

JAN 19 2007

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 Registration for the program is currently housed in the
7 narcotics enforcement division of the department of public
8 safety.

9 Since the mission of the department of health is "to
10 protect and improve the health and environment for all people in
11 Hawaii," and since the use of medical marijuana is properly
12 regarded as a health issue, rather than an exception to the
13 State's laws on controlled substances, the legislature finds
14 that the State's medical marijuana program would more properly
15 be housed in the department of health rather than in the
16 department of public safety.



1 Section 329-121, Hawaii Revised Statutes, gives the
2 department of health the function of adding new debilitating
3 conditions to those that would permit medical marijuana use
4 under the definition of "debilitating medical condition".
5 Although research indicates that the potential beneficial use of
6 marijuana has been expanding to new conditions, this function
7 has never been exercised by the department of health.

8 This Act provides for an administrative body within the
9 department of health to determine whether to add new
10 debilitating conditions to those listed in section 329-121,
11 Hawaii Revised Statutes, as the legislature intended.

12 The declining number of patients who are seeking to
13 ameliorate their debilitating conditions with medical marijuana
14 on Oahu, strongly suggests that physicians are refusing to
15 certify medical marijuana use because of fear of possible
16 prosecution under the federal Controlled Substances Act, 21
17 United States Code sections 801 et seq. Experience in
18 California and cases decided by the United States Court of
19 Appeals for the Ninth Circuit, which are applicable in Hawaii,
20 make very clear that physicians may not be prosecuted for
21 recommending medical use of marijuana or taking steps under
22 part IX, chapter 329, Hawaii Revised Statutes, which will enable



1 patients to acquire medical marijuana if the role of physician
2 is properly limited to certifying that the patient has a
3 debilitating condition and that, in the physician's opinion, the
4 benefits of marijuana use outweigh the risks for the particular
5 patient. This Act limits the role of the physician to these two
6 functions.

7 It is also possible that declining enrollment may be a
8 result of certifications automatically expiring after one year,
9 as the law now requires. This Act extends the period of
10 effective registration to two years unless the physician
11 recommends a shorter period, and includes a requirement that
12 patients be given a mailed notice of expiration of their
13 registration and the need for renewal at least thirty days
14 before their registration expires.

15 This Act promotes safety by adding the use of stationary
16 heavy equipment to the situations in which medical marijuana may
17 not be used. In addition, it makes other changes to the medical
18 marijuana law designed to simplify the Act for patients
19 suffering from debilitating conditions and to better describe
20 the role of the certifying physician to ensure that the patient
21 will be likely to benefit from the use of medical marijuana and
22 that the certifying physician will not engage in activities that



1 might subject the physician to prosecution under the federal
2 Controlled Substances Act. These minor changes include:

- 3 (1) Allowing use of medical marijuana in the workplace if
4 the workplace is the patient's own residence;
- 5 (2) Eliminating ambiguity in the description of the
6 quantity of marijuana that may be possessed;
- 7 (3) Making the necessary applications readily available on
8 the department of health's website to patients who
9 seek certification; and
- 10 (4) Sharply limiting the role of the certifying physician
11 in securing certification.

12 Because persons with debilitating conditions often share the
13 same residence, administration of the program will be improved
14 by increasing the number of patients that may be served by a
15 single caregiver to three. In addition, to ensure that
16 patients' privacy rights are protected, the physician's
17 certification shall attest that the patient has a debilitating
18 condition as defined in this Act but shall not identify the
19 patient's specific diagnosis.

20 The purpose of this Act is to transfer the administration
21 of the State's program for the medicinal use of marijuana from
22 the department of public safety to the department of health and



1 to change certain procedures and definitions to make the program
2 more efficient and more user-friendly to the seriously ill
3 patients who register with the program. It also places the
4 burden of going forward with the registration required by the
5 law on patients and their caregivers, those who are most
6 directly interested in ameliorating the adverse effects of the
7 patients' debilitating conditions.

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

11 "§329- Debilitating medical condition; additional
12 medical conditions; procedure. The director of health shall
13 convene a standing committee consisting of two practicing
14 physicians, two representatives of patients certified to use
15 marijuana under this part, and one representative from the
16 department of health to meet semiannually to consider petitions
17 submitted by physicians, qualifying patients, or potential
18 qualifying patients to add other medical conditions to the
19 definition of "debilitating medical condition" in section
20 329-121. In considering the petitions, the committee shall
21 provide public notice of, and an opportunity to comment on, the
22 petitions in a public hearing. The committee shall approve or



1 deny the petitions within thirty days after the hearing.
2 Medical conditions approved by the committee shall be added to
3 the list of debilitating conditions covered by this part,
4 effective immediately upon the date of approval."

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

7 1. By adding a new definition to be appropriately inserted
8 and to read:

9 "Registration" means filing with the department of health
10 all information required by this chapter, including written
11 certification."

12 2. By amending the definitions of "adequate supply",
13 "debilitating medical condition", and "written certification" to
14 read:

15 "Adequate supply" means an amount of marijuana jointly
16 possessed between the qualifying patient and the primary
17 caregiver that is not more than is reasonably necessary to
18 assure the uninterrupted availability of marijuana for the
19 purpose of alleviating the symptoms or effects of a qualifying
20 patient's debilitating medical condition; provided that an
21 "adequate supply" shall not exceed [~~three mature~~] seven
22 marijuana plants [~~, four immature marijuana plants, and one ounce~~



1 ~~of usable marijuana per each mature plant.] and three ounces of~~
2 usable marijuana at any given time.

3 "Debilitating medical condition" means:

4 (1) Cancer, glaucoma, positive status for human
5 immunodeficiency virus, acquired immune deficiency
6 syndrome, or the treatment of these conditions;

7 (2) A chronic or debilitating disease or medical condition
8 or its treatment that produces one or more of the
9 following:

10 (A) Cachexia or wasting syndrome;

11 (B) Severe pain;

12 (C) Severe nausea;

13 (D) Seizures, including those characteristic of
14 epilepsy; or

15 (E) Severe and persistent muscle spasms, including
16 those characteristic of multiple sclerosis or
17 Crohn's disease; or

18 (3) Any other medical condition approved by the department
19 of health pursuant to ~~[administrative rules in~~
20 ~~response to a request from a physician or potentially~~
21 ~~qualifying patient.]~~ section 329- .



1 "Written certification" means the qualifying patient's
2 medical records or a statement signed by a qualifying patient's
3 physician, provided in response to a request for the information
4 from the qualifying patient, stating that in the physician's
5 professional opinion, the qualifying patient has a debilitating
6 medical condition and the potential benefits of the medical use
7 of marijuana would likely outweigh the health risks for the
8 qualifying patient. The department of [~~public safety~~] health
9 may require, through its rulemaking authority, that all written
10 certifications comply with a designated form. If a form is
11 required by the department of health, it shall be made readily
12 available for reproduction by posting it on the department of
13 health's website and by sending a copy by post to any person
14 requesting it. "Written certifications" are valid for [~~only one~~
15 ~~year~~] two years from the [~~time~~] date of signing[~~-~~] unless the
16 physician specifies a shorter duration. The department of
17 health shall give the patient and primary caregiver, if any,
18 written notice of the pending expiration of a patient's
19 certification not less than thirty days before the certification
20 expires."

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



1 "(a) Notwithstanding any law to the contrary, the medical
2 use of marijuana by a qualifying patient shall immediately be
3 permitted [~~only~~] if:

4 (1) The qualifying patient has been diagnosed by a
5 physician as having a debilitating medical condition;

6 (2) The qualifying patient's physician, in response to a
7 request for information from the patient, has
8 certified in writing that, in the physician's
9 professional opinion, after having completed a medical
10 examination and assessment of the patient's medical
11 history and current medical condition in the course of
12 a bona fide physician-patient relationship, the
13 potential benefits of the medical use of marijuana
14 would likely outweigh the health risks for the
15 particular qualifying patient; and

16 (3) The amount of marijuana possessed by the patient does
17 not exceed an adequate supply."

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

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

- 1 (1) The medical use of marijuana that endangers the health
- 2 or well-being of another person;
- 3 (2) The medical use of marijuana:
- 4 (A) In a school bus, public bus, or any moving
- 5 vehicle[+], or while using stationary heavy
- 6 equipment;
- 7 (B) In the workplace of one's employment[+], except
- 8 if working in one's residence;
- 9 (C) On any school grounds;
- 10 (D) At any public park, public beach, public
- 11 recreation center, [~~recreation~~] or youth center;
- 12 or
- 13 (E) Other [~~place~~] places open to the public; and
- 14 (3) The use of marijuana by a qualifying patient, parent,
- 15 or primary caregiver for purposes other than medical
- 16 use permitted by this part."

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

19 "[+]§329-123[+] Registration requirements. (a)
 20 Physicians who issue written certifications shall [~~register the~~
 21 ~~names, addresses, patient identification numbers,~~] provide in
 22 each certification, the name, address, patient identification



1 number, and other identifying information of the qualifying
2 patients [~~issued written certifications with the department of~~
3 ~~public safety~~]. The information shall include the physician's
4 attestation that the patient had one of the debilitating medical
5 conditions defined in section 321-121.

6 (b) Qualifying patients shall register with the department
7 of [~~public safety. Such~~] health. The registration shall be
8 effective until the expiration of the certificate issued by the
9 physician. Every qualifying patient shall provide sufficient
10 identifying information to establish the personal identity of
11 the qualifying patient and the primary caregiver. Qualifying
12 patients shall report changes in information within [~~five~~] ten
13 working days. Every qualifying patient shall have only one
14 primary caregiver at any given time. The department of health
15 shall [~~then~~] issue to the qualifying patient and primary
16 caregiver a registration certificate[~~7~~] and may charge a
17 reasonable fee not to exceed \$25[~~7~~] per year. The certificate
18 may state that the patient had a "debilitating condition", but
19 may not include the patient's specific medical diagnosis.

20 (c) Primary caregivers shall register with the department
21 of [~~public safety. Every~~] health. No primary caregiver shall



1 be responsible for the care of [~~only one~~] more than three
2 qualifying [~~patient~~] patients at any given time.

3 (d) The department of health may require, in rules adopted
4 under chapter 91, that all registrations comply with a
5 designated form. The registration form shall be made readily
6 available for reproduction by the public by posting it on the
7 department of health's website and by sending a copy by mail to
8 any person requesting it.

9 [~~(d)~~] (e) Upon [~~an~~] inquiry by a law enforcement agency,
10 the department of [~~public safety~~] health shall verify whether
11 the [~~particular qualifying patient~~] subject of the inquiry has
12 registered with the department and may provide reasonable access
13 to the registry information for official law enforcement
14 purposes."

15 SECTION 7. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 8. All rights, powers, and duties of the
19 department of public safety regarding part IX of chapter 329,
20 Hawaii Revised Statutes, are transferred to the department of
21 health.



1 All appropriations, records, equipment, files, supplies,
 2 contracts, books, papers, documents, maps, computer software and
 3 data, authorizations and other property, both real and personal,
 4 heretofore made, used, acquired, or held by the department of
 5 public safety in the exercise of the functions and programs
 6 transferred by this Act shall be transferred to the department
 7 of health.

8 SECTION 9. All rules or other documents executed or
 9 entered into by or on behalf of the department of public safety
 10 pursuant to part IX of chapter 329, Hawaii Revised Statutes,
 11 which are reenacted or made applicable to the department of
 12 health by this Act, shall remain in full force and effect until
 13 amended or repealed by the department of health pursuant to
 14 chapter 91, Hawaii Revised Statutes.

15 SECTION 10. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect upon its approval.
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INTRODUCED BY: Will Egan
 Suzanne Chundakuland
 The Honorable
 J. L. G. G. G.



Report Title:

Controlled Substances; Medical Marijuana

Description:

Transfers the administration of the medical marijuana program from the department of public safety to the department of health. Amends provisions of the medical marijuana law for clarity and usability. Minimizes physicians' role in certifying medical marijuana use. Adds and amends definitions.

