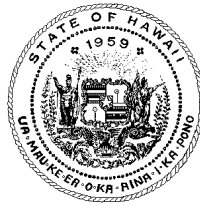


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Shari L. Kimoto**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 2689  
RELATING TO HEMP.

By  
Nolan P. Espinda, Director

House Committee on Agriculture  
Representative Richard P. Creagan, Chair  
Representative Lynn DeCoite, Vice Chair

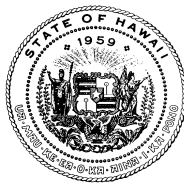
Friday, January 31, 2020; 8:30 a.m.  
State Capitol, Conference Room 312

Chair Creagan, Vice Chair DeCoite, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of House Bill (HB) 2689, which proposes, among other things, to establish a permanent hemp program in Hawaii. PSD, however, supports HB 2278 which similarly proposes to establish a permanent hemp program in Hawaii.

PSD prefers HB 2278, because HB 2278 recognizes the need for law enforcement support for managing non-compliant hemp crops. Under federal guidance from the United States Department of Agriculture, published in the Federal Register on October 31, 2019, the disposal of non-compliant hemp crops must be handled by a United States Drug Enforcement Administration registered-reverse distributor, or by federal, state or local law enforcement officers. PSD supports HB 2278, because HB 2278, unlike this proposed measure, provides an appropriation to support PSD law enforcement activity that is necessary to ensure that Hawaii's future hemp program can comply with the federal guidance.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII  
DEPARTMENT OF HEALTH

P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**LATE**

**Testimony COMMENTING on HB 2689  
RELATING TO INDUSTRIAL HEMP**

REPRESENTATIVE RICHARD P. CREAGAN, CHAIR  
HOUSE COMMITTEE ON AGRICULTURE

Hearing Date: 1/31/2020

Room Number: 312

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's  
2 Executive Budget Request for the Department of Health's (Department) appropriations and  
3 personnel priorities.

4 **Department Testimony:** The Department appreciates the opportunity to provide comments on  
5 this measure.

6 As written, §141-G Processing; Inspection (page 11, line 1) amends HRS 141, by requiring rules  
7 be adopted by the Department for the licensing, inspection, and regulation of industrial hemp  
8 processing facilities. The Department agrees that rules should be written to regulate hemp  
9 processing in the State. However, if the intent is to have the Department regulate hemp  
10 processing, we respectfully recommend language from HB2278 be incorporated into this  
11 measure. In part, HB2278 seeks to amend HRS 328 by allowing the Department to promulgate  
12 interim rules for the registration and requirements of hemp processing facilities in the State.

13 Also, as written, this measure allows the Department to create rules to regulate hemp processing  
14 facilities under authority of HRS 141. The Department requests that any rule making authority  
15 given to the Department for the regulation of hemp processing be provided for in HRS 328.

16 The measure also seeks to amend section HRS 328-15 (page 35, line 20), to exempt hemp and its  
17 derivatives from a drug labeling requirement. With the exception of the FDA-approved drug  
18 Epidiolex™, all other hemp-derived products are not approved drugs. The department is  
19 concerned that providing an exception to the labeling requirements is misleading and can serve

- 1 as a basis for claiming that such products are, in fact, approved as drugs when they are not. It is
- 2 our current opinion that exempting “hemp” from HRS 328-15(4) [page 37, line 21] would only
- 3 serve to relieve a manufacturer from having to write “WARNING: May be Habit Forming” on
- 4 the hemp product label.
  
- 5 Thank you for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2689, RELATING TO INDUSTRIAL HEMP.

**LATE**

**BEFORE THE:**

HOUSE COMMITTEE ON AGRICULTURE

**DATE:** Friday, January 31, 2020

**TIME:** 8:30 a.m.

**LOCATION:** State Capitol, Room 312

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

---

Chair Creagan and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill:

This bill establishes a new licensing program for the growth of industrial hemp and requires the Hawaii Department of Agriculture (HDOA) to create a plan based on that program that can be approved by the United States Department of Agriculture (USDA).

Under the Agriculture Improvement Act of 2018 ("2018 Farm Bill"), a state can take primary regulatory authority over hemp production by submitting a plan to the USDA for approval. The USDA has recently published regulations that outline what a state's regulatory plan must include, such as procedures for information gathering, reporting to the USDA, testing hemp, and disposal of noncompliant plants and products. We recommend several amendments to the bill that will be consistent with the USDA regulations and allow for a Hawaii state plan to be approved and implemented.

1. Inspections and sampling

Regarding inspections and sampling of hemp, the USDA regulations state in part:

(2) A State or Tribal plan **must include a procedure for accurate and effective sampling of all hemp produced**, to include the requirements in this paragraph (a)(2).

(i) Within 15 days prior to the anticipated harvest of cannabis plants, **a Federal, State, local, or Tribal law enforcement agency or other Federal, State, or Tribal designated person shall collect samples** from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing as described in §§ 990.24 and 990.25.

...

(v) **A producer shall not harvest the cannabis crop prior to samples being taken.**

7 CFR § 990.3(a)(2) (emphases added).

Consequently, Hawaii's state hemp plan will not get approved by the USDA unless that plan includes a procedure to ensure every hemp crop is adequately tested at least 15 days prior to harvest.

This bill authorizes the HDOA to conduct inspections of licensee facilities and take samples of plant materials for testing to ensure compliance with the program. However, the HDOA's authority would be limited to inspecting and sampling each licensee once a year.

**§141-E Inspections; fees. (a) A licensee shall permit the annual inspection and sampling** of the licensee's hemp plants, plant material, seeds, growing area, equipment, and facilities incident to the cultivation of hemp.

(b) Any authorized member of the department, or any agent or third party authorized by the department, with prior notice to the applicable licensee, may enter between sunrise and sunset upon any property utilized for the cultivation of industrial hemp pursuant to this part **in order to conduct the annual inspection and sampling pursuant to subsection (a).**

Section 2, p. 10, lines 3-12 (emphases added).

HDOA would also have authority to adopt rules for its hemp program. However, those rules could only allow annual inspections of a random sample of producers during growth or after harvest. Section 2, p. 13, lines 19-21.

These provisions provide for the annual sampling of a licensee and not an individual crop. Hawaii has three growing seasons per year and, therefore, each licensee could potentially grow three crops per year. Under the bill as written, a licensee would be able to grow two entire crops that are not tested. This is not allowed by the USDA regulations.

2. Violations

The program's violation section contains the following provision:

(b) For any violation of this part, the department may impose civil penalties up to \$500 for the first violation, up to \$1,000 for the second violation, and up to \$2,500 and disciplinary sanctions, including denial or revocation of a license, for each subsequent violation; provided that:

- (1) If the department determines that a licensee has negligently violated this part, the licensee shall comply with a corrective action plan established by the department to correct the violation, which may include disposal of any industrial hemp crop, plant, plant material, or seed, whether growing or not, and products derived from those plants;
- (2) **An individual licensee that negligently violates this part three times in a five-year period shall be ineligible for the industrial hemp program**, as either an individual or as a principal or member of an entity, for a period of five years beginning on the date of the third violation;
- (3) **Each principal or member of an entity licensee that negligently violates this part three times in a five-year period shall be ineligible for the industrial hemp program**, as either an individual or as a principal or member of an entity, for a period of five years beginning on the date of the third violation;

Section 2, p. 12, lines 6-21, p. 13, lines 1-8 (emphases added).

Essentially, if a negligent licensee's hemp tests prohibitively high three times in a five-year period, the license will be revoked, and the licensee cannot reapply to the

program for five years. Similarly, USDA regulations require a licensee “that negligently violates a USDA–approved State or Tribal plan three times in a 5–year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.” 7 CFR § 990.6(c)(4).

However, the bill also adds the following provision that would conflict with that violation section:

[A]n analytical testing of tetrahydrocannabinol levels greater than 0.3 per cent shall not result in revocation of a license so long as the crop from which the sample is taken is disposed of in a manner provided by rule;

Section 2, p. 14, lines 1-5.

When read together, if a licensee’s hemp tests prohibitively high three times, it would not be possible to revoke the license so long as the crop is disposed of, contrary to the violations section and federal law. Therefore, we recommend removing the above wording on p. 14, lines 1-5.

3. Interim rules

The bill allows for the new licensing program to adopt interim rules by including this subsection:

(b) The department may adopt and amend interim rules to effectuate the purposes of this part; provided that the interim rules shall remain in effect until July 1, 2026, or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

p. 14, lines 20-21, p. 15, lines 1-2.

However, to exempt HDOA from the rulemaking process and allow for interim rules, the bill must explicitly exempt the process from chapter 91, HRS. We recommend using the following wording:

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

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

4. The definition of THC

Section 15, on p. 50, lines 14-16, excludes “tetrahydrocannabinols in hemp” from the definition of tetrahydrocannabinol (“THC”) in section 329-14, HRS. This may cause confusion as to whether a product made entirely from THC extracted from hemp, but exceeding a concentration of 0.3 percent THC, would be legal.

To avoid this confusion, it is recommended that the following wording replace p. 50, lines 14-16:

“provided that tetrahydrocannabinols under this subsection shall exclude tetrahydrocannabinols in:

- (1) Hemp that is in the possession, custody, or control of a person or entity that holds a license issued by the Hawaii department of agriculture permitting that person or entity to produce hemp;
- (2) Hemp that is in the possession, custody, or control of a person or entity that is authorized under state law to process hemp; or
- (3) A product containing or derived from hemp, including a product containing one or more hemp-derived cannabinoids such as cannabidiol, that:
  - (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and
  - (B) Has a total delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation or other similarly reliable methods.”

Section 16 adds a definition of THC to the Penal Code, and similarly excludes THC found in hemp from that definition, p. 57, lines 20-21 and p. 58, lines 1-13.



However, adding a definition of THC to the Penal Code is unnecessary, as THC is included in the definition of “marijuana concentrate” found in section 712-1240, HRS, and the bill addresses the definition of “marijuana concentrate” on p. 60, lines 1-21. To avoid confusion, it is recommended that p. 57, lines 20-21, and p. 58, lines 1-13, be removed.

We respectfully ask that the Committee make the recommended amendments. Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture  
MORRIS ATTA  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**LATE**

TESTIMONY OF PHYLLIS SHIMABUKURO- GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

January 31, 2020

8:30 A.M.

CONFERENCE ROOM 312

HOUSE BILL NO. 2689  
RELATING TO INDUSTRIAL HEMP

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2689. This bill: requires the Department of Agriculture ("Department") to establish a permanent hemp program pursuant to federal law, together with a corresponding special fund; requires the Department of Health to adopt rules for the licensing, inspection, and regulation of industrial hemp processing facilities; reduces or repeals certain regulatory provisions of existing hemp pilot program; establishes authorized cultivation of hemp as affirmative defense; excludes hemp from the definition of marijuana; requires the chairperson of board of agriculture to prepare a state plan for approval by the federal Secretary of Agriculture; requires the Department to report on the approval process to legislature and governor; and, appropriates funds. The Department supports the intent of this measure, however, has concerns regarding proposed changes to the pilot program, and offers the following comments:



**LATE**

Regarding Section 2 and a future hemp production program:

- §141-I (a) & (b) states the Department has interim rulemaking authority, which the department supports in light of the interim nature of USDA's own regulations, but §141-I (a) & (b) does not appear to provide actual interim rulemaking authority as the Department is still subject to chapters 91 and 201M.

Regarding Section 6 and the current pilot program:

- §141-C (f) This clause may place the state and its growers in jeopardy of becoming noncompliant with federal law since the authority to produce hemp under a pilot program/outside of a 2018 Farm Bill approved program expires on October 31, 2020.

Generally:

- Numerous sections of this measure appear to limit sampling of crops to once per year. The Department notes that unlike other states, growers in Hawaii can produce multiple crops in a year, so a limitation to annual sampling means only one of multiple crops per year would be tested for compliance.
- Numerous sections of this measure limit the Department to only collecting legal addresses rather than GPS coordinates. This is problematic for the following reasons:
  1. Legal addresses in rural areas could just be a street address or TMK for a 500-acre property occupied by multiple tenants, creating potential difficulties in determining the location of a licensed grow site and what growth is legal/protected; and
  2. USDA's recently released requirements that require the collection and reporting of GPS coordinates for every licensed producer, so requiring this information is an industry-standard practice.

Regarding Section 6(c) and Section 9, the Department has concerns regarding the following:

- It is unclear what "materially false" and "materially incomplete" encompasses.

**LATE**

Page 3

- It is unclear what information would be considered “reasonably relevant.”
- It is unclear what “reasonably cooperative” means, and it seems potentially difficult for the Department to adequately perform an inspection without full cooperation from a licensee.
- The Department has concerns that these terms will create confusion and administrative unworkability for both the Department and growers.

Regarding Section 17 the Department notes USDA guidelines were already released in 2019.

The Department respectfully defers Section 2 141-G and Section 5 to the Department of Health, and Sections 4 ,14, 15, and 16 to the Department of Public Safety.

If this Committee is inclined to move this measure forward, the Department respectfully requests that the Committee, in the alternative, consider adopting the language and content of HB 2278, which similarly allows the state to develop a hemp production program.

Thank you for the opportunity to testify on this measure.

**HB-2689**

Submitted on: 1/30/2020 7:17:31 AM

Testimony for AGR on 1/31/2020 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Miyamoto	Hawaii Farm Bureau	Support	Yes

Comments:

**HB-2689**

Submitted on: 1/30/2020 7:50:39 AM

Testimony for AGR on 1/31/2020 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
ray maki	Hawaii Hemp Farmers Association	Support	No

Comments:

Aloha Agriculture Committee,

The Hawaii Hemp Farmers Association is pleased to offer our support for HB2689. This bill fulfills most of the needs of Hemp producers in Hawaii with the following exceptions. On page 49, line 7, ALL compliant and tested hemp materials cannot be sold in the state. We recognize that the State is hesitant to allow smokable flower materials for sale in the State, but we believe that some exceptions should be allowed. Two fresh hemp products that we identified are compliant and tested flower materials in tea bags, and fresh plant materials that have been juiced. Various customers in state and nationally have been identified as potential customers for these products and exceptions should be made for products like the two mentioned. We feel that the USDA farm bill mandates should not be exceeded by Hawaii State Hemp laws, and that Hawaii hemp laws should be modelled after successful and well established state programs such as Colorado and Oregon. Hawaii is at least 3 years behind programs in other states and it is time to open our states program to enter an even playing field nationally. Mahalo for the committees consideration of these points and continuing support to move the Hawaii Hemp program forward,

Mahalo and Aloha,

Ray Maki

President- Hawaii Hemp Farmers Association

**From:** John Calvert <jcalvert@crystal3.com>

**Subject:** SUPPORT for HB1819 & HB2689, with amendments

**LATE**

Aloha Members of the Committee:

My name is John Calvert and I'm a hemp licensee and small farmer in lower Puna district, Big Island. I am growing CBD hemp by the horticultural method, in a greenhouse. I urge you to craft the legislation to have more recognition for CBD hemp production, and also for small-scale production.

The proposed 2020 legislation is geared to large-scale, agronomic production. The legislation also lumps together all types of hemp (seed, fiber, and CBD). Please be aware that most growers in Hawaii (and in other states) are primarily interested in growing CBD hemp, because it is far more valuable than seed and fiber varieties. The legislation should reflect this. Note that all the "industrial hemp" varieties currently on the Hawaii approved list are in fact CBD varieties. The list also includes a relatively new arrival, which is CBG hemp (cannabigerol).

I urge you to be supportive of Hawaii's small hemp farmers, as well as the large farmers and corporate interests. Small farmers growing horticultural hemp have an advantage for ease of cropping, crop control, fast turn-around on crops, and innovation.

I have the following requests, in order for the legislation to better support small farmers and farmer-processed CBD hemp:

- Make licensing farmer-friendly. The hemp production license should be valid for 3 years. Please make the licensing fees variable based on the number of acres to be grown, to be more supportive of Hawaii's small farmers. There is no reason why a small farmer should pay the same fees as a corporate operation growing 10 acres.
- Make inspections farmer-friendly. Please support *prior notice* for inspections, and not surprise inspections. Allow farmers to negotiate the date and time of day for the inspection. Farmers should not have to pay the hourly wages of inspectors. Small farmers in particular should not be required to pay for inspections. Farmers are already required to pay for harvest sampling and testing.
- Allow small farmers to process their own hemp without being required to get a license from the DOH. High-quality hemp flower extract can be produced by small farmers using relatively inexpensive equipment. I urge you to craft the legislation in order to rely on end-product testing requirements as a way to insure safety and quality – not on DOH licensing, which will cause undue overhead and burden to small farmers who process their own crops.

- Farming hemp in Hawaii in a greenhouse opens the possibility of multiple crops per year, using artificial photoperiod lighting. The legislation should recognize that growers will at any given time have a pool of genetics to choose from, for cropping. In other words, there is not necessarily just one "cultivated variety that will be sown" (HB2689). A grower will often have several varieties growing, in different stages of growth, including seedlings, clones, and clone mothers. And from the genetic pool, the grower will select plants for production crops. Farmers need to have flexibility to obtain genetics and maintain their own pool of genetics.

## **Approved Cultivars**

HB2689 specifies that a list of approved cultivars be maintained by the chairperson of the HDOA.

I urge you to make cultivar approval more farmer-friendly.

In practical terms, I think there's no good reason why the chairperson of the HDOA should be tasked with approving cultivars. This is the method currently used by the hemp pilot program, and from my experience it's inefficient and not farmer-friendly.

The way CBD hemp is grown in the industry is by testing the crop prior to harvest, to determine THC levels. The burden should be on the grower to insure that their crop does not exceed the limit at harvest, and there is already ample incentive for the grower to do this. Thus, any cultivar produced by a U.S. state-licensed hemp seed producer should be acceptable for inclusion on the Hawaii approved list. Virtually all CBD hemp varieties will exceed the THC limit if allowed to grow to full maturity. So, it makes little sense to approve some hemp varieties and disallow others, simply by trying to guess what will happen with THC levels for any given cultivar (based on the seed seller's lab test results, etc.). This is how the current pilot program approves cultivars – a process that creates overhead and delays for farmers.

Please note that almost all varieties currently on the Hawaii approved list (CBD) are sold by seed companies with minimum orders of at least \$1,000, and some have minimum orders of \$10,000 or more. It can be very difficult to find seed that can be ordered in small quantities. A small farmer looking to buy a small quantity of seed will have further difficulty if also faced with a burdensome approval process.

I urge you to craft legislation to follow the type of model used by the state of Kentucky, which allows farmers to try various cultivars, and then annually publishes a list of cultivars indicating which are less likely or more likely to exceed the THC limit. Over time, cultivars that prove too risky if grown in Hawaii can then be listed as prohibited.



## **Hemp Breeder's License**

Please craft legislation that will allow hemp producers to obtain a special *hemp breeder's license*, which will allow them to use genetics for breeding hemp that fall outside the definition of hemp. For example, a hemp breeder producing a new variety for use in Hawaii could legally acquire seeds for a cannabis variety that is known to go over 0.3% THC. The goal of breeding would be a resulting variety that grows well in Hawaii and produces high CBD levels without going over 0.3% THC. This is what breeders in Colorado and Oregon have been doing for years, resulting in many excellent high-CBD varieties, many of which are currently on the Hawaii approved list.

The special breeder's license would allow Hawaii to compete in this important area of hemp production, and create new varieties which are well adapted to our tropical climate and annual photoperiod cycle. Hawaii could become the leader in developing tropical CBD hemp varieties.

## **Special Fund Appropriation for Program Staff**

The current hemp pilot program has demonstrated that there is a crucial need for more staff for the program, to provide adequate support for the whole state of Hawaii. Please make more realistic appropriations for program staff. One coordinator and two specialists is surely not enough, in order for the program to run smoothly.

Thank you for your consideration,

Mahalo,

John Calvert

small farmer in lower Puna district, Big Island

**HB-2689**

Submitted on: 1/29/2020 4:17:01 PM

Testimony for AGR on 1/31/2020 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support HB2689. Industrial hemp will help Hawaii to become more self-sustaining.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei