

JAN 22 2021

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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 legislature finds that the legal history of  
2 cannabis or marijuana in the United States primarily addresses  
3 the regulation of marijuana for medical use, and secondarily the  
4 use of marijuana for personal or recreational purposes. By the  
5 mid-1930s cannabis was regulated as a drug in every state,  
6 including thirty-five states that adopted the Uniform State  
7 Narcotic Drug Act, which was subsequently replaced in 1970 with  
8 the federal Uniform Controlled Substances Act that classified  
9 marijuana and tetrahydrocannabinol as schedule I controlled  
10 substances.

11           Notwithstanding the prospect of federal prosecution,  
12 several states, including Hawai'i, have enacted medical marijuana  
13 laws. Chapter 329, part IX, Hawaii Revised Statutes, was  
14 enacted to create a medical use of marijuana exemption from  
15 criminal sanctions. As of November 4, 2020, thirty-six states  
16 and four U.S. territories also allowed the use of marijuana for  
17 medicinal purposes. Furthermore, chapter 329D, Hawaii Revised



1 Statutes, was enacted to establish medical marijuana  
2 dispensaries that were authorized to operate beginning in July  
3 2016. As Hawai'i expands its medical marijuana program through  
4 the use of highly regulated and monitored dispensaries, more  
5 patients are anticipated to consider medical marijuana as a  
6 viable treatment, knowing that the medicine will be regulated  
7 and tested.

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



1 each of these states, marijuana users no longer face arrest or  
2 jail time for the possession or use of marijuana in an amount  
3 permitted by statute. Act 273, Session Laws of Hawaii 2019,  
4 among other things, decriminalized the possession of three grams  
5 or less of marijuana and established that possession of that  
6 amount is a violation punishable by a monetary fine of \$130,  
7 beginning January 11, 2020.

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



1 as sales of retail marijuana increase. Following Colorado and  
2 Washington's lead, Alaska, California, District of Columbia,  
3 Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, and  
4 Vermont passed legislation to also legalize and regulate the  
5 production, possession, and distribution of cannabis for persons  
6 age twenty-one and older. Several other states have followed  
7 suit in making recreational marijuana legal, and as of 2020, the  
8 number of jurisdictions in which recreational cannabis is legal  
9 has risen to fifteen states and three territories.

10 The legislature additionally finds that marijuana  
11 cultivation and sales hold potential for economic development,  
12 increased tax revenues, and reduction in crime.

13 The purpose of this Act is to:

- 14 (1) Further decriminalize and regulate small amounts of  
15 marijuana for personal use;
- 16 (2) Establish a licensing scheme for the cultivation,  
17 sale, and use of small amounts of marijuana for  
18 personal use;
- 19 (3) Tax marijuana sales in the same manner as state excise  
20 taxes; and



1 (4) Subject income derived from marijuana sales to state  
2 income taxes.

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

6 "CHAPTER

7 LEGALIZATION OF MARIJUANA FOR PERSONAL USE

8 § -1 Definitions. As used in this chapter:

9 "Department" means the department of health.

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

12 "Marijuana" means all parts of the plant of the genus  
13 cannabis, whether growing or not; the seeds thereof; the resin  
14 extracted from any part of the plant; and every compound,  
15 manufacture, salt, derivative, mixture, or preparation of the  
16 plant, its seeds, or its resin, including marijuana concentrate.

17 "Marijuana" does not include industrial hemp; fiber produced  
18 from the stalks, oil, or cake made from the seeds of the plant;  
19 sterilized seed of the plant that is incapable of germination;  
20 or the weight of any other ingredient combined with marijuana to  
21 prepare topical or oral administrations, food, drink, or other



# S.B. NO. 704

1 product. For purposes of this definition, "industrial hemp"  
2 means the plant of the genus cannabis and any part of such  
3 plant, whether growing or not, with a delta-9  
4 tetrahydrocannabinol concentration that does not exceed 0.3 per  
5 cent on a dry weight basis.

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

14 "Marijuana cultivation facility" means an entity licensed  
15 to cultivate, prepare, and package marijuana and sell marijuana  
16 to retail marijuana stores, marijuana product manufacturing  
17 facilities, and other marijuana cultivation facilities, but not  
18 to consumers.

19 "Marijuana establishment" means a marijuana cultivation  
20 facility, marijuana testing facility, marijuana product  
21 manufacturing facility, or retail marijuana store.



# S.B. NO. 704

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 retail marijuana stores, but not to consumers.

6 "Marijuana products" means marijuana concentrate products  
7 and products that comprise marijuana and other ingredients  
8 intended for use or consumption and include but are not limited  
9 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 as  
3 described in this section is permitted.

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

6           (c) The possession, use, display, purchase, transfer, or  
7 transport of marijuana, 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 that the plants are not  
17 made available 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) Manufacturing, possessing, or purchasing marijuana  
10 accessories or selling marijuana accessories to a  
11 person who is twenty-one years of age or older;
- 12 (2) Possessing, displaying, or transporting marijuana or  
13 marijuana products; purchasing marijuana from a  
14 marijuana cultivation facility; purchasing marijuana  
15 or marijuana products from a marijuana product  
16 manufacturing facility; or selling marijuana or  
17 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



# S.B. NO. 704

1 capacity of an owner, employee, or agent of a licensed  
2 retail marijuana store;

3 (3) Cultivating, harvesting, processing, packaging,  
4 transporting, displaying, or possessing marijuana;  
5 delivering or transferring marijuana to a marijuana  
6 testing facility; selling marijuana to a marijuana  
7 cultivation facility, marijuana product manufacturing  
8 facility, or retail marijuana store; or purchasing  
9 marijuana from a marijuana cultivation facility;  
10 provided that the person conducting the activities  
11 described in this paragraph has obtained a current,  
12 valid license to operate a marijuana cultivation  
13 facility or is acting in the capacity of an owner,  
14 employee, or agent of a licensed marijuana cultivation  
15 facility;

16 (4) Packaging, processing, transporting, manufacturing,  
17 displaying, or possessing marijuana or marijuana  
18 products; delivering or transferring marijuana or  
19 marijuana products to a marijuana testing facility;  
20 selling marijuana or marijuana products to a retail  
21 marijuana store or marijuana product manufacturing



# S.B. NO. 704

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

10 (5) Possessing, processing, repackaging, storing,  
11 transporting, displaying, transferring, or delivering  
12 marijuana or marijuana products; provided that the  
13 person has obtained a current, valid license to  
14 operate a marijuana testing facility or is acting in  
15 the capacity as an owner, employee, or agent of a  
16 licensed marijuana testing facility; and

17 (6) Leasing or otherwise allowing the use of property  
18 owned, occupied, or controlled by any person,  
19 corporation, or other entity for any of the activities  
20 conducted lawfully in accordance with this section.



1           §   -4 Regulation of marijuana; rules. (a) No later than  
2 July 1, 2021, the department shall adopt rules, pursuant to  
3 chapter 91, necessary for implementation of this chapter. The  
4 rules shall not require such a high investment of risk, money,  
5 time, or any other resource or asset that the operation of a  
6 marijuana establishment is not worthy of being carried out in  
7 practice by a reasonably prudent business person. The rules  
8 shall include:

- 9           (1) Procedures for the application, issuance, renewal,  
10                suspension, and revocation of a license to operate a  
11                marijuana establishment; provided that any license to  
12                be issued shall be issued no later than ninety days  
13                after receipt of an application;
- 14           (2) A schedule of application, licensing, and renewal  
15                fees; provided that application fees shall not exceed  
16                \$5,000, adjusted annually for inflation, unless the  
17                department determines a greater fee is necessary to  
18                carry out its responsibilities under this section;
- 19           (3) Qualifications for licensure that are directly and  
20                demonstrably related to the operation of a marijuana  
21                establishment;



# S.B. NO. 704

- 1           (4) Security requirements for the premises of marijuana
- 2                   establishments;
- 3           (5) Requirements to prevent the sale or diversion of
- 4                   marijuana and marijuana products to persons under the
- 5                   age of twenty-one;
- 6           (6) Labeling requirements for marijuana and marijuana
- 7                   products sold or distributed by a marijuana
- 8                   establishment;
- 9           (7) Health and safety regulations and standards for the
- 10                  manufacture of marijuana products and the cultivation
- 11                  of marijuana;
- 12           (8) Restrictions on the advertising and display of
- 13                  marijuana and marijuana products; and
- 14           (9) Civil penalties for the failure to comply with rules
- 15                  adopted pursuant to this section.
- 16           (b) In order to ensure that individual privacy is
- 17                  protected, the department shall not require a consumer to
- 18                  provide a retail marijuana store with personal information other
- 19                  than government-issued identification to determine the
- 20                  consumer's age. A retail marijuana store shall not be required
- 21                  to acquire and record a consumer's personal information.



1 (c) If an application for a license under this section is  
2 denied, the applicant shall be notified in writing of the  
3 specific reason for the denial. The applicant may be entitled  
4 to resubmit the application at any time after denial of the  
5 initial application.

6 § -5 **Effect on employers.** This chapter shall not be  
7 construed to:

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

13 § -6 **Effect on intoxicated driving laws.** This chapter  
14 shall not be construed as a defense, exemption, or immunity from  
15 chapter 291E.

16 § -7 **Effect on medical cannabis law.** This chapter shall  
17 not be construed to affect medical use of cannabis as provided  
18 in chapter 329 and shall not be deemed to expand the medical use  
19 of cannabis beyond the uses provided in chapter 329.

20 § -8 **Effect on medical cannabis dispensary law.** This  
21 chapter shall not be construed to affect the dispensing of



1 medical cannabis as provided in chapter 329D and shall not be  
2 deemed to expand the dispensing of medical cannabis beyond the  
3 uses provided in chapter 329D.

4       **§ -9 Effect on property rights.** This chapter shall not  
5 be construed to prohibit a person, employer, school, hospital,  
6 detention facility, corporation, or any other entity who  
7 occupies, owns, or controls a property from prohibiting or  
8 otherwise regulating the possession, consumption, use, display,  
9 transfer, distribution, sale, transportation, or growing of  
10 marijuana on or in that property.

11       **§ -10 Taxes.** A marijuana establishment shall be subject  
12 to payment of income taxes under chapter 235 and general excise  
13 taxes under chapter 237 on gross receipts from each transaction  
14 conducted by the marijuana establishment."

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

18       "§712-       **Legalization of marijuana.** The following acts  
19 shall be exempt from arrest, prosecution, and criminal  
20 culpability under this part:

21       (a) Any act permitted under section       -2;



# S.B. NO. 704

- 1        (b) Any act permitted under section \_\_\_\_\_ -3; and
- 2        (c) An act of any person who is appropriately and
- 3        currently licensed if the act requires a license under
- 4        chapter \_\_\_\_\_."

5        SECTION 4. This Act does not affect rights and duties that  
6        matured, penalties that were incurred, and proceedings that were  
7        begun before its effective date.

8        SECTION 5. New statutory material is underscored.

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

10

INTRODUCED BY: J. Kabani Gbik



# S.B. NO. 704

**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 State general 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.*

