

JAN 23 2009

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, 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 interests by mistakenly releasing private
5 patient information to a reporter for the Hawaii Tribune-Herald.
6 The list included the name of each of the four thousand two
7 hundred patients, the location of their cannabis plants, license
8 information, and the names of their physicians.

9 The mission of the department of health is "to protect and
10 improve the health and environment for all people in Hawaii."
11 Since the department is more experienced in dealing with private
12 health records, and since the use of medical cannabis is
13 properly regarded as a health issue, not simply as an exception
14 to the State's laws on controlled substances, the legislature
15 finds 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 cannabis from the
3 department of public safety to the department of health and to
4 rename the program to be known as the "medical use of cannabis"
5 program.

6 SECTION 2. Chapter 329, part IX, Hawaii Revised Statutes,
7 is amended by amending its title to read as follows:

8 " [] PART IX. [] MEDICAL USE OF [MARIJUANA] CANNABIS"

9 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " [] §329-121 [] **Definitions.** As used in this part:

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



1 "Cannabis" shall have the same meaning as "marijuana" and
2 "marijuana concentrate" as provided in sections 329-1 and
3 712-1240.

4 "Debilitating medical condition" means:

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



1 to a request from a physician or potentially
2 qualifying patient.

3 "Department" means the department of health.

4 [~~"Marijuana" shall have the same meaning as "marijuana" and~~
5 ~~"marijuana concentrate" as provided in sections 329-1 and 712-~~
6 ~~1240-.~~]

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

15 "Physician" means a person who is licensed under [~~chapters~~]
16 chapter 453 [~~and 460 and~~], is licensed with authority to
17 prescribe drugs, and is registered under section 329-32.

18 "Physician" does not include a physician's assistant as
19 described in section 453-5.3.

20 "Primary caregiver" means a person, other than the
21 qualifying patient and the qualifying patient's physician, who
22 is eighteen years of age or older who has agreed to undertake



1 responsibility for managing the well-being of the qualifying
2 patient with respect to the medical use of [~~marijuana.~~]
3 cannabis. In the case of a minor or an adult lacking legal
4 capacity, the primary caregiver shall be a parent, guardian, or
5 person having legal custody.

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

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

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



1 certifications" are valid for only one year from the time of
2 signing."

3 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

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

- 20 (1) The qualifying patient's physician has explained the
21 potential risks and benefits of the medical use of
22 [~~marijuana~~] cannabis to the qualifying patient and to



1 a parent, guardian, or person having legal custody of
2 the qualifying patient; and

3 (2) A parent, guardian, or person having legal custody
4 consents in writing to:

5 (A) Allow the qualifying patient's medical use of
6 [~~marijuana~~] cannabis;

7 (B) Serve as the qualifying patient's primary
8 caregiver; and

9 (C) Control the acquisition of the [~~marijuana~~]
10 cannabis, the dosage, and the frequency of the
11 medical use of [~~marijuana~~] cannabis by the
12 qualifying patient.

13 (c) The authorization for the medical use of [~~marijuana~~]
14 cannabis in this section shall not apply to:

15 (1) The medical use of [~~marijuana~~] cannabis that endangers
16 the health or well-being of another person;

17 (2) The medical use of [~~marijuana~~] cannabis:

18 (A) In a school bus, public bus, or any moving
19 vehicle;

20 (B) In the workplace of one's employment;

21 (C) On any school grounds;



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

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

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

9 SECTION 5. Section 329-123, Hawaii Revised Statutes, is
10 amended to by amending subsections (a), (b), and (c) to read as
11 follows:

12 "(a) Physicians who issue written certifications shall
13 register the names, addresses, patient identification numbers,
14 and other identifying information of the patients issued written
15 certifications with the department of [~~public safety.~~] health.
16 The department of health shall provide the department of public
17 safety, on a weekly basis, with a copy of the information
18 provided by physicians pursuant to this subsection.

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



1 identifying information to establish the personal identity of
2 the qualifying patient and the primary caregiver. Qualifying
3 patients shall report changes in information within five working
4 days. Every qualifying patient shall have only one primary
5 caregiver at any given time. The department of health shall
6 then issue to the qualifying patient a registration certificate,
7 and may charge a reasonable fee not to exceed \$25. The
8 department of health shall provide the department of public
9 safety, on a weekly basis, with a copy of the information
10 provided by qualifying patients pursuant to this subsection.

11 (c) Primary caregivers shall register with the department
12 of [~~public safety.~~] health. Every primary caregiver shall be
13 responsible for the care of only one qualifying patient at any
14 given time. The department of health shall provide the
15 department of public safety, on a weekly basis, with a copy of
16 the information provided by primary caregivers pursuant to this
17 subsection."

18 SECTION 6. Section 329-124, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[~~†~~] §329-124 [~~†~~] **Insurance not applicable.** This part shall
21 not be construed to require insurance coverage for the medical
22 use of [~~marijuana.~~] cannabis."



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

3 " [†]§329-125 [†] Protections afforded to a qualifying
4 patient or primary caregiver. (a) A qualifying patient or the
5 primary caregiver may assert the medical use of [~~marijuana~~]
6 cannabis as an affirmative defense to any prosecution involving
7 [~~marijuana~~] cannabis under this [†]part [†] or chapter 712;
8 provided that the qualifying patient or the primary caregiver
9 strictly complied with the requirements of this part.

10 (b) Any qualifying patient or primary caregiver not
11 complying with the permitted scope of the medical use of
12 [~~marijuana~~] cannabis shall not be afforded the protections
13 against searches and seizures pertaining to the misapplication
14 of the medical use of [~~marijuana.~~] cannabis.

15 (c) No person shall be subject to arrest or prosecution
16 for simply being in the presence or vicinity of the medical use
17 of [~~marijuana~~] cannabis as permitted under this part."

18 SECTION 8. Section 329-126, Hawaii Revised Statutes, is
19 amended to read as follows:

20 " [†]§329-126 [†] Protections afforded to a treating
21 physician. No physician shall be subject to arrest or
22 prosecution, penalized in any manner, or denied any right or



1 privilege for providing written certification for the medical
2 use of [~~marijuana~~] cannabis for a qualifying patient; provided
3 that:

4 (1) The physician has diagnosed the patient as having a
5 debilitating medical condition, as defined in section
6 329-121;

7 (2) The physician has explained the potential risks and
8 benefits of the medical use of [~~marijuana~~] cannabis,
9 as required under section 329-122;

10 (3) The written certification is based upon the
11 physician's professional opinion after having
12 completed a full assessment of the patient's medical
13 history and current medical condition made in the
14 course of a bona fide physician-patient relationship;
15 and

16 (4) The physician has complied with the registration
17 requirements of section 329-123."

18 SECTION 9. Section 329-127, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[~~§~~329-127[~~]~~] **Protection of [~~marijuana~~] cannabis and**
21 **other seized property.** [~~Marijuana~~] Cannabis, paraphernalia, or
22 other property seized from a qualifying patient or primary



1 caregiver in connection with a claimed medical use of
 2 [~~marijuana~~] cannabis under this part shall be returned
 3 immediately upon the determination by a court that the
 4 qualifying patient or primary caregiver is entitled to the
 5 protections of this part, as evidenced by a decision not to
 6 prosecute, dismissal of charges, or an acquittal; provided that
 7 law enforcement agencies seizing live plants as evidence shall
 8 not be responsible for the care and maintenance of [~~such~~] the
 9 plants."

10 SECTION 10. Section 329-128, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "[~~+~~]§329-128[~~+~~] **Fraudulent misrepresentation; penalty.**

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

18 (b) Notwithstanding any law to the contrary, fraudulent
 19 misrepresentation to a law enforcement official of any fact or
 20 circumstance relating to the issuance of a written certificate
 21 by a physician not covered under section 329-126 for the medical
 22 use of [~~marijuana~~] cannabis shall be a misdemeanor. This



1 penalty shall be in addition to any other penalties that may
2 apply for the non-medical use of [~~marijuana.~~] cannabis. Nothing
3 in this section is intended to preclude the conviction of any
4 person under section 710-1060 or for any other offense under
5 part V of chapter 710."

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

9 SECTION 12. All appropriations, records, equipment, files,
10 supplies, contracts, books, papers, documents, maps, computer
11 software and data, authorizations and other property, both real
12 and personal, heretofore made, used, acquired, or held by the
13 department of public safety in the exercise of the functions and
14 programs transferred by this Act shall be transferred to the
15 department of health when the functions or programs are
16 transferred.

17 SECTION 13. All rules or other documents executed or
18 entered into by or on behalf of the department of public safety
19 pursuant to the provisions of part IX of chapter 329, Hawaii
20 Revised Statutes, which are reenacted or made applicable to the
21 department of health by this Act, shall remain in full force and



1 effect until amended or repealed by the department of health
2 pursuant to chapter 91, Hawaii Revised Statutes.

3 SECTION 14. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 15. This Act shall take effect upon its approval.

6

INTRODUCED BY: _____

Will Lyons



Report Title:

Medical Marijuana; Medical Cannabis; Department of Health

Description:

Amends the term "medical marijuana" to "medical cannabis"; transfers the administration of the State's program for the medical use of marijuana from the department of public safety to the department of health.

