

JAN 18 2013

S.B. NO. 738

---

## A BILL FOR AN ACT

RELATING TO MARIJUANA.

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

1           SECTION 1. The legislature finds that in the interest of  
2 the efficient use of law enforcement resources, increasing  
3 respect for laws, and enhancing revenue for public purposes, the  
4 use of marijuana should be legal for persons twenty-one years of  
5 age or older and taxed in a manner similar to alcohol. Such  
6 regulations would redirect law enforcement resources to more  
7 serious threats to public safety. They would also redirect  
8 income from the black market to legitimate businesses and to new  
9 employers who will furnish tax revenue to the State.

10           The legislature finds that in the interest of health and  
11 public safety, marijuana should be regulated in a manner similar  
12 to alcohol such that:

- 13           (1) Individuals will have to show proof of age before  
14           purchasing marijuana;
- 15           (2) Selling, distributing, or transferring marijuana to  
16           minors and other individuals under the age of twenty-  
17           one shall remain illegal under state law;



- 1 (3) Driving under the influence of marijuana shall remain
- 2 illegal under state law;
- 3 (4) Taxpaying business people, not criminal actors, will
- 4 conduct sales of marijuana; and
- 5 (5) Marijuana will be labeled and subject to additional
- 6 regulations to ensure that consumers are informed and
- 7 protected.

8 SECTION 2. The Hawaii Revised Statutes is amended by  
 9 adding a new chapter to be appropriately designated and to read  
 10 as follows:

11 **"CHAPTER**  
 12 **MARIJUANA**

13 § -1 **Definitions.** As used in this chapter:

14 "Consumer" means a person twenty-one years of age or older  
 15 who purchases marijuana or marijuana products for personal use  
 16 from persons twenty-one years or age or older, but not for  
 17 resale to others.

18 "Department" means the department of taxation.

19 "Marijuana" includes "marijuana", as defined in section  
 20 329-1, and "marijuana concentrate", as defined in 712-1240.

21 "Marijuana accessories" means any equipment, products, or  
 22 materials of any kind which are used, intended for use, or

1 designed for use in planting, propagating, cultivating, growing,  
2 harvesting, composting, manufacturing, compounding, converting,  
3 producing, processing, preparing, testing, analyzing, packaging,  
4 repackaging, storing, containing, or vaporizing marijuana or for  
5 ingesting, inhaling, or otherwise introducing marijuana into the  
6 human body.

7 "Marijuana cultivation facility" means an entity licensed  
8 to cultivate, prepare, package, and sell marijuana to retail  
9 marijuana stores, to marijuana product manufacturing facilities,  
10 and to other marijuana cultivation facilities, but not to  
11 consumers.

12 "Marijuana establishment" means a marijuana cultivation  
13 facility, a marijuana testing facility, a marijuana product  
14 manufacturing facility, or a retail marijuana store.

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

20 "Marijuana products" means concentrated marijuana products  
21 and marijuana products that comprise marijuana and other



1 ingredients and are intended for use or consumption, including  
2 but not limited to edible products, ointments, and tinctures.

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

5 "Retail marijuana store" means an entity licensed to  
6 purchase marijuana from marijuana cultivation facilities,  
7 purchase marijuana and marijuana products from marijuana product  
8 manufacturing facilities, and sell marijuana and marijuana  
9 products to consumers.

10 "Unreasonably impracticable" means that the measures  
11 necessary to comply with regulations require such a high  
12 investment of risk, money, time, or any other resource or asset  
13 that the operation of a marijuana establishment is not worthy of  
14 being carried out in practice by a reasonably prudent  
15 businessperson.

16 § -2 **Personal use of marijuana.** Notwithstanding any  
17 state law to the contrary, the following acts shall neither be a  
18 criminal offense under Hawaii law nor a basis for seizure or  
19 forfeiture of assets under Hawaii law for persons twenty-one  
20 years of age or older:



- 1 (1) Possessing, using, displaying, purchasing, or  
2 transporting marijuana accessories or one ounce or  
3 less of marijuana;
- 4 (2) Possessing, growing, processing, or transporting up to  
5 five marijuana plants and possession of the marijuana  
6 produced by the plants on the premises where the  
7 plants were grown; provided that the plants are grown  
8 in a secured space, the plants are not grown openly or  
9 publicly, and are not made available for sale;
- 10 (3) Transfer of one ounce or less of marijuana without  
11 remuneration to a person who is twenty-one years of  
12 age or older;
- 13 (4) Consumption of marijuana; provided that nothing in  
14 this section shall permit consumption that is  
15 conducted openly and publicly or in a manner that  
16 endangers others; and
- 17 (5) Assisting another person who is twenty-one years of  
18 age or older in any of the acts described in  
19 paragraphs (1) through (4).

20 § -3 Lawful operation of marijuana-related facilities.

21 Notwithstanding any state law to the contrary, the following  
22 acts shall neither be a criminal offense under Hawaii law nor a



1 basis for seizure or forfeiture of assets under Hawaii law for  
2 persons twenty-one years of age or older:

- 3 (1) Manufacture, sale, purchase, or possession of  
4 marijuana accessories;
- 5 (2) Possessing, displaying, or transporting marijuana or  
6 marijuana products; purchase of marijuana from a  
7 marijuana cultivation facility; purchase of marijuana  
8 or marijuana products from a marijuana product  
9 manufacturing facility; or sale of marijuana or  
10 marijuana products to consumers if the person  
11 conducting the activities described in this paragraph  
12 holds a valid license to operate a retail marijuana  
13 store or is acting in the person's capacity as an  
14 owner, employee, or agent of a licensed retail  
15 marijuana store;
- 16 (3) Cultivating, harvesting, processing, packaging,  
17 transporting, displaying, or possessing marijuana;  
18 delivery or transfer of marijuana to a marijuana  
19 testing facility; selling marijuana to a marijuana  
20 cultivation facility, a marijuana product  
21 manufacturing facility, or a retail marijuana store;  
22 or the purchase of marijuana from a marijuana



1 cultivation facility, if the person conducting the  
2 activities described in this paragraph holds a valid  
3 license to operate a marijuana cultivation facility or  
4 is acting in the person's capacity as an owner,  
5 employee, or agent of a licensed marijuana cultivation  
6 facility;

- 7 (4) Packaging, processing, transporting, manufacturing,  
8 displaying, or possessing marijuana or marijuana  
9 products; delivery or transfer of marijuana or  
10 marijuana products to a marijuana testing facility;  
11 selling marijuana or marijuana products to a retail  
12 marijuana store or a marijuana product manufacturing  
13 facility; purchase of marijuana from a marijuana  
14 cultivation facility; or purchase of marijuana or  
15 marijuana products from a marijuana product  
16 manufacturing facility, if the person conducting the  
17 activities described in this paragraph holds a valid  
18 license to operate a marijuana product manufacturing  
19 facility or is acting in the person's capacity as an  
20 owner, employee, or agent of a licensed marijuana  
21 product manufacturing facility;



1 (5) Possessing, cultivating, processing, repackaging,  
2 storing, transporting, displaying, transferring, or  
3 delivering marijuana or marijuana products if the  
4 person holds a valid license to operate a marijuana  
5 testing facility or is acting in the person's capacity  
6 as owner, employee, or agent of a licensed marijuana  
7 testing facility; and

8 (6) Leasing or otherwise allowing the use of property  
9 owned, occupied, or controlled by any person,  
10 corporation, or other entity for any of the activities  
11 conducted in accordance with paragraphs (1) through  
12 (5).

13 § -4 Regulation of marijuana. (a) Not later than  
14 October 29, 2013, the department shall adopt rules pursuant to  
15 chapter 91 necessary for implementation of this chapter. The  
16 rules shall not prohibit the operation of marijuana  
17 establishments either expressly or by making operations  
18 unreasonably impracticable. The rules shall include:

19 (1) Procedures for the issuance, renewal, suspension, and  
20 revocation of a license to operate a marijuana  
21 establishment;





- 1 (2) A schedule of application, licensing, and renewal
- 2 fees;
- 3 (3) Qualifications for a license that are directly and
- 4 demonstrably related to the operation of a marijuana
- 5 establishment;
- 6 (4) Security requirements for marijuana establishments;
- 7 (5) Requirements to prevent the sale or diversion of
- 8 marijuana and marijuana products to persons under the
- 9 age of twenty-one;
- 10 (6) Labeling requirements for marijuana and marijuana
- 11 products sold or distributed by a marijuana
- 12 establishment;
- 13 (7) Health and safety regulations and standards for the
- 14 manufacture of marijuana products and the cultivation
- 15 of marijuana;
- 16 (8) Restrictions on the advertising and display of
- 17 marijuana and marijuana products; and
- 18 (9) Civil penalties not to exceed \$100 per violation for
- 19 any failure to comply with rules made pursuant to this
- 20 section.
- 21 (b) In order to ensure that individual privacy is
- 22 protected, notwithstanding subsection (a), the department shall



1 not require a consumer to provide a retail marijuana store with  
2 personal information other than government-issued identification  
3 to determine the consumer's age. A retail marijuana store shall  
4 not be required to acquire and record personal information about  
5 consumers other than information typically acquired in a  
6 financial transaction conducted at a retail liquor store.

7 (c) There shall be an excise tax at the rate of fifteen  
8 per cent to be levied upon marijuana sold or otherwise  
9 transferred by a marijuana cultivation facility to a marijuana  
10 product manufacturing facility or to a retail marijuana store.

11 (d) The department shall establish rules pursuant to  
12 chapter 91 for the collection of all taxes levied.

13 (e) Each application for a license to operate a marijuana  
14 establishment shall be submitted to the department. The  
15 department shall:

16 (1) Begin accepting and processing applications by July 1,  
17 2014;

18 (2) Issue a license to the applicant within ninety days of  
19 receipt of an application unless the department finds  
20 the applicant is not in compliance with rules adopted  
21 pursuant to subsection (a); and



1           (3) Upon denial of an application, notify the applicant in  
2           writing of the reason or reasons for its denial.

3 No license issued by the department pursuant to this section  
4 shall be valid for more than one year.

5           § -5 **Effect on other laws.** (a) Nothing in this chapter  
6 shall require an employer to permit or accommodate the use,  
7 consumption, possession, transfer, display, transportation,  
8 sale, or growing of marijuana in the workplace or to affect any  
9 employer policy restricting the use of marijuana by employees.

10           (b) Nothing in this chapter is intended to allow driving  
11 under the influence of marijuana or driving while impaired by  
12 marijuana or to supersede statutory laws related to driving  
13 under the influence of marijuana or driving while impaired by  
14 marijuana, nor shall this chapter prevent the State from  
15 enacting and imposing criminal penalties for driving under the  
16 influence of or while impaired by marijuana.

17           (c) Nothing in this chapter shall be construed to permit  
18 the transfer of marijuana, with or without remuneration, to a  
19 person under the age of twenty-one or to allow a person under  
20 the age of twenty-one to purchase, possess, use, transport,  
21 grow, or consume marijuana.

1 (d) Nothing in this chapter shall prohibit a person,  
2 employer, school, hospital, detention facility, corporation, or  
3 any other entity who occupies, owns, or controls a property from  
4 prohibiting or otherwise regulating the possession, consumption,  
5 use, display, transfer, distribution, sale, transportation, or  
6 growing of marijuana on or in that property.

7 § -6 **Medical marijuana provisions unaffected.** Nothing  
8 in this chapter shall limit any privileges or rights of a  
9 medical marijuana qualifying patient, primary caregiver, or  
10 registered entity as provided in chapter 329, part IX."

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

14 "§712- Marijuana. The following acts shall be exempt  
15 from arrest, prosecution, and criminal culpability under this  
16 part:

- 17 (a) Any act permitted under section -2; and
- 18 (b) Any act permitted under section -3."

19 SECTION 4. 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.



1 SECTION 5. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 6. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.

9  
INTRODUCED BY: *David L. ...*  
*Michelle Kidani*

# S.B. NO. 738

**Report Title:**

Marijuana; Legalization

**Description:**

Decriminalizes under state law the growing, processing, possession, transfer, and personal use of marijuana in a specified quantity to persons at least twenty-one years of age. 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.*

