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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1       SECTION 1. The legislature finds that the National  
2       Institute on Drug Abuse defines drug checking as "a harm  
3       reduction practice in which people check to see if drugs contain  
4       certain substances". Drug checking methods range from tools  
5       such as fentanyl test strips, which may be used in any setting  
6       where drugs are used, to more advanced technologies like  
7       infrared spectrometry, which are typically conducted at on-site  
8       facilities such as syringe service programs. The National  
9       Institute on Drug Abuse supports research to improve the  
10      accuracy, accessibility, and effectiveness of drug checking  
11      technologies, including smartphone- and internet-based services,  
12      mobile facilities, and programs that offer overdose response and  
13      education.

14      The legislature further finds that substantial research and  
15      evidence highlight the effectiveness, long-standing use, and  
16      public health value of drug checking services. A May 2024 study  
17      published in the *Harm Reduction Journal* emphasizes the



1 effectiveness of drug checking services in reducing risks  
2 associated with substance use, including overdose, and  
3 identifies benefits at the individual, community, public health,  
4 and health system levels. The study urges policymakers to  
5 consider allocating resources for the implementation and  
6 expansion of drug checking services in areas affected by  
7 overdose mortality.

8 A September 2024 evidence brief issued by the Canadian  
9 Centre on Substance Use and Addiction reports that drug checking  
10 has been used to monitor unregulated drug supplies for more than  
11 fifty years and identifies thirty-one drug checking services  
12 operating across twenty countries. The evidence brief  
13 identifies benefits of drug checking, which include reducing  
14 risks associated with substance use, including overdose;  
15 improving clinical care, including by informing care plans and  
16 medication choices among clinicians and nursing professionals;  
17 increasing access to health and social services by facilitating  
18 trust and connection between underserved populations and service  
19 providers; monitoring drug-related trends to inform public  
20 health and safety decisions; and reducing costs associated with  
21 emergency medical services and hospitalization.



1           The legislature also finds that, in recent years, illicit  
2 street drugs in the State have been found to contain unspecified  
3 quantities of fentanyl, medetomidine, xylazine, and other  
4 substances, posing serious risks of accidental overdose. In  
5 response to increasing fentanyl-related overdoses, the  
6 legislature passed Act 111, Session Laws of Hawaii 2023, which  
7 exempted fentanyl testing strips from the definition of drug  
8 paraphernalia under the Uniform Controlled Substances Act.

9           While fentanyl test strips are an important tool, they only  
10 detect the presence of fentanyl. Other drug checking tools,  
11 such as chemical reagents, can detect the presence of additional  
12 substances. More advanced tools such as spectrometers, which  
13 are currently used by harm reduction service providers in  
14 Chicago and New York City, can both detect and quantify the  
15 substances present in a sample.

16           The legislature believes that providing individuals,  
17 service providers, and communities with accurate information  
18 regarding the presence and concentration of substances in  
19 illicit drugs will reduce accidental and fatal overdoses.

20           The legislature additionally finds that certain practices  
21 relating to the inspection of a qualifying patient's medical



1 records has created unintended barriers to the lawful access of  
2 medical cannabis and, as a result, has led Hawaii residents to  
3 seek cannabis from places other than a state licensed medical  
4 cannabis dispensary. However, unlike cannabis purchased from a  
5 licensed medical cannabis dispensary, illicit cannabis and  
6 manufactured cannabis products do not undergo testing to ensure  
7 the cannabis and products do not contain any harmful or toxic  
8 substances. The legislature believes that removing this barrier  
9 will encourage qualifying patients to purchase medical cannabis  
10 from a licensed medical cannabis dispensary that has been tested  
11 to ensure it is safe for human consumption.

12 The legislature notes that leading public health  
13 organizations have long recognized the harms caused by  
14 criminalization-based drug policy. In its 2013 policy  
15 statement, *Defining and Implementing a Public Health Response to*  
16 *Drug Use and Misuse*, the American Public Health Association  
17 described the current "war on drugs" as a severely flawed  
18 approach based on misplaced priorities and strategies, and  
19 observed that the domestic drug war has been an engine of mass  
20 incarceration. It further concluded that criminalization of  
21 substance use stigmatizes people who use drugs, making it more



1 difficult to engage them in health care and other essential  
2 services, and therefore recommended a full policy reorientation,  
3 including the end of criminal penalties for drug possession and  
4 the decriminalization of people who use drugs.

5       The legislature recognizes the substantial evidence linking  
6 incarceration itself to poor health outcomes and notes that many  
7 states have begun to reevaluate their approach to drug  
8 paraphernalia laws. In 2023, Minnesota became the first state  
9 to repeal its drug paraphernalia laws entirely. Hawaii has also  
10 taken steps toward reform. Act 72, Session Laws of Hawaii 2017,  
11 reduced the offense of simple possession or use of drug  
12 paraphernalia from a class C felony to a violation, punishable  
13 by a fine of no more than \$500. However, despite this reform,  
14 possession of drug paraphernalia continues to serve as an entry  
15 point into the criminal legal system. Possession of even  
16 unusable traces or residue of certain controlled substances,  
17 often found on drug paraphernalia, remains classified as a class  
18 C felony, carrying a potential penalty of up to five years  
19 imprisonment and a \$10,000 fine. Therefore, the legislature  
20 recognizes that further action should be taken to further  
21 prevent the simple possession of certain types of drug



1 paraphernalia from serving as an entry point into the criminal  
2 legal system.

3 Accordingly, the purpose of this Act is to:

4 (1) Exempt additional drug testing products from the  
5 definition of drug paraphernalia under the uniform  
6 controlled substances act;

7 (2) Remove items that are used to plant, propagate,  
8 cultivate, grow, harvest, test, analyze, pack, repack,  
9 store, contain, conceal, inject, ingest, inhale, or  
10 otherwise introduce into the human body a controlled  
11 substance from the law prohibiting drug paraphernalia  
12 under the uniform controlled substances act;

13 (3) Restrict the law prohibiting drug paraphernalia under  
14 the uniform controlled substances act to only prohibit  
15 items that are used for the manufacturing,  
16 compounding, converting, production, processing, or  
17 preparing of controlled substances; and

18 (4) Repeal language permitting the department of health to  
19 inspect a qualifying patient's medical records and  
20 suspend or revoke the ability of a physician, advance  
21 practice registered nurse, or hospice provider to



1 issue a written certification, under certain  
2 circumstances.

3 SECTION 2. Section 329-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "drug paraphernalia" to  
5 read as follows:

6 ""Drug paraphernalia" means all equipment, products, and  
7 materials of any kind that are used, primarily intended for use,  
8 or primarily designed for use, in planting, propagating,  
9 cultivating, growing, harvesting, manufacturing, compounding,  
10 converting, producing, processing, preparing, testing,  
11 analyzing, packaging, repackaging, storing, containing,  
12 concealing, injecting, ingesting, inhaling, or otherwise  
13 introducing into the human body a controlled substance in  
14 violation of this chapter. [~~Drug paraphernalia~~] For the  
15 purposes of this definition:

16 (1) "Drug paraphernalia" includes but is not limited to:

17 [~~(1)~~] (A) Kits used, primarily intended for use, or  
18 primarily designed for use in planting,  
19 propagating, cultivating, growing, or harvesting  
20 of any species of plant that is a controlled



- 1 substance or from which a prohibited controlled  
2 substance can be derived;
- 3 ~~[-(2)]~~ (B) Kits used, primarily intended for use, or  
4 primarily designed for use in manufacturing,  
5 compounding, converting, producing, processing,  
6 or preparing prohibited controlled substances;
- 7 ~~[-(3)]~~ (C) Isomerization devices used, primarily intended  
8 for use, or primarily designed for use in  
9 increasing the potency of any species of plant  
10 that is a prohibited controlled substance;
- 11 ~~[-(4)]~~ (D) Testing equipment used, primarily intended for  
12 use, or primarily designed for use in  
13 identifying, or in analyzing the strength,  
14 effectiveness, or purity of prohibited controlled  
15 substances;
- 16 ~~[-(5)]~~ (E) Scales and balances used, primarily intended for  
17 use, or primarily designed for use in weighing or  
18 measuring prohibited controlled substances;
- 19 ~~[-(6)]~~ (F) Diluents and adulterants; ~~[such as]~~ including  
20 quinine hydrochloride, mannitol, mannite,  
21 dextrose, and lactose, used, primarily intended



1 for use, or primarily designed for use in cutting  
2 prohibited controlled substances;

3 ~~(7)~~ (G) Separation gins and sifters used, primarily  
4 intended for use, or primarily designed for use  
5 in removing twigs and seeds from, or in otherwise  
6 cleaning or refining, prohibited marijuana;

7 ~~(8)~~ (H) Blenders, bowls, containers, spoons, and mixing  
8 devices used, primarily intended for use, or  
9 primarily designed for use in compounding  
10 prohibited controlled substances;

11 ~~(9)~~ (I) Capsules, balloons, envelopes, and other  
12 containers used, primarily intended for use, or  
13 primarily designed for use in packaging small  
14 quantities of prohibited controlled substances;

15 ~~(10)~~ (J) Containers and other objects used, primarily  
16 intended for use, or primarily designed for use  
17 in storing or concealing prohibited controlled  
18 substances;

19 ~~(11)~~ (K) Hypodermic syringes, needles, and other objects  
20 used, primarily intended for use, or primarily  
21 designed for use in parenterally injecting



1 prohibited controlled substances into the human  
2 body; and  
3 ~~[(12)]~~ (L) Objects used, primarily intended for use, or  
4 primarily designed for use in ingesting,  
5 inhaling, or otherwise introducing prohibited  
6 marijuana, cocaine, hashish, hashish oil, or  
7 methamphetamine into the human body, ~~[such as:]~~  
8 including:  
9 ~~[(A)]~~ (i) Metal, wooden, acrylic, glass, stone,  
10 plastic, or ceramic pipes with or without  
11 screens, permanent screens, hashish heads,  
12 or punctured metal bowls;  
13 ~~[(B)]~~ (ii) Water pipes;  
14 ~~[(C)]~~ (iii) Carburetion tubes and devices;  
15 ~~[(D)]~~ (iv) Smoking and carburetion masks;  
16 ~~[(E)]~~ (v) Roach clips: meaning objects used to hold  
17 burning materials, such as marijuana  
18 cigarettes, that have become too small or  
19 too short to be held in the hand;  
20 ~~[(F)]~~ (vi) Miniature cocaine spoons, and cocaine vials;  
21 ~~[(G)]~~ (vii) Chamber pipes;



- 1           ~~[(H)]~~ (viii) Carburetor pipes;
- 2           ~~[(I)]~~ (ix) Electric pipes;
- 3           ~~[(J)]~~ (x) Air-driven pipes;
- 4           ~~[(K)]~~ (xi) Chillums;
- 5           ~~[(L)]~~ (xii) Bonges; and
- 6           ~~[(M)]~~ (xiii) Ice pipes or chillers~~[-]~~;
- 7       (2) In determining whether an object is drug
- 8           paraphernalia, a court or other authority ~~[should]~~
- 9           shall consider, in addition to all other logically
- 10          relevant factors, the following:
- 11       ~~[(1)]~~ (A) Statements by an owner or anyone in control of
- 12                           the object concerning its use;
- 13       ~~[(2)]~~ (B) Prior convictions, if any, of an owner, or of
- 14                           anyone in control of the object, under any state
- 15                           or federal law relating to any controlled
- 16                           substance;
- 17       ~~[(3)]~~ (C) The proximity of the object, in time and space,
- 18                           to a direct violation of this chapter;
- 19       ~~[(4)]~~ (D) The proximity of the object to controlled
- 20                           substances;







1 paraphernalia to [~~plant, propagate, cultivate, grow, harvest,~~  
2 manufacture, compound, convert, produce, process, or prepare[~~r~~  
3 ~~test, analyze, pack, repack, store, contain, conceal, inject,~~  
4 ~~ingest, inhale, or otherwise introduce into the human body]~~ a  
5 controlled substance in violation of this chapter. A violation  
6 of this subsection shall constitute a violation subject to a  
7 fine of no more than \$500.

8 (b) Except as provided in subsection (e), it is unlawful  
9 for any person to deliver, possess with intent to deliver, or  
10 manufacture with intent to deliver drug paraphernalia, knowing  
11 or under circumstances where one reasonably should know, that it  
12 will be used to [~~plant, propagate, cultivate, grow, harvest,~~  
13 manufacture, compound, convert, produce, process, or prepare[~~r~~  
14 ~~test, analyze, pack, repack, store, contain, conceal, inject,~~  
15 ~~ingest, inhale, or otherwise introduce into the human body]~~ a  
16 controlled substance in violation of this chapter. A violation  
17 of this subsection shall constitute a violation subject to a  
18 fine of no more than \$500."

19 SECTION 4. Section 329-123.2, Hawaii Revised Statutes, is  
20 repealed.



1           ~~["§329-123.2] Qualifying patient medical records;~~  
2 ~~inspection and enforcement; authority.~~ (a) ~~The department may~~  
3 ~~inspect a qualifying patient's medical records held by the~~  
4 ~~physician, advanced practice registered nurse, or hospice~~  
5 ~~provider who issued a written certification for the qualifying~~  
6 ~~patient.~~

7           ~~(b) The department may suspend or revoke the ability to~~  
8 ~~issue a written certification for any physician, advanced~~  
9 ~~practice registered nurse, or hospice provider who refuses~~  
10 ~~inspection of a qualifying patient's medical records by the~~  
11 ~~department pursuant to this section.~~

12           ~~(c) The department may suspend or revoke the ability to~~  
13 ~~issue a written certification for any physician, advanced~~  
14 ~~practice registered nurse, or hospice provider whose medical~~  
15 ~~records do not comply with the requirements of this chapter."]~~

16           SECTION 5. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19           SECTION 6. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



**1** SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

DOH; Uniform Controlled Substances Act; Drug Paraphernalia; Drug Testing Products; Qualifying Patients; Medical Cannabis; Medical Records; Inspection

**Description:**

Excludes drug testing products from the definition of drug paraphernalia under the Uniform Controlled Substances Act. Removes items that are used to plant, propagate, cultivate, grow, harvest, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance from the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act. Restricts the law prohibiting drug paraphernalia under the Uniform Controlled Substances Act to only prohibit items that are used for the manufacturing, compounding, converting, production, processing, or preparing of controlled substances. Repeals language permitting the Department of Health to inspect a qualifying patient's medical records and suspend or revoke the ability of certain health care providers to issue written certifications under certain circumstances. (CD1)

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

