

JAN 18 2013

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# 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 1969 with the federal Uniform  
12 Controlled Substances Act.

13           The Uniform Controlled Substances Act classifies marijuana  
14 and tetrahydrocannabinol as a schedule I controlled substance.  
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, Maine,  
10 Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New  
11 York, North Carolina, Ohio, Oregon, and Washington have  
12 decriminalized marijuana in small amounts. In each of these  
13 states, marijuana users no longer face arrest or jail time for  
14 the possession or use of marijuana in an amount permitted by  
15 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-five 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 which 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, to marijuana product manufacturing  
18 facilities and to other marijuana cultivation facilities, but  
19 not to consumers.

20 "Marijuana establishment" means a marijuana cultivation  
21 facility, marijuana testing facility, marijuana product  
22 manufacturing facility, or a 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 to retail marijuana stores, but not to consumers.

6 "Marijuana products" means marijuana concentrate products  
7 and products that are comprised of marijuana and other  
8 ingredients, intended for use or consumption, and include but  
9 are not limited 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 to arrest, seizure, or forfeiture of assets.

6           (c) The possession, use, display, purchase, transfer, or  
7 transport of marijuana or 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 is not made available  
17 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) Manufacture, possession, or purchase of marijuana  
10 accessories or the sale of 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           delivery or transfer of marijuana to a marijuana  
4           testing facility; selling marijuana to a marijuana  
5           cultivation facility, a marijuana product  
6           manufacturing facility, or a retail marijuana store;  
7           or the purchase of marijuana from a marijuana  
8           cultivation facility; provided that the person  
9           conducting the activities described in this paragraph  
10          has obtained a current, valid license to operate a  
11          marijuana cultivation facility or is acting in the  
12          capacity of an owner, employee, or agent of a licensed  
13          marijuana cultivation facility;
- 14          (4) Packaging, processing, transporting, manufacturing,  
15          displaying, or possessing marijuana or marijuana  
16          products; delivery or transfer of marijuana or  
17          marijuana products to a marijuana testing facility;  
18          selling marijuana or marijuana products to a retail  
19          marijuana store or a marijuana product manufacturing  
20          facility; the purchase of marijuana from a marijuana  
21          cultivation facility; or the purchase of 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, 2014, the department shall adopt rules necessary for  
20 implementation of this chapter. The rules shall not require  
21 such a high investment of risk, money, time, or any other  
22 resource or asset that the operation of a marijuana



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

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

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

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

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

18 (5) Requirements to prevent the sale or diversion of  
19 marijuana and marijuana products to persons under the  
20 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          (c) 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.

16          A retail marijuana store shall not be required to acquire  
17          and record personal information about consumers.

18          (d) If an application for a license under this section is  
19          denied, the applicant shall be notified in writing of the  
20          specific reason for the denial. The applicant shall be entitled  
21          to resubmit the application at any time after denial of the  
22          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 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.

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

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INTRODUCED BY:

J. Filani GSH

Daniel K. ...

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# S.B. NO. 467

**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.*

