

JAN 19 2018

A BILL FOR AN ACT

RELATING TO CANNABIS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 19 to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **CANNABIS**

6 § -1 **Definitions.** As used in this chapter:

7 "Cannabis" shall have the same meaning as "marijuana" and
8 "marijuana concentrate" as provided in section 712-1240.

9 "Cannabis accessories" means any equipment, products, or
10 materials of any kind which are used, intended for use, or
11 designed for use in planting, propagating, cultivating, growing,
12 harvesting, composting, manufacturing, compounding, converting,
13 producing, processing, preparing, testing, analyzing, packaging,
14 repackaging, storing, containing, or vaporizing cannabis or for
15 ingesting, inhaling, or otherwise introducing cannabis into the
16 human body.



1 "Cannabis cultivation facility" means an entity licensed to
2 cultivate, prepare, package, and sell cannabis to retail
3 cannabis stores, to cannabis product manufacturing facilities,
4 and to other cannabis cultivation facilities, but not to
5 consumers.

6 "Cannabis establishment" means a cannabis cultivation
7 facility, a cannabis testing facility, a cannabis product
8 manufacturing facility, or a retail cannabis store.

9 "Cannabis product manufacturing facility" means an entity
10 licensed to purchase cannabis; manufacture, prepare, and package
11 cannabis products; and sell cannabis and cannabis products to
12 other cannabis product manufacturing facilities and to retail
13 cannabis stores, but not to consumers.

14 "Cannabis products" means concentrated cannabis products
15 and cannabis products that are composed of cannabis and other
16 ingredients and are intended for use or consumption, including
17 but not limited to edible products, ointments, and tinctures.

18 "Cannabis testing facility" means an entity licensed to
19 analyze and certify the safety and potency of cannabis.

20 "Consumer" means a person twenty-one years of age or older
21 who purchases cannabis or cannabis products for personal use



1 from persons twenty-one years or age or older, but not for
2 resale to others.

3 "Department" means the department of health.

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

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

15 § -2 **Personal use of cannabis.** Notwithstanding any
16 other state law to the contrary, the following acts shall
17 neither be a criminal offense under Hawaii law nor a basis for
18 seizure or forfeiture of assets under Hawaii law for persons
19 twenty-one years of age or older:



(1) Possessing, using, displaying, purchasing, or transporting cannabis accessories or one ounce or less of cannabis;

(2) Possessing, growing, processing, or transporting up to five cannabis plants and possession of the cannabis produced by the plants on the premises where the plants were grown; provided that the plants are grown in a secured space, the plants are not grown openly or publicly, and are not made available for sale;

(3) Transfer of one ounce or less of cannabis without remuneration to a person who is twenty-one years of age or older;

(4) Consumption of cannabis; provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others; and

(5) Assisting another person who is twenty-one years of age or older in any of the acts described in paragraphs (1) through (4).

§ -3 Lawful operation of cannabis-related facilities.

Notwithstanding any other state law to the contrary, the



1 following acts shall neither be a criminal offense under Hawaii
2 law nor a basis for seizure or forfeiture of assets under Hawaii
3 law for persons twenty-one years of age or older:

4 (1) Manufacture, sale, purchase, or possession of cannabis
5 accessories;

6 (2) Possessing, displaying, or transporting cannabis or
7 cannabis products; purchase of cannabis from a
8 cannabis cultivation facility; purchase of cannabis or
9 cannabis products from a cannabis product
10 manufacturing facility; or sale of cannabis or
11 cannabis products to consumers if the person
12 conducting the activities described in this paragraph
13 holds a valid license to operate a retail cannabis
14 store or is acting in the person's capacity as an
15 owner, employee, or agent of a licensed retail
16 cannabis store;

17 (3) Cultivating, harvesting, processing, packaging,
18 transporting, displaying, or possessing cannabis;
19 delivery or transfer of cannabis to a cannabis testing
20 facility; selling cannabis to a cannabis cultivation
21 facility, a cannabis product manufacturing facility,



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

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



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

(6) Leasing or otherwise allowing the use of property owned, occupied, or controlled by any person, corporation, or other entity for any of the activities described in paragraphs (1) through (5).

§ -4 Regulation of cannabis. (a) Not later than one hundred twenty days after the effective date of this Act, the department shall adopt rules pursuant to chapter 91 necessary to implement this chapter. The rules shall not prohibit the operation of cannabis establishments either expressly or by making operations unreasonably impracticable. The rules shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a cannabis establishment;



- (2) A schedule of application, licensing, and renewal fees;
- (3) Qualifications for a license that are directly and demonstrably related to the operation of a cannabis establishment;
- (4) Security requirements for cannabis establishments;
- (5) Requirements to prevent the sale or diversion of cannabis and cannabis products to persons under the age of twenty-one;
- (6) Labeling requirements for cannabis and cannabis products sold or distributed by a cannabis establishment;
- (7) Health and safety regulations and standards for the manufacture of cannabis products and the cultivation of cannabis;
- (8) Restrictions on the advertising and display of cannabis and cannabis products; and
- (9) Civil penalties not to exceed \$100 per violation for any failure to comply with rules made pursuant to this section.



1 (b) To ensure that individual privacy is protected,
2 notwithstanding subsection (a), the department shall not require
3 a consumer to provide a retail cannabis store with personal
4 information other than government-issued identification to
5 determine the consumer's age. A retail cannabis store shall not
6 be required to acquire and record personal information about
7 consumers other than information typically acquired in a
8 financial transaction conducted at a retail liquor store.

9 (c) Each application for a license to operate a cannabis
10 establishment shall be submitted to the department. The
11 department shall:

12 (1) Begin accepting and processing applications by July 1,
13 2019;

14 (2) Issue a license to the applicant within ninety days of
15 receipt of an application unless the department finds
16 the applicant is not in compliance with rules adopted
17 pursuant to subsection (a); and

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

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



§ -5 Employers; driving; minors; control of property.

Nothing in this chapter shall be construed to:

(1) Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the workplace or to affect the ability of employers to have policies restricting the use of cannabis by employees;

(2) Allow driving under the influence of cannabis or driving while impaired by cannabis or to supersede any law relating to driving under the influence of cannabis or driving while impaired by cannabis, nor shall this chapter preclude the State from enacting laws and imposing penalties for driving under the influence of or while impaired by cannabis;

(3) Permit the transfer of cannabis, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume cannabis; or



(4) Prohibit a person, employer, school, hospital, detention facility, corporation, or any other entity who occupies, owns, or controls property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of cannabis on or in that property.

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

§ -7 **General excise tax; drug treatment special fund.** The tax imposed by chapter 237 shall apply to the gross proceeds of sale of cannabis products pursuant to this chapter. Fifty per cent of the general excise tax revenues collected shall be deposited in the drug treatment special fund established pursuant to section 321- ."

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



1 "§237- Exemption of sales of cannabis and manufactured
2 cannabis products. This chapter shall not apply to amounts
3 received by medical cannabis dispensaries licensed under chapter
4 329D for sales of cannabis or manufactured cannabis products
5 intended for medical use to qualifying patients or primary
6 caregivers registered with the department of health under
7 section 329-123."

8 SECTION 3. Chapter 321, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§321- Drug treatment special fund. (a) There is
12 created in the treasury of the State the drug treatment special
13 fund, into which shall be deposited tax revenues designated in
14 section -7.

15 (b) Moneys in the drug treatment special fund shall be
16 used solely for the support of drug treatment programs in the
17 State."

18 SECTION 4. Chapter 712, Hawaii Revised Statutes, is
19 amended by adding a new section to part IV to be appropriately
20 designated and to read as follows:



1 "§712- Cannabis. The following acts shall be exempt
2 from arrest, prosecution, and criminal culpability under this
3 part:

4 (1) Any act permitted under section -2; and

5 (2) Any act permitted under section -3."

6 SECTION 5. Section 46-4, Hawaii Revised Statutes, is
7 amended by amending subsection (f) to read as follows:

8 "(f) Neither this section nor any other law, county
9 ordinance, or rule shall prohibit the use of land for medical
10 cannabis production centers or medical cannabis dispensaries
11 established and licensed pursuant to chapter 329D[+] or cannabis
12 establishments established and licensed pursuant to chapter
13 ; provided that the land is otherwise zoned for
14 agriculture, manufacturing, or retail purposes."

15 SECTION 6. Section 235-2.4, Hawaii Revised Statutes, is
16 amended by amending subsection (r) to read as follows:

17 "(r) Section 280E (with respect to expenditures in
18 connection with the illegal sale of drugs) of the Internal
19 Revenue Code shall be operative for the purposes of this
20 chapter, except that section 280E shall not be operative with
21 respect to the production and sale of ~~[medical]~~ :



- 1 (1) Medical cannabis and manufactured cannabis products by
2 dispensaries licensed under chapter 329D and their
3 subcontractors, as defined in section 329D-1[-]; and
4 (2) Cannabis and cannabis products by cannabis
5 establishments licensed under chapter ."

6 SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§237-24.3 Additional amounts not taxable.** In addition to
9 the amounts not taxable under section 237-24, this chapter shall
10 not apply to:

- 11 (1) Amounts received from the loading, transportation, and
12 unloading of agricultural commodities shipped for a
13 producer or produce dealer on one island of this State
14 to a person, firm, or organization on another island
15 of this State. The terms "agricultural commodity",
16 "producer", and "produce dealer" shall be defined in
17 the same manner as they are defined in section 147-1;
18 provided that agricultural commodities need not have
19 been produced in the State;
- 20 (2) Amounts received by the manager, submanager, or board
21 of directors of:



- 1 (A) An association of owners of a condominium
2 property regime established in accordance with
3 chapter 514A or 514B; or
4 (B) A nonprofit homeowners or community association
5 incorporated in accordance with chapter 414D or
6 any predecessor thereto and existing pursuant to
7 covenants running with the land,
8 in reimbursement of sums paid for common expenses;

9 (3) Amounts received or accrued from:

- 10 (A) The loading or unloading of cargo from ships,
11 barges, vessels, or aircraft, whether or not the
12 ships, barges, vessels, or aircraft travel
13 between the State and other states or countries
14 or between the islands of the State;

- 15 (B) Tugboat services including pilotage fees
16 performed within the State, and the towage of
17 ships, barges, or vessels in and out of state
18 harbors, or from one pier to another; and

- 19 (C) The transportation of pilots or governmental
20 officials to ships, barges, or vessels offshore;
21 rigging gear; checking freight and similar



1 services; standby charges; and use of moorings
2 and running mooring lines;

3 (4) Amounts received by an employee benefit plan by way of
4 contributions, dividends, interest, and other income;
5 and amounts received by a nonprofit organization or
6 office, as payments for costs and expenses incurred
7 for the administration of an employee benefit plan;
8 provided that this exemption shall not apply to any
9 gross rental income or gross rental proceeds received
10 after June 30, 1994, as income from investments in
11 real property in this State; and provided further that
12 gross rental income or gross rental proceeds from
13 investments in real property received by an employee
14 benefit plan after June 30, 1994, under written
15 contracts executed prior to July 1, 1994, shall not be
16 taxed until the contracts are renegotiated, renewed,
17 or extended, or until after December 31, 1998,
18 whichever is earlier. For the purposes of this
19 paragraph, "employee benefit plan" means any plan as
20 defined in section 1002(3) of title 29 of the United
21 States Code, as amended;



1 (5) Amounts received for purchases made with United States
2 Department of Agriculture food coupons under the
3 federal food stamp program, and amounts received for
4 purchases made with United States Department of
5 Agriculture food vouchers under the Special
6 Supplemental Foods Program for Women, Infants and
7 Children;

8 (6) Amounts received by a hospital, infirmary, medical
9 clinic, health care facility, pharmacy, or a
10 practitioner licensed to administer the drug to an
11 individual for selling prescription drugs or
12 prosthetic devices to an individual; provided that
13 this paragraph shall not apply to any amounts received
14 for services provided in selling prescription drugs or
15 prosthetic devices. As used in this paragraph:

16 "Prescription drugs" are those drugs defined
17 under section 328-1 and dispensed by filling or
18 refilling a written or oral prescription by a
19 practitioner licensed under law to administer the drug
20 and sold by a licensed pharmacist under section 328-16
21 or practitioners licensed to administer drugs;



1 provided that "prescription drugs" shall not include
2 cannabis, cannabis products, or manufactured cannabis
3 products authorized pursuant to chapters 329 ~~[and]~~,
4 329D, and _____ ~~[+]~~; and~~[+]~~

5 "Prosthetic device" means any artificial device
6 or appliance, instrument, apparatus, or contrivance,
7 including their components, parts, accessories, and
8 replacements thereof, used to replace a missing or
9 surgically removed part of the human body, which is
10 prescribed by a licensed practitioner of medicine,
11 osteopathy, or podiatry and that is sold by the
12 practitioner or that is dispensed and sold by a dealer
13 of prosthetic devices; provided that "prosthetic
14 device" shall not mean any auditory, ophthalmic,
15 dental, or ocular device or appliance, instrument,
16 apparatus, or contrivance;

17 (7) Taxes on transient accommodations imposed by chapter
18 237D and passed on and collected by operators holding
19 certificates of registration under that chapter;

20 (8) Amounts received as dues by an unincorporated
21 merchants association from its membership for



1 advertising media, promotional, and advertising costs
2 for the promotion of the association for the benefit
3 of its members as a whole and not for the benefit of
4 an individual member or group of members less than the
5 entire membership;

6 (9) Amounts received by a labor organization for real
7 property leased to:

8 (A) A labor organization; or

9 (B) A trust fund established by a labor organization
10 for the benefit of its members, families, and
11 dependents for medical or hospital care, pensions
12 on retirement or death of employees,
13 apprenticeship and training, and other membership
14 service programs.

15 As used in this paragraph, "labor organization" means
16 a labor organization exempt from federal income tax
17 under section 501(c)(5) of the Internal Revenue Code,
18 as amended;

19 (10) Amounts received from foreign diplomats and consular
20 officials who are holding cards issued or authorized



1 by the United States Department of State granting them
2 an exemption from state taxes; and

3 (11) Amounts received as rent for the rental or leasing of
4 aircraft or aircraft engines used by the lessees or
5 renters for interstate air transportation of
6 passengers and goods. For purposes of this paragraph,
7 payments made pursuant to a lease shall be considered
8 rent regardless of whether the lease is an operating
9 lease or a financing lease. The definition of
10 "interstate air transportation" is the same as in
11 title 49 [U.S.C.] United States Code section 40102."

12 SECTION 8. Section 321-30.1, Hawaii Revised Statutes, is
13 amended by amending its title and subsections (a) and (b) to
14 read as follows:

15 "**§321-30.1 [Medical-cannabis] Cannabis registry and**
16 **regulation special fund; established.** (a) There is established
17 within the state treasury the ~~[medical]~~ cannabis registry and
18 regulation special fund. The fund shall be expended at the
19 discretion of the director of health:

20 (1) To establish and regulate a system of medical cannabis
21 dispensaries in the State;



(2) To offset the cost of the processing and issuance of patient registry identification certificates and primary caregiver registration certificates;

(3) To fund positions and operating costs authorized by the legislature;

(4) To establish and manage a secure and confidential database;

(5) To fund public education as required by section 329D-26;

(6) To fund substance abuse prevention and education programs; [and]

(7) To regulate cannabis establishments in the State pursuant to chapter _____; and

~~[(7)]~~ (8) For any other expenditure necessary, consistent with this chapter [and], chapter 329D, and chapter _____, to implement medical cannabis registry and regulation programs[-] and cannabis establishment regulation programs.

(b) The fund shall consist of all moneys derived from fees collected pursuant to subsection (c) ~~[and]~~ , section 329D-4[-],



1 and chapter . There is established within the ~~[medical]~~
2 cannabis registry and regulation special fund:

3 (1) A medical cannabis registry program sub-account, into
4 which shall be deposited all fees collected pursuant
5 to subsection (c); ~~[and]~~

6 (2) A medical cannabis dispensary program sub-account,
7 into which shall be deposited all fees collected
8 pursuant to section 329D-4~~[-]~~; and

9 (3) A cannabis establishment program sub-account, into
10 which shall be deposited all fees collected pursuant
11 to chapter ."

12 SECTION 9. Section 329-43.5, Hawaii Revised Statutes, is
13 amended by amending subsection (e) to read as follows:

14 "(e) Subsections (a) and (b) shall not apply to a person
15 who is authorized to:

16 (1) Acquire, possess, cultivate, use, distribute, or
17 transport cannabis pursuant to the definition of
18 "medical use" under section 329-121, while the person
19 is facilitating the medical use of cannabis by a
20 qualifying patient; ~~[or]~~



1 (2) Dispense, manufacture, or produce cannabis or
2 manufactured cannabis products pursuant to and in
3 compliance with chapter 329D, while the person is
4 facilitating the medical use of cannabis by a
5 qualifying patient pursuant to part IX of chapter
6 329[-]; or

7 (3) Grow, process, possess, transfer, display, transport,
8 or use cannabis or cannabis products pursuant to and
9 in compliance with chapter ."

10 SECTION 10. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 11. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 12. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



S.B. NO. 2537

1 SECTION 13. This Act shall take effect on July 1, 2018.

2

INTRODUCED BY:

[Signature]

Ron E. By

Will Eyo



S.B. NO. 2537

Report Title:

Cannabis; Legalization; Drug Treatment Special Fund; Medical Cannabis; General Excise Tax; Exemption

Description:

Legalizes under state law the growing, processing, possession, transfer, and personal use of cannabis in a specified quantity to persons at least twenty-one years of age. Requires licensing to operate cannabis establishments. Specifies that fifty per cent of general excise tax revenues collected for the sale of cannabis or cannabis products shall be deposited into the drug treatment special fund. Exempts the sale of cannabis or manufactured cannabis products by medical cannabis dispensaries from the state general excise tax. Specifies the application and non-application of the Internal Revenue Code to expenses related to the production and sale of cannabis and cannabis products for state income tax purposes. Specifies that amounts received for the sale of cannabis or cannabis products are exempt from the state general excise tax.

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

