
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 finds that the State's medical
2 marijuana program, enacted into law in 2000, is a public health
3 program conceived out of concern for the health and welfare of
4 the seriously ill. Registration for the program is currently
5 administered by the narcotics enforcement division of the
6 department of public safety.

7 Many patients, however, are intimidated by the prospect of
8 dealing with a narcotics enforcement agency, and do not apply
9 for certification. Therefore, they do not benefit from the
10 protection from arrest or the threat of arrest by state or
11 county authorities that is offered to those who are certified by
12 the State under this program.

13 Furthermore, the program's current placement in the
14 narcotics enforcement division is in part responsible for the
15 reluctance of many physicians to certify patients. These
16 physicians are concerned that their written certifications will
17 be reviewed by the same entity that monitors physicians on



1 issues of over-prescribing, "doctor shopping," and similar
2 issues.

3 In June 2008 the department of public safety violated
4 patients' privacy by mistakenly releasing private patient
5 information to a reporter for the Hawaii Tribune-Herald. The
6 list included the name of each of the four thousand two hundred
7 patients, the location of their cannabis plants, license
8 information, and the names of their physicians.

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, the department is experienced in dealing with private
12 health records, and the use of medical cannabis is properly
13 regarded as a health issue, not simply as an exception to the
14 State's laws on controlled substances, the legislature finds
15 that the State's medical marijuana program would be more
16 properly administered by the department of health rather than by
17 the department of public safety.

18 Further, the department of health is already part of the
19 medical use of medical marijuana program as existing law confers
20 upon the department of health the power to add new debilitating
21 conditions to those which would permit medical cannabis use.



1 The purpose of this Act is to transfer administration of
2 the State's program for the medical use of marijuana from the
3 department of public safety to the department of health, and to
4 amend the medical use of marijuana law to replace the term,
5 "marijuana" with "cannabis". In addition, this Act establishes
6 the medical cannabis advisory board that shall identify
7 requirements for the licensure of producers and cannabis
8 production facilities and set forth procedures to obtain
9 licenses and develop a distribution system for medical cannabis.

10 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
11 amended by adding two new sections to part IX to be
12 appropriately designated and to read as follows:

13 "§329- **Medical cannabis advisory board; establishment.**

14 (a) There is established within the department of health the
15 medical cannabis advisory board.

16 (b) The advisory board shall consist of eleven members,
17 three of which shall be qualified medical cannabis patients,
18 seven of which shall be practitioners representing the fields of
19 neurology, pain management, medical oncology, psychiatry,
20 infectious disease, family medicine, and gynecology. The
21 practitioners shall be nationally board-certified in their area
22 of specialty and knowledgeable about the medical use of



1 cannabis. The chairperson of the board and the members shall be
2 appointed by the director of health or the director's designee.

3 (c) The advisory board shall:

4 (1) Review and recommend to the department for approval
5 additional debilitating medical conditions that would
6 benefit from the medical use of cannabis;

7 (2) Issue recommendations concerning rules to be adopted
8 for the issuance of registry identification cards,
9 including the manner in which the department shall
10 consider applications for registry identification
11 cards and for the renewal of identification cards for
12 qualified patients and primary caregivers;

13 (3) Identify requirements for the licensure of producers
14 and cannabis production facilities and set forth
15 procedures to obtain licenses;

16 (4) Develop a distribution system for medical cannabis
17 that provides for:

18 (A) Cannabis production facilities within the State
19 of Hawaii housed on secured grounds and operated
20 by licensed producers; and

21 (B) Distribution of medical cannabis to qualified
22 patients or their primary caregivers to take



- 1 place at locations that are designated by the
2 department and that are not within three hundred
3 feet of any school, church or daycare center;
- 4 (5) Determine additional duties and responsibilities of
5 the advisory board; and
- 6 (6) Submit annual reports to the legislature no later than
7 twenty days prior to the convening of each regular
8 session that shall include:
- 9 (A) Any issues and concerns relating to the
10 implementation of the medical cannabis program;
- 11 (B) The total number of licensed producers,
12 qualifying patients, and primary caregivers that
13 have utilized the program; provided that no
14 personal, identifying information of producers,
15 qualifying patients or primary caregivers is
16 included;
- 17 (C) An evaluation of the effectiveness of the program
18 in providing medical cannabis to individuals
19 suffering from debilitating illnesses; and
- 20 (D) Any recommendations, including proposed
21 legislation, to improve the provisions of the
22 medical cannabis program.



1 (d) Members of the medical cannabis advisory board shall
2 serve without compensation and shall not receive reimbursements
3 for expenses.

4 §329- Protections afforded to a licensed producer. (a)
5 A licensed producer shall not be subject to arrest, prosecution,
6 or penalty, in any manner, for the production, possession,
7 distribution, or dispensing of cannabis; provided that the
8 licensed producer strictly complied with the requirements of
9 this part.

10 (b) A licensed producer may assert the medical use of
11 cannabis as an affirmative defense to any prosecution involving
12 cannabis under this part or chapter 712; provided that the
13 licensed producer strictly complied with the requirements of
14 this part.

15 (c) Any licensed producer not complying with the permitted
16 scope of the medical use of cannabis shall not be afforded the
17 protections against searches and seizures pertaining to the
18 misapplication of the medical use of cannabis."

19 SECTION 3. Section 329-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§329-14 Schedule I.** (a) The controlled substances
22 listed in this section are included in schedule I.



1 (b) Any of the following opiates, including their isomers,
2 esters, ethers, salts, and salts of isomers, esters, and ethers,
3 unless specifically excepted, whenever the existence of these
4 isomers, esters, ethers, and salts is possible within the
5 specific chemical designation:

- 6 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
7 phenethyl)-4-piperidinyl]-N-phenylacetamide);
8 (2) Acetylmethadol;
9 (3) Allylprodine;
10 (4) Alphacetylmethadol (except levo-alphacetylmethadol,
11 levomethadyl acetate, or LAAM);
12 (5) Alphameprodine;
13 (6) Alphamethadol;
14 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
15 phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-
16 2-phenylethyl)-4-(N-propanilido) piperidine);
17 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
18 thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
19 (9) Benzethidine;
20 (10) Betacetylmethadol;
21 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-
22 piperidinyl]-N-phenylpropanamide;



- 1 (12) Beta-hydroxy-3-methylfentanyl (N-[1-(2- hydroxy-2-
- 2 phenethyl)-3-methyl-4-piperidinyll)-N-
- 3 phenylpropanamide);
- 4 (13) Betameprodine;
- 5 (14) Betamethadol;
- 6 (15) Betaprodine;
- 7 (16) Clonitazene;
- 8 (17) Dextromoramide;
- 9 (18) Diampromide;
- 10 (19) Diethylthiambutene;
- 11 (20) Difenoxin;
- 12 (21) Dimenoxadol;
- 13 (22) Dimepheptanol;
- 14 (23) Dimethylthiambutene;
- 15 (24) Dioxaphetyl butyrate;
- 16 (25) Dipipanone;
- 17 (26) Ethylmethylthiambutene;
- 18 (27) Etonitazene;
- 19 (28) Etoxeridine;
- 20 (29) Furethidine;
- 21 (30) Hydroxypethidine;
- 22 (31) Ketobemidone;



- 1 (32) Levomoramide;
- 2 (33) Levophenacymorphan;
- 3 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 4 piperidyl]-N-phenylpropanamide);
- 5 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-
- 6 4-piperidinyl]-N-phenylpropanamide);
- 7 (36) Morpheridine;
- 8 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 9 (38) Noracymethadol;
- 10 (39) Norlevorphanol;
- 11 (40) Normethadone;
- 12 (41) Norpipanone;
- 13 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
- 14 phenethyl)-4-piperidinyl] propanamide;
- 15 (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine;
- 16 (44) Phenadoxone;
- 17 (45) Phenampromide;
- 18 (46) Phenomorphan;
- 19 (47) Phenoperidine;
- 20 (48) Piritramide;
- 21 (49) Proheptazine;
- 22 (50) Properidine;



- 1 (51) Propiram;
- 2 (52) Racemoramide;
- 3 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
- 4 piperidinyl]-propanamide);
- 5 (54) Tilidine;
- 6 (55) Trimeperidine;
- 7 (56) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
- 8 (benzylfentanyl), its optical isomers, salts, and
- 9 salts of isomers; and
- 10 (57) N-[1-(2-thienyl)methyl-4-piperidyl]-N-
- 11 phenylpropanamide (thenylfentanyl), its optical
- 12 isomers, salts, and salts of isomers.
- 13 (c) Any of the following opium derivatives, their salts,
- 14 isomers, and salts of isomers, unless specifically excepted,
- 15 whenever the existence of these salts, isomers, and salts of
- 16 isomers is possible within the specific chemical designation:
- 17 (1) Acetorphine;
- 18 (2) Acetyldihydrocodeine;
- 19 (3) Benzylmorphine;
- 20 (4) Codeine methylbromide;
- 21 (5) Codeine-N-Oxide;
- 22 (6) Cyprenorphine;



- 1 (7) Desomorphine;
- 2 (8) Dihydromorphine;
- 3 (9) Drotebanol;
- 4 (10) Etorphine;
- 5 (11) Heroin;
- 6 (12) Hydromorphinol;
- 7 (13) Methyldesorphine;
- 8 (14) Methyldihydromorphine;
- 9 (15) Morphine methylbromide;
- 10 (16) Morphine methylsulfonate;
- 11 (17) Morphine-N-Oxide;
- 12 (18) Myrophine;
- 13 (19) Nicocodeine;
- 14 (20) Nicomorphine;
- 15 (21) Normorphine;
- 16 (22) Phoclodine;
- 17 (23) Thebacon.
- 18 (d) Any material, compound, mixture, or preparation that
- 19 contains any quantity of the following hallucinogenic
- 20 substances, their salts, isomers, and salts of isomers, unless
- 21 specifically excepted, whenever the existence of these salts,



- 1 isomers, and salts of isomers is possible within the specific
2 chemical designation:
- 3 (1) Alpha-ethyltryptamine (AET);
 - 4 (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
 - 5 (3) 2,5-dimethoxyamphetamine (2,5-DMA);
 - 6 (4) 3,4-methylenedioxy amphetamine;
 - 7 (5) 3,4-methylenedioxymethamphetamine (MDMA);
 - 8 (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-
9 MDA);
 - 10 (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
 - 11 (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
 - 12 (9) 4-bromo-2,5-dimethoxy-amphetamine (4-bromo-2,5-DMA);
 - 13 (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
 - 14 (11) 3,4,5-trimethoxy amphetamine;
 - 15 (12) Bufotenine;
 - 16 (13) 4-methoxyamphetamine (PMA);
 - 17 (14) Diethyltryptamine;
 - 18 (15) Dimethyltryptamine;
 - 19 (16) 4-methyl-2,5-dimethoxy-amphetamine;
 - 20 (17) Gamma hydroxybutyrate (GHB) (some other names include
21 gamma hydroxybutyric acid; 4-hydroxybutyrate;



- 1 4-hydroxybutanoic acid; sodium oxybate; sodium
2 oxybutyrate);
- 3 (18) Ibogaine;
- 4 (19) Lysergic acid diethylamide;
- 5 (20) Marijuana;
- 6 (21) Parahexyl;
- 7 (22) Mescaline;
- 8 (23) Peyote;
- 9 (24) N-ethyl-3-piperidyl benzilate;
- 10 (25) N-methyl-3-piperidyl benzilate;
- 11 (26) Psilocybin;
- 12 (27) Psilocyn;
- 13 (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
- 14 (29) Tetrahydrocannabinols;
- 15 (30) Ethylamine analog of phencyclidine (PCE);
- 16 (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- 17 (32) Thiophene analog of phencyclidine (TCP; TCP);
- 18 (33) Gamma-butyrolactone, including butyrolactone;
- 19 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone
- 20 dihydro; dihydro-2(3H)-furanone; tetrahydro-2-
- 21 furanone; 1,2-butanolide; 1,4-butanolide;
- 22 4-butanolide; gamma-hydroxybutyric acid lactone;



- 1 3-hydroxybutyric acid lactone and 4-hydroxybutanoic
2 acid lactone with Chemical Abstract Service number
3 96-48-0 when any such substance is intended for human
4 ingestion;
- 5 (34) 1,4 butanediol, including butanediol; butane-1,4-diol;
6 1,4- butylenes glycol; butylene glycol; 1,4-
7 dihydroxybutane; 1,4- tetramethylene glycol;
8 tetramethylene glycol; tetramethylene 1,4- diol with
9 Chemical Abstract Service number 110-63-4 when any
10 such substance is intended for human ingestion;
- 11 (35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7),
12 its optical isomers, salts, and salts of isomers;
- 13 (36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its
14 optical isomers, salts, and salts of isomers;
- 15 (37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its
16 optical isomers, salts, and salts of isomers;
- 17 (38) Alpha-methyltryptamine (AMT), its isomers, salts, and
18 salts of isomers; and
- 19 (39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its
20 isomers, salts, and salts of isomers.



1 (e) Depressants. Unless specifically excepted, the
2 schedule shall include any material, compound, mixture, or
3 preparation which contains any quantity of the substance:

4 (1) Mecloqualone; or

5 (2) Methaqualone.

6 (f) Stimulants. Unless specifically excepted or unless
7 listed in another schedule, any material, compound, mixture, or
8 preparation which contains any quantity of the following
9 substances having a stimulant effect on the central nervous
10 system, including its salts, isomers, and salts of isomers:

11 (1) Aminorex;

12 (2) Cathinone;

13 (3) Fenethylamine;

14 (4) Methcathinone;

15 (5) N-ethylamphetamine;

16 (6) 4-methylaminorex;

17 (7) N,N-dimethylamphetamine.

18 (g) The enumeration of marijuana, tetrahydrocannabinols,
19 or chemical derivatives of tetrahydrocannabinol as Schedule I
20 controlled substances does not apply to the use or possession of
21 marijuana, tetrahydrocannabinols, or chemical derivatives of
22 tetrahydrocannabinol by qualified patients, primary care givers,



1 or licensed producers pursuant to part IX of chapter 329
2 regarding the medical use of cannabis."

3 SECTION 4. Chapter 329, part IX, Hawaii Revised Statutes,
4 is amended by amending its title to read as follows:

5 "[+]PART IX. [+] MEDICAL USE OF [MARIJUANA] CANNABIS"

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

8 "[+]§329-121[+] Definitions. As used in this part:

9 "Adequate supply" means an amount of [~~marijuana~~] cannabis
10 jointly possessed between the qualifying patient and the primary
11 caregiver that is not more than is reasonably necessary to
12 assure the uninterrupted availability of [~~marijuana~~] cannabis
13 for the purpose of alleviating the symptoms or effects of a
14 qualifying patient's debilitating medical condition; provided
15 that an "adequate supply" shall not exceed three mature
16 [~~marijuana~~] cannabis plants, four immature [~~marijuana~~] cannabis
17 plants, and one ounce of usable [~~marijuana~~] cannabis per each
18 mature plant.

19 "Department" means the department of health.

20 "Debilitating medical condition" means:



- 1 (1) Cancer, glaucoma, positive status for human
2 immunodeficiency virus, acquired immune deficiency
3 syndrome, or the treatment of these conditions;
- 4 (2) A chronic or debilitating disease or medical condition
5 or its treatment that produces one or more of the
6 following:
- 7 (A) Cachexia or wasting syndrome;
 - 8 (B) Severe pain;
 - 9 (C) Severe nausea;
 - 10 (D) Seizures, including those characteristic of
11 epilepsy; or
 - 12 (E) Severe and persistent muscle spasms, including
13 those characteristic of multiple sclerosis or
14 Crohn's disease; or
- 15 (3) Any other medical condition approved by the department
16 of health pursuant to administrative rules in response
17 to a request from a physician or potentially
18 qualifying patient.

19 ["Marijuana"] "Cannabis" shall have the same meaning as
20 "marijuana" and "marijuana concentrate" as provided in sections
21 329-1 and 712-1240.



1 "Licensed producer" means any person or association of
2 persons within the State of Hawaii that the department of health
3 determines to be qualified to produce, possess, distribute, and
4 dispense cannabis pursuant to this part and that is licensed by
5 the department.

6 "Medical use" means the acquisition, possession,
7 cultivation, use, distribution, or transportation of [~~marijuana~~]
8 cannabis or paraphernalia relating to the administration of
9 [~~marijuana~~] cannabis to alleviate the symptoms or effects of a
10 qualifying patient's debilitating medical condition. For the
11 purposes of "medical use", the term distribution is limited to
12 the transfer of [~~marijuana~~] cannabis and paraphernalia from the
13 primary caregiver to the qualifying patient.

14 "Physician" means a person who is licensed under chapters
15 453 and 460, and is licensed with authority to prescribe drugs
16 and is registered under section 329-32. "Physician" does not
17 include physician's assistant as described in section 453-5.3.

18 "Primary caregiver" means a person, other than the
19 qualifying patient and the qualifying patient's physician, who
20 is eighteen years of age or older who has agreed to undertake
21 responsibility for managing the well-being of the qualifying
22 patient with respect to the medical use of [~~marijuana.~~]



1 cannabis. In the case of a minor or an adult lacking legal
2 capacity, the primary caregiver shall be a parent, guardian, or
3 person having legal custody.

4 "Qualifying patient" means a person who has been diagnosed
5 by a physician as having a debilitating medical condition.

6 [~~"Usable marijuana"~~] "Usable cannabis" means the dried
7 leaves and flowers of the plant Cannabis family Moraceae, and
8 any mixture [+]~~or~~[+] preparation thereof, that are appropriate
9 for the medical use of [~~marijuana~~] cannabis. [~~"Usable~~
10 ~~marijuana"~~] "Usable cannabis" does not include the seeds,
11 stalks, and roots of the plant.

12 "Written certification" means the qualifying patient's
13 medical records or a statement signed by a qualifying patient's
14 physician, stating that in the physician's professional opinion,
15 the qualifying patient has a debilitating medical condition and
16 the potential benefits of the medical use of [~~marijuana~~]
17 cannabis would likely outweigh the health risks for the
18 qualifying patient. The department of [~~public safety~~] health
19 may require, through its rulemaking authority, that all written
20 certifications comply with a designated form. "Written
21 certifications" are valid for only one year from the time of
22 signing."



1 SECTION 6. Section 329-122, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§329-122 Medical use of [~~marijuana~~] cannabis; conditions**
4 **of use.** (a) Notwithstanding any law to the contrary, the
5 medical use of [~~marijuana~~] cannabis by a qualifying patient
6 shall be permitted only if:

- 7 (1) The qualifying patient has been diagnosed by a
8 physician as having a debilitating medical condition;
9 (2) The qualifying patient's physician has certified in
10 writing that, in the physician's professional opinion,
11 the potential benefits of the medical use of
12 [~~marijuana~~] cannabis would likely outweigh the health
13 risks for the particular qualifying patient; and
14 (3) The amount of [~~marijuana~~] cannabis does not exceed an
15 adequate supply.

16 (b) Subsection (a) shall not apply to a qualifying patient
17 under the age of eighteen years, unless:

- 18 (1) The qualifying patient's physician has explained the
19 potential risks and benefits of the medical use of
20 [~~marijuana~~] cannabis to the qualifying patient and to
21 a parent, guardian, or person having legal custody of
22 the qualifying patient; and



- 1 (2) A parent, guardian, or person having legal custody
2 consents in writing to:
- 3 (A) Allow the qualifying patient's medical use of
4 ~~[marijuana]~~ cannabis;
- 5 (B) Serve as the qualifying patient's primary
6 caregiver; and
- 7 (C) Control the acquisition of the ~~[marijuana]~~
8 cannabis, the dosage, and the frequency of the
9 medical use of ~~[marijuana]~~ cannabis by the
10 qualifying patient.
- 11 (c) The authorization for the medical use of ~~[marijuana]~~
12 cannabis in this section shall not apply to:
- 13 (1) The medical use of ~~[marijuana]~~ cannabis that endangers
14 the health or well-being of another person;
- 15 (2) The medical use of ~~[marijuana]~~ cannabis:
- 16 (A) In a school bus, public bus, or any moving
17 vehicle;
- 18 (B) In the workplace of one's employment;
- 19 (C) On any school grounds;
- 20 (D) At any public park, public beach, public
21 recreation center, recreation or youth center; or



1 (E) ~~[Other]~~ At any other place open to the public;
2 and

3 (3) The use of ~~[marijuana]~~ cannabis by a qualifying
4 patient, parent, or primary caregiver for purposes
5 other than medical use permitted by this part."

6 SECTION 7. Section 329-123, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§329-123[+] **Registration requirements.** (a)

9 Physicians who issue written certifications shall register the
10 names, addresses, patient identification numbers, and other
11 identifying information of the patients issued written
12 certifications with the department of ~~[public safety.]~~ health.
13 The department of health shall provide the department of public
14 safety, on a weekly basis, a copy of the information provided by
15 physicians.

16 (b) Qualifying patients shall register with the department
17 of ~~[public safety.]~~ health. Such registration shall be
18 effective until the expiration of the certificate issued by the
19 physician. Every qualifying patient shall provide sufficient
20 identifying information to establish personal identity of the
21 qualifying patient and the primary caregiver. Qualifying
22 patients shall report changes in information within five working



1 days. Every qualifying patient shall have only one primary
2 caregiver at any given time. The department shall then issue to
3 the qualifying patient a registration certificate, and may
4 charge a reasonable fee not to exceed [~~\$25.~~] \$50. The
5 department of health shall provide the department of public
6 safety, on a weekly basis, a copy of the information provided by
7 qualifying patients.

8 (c) Primary caregivers shall register with the department
9 of [~~public safety.~~] health. Every primary caregiver shall be
10 responsible for the care of only one qualifying patient at any
11 given time. The department of health shall provide the
12 department of public safety, on a weekly basis, a copy of the
13 information provided by primary caregivers.

14 (d) Upon an inquiry by a law enforcement agency, the
15 department of [~~public safety~~] health shall verify whether the
16 particular qualifying patient or licensed producer has
17 registered with the department and may provide reasonable access
18 to the registry information for official law enforcement
19 purposes."

20 SECTION 8. Section 329-124, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[+]§329-124[+] **Insurance not applicable.** This part shall
2 not be construed to require insurance coverage for the medical
3 use of [~~marijuana~~] cannabis."

4 SECTION 9. 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~~]
9 cannabis as an affirmative defense to any prosecution involving
10 [~~marijuana~~] cannabis under this [+]part[+] or chapter 712;
11 provided that the qualifying patient or the primary caregiver
12 strictly complied with the 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~~] cannabis shall not be afforded the protections
16 against searches and seizures pertaining to the misapplication
17 of the medical use of [~~marijuana~~] cannabis.

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~~] cannabis as permitted under this part."

21 SECTION 10. Section 329-126, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[+]§329-126[+] **Protections afforded to a treating**
2 **physician.** No physician shall be subject to arrest or
3 prosecution, penalized in any manner, or denied any right or
4 privilege for providing written certification for the medical
5 use of [~~marijuana~~] cannabis for a qualifying patient; provided
6 that:

- 7 (1) The physician has diagnosed the patient as having a
8 debilitating medical condition, as defined in section
9 329-121;
- 10 (2) The physician has explained the potential risks and
11 benefits of the medical use of [~~marijuana~~] cannabis,
12 as required under section 329-122;
- 13 (3) The written certification is based upon the
14 physician's professional opinion after having
15 completed a full assessment of the patient's medical
16 history and current medical condition made in the
17 course of a bona fide physician-patient relationship;
18 and
- 19 (4) The physician has complied with the registration
20 requirements of section 329-123."

21 SECTION 11. Section 329-127, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~{}~~§329-127~~{}~~ **Protection of [~~marijuana~~] cannabis and**
2 **other seized property.** [~~Marijuana~~,] Cannabis, paraphernalia, or
3 other property seized from a qualifying patient or primary
4 caregiver in connection with a claimed medical use of
5 [~~marijuana~~] cannabis under this part shall be returned
6 immediately upon the determination by a court that the
7 qualifying patient or primary caregiver is entitled to the
8 protections of this part, as evidenced by a decision not to
9 prosecute, dismissal of charges, or an acquittal; provided that
10 law enforcement agencies seizing live plants as evidence shall
11 not be responsible for the care and maintenance of [~~such~~] the
12 plants."

13 SECTION 12. Section 329-128, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~{}~~§329-128~~{}~~ **Fraudulent misrepresentation; penalty.**

16 (a) Notwithstanding any law to the contrary, fraudulent
17 misrepresentation to a law enforcement official of any fact or
18 circumstance relating to the medical use of [~~marijuana~~] cannabis
19 to avoid arrest or prosecution under this part or chapter 712
20 shall be a petty misdemeanor and subject to a fine of \$500.

21 (b) Notwithstanding any law to the contrary, fraudulent
22 misrepresentation to a law enforcement official of any fact or



1 circumstance relating to the issuance of a written certificate
2 by a physician not covered under section 329-126 for the medical
3 use of [~~marijuana~~] cannabis shall be a misdemeanor. This
4 penalty shall be in addition to any other penalties that may
5 apply for the non-medical use of [~~marijuana~~] cannabis. Nothing
6 in this section is intended to preclude the conviction of any
7 person under section 710-1060 or for any other offense under
8 part V of chapter 710.

9 (c) If a licensed producer sells, distributes, dispenses
10 or transfers cannabis to a person not approved by the department
11 pursuant to this part or obtains or transports cannabis outside
12 the State of Hawaii in violation of federal law, the licensed
13 producer shall be subject to arrest, prosecution, and civil or
14 criminal penalties pursuant to state law."

15 SECTION 13. This Act does not affect rights and duties
16 that matured, penalties that were incurred, and proceedings that
17 were begun, before its effective date.

18 SECTION 14. All appropriations, records, equipment, files,
19 supplies, contracts, books, papers, documents, maps, computer
20 software and data, authorizations and other property, both real
21 and personal, heretofore made, used, acquired, or held by the
22 department of public safety in the exercise of the functions and



1 programs transferred by the Act shall be transferred to the
2 department of health when the functions or programs are
3 transferred.

4 SECTION 15. All rules or other documents executed or
5 entered into by or on behalf of the department of public safety
6 pursuant to the provisions of part IX of chapter 329, Hawaii
7 Revised Statutes, which are reenacted or made applicable to the
8 department of health by this Act, shall remain in full force and
9 effect until amended or repealed by the department of health
10 pursuant to chapter 91, Hawaii Revised Statutes.

11 SECTION 16. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14

INTRODUCED BY:

Wayne Harshman
Calvin H. Day

[Signature]

JAN 26 2009



Report Title:

Medical Marijuana; Medical Cannabis; Department of Health;
Dispensaries; Licensed Producer

Description:

Amends the term "medical marijuana" to "medical cannabis"; transfers the administration of the program from the department of public safety to the department of health; authorizes a registration fee of \$50; establishes the medical cannabis advisory board; provides for the department of health to license producers to dispense medical cannabis.

