A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

PART I

SECTION 1. The legislature finds that the decriminalization of certain offenses related to marijuana, otherwise known as cannabis, is in the best interest of the State. The limited resources available to combat substance abuse, enforce criminal laws, and incarcerate and supervise offenders should be directed toward opposing more harmful substances, such as methamphetamine, heroin, and other opioids. Hawaii and thirty-two other states, the United States territories of Guam, Puerto Rico, and the Northern Mariana Islands, and the District of Columbia have legalized the use of marijuana for medicinal purposes. Twenty-two states and the District of Columbia have decriminalized offenses pertaining to certain amounts of marijuana, and ten states and the District of Columbia have legalized certain amounts of marijuana for non-medical use.
The legislature further finds that this State should replace criminal penalties for certain offenses relating to marijuana with monetary fines, and should also carefully consider whether and how to legalize the non-medicinal use of marijuana.

Accordingly, the purpose of this Act is to:

(1) Change statutory references from "marijuana" to "cannabis";

(2) Decriminalize certain offenses relating to marijuana and make them violations punishable by monetary fines;

(3) Provide for the dismissal of criminal charges, and expungement of criminal records, pertaining solely to cannabis; and

(4) Establish a cannabis evaluation working group to study the future of cannabis in the State.

PART II

SECTION 2. Section 329-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
"Cannabis" 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 does not include the mature stalks of the plant, 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 is incapable of germination.

2. By repealing the definition of "marijuana".

"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 does not include the mature stalks of the plant, 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 is incapable of germination.
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PART III

SECTION 3. All references to "marijuana," in chapter 712, and sections 141-36, 302A-1002, 328-15, 329-1, 329-125.6, 353-66, 706-622.5, 706-625, and 710-1022, Hawaii Revised Statutes, shall be amended to "cannabis".

SECTION 4. By operation of law, the Hawaii administrative rules relating to marijuana or cannabis shall be construed as having been amended in conformance with part IV of this Act; provided that if and when an agency or department amends the Hawaii administrative rules, it shall conform the wording to part IV of this Act at the time of the amendment.

PART IV

SECTION 5. Section 712-1244, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting a harmful drug in the first degree if the person knowingly:

(a) Possesses one hundred or more capsules or tablets or dosage units containing one or more of the harmful
(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or any combination thereof; or

d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the harmful drugs or any combination thereof; or

e) Distributes any harmful drug to a minor.
"(1) A person commits the offense of promoting a harmful
drug in the second degree if the person knowingly:

(a) Possesses fifty or more capsules or tablets or dosage
    units containing one or more of the harmful drugs or
    [one or more of the marijuana concentrates, or] any
    combination thereof;

(b) Possesses one or more preparations, compounds,
mixtures, or substances, of an aggregate weight of
    one-eighth ounce or more, containing one or more of
    the harmful drugs [or one or more of the marijuana
    concentrates,] or any combination thereof; or

(c) Distributes any harmful drug [or any marijuana
    concentrate] in any amount."

SECTION 7. Section 712-1246, Hawaii Revised Statutes, is
amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting a harmful
drug in the third degree if the person knowingly possesses
twenty-five or more capsules or tablets or dosage units
containing one or more of the harmful drugs or [one or more of
the marijuana concentrates, or] any combination thereof."
SECTION 8. Section 712-1247, Hawaii Revised Statutes, is amended to read as follows:

§712-1247 Promoting a detrimental drug in the first degree. (1) A person commits the offense of promoting a detrimental drug in the first degree if the person knowingly:

(a) Possesses four hundred or more capsules or tablets containing one or more of the Schedule V substances;

(b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more, containing one or more of the Schedule V substances;

(c) Distributes fifty or more capsules or tablets containing one or more of the Schedule V substances;

(d) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances;

(e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more, containing any marijuana;
(f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more, containing any marijuana;

(g) Possesses, cultivates, or has under the person's control twenty-five or more marijuana plants; or

(h) Sells or barters any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the first degree is a class C felony.

{(3) Any marijuana seized as evidence of a violation of this section in excess of one pound may be destroyed after it has been photographed and the weight thereof recorded. The remainder of the marijuana shall remain in the custody of the police department until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself, provided that nothing in this subsection shall be construed to limit or to
SECTION 9. Section 712-1248, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting a detrimental drug in the second degree if the person knowingly:

(a) Possesses fifty or more capsules or tablets containing one or more of the Schedule V substances;

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances;

[(c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any marijuana; or

(d)] (c) Distributes any [marijuana or any] Schedule V substance in any amount."

SECTION 10. Section 712-1249, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly
possesses any [marijuana or any] Schedule V substance in any amount."

SECTION 11. Section 712-1249.4, Hawaii Revised Statutes, is repealed.

["§712-1249.4—Commercial promotion of marijuana in the first degree. (1) A person commits the offense of commercial promotion of marijuana in the first degree if the person knowingly:

(a) Possesses marijuana having an aggregate weight of twenty-five pounds or more;

(b) Distributes marijuana having an aggregate weight of five pounds or more;

(c) Possesses, cultivates, or has under the person's control one hundred or more marijuana plants;

(d) Cultivates on land owned by another person, including land owned by the government or other legal entity, twenty-five or more marijuana plants, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or..."
(c) Uses, or causes to be used, any firearm or other
weapon, device, instrument, material, or substance,
whether animate or inanimate, which in the manner used
is capable of causing death, serious bodily injury,
substantial bodily injury, or other bodily injury, as
defined in chapter 707 in order to prevent the theft,
removal, search and seizure, or destruction of
marijuana.

(2) Commercial promotion of marijuana in the first degree
is a class A felony.

(3) Any marijuana seized as evidence in violation of this
section in excess of an aggregate weight of twenty-five pounds
as stated in subsection (1)(a), or in excess of an aggregate
weight of five pounds as stated in subsection (1)(b), or in
excess of one hundred marijuana plants as stated in subsection
(1)(c), or in excess of twenty-five marijuana plants as stated
in subsection (1)(d) may be destroyed after the excess amount
has been photographed and the number of plants and the weight
thereof has been recorded. The required minimum amount of the
marijuana needed to constitute the elements of this offense
shall remain in the custody of the police until the termination
of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or restrict the application of rule 901 of the Hawaii rules of evidence.

SECTION 12. Section 712-1249.5, Hawaii Revised Statutes, is repealed.

["§712-1249.5—Commercial promotion of marijuana in the second degree. (1) A person commits the offense of commercial promotion of marijuana in the second degree if the person knowingly:

(a) Possesses marijuana having an aggregate weight of two pounds or more;

(b) Distributes marijuana having an aggregate weight of one pound or more;

(c) Possesses, cultivates, or has under the person's control fifty or more marijuana plants;"]
(a) Cultivates on land owned by another person, including land owned by the government or other legal entity, any marijuana plant, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or

(e) Sells or barters any marijuana or any Schedule V substance in any amount to a minor.

(2) Commercial promotion of marijuana in the second degree is a class B felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of two pounds as stated in subsection (1)(a), or in excess of an aggregate weight of one pound as stated in subsection (1)(b), or in excess of twenty-five marijuana plants as stated in subsection (1)(c) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a
result of the seizure of the marijuana. Photographs duly
identified as accurately representing the marijuana shall be
deemed competent evidence of the marijuana involved and shall be
admissible in any proceeding, hearing, or trial to the same
extent as the marijuana itself, provided that nothing in this
subsection shall be construed to limit or to restrict the
application of rule 901 of the Hawaii rules of evidence."

PART V

SECTION 13. Chapter 712, Hawaii Revised Statutes, is
amended by adding two new sections to be appropriately
designated and to read as follows:

"§712- **Dismissal of pending cannabis charges.** (a)
Notwithstanding any other law to the contrary, a person charged
prior to the effective date of this Act with any cannabis
offense arising from a set of facts and circumstances that
resulted in no criminal charge other than the cannabis offense
may apply to the court where the charge is pending for an order
dismissing the charge.

(b) The court shall grant an order dismissing the charge
under subsection (a) upon a finding that the applicant is
eligible for the order.
(c) The court may establish a reasonable fee for an application under this section.

(d) As used in this section, "cannabis offense" means any criminal offense prohibiting the cultivation, possession, sales, transportation, or use of cannabis, regardless of whether previously referenced as marijuana.

§712- Expungement of records of criminal violations pertaining solely to cannabis. (a) Notwithstanding any other law to the contrary, a person convicted prior to the effective date of this Act of any cannabis offense arising from a set of facts and circumstances that resulted in no criminal charge other than the cannabis offense may apply to the court of conviction for an expungement order pertaining to the conviction for the cannabis offense.

(b) The court shall grant an expungement order under subsection (a) upon a finding that the applicant is eligible for the expungement.

(c) The court may establish a reasonable fee for an application under this section.

(d) As used in this section, "cannabis offense" means any criminal offense prohibiting the cultivation, possession, sales,
transformation, or use of cannabis, regardless of whether
previously referenced as marijuana."

PART VI

SECTION 14. Chapter 281, Hawaii Revised Statutes, is
amended by adding a new part to be appropriately designated and
to read as follows:

"PART VI. CANNABIS VIOLATIONS

§281-A Promoting cannabis in the first degree. (a) A
person violates this section by promoting cannabis in the first
degree if the person knowingly:

(1) Possesses one hundred or more capsules or tablets or
dosage units containing one or more of the cannabis
concentrates or any combination thereof;

(2) Possesses one or more preparations, compounds,
mixtures, or substances, of an aggregate weight of one
ounce or more containing one or more of the cannabis
concentrates, or any combination thereof;

(3) Distributes twenty-five or more capsules or tablets or
dosage units containing one or more of the cannabis
concentrates, or any combination thereof;
(4) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the cannabis concentrates, or any combination thereof; or

(5) Distributes any cannabis concentrate in any amount to a minor.

(b) Promoting cannabis in the first degree is punishable as provided under section 281-I.

§281-B Promoting cannabis in the second degree. (a) A person violates this section by promoting cannabis in the second degree if the person knowingly:

(1) Possesses fifty or more capsules or tablets or dosage units containing one or more of the cannabis concentrates, or any combination thereof;

(2) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the cannabis concentrates, or any combination thereof; or

(3) Distributes any cannabis concentrate in any amount.
(b) Promoting cannabis in the second degree is punishable as provided under section 281-I.

§281-C Promoting cannabis in the third degree. (a) A person violates this section by promoting cannabis in the third degree if the person knowingly possesses twenty-five or more capsules or tablets or dosage units containing one or more of the cannabis concentrates, or any combination thereof.

(b) Promoting a harmful drug in the third degree is punishable as provided under section 281-I.

§281-D Promoting cannabis detrimentally in the first degree. (a) A person violates this section by promoting cannabis detrimentally in the first degree if the person knowingly:

(1) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more, containing any cannabis;
(2) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more, containing any cannabis;
(3) Possesses, cultivates, or has under the person's control twenty-five or more cannabis plants; or
(4) Sells or barters any cannabis in any amount.

(b) Promoting cannabis detrimentally in the first degree is a punishable as provided under section 281-I.

§281-E Promoting cannabis detrimentally in the second degree. (a) A person violates this section by promoting cannabis detrimentally in the second degree if the person knowingly:

(1) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any cannabis; or

(2) Distributes any cannabis in any amount.

(b) Promoting cannabis detrimentally in the second degree is punishable as provided under section 281-I.

§281-F Promoting cannabis detrimentally in the third degree. (a) A person violates this section by promoting cannabis detrimentally in the third degree if the person knowingly possesses any cannabis in any amount.

(b) Promoting cannabis detrimentally in the third degree is punishable as provided under section 281-I.

§281-G Commercial promotion of cannabis in the first degree. (a) A person violates this section by committing
commercial promotion of cannabis in the first degree if the
person knowingly:

(1) Possesses cannabis having an aggregate weight of
twenty-five pounds or more;

(2) Distributes cannabis having an aggregate weight of
five pounds or more;

(3) Possesses, cultivates, or has under the person's
control one hundred or more cannabis plants;

(4) Cultivates on land owned by another person, including
land owned by the government or other legal entity,
twenty-five or more cannabis plants, unless the person
has the express permission from the owner of the land
to cultivate the cannabis or the person has a legal or
an equitable ownership interest in the land or the
person has a legal right to occupy the land; or

(5) Uses, or causes to be used, any firearm or other
weapon, device, instrument, material, or substance,
whether animate or inanimate, which in the manner used
is capable of causing death, serious bodily injury,
substantial bodily injury, or other bodily injury, as
defined in chapter 707 in order to prevent the theft,
removal, search and seizure, or destruction of cannabis.

(b) Commercial promotion of cannabis in the first degree is punishable as specified in section 281-I.

§281-H Commercial promotion of cannabis in the second degree. (a) A person violates this section by committing commercial promotion of cannabis in the second degree if the person knowingly:

(1) Possesses cannabis having an aggregate weight of two pounds or more;

(2) Distributes cannabis having an aggregate weight of one pound or more;

(3) Possesses, cultivates, or has under the person's control fifty or more cannabis plants;

(4) Cultivates on land owned by another person, including land owned by the government or other legal entity, any cannabis plant, unless the person has the express permission from the owner of the land to cultivate the cannabis or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
(5) Sells or barters any cannabis or any Schedule V
substance in any amount to a minor.

(b) Commercial promotion of cannabis in the second degree
is punishable as specified in section 281-I.

§281-I Penalties for violations of certain statutes
relating to cannabis. (a) Penalties for violations of the
following statutes shall consist solely of monetary fines, as
specified. The fine for a violation of:

(1) Section 281-A, promoting cannabis in the first degree,
shall be $  

(2) Section 281-B, promoting cannabis in the second
degree, shall be $  

(3) Section 281-C, promoting cannabis in the third degree,
shall be $  

(4) Section 281-D, promoting cannabis detrimentally in the
first degree, shall be $  

(5) Section 281-E, promoting cannabis detrimentally in the
second degree, shall be $  

(6) Section 281-F, promoting cannabis detrimentally in the
third degree, shall be $  

(7) Section 281-G, commercial promotion of cannabis in the first degree, shall be $ ; and

(8) Section 281-H, commercial promotion of cannabis in the second degree, shall be $ .

§281-J Any cannabis seized as evidence in violation of this part in excess of a specified aggregate weight constituting a violation may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the cannabis needed to constitute the elements of this violation shall remain in the custody of the police until the termination of any action brought as a result of the seizure of the cannabis. Photographs duly identified as accurately representing the cannabis shall be deemed competent evidence of the cannabis involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the cannabis itself; provided that nothing in this subsection shall be construed to limit or to restrict the application of rule 901 of the Hawaii rules of evidence."

SECTION 15. Title 16, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:
"TITLE 16. INTOXICATING LIQUOR AND CANNABIS"

2. By amending the title of chapter 281 to read:

"CHAPTER 281

INTOXICATING LIQUOR AND CANNABIS"

PART VII

SECTION 16. (a) There shall be established a cannabis evaluation working group that shall be administratively attached to the department of the attorney general. The cannabis evaluation working group shall examine other state laws and outcomes pertaining to cannabis and ways in which cannabis use other than for medical purposes may provide benefits or raise questions in the State, including but not limited to the establishment of a system of growing, production, and retail facilities that are licensed, regulated, and subject to taxation by the State, including purposes for which cannabis tax revenue may be used.

(b) The cannabis evaluation working group shall comprise the following members or their designees:

(1) The chairs of the following committees of the senate:

(A) Judiciary; and

(B) Ways and means.
(2) The chairs of the following committees of the house of representatives:
   (A) Judiciary; and
   (B) Finance;

(3) The attorney general;

(4) The director of business, economic development, and tourism;

(5) The director of commerce and consumer affairs; and

(6) The director of health.

The chairs of the respective judiciary committees shall serve as co-chairs of the working group and may invite other interested parties to participate on the working group.

(c) The working group shall submit a report of its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2021 regular session.

PART VIII

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the
invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. In codifying the new sections added by part III 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 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval; provided that parts V, VI, and VII shall be repealed on July 1, 2021.

INTRODUCED BY:
Report Title:
Cannabis; Marijuana; Decriminalization; Dismissal of Charges; Expungement; Evaluation Working Group

Description:
Decriminalizes certain offenses relating to marijuana and establishes a schedule of monetary fines for violations. Changes statutory references from "marijuana" to "cannabis." Provides for the dismissal of charges and expungement of criminal records based solely on cannabis offenses. Establishes the cannabis evaluation working group. Requires a report to the Legislature.

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