

JAN 23 2015

A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The legal history of cannabis or marijuana in
2 the United States primarily addresses the regulation of
3 marijuana for medical use, and secondarily the use of marijuana
4 for personal or recreational purposes. Regulations and
5 restrictions on the sale of cannabis sativa as a drug began as
6 early as 1860. Increased restrictions and labeling of cannabis
7 as a poison began in many states from 1906 onward, and outright
8 prohibitions began in the 1920s. By the mid-1930s cannabis was
9 regulated as a drug in every state, including thirty-five states
10 that adopted the Uniform State Narcotic Drug Act which was
11 subsequently replaced in 1970 with the federal Uniform
12 Controlled Substances Act.

13 The Uniform Controlled Substances Act classifies marijuana
14 and tetrahydrocannabinol as schedule I controlled substances.
15 In 1996, California voters passed Proposition 215, which
16 legalized medical cannabis. The Oakland Cannabis Buyers'
17 Cooperative was created to provide seriously ill patients with a



1 safe and reliable source of medical cannabis, information, and
2 patient support in accordance with Proposition 215. In January
3 1998 the United States government sued Oakland Cannabis Buyers'
4 Cooperative for violating federal laws. On May 14, 2001, the
5 United States Supreme Court ruled in *United States v. Oakland*
6 *Cannabis Buyers' Club* that federal anti-drug laws do not permit
7 an exception for medical cannabis. Subsequently, the United
8 States Supreme Court in *Gonzales v. Raich* held that even where
9 persons are cultivating, possessing, or distributing medical
10 cannabis in accordance with state-approved medical cannabis
11 programs, medical cannabis is in violation of federal marijuana
12 laws and therefore federal authorities may prosecute offenses
13 involving the Uniform Controlled Substances Act.

14 Notwithstanding the prospect of federal prosecution,
15 several states, including Hawaii, have enacted medical marijuana
16 laws. Chapter 329, part IX, Hawaii Revised Statutes, was
17 enacted pursuant to Act 228, Session Laws of Hawaii 2000, to
18 create a medical use of marijuana exemption from criminal
19 sanctions. Other jurisdictions, such as Alaska, Arizona,
20 California, Colorado, Connecticut, District of Columbia,
21 Delaware, Maine, Massachusetts, Michigan, Montana, Nevada, New



1 Jersey, New Mexico, Oregon, Rhode Island, Vermont, and
2 Washington, also allow the use of marijuana for medicinal
3 purposes.

4 In addition to medicinal marijuana laws, some states have
5 legalized or decriminalized marijuana. Most places that have
6 decriminalized cannabis have civil fines, confiscation, drug
7 education, or drug treatment in place of incarceration or
8 criminal charges for possession of small amounts of cannabis, or
9 have made various cannabis offenses the lowest priority for law
10 enforcement. The states of Alaska, California, Colorado,
11 Connecticut, Maine, Massachusetts, Minnesota, Mississippi,
12 Nebraska, Nevada, New York, North Carolina, Ohio, Oregon, Rhode
13 Island, Vermont, and Washington have decriminalized marijuana in
14 small amounts. In each of these states, marijuana users no
15 longer face arrest or jail time for the possession or use of
16 marijuana in an amount permitted by statute.

17 The legislature finds increasing public support for the
18 decriminalization of marijuana possession. In November 2008,
19 Hawaii county voters approved ordinance 08-181, the "lowest law
20 enforcement priority of cannabis ordinance." The ordinance
21 provides in pertinent part, "The cultivation, possession and use



1 for adult personal use of Cannabis shall be the [l]owest [l]aw
2 [e]nforcement [p]riority for law enforcement agencies in the
3 county of Hawaii." Adult personal use is defined in the
4 ordinance as use of cannabis on private property by adults.

5 Many critics of drug legalization are concerned that
6 lifting the prohibition on illegal drugs like marijuana will
7 increase crime and make streets less safe. However, a study
8 released in 2011 by the nonprofit RAND Corp. indicates that just
9 the opposite might be true: counter intuitively, stricter drug
10 policies might actually lead to an increase in crime. The study
11 found that when hundreds of medical marijuana dispensaries were
12 closed last year in Los Angeles, crime rates rose in surrounding
13 neighborhoods. Therefore, the legislature finds that
14 legalization of marijuana sales by law-abiding corporations
15 instead of by criminals has the potential to end a major source
16 of crime on the streets.

17 On October 18, 2010, CNN reported in an article entitled
18 "Former surgeon general calls for marijuana legalization" that
19 then United States Surgeon General Jocelyn Elders supports
20 legalizing marijuana. She is quoted in the article, "What I
21 think is horrible about all of this, is that we criminalize



1 young people. And we use so many of our excellent resources ...
2 for things that aren't really causing any problems. It's not a
3 toxic substance."

4 The legislature further finds that the legalization of
5 marijuana for personal or recreational use is a natural,
6 logical, and reasonable outgrowth of the current science of
7 marijuana and attitude toward marijuana. In 2012, voters in
8 Colorado voted to amend the state's constitution (Amendment 64)
9 to legalize and regulate the production, possession, and
10 distribution of marijuana for persons age twenty-one and older.
11 Also in 2012, voters in Washington approved a proposition to
12 legalize and regulate the production, possession, and
13 distribution of cannabis for persons age twenty-one and older.
14 Colorado is the first state to remove the prohibition on
15 commercial production of marijuana for general use. Colorado
16 realized state tax revenue of approximately \$18,900,000 during
17 the first half of 2014, and this revenue is expected to increase
18 as sales of retail marijuana increase.

19 The legislature further finds that marijuana cultivation
20 and sales hold potential for economic development, increased tax
21 revenues, and reduction in crime.



- 1 The purpose of this Act is to:
- 2 (1) Decriminalize and regulate small amounts of marijuana
- 3 for personal use;
- 4 (2) Establish a licensing scheme for the cultivation,
- 5 sale, and use of small amounts of marijuana for
- 6 personal use;
- 7 (3) Tax marijuana sales in the same manner as state excise
- 8 taxes; and
- 9 (4) Subject income derived from marijuana sales to state
- 10 income taxes.

11 SECTION 2. The Hawaii Revised Statutes is amended by

12 adding a new chapter to be appropriately designated and to read

13 as follows:

14 **"CHAPTER**

15 **LEGALIZATION OF MARIJUANA FOR PERSONAL USE**

16 **§ -1 Definitions.** As used in this chapter:

17 "Department" means the department of taxation.

18 "License" means a license issued by the department to

19 authorize the operation of a marijuana establishment.

20 "Marijuana" means all parts of the plant of the genus

21 cannabis, whether growing or not; the seeds thereof; the resin



1 extracted from any part of the plant; and every compound,
2 manufacture, salt, derivative, mixture, or preparation of the
3 plant, its seeds, or its resin, including marijuana concentrate.
4 "Marijuana" does not include industrial hemp; fiber produced
5 from the stalks, oil, or cake made from the seeds of the plant;
6 sterilized seed of the plant which is incapable of germination;
7 or the weight of any other ingredient combined with marijuana to
8 prepare topical or oral administrations, food, drink, or other
9 product. For purposes of this definition, "industrial hemp"
10 means the plant of the genus cannabis and any part of such
11 plant, whether growing or not, with a delta-9
12 tetrahydrocannabinol concentration that does not exceed 0.3 per
13 cent on a dry weight basis.

14 "Marijuana accessories" means any equipment, products, or
15 materials of any kind that are used, intended for use, or
16 designed for use in planting, propagating, cultivating, growing,
17 harvesting, composting, manufacturing, compounding, converting,
18 producing, processing, preparing, testing, analyzing, packaging,
19 repackaging, storing, vaporizing, or containing marijuana, or
20 for ingesting, inhaling, or otherwise introducing marijuana into
21 the human body.



1 "Marijuana cultivation facility" means an entity licensed
2 to cultivate, prepare, and package marijuana and sell marijuana
3 to retail marijuana stores, marijuana product manufacturing
4 facilities, and other marijuana cultivation facilities, but not
5 to consumers.

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

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

14 "Marijuana products" means marijuana concentrate products
15 and products that comprise marijuana and other ingredients
16 intended for use or consumption and include but are not limited
17 to edible products, ointments, and tinctures.

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

20 "Personal use" means an amount of marijuana not exceeding
21 one ounce that is used for private, personal, or recreational



1 purposes by persons age twenty-one years or older. The term
2 personal use includes display, possession, sale, transport,
3 transfer, or processing of marijuana or marijuana products.

4 "Retail marijuana store" means an entity licensed to
5 purchase marijuana from marijuana cultivation facilities,
6 purchase marijuana and marijuana products from marijuana product
7 manufacturing facilities, and sell marijuana and marijuana
8 products to consumers.

9 **§ -2 Personal use of marijuana.** (a) Notwithstanding
10 any law to the contrary, the personal use of marijuana is
11 permitted.

12 (b) Personal use of marijuana shall not be the basis for
13 arrest, seizure, or forfeiture of assets.

14 (c) The possession, use, display, purchase, transfer, or
15 transport of marijuana, marijuana accessories, or marijuana
16 paraphernalia for personal use shall be immune from criminal
17 prosecution.

18 (d) The possession, growing, processing, or transporting
19 of not more than six marijuana plants, with three or fewer being
20 mature, flowering plants, and possession of the marijuana
21 produced by the plants on the premises where the plants are



1 grown shall not be subject to criminal prosecution; provided
2 that the growing takes place in an enclosed and locked space and
3 is not conducted openly or publicly, and that the plants are not
4 made available for sale.

5 (e) The transfer or sale of one ounce or less of marijuana
6 with or without remuneration to a person who is twenty-one years
7 of age or older is permitted.

8 (f) The consumption of marijuana products is permitted.

9 (g) Assisting, advising, or abetting another person who is
10 twenty-one years of age or older in any actions described in
11 this section is permitted.

12 **§ -3 Lawful operation of marijuana establishments;**
13 **license required.** Notwithstanding any law to the contrary, the
14 following acts are permitted and shall not constitute a criminal
15 offense or be the basis for search, seizure, or forfeiture of
16 assets of a person age twenty-one years or older:

17 (1) Manufacturing, possessing, or purchasing marijuana
18 accessories or selling marijuana accessories to a
19 person who is twenty-one years of age or older;

20 (2) Manufacturing, possessing, displaying, or transporting
21 marijuana or marijuana products; purchase of marijuana



1 from a marijuana cultivation facility; purchase of
2 marijuana or marijuana products from a marijuana
3 product manufacturing facility; or sale of marijuana
4 or marijuana products to consumers; provided that the
5 person conducting the activities described in this
6 paragraph has obtained a current, valid license to
7 operate a retail marijuana store or is acting in the
8 capacity of an owner, employee, or agent of a licensed
9 retail marijuana store;

- 10 (3) Cultivating, harvesting, processing, packaging,
11 transporting, displaying, or possessing marijuana;
12 delivering or transferring marijuana to a marijuana
13 testing facility; selling marijuana to a marijuana
14 cultivation facility, marijuana product manufacturing
15 facility, or retail marijuana store; or purchasing
16 marijuana from a marijuana cultivation facility;
17 provided that the person conducting the activities
18 described in this paragraph has obtained a current,
19 valid license to operate a marijuana cultivation
20 facility or is acting in the capacity of an owner,



1 employee, or agent of a licensed marijuana cultivation
2 facility;

3 (4) Packaging, processing, transporting, manufacturing,
4 displaying, or possessing marijuana or marijuana
5 products; delivering or transferring marijuana or
6 marijuana products to a marijuana testing facility;
7 selling marijuana or marijuana products to a retail
8 marijuana store or marijuana product manufacturing
9 facility; purchasing marijuana from a marijuana
10 cultivation facility; or purchasing marijuana or
11 marijuana products from a marijuana product
12 manufacturing facility; provided that the person
13 conducting the activities described in this paragraph
14 has obtained a current, valid license to operate a
15 marijuana product manufacturing facility or is acting
16 in the capacity as an owner, employee, or agent of a
17 licensed marijuana product manufacturing facility;

18 (5) Possessing, cultivating, processing, repackaging,
19 storing, transporting, displaying, transferring or
20 delivering marijuana or marijuana products; provided
21 that the person has obtained a current, valid license



1 to operate a marijuana testing facility or is acting
2 in the capacity as an owner, employee, or agent of a
3 licensed marijuana testing facility; and

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

8 § -4 Regulation of marijuana; rules. (a) No later than
9 July 1, 2016, the department shall adopt rules, pursuant to
10 chapter 91, necessary for implementation of this chapter. The
11 rules shall not require such a high investment of risk, money,
12 time, or any other resource or asset that the operation of a
13 marijuana establishment is not worthy of being carried out in
14 practice by a reasonably prudent businessperson. The rules
15 shall include:

16 (1) Procedures for the application, issuance, renewal,
17 suspension, and revocation of a license to operate a
18 marijuana establishment; provided that any license to
19 be issued shall be issued no later than ninety days
20 after receipt of an application;



- 1 (2) A schedule of application, licensing, and renewal
2 fees; provided that application fees shall not exceed
3 \$5,000, adjusted annually for inflation, unless the
4 department determines a greater fee is necessary to
5 carry out its responsibilities under this section;
- 6 (3) Qualifications for licensure that are directly and
7 demonstrably related to the operation of a marijuana
8 establishment;
- 9 (4) Security requirements for the premises of marijuana
10 establishments;
- 11 (5) Requirements to prevent the sale or diversion of
12 marijuana and marijuana products to persons under the
13 age of twenty-one;
- 14 (6) Labeling requirements for marijuana and marijuana
15 products sold or distributed by a marijuana
16 establishment;
- 17 (7) Health and safety regulations and standards for the
18 manufacture of marijuana products and the cultivation
19 of marijuana;
- 20 (8) Restrictions on the advertising and display of
21 marijuana and marijuana products; and



1 (9) Civil penalties for the failure to comply with rules
2 adopted pursuant to this section.

3 (b) In order to ensure that individual privacy is
4 protected, the department shall not require a consumer to
5 provide a retail marijuana store with personal information other
6 than government-issued identification to determine the
7 consumer's age. A retail marijuana store shall not be required
8 to acquire and record personal information about consumers.

9 (c) If an application for a license under this section is
10 denied, the applicant shall be notified in writing of the
11 specific reason for the denial. The applicant shall be entitled
12 to resubmit the application at any time after denial of the
13 initial application.

14 **§ -5 Effect on employers.** This chapter shall not be
15 construed to:

16 (1) Require an employer to permit or accommodate the use,
17 consumption, possession, transfer, display, transport,
18 sale, or growing of marijuana in the workplace; or

19 (2) Affect the ability of an employer to have policies
20 restricting the use of marijuana by employees.



1 **§ -6 Effect on intoxicated driving laws.** This chapter
2 shall not be construed as a defense, exemption, or immunity from
3 chapter 291E.

4 **§ -7 Effect on medical marijuana law.** This chapter
5 shall not be construed to affect medical use of marijuana as
6 provided in chapter 329 and shall not be deemed to expand the
7 medical use of marijuana beyond the uses provided in chapter
8 329.

9 **§ -8 Effect on property rights.** This chapter shall not
10 be construed to prohibit a person, employer, school, hospital,
11 detention facility, corporation, or any other entity who
12 occupies, owns, or controls a property from prohibiting or
13 otherwise regulating the possession, consumption, use, display,
14 transfer, distribution, sale, transportation, or growing of
15 marijuana on or in that property.

16 **§ -9 Taxes.** A marijuana establishment shall be subject
17 to payment of income taxes on gross receipts under chapter 235
18 and payment of excise taxes under chapter 237 for each
19 transaction conducted by the marijuana establishment."



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

4 "§712- Legalization of marijuana. The following acts
5 shall be exempt from arrest, prosecution, and criminal
6 culpability under this part:

7 (a) Any act permitted under section -2;

8 (b) Any act permitted under section -3; and

9 (c) An act of any person who is appropriately and
10 currently licensed if the act requires a license under
11 chapter ."

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

15 SECTION 5. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.

17

INTRODUCED BY:

J. Keleni Ghosh

[Signature]

Paul E. [Signature]

[Signature]



S.B. NO. 873

Report Title:

Marijuana; Legalization

Description:

Legalizes the personal use of marijuana in a specified quantity.
Requires licensing to operate marijuana establishments.
Subjects marijuana establishments to excise taxes and income taxes.

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

