL HEMP, **SUPPORT WITH COMMENTS**

Dear Chair Lee, Vice Chair San Buenaventura; Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure and offers the following comment:

- We appreciate that the blanket exclusion of felons in a future hemp industry was removed from the original bill. The Farm Bill of 2018, as passed by Congress, excludes those with felonies from the past ten years. Some states take a more punitive approach, also excluding certain misdemeanants;
- Conversely, Colorado takes a more nuanced tack, but it may be forced to change that;¹
- While we appreciate that all rules “more stringent than required under federal law are void” (Section 4);
- **We respectfully request even clearer legislative intent that the Department of Agriculture, in drafting administrative rules regarding any exclusionary criteria from acquiring a license, should be as inclusive as possible. If Colorado is permitted to continue without a stringent 10 year-ban on felons, Hawai'i should adopt the same approach.**

We submit that prospective hemp industry workers should not be punished for past offenses, particularly those that, like Hemp prohibition, are part of the failed War on Drugs. We look forward to the day that cannabis joins hemp in being taken off the state and federal Schedule I of the Controlled Substances Act, and also grows free in our fields across the islands.

Mahalo for the opportunity to testify.

¹ <https://www.mcclatchydc.com/news/politics-government/congress/article222658500.html>.



HAWAI'I CENTER FOR FOOD SAFETY

House Committee on Judiciary

Hawai'i Center for Food Safety supports: SB1353 SD3 HD1

Dear Chair Lee , Vice Chair San Buenaventura and members of the Committee,

My name is Lauryn Rego and I am Hawai'i program co-director for the Center for Food Safety (CFS). CFS is a nationwide public interest, sustainable agriculture nonprofit organization whose mission centers on furthering the public's right to know how their food is produced, through labeling and other means. We have over 1 million farmer and consumer members across the country, including nearing 11,000 in Hawai'i. On behalf of CFS and our members, I thank you for the opportunity to provide testimony regarding this important bill.

I am writing today, in support of SB1353 SD3 HD1, which legalizes hemp to the extent legalized under federal law. The economic opportunity for Hawai'i farmers is evident, with industrial hemp hitting multi-million dollar sales figures last year, and expected to skyrocket under the loosening of federal regulations. Hemp farming will be a boon to local agriculture providing important local jobs and renewed investment into our rural communities.

The current State law under the pilot program is overly burdensome, with excessive limitations in licensing, acreage and genetics. We appreciate the language in this bill that clearly states that any certified hemp seed can be utilized. We would like to see any State law also include provisions that guarantee licenses to qualified applicants, lift the limitations on acreage, and provide remedies (other than destruction) for crops that accidentally produce more THC than intended. If Hawai'i is serious about supporting sustainable agricultural goals then the path forward is obvious: bring the State law into the present, to match the Federal law. The creation of sensible state hemp legislation has never been more urgent. Let's allow all farmers the opportunity to participate in this emerging and exciting market.

Respectfully,

Lauryn Rego
Hawai'i Program Director
Center for Food Safety

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SB-1353-HD-1

Submitted on: 3/17/2019 11:51:55 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Miyamoto	Hawaii Farm Bureau	Support	No

Comments:

LATE



Board of Directors:

House Committee on Judiciary

Gary L. Hooser
President

Hawai'i Alliance for Progressive Action (HAPA) strongly supports: SB 1353 SD3 HD1

Andrea N. Brower
Ikaika M. Hussey
Co-Vice Presidents

Monday, March 18th, 2019, 2:05 p.m., Conference Room 325

Kim Coco Iwamoto
Treasurer

Aloha Chair Lee, Vice Chair San Buenaventura and Members of the Committee,

Bart E. Dame
Secretary

My name is Anne Frederick and I am the Executive Director for the Hawai'i Alliance for Progressive Action (HAPA). HAPA is a statewide environmental, social and economic justice organization. HAPA's fair and sustainable food systems work focuses on protecting Hawaii's environment and the health of its residents from potentially harmful pesticide impacts. HAPA engages over 10,000 local residents annually through its work.

Paul Achitoff

Nancy Aleck

I am writing in support SB 1353 SD3 HD1, which is designed to accelerate the process that will allow farmers in Hawai'i and market hemp products, and help diversify Hawai'i's economy.

Laura Harrelson

Kaleikoa Ka'eo

The recent passage of the Farm Bill in December presents Hawai'i with a monumental opportunity to usher in a successful new hemp agricultural industry. Current industry estimates place the total retail value of hemp products sold in the U.S. in 2017 to be at least \$820 million.[1]

Michael Miranda

Walter Ritte Jr.

Pua Rossi-Fukino

Karen Shishido

While other states had the requisite ag plans prepared to submit to the feds prior to the passage of the Farm Bill, our state dragged its heels. Our economy cannot afford to delay any longer. We should pass the requisite legislation to allow the state to move forward on the opportunity to generate millions of dollars in profits, create new jobs and enable entrepreneurial opportunities.

Leslie Malulani Shizue Miki

Hemp yields three crops yearly in balmy Hawai'i, where climate provides a distinct advantage over competitors in other states. There is no reason that Hawai'i's ag sector should not be participating in this dynamic new market. The estimated gross value of hemp production per acre is about \$21,000 from seeds

and \$12,500 from stalks. And, since 2011, U.S. hemp retail sales have increased from about 10% to over 20% annually.

And this is just the beginning. The potential for growth of small business is exponential. Hemp is now being used for clothing, paper, building materials, foods, health supplements and a variety of other value-added products.

In addition to its potential for agricultural commerce, hemp has the potential to remediate our contaminated soils. Hemp's high biomass, long roots and short life-cycle make it a premium candidate for phytoremediation. In 1999, it was planted in the contaminated soils of the Chernobyl disaster site in the Ukraine, where it was revealed that the plant can take up considerable amounts of heavy metals, including lead, nickel, zinc, chromium, and cadmium. [2]

Further, a 2012 scientific study proved that hemp successfully absorbs cadmium from the soil.[3] Left untreated in soil, cadmium can enter the food chain, and consumption can cause severe joint and spinal pain. Another study found hemp to be the best bioaccumulator of cadmium out of eight potential energy crops.[4]

Hawai'i's soil, which has been severely compromised by the toxic legacy of pesticide-dependent agriculture, could greatly benefit from the phytoremediation properties of hemp.

Hawai'i needs to expedite the production and marketing of this valuable crop. Thank you for consideration. I urge you to support SB 1353 SD3 HD1.

Mahalo,



Anne Frederick
Executive Director

[1] "In Kentucky, Farmers Find Hemp May Be More Profitable Than Tobacco," *Forbes*, August 28, 2018.

[2] "Phytoremediation and Potential of Hemp (*Cannabis sativa* L.): Identification and Characterization of Heavy Metals Responsive Genes," *CLEAN – Soil Air Water* 44(2), August 2015.

[3] *Applied Biochemistry and Biotechnology*, "Cadmium Tolerance and Bioaccumulation of 18 Hemp Accessions," Sept. 2012, Vol. 168, pp. 163-173.

[4] "Cadmium tolerance and accumulation in eight potential energy crops," *Biotechnol Adv.* 2009 Sep-Oct;27(5):555-61.

Marcella Alohalani Boido, M. A.
Hawaii Judiciary Certified Spanish Court Interpreter, Tier 4

Voting resident, Senate District 10, House District 21. Moili'ili, Honolulu, Hawaii 96826

To: Chair, Rep. Chris Lee; Vice-Chair, Rep. Joy San Buenaventura
Members, House Committee on Judiciary

Re: **SB 1353, SD 3, HD 1, SUPPORT with comments**

Date: Monday, March 18, 2019, 2:05 p.m., Room 325

Chair C. Lee, Vice-Chair San Buenaventura, and Committee Members: Thank you for hearing SB 1353, SD 3, HD 1, which has the potential for an important positive impact on Hawaii's agriculture.

This testimony is presented as a private individual. I am not involved in any way in this proposed industry.

Having reviewed the testimony from 3/13/19, I agree with the supporters of this bill. I looked at their names, and did not recognize anyone. I would like to call attention to the testimony of Mr. John Calvert, which begins on p. 94 of that testimony packet. My testimony offers some additional comments and considerations.

I was born in the Territory of Hawaii, and spent most of my childhood in Koloa, when it was still very much a sugar plantation town. As an adult, I have worked as a researcher in post-contact Hawaii history, and taught the required high school course in Modern Hawaiian History.

Hawaii's history is often told as a series of discontinuities. Yet, there are many negative patterns that have continued over long periods of time. Specifically, we have a concentration of land ownership, wealth, and the opportunities to obtain wealth, in a very small number of hands.

May I strongly suggest that we do not continue this negative historical pattern in the creation of Hawaii's hemp agriculture? If we want a different kind of future, we must thoughtfully, intentionally, and lawfully create it. Let small businesses flourish! This requires vision, foundational principles, and courage. There will be big money interests that oppose the creation of a hemp agriculture that includes small businesses, and avoids monopolies.

Please note that I wrote, "hemp agriculture," not "industrial hemp" industry. What should be created is an "industrial and artisanal hemp" agricultural industry. That means that we should create an agricultural industry that is open to small farmers, investors, and land owners. The opportunity to make money should be open to a lot of people.

The amount of bureaucracy created should be as small as possible. We should avoid regulation beyond what is absolutely necessary. We should also avoid the creation of

entrenched interest groups which will have a financial and power stake in preventing positive change in the future.

The licensing process should be fair, simple, transparent and inexpensive. There should be no limit on the number of licenses issued. We do not limit the number of licenses issued for other matters which are important in earning a living, such as driver's licenses, boat permits, etc. The fees to apply for a license should be as small as possible. As Mr. Calvert has said, "PLEASE be sure that the new legislation allows hemp farming to be affordable for all farmers, not just the wealthy."

Hemp has many uses, which it why is has historically been one of humankind's most valuable crops. It can be made into food products, cosmetics, paper, cloth, twine, and rope. It is a sustainable industry, and its products can be biodegradable.

If an artist wants to create artisanal hemp paper at home, it should be financially feasible. Perhaps you have seen artisanal paper from Thailand, with leaves and ornamental flowers embedded in the paper.¹ It's beautiful, and can be made into everything from note paper to paper for Asian calligraphy to paper-covered lamps.² I simply offer this as an example of a potential artisanal product.

It saddens me to see the formerly green fields of my childhood now growing scrub cane and albizia trees. Albizia has been described as a "weed tree." It is an invasive species, and with a growth rate of up to 15 feet per year, it certainly grows like a weed.³

I do not care to see these fields "grow" a whole lot of urban development, once again for the profit of a few, many of whom do not even live here.

Sugar was a flawed industry, which did a lot of harm to workers and the natural environment. But it was lovely to see. Let's have more green fields and gardens, growing a different kind of "weed." May those green fields and gardens undo some of the harms of the past, and enable people to earn...more long green!

Thank you for hearing this bill. SB 1353, SD 3, HD 1, includes a lot of good changes which were probably influenced by previous testimony. Let's keep the positive momentum going. Please pass this bill. Thank you.

¹ See <https://www.mulberrypaperandmore.com/m-6-thailand.aspx> for the heavyweight mulberry paper.

² In the past, Temari Hawaii had papermaking classes. <https://temarihawaii.org/>

³ <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/albizia/>

From: John Calvert <jcalvert@crystal3.com>

Subject: SUPPORT for HB 1353 SD3, with amendments

Aloha Members of the Committee:

My name is John Calvert and I'm a small farmer in lower Puna district, Big Island.

I'm interested in growing hemp and have some comments and concerns regarding HB 1353 and other hemp legislation in the 2019 session.

My concern is that none of the legislation, or present rules in the existing hemp pilot program, make much of a distinction between "industrial hemp" and "CBD hemp." Industrial hemp is typically and historically the term used for seed and fiber varieties. These are plants that can be 15 ft. tall. CBD hemp, on the other hand, is a relatively new arrival on the cannabis scene, and the plants are much smaller and similar to marijuana plants, with resin-laden flowers.

Although CBD hemp technically falls into the same category as industrial hemp, there are important distinctions to be made between these two types of cannabis, which actually affect how it is grown, what kind of crop size make sense, and concerns about acquisition and approval of hemp genetics (seeds or clones).

In essence, these should be considered two different crops, and regulations should make a distinction where necessary, so as to best support the growing of either of these crops.

A third crop type exists, and that is large-scale CBD hemp, grown by the acre. In this kind of crop, as with big seed and fiber crops, farming machinery is used to harvest whole plants, and then other machinery is used to extract CBD from the harvested material. A byproduct of this process is hemp fiber.

To give you one example of the distinction between industrial hemp and CBD hemp: if you tell the average person on the Big Island that you are interested in growing hemp, a typical response will be that it's not a great idea because the pollen will contaminate other local cannabis crops, for example medical marijuana. This is actually true in the case of seed and fiber varieties of hemp that include male plants in the crop; however, it is not true for a small-scale CBD hemp crop, because the goal of growing the crop is to harvest the flowers, and nobody wants seeds in their flowers.

As a small farmer, my intention is not to grow acres of industrial hemp. My intention is to grow a relatively much smaller number of high-CBD hemp plants, far less than one acre. This kind of crop size makes perfect sense, because of the current high market value of CBD oil.

Speaking on behalf of Hawaii's small farmers, PLEASE be sure that the new legislation

allows hemp farming to be affordable for all farmers, not just the wealthy.

Licensing Cost

The current cost of the Hawaii hemp license application is \$500 non-refundable. The cost of the license itself is \$250. Since the hemp grower must pay for all inspections and testing of the crop, seed costs, and other expenses related to conforming to the HDOA rules and regulations, I feel the application cost is too high. Further, the grower is taking the full risk that the crop will conform to strict THC requirements.

Whereas \$750 may not be a significant amount of money to a large-scale hemp farmer who is planning to cultivate 10 acres, that amount of money could very well be restrictive to a small farmer who wants to grow a lucrative CBD hemp crop of less than, for example, 100 plants. I think it is very important that Hawaii adopts rules that allow everyone who wants to grow hemp an equal chance. CBD hemp has the potential to be a very valuable new crop for Hawaii's struggling small farmers.

Approved Cultivars

Whereas seed and fiber varieties typically do not have THC levels over .3% by dry weight, many very good CBD varieties can sometimes test over the .3% limit, often only very slightly over, and depending on when they are harvested. Typically what is seen is that the higher the CBD content, the more likely the strain will exceed the THC limit if allowed to grow to full maturity. To address this, other states allow their farmers to harvest these types of strains early, so as not to exceed the THC limit. This is a VERY important concept for Hawaii hemp legislation – Please include this clause in Hawaii legislation.

I disagree with the chairperson being the sole arbiter of which hemp strains that the HDOA will allow farmers to grow. Since the farmer is taking the full risk of THC compliance, it should fall on the farmer's shoulders to select the right strains, and there is already enough incentive to do so.

If the chairperson is assigned to be the arbiter of which strains are allowed, then this opens up the possibility of error on the part of the chairperson – i.e. mistakenly approving a strain which actually does not conform to THC requirements – and it opens up the possibility of conflict of interest, because one licensee may be approved for a strain while another licensee is not. This is because the final decision would lie in the hands of the chairperson. This opens the possibility that licensees will not be treated equally, which is not fair and should not be allowed.

Another example of inequality would be if the chairperson favored large-scale hemp production, and therefor would only allow approval of genetics from vendors who set large minimum orders on their seed, which could cost \$1000 to \$5000. This would be unworkable and restrictive to a small farmer who wants to grow a small CBD hemp crop, for example, 100 plants.

I do agree that the chairperson should maintain a list of those cultivars that may go over the THC limit, as a warning to farmers that these cultivars are too risky to plant, or are actually prohibited by the HDOA. This is how Kentucky deals with their cultivars – they provide information to the farmer, to help the farmer.

CBD Production and Sales

The most important piece of new legislation, in my mind, is to make the production and sale of CBD oil completely legal in Hawaii. **This means that the THC in hemp needs to be removed from the Hawaii Controlled Substances list.** So far, HB 131 is the only active legislation that specifically removes the THC in hemp from the Controlled Substances list. Please be aware that CBD as a "drug" is not the same as CBD oil derived from natural extraction of cannabinoids from hemp flowers, as would be done by farmers in Hawaii. The latter is called "full spectrum" CBD oil, and it has been found to have higher therapeutic value than purified CBD isolate (i.e. drug-form or pharmaceutical CBD).

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Lastly, please change the definition of "marijuana" in the Hawaii statutes to mean cannabis that has a THC content of more than .3% by dry weight. Currently, the definition of "marijuana" is simply "cannabis" with no mention of THC content.

Thank you for your consideration,

Mahalo,

John Calvert

small farmer, lower Puna district, Big Island

**SB-1353-HD-1**

Submitted on: 3/16/2019 6:18:17 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| JOHN BREUKER        | Individual          | Support                   | No                        |

Comments:

**SB-1353-HD-1**

Submitted on: 3/16/2019 8:00:16 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Jun Shin            | Individual          | Support                   | No                        |

Comments:

**LATE**

**SB-1353-HD-1**

Submitted on: 3/18/2019 8:57:25 AM  
Testimony for JUD on 3/18/2019 2:05:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| dain retzlaff       | Individual          | Support                   | No                        |

Comments:

Allow Hawaii to be a leader in hemp production.

Thank you!