

JAN 17 2014

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
18 safe and reliable source of medical cannabis, information, and



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

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



1 Washington, also allow the use of marijuana for medicinal
2 purposes.

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

16 The legislature finds increasing public support for the
17 decriminalization of marijuana possession. In November 2008,
18 Hawaii county voters approved ordinance 08-181, the "lowest law
19 enforcement priority of cannabis ordinance." The ordinance
20 provides in pertinent part, "The cultivation, possession and use
21 for adult personal use of Cannabis shall be the [l]owest [l]aw
22 [e]nforcement [p]riority for law enforcement agencies in the



1 county of Hawaii." Adult personal use is defined in the
2 ordinance as use of cannabis on private property by adults.

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

15 On October 18, 2010, CNN reported in an article entitled
16 "Former surgeon general calls for marijuana legalization" that
17 then United States Surgeon General Jocelyn Elders supports
18 legalizing marijuana. She is quoted in the article, "What I
19 think is horrible about all of this, is that we criminalize
20 young people. And we use so many of our excellent resources ...
21 for things that aren't really causing any problems. It's not a
22 toxic substance."



1 The legislature further finds that the legalization of
2 marijuana for personal or recreational use is a natural,
3 logical, and reasonable outgrowth of the current science of
4 marijuana and attitude toward marijuana. In 2012, voters in
5 Colorado voted to amend the state's constitution (Amendment 64)
6 to legalize and regulate the production, possession, and
7 distribution of marijuana for persons age twenty-one and older.
8 Also in 2012, voters in Washington approved a proposition to
9 legalize and regulate the production, possession, and
10 distribution of cannabis for persons age twenty-one and older.
11 Colorado is the first state to remove the prohibition on
12 commercial production of marijuana for general use. Colorado
13 expects to realize revenue of upwards of \$60,000,000 a year.

14 The legislature further finds that marijuana cultivation
15 and sales hold potential for economic development, increased tax
16 revenues, and reduction in crime.

17 The purpose of this Act is to:

- 18 (1) Decriminalize and regulate small amounts of marijuana
19 for personal use;
- 20 (2) Establish a licensing scheme for the cultivation,
21 sale, and use of small amounts of marijuana for
22 personal use;



- 1 (3) Tax marijuana sales in the same manner as state excise
- 2 taxes; and
- 3 (4) Subject income derived from marijuana sales to state
- 4 income taxes.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 **"CHAPTER**

9 **LEGALIZATION OF MARIJUANA FOR PERSONAL USE**

10 § -1 **Definitions.** As used in this chapter:

11 "Department" means the department of taxation.

12 "License" means a license issued by the department to
13 authorize the operation of a marijuana establishment.

14 "Marijuana" means all parts of the plant of the genus
15 cannabis, whether growing or not; the seeds thereof; the resin
16 extracted from any part of the plant; and every compound,
17 manufacture, salt, derivative, mixture, or preparation of the
18 plant, its seeds, or its resin, including marijuana concentrate.

19 "Marijuana" does not include industrial hemp; fiber produced
20 from the stalks, oil, or cake made from the seeds of the plant;
21 sterilized seed of the plant which is incapable of germination;
22 or the weight of any other ingredient combined with marijuana to



1 prepare topical or oral administrations, food, drink, or other
2 product. For purposes of this definition, "industrial hemp"
3 means the plant of the genus cannabis and any part of such
4 plant, whether growing or not, with a delta-9
5 tetrahydrocannabinol concentration that does not exceed three-
6 tenths of one per cent on a dry weight basis.

7 "Marijuana accessories" means any equipment, products, or
8 materials of any kind that are used, intended for use, or
9 designed for use in planting, propagating, cultivating, growing,
10 harvesting, composting, manufacturing, compounding, converting,
11 producing, processing, preparing, testing, analyzing, packaging,
12 repackaging, storing, vaporizing, or containing marijuana, or
13 for ingesting, inhaling, or otherwise introducing marijuana into
14 the human body.

15 "Marijuana cultivation facility" means an entity licensed
16 to cultivate, prepare, and package marijuana and sell marijuana
17 to retail marijuana stores, marijuana product manufacturing
18 facilities, and other marijuana cultivation facilities, but not
19 to consumers.

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



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

6 "Marijuana products" means marijuana concentrate products
7 and products that comprise marijuana and other ingredients
8 intended for use or consumption and include but are not limited
9 to edible products, ointments, and tinctures.

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

12 "Personal use" means an amount of marijuana not exceeding
13 one ounce that is used for private, personal, or recreational
14 purposes by persons age twenty-one years or older. The term
15 personal use includes display, possession, sale, transport,
16 transfer, or processing of marijuana or marijuana products.

17 "Retail marijuana store" means an entity licensed to
18 purchase marijuana from marijuana cultivation facilities,
19 purchase marijuana and marijuana products from marijuana product
20 manufacturing facilities, and sell marijuana and marijuana
21 products to consumers.



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

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

6 (c) The possession, use, display, purchase, transfer, or
7 transport of marijuana, marijuana accessories, or marijuana
8 paraphernalia for personal use shall be immune from criminal
9 prosecution.

10 (d) The possession, growing, processing, or transporting
11 of not more than six marijuana plants, with three or fewer being
12 mature, flowering plants, and possession of the marijuana
13 produced by the plants on the premises where the plants are
14 grown shall not be subject to criminal prosecution; provided
15 that the growing takes place in an enclosed and locked space and
16 is not conducted openly or publicly, and that the plants are not
17 made available for sale.

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

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



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

4 § -3 Lawful operation of marijuana establishments;
5 license required. Notwithstanding any law to the contrary, the
6 following acts are permitted and shall not constitute a criminal
7 offense or be the basis for search, seizure, or forfeiture of
8 assets of a person age twenty-one years or older:

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

12 (2) Manufacturing, possessing, displaying, or transporting
13 marijuana or marijuana products; purchase of marijuana
14 from a marijuana cultivation facility; purchase of
15 marijuana or marijuana products from a marijuana
16 product manufacturing facility; or sale of marijuana
17 or marijuana products to consumers; provided that the
18 person conducting the activities described in this
19 paragraph has obtained a current, valid license to
20 operate a retail marijuana store or is acting in the
21 capacity of an owner, employee, or agent of a licensed
22 retail marijuana store;



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



1 manufacturing facility; provided that the person
2 conducting the activities described in this paragraph
3 has obtained a current, valid license to operate a
4 marijuana product manufacturing facility or is acting
5 in the capacity as an owner, employee, or agent of a
6 licensed marijuana product manufacturing facility;

7 (5) Possessing, cultivating, processing, repackaging,
8 storing, transporting, displaying, transferring or
9 delivering marijuana or marijuana products; provided
10 that the person has obtained a current, valid license
11 to operate a marijuana testing facility or is acting
12 in the capacity as an owner, employee, or agent of a
13 licensed marijuana testing facility;

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

18 § -4 Regulation of marijuana; rules. (a) No later than
19 July 1, 2015, the department shall adopt rules, pursuant to
20 chapter 91, necessary for implementation of this chapter. The
21 rules shall not require such a high investment of risk, money,
22 time, or any other resource or asset that the operation of a



1 marijuana establishment is not worthy of being carried out in
2 practice by a reasonably prudent businessperson. The rules
3 shall include:

4 (1) Procedures for the application, issuance, renewal,
5 suspension, and revocation of a license to operate a
6 marijuana establishment; provided that any license to
7 be issued shall be issued no later than ninety days
8 after receipt of an application;

9 (2) A schedule of application, licensing, and renewal
10 fees; provided that application fees shall not exceed
11 \$5,000, adjusted annually for inflation, unless the
12 department determines a greater fee is necessary to
13 carry out its responsibilities under this section;

14 (3) Qualifications for licensure that are directly and
15 demonstrably related to the operation of a marijuana
16 establishment;

17 (4) Security requirements for the premises of marijuana
18 establishments;

19 (5) Requirements to prevent the sale or diversion of
20 marijuana and marijuana products to persons under the
21 age of twenty-one;



1 (6) Labeling requirements for marijuana and marijuana
2 products sold or distributed by a marijuana
3 establishment;

4 (7) Health and safety regulations and standards for the
5 manufacture of marijuana products and the cultivation
6 of marijuana;

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

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

11 (b) In order to ensure that individual privacy is
12 protected, the department shall not require a consumer to
13 provide a retail marijuana store with personal information other
14 than government-issued identification to determine the
15 consumer's age. A retail marijuana store shall not be required
16 to acquire and record personal information about consumers.

17 (c) If an application for a license under this section is
18 denied, the applicant shall be notified in writing of the
19 specific reason for the denial. The applicant shall be entitled
20 to resubmit the application at any time after denial of the
21 initial application.



1 § -5 **Effect on employers.** This chapter shall not be
2 construed to:

- 3 (1) Require an employer to permit or accommodate the use,
4 consumption, possession, transfer, display, transport,
5 sale, or growing of marijuana in the workplace; or
6 (2) Affect the ability of an employer to have policies
7 restricting the use of marijuana by employees.

8 § -6 **Effect on intoxicated driving laws.** This chapter
9 shall not be construed as a defense, exemption, or immunity from
10 chapter 291E.

11 § -7 **Effect on medical marijuana law.** This chapter
12 shall not be construed to affect medical use of marijuana as
13 provided in chapter 329 and shall not be deemed to expand the
14 medical use of marijuana beyond the uses provided in chapter
15 329.

16 § -8 **Effect on property rights.** This chapter shall not
17 be construed to prohibit a person, employer, school, hospital,
18 detention facility, corporation, or any other entity who
19 occupies, owns, or controls a property from prohibiting or
20 otherwise regulating the possession, consumption, use, display,
21 transfer, distribution, sale, transportation, or growing of
22 marijuana on or in that property.



1 § -9 Taxes. A marijuana establishment shall be subject
2 to payment of income taxes on gross receipts under chapter 235
3 and payment of excise taxes under chapter 237 for each
4 transaction conducted by the marijuana establishment."

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

8 "§712- Legalization of marijuana. The following acts
9 shall be exempt from arrest, prosecution, and criminal
10 culpability under this part:

- 11 (a) Any act permitted under section -2;
- 12 (b) Any act permitted under section -3; and
- 13 (c) An act of any person who is appropriately and
14 currently licensed if the act requires a license under
15 chapter ."

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

19 SECTION 5. New statutory material is underscored.

20



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

2

INTRODUCED BY:

J. Calani Egler

Melanie P...
[Signature]

Paul Puder
[Signature]

[Signature]
[Signature]



S.B. NO. 2733

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.

