



Senate Bill 375: Analysis and Recommended Changes

Prepared for:

Chairman Karl Rhoads
Hawaii Senate Committee on Judiciary

Chairman Donovan Dela Cruz
Hawaii Senate Committee on Ways and Means

Prepared by: Geoff Lawrence, Director

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Chairmen Rhoads and Dela Cruz and Members of the Committees:

On behalf of the Reason Foundation, I thank you for accepting these comments and making them part of the public record. Reason Foundation is a national 501(c)(3) public policy think tank that offers pro-bono research and technical assistance to public officials and other stakeholders to help design and implement policy solutions in a variety of areas, including public finance, public pension solvency, infrastructure, and drug policy. We are committed to ensuring that state-regulated cannabis markets are designed in such a way that they remain dynamic and offer genuine economic opportunity to individuals from a range of backgrounds.

We have reviewed Senate Bill 375 and believe it does some things well but is missing key provisions that should be included. We applaud prior committees for having removed provisions that would have implicated federal racketeering and labor laws after considering our comments. These comments reflect the current version (SB375_SD1) of the bill:

Strengths

1. **Workplace protections.** Section A-4 includes workplace protections that allow employers to enforce a drug-free workplace or enforce uniform standards regarding employee drug use. This provision is vital for employers who may hold federal contracts or are engaged in physically dangerous activities.
2. **Automatic expungement.** Section 12 would automatically expunge convictions for activities that would no longer be considered crimes following the bill's passage, establishing intertemporal justice.
3. **Ordinary deductions.** Section 30 allows cannabis licensees to deduct ordinary and necessary expenses from gross income under the state corporate income tax, allowing these legal businesses to be treated as similarly situated legal businesses in other industries.
4. **Medical marijuana reciprocity.** Sections 32 and 33 would establish universal recognition of medical marijuana cards issued by other states so that patients can gain access to medically

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needed cannabis products while they are away from home.

Shortcomings

1. **Cannabis Authority less efficient, timely than agency implementation.** Sections A-12 and A-13 charge the proposed Hawaii Cannabis Authority with adopting rules, establishing fees and making decisions regarding the award of cannabis licenses to applicants. Section A-14 clarifies that these functions cannot be delegated. However, the Hawaii Cannabis Authority may meet as infrequently as once per quarter. This means that license applications may linger for extended periods while applicants are forced to consume working capital that may deplete their resources. If an applicant is instructed to cure a small deficiency within its application, then that application may not be considered again for three months. This structure could substantially slow licensing and cause disharmony in the market.

Michigan began its adult use market with a similar board in charge of licensing decisions, but quickly scrapped it in response to frequent complaints about how slowly the board moved and the arbitrary nature of its decisions. Instead, Gov. Gretchen Whitmer created the Marijuana Regulatory Agency as a permanent state agency using a rules-based framework to evaluate license applications. Almost immediately, the state became more responsive to the needs of market participants.¹

Needed Provisions

1. **Enforceable contracts.** Senate Bill 375 contains no express provisions to clarify that contracts entered into by cannabis licensees are enforceable under Hawaiian law. This provision is required to hold counterparties to their commitments with cannabis licensees.
2. **Occupational licensing protection.** There is no express provision to protect holders of professional licenses from censure by state licensing boards simply because they offer services to a cannabis business. Since cannabis businesses are federal criminal enterprises, lawyers, accountants and other credentialed professionals should enjoy this protection under Hawaiian law.
3. **Parent protections.** There is no express provision clarifying that individuals cannot be stripped of their parental rights solely on the basis of their lawful cannabis consumption. Lawmakers should consider adding a provision to this effect.

We hope this information is useful, and Reason Foundation is committed to ensuring that cannabis legalization is done correctly and that state-regulated markets function properly. We are ready and eager to provide additional feedback on this or similar proposals as necessary.

¹ Geoffrey Lawrence, "Michigan's Marijuana Regulators Are Running Ahead of Schedule," Reason Foundation commentary, July 2, 2019, <https://reason.org/commentary/michigans-marijuana-regulators-are-running-ahead-of-schedule/>.

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