
A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 SECTION 1. The purpose of this Act is to repeal from state
2 law certain criminal penalties that relate to growing, selling,
3 distributing, possessing, or consuming marijuana. In doing so,
4 the State asserts that it has the primary legal jurisdiction
5 over all crimes committed by the civil population within its
6 boundaries, with the exception of crimes committed on property
7 directly owned by the federal government. Any activities
8 related to growing, selling, distributing, possessing, or
9 consuming marijuana on federal lands shall remain subject to
10 federal law. If no federal law prohibiting marijuana exists at
11 a time subsequent to the passage of this Act, activities related
12 to marijuana may be subject to state law. This Act is not
13 intended to undermine the authority of the federal government to
14 regulate the export or import of marijuana to or from another
15 state or territory of the United States or to regulate the use
16 of marijuana on federal property or among active duty members of
17 the military.



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

4 "§712- Marijuana; minors. (1) It shall be unlawful to
5 sell or furnish to a minor under the age of eighteen any
6 marijuana or intoxicating compound derived from marijuana.

7 (2) It shall be unlawful for a minor under the age of
8 eighteen to purchase any marijuana or intoxicating compound
9 derived from marijuana; provided that this subsection shall not
10 apply to a minor who is participating in a controlled purchase
11 as part of a law enforcement activity or a study authorized by
12 the department of health under the supervision of a law
13 enforcement agency to determine the level of illegal marijuana
14 sales to minors.

15 (3) If any marijuana or intoxicating compound derived from
16 marijuana shall be lawfully sold, including from any vending
17 machine, a sign using the statement "The sale of marijuana or
18 intoxicating compounds derived from marijuana to persons under
19 the age of eighteen is prohibited" shall be posted, in letters
20 at least one-half inch high, at or near the point of sale, or on
21 or near the vending machine, as the case may be.



- 1 (4) This section shall not apply to a person who is
2 authorized to:
- 3 (a) Acquire, possess, cultivate, use, distribute, or
4 transport marijuana pursuant to the definition of
5 "medical use" under section 329-121, while the person
6 is facilitating the medical use of marijuana by a
7 qualifying patient; or
- 8 (b) Dispense, manufacture, or produce marijuana or
9 manufactured marijuana products pursuant to and in
10 compliance with chapter 329D, while the person is
11 facilitating the medical use of marijuana by a
12 qualifying patient pursuant to part IX of chapter 329.
- 13 (5) Any person who violates subsection (1) or (3) shall be
14 fined:
- 15 (a) \$500 for a first offense; and
16 (b) Not less than \$500 nor more than \$2,000 for a
17 subsequent offense.
- 18 (6) Any minor under the age of eighteen who violates
19 subsection (2) shall be fined:
- 20 (a) \$10 for a first offense; and



1 (b) \$50 for a subsequent offense, no part of which shall
2 be suspended; provided that the violator may instead
3 be required to perform not less than forty-eight hours
4 nor more than seventy-two hours of community service
5 during hours when the violator is neither employed nor
6 attending school.

7 §712- Marijuana; cultivation. (1) It shall be
8 unlawful for any person to cultivate marijuana on property owned
9 by the State or a county.

10 (2) Any person who violates subsection (1) shall be fined
11 \$20,000.

12 (3) A person may grow no more than ten marijuana plants on
13 private property for personal use; provided that a person may
14 grow more than ten plants for commercial use on private property
15 that is classified for agriculture; provided further that a
16 county may regulate by ordinance the growing of marijuana on
17 private property.

18 (4) Any person who cultivates marijuana on private
19 property without permission of the person who owns or has legal
20 control of the private property shall be guilty of a
21 misdemeanor.



1 §712- Abuse of marijuana rights. Any person who:
2 (a) Distributes moneys gained from the sale of marijuana
3 to any criminal gang, cartel, or other organization
4 that engages in criminal activity for profit;
5 (b) Engages in violence or the use of a firearm in
6 relation to the cultivation of marijuana; or
7 (c) Uses a marijuana distribution business to hide illegal
8 activity,
9 shall be fined not more than \$20,000, in addition to any other
10 penalty provided by law."

11 SECTION 3. Section 706-625, Hawaii Revised Statutes, is
12 amended by amending subsection (7) to read as follows:

13 "(7) The court may require a defendant to undergo and
14 complete a substance abuse treatment program when the defendant
15 has committed a violation of the terms and conditions of
16 probation involving possession or use, not including to
17 distribute or manufacture as defined in section 712-1240, of any
18 dangerous drug, detrimental drug, harmful drug, or intoxicating
19 compound, [~~marijuana, or marijuana concentrate,~~] as defined in
20 section 712-1240, unlawful methamphetamine trafficking as
21 provided in section 712-1240.6, or involving possession or use

1 of drug paraphernalia under section 329-43.5. If the defendant
2 fails to complete the substance abuse treatment program or the
3 court determines that the defendant cannot benefit from any
4 other suitable substance abuse treatment program, the defendant
5 shall be subject to revocation of probation and incarceration.

6 The court may require the defendant to:

7 (a) Be assessed by a certified substance abuse counselor
8 for substance abuse dependency or abuse under the
9 applicable Diagnostic and Statistical Manual and
10 Addiction Severity Index;

11 (b) Present a proposal to receive substance abuse
12 treatment in accordance with the treatment plan
13 prepared by a certified substance abuse counselor
14 through a substance abuse treatment program that
15 includes an identified source of payment for the
16 treatment program;

17 (c) Contribute to the cost of the substance abuse
18 treatment program; and

19 (d) Comply with any other terms and conditions of
20 probation.



1 As used in this subsection, "substance abuse treatment
2 program" means drug or substance abuse treatment services
3 provided outside a correctional facility by a public, private,
4 or nonprofit entity that specializes in treating persons who are
5 diagnosed with substance abuse or dependency and preferably
6 employs licensed professionals or certified substance abuse
7 counselors.

8 Nothing in this subsection shall be construed to give rise
9 to a cause of action against the State, a state employee, or a
10 treatment provider."

11 SECTION 4. Section 706-660, Hawaii Revised Statutes, is
12 amended by amending subsection (2) to read as follows:

13 "(2) A person who has been convicted of a class B or class
14 C felony for any offense under part IV of chapter 712 may be
15 sentenced to an indeterminate term of imprisonment; provided
16 that this subsection shall not apply to sentences imposed under
17 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that
18 section was in effect prior to July 1, 2016, 712-1242, 712-1245,
19 [~~712-1249.5,~~] 712-1249.6, 712-1249.7, and 712-1257.

20 When ordering a sentence under this subsection, the court
21 shall impose a term of imprisonment, which shall be as follows:



1 (a) For a class B felony--ten years or less, but not less
2 than five years; and

3 (b) For a class C felony--five years or less, but not less
4 than one year.

5 The minimum length of imprisonment shall be determined by the
6 Hawaii paroling authority in accordance with section 706-669."

7 SECTION 5. Section 712-1240, Hawaii Revised Statutes, is
8 amended by amending the definitions of "detrimental drug" and
9 "harmful drug" to read as follows:

10 "Detrimental drug" means any substance or immediate
11 precursor defined or specified as a "Schedule V substance" by
12 chapter 329 [~~, or any marijuana~~].

13 "Harmful drug" means any substance or immediate precursor
14 defined or specified as a "Schedule III substance" or a
15 "Schedule IV substance" by chapter 329 [~~, or any marijuana
16 concentrate except marijuana and a substance specified in
17 section 329-18(e)(14)] ."~~

18 SECTION 6. Section 712-1244, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

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



- 1 (a) Possesses one hundred or more capsules or tablets or
2 dosage units containing one or more of the harmful
3 drugs or [~~one or more of the marijuana concentrates,~~
4 ~~or~~] any combination thereof;
- 5 (b) Possesses one or more preparations, compounds,
6 mixtures, or substances, of an aggregate weight of one
7 ounce or more containing one or more of the harmful
8 drugs or [~~one or more of the marijuana concentrates,~~
9 ~~or~~] any combination thereof;
- 10 (c) Distributes twenty-five or more capsules or tablets or
11 dosage units containing one or more of the harmful
12 drugs or [~~one or more of the marijuana concentrates,~~
13 ~~or~~] any combination thereof;
- 14 (d) Distributes one or more preparations, compounds,
15 mixtures, or substances, of an aggregate weight of
16 one-eighth ounce or more, containing one or more of
17 the harmful drugs or [~~one or more of the marijuana
18 concentrates,~~ ~~or~~] any combination thereof; or
- 19 (e) Distributes any harmful drug [~~or any marijuana
20 concentrate~~] in any amount to a minor."



1 SECTION 7. Section 712-1245, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

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

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

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

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

16 SECTION 8. Section 712-1246, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

18 "(1) A person commits the offense of promoting a harmful
19 drug in the third degree if the person knowingly possesses
20 twenty-five or more capsules or tablets or dosage units



1 containing one or more of the harmful drugs or [~~one or more of~~
2 ~~the marijuana concentrates, or~~] any combination thereof."

3 SECTION 9. Section 712-1247, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§712-1247 Promoting a detrimental drug in the first
6 degree. (1) A person commits the offense of promoting a
7 detrimental drug in the first degree if the person knowingly:

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

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

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

16 or

17 (d) Distributes one or more preparations, compounds,
18 mixtures, or substances of an aggregate weight of one-
19 eighth ounce or more, containing one or more of the
20 Schedule V substances [7



- 1 ~~(e) Possesses one or more preparations, compounds,~~
2 ~~mixtures, or substances of an aggregate weight of one~~
3 ~~pound or more, containing any marijuana;~~
- 4 ~~(f) Distributes one or more preparations, compounds,~~
5 ~~mixtures, or substances of an aggregate weight of one~~
6 ~~ounce or more, containing any marijuana;~~
- 7 ~~(g) Possesses, cultivates, or has under the person's~~
8 ~~control twenty five or more marijuana plants; or~~
- 9 ~~(h) Sells or barter any marijuana or any Schedule V~~
10 ~~substance in any amount].~~

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

13 ~~[(3) Any marijuana seized as evidence of a violation of~~
14 ~~this section in excess of one pound may be destroyed after it~~
15 ~~has been photographed and the weight thereof recorded. The~~
16 ~~remainder of the marijuana shall remain in the custody of the~~
17 ~~police department until the termination of any criminal action~~
18 ~~brought as a result of the seizure of the marijuana.~~

19 ~~Photographs duly identified as accurately representing the~~
20 ~~marijuana shall be deemed competent evidence of the marijuana~~
21 ~~involved and shall be admissible in any proceeding, hearing, or~~



1 ~~trial to the same extent as the marijuana itself; provided that~~
2 ~~nothing in this subsection shall be construed to limit or to~~
3 ~~restrict the application of rule 901 of the Hawaii rules of~~
4 ~~evidence.] "~~

5 SECTION 10. Section 712-1248, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

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

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

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

15 ~~[(e) Possesses one or more preparations, compounds,~~
16 ~~mixtures, or substances, of an aggregate weight of one~~
17 ~~ounce or more, containing any marijuana; or~~

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

20 SECTION 11. Section 712-1249, Hawaii Revised Statutes, is
21 amended by amending subsection (1) to read as follows:



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

5 SECTION 12. Section 712A-4, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§712A-4 Covered offenses.** Offenses for which property is
8 subject to forfeiture under this chapter are:

- 9 (a) All offenses that specifically authorize forfeiture;
- 10 (b) Murder, kidnapping, labor trafficking, gambling,
11 criminal property damage, robbery, bribery, extortion,
12 theft, unauthorized entry into motor vehicle,
13 burglary, money laundering, trademark counterfeiting,
14 insurance fraud, promoting a dangerous, harmful, or
15 detrimental drug, [~~commercial promotion of marijuana,~~]
16 methamphetamine trafficking, manufacturing of a
17 controlled substance with a child present, promoting
18 child abuse, promoting prostitution, sex trafficking,
19 solicitation of a minor for prostitution, habitual
20 solicitation of prostitution, or electronic enticement



1 of a child that is chargeable as a felony offense
2 under state law;

3 (c) The manufacture, sale, or distribution of a controlled
4 substance in violation of chapter 329, promoting
5 detrimental drugs or intoxicating compounds, promoting
6 pornography, promoting pornography for minors, or
7 solicitation of prostitution near schools or public
8 parks, which is chargeable as a felony or misdemeanor
9 offense, but not as a petty misdemeanor, under state
10 law; and

11 (d) The attempt, conspiracy, solicitation, coercion, or
12 intimidation of another to commit any offense for
13 which property is subject to forfeiture."

14 SECTION 13. Section 712-1249.4, Hawaii Revised Statutes,
15 is repealed.

16 ~~["§712-1249.4] Commercial promotion of marijuana in the~~
17 ~~first degree. (1) A person commits the offense of commercial~~
18 ~~promotion of marijuana in the first degree if the person~~
19 ~~knowingly:~~

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



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- 1 ~~(b) Distributes marijuana having an aggregate weight of~~
- 2 ~~five pounds or more;~~
- 3 ~~(c) Possesses, cultivates, or has under the person's~~
- 4 ~~control one hundred or more marijuana plants;~~
- 5 ~~(d) Cultivates on land owned by another person, including~~
- 6 ~~land owned by the government or other legal entity,~~
- 7 ~~twenty five or more marijuana plants, unless the~~
- 8 ~~person has the express permission from the owner of~~
- 9 ~~the land to cultivate the marijuana or the person has~~
- 10 ~~a legal or an equitable ownership interest in the land~~
- 11 ~~or the person has a legal right to occupy the land, or~~
- 12 ~~(e) Uses, or causes to be used, any firearm or other~~
- 13 ~~weapon, device, instrument, material, or substance,~~
- 14 ~~whether animate or inanimate, which in the manner used~~
- 15 ~~is capable of causing death, serious bodily injury,~~
- 16 ~~substantial bodily injury, or other bodily injury, as~~
- 17 ~~defined in chapter 707 in order to prevent the theft,~~
- 18 ~~removal, search and seizure, or destruction of~~
- 19 ~~marijuana.~~
- 20 ~~(2) Commercial promotion of marijuana in the first degree~~
- 21 ~~is a class A felony.~~



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

20 SECTION 14. Section 712-1249.5, Hawaii Revised Statutes,
21 is repealed.



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

- 5 ~~(a) Possesses marijuana having an aggregate weight of two~~
6 ~~pounds or more;~~
- 7 ~~(b) Distributes marijuana having an aggregate weight of~~
8 ~~one pound or more;~~
- 9 ~~(c) Possesses, cultivates, or has under the person's~~
10 ~~control fifty or more marijuana plants;~~
- 11 ~~(d) Cultivates on land owned by another person, including~~
12 ~~land owned by the government or other legal entity,~~
13 ~~any marijuana plant, unless the person has the express~~
14 ~~permission from the owner of the land to cultivate the~~
15 ~~marijuana or the person has a legal or an equitable~~
16 ~~ownership interest in the land or the person has a~~
17 ~~legal right to occupy the land; or~~
- 18 ~~(e) Sells or barter any marijuana or any Schedule V~~
19 ~~substance in any amount to a minor.~~

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



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

18 SECTION 15. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.



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1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect upon its approval.

4

INTRODUCED BY: *scm* *blr*

JAN 24 2019



H.B. NO. 1515

Report Title:

Marijuana; Related Compounds; Minors; Provision to or Possession by Minors Prohibited; Cultivation; Prohibited on Public Property; Authorized on Private Property; Proceeds; Sharing with Criminal Groups Prohibited; Fines; Established; Other Criminal Penalties; Repealed

Description:

Prohibits the provision of marijuana and related compounds to minors under 18. Prohibits minors under 18 from purchasing marijuana or related compounds. Prohibits cultivation of marijuana on state or county property. Authorizes cultivation of marijuana on private property under certain conditions. Prohibits sharing proceeds from marijuana cultivation with criminal groups. Establishes fines for violations. Repeals other criminal penalties related to possession, cultivation, distribution, and use of marijuana and related compounds.

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

