

JAN 18 2008

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that the State's medical
2 marijuana program, enacted into law in 2000 in Act 228, Session
3 Laws of Hawaii 2000, and codified in part IX, chapter 329,
4 Hawaii Revised Statutes, is a public health program conceived
5 out of concern for the health and welfare of the seriously ill.
6 After seven years in effect, experience of the program indicates
7 that improvements to the law would help to fulfill its original
8 intent by clarifying provisions and removing obstacles to
9 patient access and physician participation.

10 This Act will help qualifying patients by:

11 (1) Increasing the patient-caregiver ratio. Because many
12 qualifying patients are too incapacitated or otherwise
13 unable to grow their own supply of marijuana, they
14 must rely on caregivers. However, there are not
15 enough caregivers to meet the demand; therefore, this
16 Act will increase the ratio of patient to caregiver
17 from 1:1 to 5:1. This will also assist qualifying



1 patients who share housing and are therefore in a good
2 position to share caregivers;

3 (2) Protecting patients' employment and ability to rent or
4 lease a home;

5 (3) Protecting patients' medicine from unlawful seizure by
6 law enforcement personnel;

7 (4) Making the registration and certification process more
8 user friendly by requiring forms to be posted on the
9 department of public safety's website, as is done in
10 other states; providing for a thirty-day notice of
11 certificate expiration; and increasing the length of
12 time for reporting changes in a patient's status;

13 (5) Increasing the amount of marijuana permitted per
14 patient or caregiver to be consistent with the amounts
15 allowed in other states for meeting the therapeutic
16 needs of the patient;

17 (6) Enhancing patient confidentiality and security by
18 requiring that the address where the marijuana is
19 grown be kept confidential and omitted from the
20 registry card issued by the department of public
21 safety;



1 (7) Establishing specific procedures and protocols within
2 the department of health, as required by existing law,
3 for adding new qualifying medical conditions as
4 warranted;

5 (8) Establishing reciprocity with other medical marijuana
6 states by adding a definition of "visiting qualifying
7 patient"; and

8 (9) Establishing presumptive eligibility whereby
9 qualifying patients with a written recommendation by
10 their physician are immediately protected under state
11 law upon submission of an application to the
12 department of public safety.

13 This Act will help physicians by:

14 (1) Limiting the responsibilities of the certifying
15 physician; and

16 (2) Allowing potential and existing patients to obtain
17 forms themselves.

18 This Act will help law enforcement by:

19 (1) Eliminating the confusing distinction between mature
20 and immature plants;

21 (2) Clarifying circumstances where medical marijuana can
22 be used, for example, by allowing use in the workplace



1 if the workplace is the patient's own residence and
2 promoting safety by prohibiting the use by qualifying
3 patients on stationary heavy equipment; and

4 (3) Eliminating any ambiguity in the description of the
5 quantity of marijuana that may be possessed.

6 This Act is consistent with the laws in eleven other states
7 that have established medical marijuana programs, including
8 several laws that have been enacted since the passage of
9 Hawaii's law.

10 The purpose of this Act is to address the expressed
11 concerns of both Hawaii's seriously ill patients and physicians
12 by establishing a standing committee to review additional
13 medical conditions that may be included under the definition of
14 "debilitating medical conditions" for the purposes of medical
15 marijuana use. In addition, this Act makes clarifications to
16 the medical marijuana program for law enforcement purposes.

17 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
18 amended by adding a new section to part IX to be appropriately
19 designated and to read as follows:

20 "§329- Additional debilitating medical conditions;
21 standing committee; procedure. (a) The director of health
22 shall convene a debilitating medical condition standing



1 committee consisting of two practicing physicians, two
2 representatives of qualifying patients certified to use
3 marijuana under this part, and one representative from the
4 department of health, who shall be the chairperson of the
5 standing committee. The director of health shall select the
6 members of the standing committee. Members shall not be
7 compensated but shall be reimbursed for necessary expenses,
8 including travel expenses, incurred in the routine performance
9 of their duties.

10 (b) The standing committee shall meet semiannually to
11 consider petitions submitted by physicians, qualifying patients,
12 or potentially qualifying patients to add other medical
13 conditions to the definition of "debilitating medical condition"
14 in section 329-121. In considering the petitions, the standing
15 committee shall provide public notice of, and an opportunity to
16 comment in a public hearing upon, the petitions. The standing
17 committee shall approve or deny the petitions within thirty days
18 after the hearing. If approved, the director of health shall
19 adopt rules, exempt from the public notice, public hearing, and
20 gubernatorial approval requirements under chapter 91 and the
21 small business regulatory review board rule review requirement



1 under chapter 201M, to include the approved medical conditions
2 in the list of debilitating conditions covered by this part."

3 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding two new definitions to be appropriately
6 inserted and to read:

7 "Registration" means the filing by a qualifying patient or
8 a prospective qualifying patient with the department of public
9 safety of all information required by this part, including
10 written certification.

11 "Visiting qualifying patient" means a person who has been
12 issued a registry information card or its equivalent, issued
13 under the laws of another state, district, territory,
14 commonwealth, or insular possession of the United States, that
15 allows for the medical use of marijuana and shall have the same
16 force and effect as written certification issued by the State of
17 Hawaii."

18 2. By amending the definition of "adequate supply" to
19 read:

20 "Adequate supply" means an amount of marijuana jointly
21 possessed between the qualifying patient and the primary
22 caregiver that is not more than is reasonably necessary to



1 assure the uninterrupted availability of marijuana for the
2 purpose of alleviating the symptoms or effects of a qualifying
3 patient's debilitating medical condition; provided that an
4 "adequate supply" shall not exceed [~~three mature~~] twelve
5 marijuana plants [~~, four immature marijuana plants, and one~~
6 ~~ounce~~] and seven ounces of usable marijuana [~~per each mature~~
7 ~~plant.~~] at any given time."

8 3. By amending the definition of "debilitating medical
9 condition" to read:

10 "Debilitating medical condition" means:

- 11 (1) Cancer, glaucoma, positive status for human
12 immunodeficiency virus, acquired immune deficiency
13 syndrome, or the treatment of these conditions;
- 14 (2) A chronic or debilitating disease or medical condition
15 or its treatment that produces one or more of the
16 following:
 - 17 (A) Cachexia or wasting syndrome;
 - 18 (B) Severe pain;
 - 19 (C) Severe nausea;
 - 20 (D) Seizures, including those characteristic of
21 epilepsy; or



1 (E) Severe and persistent muscle spasms, including
2 those characteristic of multiple sclerosis or
3 Crohn's disease; or

4 (3) Any other medical condition approved by the department
5 of health pursuant to the expedited adoption of
6 administrative rules in response to a request from a
7 physician, qualifying patient, or potentially
8 qualifying patient [-] pursuant to section 329- ."

9 4. By amending the definition of "written certification"
10 to read:

11 "Written certification" means the qualifying patient's
12 medical records or a statement signed by a qualifying patient's
13 physician, provided in response to a request for the information
14 from the qualifying patient, stating that in the physician's
15 professional opinion, the qualifying patient has a debilitating
16 medical condition and the potential benefits of the medical use
17 of marijuana would likely outweigh the health risks for the
18 qualifying patient. The department of public safety may
19 require, through its rulemaking authority, that all written
20 certifications comply with a designated form. The form may
21 request the address of the location where the marijuana is
22 grown, but such information shall be confidential and shall not



1 appear on the registry card issued by the department. The
2 department shall make the form readily available for
3 reproduction by posting the form on the department's website and
4 by mailing or faxing a copy of the form to any person requesting
5 it. "Written certifications" are valid for only one year from
6 the [time] date of signing[-], unless the physician specifies a
7 shorter duration. The department shall give the patient and
8 primary caregiver, if any, written notice of the pending
9 expiration of a patient's certification not less than thirty
10 days before the certification expires."

11 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Notwithstanding any law to the contrary, the medical
14 use of marijuana by a qualifying patient shall be permitted only
15 if:

- 16 (1) The qualifying patient has been diagnosed by a
17 physician as having a debilitating medical condition;
- 18 (2) The qualifying patient's physician, in response to a
19 request for information from the qualifying patient or
20 potentially qualifying patient, has certified in
21 writing that, in the physician's professional opinion,
22 after having completed a medical examination and



1 assessment of the patient's medical history and
2 current medical condition in the course of a bona fide
3 physician-patient relationship, the potential benefits
4 of the medical use of marijuana would likely outweigh
5 the health risks for the particular qualifying
6 patient; and

7 (3) The amount of marijuana possessed by the qualifying
8 patient does not exceed an adequate supply."

9 SECTION 5. Section 329-122, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) The authorization for the medical use of marijuana in
12 this section shall not apply to:

13 (1) The medical use of marijuana that endangers the health
14 or well-being of another person;

15 (2) The medical use of marijuana:

16 (A) In a school bus, public bus, [~~e~~] any moving
17 vehicle[+], or while using stationary heavy
18 equipment;

19 (B) In the workplace of one's employment[+], except
20 if working in one's own residence;

21 (C) On any school grounds;



1 (D) At any public park, public beach, public
2 recreation center, [~~recreation~~] or youth center;
3 [~~or~~] and

4 (E) Other [~~place~~] places open to the public; and

5 (3) The use of marijuana by a qualifying patient, parent,
6 or primary caregiver for purposes other than a medical
7 use permitted by this part."

8 SECTION 6. Section 329-123, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~329-123 [~~]~~] **Registration requirements.** (a)

11 Physicians who issue written certifications shall [~~register the~~
12 ~~names, addresses, patient identification numbers,~~] provide, in
13 each certification, the name, address, patient identification
14 number, and other identifying information of the [patients
15 ~~issued written certifications with the department of public~~
16 ~~safety.]~~ Qualifying Patients. The information shall include the
17 physician's attestation that the patient has one of the
18 debilitating medical conditions defined in section 329-121.

19 (b) Qualifying patients shall register with the department
20 of public safety. [~~Such~~] The registration shall be effective
21 until the expiration of the certificate issued by the physician.
22 Every qualifying patient shall provide sufficient identifying



1 information to establish the personal identity of the qualifying
2 patient and the primary caregiver. Qualifying patients shall
3 report changes in information within [~~five~~] ten working days.
4 Every qualifying patient shall have only one primary caregiver
5 at any given time. The department shall [~~then~~] issue to the
6 qualifying patient a registration certificate[~~]~~ and may charge
7 a reasonable fee not to exceed \$25[~~]~~ per year.

8 (c) Primary caregivers shall register with the department
9 of public safety. [~~Every~~] No primary caregiver shall be
10 responsible for the care of [~~only one~~] more than five qualifying
11 [~~patient~~] patients at any given time.

12 (d) The department may require, in rules adopted under
13 chapter 91, that all registrations comply with a designated
14 form. The form shall require information only from the
15 applicant and contain other information as required or permitted
16 by this part. The department shall make registration forms
17 readily available for reproduction by the public by posting the
18 form on the department's website or by mailing or faxing a copy
19 of the form to any person requesting it.

20 [~~(d)~~] (e) Upon [~~an~~] inquiry by a law enforcement agency,
21 the department of public safety shall verify whether the
22 [~~particular qualifying patient~~] subject of the inquiry has



1 registered with the department and may provide reasonable access
2 to the registry information for official law enforcement
3 purposes."

4 SECTION 7. Section 329-125, Hawaii Revised Statutes, is
5 amended to read as follows:

6 " ~~[+]§329-125[+]~~ **Protections afforded to a qualifying**
7 **patient or primary caregiver.** (a) A qualifying patient or the
8 primary caregiver may assert the medical use of marijuana as an
9 affirmative defense to any prosecution involving marijuana under
10 this ~~[+]part[+]~~ or chapter 712; provided that the qualifying
11 patient or the primary caregiver strictly complied with the
12 requirements of this part.

13 (b) Any qualifying patient or primary caregiver not
14 complying with the permitted scope of the medical use of
15 marijuana shall not be afforded the protections against searches
16 and seizures pertaining to the misapplication of the medical use
17 of marijuana.

18 (c) No person shall be subject to arrest or prosecution
19 for simply being in the presence or vicinity of the medical use
20 of marijuana as permitted under this part.

21 (d) No school, employer, or landlord shall refuse to
22 enroll or employ or lease to, or otherwise penalize a person



1 solely for the person's status as a registered qualifying
 2 patient or a registered primary caregiver, unless failing to do
 3 so would put the school, employer or landlord in violation of
 4 federal law or cause it to lose a federal contract or funding.

5 (e) A law enforcement agency that seizes and does not
 6 return marijuana that is possessed in accordance with this part
 7 by a registered qualifying patient or a registered primary
 8 caregiver shall be liable to the registered qualifying patient
 9 or the registered primary caregiver for the fair market value of
 10 the marijuana "

11 SECTION 8. This Act does not affect rights and duties that
 12 matured, penalties that were incurred, and proceedings that were
 13 begun, before its effective date.

14 SECTION 9. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.

17

INTRODUCED BY: Will Lopez
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Report Title:

Controlled Substances; Medical Marijuana

Description:

Establishes a committee that may add other medical conditions to the definition of "debilitating medical condition" for the purpose of medical marijuana use; amends the definitions of "primary caregiver" and "written certification"; defines "adequate supply" to include seven plants and three ounces of usable marijuana; adds definition for "registration" and amends the registration requirements.

