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# A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1 PART I

2 SECTION 1. The legislature finds that decriminalizing the  
3 possession of small amounts of marijuana meant for personal use  
4 has the potential to reduce social and economic costs associated  
5 with the criminal justice system.

6 The legislature also finds that societal attitudes toward  
7 marijuana have changed and that public support for the  
8 decriminalization of marijuana possession and personal use is  
9 increasing. For example, voters in the county of Hawaii  
10 approved in 2008 an initiative to make the personal use of  
11 marijuana by adults on private property the county's lowest law  
12 enforcement priority. Four years later, Colorado voters  
13 approved an initiative amending that state's constitution to  
14 allow adults to possess and use small amounts of marijuana.

15 The legislature further finds that Hawaii must adjust its  
16 law enforcement and incarceration priorities to better reflect



1 the changing and more tolerant values of our communities and to  
2 help carefully manage the State's overcrowded prison system.

3 Accordingly, the purpose of this Act is to decriminalize  
4 the intentional or knowing possession of one ounce or less of  
5 marijuana.

6 PART II

7 SECTION 2. Chapter 329, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§329- Possession of marijuana. (a) Intentional or  
11 knowing possession of one ounce or less of marijuana shall  
12 constitute a civil violation. Chapter shall apply for the  
13 adjudication of violations under this section.

14 (b) Violations of this section shall be punishable by a  
15 civil fine as follows:

16 (1) For a first violation, a fine of \$100;

17 (2) For a second violation, a fine of \$250; and

18 (3) For a third or subsequent violation, a fine of \$500.

19 (c) The fine shall be deposited by the director of finance  
20 to the credit of the state general fund."



1 SECTION 3. Chapter 604, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§604- Enforcement of civil violations for marijuana  
5 possession. Jurisdiction is conferred upon the district courts  
6 to try all cases arising from a violation of section 329- and  
7 to impose the penalties prescribed for a violation under  
8 329- . Jurisdiction is in the district court of the circuit  
9 where the alleged violation occurred."

10 PART III

11 SECTION 4. 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 MARIJUANA INFRACTIONS

16 § -1 Definitions. As used in this chapter, unless the  
17 context requires otherwise:

18 "Court" means the district court.

19 "Notice of violation" means a notice of violation of  
20 section 329-



1           §   -2 Notice; form; determination final unless  
2 contested. (a) A notice of violation shall include the summons  
3 for the purposes of this section. Whenever a notice of  
4 violation is issued to a person, the person's signature and  
5 current address shall be noted on the notice. If the person  
6 refuses to sign the notice of violation, the officer shall  
7 record this refusal on the notice and issue the notice to the  
8 person. Individuals to whom a notice of violation is issued  
9 under this section need not be arraigned before the court,  
10 unless required by rule of the supreme court.

11           (b) The form for the notice of violation shall be  
12 prescribed by rules of the district court, which shall be  
13 uniform throughout the State.

14           (c) The notice of violation shall include the following:

15           (1) A statement of the maximum amount for the civil fine  
16               established pursuant to section 329-     , to be paid by  
17               the person;

18           (2) A statement of the options provided in section  
19               -3(b) for answering the notice and the procedures  
20               necessary to exercise the options;



- 1           (3) A statement that the person to whom the notice is  
2           issued must answer, choosing one of the options  
3           specified in section     -3(b), within twenty-one days  
4           of issuance of the notice;
- 5           (4) A statement that failure to answer the notice of  
6           violation within twenty-one days of issuance shall  
7           result in the entry of judgment by default for the  
8           State and may result in the assessment of a late  
9           penalty and that if the person to whom the notice was  
10          issued fails to pay the total amount specified in the  
11          default judgment within an additional thirty days or  
12          to otherwise take action to set aside the default, the  
13          person shall be subject to section 706-647;
- 14          (5) A statement that, at a hearing conducted pursuant to  
15          section     -5 to contest the notice of violation, no  
16          officer shall be present unless the person timely  
17          requests the court to have the officer present, and  
18          that the standard of proof to be applied by the court  
19          is whether a preponderance of the evidence proves that  
20          the specified violation was committed;



1 (6) A space in which the signature of the person to whom  
2 the notice was issued may be affixed; and

3 (7) The date, time, and place at which the person to whom  
4 the notice was issued must appear in court, if the  
5 person is required by the notice to appear in person  
6 at the hearing.

7 **§ -3 Answer required.** (a) A person who receives a  
8 notice of violation shall answer the notice within twenty-one  
9 days of the date of issuance of the notice. There shall be  
10 included with the notice of violation a preaddressed envelope  
11 directed to the clerk of the applicable district court.

12 (b) If the notice of violation does not require an  
13 appearance in person at a hearing as set forth in section  
14 -2(c)(7), in answering a notice of violation, a person shall  
15 have the following options:

16 (1) Admit the commission of the violation in one of the  
17 following ways:

18 (A) By mail or in person, by completing the  
19 appropriate portion of the notice of violation or  
20 preaddressed envelope and submitting it to the  
21 authority specified on the notice together with



1 payment of the total amount stated on the notice  
2 of violation; provided that payment by mail shall  
3 be in the form of a check, money order, or by an  
4 approved credit or debit card; provided further  
5 that payment in person shall be in the form of  
6 United States currency, check, money order, or by  
7 an approved credit or debit card; or

8 (B) Via the Internet or by telephone, by submitting  
9 payment of the total amount stated on the notice  
10 of violation; provided that payment via the  
11 Internet or by telephone shall be by an approved  
12 credit or debit card; or

13 (2) Deny the commission of the violation and request a  
14 hearing to contest the violation by completing the  
15 appropriate portion of the notice of violation or  
16 preaddressed envelope and submitting it, either by  
17 mail or in person, to the authority specified on the  
18 notice. A denial may include assertion of affirmative  
19 defenses, including that the person is duly registered  
20 with the department of health pursuant to section  
21 329-123 and asserts the medical use of marijuana as an



1 affirmative defense pursuant to section 329-125. In  
2 lieu of appearing in person at a hearing, the person  
3 may submit a written statement of grounds on which the  
4 person contests the notice of violation, which shall  
5 be considered by the court as a statement given in  
6 court pursuant to section -5(a).

7 (c) When answering the notice of violation, the person  
8 shall affix the person's signature to the answer and shall state  
9 the address at which the person will accept future mailings from  
10 the court. No other response shall constitute an answer for  
11 purposes of this chapter.

12 **§ -4 Court action after answer or failure to answer.**

13 (a) When an admitting answer is received, the court shall enter  
14 judgment in favor of the State in the total amount specified in  
15 the notice of violation. If the total amount is not submitted  
16 with the answer, the court may take action as provided in  
17 section -6.

18 (b) When a denying answer is received, the court shall  
19 notify the person in writing of the date, time, and place of  
20 hearing to contest the notice of violation. The notice of  
21 hearing shall be mailed to the address stated in the denying





1 answer, or if none is given, to the address stated on the notice  
2 of violation. The notification also shall advise the person  
3 that, if the person fails to appear at the hearing, the court  
4 shall enter judgment by default in favor of the State, as of the  
5 date of the scheduled hearing, that the total amount specified  
6 in the default judgment must be paid within thirty days of entry  
7 of default judgment, and if it is not paid, that the court shall  
8 take action as provided in section -6.

9 (c) If the person fails to answer within twenty-one days  
10 of issuance of the notice of violation, the court shall take  
11 action as provided in subsection (d).

12 (d) Whenever judgment by default in favor of the State is  
13 entered, the court shall mail a notice of entry of default  
14 judgment to the address provided by the person when the notice  
15 of violation was issued. The notice of entry of default  
16 judgment shall advise the person that the total amount specified  
17 in the default judgment shall be paid within thirty days of  
18 entry of default judgment and shall explain the procedure for  
19 setting aside a default judgment. The notice of entry of  
20 default judgment shall also inform the person that if the total



1 amount is not paid within thirty days, the court shall take  
2 action as provided in section -6.

3 Judgment by default for the State entered pursuant to this  
4 section may be set aside pending final disposition of the  
5 violation upon written application of the person and posting of  
6 an appearance bond equal to the amount of the total amount  
7 specified in the default judgment. The application shall show  
8 good cause or excusable neglect for the person's failure to take  
9 action necessary to prevent entry of judgment by default.

10 Upon receipt of the application and required appearance  
11 bond, the court shall take action pursuant to section -6.  
12 Thereafter, the court shall determine whether good cause or  
13 excusable neglect exists for the person's failure to take action  
14 necessary to prevent entry of judgment by default. If so, the  
15 application to set aside default judgment shall be granted, the  
16 default judgment shall be set aside, and the notice of violation  
17 shall be disposed of pursuant to this chapter. If not, the  
18 application to set aside default judgment shall be denied, the  
19 appearance bond shall be forfeited and applied to satisfy  
20 amounts due under the default judgment, and the notice of  
21 violation shall be finally disposed. In either case, the court



1 shall determine the existence of good cause or excusable neglect  
2 and notify the person of its decision on the application in  
3 writing.

4       **§ -5 Hearings.** (a) In proceedings to contest a notice  
5 of violation where the person to whom the notice was issued has  
6 timely requested a hearing and appears at such hearing:

7       (1) In lieu of the personal appearance by the officer who  
8           issued the notice of violation, the court shall  
9           consider the notice of violation and any other written  
10          report made by the officer, if provided to the court  
11          by the officer, together with any oral or written  
12          statement by the person to whom the notice of  
13          violation was issued;

14       (2) The court may compel by subpoena the attendance of the  
15          officer who issued the notice of violation and other  
16          witnesses from whom it may wish to hear;

17       (3) The standard of proof to be applied by the court shall  
18          be whether, by a preponderance of the evidence, the  
19          court finds that the violation was committed; and

20       (4) After due consideration of the evidence and arguments,  
21          if any, the court shall determine whether commission



1 of the violation has been established. Where the  
2 commission of the violation has not been established,  
3 judgment in favor of the defendant, dismissing the  
4 notice of violation or any count therein with  
5 prejudice, shall be entered in the record. Where it  
6 has been established that the violation was committed,  
7 the court shall enter judgment in favor of the State  
8 and shall assess a civil fine pursuant to section  
9 329- . The court also shall inform the person of  
10 the right to request a trial pursuant to section  
11 -8. If the person requests a trial at the time of  
12 the hearing, the court shall provide the person with a  
13 trial date as soon as practicable.

14 (b) If a person for whom a hearing has been scheduled to  
15 contest the notice of violation or to assert affirmative  
16 defenses fails to appear at the hearing, the court shall enter  
17 judgment by default for the State and take action as provided in  
18 section -4(d). If the total amount of the monetary  
19 assessment, fees, surcharges, or costs is not paid within thirty  
20 days of entry of default judgment, the court shall take action  
21 as provided in section -6.

1           **§ -6 Failure to pay fine.** When the person issued a  
2 notice of violation fails to pay the total amount of the fine,  
3 the fine may be collected in the same manner as a judgment in a  
4 civil action. The State may collect the fee or fine, including  
5 costs, interest, and attorney's fees pursuant to section  
6 706-647.

7           **§ -7 Time computation.** In computing any period of time  
8 prescribed or allowed by this chapter, the day of the act,  
9 event, or default from which the period of time begins to run  
10 shall not be included. The last day of the period so computed  
11 shall be included, unless it is a Saturday, Sunday, or legal  
12 holiday in which event the period runs until the end of the next  
13 day that is not a Saturday, Sunday, or legal holiday.  
14 Intermediate Saturdays, Sundays, and legal holidays shall be  
15 included. Whenever an act required to be performed under this  
16 chapter may be accomplished by mail, the act shall be deemed to  
17 have been performed on the date of the postmark on the mailed  
18 article.

19           **§ -8 Trial and concurrent trial.** (a) There shall be no  
20 right to trial unless the defendant contests the notice of  
21 violation pursuant to section -5. If, after proceedings to



1 contest the notice of violation, a determination is made that  
2 the defendant committed the violation, judgment shall enter in  
3 favor of the State. The defendant may request a trial pursuant  
4 to the Hawaii rules of evidence and the rules of the district  
5 court; provided that any request for trial shall be made within  
6 thirty days of entry of judgment. If, after appearing in person  
7 at a hearing to contest the notice of violation, the person  
8 requests a trial at the conclusion of the hearing, the court  
9 shall provide the person with a trial date as soon as  
10 practicable.

11 (b) At the time of trial, the State shall be represented  
12 by a prosecuting attorney of the county in which the violation  
13 occurred. The prosecuting attorney shall orally recite the  
14 charged civil violation in court prior to commencement of the  
15 trial. Proof of the defendant's commission of the violation  
16 shall be by a preponderance of the evidence.

17 (c) If trial on the violation is held prior to trial on  
18 any related criminal offense, the following shall be  
19 inadmissible in the subsequent prosecution or trial of the  
20 related criminal offense:



1           (1) Any written or oral statement made by the defendant in  
2           proceedings conducted pursuant to section     -4(b);  
3           and

4           (2) Any testimony given by the defendant in the violation  
5           trial.

6 The statement or testimony, or both, shall not be deemed a  
7 waiver of the defendant's privilege against self-incrimination  
8 in connection with any related criminal offense.

9           (d) In any concurrent trial, the State shall be  
10 represented by a prosecuting attorney of the county in which the  
11 violation and related crime occurred. Proof of the defendant's  
12 commission of the violation shall be by a preponderance of the  
13 evidence, and proof of the related criminal offense shall be by  
14 proof beyond a reasonable doubt. The concurrent trial shall be  
15 conducted pursuant to the rules of the appropriate court, the  
16 Hawaii rules of evidence, and the Hawaii rules of penal  
17 procedure.

18           **§ -9 Rules.** (a) The supreme court may adopt rules of  
19 procedure for the conduct of all proceedings pursuant to this  
20 chapter.



1 (b) Chapter 626 shall not apply in proceedings conducted  
2 pursuant to this chapter, except for the rules governing  
3 privileged communications and proceedings conducted under  
4 section -8.

5 (c) Notwithstanding section 604-17 to the contrary, while  
6 the court is sitting in any matter pursuant to this chapter, the  
7 court shall not be required to preserve the testimony or  
8 proceedings, except proceedings conducted pursuant to section  
9 -8 and proceedings in which the violation is heard on the  
10 same date and time as any related criminal offense.

11 (d) The prosecuting attorney shall not participate in  
12 violation proceedings conducted pursuant to this chapter, except  
13 proceedings pursuant to section -8 and proceedings in which a  
14 related criminal offense is scheduled for arraignment, hearing,  
15 or concurrent trial.

16 (e) Chapter 91 shall not apply in proceedings before the  
17 court.

18 (f) Chapter 571 and the Hawaii family court rules shall  
19 not apply in any proceedings conducted pursuant to this  
20 chapter."





1 SECTION 5. Section 329-125, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) A qualifying patient or the primary caregiver may  
4 assert the medical use of marijuana as an affirmative defense to  
5 any prosecution, criminal or civil, involving marijuana under  
6 this ~~[+]part[+]~~, section 329- , or chapter 712; provided that  
7 the qualifying patient or the primary caregiver strictly  
8 complied with the requirements of this part."

9 SECTION 6. Section 712-1240, Hawaii Revised Statutes, is  
10 amended by amending the definition of "detrimental drug" to read  
11 as follows:

12 ""Detrimental drug" means any substance or immediate  
13 precursor defined or specified as a "Schedule V substance" by  
14 chapter 329, or any marijuana~~[-]~~; provided that one ounce or  
15 less of marijuana shall not be deemed a detrimental drug for  
16 purposes of sections 712-1247, 712-1248, 712-1249, 712-1251, and  
17 712-1255."

18 PART IV

19 SECTION 7. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun, before its effective date.

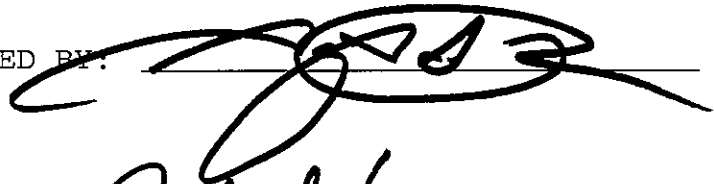


# H.B. NO. 372

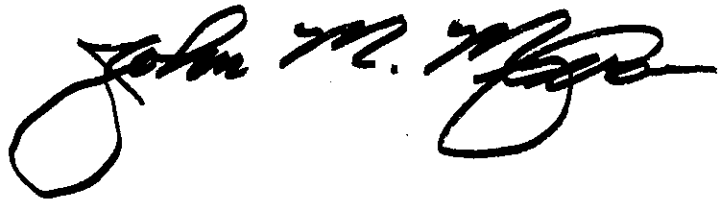
1. SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.  
4

INTRODUCED BY:



Richard Luge



JAN 23 2015



# H.B. NO. 372

**Report Title:**

Marijuana; Civil Penalties for Possession of One Ounce or Less

**Description:**

Establishes a civil violation for possession of one ounce or less of marijuana that is subject to the following fines: \$100 for the first violation; \$250 for the second violation; and \$500 for the third or subsequent violation.

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

