

ACT 384

S.B. NO. 1154

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§712- Commercial promotion of marijuana in the first degree. (1) A person commits the offense of commercial promotion of marijuana in the first degree if the person knowingly:

- (a) Possesses marijuana having an aggregate weight of twenty-five pounds or more; or
- (b) Distributes marijuana having an aggregate weight of five pounds or more; or
- (c) Possesses, cultivates, or has under the person’s control one hundred or more marijuana plants; or
- (d) Cultivates on land owned by another person, including land owned by the government or other legal entity, twenty-five or more marijuana plants, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
- (e) Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death, serious bodily injury, substantial bodily injury, or other bodily injury, as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.

(2) Commercial promotion of marijuana in the first degree is a class A felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of twenty-five pounds as stated in subsection (1)(a), or in excess of an aggregate weight of five pounds as stated in subsection (1)(b), or in excess of one hundred marijuana plants as stated in subsection (1)(c), or in excess of twenty-five marijuana plants as stated in subsection (1)(d) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or restrict the application of Rule 901 of the Hawaii Rules of Evidence.”

SECTION 2. Section 712-1247, Hawaii Revised Statutes, is amended to read as follows:

“§712-1247 Promoting a detrimental drug in the first degree. (1) A person commits the offense of promoting a detrimental drug in the first degree if [he] the person knowingly:

- (a) Possesses four hundred or more capsules or tablets containing one or more of the Schedule V substances; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more,¹ containing one or more of the Schedule V substances; or
- (c) Distributes fifty or more capsules or tablets containing one or more of the Schedule V substances; or
- (d) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances; or
- (e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of [two and two-tenths pounds] one pound or more, containing any marijuana; or
- (f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of [two ounces] one ounce or more, containing any marijuana; or
- (g) Possesses, cultivates, or has under the person’s control twenty-five or more marijuana plants; or¹
- (h) [Distributes] Sells or barters any marijuana or any Schedule V substance in any amount, [to a minor.]

(2) Promoting a detrimental drug in the first degree is a class C felony.

(3) Any marijuana seized as evidence of a violation of this section in excess of [ten pounds] one pound may be destroyed after it has been photographed and the weight thereof recorded. The remainder of the marijuana shall remain in the custody of the police department until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself[. Provided, however,]; provided that nothing in this subsection shall be construed to limit or to restrict the application of Rule 90l of the Hawaii Rules of Evidence.”

SECTION 3. Section 712-1248, Hawaii Revised Statutes, is amended to read as follows:

“§712-1248 Promoting a detrimental drug in the second degree. (1) A person commits the offense of promoting a detrimental drug in the second degree if [he] the person knowingly:

- (a) Possesses fifty or more capsules or tablets containing one or more of the Schedule V substances; or
 - (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances; or
 - (c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any marijuana; or
 - (d) [Sells] Distributes any marijuana or [distributes] any Schedule V substance in any amount.
- (2) Promoting a detrimental drug in the second degree is a misdemeanor.”

SECTION 4. Section 712-1249.5, Hawaii Revised Statutes, is amended to read as follows:

“§712-1249.5 Commercial promotion of marijuana[.] in the second degree. (1) A person commits the offense of commercial promotion of marijuana in the second degree if the person knowingly:

- (a) Possesses marijuana having an aggregate weight of [forty-four] two pounds or more; or
- (b) Distributes marijuana having an aggregate weight of [two and two-tenths pounds] one pound or more; or
- (c) Possesses, cultivates, or has under the person’s control [one hundred] fifty or more marijuana plants; or
- (d) Cultivate, on land owned by another person, including land owned by the government or other legal entity, [twenty-five or more] any marijuana plant[s], unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
- (e) [Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death or serious bodily injury, substantial bodily injury, or other bodily injury as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.] Sells or barter[s] any marijuana or any Schedule V substance in any amount to a minor.

(2) Commercial promotion of marijuana in the second degree¹ is a class B felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of two pounds as stated in subsection (1)(a), or in excess of an aggregate weight of one pound as stated in subsection (1)(b), or in excess of twenty-five marijuana plants as stated in subsection (1)(c) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or to restrict the application of Rule 901 of the Hawaii Rules of Evidence.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved June 27, 1989.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.