

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on SB 64
(RELATING TO MEDICAL CANNABIS)

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH

SENATOR BRIAN TANIGUCHI
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
Hearing Date: 2/17/2021 Room Number: 225

1 **Fiscal Implications:** None.

2 **Department Testimony:** The department appreciates and supports the intent of this measure.

3 The purpose of this bill is to provide additional employment protections for registered medical
4 cannabis patients who are in strict compliance with State rules and laws, with exceptions to
5 maintain workplace safety.

6 Act 116 (2019 Legislature) required the Department to establish a working group to consider and
7 make recommendations including employment issues involving an employee who is a registered
8 329 cardholder. The working group findings and recommendations were presented in a Report to
9 the Thirteenth Legislature. The employment subcommittee of the working group achieved
10 general agreement that:

- 11 1. Discrimination based solely on the status as a registered 329 cardholder should be
12 prohibited;
- 13 2. Employment protections should NOT apply to the use, possession, or impairment at
14 work;
- 15 3. Protection against termination should NOT apply to use, possession, or impairment at
16 work and exemptions from protections should be allowed for certain types of employers
17 and employees;
- 18 4. Employers who would be negatively impacted by federal laws regarding cannabis use by
19 employees and safety-sensitive occupations would be exempt;

1 5. Protection for 329 cardholders should be objective and based on impairment, NOT solely
2 on a positive drug test.

3 Thank you for the opportunity to provide testimony on this measure.

4 **Offered Amendments:** None.

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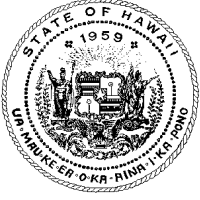
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20 Thank you for the opportunity to testify on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

February 17, 2021
Rm. 225, 1:00 p.m.

To: The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Members of the Senate Committee on Health

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 64

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports the intent of S.B. No. 64 and offers the following comments and concerns regarding the bill as drafted.

S.B. No. 64 amends HRS § 329-125.5 to prohibit an employer from discriminating against a person in the hiring, termination, or condition of employment based on the person’s status as a medical cannabis cardholder, or a registered qualifying medical cannabis patient’s positive drug test for cannabis components or metabolites, unless the patient was impaired on the premises of the place of employment during hours of employment. The new statutory protection expressly does not apply if failure to hire, terminate, impose any term or condition of employment or otherwise penalize an employee would cause the employer to lose a monetary benefit or license-related benefit under federal law. And, the new statute would expressly allow

employers to use a “fit for duty” test as a tool for a registered qualifying medical cannabis patient in a potentially dangerous occupation.

The HCRC appreciates that the bill places this new protection in HRS chapter 329, within the statute governing the Department of Health’s administration of the state medical cannabis program, recognizing that the HCRC’s interest is more narrowly focused on the rights of persons with a disability. It is noteworthy that the HRS § 329-121 definition of “debilitating medical condition” is not identical to the HRS § 378-1 and HAR § 12-46-182 definition of “disability,” so not every registered qualifying medical cannabis patient will necessarily be a person with a disability entitled to a reasonable accommodation (and not every person with a disability has a debilitating medical condition). This measure will protect all registered qualifying medical cannabis patients, and does not directly affect the right of persons with a disability to a reasonable accommodation.

HCRC Concerns

The HCRC testified in support of the intent of a similar bill during the 2020 Session, S.B. No. 2543. S.B. No. 64 differs from S.B. No. 2543 (2020) in one substantive respect. It amends HRS 329-125.5 to add this shield to employer liability:

(e) No employer shall have any liability to any employee who is injured or killed during the performance of the employee's job if the employee's impairment by medical cannabis was the sole contributing factor to the employee's death or injury.

This proposed liability shield raises two concerns:

1) It is unclear what “sole contributing factor” means, as it is not a known standard and appears oxymoronic; and

2) The scope of the employer liability shield for employee injury or death is unclear, whether it is meant to shield employers from both tort claims and workers compensation claims for employee injury or death. Workers compensation is the exclusive remedy for work-related injuries. If the proposed employer liability shield affects workers compensation, it would be a fundamental change, introducing the element of “fault” and deviating from the trade-off of workers compensation as the exclusive remedy for work injuries in return for no-fault recovery.

The HCRC supports the intent of S.B. No. 64, with the concerns noted in this testimony.



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Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Labor, Culture and the Arts and Committee on Health
Senator Brian T. Taniguchi and Senator Jarrett Keohokalole, Chairs
Senator Les Ihara, Jr. and Senator Rosalyn H. Baker, Vice Chairs

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: February 17, 2021

TIME: 1pm

PLACE: Via Videoconference

RE: SB64 Relating to Medical Cannabis

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA respectfully understands the intent of this measure. There are a range of occupations like driving or operating heavy machinery to name just two, which are incompatible with cannabis use for safety reasons. The definitions in this bill and the fit for duty test simply do not provide adequate safety protections or legal protections to mitigate the potential risks of cannabis use in certain occupations.

It is also important to note that Federal law still does not recognize medical marijuana. This law would create a conflict between Federal and State law that would be impossible for companies to reconcile in their hiring policies. For these reasons we ask that this measure be held. We thank you for the opportunity to testify.



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 17, 2021**

Re: SB 64 Relating to Medical Cannabis

Good afternoon Chair Taniguchi, Chair Keohokalole and members of the Senate Committee on Labor Culture and the Arts and the Senate Committee on Health. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

We are in OPPOSITION of SB 64 Relating to Medical Cannabis. This measure prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions; specifies that an employer may use a fit-for-duty test as a tool for medical cannabis qualifying patients in potentially dangerous occupations; and exempts certain occupations.

RMH does have questions and concerns regarding this measure. Would retailers be exempt as we work with children, the elderly and other vulnerable populations? Retailers' customers and employees comes in all ages, ethnic and social economic backgrounds. In addition, because retailers use machinery like cash registers, compactors, electric hand trucks would this also make us exempt?

It is our understanding that obtaining a medical cannabis card in Hawaii is not that difficult to do and we do not judge those who have these cards. However, retailers' main concerns are the safety of not only our customers but our employees as well. We are aware that impaired employees could have serious consequences for employers. Retail employees not only handle monetary transactions at the cash register, but the visual merchandisers who are on high ladders dressing windows and the showroom floor, stockers using razor blade box cutters, hand trucks and lifting boxes, employees using compactors to name a few. If an employee is impaired and injured a customer, themselves or another employee, the employer would be held liable and in many cases a lawsuit follows.

This measure still raises a lot of uncertainty and the employer could still easily be held liable for any injury or negative impact.

We hope that you will consider holding this measure.

Mahalo for this opportunity to testify.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TESTIMONY IN SUPPORT OF SB 64

TO: Chair Taniguchi, Vice Chair Ihara &
Labor, Culture, and the Arts Committee Members
Chair Keohokalole, Vice Chair Baker & Health Committee Members

FROM: Nikos Leverenz
DPFH Board President

DATE: February 17, 2021 (1:00 PM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** SB 64, which would provide much needed employment protections for Hawai'i workers who are registered medical cannabis patients. The bill also authorizes "fit for duty" tests in "potentially dangerous occupations."

Medical cannabis patients face significant stigma due to longstanding misperceptions regarding cannabis and its uses, [fueled by a longstanding, costly "war on drugs" that is disproportionately waged against those impacted by social determinants of health](#). In contrast, DPFH strongly believes that those with medically diagnosed behavioral health conditions, including substance use disorder, should have meaningful access to needed community-based, medically supervised treatment regardless of ability to pay.

One conspicuous example of the pervasive stigma faced by medical cannabis patients is found in the unduly caustic comments of a notable business executive in a 2019 article in the *Honolulu Star-Advertiser*: "This is another vice, just like alcohol.... This guy had an itchy eye and was screwing something in, and he poked his eye out. He wasn't paying attention. He was high on pakalolo." (Kristen Consillio, "[Medical Cannabis Raises Issues in the Workplace](#)," *Honolulu Star-Advertiser*, July 8, 2019.)

As cannabis use poses substantially lower levels of preventable injury, preventable illness, and preventable death than two widely used licit substances, alcohol and smoked tobacco, a comment like this is deeply troubling. It is indicative of bias that is untethered to underlying reality but can seriously jeopardize the ability of medical cannabis patients to earn, and continue to earn, a living through gainful employment.

Pre-employment drug screenings, including those for cannabis, are discriminatory and disproportionately impact individuals and communities that have been harmed over decades by an excessively punitive approach to drugs. [Ongoing criminalization under state law has fallen particularly hard on Native Hawaiian communities](#)—from sentencing laws, enforcement, prosecutorial practices, and practice governing probation and parole. Hawaii's unified jail and prison system has failed over decades to meet any rehabilitative objective given a lack of programming and services, including those related to re-entry.

Last month, Atlanta Mayor Keisha Lance Bottoms [issued an executive order suspending physical examinations and drug screenings](#) for applicants for city government positions that are not safety sensitive positions. She called such requirements "[outdated and costly barriers to onboarding new talent.](#)"

Recent research indicates a lack of correlation between off-duty cannabis use and the incidence of work-related injuries. Last December, University of Toronto researchers found "[no association between past-year cannabis use and work-related injury.](#)" The study recommends that "occupational medicine practitioners should take a risk-based approach to drafting workplace cannabis policies." Another 2020 study found that "[after-work cannabis use was not related \(positively or negatively\) to any form of performance as rated by the user's direct supervisor.](#)"

Without an actual connection to heightened risks of workplace injuries and increased harm to the safety of others while on-duty, drug testing is an invasive practice that operates to discriminate against broad categories of persons, including those from disadvantaged communities and those disproportionately impacted by social determinants of health. Drug tests often fail to substances like methamphetamine and alcohol that are water-soluble and quickly exit the body. In contrast, cannabis is fat-soluble and can be present in metabolites for up to a month after single use.

DPFH was instrumental in the passage of Act 228 (2000), authorizing the acquisition, possession, and use of medical cannabis, and Act 241 (2015), authorizing the establishment and regulation of medical cannabis dispensaries. DPFH also actively participated in the Act 230 (2016) Medical Cannabis Legislative Oversight Working Group, which addressed, among other concerns, the issue of discrimination against medical cannabis patients in the context of employment.

Thank you for the opportunity to testify on this measure.



Akamai Cannabis Clinic
3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON SENATE BILL 64
RELATING TO MEDICAL CANNABIS
By
Clifton Otto, MD

Senate Committee on Labor, Culture and the Arts
Senator Brian T. Taniguchi, Chair
Senator Les Ihara Jr., Vice Chair

Senate Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

Wednesday, February 17, 2021; 1:00 PM
State Capitol, Videoconference

Thank you for the opportunity to provide testimony in SUPPORT WITH CHANGES.

The state authorized use of cannabis does not violate federal law. It is exempt from the federal regulation of controlled substances because of the State's constitutional authority to decide how controlled substances are used within the state, and simply needs to be recognized as such.

This measure offers a perfect opportunity to declare this exemption since it relates to discrimination that medical cannabis patients are experiencing in the workplace from the ongoing conflict between the federal regulation of marijuana and the state authorized use of cannabis for medical purposes in Hawaii.

I respectfully recommend that the following changes be made to this measure, to include removing professional specific restrictions:

"§329-125.5 Medical cannabis patient and caregiver protections.

(c) An employer shall not discriminate against a person in hiring, termination, or any term or condition of employment based upon either of the following:

(1) The person's status as a registered patient; or
(2) A registered patient's positive drug test for cannabis
components or metabolites, unless the registered qualifying
patient was impaired by cannabis during the hours of
employment; provided that nothing in this subsection shall
abridge any existing right of an employer to send an employee
for medical evaluation when the employer has safety concerns
about the impairment of the employee;
and provided further that Part IX of chapter 329, Hawaii Revised
Statutes, and chapter 329D, Hawaii Revised Statutes, create an
exemption from federal drug laws and do not create any positive
conflict pursuant to title 21 United States Code Annotated
section 903; and that the federal scheduling of marijuana does
not apply to the state authorized use of cannabis."

I also recommend that the following statutory change be included in this bill to promote the development of a locally produced rapid THC test that will allow for impairment from cannabis in the workplace to be accurately assessed:

§321-30.1 Medical cannabis registry and regulation special

fund; established. (a) There is established within the state treasury the medical cannabis registry and regulation special fund. The fund shall be expended at the discretion of the director of health:

(1) To establish and regulate a system of medical cannabis 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) For any other expenditure necessary, consistent with this chapter and chapter 329D, to implement medical cannabis registry and regulation programs.

(8) to promote the development of a locally produced rapid THC test.

Aloha.

OPPOSE SB 64

COMMITTEE ON LABOR, CULTURE AND THE ARTS

Senator Brian T. Taniguchi, Chair

Senator Les Ihara, Jr., Vice Chair

COMMITTEE ON HEALTH

Senator Jarrett Keohokalole, Chair

Senator Rosalyn H. Baker, Vice Chair

February 15, 2021

Aloha Honorable Chairs Taniguchi and Keohokalole:

While medical cannabis patients appreciate the efforts and intent of Senator Roz Baker, this legislation codifies discrimination against many patients. For example, stated protections would not apply to:

(9) Employees who operate or are in physical control of any of the following:

(D) Public utilities, such as the electrical power grid or water source;

In practice, this legislation would prohibit Hawaiian Electric Industries CEO & President Connie Lau from using medical cannabis if she contracts cancer. Hawaiian Electric Company CEO & President Scott Seu would be denied medical cannabis authorization for severe pain caused by arthritis.

Neither these individuals are considered “safety-sensitive employees.” They and thousands like them should not be denied access to a scientifically-established safe and effective pain analgesic by the legislature simply for working in a particular industry. This is too broad of an “exemption brush.”

For many, there only remaining option would be an opioid-based medication. Some 500,000 Americans have died from OD or other complications related to opioids. It is not disputed patients who use cannabis are highly unlikely to die this way.

In 2015, the legislature amended "329" statutes after being the first state body to legalize medical cannabis in 2000.

They wrote:

HI Rev Stat § 329-125.5, (b) **For the purposes of medical care**, including organ transplants, a registered qualifying patient's use of marijuana in compliance with this part shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care. [emphasis mine]

Consider this: when dealing with scientists, medical experts and healthcare professionals, cannabis is EQUIVALENT to any other prescribed medication.

When interacting with NON-scientists, NON-medical experts, or NON-healthcare professionals, medical cannabis patients are considered second-class citizens or lepers or those "with a vice" and disparaged, shamed, disrespected, belittled and punished.

This is inhumane discrimination based on ignorance, bigotry, irrational fears and years of Institutional Racism.

The intent of “drug-free” workplace policies and related Hawai’i statute is to nurture an employment setting where all employees adhere to a program of protocols and activities designed to provide a safe workplace, discourage alcohol and drug abuse, and encourage treatment, recovery and the return to work of those employees with such abuse problems.

SB 64 does not accomplish these goals.

Another solution would be to divide employees into non-safety sensitive and safety sensitive classifications within industry or companies. A third solution would be to remove (d) (20) Marijuana and (g) (1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant) from §329-14 Schedule I, and reclassify as §329-18 Schedule III.

Although the federal government maintains medical cannabis to be illegal due to DEA Schedule I designation, the United States and member European nations participating in the Commission for Narcotic Drugs recently voted in favor (December 2020) of removing medical cannabis from the category of world’s most dangerous drugs, i.e., DEA Schedule I type designations, based on recommendation of the World Health Organization.

I have attached a comprehensive appendix (p12-p32) from a recently-released study by the Cato Institute, “The Effect of State Marijuana Legalizations: 2021 Update.”¹

Their simple conclusion is: “New research finds that the strong claims made by both advocates and critics of state-level marijuana legalization are substantially overstated and in some cases entirely without real-world support.”

The history of cannabis in the U.S. since the early 1900s has been defined by extremism, alarmists and racially-motivated actors. Isn’t it time for us to return to a scientifically-driven, evidenced-based and rational policy making.

Thank you for your time,

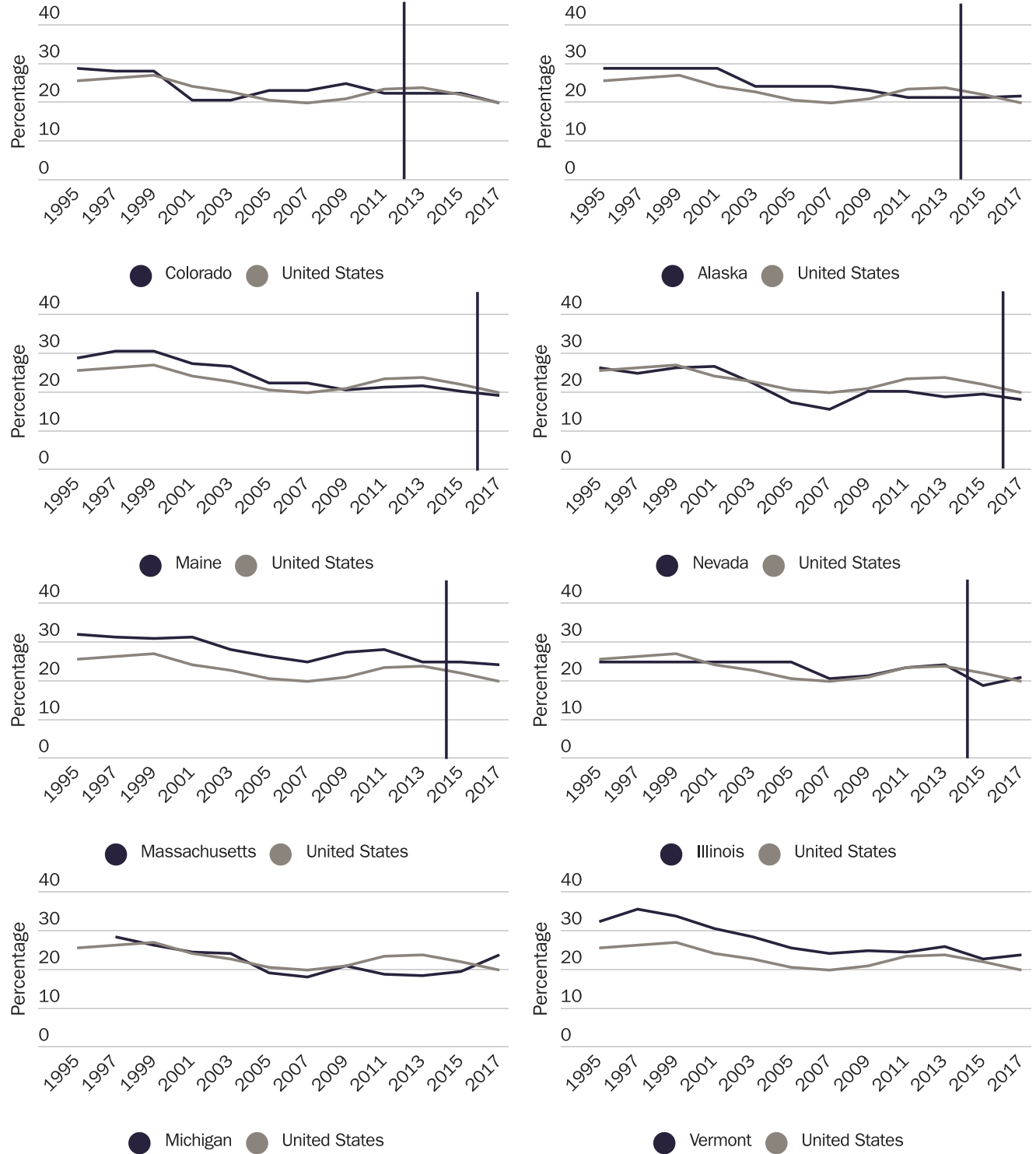
\s\ Scott Goold \s\
Scott Goold
1778 Ala Moana Blvd
Honolulu, HI 96815

¹ <https://www.cato.org/policy-analysis/effect-state-marijuana-legalizations-2021-update>

APPENDIX

Figure 2

Youth Risk Behavior Surveillance System respondents reporting marijuana use in 30 days prior to survey



Source: "Youth Risk Behavior Surveillance System (YRBSS)," Centers for Disease Control and Prevention, <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>.

Figure 3

Perceptions of "great risk" from smoking marijuana

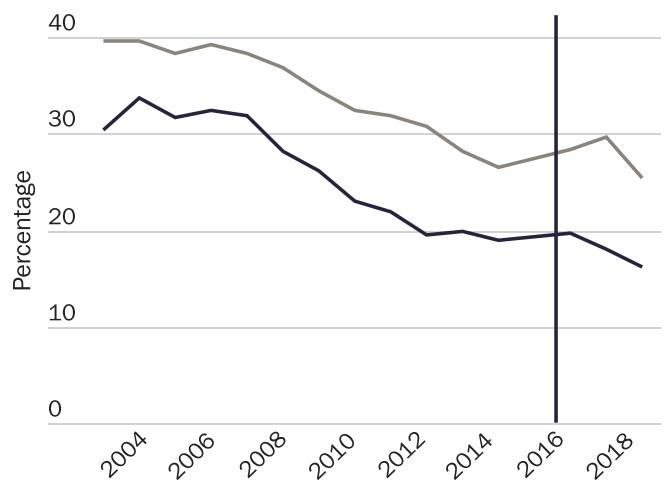
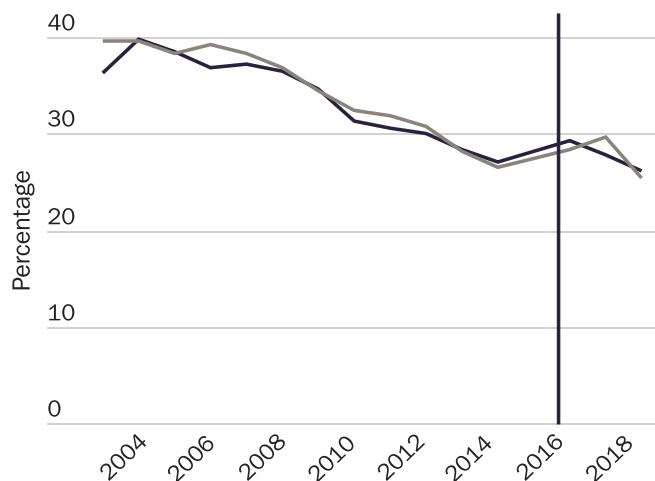
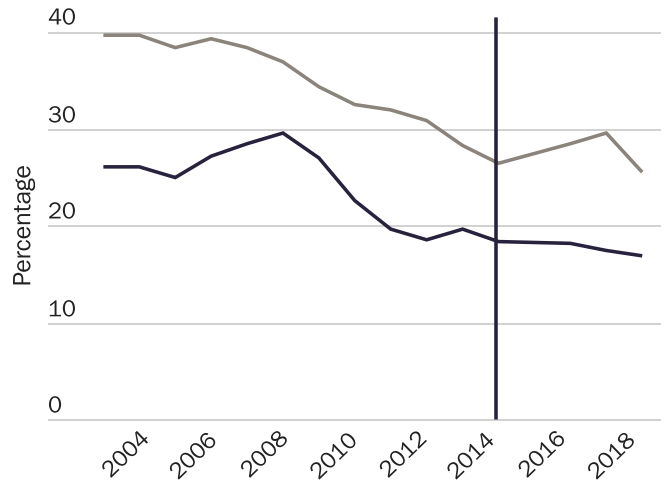
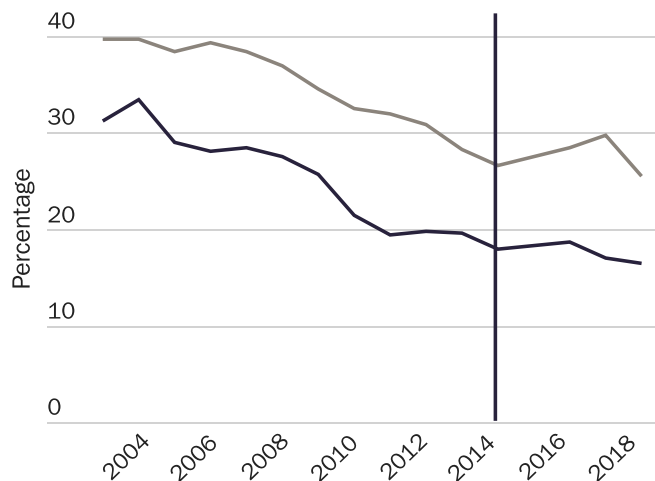
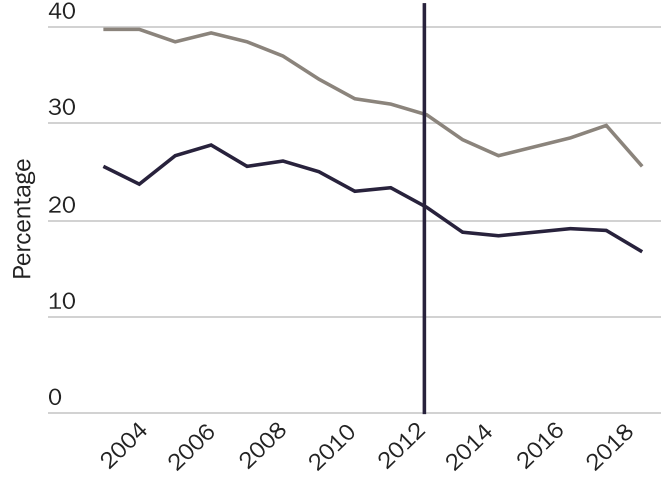
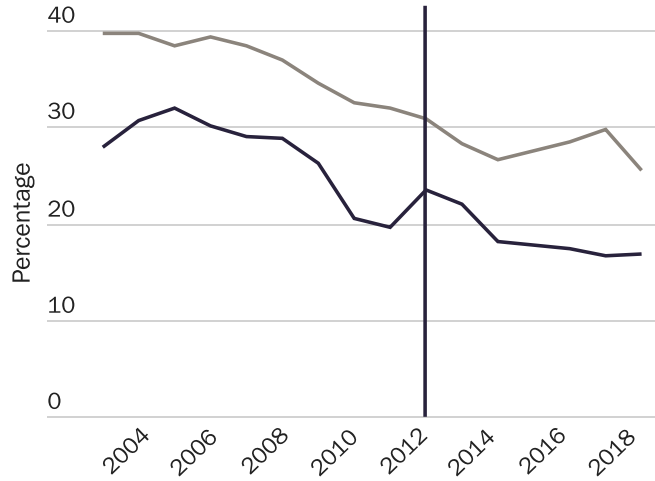
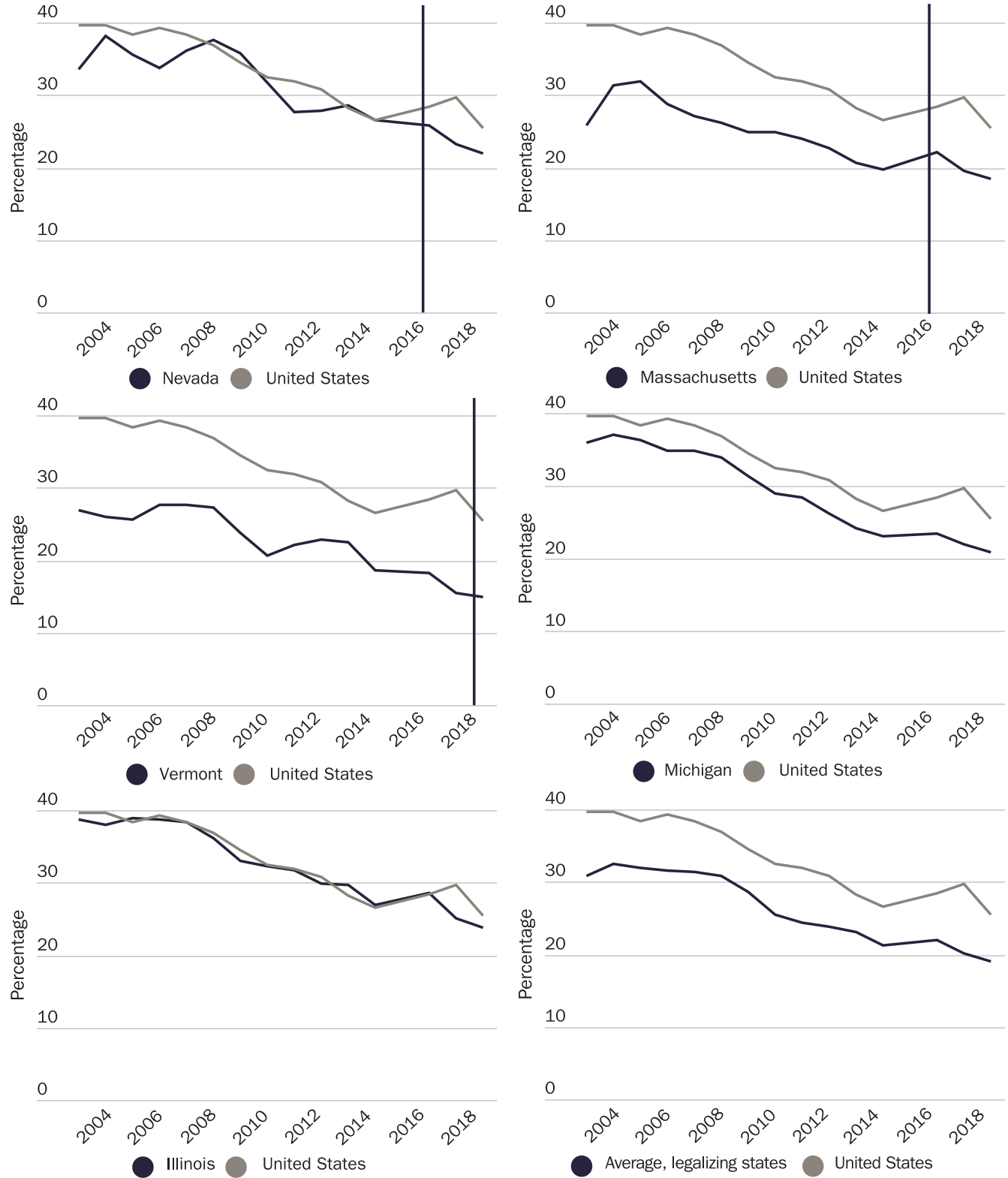


Figure 3 (continued)



Source: "National Survey on Drug Use and Health (NSDUH)," Substance Abuse and Mental Health Services Administration, 2003–2018, <https://www.samhsa.gov/data/data-we-collect/nsduh-national-survey-drug-use-and-health>.

Figure 5

Past year cocaine use rate

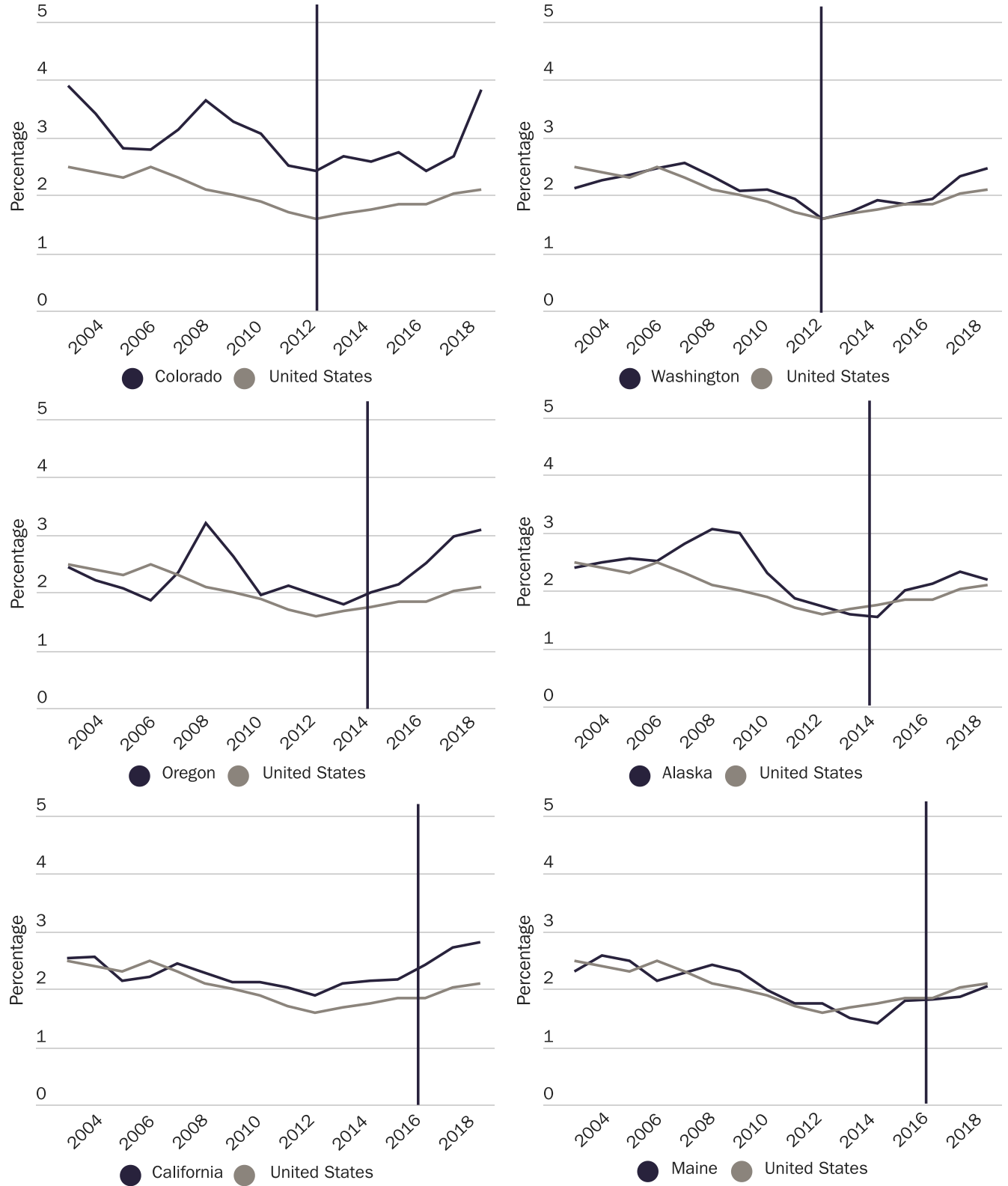
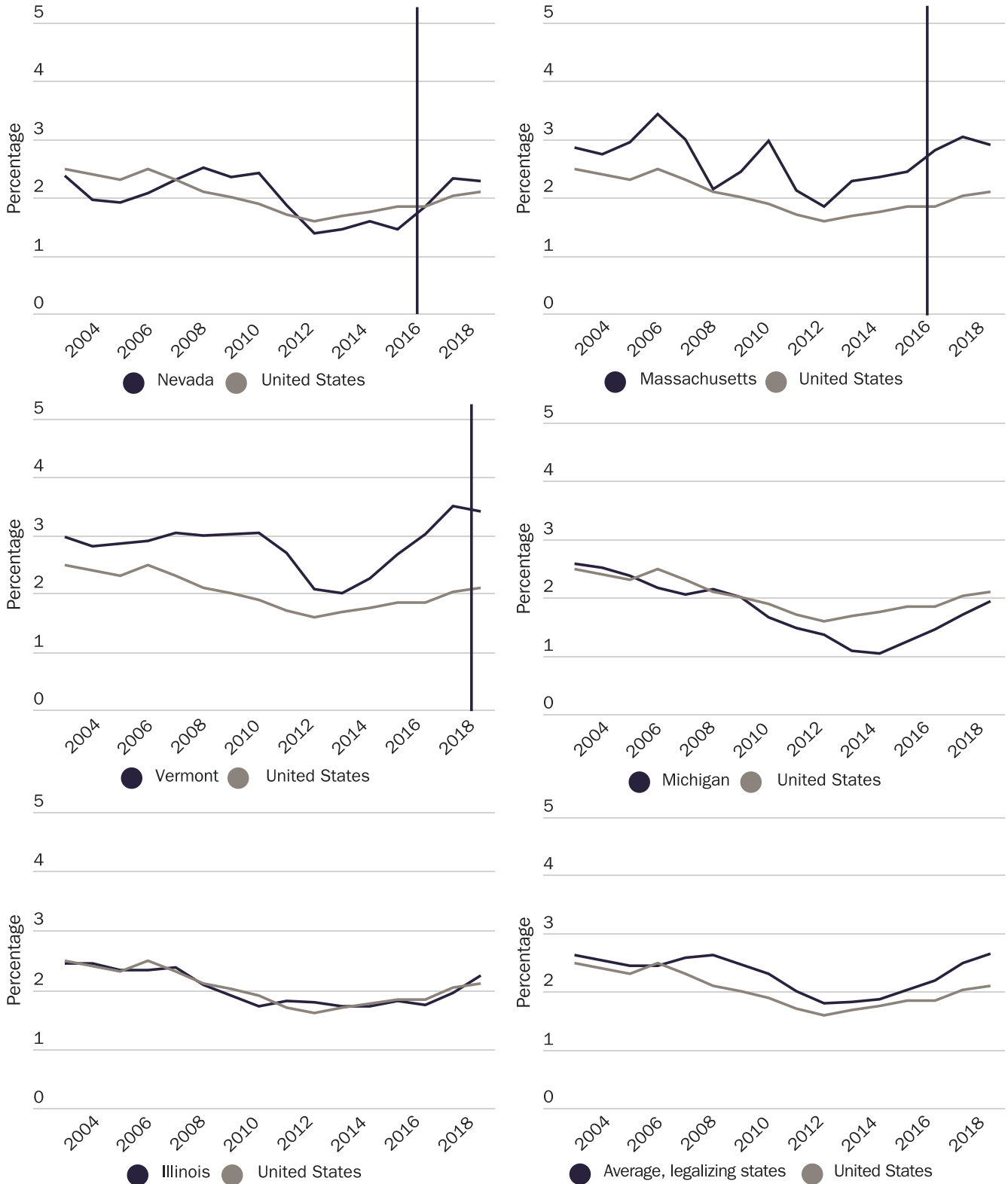


Figure 5 (continued)



Source: "National Survey on Drug Use and Health (NSDUH)," Substance Abuse and Mental Health Services Administration, 2003–2018, <https://www.samhsa.gov/data/data-we-collect/nsduh-national-survey-drug-use-and-health>.

Figure 6

Past month alcohol use rate

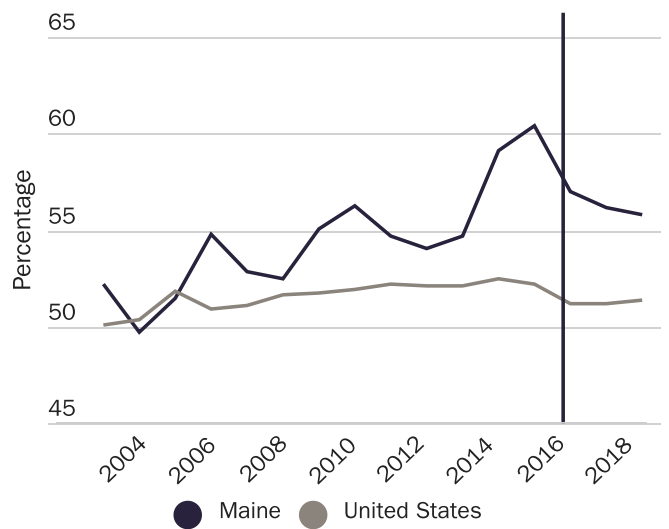
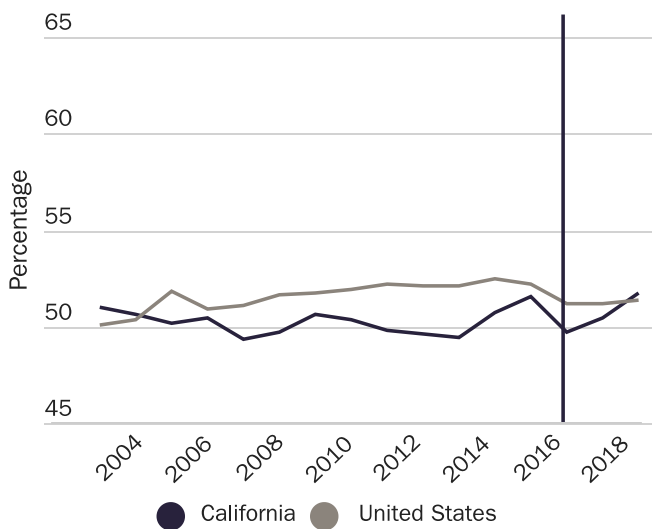
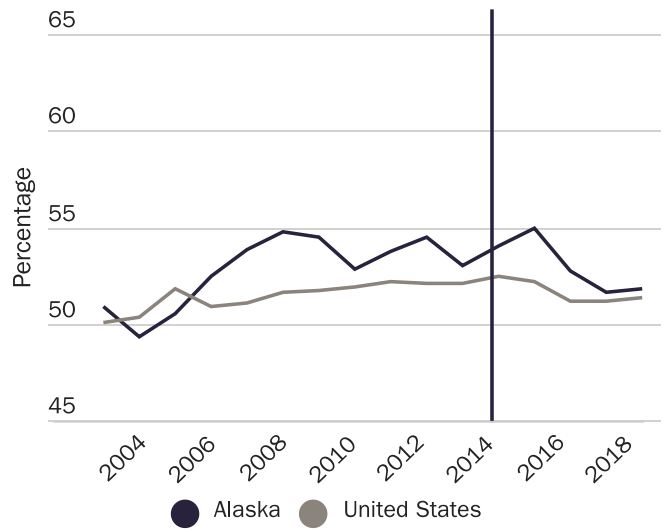
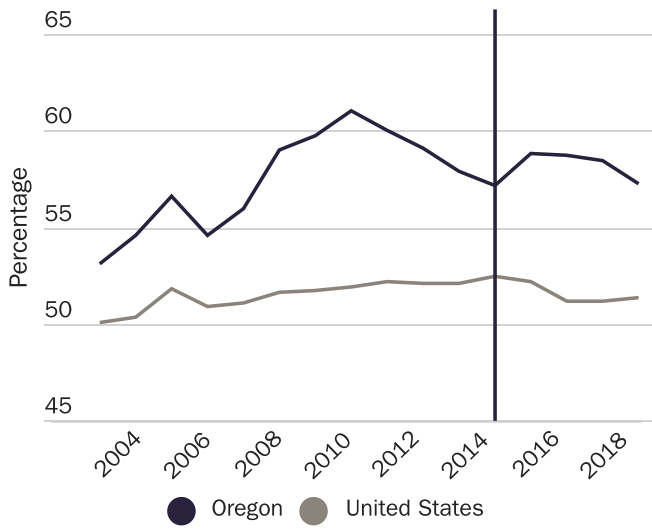
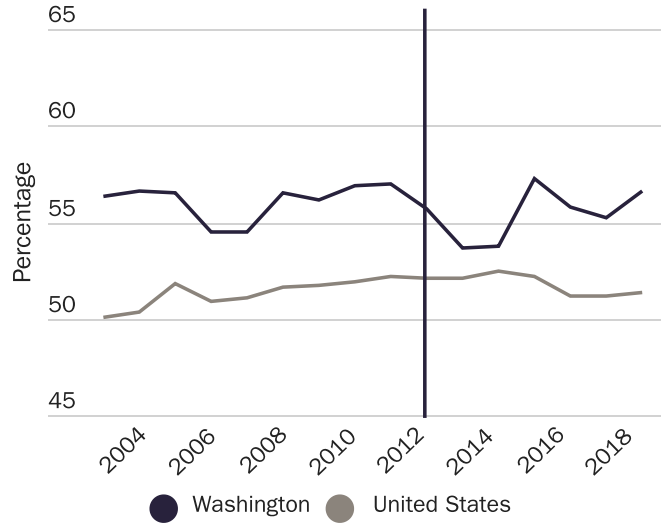
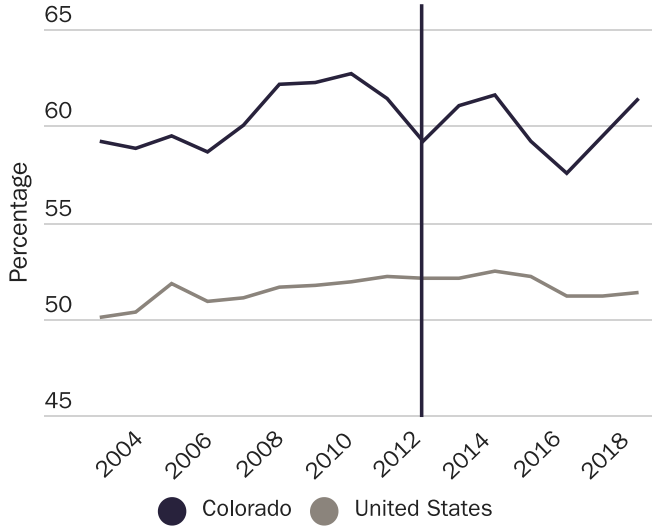
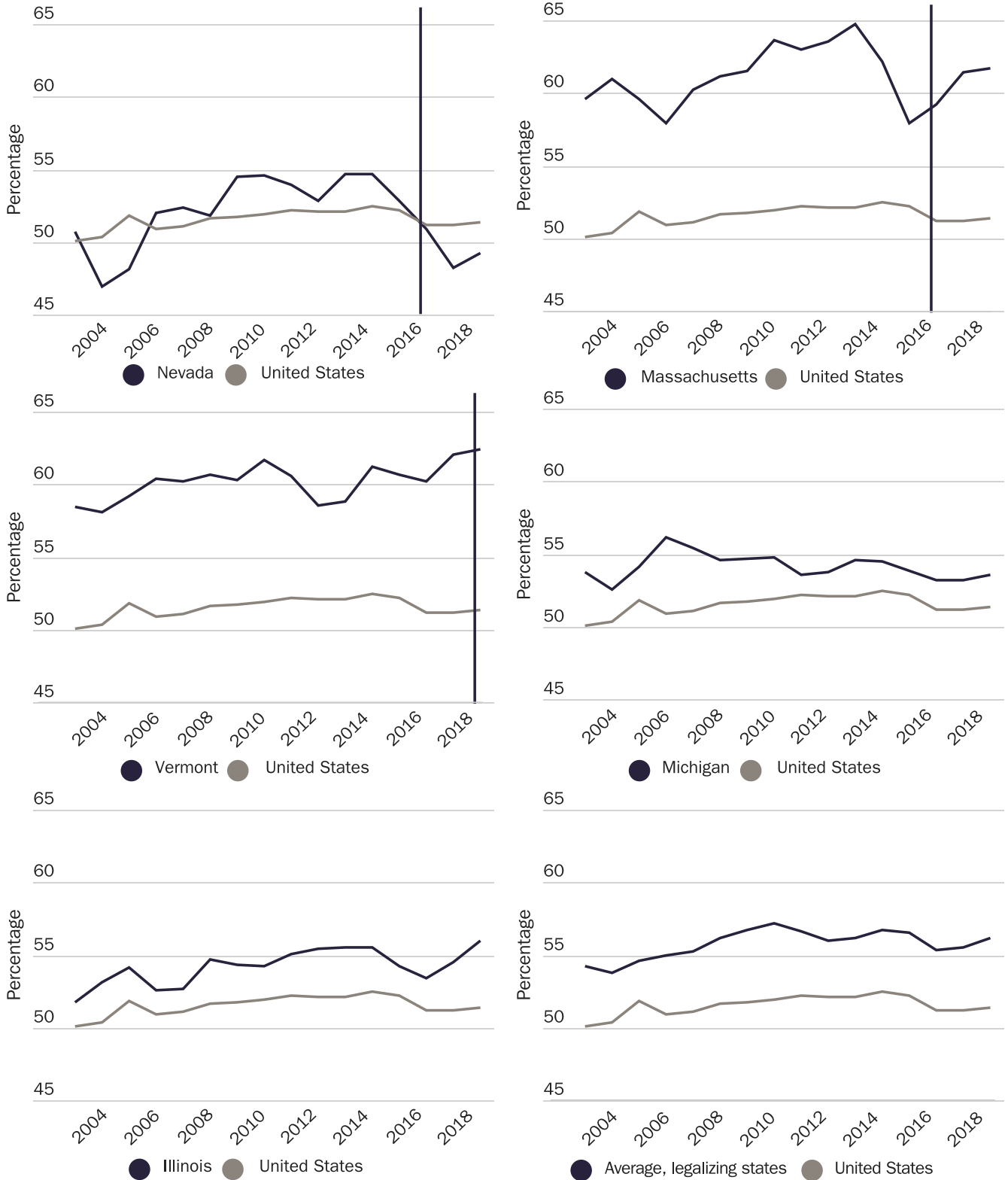


Figure 6 (continued)



Source: "National Survey on Drug Use and Health (NSDUH)," Substance Abuse and Mental Health Services Administration, 2003–2018, <https://www.samhsa.gov/data/data-we-collect/nsduh-national-survey-drug-use-and-health>.

Figure 7
Suicide death rates among people aged 15 and older

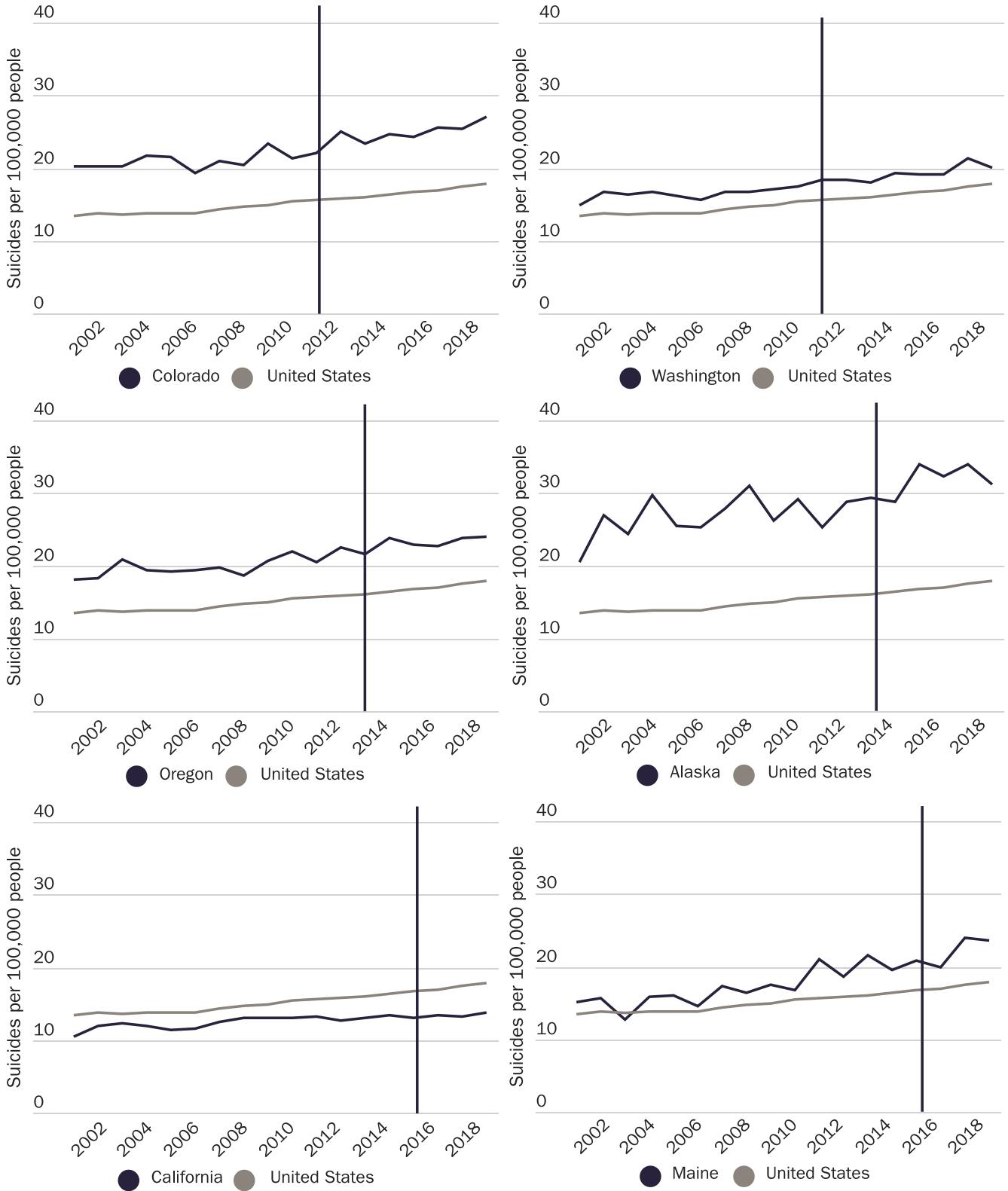
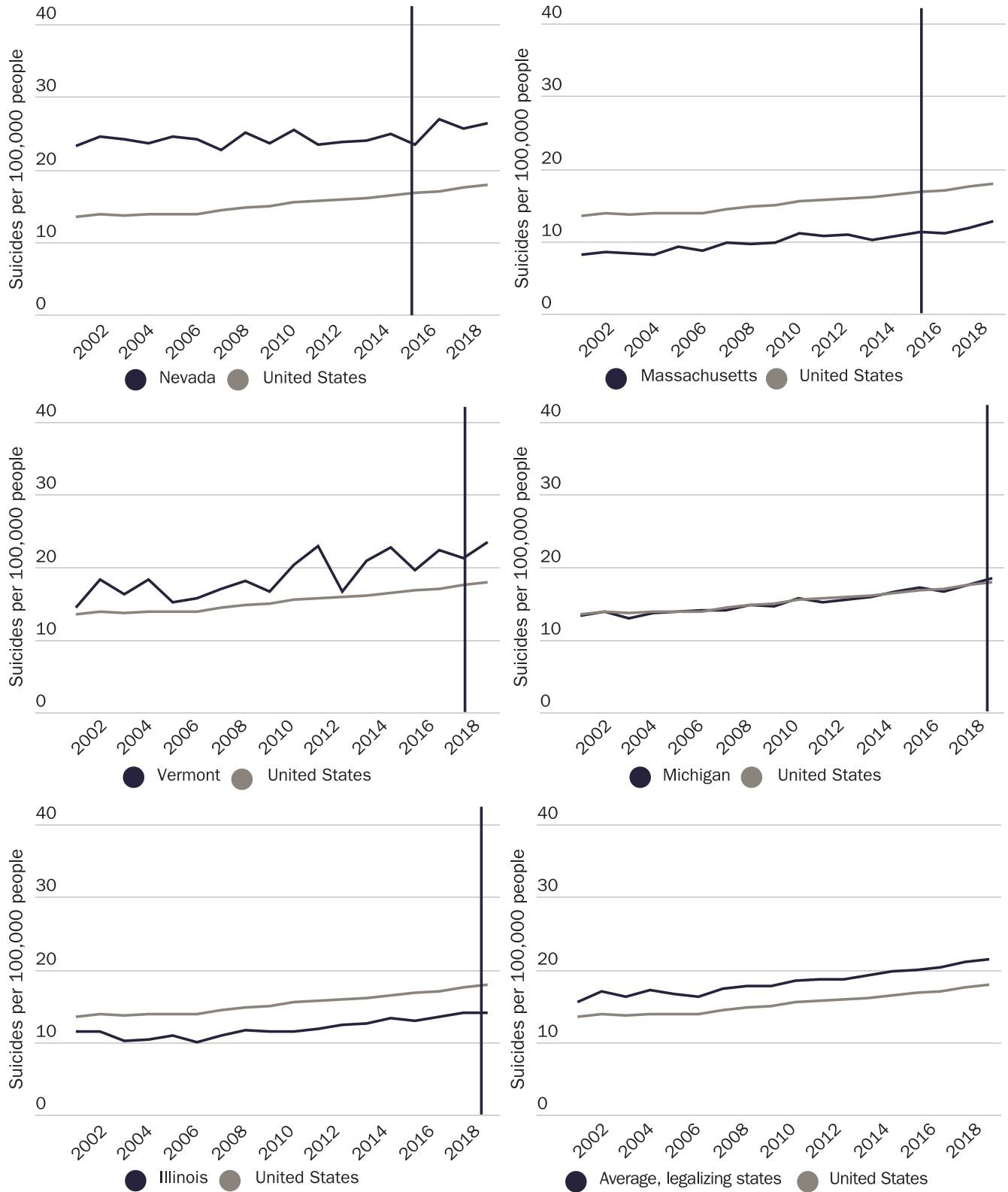


Figure 7 (continued)



Source: Wide-ranging Online Data for Epidemiologic Research, Centers for Disease Control and Prevention, <https://wonder.cdc.gov/>.

Figure 8
Violent crime rate per 100,000

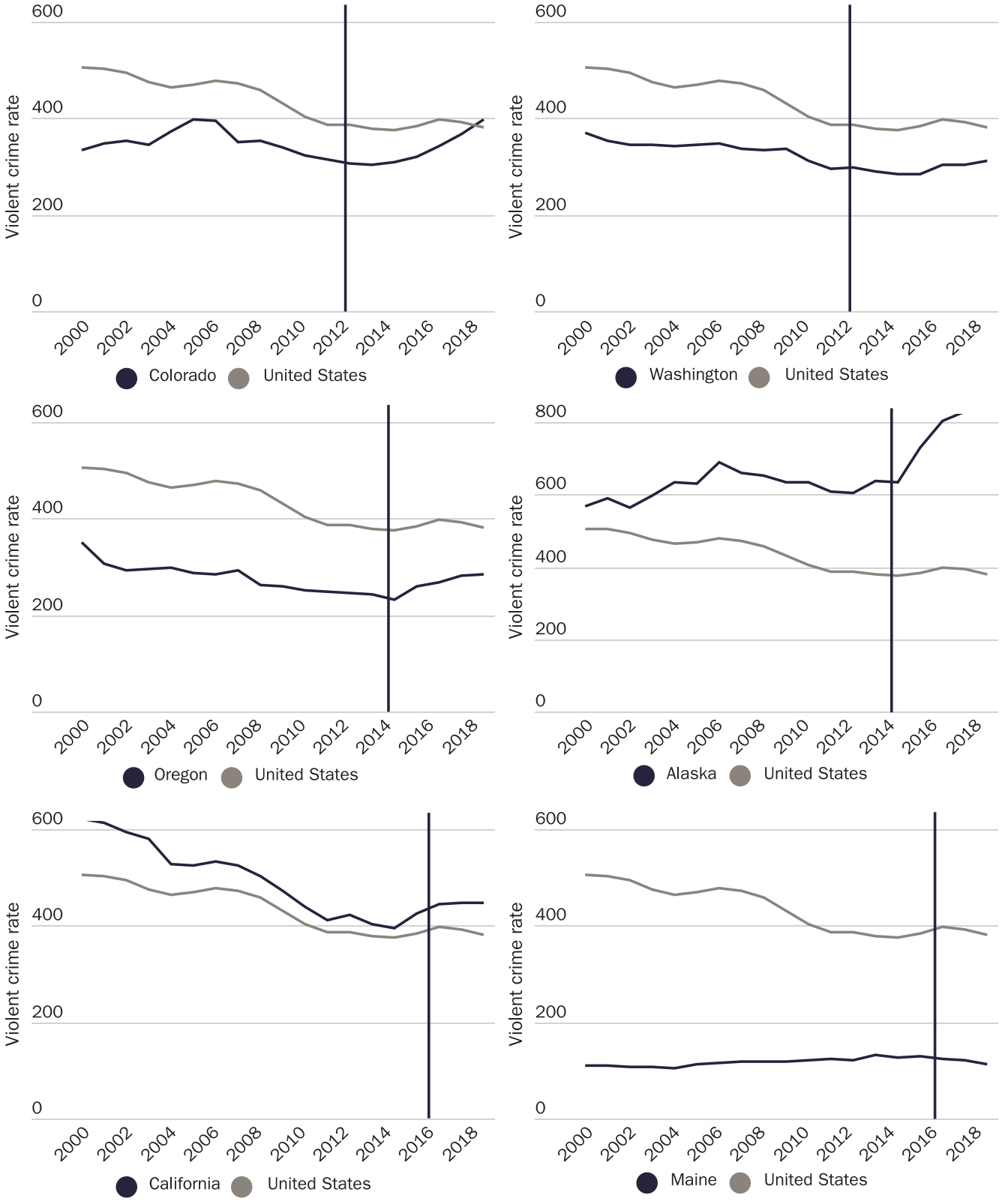
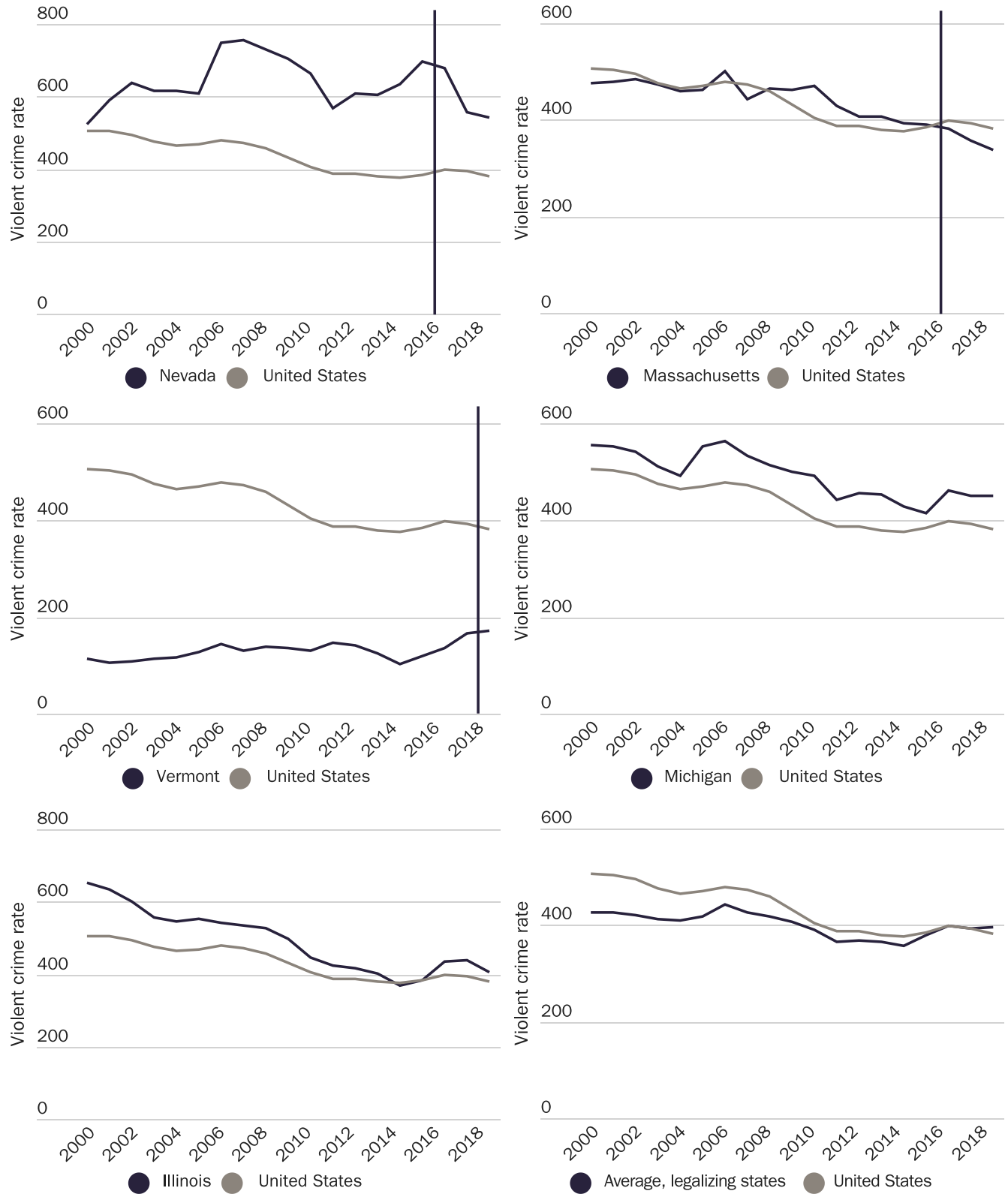


Figure 8 (continued)



Source: Wide-ranging Online Data for Epidemiologic Research, Centers for Disease Control and Prevention, <https://wonder.cdc.gov/>.

Figure 9
Crash fatality rate

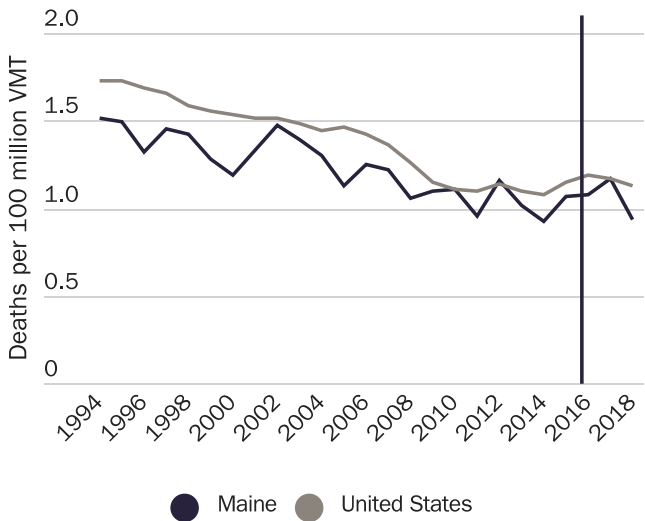
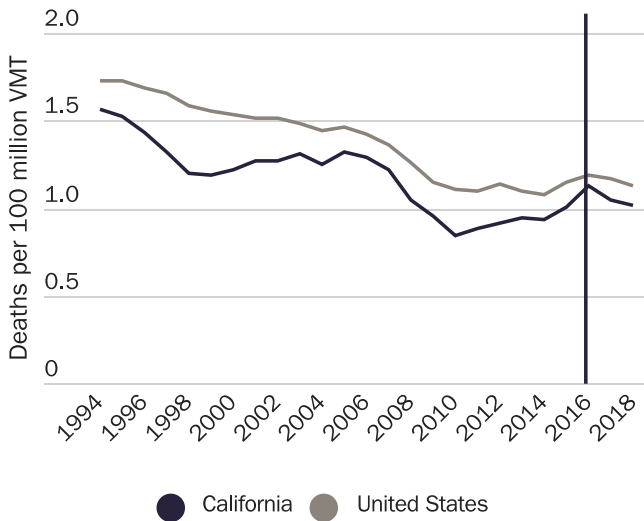
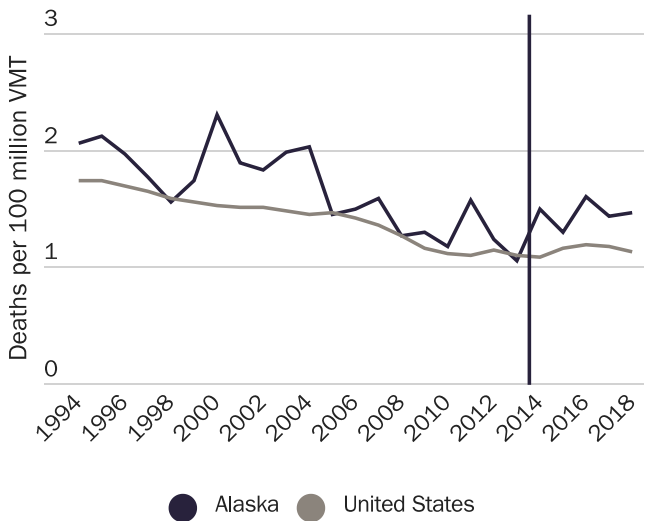
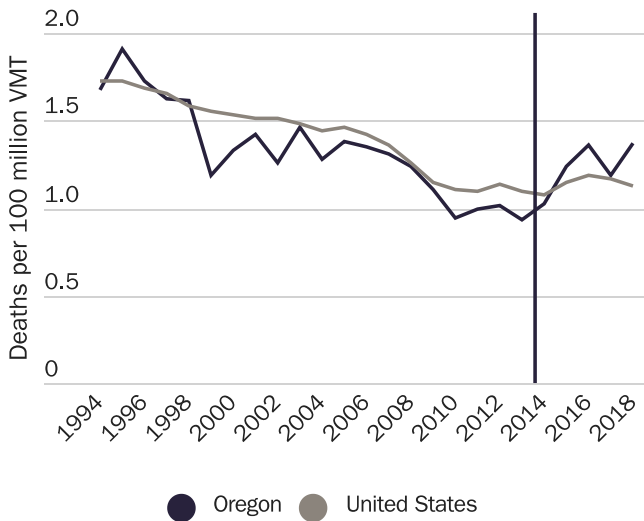
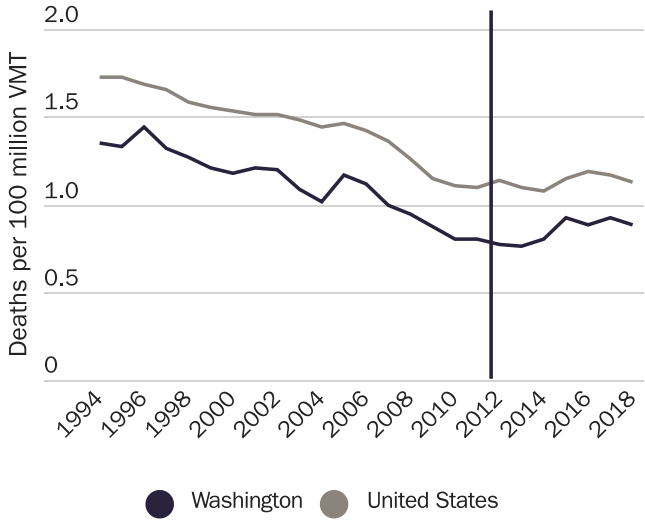
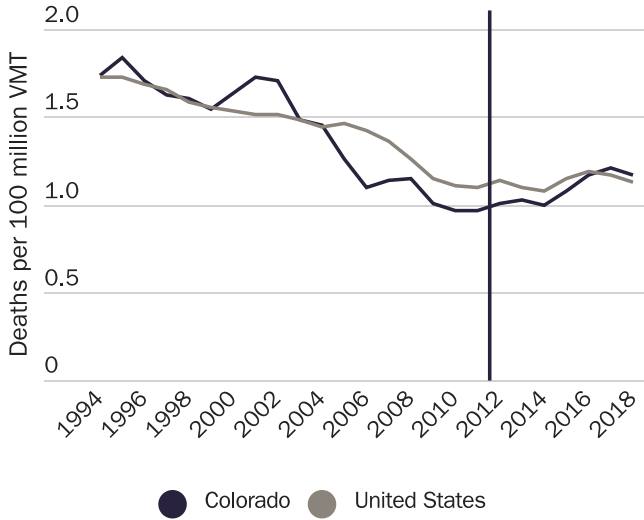
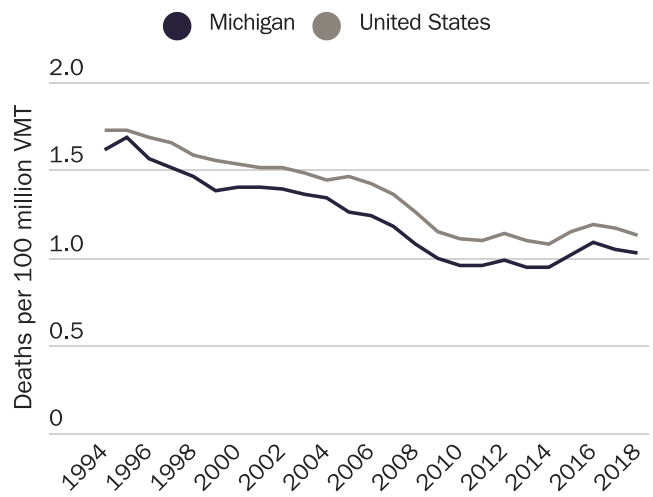
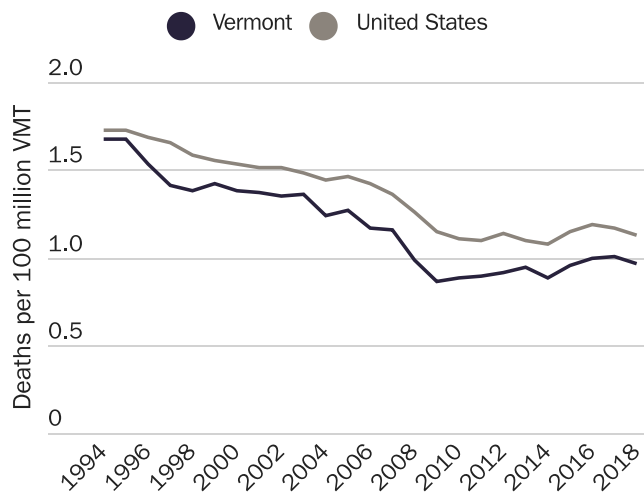
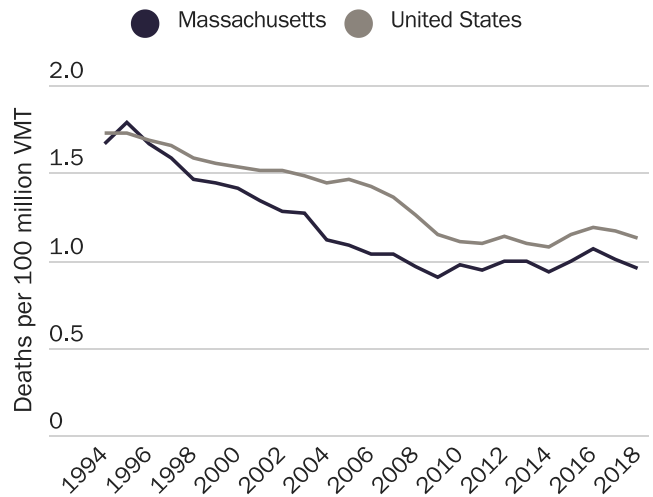
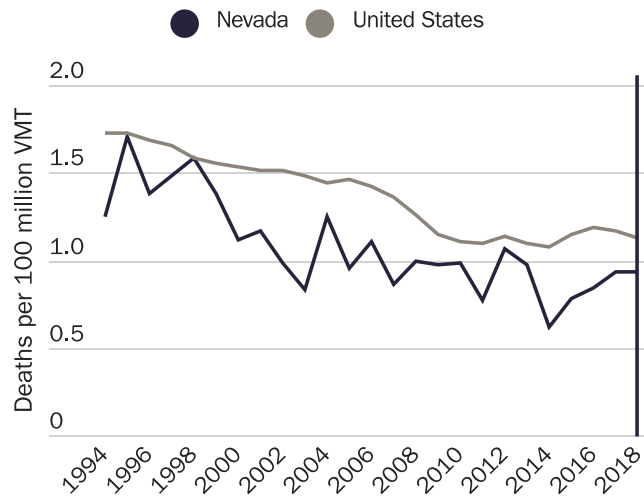
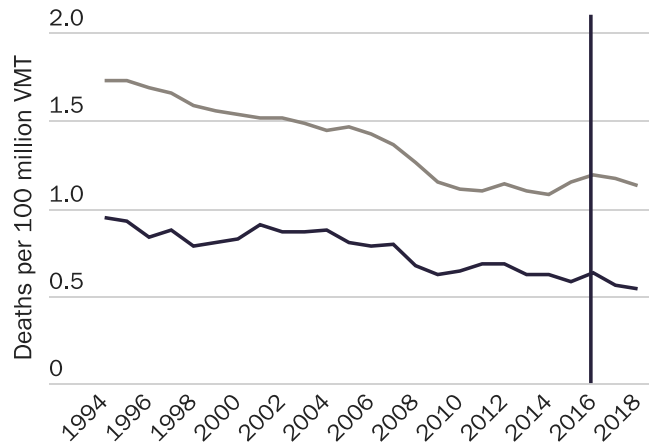
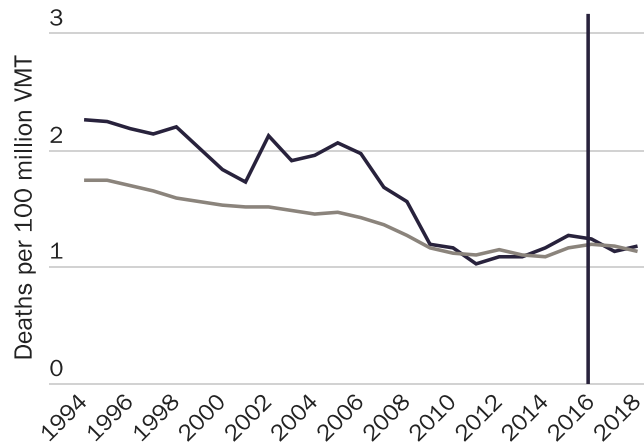


Figure 9 (continued)



● Illinois ● United States

● Average, legalizing states ● United States

Source: Wide-ranging Online Data for Epidemiologic Research, Centers for Disease Control and Prevention, <https://wonder.cdc.gov/>.

VMT = vehicle miles traveled

Figure 10

Changes in value of real estate

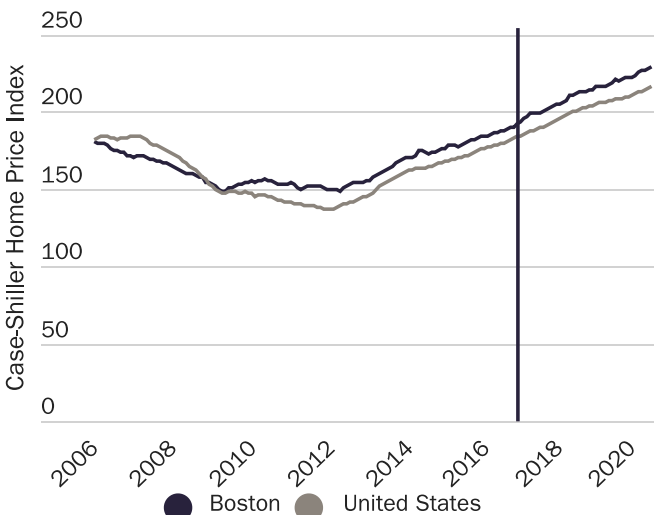
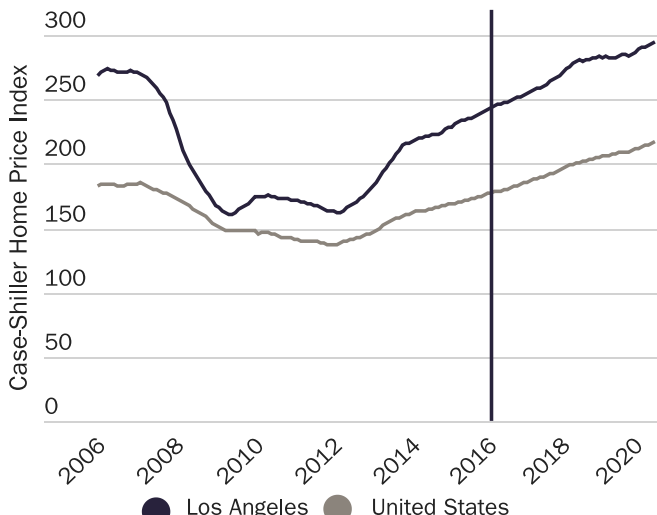
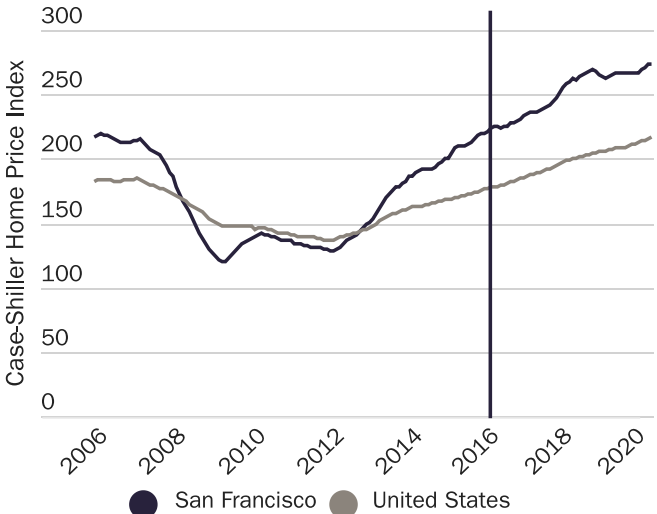
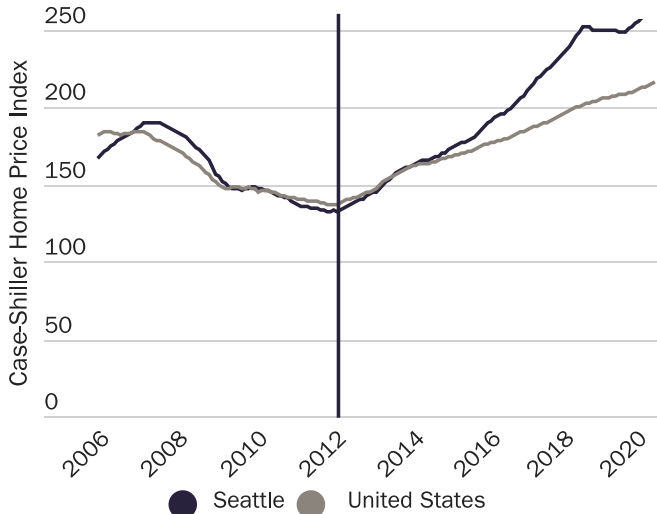
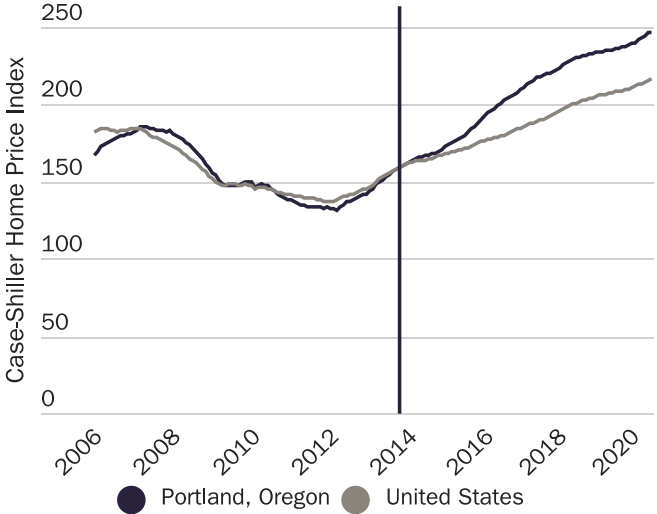
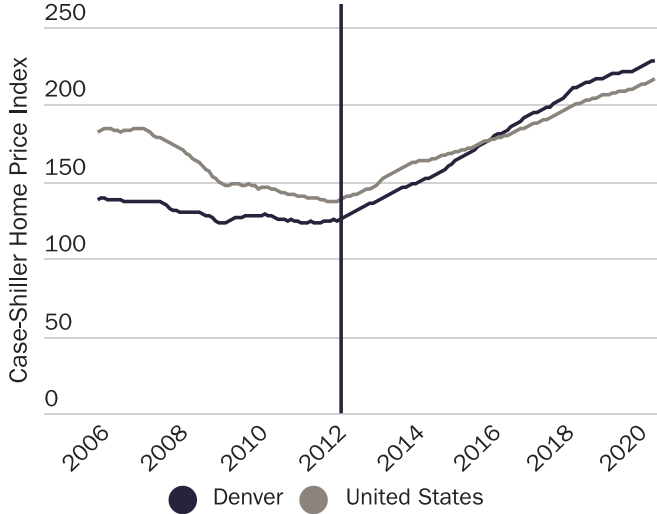
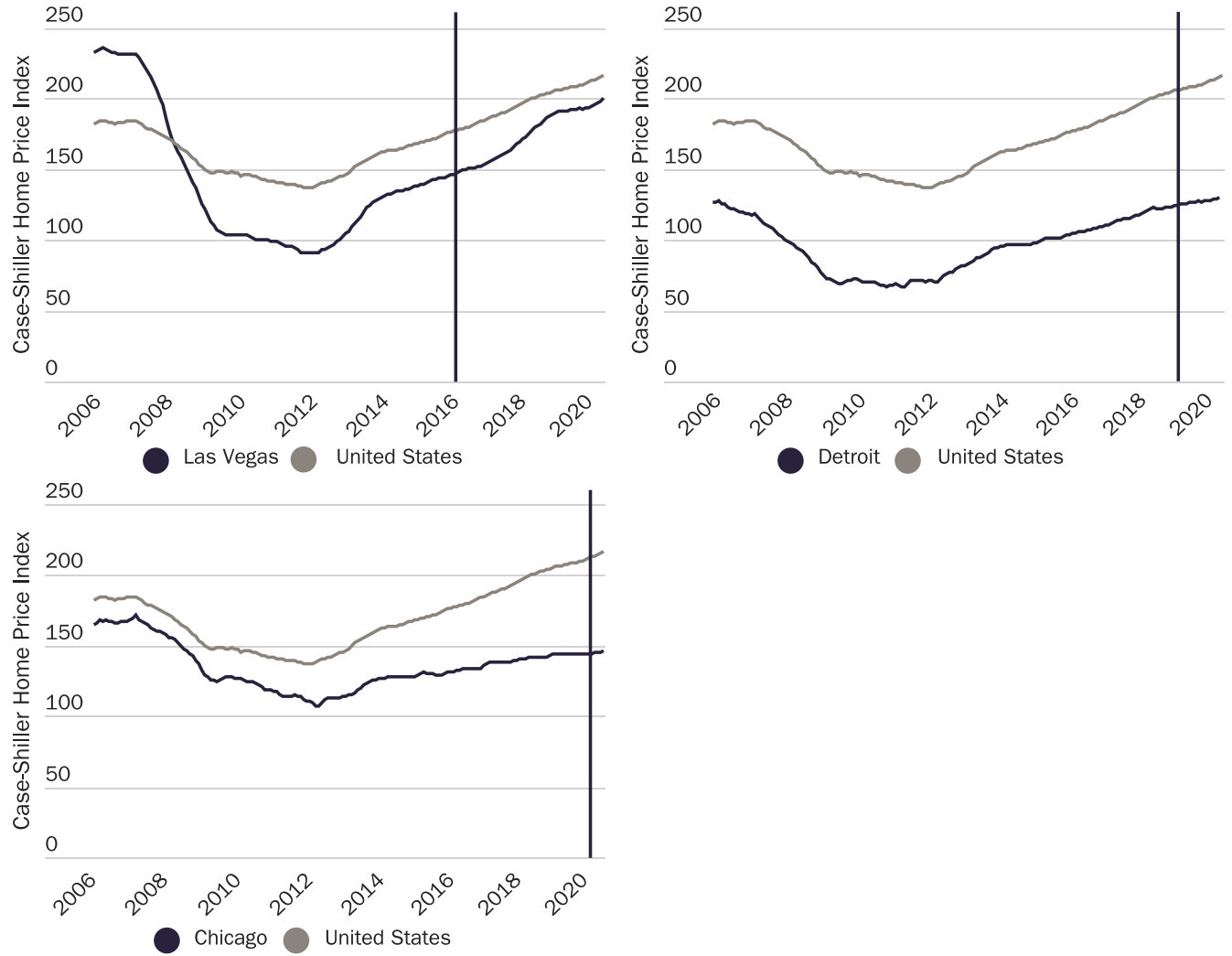


Figure 10 (continued)



Source: "S&P CoreLogic Case-Shiller Home Price Indices," S&P Dow Jones Indices, <https://www.spglobal.com/spdji/en/index-family/indicators/sp-corelogic-case-shiller/sp-corelogic-case-shiller-composite/#overview>.

Figure 11

Employment as a percentage of population

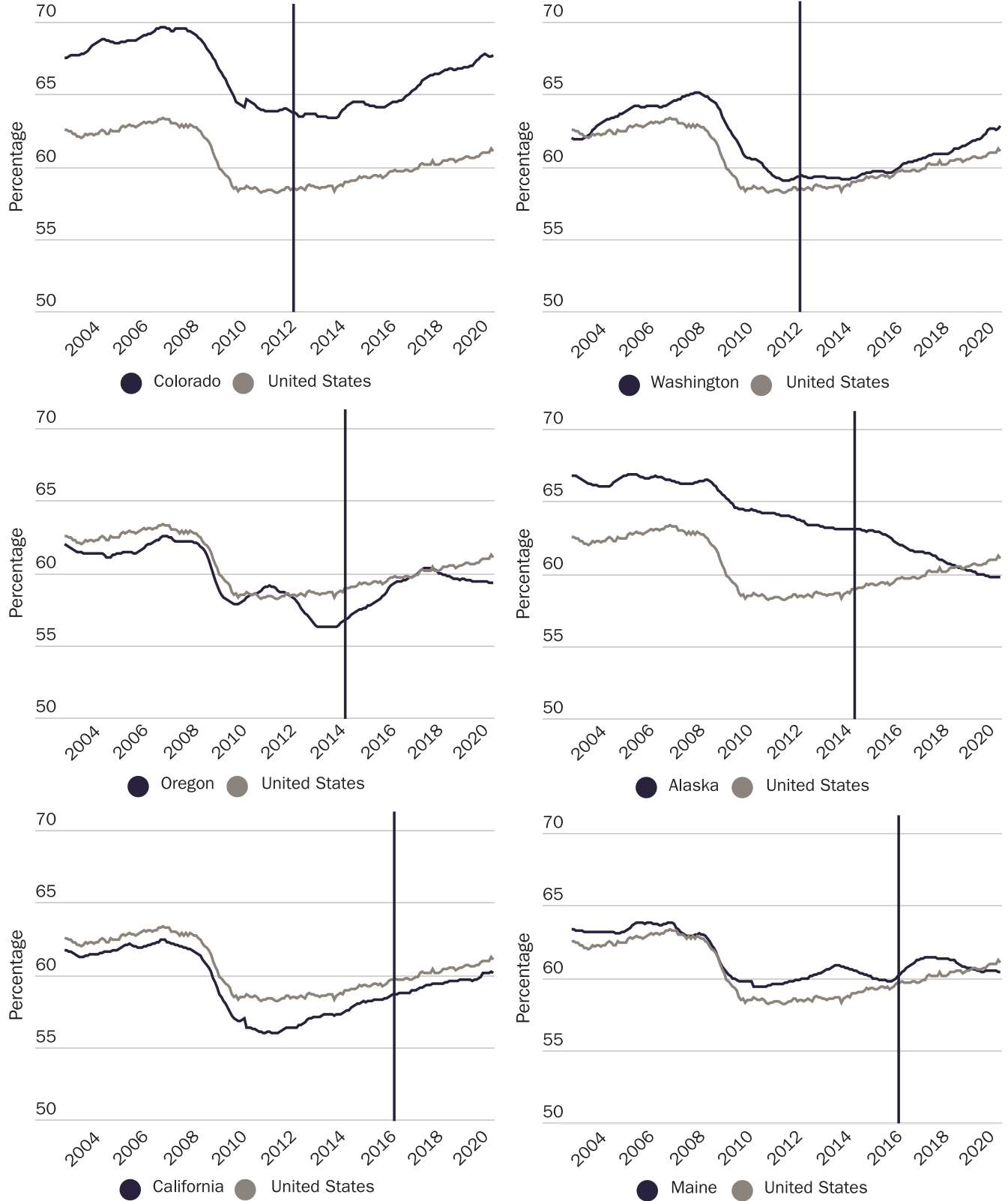
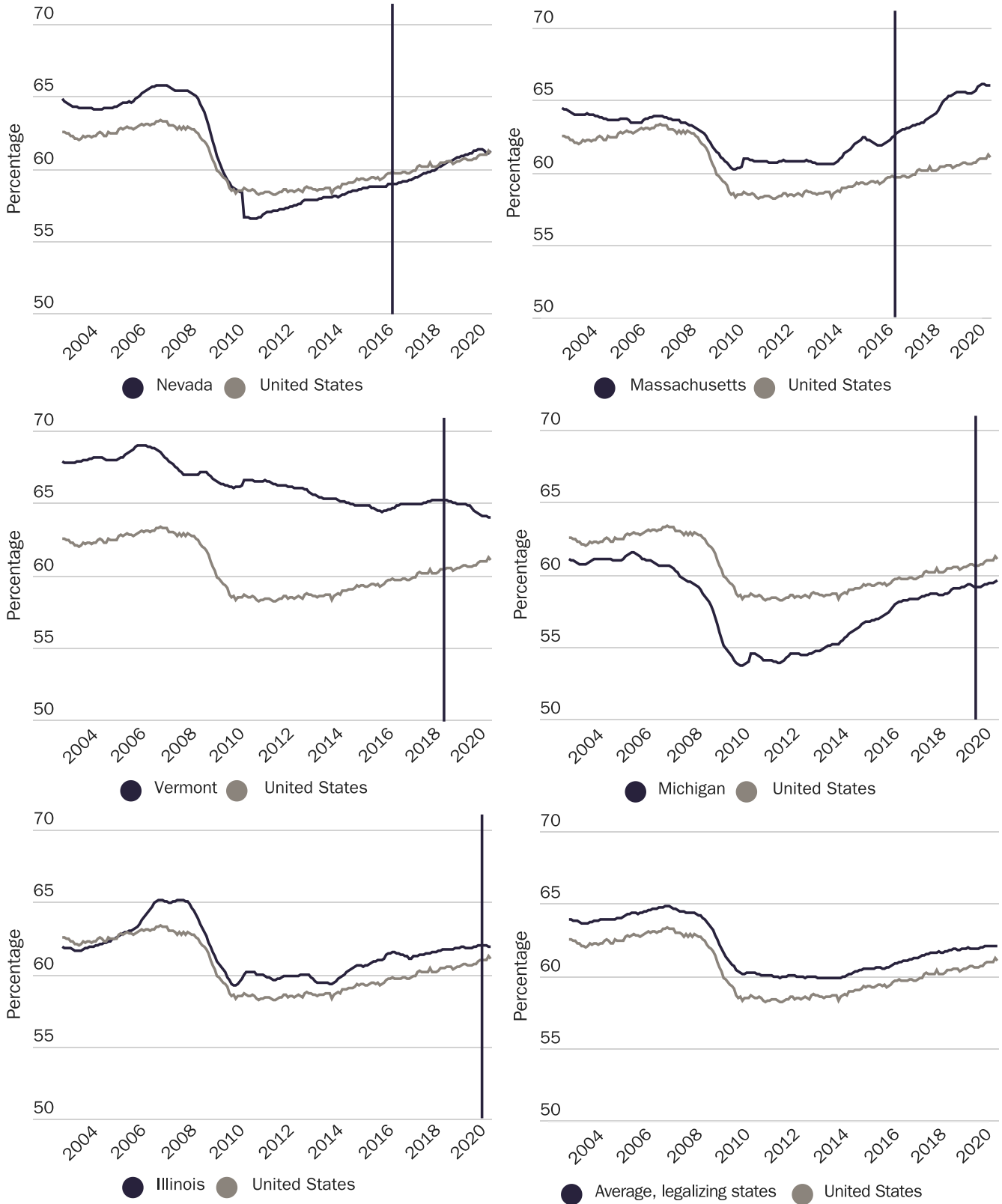


Figure 11 (continued)



Source: Bureau of Labor Statistics.

Figure 12

Gross domestic product growth rate

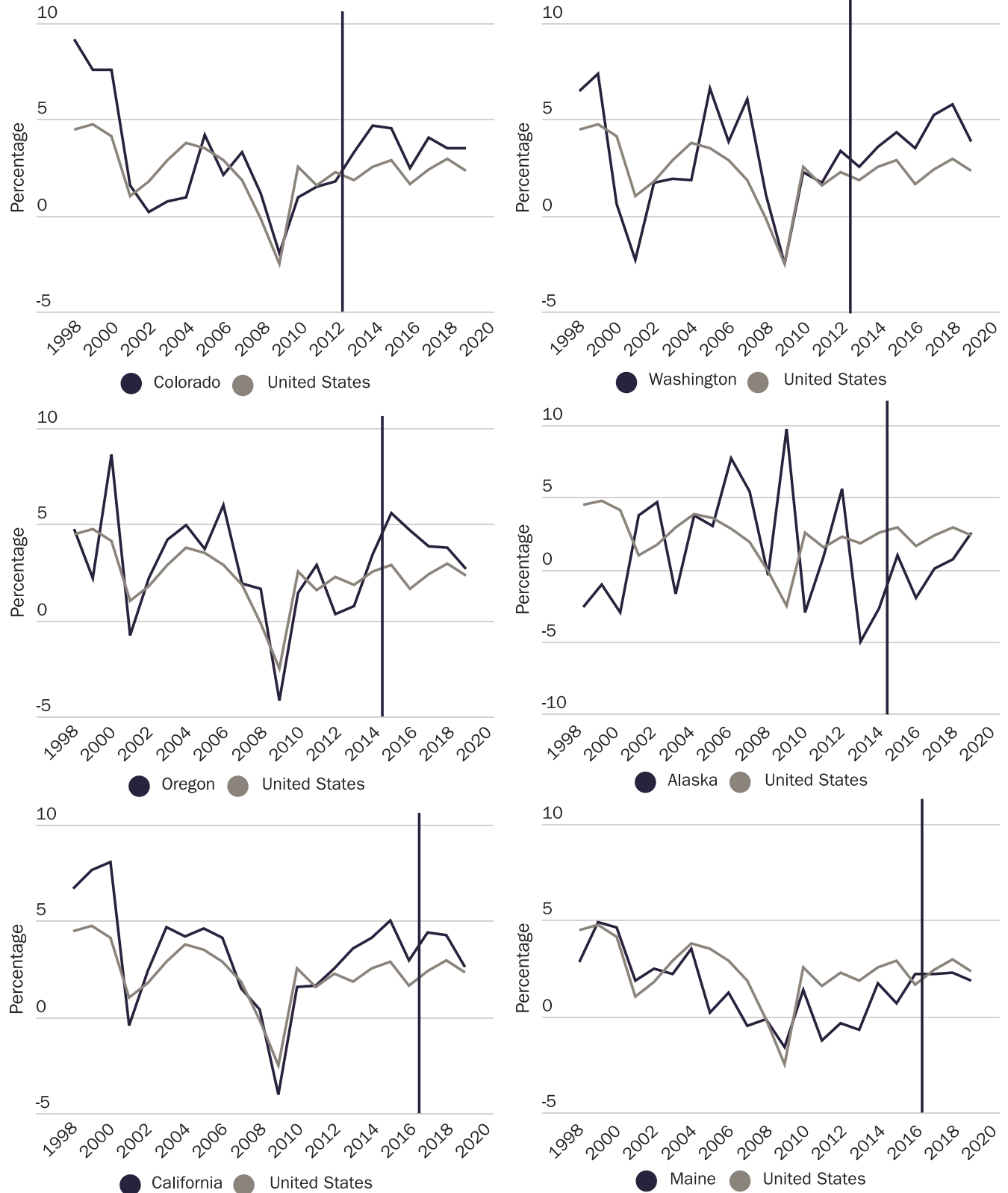
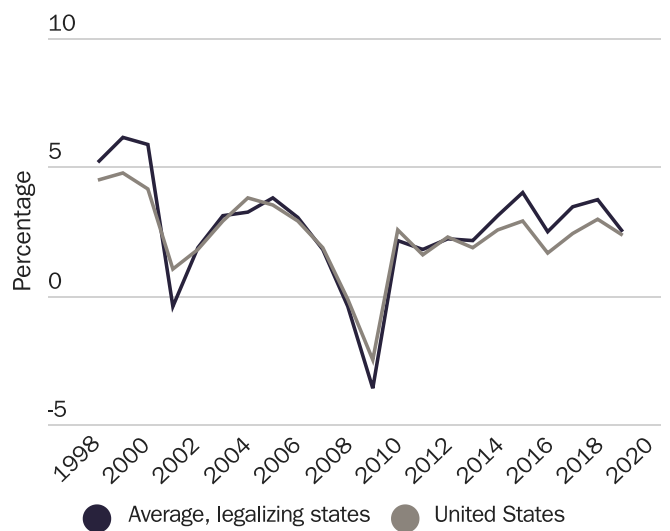
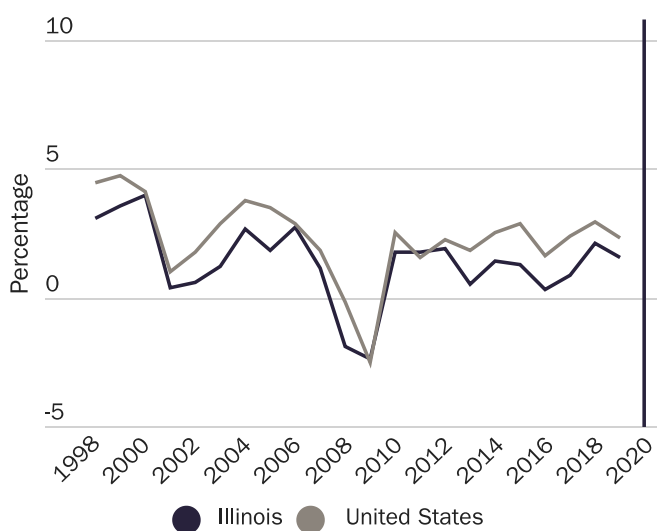
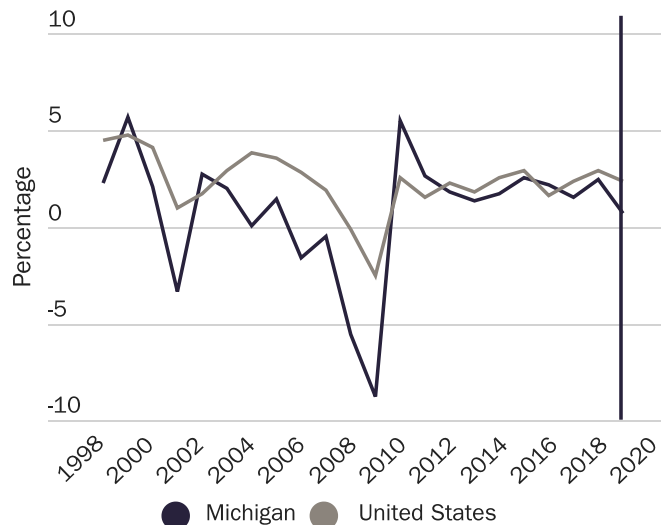
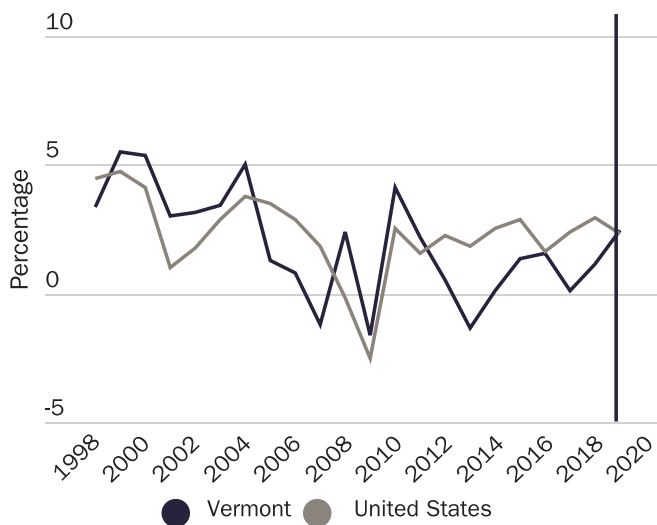
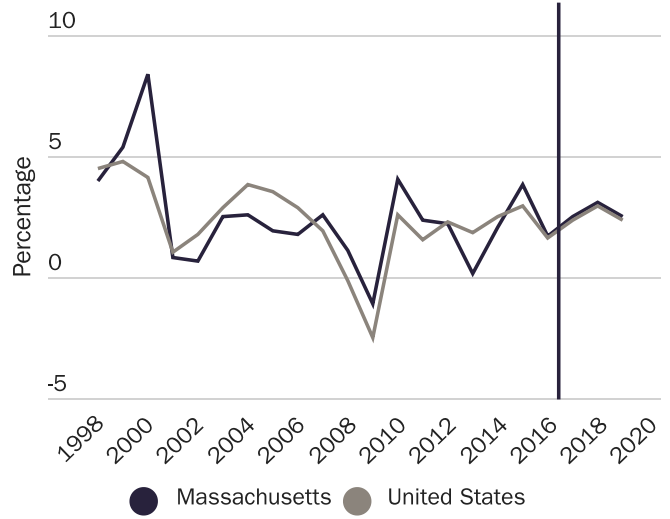
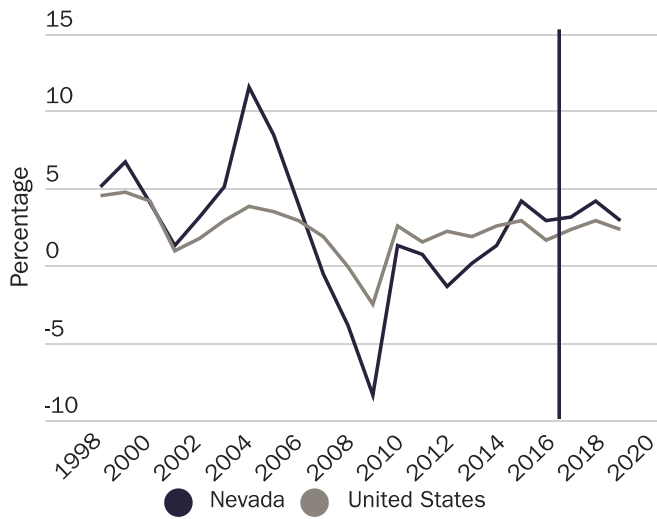


Figure 12 (continued)



Source: Author's calculations from Federal Reserve Economic Data and real state gross domestic product in millions of chained 2012 U.S. dollars.

Figure 14

Criminal justice expenditure growth rate

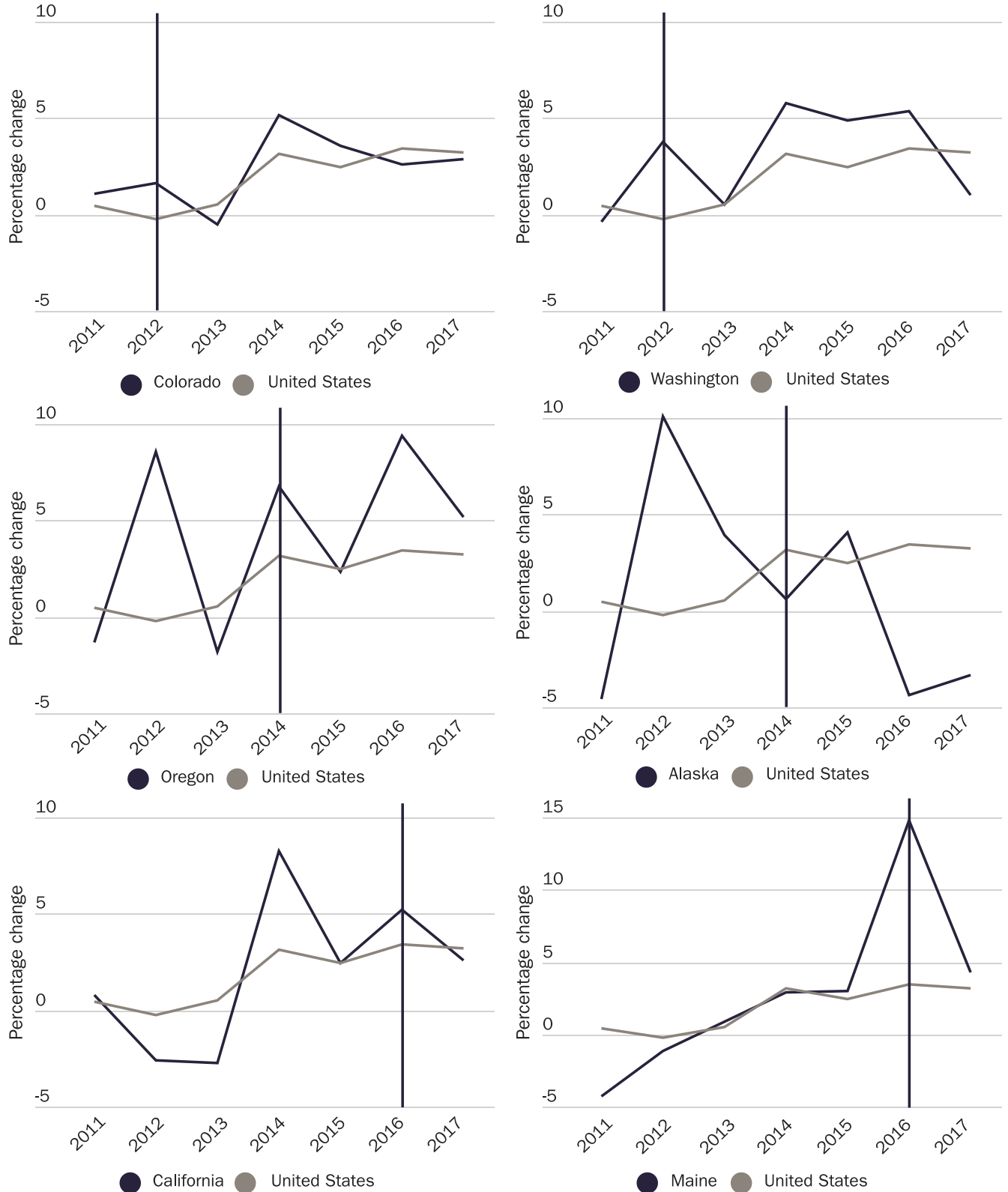
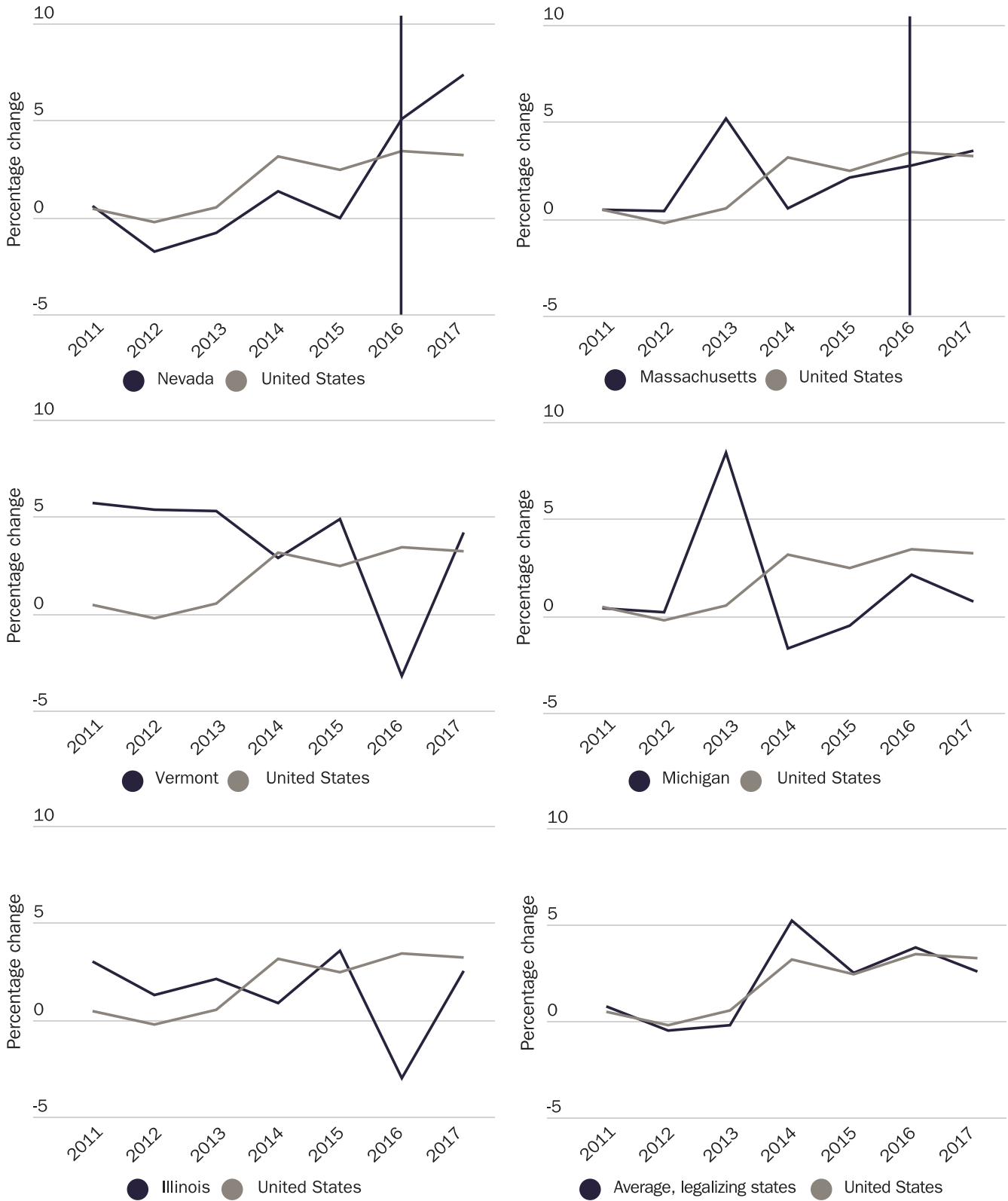


Figure 14 (continued)



Source: Wide-ranging Online Data for Epidemiologic Research, Centers for Disease Control and Prevention, <https://wonder.cdc.gov/>.

SB-64

Submitted on: 2/16/2021 10:29:00 AM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Riley	Individual	Support	No

Comments:

I support

SB-64

Submitted on: 2/12/2021 3:12:20 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

I am in full support of this measure. I am not a medical cannabis user. However, I believe they have been unfairly discriminated against in hiring decisions and that needs to be corrected. We need a level playing field.

Testimony of Ku'uhaku Park
On Behalf of Matson Navigation Company, Inc.
Opposition to SB64
Before the Committees on Labor, Culture and the Arts
and Health
February 17, 2020

Dear Chair Taniguchi, Chair Keohokalole, Vice Chair Ihara, Vice Chair Baker, and Members of the Committees,

Matson Navigation Company, Inc. ("Matson") respectfully opposes SB64 Relating to Medical Cannabis. This measure prohibits employers from discriminating against a person in the hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder. This measure allows an employer to use a fit for duty test in potentially dangerous occupations.

Matson's operations involve the use of heavy machinery, which if used incorrectly or under the influence of an intoxicant can cause death or serious bodily injury. Accordingly, Matson maintains a strict zero-tolerance marijuana policy that applies to both on-duty and off-duty use. Although this measure allows an employer to use a "fit for duty" test for a registered qualifying patient in potentially dangerous occupations, testing of medical marijuana use is in its infancy at this time. There is no "fit for duty" test that can accurately determine if an employee who has used medical marijuana is impaired while on the job. This measure increases the possibility of severe on-the-job injuries while subjecting employers to liability for discrimination against employees who use medical marijuana.

This measure also interferes with collective bargaining agreements, which contain provisions with respect to controlled substances like marijuana.

At a minimum, this measure should be amended to:

- (1) Not apply to any potentially dangerous job which could result in bodily injury or death to a third party if a cannabis cardholder-employee were to be impaired during the performance of the employee's job;
- (2) Explicitly state that no employer shall have any liability to any employee who is injured or killed during the performance of the employee's job if an employee's impairment by cannabis was a contributing factor to the employee's death or injury rather than the sole contributing factor to the employee's death or injury;
- (3) Exempt from this bill employees who are subject to collective bargaining agreements; and
- (4) Amend page 4, lines 13-17 to read: "(2) A registered qualifying patient's positive drug test for cannabis components or metabolites, unless the employer had a good faith belief that the registered qualifying patient was impaired by cannabis on the premises of the employment."

Thank you for considering this testimony in opposition.

SB-64

Submitted on: 2/15/2021 2:12:07 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
ASHLEY MATTOS	Individual	Support	No

Comments:

I support this bill

SB-64

Submitted on: 2/15/2021 2:14:24 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Heaukulani	Individual	Support	No

Comments:

I strongly support this bill!

SB-64

Submitted on: 2/15/2021 2:16:15 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi Muronaka	Individual	Support	No

Comments:

I support this bill

SB-64

Submitted on: 2/15/2021 5:24:24 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
dillon rellez	Individual	Support	No

Comments:

This would be great for a lot of hardworking people who have great talents but are unable to work because of these discriminatory laws.

SB-64

Submitted on: 2/15/2021 6:23:03 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hoku	Individual	Support	No

Comments:

I support this bill

SB-64

Submitted on: 2/15/2021 8:56:55 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
candice costales	Individual	Support	No

Comments:

I support bill SB64 because I do not believe in any discrimination.

SB-64

Submitted on: 2/15/2021 11:35:55 PM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Monique gunn	Individual	Support	No

Comments:

Support.this is my medicine. Fibromyalgia, rheumatoid arthritis, glaucoma, sciatica, depression, anxiety. I use medical canines to treat all of these



**Testimony to the Senate Committee on Labor, Culture and the Arts and
Senate Committee on Health
Wednesday, February 17, 2021 at 1:00 P.M.
Via Videoconference**

RE: SB 64, RELATING TO MEDICAL CANNABIS

Chairs Taniguchi and Keohokalole, Vice Chairs Ihara, Jr. and Baker, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **appreciate the intent but has concerns** on SB 64 which: (1) Prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder; (2) Expressly allow employers to use a "fit for duty" test as a tool for a registered qualifying medical cannabis patient in a potentially dangerous occupation; and (3) Provides 9 enumerated exceptions to the new protections against discrimination for registered qualifying medical cannabis patients.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We have concerns about the unintended consequences that this measure could have regarding employee safety and environment. Currently, there are no accepted tests to determine whether an employee is impaired by cannabis while at work and given that Federal law still does not recognize cannabis, this measure is unnecessary and premature.

Occupational Safety and Health Administration (OSHA) addresses impaired employees that contribute to an unsafe working environment. Although the bill provides for "fitness for duty" testing for potentially dangerous occupations, employers are unable to adhere to OSHA mandates and unable to conduct scientific fitness for duty testing.



Chamber *of* Commerce HAWAII

The Voice of Business

This bill states the use of a fit for duty test and suggests its use as a “risk-based assessment tool.” The use of a “risk-based assessment tool” is ambiguous and would need to be clarified in detail. A fit for duty test also should not replace determination based on specific, contemporaneous, and articulable observation concerning the appearance, behavior, speech, or body odor of the employee and allow employers to take a proactive approach to employee safety.

Given the foregoing reasons, we respectfully ask the Committees to defer this measure.

Thank you for this opportunity to provide testimony.

SB-64

Submitted on: 2/16/2021 7:53:44 AM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erin Alicia Wiggins	Individual	Support	No

Comments:

I support

SB-64

Submitted on: 2/16/2021 11:03:22 AM

Testimony for LCA on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
AJ McCabe	Individual	Support	No

Comments:

I shouldn't even need to explain why I support Bill SB64 because there is scientific proof and of course we all know it is legal for recreational use in many states and we should really be on the forefront of this movement.



To: Senator Brian Taniguchi, Chair
Senator Jarrett Keohokalole, Chair
Senator Les Ihara, Jr., Vice-Chair
Senator Rosalyn Baker, Vice-Chair
Members of the Senate Joint Committees on Health and Labor, Culture & Arts

Fr: Randy Gonce, Executive Director of the Hawai'i Cannabis Industry Association

Re: **Testimony In Support on Senate Bill (SB) 64**
RELATING TO MEDICAL CANNABIS
Prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit-for-duty test as a tool for medical cannabis qualifying patients in potentially dangerous occupations. Exempts certain occupations.

Dear Chairs Taniguchi and Keohokalole, Vice-Chairs Ihara and Baker, and Members of the Joint Committee:

The Hawai'i Cannabis Industry Association, formerly known as the Hawai'i Educational Association for Therapeutic Health, represents all eight of the state's licensed medical cannabis dispensaries. HICIA **supports** SB64 which provides certain employment protections for qualified patients.

This bill appears to be the product of the 2018 Act 116 Working Group and its report submitted to the 2019 Legislature.

https://health.hawaii.gov/opppd/files/2019/01/Medical-Cannabis-Outstanding-Issues-Working-Group-Final-Report_Nov-2018.pdf

That group looked at various states and court decisions on the issue. And while it could not come up with consensus on several employment issues, they did come back with recommendations that are largely embodied in this bill.

Currently, registered medical cannabis patients, can be summarily terminated solely for the status of being such a patient or for testing positive on a drug test. Presently, workers who are registered to use medical cannabis can find themselves having to choose between the job they need to support their family and continuing to take the medicine that relieves their suffering.

At least 11 other states (AR, AZ, CT, IL, ME, MN, NV, NY, PA, RI) have laws with explicit protections against discrimination while courts in others have stepped in to add them (MA).

Hawai'i Cannabis Industry Association (HICIA)
220 S King St #1600, Honolulu, HI 96813
www.808hcia.com



By adopting this bill, Hawai'i can join the list of states that proactively does what it can to protect the rights of workers who use medical cannabis while ensuring that employers can protect their legitimate interests.

Thank you for the opportunity to testify.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members, Committee on Labor, Culture and the Arts

The Honorable Jarrett Keohokalole, Chair
The Honorable Rosalyn Baker, Vice Chair
Members, Senate Committee on Health

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: February 17, 2021

Re: Opposition to SB64, Relating to Medical Cannabis

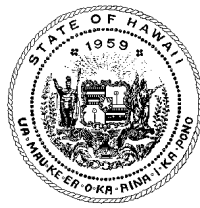
The Queen's Health Systems (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 1,500 affiliated physicians and providers statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer testimony in opposition of SB64, which prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder and specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

Health care providers are certified by the Centers for Medicare and Medicaid Services (CMS) and subject to a Condition of Participation that requires providers to operate and provide services in accordance with all applicable Federal and State laws. Cannabis remains illegal under federal law as a Schedule I drug and health care providers are at risk of losing licensure or CMS certification for violating federal regulation. Queen's has standing policies and procedures for a drug and alcohol-free workplace, which ensures a safer and healthier environment for all employees, patients, and the community we serve. As written, the proposed bill would make it difficult to take action against an employee or candidate who has tested positive for cannabis. It is also unclear what constitutes a "potentially dangerous occupation". We would appreciate an exemption for health care employers from the provisions of the bill.

Thank you for the opportunity to testify in opposition of SB64.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 64
RELATING TO MEDICAL CANNABIS.

by
Max N. Otani
Department of Public Safety

Senate Committee on Labor, Culture, and the Arts
Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

Senate Committee on Health
Senator Jarett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

Wednesday, February 17, 2021; 1:00 p.m.
State Capitol, Conference Room 225 and Videoconference

Chairs Taniguchi and Keohokalole, Vice Chairs Ihara and Baker, and Members of the Committees:

The Department of Public Safety (PSD) supports Senate Bill (SB) 64, as the proposed amendments to §329-125.5, Hawaii Revised Statutes (HRS), provide exemptions for key types of employment as identified in Subsection (f) on Pages 5 through 7.

The exemptions in SB 64 will ensure compliance with the federal law relating to prohibitions of firearms possession and would also assist correctional facilities in preventing the introduction of contraband into the facilities, resulting in increased safety and security for offenders, correctional staff, and the public.

Thank you for the opportunity to present this testimony.



February 16, 2021

Honorable Brian T. Taniguchi, chairman
Honorable Les Ihara Jr., vice chairman
Committee on Labor, Culture and the Arts

Honorable Jarrett Keohokalole, chairman
Honorable Rosalyn H. Baker, vice chairwoman
Committee on Health

The Senate
State Capitol
415 South Beretania St.
Honolulu, Hawai'i 96813

Re: S.B. 64, RELATING TO MEDICAL CANNABIS

Dear Chairs Taniguchi and Keohokalole, Vice Chairs Ihara and Baker and Committee Members:

Maui Economic Opportunity, Inc., Maui County's largest nonprofit by employees and budget, opposes this measure while understanding the bill's intent to bring medical marijuana in alignment with employment laws regarding legal, controlled substances.

The problem with marijuana or cannabis is that it remains illegal on the federal level as a Schedule I Drug on par with heroin and cocaine. This conflict between federal and state has put cannabis laws and commerce in legal limbo; cannabis-related businesses, for example, have difficulty securing traditional banking and financial services.

MEO is a Community Action Partnership agency that uses its federal funds as seed money for collaborations with state and county governments, as well as private entities. This mixing of federal, state, county and private funding puts MEO's position in murky waters. The proposed bill makes an exception for situations that "would cause the employer to lose a monetary or licensing-related benefit under a contract or federal law," but the ambiguity of MEO's situation could expose the nonprofit to legal action, sanctions and higher costs.

In light of the economic devastation of COVID-19, this may not be the best year to be changing labor law that could expose businesses and nonprofits to higher expenses. Many businesses – and nonprofits like MEO – are struggling to stay afloat.

MEO also does not feel the use of the "fit-for-duty" test for employees "in a potentially dangerous occupation" is practical in application. Tests would take too long to schedule and conduct to be of use in an employment or pre-employment situation.

Thank you for the opportunity to offer testimony on S.B. 64.

Sincerely,

Debbie Cabebe, SHRM-SCP, SPHR
Chief Executive Officer

The Promise of Community Action

Community Action changes people's lives, embodies the spirit of hope, improves communities, and makes America a better place to live. We care about the entire community, and we are dedicated to helping people help themselves and each other.





MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON LABOR, CULTURE & THE ARTS
AND THE COMMITTEE ON HEALTH
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 225
WEDNESDAY, FEBRUARY 17, 2021 AT 1:00 P.M.**

To The Honorable Brian T. Taniguchi, Chair;
The Honorable Les Ihara, Jr., Vice Chair; and
Members of the Committee on Labor, Culture & The Arts

To The Honorable Jarrett Keohokalole, Chair;
The Honorable Rosalyn H. Baker, Vice Chair; and
Members of the Committee on Health,

TESTIMONY IN OPPOSITION TO SB64 RELATING TO MEDICAL CANNABIS

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our opposition to SB64 for the reasons below.

This would be the worst year in recent history to seek to propose legislation that would or potentially could hurt businesses as first and foremost, we need our businesses to survive and recover.

The Maui Chamber of Commerce has significant concerns on this bill that would prohibit an employer from discriminating against a person in hiring, termination or condition of employment based on the person's status as a medical cannabis cardholder. As was mentioned in the Medical Cannabis Outstanding Issues Working Group Final Report, the bill should include other exempt work classes such as **“safety-sensitive positions and other industries where having a qualifying medical cannabis patient as an employee would increase the risk of liability, negligence, or exposure to an employer or the employee.”**

We appreciate and agree with the inclusion of various exempt occupations. However, we see other areas that need consideration and inclusion in the bill, such as those who use sharp tools, knives, machetes, hedge trimmers, etc. We know there are other industries that would be impacted as well that are not included on the list. Protecting employers and employees is paramount.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

Testimony on SB64 Page 2.

In addition, we understand the bill allows for fit for duty tests to be used as a tool. However, this is not a reliable way to ensure the safety of the card holding employee and other employees and would create a time and cost burden to complete the test daily. Businesses simply cannot afford to do a fit for duty test every day and the test is unreliable as medicines can affect the same person differently each day.

Further, many businesses must have a zero tolerance policy for drug tests to meet contractual obligations and agreements with their insurance companies and may incur higher insurance rates if they cannot uphold that agreement. This bill should exempt those businesses as well.

The bottom line is this is not about discrimination and businesses wanting to discriminate against those who need to use medical cannabis. This is not a federally protected discrimination class. This is about protecting those individuals using medical cannabis and all other employees from dangerous situations that exist in many different industries and throughout various occupations and job functions. Not addressing this opens up many businesses and their employees to extreme harm. This would take more work, but it is possible and skirting this important fix leave businesses and all their employees unprotected. This should not be taken lightly.

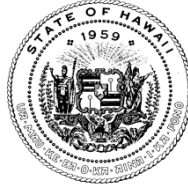
We hope you will take this to heart and understand the ramifications when considering this bill. We appreciate the opportunity to testify on this matter and ask that this bill be deferred.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 17, 2021
1:00 P.M.
State Capitol, Teleconference

S.B. 64
RELATING TO MEDICAL CANNABIS

Senate Committees on Labor, Culture and The Arts, and Health

The Department of Transportation (DOT) **opposes** S.B. 64 and suggests the following amendments.

Section 2, Page 5, §329-125.5 (f) erroneously references Subsection (c) and should be amended from the following to reference all medical cannabis patients:

“ (f) Subsection (c) shall not apply to:”

To:

“ (f) Medical cannabis patient protection shall not apply to:”

Thank you for the opportunity to provide testimony.

JAN 21 2021

A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

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

1 SECTION 1. The legislature recognizes that the use of
2 medical cannabis in Hawaii has been legal since 2000 and that
3 subsequent laws were passed to establish a licensing program for
4 a statewide system of medical cannabis dispensaries to ensure
5 access for qualifying patients. The department of health
6 recently reported that there are over twenty-nine thousand
7 patients with a valid medical cannabis registration. The
8 legislature further finds that while thirty-three states, the
9 District of Columbia, Guam, Puerto Rico, and the U.S. Virgin
10 Islands have approved comprehensive medical cannabis programs,
11 only about a dozen states have enacted anti-discrimination
12 employment laws to protect qualifying patients. Though the
13 medical use of cannabis has become increasingly accepted,
14 qualifying patients risk losing their jobs because there are no
15 clear protections against employment discrimination.

16 The legislature further finds that the ongoing conflict
17 between state and federal medical cannabis laws causes confusion



1 for employers, who are unsure whether state medical cannabis
2 laws supersede their power to enforce drug-free workplace
3 policies against employees. The courts have consistently ruled
4 in favor of employers when qualifying patients challenge drug-
5 free workplace policies; yet, on the other hand, they have not
6 entirely foreclosed the possibility that state medical cannabis
7 laws might operate to protect qualifying patients against
8 employment discrimination. Without explicit statutory guidance,
9 the courts may not properly balance the needs of qualifying
10 patients for employment protections and an employer's need to
11 provide a safe workplace.

12 The purpose of this Act is to:

- 13 (1) Prohibit an employer from discriminating against a
14 person in hiring, termination, or any term or
15 condition of employment based on the person's status
16 as a medical cannabis cardholder, under certain
17 conditions;
- 18 (2) Specify that an employer may use a fit-for-duty test
19 for medical cannabis qualifying patients in
20 potentially dangerous occupations; and



1 (3) Specify certain categories of employment that are
2 exempt from the protections of this Act.

3 SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§329-125.5 Medical cannabis patient and caregiver**

6 **protections.** (a) No school shall refuse to enroll or otherwise
7 penalize, and no landlord shall refuse to lease property to or
8 otherwise penalize, a person solely for the person's status as a
9 qualifying patient or primary caregiver in the medical cannabis
10 program under this part, unless failing to do so would cause the
11 school or landlord to lose a monetary or licensing-related
12 benefit under federal law or regulation; provided that the
13 qualifying patient or primary caregiver strictly complied with
14 the requirements of this part; provided further that the
15 qualifying patient or primary caregiver shall present a medical
16 cannabis registry card or certificate and photo identification,
17 to ensure that the qualifying patient or primary caregiver is
18 validly registered with the department of health pursuant to
19 section 329-123.

20 (b) For the purposes of medical care, including organ
21 transplants, a registered qualifying patient's use of cannabis



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1 in compliance with this part shall be considered the equivalent
2 of the use of any other medication under the direction of a
3 physician and shall not constitute the use of an illicit
4 substance or otherwise disqualify a registered qualifying
5 patient from medical care.

6 (c) Unless a failure to do so would cause the employer to
7 lose a monetary or licensing-related benefit under a contract or
8 federal law, an employer shall not discriminate against a person
9 in hiring, termination, or any term or condition of employment,
10 other than that contained in a collective bargaining agreement,
11 if the discrimination is based upon either of the following:

12 (1) The person's status as a cardholder; or
13 (2) A registered qualifying patient's positive drug test
14 for cannabis components or metabolites, unless the
15 registered qualifying patient was impaired by cannabis
16 during the hours of employment or in a potentially
17 dangerous occupation;

18 provided that nothing in this subsection shall abridge any
19 existing right of an employer to send an employee for medical
20 evaluation when the employer has safety concerns about the
21 impairment of the employee; provided further that an employer



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1 may take adverse action or discipline an employee who uses or
2 possesses medical cannabis in the workplace and is impaired.

3 (d) In a potentially dangerous occupation, an employer may
4 use a fit-for-duty test as a risk-based assessment tool for a
5 registered qualifying patient.

6 (e) No employer shall have any liability to any employee
7 who is injured or killed during the performance of the
8 employee's job if the employee's impairment by medical cannabis
9 was the sole contributing factor to the employee's death or
10 injury.

11 (f) Subsection (c) shall not apply to:

12 (1) Law enforcement officers in the State or counties or
13 employees of a state correctional facility;

14 (2) Firefighters employed by the State or counties;

15 (3) Water safety officers, lifeguards, swimming
16 instructors, or other employees of the State or
17 counties responsible for the safety of the public at
18 swimming pools or on beaches;

19 (4) Employees authorized to carry or use, or both,
20 firearms on the job;



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- 1 (5) Emergency medical services employees of the State or
2 counties;
- 3 (6) Employees who administer or may administer controlled
4 substances or other drugs to patients, whether in
5 hospitals, nursing homes, or in emergency situations
6 that would be encountered by emergency medical
7 services personnel;
- 8 (7) Employees who work with children, the elderly, or
9 other vulnerable populations;
- 10 (8) Civil defense emergency management personnel; and
- 11 (9) Employees who operate or are in physical control of
12 any of the following:
 - 13 (A) Any combination of vehicles that have a gross
14 combination weight rating or gross combination
15 weight of 11,794 kilograms or more (26,001 pounds
16 or more), whichever is greater, inclusive of a
17 towed unit or units with a gross vehicle weight
18 rating or gross vehicle weight of more than 4,536
19 kilograms (10,000 pounds), whichever is greater;
 - 20 (B) Any single vehicle that has a gross vehicle
21 weight rating or gross vehicle weight of 11,794



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1 or more kilograms (26,001 pounds or more), or any
2 such vehicle towing a vehicle with a gross
3 vehicle weight rating or gross vehicle weight
4 that does not exceed 4,536 kilograms (10,000
5 pounds);

6 (C) Any single vehicle, or combination of vehicles,
7 that does not meet the definition of class A or
8 class B, but is either designed to transport
9 sixteen or more passengers, including the driver,
10 or is transporting material that has been
11 designated as hazardous under title 49 U.S.C.
12 section 5103 and is required to be placarded
13 under subpart F of 49 C.F.R. part 172, or is
14 transporting any quantity of a material listed as
15 a select agent or toxin in 42 C.F.R. part 73;

16 (D) Public utilities, such as the electrical power
17 grid or water source;

18 (E) Machinery or power equipment; or

19 (F) A motor vehicle.

20 [~~(e)~~] (g) No qualifying patient or primary caregiver under
21 this part shall be denied custody of, visitation with, or



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1 parenting time with a minor, and there shall be no presumption
2 of neglect or child endangerment, for conduct allowed under this
3 part; provided that this subsection shall not apply if the
4 qualifying patient's or primary caregiver's conduct created a
5 danger to the safety of the minor, as established by a
6 preponderance of the evidence.

7 ~~(d)~~ (h) This section shall apply to qualifying patients,
8 primary caregivers, qualifying out-of-state patients, and
9 caregivers of qualifying out-of-state patients who are validly
10 registered with the department of health pursuant to this part
11 and the administrative rules of the department of health."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY: Roselynn H. Beh



S.B. NO. 64

Report Title:

Medical Cannabis; Discrimination; Employer; Employee

Description:

Prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit-for-duty test as a tool for medical cannabis qualifying patients in potentially dangerous occupations. Exempts certain occupations.

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



A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

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

1 SECTION 1. The legislature recognizes that the use of
2 medical cannabis in Hawaii has been legal since 2000. In 2015,
3 legislation was passed that established the medical cannabis
4 dispensary program to ensure access for qualifying patients.
5 According to the department of health, as of August 2024, there
6 were 30,708 patients in Hawaii with a valid medical cannabis
7 registration.

8 The legislature further finds that while thirty-eight
9 states, three territories, and the District of Columbia have
10 approved comprehensive medical cannabis programs, only twenty-
11 four states have enacted some form of medical cannabis anti-
12 discrimination employment laws to protect qualifying patients.
13 Though the medical use of cannabis has become increasingly
14 accepted, qualifying patients risk losing their jobs because
15 there are no clear protections against employment
16 discrimination.



1 The legislature also finds that the ongoing conflict
2 between state and federal medical cannabis laws causes confusion
3 for employers, who are unsure whether state medical cannabis
4 laws supersede their power to enforce drug-free workplace
5 policies against employees. The courts have consistently ruled
6 in favor of employers when qualifying patients challenge drug-
7 free workplace policies, yet have not entirely foreclosed on the
8 possibility that state medical cannabis laws might operate to
9 protect qualifying patients against employment discrimination.
10 Without explicit statutory guidance, the courts may not properly
11 balance the needs of qualifying patients for employment
12 protections and an employer's need to provide a safe workplace.

13 The purpose of this Act is to:

- 14 (1) Prohibit an employer from discriminating against a
15 person in hiring, termination, or any term or
16 condition of employment based on the person's status
17 as a medical cannabis registry card holder, under
18 certain conditions;
- 19 (2) Authorize an employer to use a fit-for-duty test for
20 medical cannabis qualifying patients in potentially
21 dangerous occupations; and



1 (3) Exempt certain occupations from the protections of
2 this Act.

3 SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§329-125.5 Medical cannabis patient and caregiver**
6 **protections.** (a) No school shall refuse to enroll or otherwise
7 penalize, and no landlord shall refuse to lease property to or
8 otherwise penalize, a person solely for the person's status as a
9 qualifying patient or primary caregiver in the medical cannabis
10 program under this part, unless failing to do so would cause the
11 school or landlord to lose a monetary or licensing-related
12 benefit under federal law or regulation; provided that the
13 qualifying patient or primary caregiver strictly complied with
14 the requirements of this part; provided further that the
15 qualifying patient or primary caregiver shall present a medical
16 cannabis registry card or certificate and photo identification,
17 to ensure that the qualifying patient or primary caregiver is
18 validly registered with the department of health pursuant to
19 section 329-123.

20 (b) For the purposes of medical care, including organ
21 transplants, a registered qualifying patient's use of cannabis



1 in compliance with this part shall be considered the equivalent
2 of the use of any other medication under the direction of a
3 physician and shall not constitute the use of an illicit
4 substance or otherwise disqualify a registered qualifying
5 patient from medical care.

6 (c) Unless a failure to do so would cause the employer to
7 lose a monetary or licensing-related benefit under a contract or
8 federal law, an employer shall not discriminate against a person
9 in hiring, termination, or any term or condition of employment,
10 other than that contained in a collective bargaining agreement,
11 if the discrimination is based upon either of the following:

12 (1) The person's status as a medical cannabis registry
13 card holder; or

14 (2) A registered qualifying patient's positive drug test
15 for cannabis components or metabolites, unless the
16 registered qualifying patient was impaired by cannabis
17 during the hours of employment or in a potentially
18 dangerous occupation;

19 provided that nothing in this subsection shall abridge any
20 existing right of an employer to send an employee for medical
21 evaluation when the employer has safety concerns about the



1 impairment of the employee; provided further that an employer
2 may take adverse action or discipline an employee who uses or
3 possesses medical cannabis in the workplace and is impaired.

4 (d) In a potentially dangerous occupation, an employer may
5 use a fit-for-duty test as a risk-based assessment tool for a
6 registered qualifying patient.

7 (e) No employer shall have any liability to any employee
8 who is injured or killed during the performance of the
9 employee's job if the employee's impairment by medical cannabis
10 was the sole contributing factor to the employee's death or
11 injury.

12 (f) Subsection (c) shall not apply to:

13 (1) Law enforcement officers in the State or counties or
14 employees of a state correctional facility;

15 (2) Firefighters employed by the State or counties;

16 (3) Water safety officers, lifeguards, swimming
17 instructors, or other employees of the State or
18 counties responsible for the safety of the public at
19 swimming pools or on beaches;

20 (4) Employees authorized to carry or use, or both,
21 firearms on the job;



- 1 (5) Emergency medical services personnel of the State or
2 counties;
- 3 (6) Employees who administer or may administer controlled
4 substances or other drugs to patients, whether in
5 hospitals, nursing homes, or in emergency situations
6 that would be encountered by emergency medical
7 services personnel;
- 8 (7) Employees who work with children, the elderly, or
9 other vulnerable populations;
- 10 (8) Civil defense emergency management personnel; and
- 11 (9) Employees who operate or are in physical control of
12 any of the following:
 - 13 (A) Any combination of vehicles that have a gross
14 combination weight rating or gross combination
15 weight of 11,794 kilograms or more (26,001 pounds
16 or more), whichever is greater, inclusive of a
17 towed unit or units with a gross vehicle weight
18 rating or gross vehicle weight of more than 4,536
19 kilograms (10,000 pounds), whichever is greater;
 - 20 (B) Any single vehicle that has a gross vehicle
21 weight rating or gross vehicle weight of 11,794



1 kilograms or more (26,001 pounds or more), or any
2 such vehicle towing a vehicle with a gross
3 vehicle weight rating or gross vehicle weight
4 that does not exceed 4,536 kilograms (10,000
5 pounds);

6 (C) Any single vehicle, or combination of vehicles,
7 that does not meet the definition of class A or
8 class B, but is either designed to transport
9 sixteen or more passengers, including the driver,
10 or is transporting material that has been
11 designated as hazardous under title 49 United
12 States Code section 5103 and is required to be
13 placarded under subpart F of title 49 Code of
14 Federal Regulations part 172, or is transporting
15 any quantity of a material listed as a select
16 agent or toxin in title 42 Code of Federal
17 Regulations part 73;

18 (D) Public utilities, such as the electric grid or
19 water source;

20 (E) Machinery or power equipment; or

21 (F) A motor vehicle.



1

2 [~~e~~] (g) No qualifying patient or primary caregiver under
3 this part shall be denied custody of, visitation with, or
4 parenting time with a minor, and there shall be no presumption
5 of neglect or child endangerment, for conduct allowed under this
6 part; provided that this subsection shall not apply if the
7 qualifying patient's or primary caregiver's conduct created a
8 danger to the safety of the minor, as established by a
9 preponderance of the evidence.

10 [~~d~~] (h) This section shall apply to qualifying patients,
11 primary caregivers, qualifying out-of-state patients, and
12 caregivers of qualifying out-of-state patients who are validly
13 registered with the department of health pursuant to this part
14 and the administrative rules of the department of health."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



H.B. NO. 325

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Jennifer P. ...", written over a horizontal line.

JAN 16 2025



H.B. NO. 325

Report Title:

Medical Cannabis; Qualifying Patients; Discrimination; Employer; Employee; Potentially Dangerous Occupations; Exemptions

Description:

Prohibits an employer from discriminating against a person in hiring, termination, or any term or condition of employment based on the person's status as a medical cannabis registry card holder, under certain conditions. Authorizes an employer to use a fit-for-duty test for medical cannabis qualifying patients in potentially dangerous occupations. Exempts certain occupations.

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