

JAN 18 2019

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. By the mid-1930s
5 cannabis was regulated as a drug in every state, including
6 thirty-five states that adopted the Uniform State Narcotic Drug
7 Act which was subsequently replaced in 1970 with the federal
8 Uniform Controlled Substances Act, which classifies marijuana
9 and tetrahydrocannabinol as schedule I controlled substances.

10 Notwithstanding the prospect of federal prosecution,
11 several states, including Hawaii, have enacted medical marijuana
12 laws. Chapter 329, part IX, Hawaii Revised Statutes, was
13 enacted to create a medical use of marijuana exemption from
14 criminal sanctions. Other jurisdictions, such as Alaska,
15 Arizona, Arkansas, California, Colorado, Connecticut, District
16 of Columbia, Delaware, Illinois, Maine, Maryland, Massachusetts,
17 Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey,



1 New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania,
2 Rhode Island, Vermont, and Washington, also allow the use of
3 marijuana for medicinal purposes. Furthermore, chapter 329D,
4 Hawaii Revised Statutes, was enacted to establish medical
5 marijuana dispensaries that were authorized to operate beginning
6 in July 2016. As Hawaii expands its medical marijuana program
7 through the use of highly regulated and monitored dispensaries,
8 more patients are anticipated to consider medical marijuana as a
9 viable treatment, knowing that the medicine will be regulated
10 and tested.

11 In addition to medicinal marijuana laws, some states have
12 legalized or decriminalized marijuana. Most places that have
13 decriminalized cannabis have civil fines, confiscation, drug
14 education, or drug treatment in place of incarceration or
15 criminal charges for possession of small amounts of cannabis, or
16 have made various cannabis offenses the lowest priority for law
17 enforcement. The states of Alaska, California, Colorado,
18 Connecticut, Delaware, District of Columbia, Illinois, Maine,
19 Maryland, Massachusetts, Minnesota, Mississippi, Missouri,
20 Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio,
21 Oregon, Rhode Island, Vermont, and Washington have



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1 decriminalized marijuana in small amounts. In each of these
2 states, marijuana users no longer face arrest or jail time for
3 the possession or use of marijuana in an amount permitted by
4 statute.

5 The legislature further finds that the legalization of
6 marijuana for personal or recreational use is a natural,
7 logical, and reasonable outgrowth of the current science of
8 marijuana and attitude toward marijuana. In 2012, voters in
9 Colorado voted to amend the state's constitution (Amendment 64)
10 to legalize and regulate the production, possession, and
11 distribution of marijuana for persons age twenty-one and older.
12 Also in 2012, voters in Washington approved a proposition to
13 legalize and regulate the production, possession, and
14 distribution of cannabis for persons age twenty-one and older.
15 Colorado is the first state to remove the prohibition on
16 commercial production of marijuana for general use. Colorado
17 realized state tax revenue of approximately \$18,900,000 during
18 the first half of 2014, and this revenue is expected to increase
19 as sales of retail marijuana increase. Following Colorado and
20 Washington's lead, Oregon and Alaska passed legislation to also
21 legalize and regulate the production, possession, and



1 distribution of cannabis for persons age twenty-one and older.
2 Several other states have followed suit in making recreational
3 marijuana legal.

4 The legislature further finds that marijuana cultivation
5 and sales hold potential for economic development, increased tax
6 revenues, and reduction in crime.

7 The purpose of this Act is to:

8 (1) Decriminalize and regulate small amounts of marijuana
9 for personal use;

10 (2) Establish a licensing scheme for the cultivation,
11 sale, and use of small amounts of marijuana for
12 personal use;

13 (3) Tax marijuana sales in the same manner as state excise
14 taxes; and

15 (4) Subject income derived from marijuana sales to state
16 income taxes.

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20 "CHAPTER

21 LEGALIZATION OF MARIJUANA FOR PERSONAL USE



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

2 "Department" means the department of taxation.

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

5 "Marijuana" means all parts of the plant of the genus
6 cannabis, whether growing or not; the seeds thereof; the resin
7 extracted from any part of the plant; and every compound,
8 manufacture, salt, derivative, mixture, or preparation of the
9 plant, its seeds, or its resin, including marijuana concentrate.

10 "Marijuana" does not include industrial hemp; fiber produced
11 from the stalks, oil, or cake made from the seeds of the plant;
12 sterilized seed of the plant which is incapable of germination;
13 or the weight of any other ingredient combined with marijuana to
14 prepare topical or oral administrations, food, drink, or other
15 product. For purposes of this definition, "industrial hemp"
16 means the plant of the genus cannabis, and any part of such
17 plant, whether growing or not, with a delta-9
18 tetrahydrocannabinol concentration that does not exceed 0.3 per
19 cent on a dry weight basis.

20 "Marijuana accessories" means any equipment, products, or
21 materials of any kind that 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, vaporizing, or containing marijuana, or
5 for ingesting, inhaling, or otherwise introducing marijuana into
6 the human body.

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

12 "Marijuana establishment" means a marijuana cultivation
13 facility, marijuana testing facility, marijuana product
14 manufacturing facility, or 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 retail marijuana stores, but not to consumers.

20 "Marijuana products" means marijuana concentrate products
21 and products that comprise marijuana and other ingredients



1 intended for use or consumption and include but are not limited
2 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 "Personal use" means an amount of marijuana not exceeding
6 one ounce that is used for private, personal, or recreational
7 purposes by persons age twenty-one years or older. The term
8 personal use includes display, possession, sale, transport,
9 transfer, or processing of marijuana or marijuana products.

10 "Retail marijuana store" means an entity licensed to
11 purchase marijuana from marijuana cultivation facilities,
12 purchase marijuana and marijuana products from marijuana product
13 manufacturing facilities, and sell marijuana and marijuana
14 products to consumers.

15 § -2 Personal use of marijuana. (a) Notwithstanding
16 any law to the contrary, the personal use of marijuana is
17 permitted.

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

20 (c) The possession, use, display, purchase, transfer, or
21 transport of marijuana, marijuana accessories, or marijuana



1 paraphernalia for personal use shall be immune from criminal
2 prosecution.

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

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

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

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

18 § -3 Lawful operation of marijuana establishments;
19 license required. Notwithstanding any law to the contrary, the
20 following acts are permitted and shall not constitute a criminal



1 offense or be the basis for search, seizure, or forfeiture of
2 assets of a person age twenty-one years or older:

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

6 (2) Possessing, displaying, or transporting marijuana or
7 marijuana products; purchasing marijuana from a
8 marijuana cultivation facility; purchasing marijuana
9 or marijuana products from a marijuana product
10 manufacturing facility; or selling marijuana or
11 marijuana products to consumers; provided that the
12 person conducting the activities described in this
13 paragraph has obtained a current, valid license to
14 operate a retail marijuana store or is acting in the
15 capacity of an owner, employee, or agent of a licensed
16 retail marijuana store;

17 (3) Cultivating, harvesting, processing, packaging,
18 transporting, displaying, or possessing marijuana;
19 delivering or transferring marijuana to a marijuana
20 testing facility; selling marijuana to a marijuana
21 cultivation facility, marijuana product manufacturing



1 facility, or retail marijuana store; or purchasing
2 marijuana from a marijuana cultivation facility;
3 provided that the person conducting the activities
4 described in this paragraph has obtained a current,
5 valid license to operate a marijuana cultivation
6 facility or is acting in the capacity of an owner,
7 employee, or agent of a licensed marijuana cultivation
8 facility;

9 (4) Packaging, processing, transporting, manufacturing,
10 displaying, or possessing marijuana or marijuana
11 products; delivering or transferring marijuana or
12 marijuana products to a marijuana testing facility;
13 selling marijuana or marijuana products to a retail
14 marijuana store or marijuana product manufacturing
15 facility; purchasing marijuana from a marijuana
16 cultivation facility; or purchasing marijuana or
17 marijuana products from a marijuana product
18 manufacturing facility; provided that the person
19 conducting the activities described in this paragraph
20 has obtained a current, valid license to operate a
21 marijuana product manufacturing facility or is acting



1 in the capacity as an owner, employee, or agent of a
2 licensed marijuana product manufacturing facility;

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

10 (6) Leasing or otherwise allowing the use of property
11 owned, occupied, or controlled by any person,
12 corporation, or other entity for any of the activities
13 conducted lawfully in accordance with this section.

14 § -4 Regulation of marijuana; rules. (a) No later than
15 July 1, 2020, the department shall adopt rules, pursuant to
16 chapter 91, necessary for implementation of this chapter. The
17 rules shall not require such a high investment of risk, money,
18 time, or any other resource or asset that the operation of a
19 marijuana establishment is not worthy of being carried out in
20 practice by a reasonably prudent business person. The rules
21 shall include:



- 1 (1) Procedures for the application, issuance, renewal,
2 suspension, and revocation of a license to operate a
3 marijuana establishment; provided that any license to
4 be issued shall be issued no later than ninety days
5 after receipt of an application;
- 6 (2) A schedule of application, licensing, and renewal
7 fees; provided that application fees shall not exceed
8 \$5,000, adjusted annually for inflation, unless the
9 department determines a greater fee is necessary to
10 carry out its responsibilities under this section;
- 11 (3) Qualifications for licensure that are directly and
12 demonstrably related to the operation of a marijuana
13 establishment;
- 14 (4) Security requirements for the premises of marijuana
15 establishments;
- 16 (5) Requirements to prevent the sale or diversion of
17 marijuana and marijuana products to persons under the
18 age of twenty-one;
- 19 (6) Labeling requirements for marijuana and marijuana
20 products sold or distributed by a marijuana
21 establishment;



1 (7) Health and safety regulations and standards for the
2 manufacture of marijuana products and the cultivation
3 of marijuana;

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

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

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

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

19 § -5 Effect on employers. This chapter shall not be
20 construed to:



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

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

9 § -7 **Effect on medical cannabis law.** This chapter shall
10 not be construed to affect medical use of cannabis as provided
11 in chapter 329 and shall not be deemed to expand the medical use
12 of cannabis beyond the uses provided in chapter 329.

13 § -8 **Effect on medical cannabis dispensary law.** This
14 chapter shall not be construed to affect the dispensing of
15 medical cannabis as provided in chapter 329D and shall not be
16 deemed to expand the dispensing of medical cannabis beyond the
17 uses provided in chapter 329D.

18 § -9 **Effect on property rights.** This chapter shall not
19 be construed to prohibit a person, employer, school, hospital,
20 detention facility, corporation, or any other entity who
21 occupies, owns, or controls a property from prohibiting or



1 otherwise regulating the possession, consumption, use, display,
2 transfer, distribution, sale, transportation, or growing of
3 marijuana on or in that property.

4 § -10 Taxes. A marijuana establishment shall be subject
5 to payment of income taxes on gross receipts under chapter 235
6 and payment of excise taxes under chapter 237 for each
7 transaction conducted by the marijuana establishment."

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

11 "§712- Legalization of marijuana. The following acts
12 shall be exempt from arrest, prosecution, and criminal
13 culpability under this part:

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

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. New statutory material is underscored.

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

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S.B. NO. 686

Report Title:

Marijuana; Legalization

Description:

Legalizes the personal use, possession, and sale 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.

