A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . PERSONAL USE OF MARIJUANA

§329-A Definitions. As used in this part, unless the context otherwise requires:

"Consumer" means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

"Marijuana accessories" means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
"Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

"Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

"Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

"Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, including edible products, ointments, and tinctures.

"Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

"Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities.
manufacturing facilities and to sell marijuana and marijuana products to consumers.

§329-B Personal use of marijuana lawful. Notwithstanding any other provision of law, the following acts shall be lawful and shall not be a basis for seizure or forfeiture of assets for persons twenty-one years of age or older:

(1) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;

(2) Possessing, growing, processing, or transporting no more than seven marijuana plants, with or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale;

(3) Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older;

(4) Consumption of marijuana, provided that nothing in this section shall permit consumption that is
conducted openly and publicly or in a manner that 
endangers others; and 

(5) Assisting another person who is twenty-one years of 
age or older in committing any of the acts described 
in this section.

§329-C Lawful operation of marijuana establishments.

Notwithstanding any other provision of law, the following acts 
shall be lawful and shall not be a basis for seizure or 
forfeiture of assets for persons twenty-one years of age or 
older:

(1) Manufacture, possession, or purchase of marijuana 
accessories or the sale of marijuana accessories to a 
person who is twenty-one years of age or older;

(2) Possessing, displaying, or transporting marijuana or 
marijuana products; purchase of marijuana from a 
marijuana cultivation facility; purchase of marijuana 
or marijuana products from a marijuana product 
manufacturing facility; or sale of marijuana or 
marijuana products to consumers, if the person 
conducting the activities described in this paragraph 
has obtained a current, valid license to operate a 
retail marijuana store or is acting in the person's
capacity as an owner, employee, or agent of a licensed retail marijuana store;

(3) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana; delivery or transfer of marijuana to a marijuana testing facility; selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or the purchase of marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana cultivation facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana cultivation facility;

(4) Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products; delivery or transfer of marijuana or marijuana products to a marijuana testing facility; selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility; the purchase of marijuana from a marijuana
cultivation facility; or the purchase of marijuana or
marijuana products from a marijuana product
manufacturing facility, if the person conducting the
activities described in this paragraph has obtained a
current, valid license to operate a marijuana product
manufacturing facility or is acting in the person's
capacity as an owner, employee, or agent of a licensed
marijuana product manufacturing facility;

(5) Possessing, cultivating, processing, repackaging,
storing, transporting, displaying, transferring, or
delivering marijuana or marijuana products if the
person has obtained a current, valid license to
operate a marijuana testing facility or is acting in
the person's capacity as an owner, employee, or agent
of a licensed marijuana testing facility; and

(6) Leasing or otherwise allowing the use of property
owned, occupied, or controlled by any person,
corporation, or other entity for any of the activities
conducted lawfully in accordance with this section.

§329-D Department rules; marijuana establishments. (a)

The department shall adopt rules pursuant to chapter 91 to
implement this part. The rules shall authorize the operation of marijuana establishments and shall include:

1. Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

2. A schedule of application, licensing, and renewal fees; provided that the application fee shall not exceed $\$, with this upper limit adjusted annually for inflation based on the consumer price index for urban Honolulu issued by the United States Bureau of Labor Statistics, unless the department determines a greater fee is necessary to carry out the department's responsibilities under this part;

3. Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment, including licensure as a business under chapter 237;

4. Security requirements for marijuana establishments;

5. Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of twenty-one;
(6) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;

(7) Health and safety standards for the manufacture of marijuana products and the cultivation of marijuana;

(8) Restrictions on the advertising and display of marijuana and marijuana products; and

(9) Civil penalties for the failure to comply with any rule adopted pursuant to this section.

(b) For the purpose of ensuring that individual privacy is protected, the department shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

§329-E County ordinances. (a) Not later than , each county shall enact an ordinance specifying the entity within the county that shall be responsible for processing applications submitted for a license to operate a marijuana establishment within the county and for the issuance
of those licenses if the issuance by the county becomes necessary because of a failure by the department to adopt rules pursuant to section 329-D or because of a failure by the department to process and issue licenses as required by section 329-F(a).

(b) A county may enact ordinances, not in conflict with this part or with rules adopted pursuant to this part:

(1) Governing the time, place, manner, and number of marijuana establishment operations;

(2) Establishing procedures for the issuance, suspension, and revocation of a license issued by the county in accordance with section 329-F(b) or 329-F(c);

(3) Establishing a schedule of annual operating, licensing, and application fees for marijuana establishments; provided that the application fee shall only be due if an application is submitted to a county in accordance with section 329-F(c) and a licensing fee shall only be due if a license is issued by a county in accordance with section 329-F(b) or 329-F(c);

(4) Establishing civil penalties for violation of an ordinance governing the time, place, and manner of a
marijuana establishment that may operate in the county; or

(5) Prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores.

§329-F Marijuana establishments; licenses; procedures.

(a) Each application for an annual license to operate a marijuana establishment shall be submitted to the department. The department shall:

(1) Begin accepting and processing applications no later than

(2) Immediately forward a copy of each application and half of the license application fee to the county in which the applicant desires to operate the marijuana establishment;

(3) Issue an annual license to the applicant between forty-five and ninety days after receipt of an application unless the department finds the applicant is not in compliance with rules adopted pursuant to section 329-D or the department is notified by the relevant county that the applicant is not in
compliance with ordinances enacted pursuant to section 329-E(b) and in effect at the time of application; provided that where a county has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek licenses, the department shall solicit and consider input from the county as to the county's preference or preferences for licensure; and

(4) Upon denial of an application, notify the applicant in writing of the specific reason for its denial.

(b) If the department does not issue a license to an applicant within ninety days of receipt of the application filed in accordance with subsection (a) and does not notify the applicant of the specific reason for its denial, in writing and within the ninety-day time period, or if the department has adopted rules pursuant to section 329-D and has accepted applications pursuant to subsection (a) but has not issued any licenses by , the applicant may resubmit the application directly to the county, pursuant to section 329-E(a), and the county may issue an annual license to the applicant. A county issuing a license to an applicant shall do so within ninety days of receipt of the resubmitted application
unless the county finds and notifies the applicant that the
applicant is not in compliance with ordinances enacted pursuant
to section 329-E(b) in effect at the time the application is
resubmitted and the county shall notify the department if an
annual license has been issued to the applicant. If an
application is submitted to a county under this subsection, the
department shall forward to the county the application fee paid
by the applicant to the department upon request by the county.
A license issued by a county in accordance with this subsection
shall have the same force and effect as a license issued by the
department in accordance with subsection (a) and the holder of
such license shall not be subject to regulation or enforcement
by the department during the term of that license. A subsequent
or renewed license may be issued under this subsection on an
annual basis only upon resubmission to the county of a new
application submitted to the department pursuant to subsection
(a).
(c) If the department does not adopt rules required by
section 329-D, an applicant may submit an application directly
to a county after and the county may issue an annual
license to the applicant. A county issuing a license to an
applicant shall do so within ninety days of receipt of the
application unless it finds and notifies the applicant that the applicant is not in compliance with ordinances enacted pursuant to section 329-E(b) in effect at the time of application and shall notify the department if an annual license has been issued to the applicant. A license issued by a county in accordance with this subsection shall have the same force and effect as a license issued by the department in accordance with subsection (a) and the holder of the license shall not be subject to regulation or enforcement by the department during the term of that license. A subsequent or renewed license may be issued under this subsection on an annual basis if the department has not adopted rules pursuant to section 329-D at least ninety days prior to the date upon which the subsequent or renewed license would be effective or if the department has adopted rules pursuant to section 329-D but has not, at least ninety days after the adoption of the rules, issued licenses pursuant to subsection (a).

§329-G Employers; driving; minors; control of real property. Nothing in this part shall be construed to:

(1) Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the
workplace or to affect the ability of employers to
have policies restricting the use of marijuana by
employees;

(2) Allow driving under the influence of marijuana or
driving while impaired by marijuana or to supersede
any law relating to driving under the influence of
marijuana or driving while impaired by marijuana, nor
shall this part preclude the State from enacting laws
and imposing penalties for driving under the influence
of or while impaired by marijuana;

(3) Permit the transfer of marijuana, with or without
remuneration, to a person under the age of twenty-one
or to allow a person under the age of twenty-one to
purchase, possess, use, transport, grow, or consume
marijuana; or

(4) Prohibit a person, employer, school, hospital,
detention facility, corporation, or any other entity
who occupies, owns, or controls real property from
prohibiting or otherwise regulating the possession,
consumption, use, display, transfer, distribution,
sale, transportation, or growing of marijuana on or in
that property.
§329-H  Medical use of marijuana unaffected. Nothing in this part shall be construed as in any manner affecting the provisions of part IX relating to the medical use of marijuana."

SECTION 2. Section 712-1240.1, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) It is an affirmative defense to prosecution for any marijuana-related offense defined in this part that the person who possessed or distributed the marijuana was authorized to possess or distribute the marijuana for medical purposes pursuant to part IX of chapter 329[-] or acted in accordance with part___ of that chapter."

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY:

JAN 17 2013
Report Title:
Personal Use of Marijuana; Licenses to Cultivate, Manufacture, Test, or Sell Marijuana; County Regulation

Description:
Authorizes persons 21 years of age or older to consume or possess limited amounts of marijuana for personal use. Provides for the licensing of marijuana cultivation facilities, product manufacturing facilities, safety testing facilities, and retail stores. Requires the counties to provide for licensing of marijuana facilities if the State fails to do so. Authorizes the counties to regulate or prohibit marijuana facilities within their boundaries.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.