

ASSEMBLY BILL NO. 402—ASSEMBLYMEN
HOGAN, MARTIN; AND SWANK

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Provides for the legalization and taxation of marijuana. (BDR 15-1069)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 18)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to controlled substances; providing in skeleton form for the decriminalization of the possession, use and delivery of marijuana by certain persons under certain circumstances; providing in skeleton form for the taxation of the production, processing and sale of marijuana; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Sections 5-21** of this bill provide in skeleton form for the decriminalization of
2 the cultivation, processing, possession and consumption of marijuana by persons in
3 this State who are 21 years of age or older. **Sections 5-21** are modeled, in
4 substantial part, upon the provisions of House Bill No. 150 of the Twenty-Seventh
5 Legislature of the State of Hawaii, 2013. **Section 20** makes clear that the
6 decriminalization contemplated by this bill does not: (1) authorize persons to
7 operate a vehicle in an impaired manner; (2) require an employer to allow or
8 accommodate the use of marijuana; (3) allow the use of or transfer of marijuana to
9 a person who is under 21 years of age; or (4) require a person or entity in control of
10 real property to allow the possession or use of marijuana on that property. **Section 2**
11 of this bill establishes an excise tax on both the wholesale and retail sale of
12 marijuana and marijuana products. The proceeds of the excise tax established by
13 **section 2** are to be deposited in the State Distributive School Account in the State
14 General Fund.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 207 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *It is unlawful for any person to counterfeit or forge or*
4 *attempt to counterfeit or forge a registry identification card.*

5 2. *Any person who violates the provisions of subsection 1 is*
6 *guilty of a misdemeanor.*

7 3. *As used in this section, "registry identification card" has*
8 *the meaning ascribed to it in NRS 453A.140.*

9 **Sec. 2.** Chapter 372A of NRS is hereby amended by adding
10 thereto a new section to read as follows:

11 1. *An excise tax is hereby imposed on each wholesale sale in*
12 *this State of marijuana by a marijuana cultivation facility to a*
13 *retail marijuana store, a marijuana product manufacturing*
14 *facility or another marijuana cultivation facility at the rate of 25*
15 *percent of the sales price of the marijuana. The excise tax imposed*
16 *pursuant to this subsection is the obligation of the marijuana*
17 *cultivation facility.*

18 2. *An excise tax is hereby imposed on each wholesale sale in*
19 *this State of marijuana or marijuana products by a marijuana*
20 *product manufacturing facility to a retail marijuana store or*
21 *another marijuana product manufacturing facility at the rate of*
22 *25 percent of the sales price of the marijuana or marijuana*
23 *products. The excise tax imposed pursuant to this subsection is the*
24 *obligation of the marijuana product manufacturing facility which*
25 *sells the marijuana or marijuana products to the retail marijuana*
26 *store or another marijuana product manufacturing facility.*

27 3. *An excise tax is hereby imposed on each retail sale in this*
28 *State of marijuana or marijuana products at the rate of 25 percent*
29 *of the sales price of the marijuana or marijuana products. The*
30 *excise tax imposed pursuant to this subsection:*

31 (a) *Is the obligation of the retail marijuana store.*

32 (b) *Is separate from and in addition to any general state and*
33 *local sales and use taxes that apply to retail sales of tangible*
34 *personal property.*

35 (c) *Must be considered part of the total retail price to which*
36 *general state and local sales and use taxes apply.*

37 4. *All revenues collected from the marijuana excise taxes*
38 *imposed pursuant to subsections 1, 2 and 3 must be paid over as*
39 *collected to the State Treasurer to be deposited to the credit of the*
40 *State Distributive School Account in the State General Fund.*

41 5. *The Department shall review regularly the rates of the*
42 *marijuana excise taxes imposed pursuant to subsections 1, 2 and 3*



1 *and make recommendations to the Legislature, as appropriate,*
2 *regarding adjustments that would further the goal of discouraging*
3 *use while undercutting illegal market prices.*

4 *6. As used in this section:*

5 *(a) "Marijuana cultivation facility" has the meaning ascribed*
6 *to it in section 9 of this act.*

7 *(b) "Marijuana product manufacturing facility" has the*
8 *meaning ascribed to it in section 11 of this act.*

9 *(c) "Marijuana products" has the meaning ascribed to it in*
10 *section 12 of this act.*

11 *(d) "Retail marijuana store" has the meaning ascribed to it in*
12 *section 14 of this act.*

13 **Sec. 3.** NRS 372A.070 is hereby amended to read as follows:

14 372A.070 1. A person shall not sell, offer to sell or possess
15 with the intent to sell a controlled substance unless he or she first:

16 (a) Registers with the Department as a dealer in controlled
17 substances and pays an annual fee of \$250; and

18 (b) Pays a tax on:

19 (1) ~~Each gram of marijuana, or portion thereof, of \$100;~~
20 ~~— (2) Each gram of any other a~~ controlled substance, or
21 portion thereof, of \$1,000; and

22 ~~(3) (2) Each 50 dosage units of a controlled substance that~~
23 ~~is not sold by weight, or portion thereof, of \$2,000.~~

24 2. For the purpose of calculating the tax imposed by
25 ~~subparagraphs~~ *subparagraph* (1) ~~and (2)~~ of paragraph (b) of
26 subsection 1, the controlled substance must be measured by the
27 weight of the substance in the dealer's possession, including the
28 weight of any material, compound, mixture or preparation that is
29 added to the controlled substance.

30 3. The Department shall not require a registered dealer to give
31 his or her name, address, social security number or other identifying
32 information on any return submitted with the tax.

33 4. Any person who violates subsection 1 is subject to a civil
34 penalty of 100 percent of the tax in addition to the tax imposed by
35 subsection 1. Any civil penalty imposed pursuant to this subsection
36 must be collected as part of the tax.

37 5. The district attorney of any county in which a dealer resides
38 may institute and conduct the prosecution of any action for violation
39 of subsection 1.

40 6. Property forfeited or subject to forfeiture pursuant to NRS
41 453.301 must not be used to satisfy a fee, tax or penalty imposed by
42 this section.

43 *7. As used in this section, "controlled substance" does not*
44 *include marijuana.*



1 **Sec. 4.** Chapter 453 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 5 to 21, inclusive, of this
3 act.

4 **Sec. 5.** *As used in sections 5 to 21, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 6 to 14, inclusive, of this act have the meanings*
7 *ascribed to them in those sections.*

8 **Sec. 6.** *“Consumer” means a person who is 21 years of age*
9 *or older who purchases marijuana or marijuana products for*
10 *personal use by persons 21 years of age or older, but not for resale*
11 *to others.*

12 **Sec. 7.** *“Department” means the Department of Taxation.*

13 **Sec. 8.** *“Marijuana accessories” means any equipment,*
14 *products or materials of any kind that are used, intended for use*
15 *or designed for use in planting, propagating, cultivating, growing,*
16 *harvesting, composting, manufacturing, compounding,*
17 *converting, producing, processing, preparing, testing, analyzing,*
18 *packaging, repackaging, storing, vaporizing or containing*
19 *marijuana, or for ingesting, inhaling or otherwise introducing*
20 *marijuana into the human body.*

21 **Sec. 9.** *“Marijuana cultivation facility” means an entity*
22 *licensed to cultivate, prepare and package marijuana and sell*
23 *marijuana to retail marijuana stores, to marijuana product*
24 *manufacturing facilities and to other marijuana cultivation*
25 *facilities, but not to consumers.*

26 **Sec. 10.** *“Marijuana establishment” means a marijuana*
27 *cultivation facility, a marijuana testing facility, a marijuana*
28 *product manufacturing facility or a retail marijuana store.*

29 **Sec. 11.** *“Marijuana product manufacturing facility” means*
30 *an entity licensed to purchase marijuana, manufacture, prepare*
31 *and package marijuana products, and sell marijuana and*
32 *marijuana products to other marijuana product manufacturing*
33 *facilities and to retail marijuana stores, but not to consumers.*

34 **Sec. 12.** *“Marijuana products” means products that are*
35 *comprised of marijuana and other ingredients and are intended*
36 *for use or consumption, including, without limitation, edible*
37 *products, ointments and tinctures.*

38 **Sec. 13.** *“Marijuana testing facility” means an entity*
39 *licensed to analyze and certify the safety and potency of*
40 *marijuana.*

41 **Sec. 14.** *“Retail marijuana store” means an entity licensed*
42 *to:*

- 43 1. *Purchase marijuana from marijuana cultivation facilities;*
44 2. *Purchase marijuana and marijuana products from*
45 *marijuana product manufacturing facilities; and*



1 3. *Sell marijuana and marijuana products to consumers.*

2 **Sec. 15.** *Notwithstanding any other provision of law to the*
3 *contrary, the following acts are lawful in this State, must not be*
4 *used as the basis for prosecution by this State or a political*
5 *subdivision of this State, and must not, in this State, be a basis for*
6 *seizure or forfeiture of assets for persons 21 years of age or older:*

7 1. *Possessing, using, displaying, purchasing or transporting*
8 *marijuana accessories or 1 ounce or less of marijuana;*

9 2. *Possessing, growing, processing or transporting not more*
10 *than six marijuana plants, with three or fewer being mature,*
11 *flowering plants, and possession of the marijuana produced by the*
12 *plants on the premises where the plants were grown, provided that*
13 *the growing takes place in an enclosed, locked space, is not*
14 *conducted openly or publicly and is not made available for sale;*

15 3. *Transferring 1 ounce or less of marijuana without*
16 *remuneration to a person who is 21 years of age or older;*

17 4. *Consuming of marijuana, provided that nothing in this*
18 *section shall be construed to allow consumption that is conducted*
19 *openly and publicly, or in a manner that endangers others; and*

20 5. *Assisting another person who is 21 years of age or older in*
21 *committing any of the acts described in this section.*

22 **Sec. 16.** *Notwithstanding any other provision of law to the*
23 *contrary, the following acts are lawful in this State, must not be*
24 *used as the basis for prosecution by this State or a political*
25 *subdivision of this State, and must not, in this State, be a basis for*
26 *seizure or forfeiture of assets for persons 21 years of age or older:*

27 1. *Manufacturing, possessing or purchasing marijuana*
28 *accessories, or the sale of marijuana accessories to a person who*
29 *is 21 years of age or older;*

30 2. *Possessing, displaying or transporting marijuana or*
31 *marijuana products, purchasing marijuana from a marijuana*
32 *cultivation facility, purchasing marijuana or marijuana products*
33 *from a marijuana product manufacturing facility, or selling*
34 *marijuana or marijuana products to consumers, if the person*
35 *conducting the activities described in this subsection has obtained*
36 *a current, valid license to operate a retail marijuana store or is*
37 *acting in the person's capacity as an owner, employee or agent of*
38 *a licensed retail marijuana store;*

39 3. *Cultivating, harvesting, processing, packaging,*
40 *transporting, displaying or possessing marijuana, delivering or*
41 *transferring marijuana to a marijuana testing facility, selling*
42 *marijuana to a marijuana cultivation facility, a marijuana product*
43 *manufacturing facility or a retail marijuana store, or purchasing*
44 *marijuana from a marijuana cultivation facility, if the person*
45 *conducting the activities described in this subsection has obtained*



1 *a current, valid license to operate a marijuana cultivation facility*
2 *or is acting in the person's capacity as an owner, employee or*
3 *agent of a licensed marijuana cultivation facility;*

4 *4. Packaging, processing, transporting, manufacturing,*
5 *displaying or possessing marijuana or marijuana products,*
6 *delivering or transferring marijuana or marijuana products to a*
7 *marijuana testing facility, selling marijuana or marijuana*
8 *products to a retail marijuana store or a marijuana product*
9 *manufacturing facility, purchasing marijuana from a marijuana*
10 *cultivation facility, or purchasing marijuana or marijuana*
11 *products from a marijuana product manufacturing facility, if the*
12 *person conducting the activities described in this subsection has*
13 *obtained a current, valid license to operate a marijuana product*
14 *manufacturing facility or is acting in the person's capacity as an*
15 *owner, employee or agent of a licensed marijuana product*
16 *manufacturing facility;*

17 *5. Possessing, cultivating, processing, repackaging, storing,*
18 *transporting, displaying, transferring or delivering marijuana or*
19 *marijuana products if the person has obtained a current, valid*
20 *license to operate a marijuana testing facility or is acting in the*
21 *person's capacity as an owner, employee or agent of a licensed*
22 *marijuana testing facility; and*

23 *6. Leasing or otherwise allowing the use of property owned,*
24 *occupied or controlled by any person, corporation or other entity*
25 *for any of the activities conducted lawfully in accordance with this*
26 *section.*

27 **Sec. 17. 1. The Department shall adopt regulations to carry**
28 **out the provisions of sections 5 to 21, inclusive, of this act. The**
29 **regulations must authorize the operation of marijuana**
30 **establishments and must include, without limitation:**

31 *(a) Procedures for the issuance, renewal, suspension and*
32 *revocation of a license to operate a marijuana establishment;*

33 *(b) A schedule of application, licensing and renewal fees for*
34 *the operation of marijuana establishments, providing that the*
35 *application fee must not exceed \$5,000, with this upper limit*
36 *adjusted annually for inflation based on the consumer price index*
37 *for urban Las Vegas issued by the United States Bureau of Labor*
38 *Statistics, unless the Department determines that a greater fee is*
39 *necessary to carry out the Department's responsibilities under*
40 *sections 5 to 21, inclusive, of this act;*

41 *(c) Qualifications for licensure that are directly and*
42 *demonstrably related to the operation of a marijuana*
43 *establishment, including, without limitation, licensure as a*
44 *business pursuant to chapter 76 of NRS;*

45 *(d) Security requirements for marijuana establishments;*



1 (e) Requirements to prevent the sale or diversion of marijuana
2 and marijuana products to persons under the age of 21 years;

3 (f) Labeling requirements for marijuana and marijuana
4 products sold or distributed by a marijuana establishment;

5 (g) Health and safety standards for the cultivation of
6 marijuana and the manufacture of marijuana products;

7 (h) Restrictions on the advertising and display of marijuana
8 and marijuana products; and

9 (i) Civil penalties for the failure to comply with any regulation
10 adopted pursuant to this section.

11 2. To ensure that individual privacy is protected:

12 (a) The Department shall not require a consumer to provide a
13 retail marijuana store with personal information other than
14 government-issued identification to determine the consumer's age;
15 and

16 (b) A retail marijuana store must not be required to acquire
17 and record personal information about consumers other than
18 information typically acquired in a financial transaction
19 conducted at a retail liquor store.

20 **Sec. 18.** 1. If the Department fails to adopt regulations
21 pursuant to section 17 of this act or fails to process and issue
22 licenses as required by subsection 1 of section 19 of this act, each
23 county in this State shall enact an ordinance specifying the
24 governmental entity within the county that is responsible for:

25 (a) Processing applications submitted for a license to operate a
26 marijuana establishment within the county; and

27 (b) The issuance of the licenses for which applications are
28 submitted, as described in paragraph (a).

29 2. In addition to the circumstances set forth in subsection 1, a
30 county may enact ordinances, not in conflict with sections 5 to 21,
31 inclusive, of this act or with any regulations adopted pursuant
32 thereto:

33 (a) Governing the time, place, manner and number of
34 marijuana establishments that may be operated in the county;

35 (b) Establishing procedures for the issuance, suspension and
36 revocation of a license issued by the county in accordance with
37 subsection 2 or 3 of section 19 of this act;

38 (c) Establishing a schedule of annual operating, licensing and
39 application fees for marijuana establishments, providing that:

40 (1) Such an application fee must only be due if an
41 application is submitted to the county in accordance with
42 subsection 3 of section 19 of this act; and

43 (2) Such a licensing fee must only be due if a license is
44 issued by the county in accordance with subsection 2 or 3 of
45 section 19 of this act;



1 (d) *Establishing civil penalties for the violation of an*
2 *ordinance governing the time, place or manner of the operation of*
3 *a marijuana establishment in the county; or*

4 (e) *Prohibiting, within the county, the operation of marijuana*
5 *cultivation facilities, marijuana product manufacturing facilities,*
6 *marijuana testing facilities or retail marijuana stores.*

7 **Sec. 19. 1.** *Except as otherwise provided in this section and*
8 *section 18 of this act, each application for an annual license to*
9 *operate a marijuana establishment must be submitted to the*
10 *Department. The Department shall:*

11 (i) *Accept and process applications on a timely basis;*

12 (ii) *Immediately forward to the county in which the applicant*
13 *desires to operate the marijuana establishment:*

14 (1) *A copy of each application; and*

15 (2) *One-half of the license application fee;*

16 (iii) *Issue an annual license to the applicant within 90 days*
17 *after receipt of an application unless the Department finds that the*
18 *applicant is not in compliance with the regulations adopted*
19 *pursuant to section 17 of this act or the Department is notified by*
20 *the county that the applicant is not in compliance with ordinances*
21 *that have been enacted pursuant to subsection 2 of section 18 of*
22 *this act and are in effect at the time of application, provided that if*
23 *a county has enacted a numerical limit on the number of*
24 *marijuana establishments and a greater number of applicants seek*
25 *licenses, the Department shall solicit and consider input from the*
26 *county as to the county's preference or preferences for licensure;*
27 *and*

28 (iv) *Upon denial of an application, notify the applicant in*
29 *writing of the specific reason for its denial.*

30 **2.** *If the Department does not issue a license to an applicant*
31 *within 90 days after receipt of the application filed in accordance*
32 *with subsection 1 and does not notify the applicant of the specific*
33 *reason for its denial, in writing and within the 90-day period, or if*
34 *the Department has adopted regulations pursuant to section 17 of*
35 *this act and has accepted applications pursuant to subsection 1 but*
36 *has not issued the licenses corresponding to those applications on*
37 *a timely basis, the applicant may resubmit the application directly*
38 *to the county pursuant to subsection 1 of section 18 of this act, and*
39 *the county may issue an annual license to the applicant. A county*
40 *issuing a license to an applicant shall do so within 90 days after*
41 *receipt of the resubmitted application unless the county finds and*
42 *notifies the applicant that the applicant is not in compliance with*
43 *ordinances that have been enacted pursuant to subsection 2 of*
44 *section 18 of this act and are in effect at the time the application is*
45 *resubmitted, and the county shall notify the Department if an*



1 annual license is issued to the applicant. If an application is
2 submitted to a county pursuant to this subsection, the Department
3 shall, upon request by the county, forward to the county the
4 application fee paid by the applicant to the Department. A license
5 issued by a county in accordance with this subsection has the
6 same force and effect as a license issued by the Department in
7 accordance with subsection 1 and the holder of such a license
8 must not be subject to regulation or enforcement by the
9 Department during the term of that license. A subsequent or
10 renewed license may be issued pursuant to this subsection on an
11 annual basis only upon resubmission to the county of a new
12 application that is first submitted to the Department pursuant to
13 subsection 1.

14 3. If the Department has not adopted regulations as required
15 by section 17 of this act, an applicant may submit an application
16 directly to a county and the county may issue an annual license to
17 the applicant. A county issuing a license to an applicant shall do
18 so within 90 days after receipt of the application unless it finds
19 and notifies the applicant that the applicant is not in compliance
20 with ordinances that have been enacted pursuant to subsection 2
21 of section 18 of this act and are in effect at the time of application,
22 and the county shall notify the Department if an annual license is
23 issued to the applicant. A license issued by a county in accordance
24 with this subsection has the same force and effect as a license
25 issued by the Department in accordance with subsection 1 and the
26 holder of the license must not be subject to regulation or
27 enforcement by the Department during the term of that license. A
28 subsequent or renewed license may be issued pursuant to this
29 subsection on an annual basis if the Department has not adopted
30 regulations pursuant to section 17 of this act at least 90 days
31 before the date on which the subsequent or renewed license would
32 be effective, or if the Department has adopted regulations
33 pursuant to section 17 of this act but has not, at least 90 days after
34 the adoption of those regulations, issued any licenses pursuant to
35 subsection 1.

36 **Sec. 20.** Nothing in the provisions of sections 5 to 21,
37 inclusive, of this act shall be construed to:

38 1. Require an employer to allow or accommodate the use,
39 consumption, possession, transfer, display, transportation, sale or
40 growing of marijuana in the workplace or to affect the ability of
41 employers to have policies restricting the use of marijuana by
42 employees;

43 2. Allow driving, operating or being in actual physical control
44 of a vehicle or a vessel under power or sail while under the
45 influence of marijuana or while impaired by marijuana, or to



1 *supersede any law relating to such matters, nor do the provisions*
2 *of sections 5 to 21, inclusive, of this act preclude the State from*
3 *enacting laws and imposing penalties for driving, operating or*
4 *being in actual physical control of a vehicle or a vessel under*
5 *power or sail while under the influence of marijuana or while*
6 *impaired by marijuana;*

7 3. *Allow the transfer of marijuana, with or without*
8 *remuneration, to a person under the age of 21 years or to allow a*
9 *person under the age of 21 years to purchase, possess, use,*
10 *transport, grow or consume marijuana; or*

11 4. *Prohibit a person, employer, school, hospital, detention*
12 *facility, corporation or any other entity which occupies, owns or*
13 *controls real property from prohibiting or otherwise regulating the*
14 *possession, consumption, use, display, transfer, distribution, sale,*
15 *transportation or growing of marijuana on or in that property.*

16 **Sec. 21.** *Nothing in the provisions of sections 5 to 21,*
17 *inclusive, of this act shall be construed as in any manner affecting*
18 *the provisions of chapter 453A of NRS relating to the medical use*
19 *of marijuana.*

20 **Sec. 22.** The Department of Taxation shall adopt the
21 regulations required by section 17 of this act on or before January 1,
22 2014.

23 **Sec. 23.** This act becomes effective:

24 1. Upon passage and approval for the purpose of adopting
25 regulations and conducting any preliminary activities necessary to
26 ensure that the provisions of this act are carried out in an orderly
27 fashion; and

28 2. On January 1, 2014, for all other purposes.

