THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

S.B. NO. 1335

JAN 24 2019

A BILL FOR AN ACT

RELATING TO HEMP.

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

SECTION 1. The legislature recognizes that the recently-enacted Agriculture Improvement Act of 2018, informally known as the "Farm Bill", among other matters, legalized hemp by removing hemp from the definition of "marihuana" contained in the federal Controlled Substances Act. Therefore, hemp is no longer classified as an illegal "drug" under federal law. The Agriculture Improvement Act also makes amendments to the Agricultural Marketing Act of 1946. These amendments authorize the department of agriculture of each state to submit to the federal Secretary of Agriculture a proposed plan for the state's department of agriculture to monitor and regulate hemp production within the state. After the federal Secretary of Agriculture approves a state plan, authorized entities within the respective state may engage in the production of hemp, including at the commercial level.

The legislature finds that the University of Hawaii's research on hemp shows that there is significant potential for a

successful hemp agricultural industry in Hawaii. In addition to creating new agricultural commerce, hemp is also beneficial in removing toxins from the soil (phytoremediation), which is important because past agricultural operations in the State have deposited toxins in vast tracts of land. Hemp grows quickly and is a superior phytoremediation crop. The legislature also finds that hemp is an environmentally-friendly and efficient feedstock for biofuel. Hemp can be made into clothing and used in other products to promote the growth of small businesses.

The legislature also finds that although the State has authorized the limited production of hemp through its industrial hemp pilot program, progress in that program has been stalled by the rules, policies, and practices of the state department of agriculture, which have been far more onerous than even the requirements established under previous federal law.

The purpose of this Act is to facilitate the regulation and production of hemp by:

(1) Amending definitions of "marijuana" in state law to clarify that hemp is not marijuana;

(2) Requiring the chairperson of agriculture to prepare and submit a proposed state plan to monitor and

regulate hemp production, including commercial production and research, to the federal Secretary of Agriculture pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended; and

(3) Requiring the chairperson of agriculture to submit a report to the legislature on the status of the federal Secretary of Agriculture's pending approval of the state plan.

SECTION 2. Section 328-15, Hawaii Revised Statutes, is amended to read as follows:

"**§328-15 Drugs or devices deemed misbranded when; prescriptions excepted, when.** A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of section 328-19.1.

(2) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, provided that under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with rules adopted by the director. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count shall not be required for any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. §§151-158), commonly known as the Virus-Serum-Toxin Act.

(3) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by a person and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis[~~,~~] (except hemp as defined in section 329-1), cabromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or any chemical derivative of [~~such~~] the substance, which derivative, after investigation, has been found to be and designated as habit forming, by rules adopted by the director under this part, or by regulations issued pursuant to section 502(d) of the Federal Act, unless its label bears the name and quantity or proportion of the substance or derivative

and in juxtaposition therewith the statement "Warning--May be habit forming."

(5) (A) If it is a drug unless:

(i) Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), the established name, as defined in subparagraph (B), of the drug, if [~~such there be;~~] any; and in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any

[~~such~~] of those substances, contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of these specifically named in this paragraph, shall apply only to prescription drugs; and

(ii) For any prescription drug the established name of [~~such~~] the drug or ingredient, as the case may be, on [~~such~~] the label (and on any labeling on which a name for [~~such~~] the drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for [~~such~~] the drug or ingredient; provided further that to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be allowed under rules adopted by the director.

(B) As used in this paragraph, the term "established name", with respect to a drug or ingredient thereof, means:

(i) The applicable official name designated pursuant to section 508 of the Federal Act;

(ii) If there is no [~~such~~] applicable name and the drug, or the ingredient, is an article recognized in an official compendium, then the official title thereof in the compendium; or

(iii) If neither clause (i) nor clause (ii) of this subparagraph applies, then the common or usual name, if any, of [~~such~~] the drug or of the ingredient;

provided further that where clause (ii) of this subparagraph applies to an article recognized in the United States Pharmacopoeia, in the United States Pharmacopoeia Dispensing Information, and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it

is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

(6) Unless its labeling bears[~~:~~] adequate:

(A) [~~Adequate directions~~] Directions for use; and

(B) [~~Such adequate warnings~~] Warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in [~~such~~] a manner and form[~~,~~] as [~~are~~] necessary for the protection of users; provided that where any requirement of subparagraph (A), as applied to any drug or device, is not necessary for the protection of the public health, the director shall adopt rules exempting the drug or device from [~~such~~] the requirements; provided further that articles exempted under regulations issued under section 502(f) of the Federal Act may also be exempt.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is

packaged and labeled as prescribed therein; provided that the method of packaging may be modified with the consent of the director, or if consent is obtained under the Federal Act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia; provided that in the event of inconsistency between the requirements of this paragraph and those of paragraph (5) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (5) shall prevail.

(8) If it has been found by the director to be a drug liable to deterioration, unless it is packaged in [~~such~~] any form and manner, and its label bears a statement of [~~such~~] any precautions, as the rules

adopted by the director or regulations issued under the Federal Act require as necessary for the protection of public health. No [~~such~~] applicable rule shall be established for any drug recognized in an official compendium until the director shall have informed the appropriate body charged with the revision of the compendium of the need for [~~such~~] the packaging or labeling requirements and [~~such~~] the body shall have failed within a reasonable time to prescribe [~~such~~] the requirements.

(9) (A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11) If it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the Federal Act; and

(B) The certificate or release is in effect with respect to the drug.

(12) If it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:

(A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the Federal Act; and

(B) The certificate or release is in effect with respect to the drug; provided that this paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the Federal Act.

For the purpose of this paragraph, the term "antibiotic drug" means any drug intended for use by a person containing any quantity of any chemical

substance [~~which~~] that is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of [~~any such~~] the substance).

(13) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to [~~such~~] a color additive prescribed under section 328-13(b).

(14) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(A) The established name, as defined in paragraph (5)(B), printed prominently and in type at least

half as large as that used for any trade or brand name thereof;

(B) The formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the Federal Act; and

(C) [~~Such~~] Any other information in brief summary relating to side effects, contra-indications, and effectiveness as shall be required in rules adopted by the director.

(15) If a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(16) Drugs and devices [~~which~~] that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this part; provided that [~~such~~] those drugs and devices are being delivered,

manufactured, processed, labeled, repacked, or otherwise held in compliance with rules adopted by the director.

(17) If it has met or exceeded the expiration date established by the manufacturer or principal labeler."

SECTION 3. Section 329-1, Hawaii Revised Statutes, is amended as follows:

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

""Hemp" means 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 per cent on a dry weight basis."

2. By amending the definition of "marijuana" to read":

""Marijuana" means all parts of the plant (genus) Cannabis whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. [~~It~~]

"Marijuana" does not include [~~the~~]:

(1) Hemp; or

(2) The mature stalks of the plant[~~,~~] (genus) Cannabis, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant [~~which~~] that is incapable of germination."

SECTION 4. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic

substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered); provided that tetrahydrocannabinols under this subsection shall exclude tetrahydrocannabinols in hemp;

(2) Naphthoylindoles; meaning any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl,cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and

whether or not substituted in the naphthyl ring to any extent;

(3) Naphthylmethylindoles; meaning any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(4) Naphthoylpyrroles; meaning any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;

(5) Naphthylmethylindenes; meaning any compound containing a naphthylideneindene structure with substitution at

the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent;

(6) Phenylacetylindoles; meaning any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent;

(7) Cyclohexylphenols; meaning any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not substituted in the cyclohexyl ring to any extent;

(8) Benzoylindoles; meaning any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone (another trade name is WIN 55,212-2);

(10) (6a,10a)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (Other trade names are: HU-210/HU-211);

(11) Tetramethylcyclopropanoylindoles; meaning any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl,

alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent;

(12) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: APINACA, AKB48);

(13) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: PB-22; QUPIC);

(14) Quinolin-8-yl 1-(5fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

(15) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-FUBINACA);

(16) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: ADB-PINACA);

(17) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-CHMINACA);

(18) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AB-PINACA);

(19) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, and geometric isomers, salts, and salts of isomers (Other names: THJ-2201);

(20) Methyl (1-(4-fluorobenzyl)-1 H-indazole-3-carbonyl)-L-valinate, and geometric isomers, salts, and salts of isomers (Other names: FUB-AMB);

(21) (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-AMB, 5-fluoro-AMP);

(22) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AKB48 N-(5-fluoropentyl) analog, 5F-AKB48, APINACA 5-fluoropentyl analog, 5F-APINACA);

(23) N-adamantyl-1-fluoropentylindole-3-Carboxamide, and geometric isomers, salts, and salts of isomers (Other names: STS-135, 5F-APICA; 5-fluoro-APICA);

(24) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, and geometric isomers, salts, and salts of isomers (Other names: NM2201);

(25) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: MAB-CHMINACA and ADB-CHMINACA);

(26) Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (Other names: 5F-ADB, 5-flouro-ADB, and 5F-MDMB-PINACA), its optical, positional, and geometric isomers, salts, and salts of isomers; and

(27) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)indazole-3-carboxamide (CUMYL-4CN-BINACA), its optical, positional, and geometric isomers, salts, and salts of isomers; also known as SGT-78, 4-CN-CUMYL-BINACA; CUMYL-CB-PINACA; CUMYL-CYBINACA; 4-cyano CUMYL-BUTINACA."

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

1. By adding two new definitions to be appropriately inserted and to read:

""Hemp" shall have the same meaning as in section 329-1.

"Tetrahydrocannabinol" means tetrahydrocannabinol naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and

its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered); provided that tetrahydrocannabinol shall exclude tetrahydrocannabinol in hemp."

2. By amending the definition of "marijuana" to read:

""Marijuana" means any part of the plant (genus) cannabis, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin[~~, except that, as used herein, "marijuana"~~]. "Marijuana" does not include hemp, hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol."

SECTION 6. (a) The chairperson of the board of agriculture shall prepare and submit a proposed state plan to monitor and regulate hemp production in the State pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended, to the federal Secretary of Agriculture within days after the approval of this Act. The chairperson shall also submit a copy of the proposed state plan to the governor, the

president of the senate, and the speaker of the house of representatives.

(b) The chairperson of the board of agriculture shall submit reports on a basis to the governor, the president of the senate, and the speaker of the house of representatives concerning the status of the federal Secretary of Agriculture's pending approval of the state plan until the state plan is approved.

(c) The chairperson of the board of agriculture shall submit a report on the implementation of the state plan to the legislature no later than twenty days prior to the convening of the regular session of 2020. The report shall include any proposed legislation to facilitate the monitoring and regulation of hemp production in the State.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 9. This Act shall take effect upon approval.

INTRODUCED BY: _____

S.B. NO. 1335

Report Title:
Hemp; Cannabis; Controlled Substances; Legalization

Description:
Legalizes hemp to the extent legalized under federal law. Requires the Chairperson of the Board of Agriculture to prepare and submit a proposed state plan to monitor and regulate hemp production, including commercial production and research, to the federal Secretary of Agriculture pursuant to section 297B of the Agricultural Marketing Act of 1946, as amended. Requires reports to the Governor and Legislature.

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