



1 be reviewed by the same entity that monitors physicians on  
2 issues such as over-prescribing and, "doctor shopping".

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



1           The purpose of this Act is to amend the medical use of  
2 marijuana law by:

- 3           (1) Replacing the term "marijuana" with "cannabis";
- 4           (2) Transferring the administration of the program for the  
5           medical use of marijuana from the department of public  
6           safety to the department of health;
- 7           (3) Establishing procedures for employment-related  
8           marijuana drug testing and review of results by a  
9           medical review officer;
- 10          (4) Directing the department of health to establish a  
11          system of medical cannabis distribution outlets;
- 12          (5) Directing the counties to establish a system to  
13          license, tax, and regulate medical cannabis family  
14          farms;
- 15          (6) Directing the department of health, in consultation  
16          with the University of Hawaii, to establish a system  
17          to license research and development for medical  
18          cannabis related products; and
- 19          (7) Allowing out-of-state visitors who are qualifying  
20          patients or primary caregivers in their home state to  
21          apply for a temporary registration certificate.



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

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

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

6 "§329-121 Definitions. As used in this part:

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

17 "Cannabis" shall have the same meaning as "marijuana" and  
18 "marijuana concentrate" as provided in sections 329-1 and  
19 712-1240.

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 "Department" means the department of health.

20 [~~"Marijuana" shall have the same meaning as "marijuana" and~~  
21 ~~"marijuana concentrate" as provided in sections 329-1 and 712-~~  
22 ~~1240.]~~



1 "Medical use" means the acquisition, possession,  
2 cultivation, use, distribution, or transportation of [~~marijuana~~]  
3 cannabis or paraphernalia relating to the administration of  
4 [~~marijuana~~] cannabis to alleviate the symptoms or effects of a  
5 qualifying patient's debilitating medical condition. For the  
6 purposes of "medical use", the term distribution is limited to  
7 the transfer of [~~marijuana~~] cannabis and paraphernalia from the  
8 primary caregiver to the qualifying patient[-] and acquisition  
9 from state licensed outlets.

10 "Physician" means a person who is licensed to practice  
11 medicine or osteopathic medicine under chapter 453 and is  
12 licensed with authority to prescribe drugs and is registered  
13 under section 329-32. "Physician" does not include  
14 [~~physician's~~] a physician assistant as described in section 453-  
15 5.3 or an advanced practice registered nurse with prescriptive  
16 authority as described in section 457-8.6.

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



1 capacity, the primary caregiver shall be a parent, guardian, or  
2 person having legal custody.

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

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

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



1 SECTION 4. 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  
22          (E) Other place open to the public; and



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

4           SECTION 5. Section 329-123, Hawaii Revised Statutes, is  
5           amended to read as follows:

6           "~~§~~329-123~~§~~ **Registration requirements.** (a)

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

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



1 then issue to the qualifying patient a registration certificate,  
2 and may charge a reasonable fee not to exceed \$25. The  
3 department of health shall provide the department of public  
4 safety, on a weekly basis, a copy of the information provided by  
5 qualifying patients.

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

12 (d) An out-of-state visitor who possesses a registration  
13 certificate or its equivalent issued by another state government  
14 to permit the medical use of cannabis by a qualifying patient,  
15 or to permit a person to assist with a qualifying patient's  
16 medical use of cannabis in that other state, shall be allowed to  
17 apply for a temporary registration certificate for use within  
18 the State. Distribution outlets licensed by the department of  
19 health shall be allowed to issue a temporary registration  
20 certificate to an out-of-state visitor who provides a valid  
21 registration certificate or its equivalent issued by another



1 state government. The department of health or distribution  
2 outlet may charge a reasonable fee not to exceed \$25.

3 ~~[(d)]~~ (e) Upon an inquiry by a law enforcement agency, the  
4 department of ~~[public safety]~~ health shall verify whether the  
5 particular qualifying patient has registered with the department  
6 and may provide reasonable access to the registry information  
7 for official law enforcement purposes."

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

10 "[+]§329-124[+] **Insurance not applicable.** This part shall  
11 not be construed to require insurance coverage for the medical  
12 use of ~~[marijuana-]~~ cannabis."

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

15 "[+]§329-125[+] **Protections afforded to a qualifying**  
16 **patient or primary caregiver.** (a) A qualifying patient or the  
17 primary caregiver may assert the medical use of ~~[marijuana]~~  
18 cannabis as an affirmative defense to any prosecution involving  
19 ~~[marijuana]~~ cannabis under this [+]part[+] or chapter 712;  
20 provided that the qualifying patient ~~[or the]~~ primary  
21 caregiver, distribution outlet, licensed farmer, or research  
22 center strictly complied with the requirements of this part.



1 (b) Any qualifying patient [~~or~~], primary caregiver,  
2 distribution outlet, licensed farmer, or research center not  
3 complying with the permitted scope of the medical use of  
4 [~~marijuana~~] cannabis shall not be afforded the protections  
5 against searches and seizures pertaining to the misapplication  
6 of the medical use of [~~marijuana~~] cannabis.

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

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

12 "[~~§~~329-126[~~]~~] **Protections afforded to a treating**  
13 **physician.** No physician shall be subject to arrest or  
14 prosecution, penalized in any manner, or denied any right or  
15 privilege for providing written certification for the medical  
16 use of [~~marijuana~~] cannabis for a qualifying patient; provided  
17 that:

18 (1) The physician has diagnosed the patient as having a  
19 debilitating medical condition, as defined in section  
20 329-121;



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

4 (3) The written certification is based upon the  
5 physician's professional opinion after having  
6 completed a full assessment of the patient's medical  
7 history and current medical condition made in the  
8 course of a bona fide physician-patient relationship;  
9 and

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

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

14 "[~~§~~329-127[~~]~~] **Protection of [~~marijuana,~~] cannabis and**  
15 **other seized property.** [~~Marijuana,~~] Cannabis, paraphernalia, or  
16 other property seized from a qualifying patient or primary  
17 caregiver in connection with a claimed medical use of  
18 [~~marijuana,~~] cannabis under this part shall be returned  
19 immediately upon the determination by a court that the  
20 qualifying patient or primary caregiver is entitled to the  
21 protections of this part, as evidenced by a decision not to  
22 prosecute, dismissal of charges, or an acquittal; provided that



1 law enforcement agencies seizing live plants as evidence shall  
2 not be responsible for the care and maintenance of [~~such~~] the  
3 plants."

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

6 "[~~+~~]**\$329-128**[~~+~~] **Fraudulent misrepresentation; penalty.**

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

12 (b) Notwithstanding any law to the contrary, fraudulent  
13 misrepresentation to a law enforcement official of any fact or  
14 circumstance relating to the issuance of a written certificate  
15 by a physician not covered under section 329-126 for the medical  
16 use of [~~marijuana~~] cannabis shall be a misdemeanor. This  
17 penalty shall be in addition to any other penalties that may  
18 apply for the non-medical use of [~~marijuana~~] cannabis. Nothing  
19 in this section is intended to preclude the conviction of any  
20 person under section 710-1060 or for any other offense under  
21 part V of chapter 710."



1 SECTION 11. This part does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

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

12 SECTION 13. All rules, policies, procedures, guidelines,  
13 and other material adopted or developed by the department of  
14 public safety to implement provisions of the Hawaii Revised  
15 Statutes which are reenacted or made applicable to the  
16 department of health by this Act, shall remain in full force and  
17 effect until amended or repealed by the department of health  
18 pursuant to chapter 91, Hawaii Revised Statutes. In the  
19 interim, every reference to the department of public safety or  
20 the director of public safety in those rules, policies,  
21 procedures, guidelines, and other material is amended to refer





1 to the department of health or the director of health as  
2 appropriate.

3 PART II.

4 SECTION 14. Chapter 329B, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7 "§329B-A Marijuana testing. (a) If an employer requires  
8 an employee to submit to a drug test for marijuana, the employer  
9 shall designate a medical review officer to receive, review, and  
10 report the test result to the employer. The medical review  
11 officer shall be trained in the assessment and treatment of  
12 substance abuse.

13 (b) If a medical review officer receives a test result  
14 that is negative for marijuana from a laboratory as provided in  
15 section 329B-5, the medical review officer shall report a  
16 negative marijuana test result to the employer.

17 (c) If a medical review officer receives a test result  
18 that is positive for marijuana from a laboratory as provided in  
19 section 329B-5, the medical review officer shall consult with  
20 the employee to determine if the employee is registered with the  
21 department of health as a qualifying patient under section 329-  
22 123.



1        (d) If the employee is not registered with the department  
2 of health as a qualifying patient under section 329-123, the  
3 medical review officer shall report a positive marijuana test  
4 result to the employer.

5        (e) If the employee is registered with the department of  
6 health as a qualifying patient under section 329-123, the  
7 medical review officer shall consult with the employee to  
8 determine the employee's pattern of marijuana use and the  
9 potential for impairment while the employee is acting in the  
10 course and scope of employment.

11       (f) If, after the consultation required by subsection (e),  
12 the medical review officer determines that the employee's  
13 marijuana use poses a risk to the safety of the employee or  
14 others in the employee's place of employment, the medical review  
15 officer shall report a positive marijuana test result to the  
16 employer.

17       (g) If, after the consultation required by subsection (e),  
18 the medical review officer determines that the employee's  
19 marijuana use does not pose a risk to the safety of the employee  
20 or others in the employee's place of employment, the medical  
21 review officer shall report a negative marijuana test result to  
22 the employer."



1 SECTION 15. Section 329B-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§329B-5 Substance abuse testing procedures and**  
4 **interpretation of test results.** (a) Prior to the collection of  
5 any sample for substance abuse testing, the individual to be  
6 tested shall receive a written statement of the specific  
7 substances to be tested for and a statement that over-the-  
8 counter medications or prescribed drugs may result in a positive  
9 test result.

10 (b) When the substance abuse testing is for nonmedical  
11 employment or pre-employment purposes and includes a test for  
12 marijuana, the laboratory shall forward the marijuana test  
13 result to the medical review officer designated by the employer  
14 under section 329B-A. The laboratory may not report a marijuana  
15 test result to the employer, but may report the result of any  
16 other substance abuse test in accordance with this chapter.

17 ~~[(b)]~~ (c) In accordance with this section, the director  
18 shall adopt rules pertaining to:

19 (1) The qualifications, responsibilities, and licensing of  
20 the medical review officer;









1 and shall be subject to other reasonable safety and regulations  
2 standards.

3 § -2 **Family farmers; licensing.** (a) Each county shall  
4 issue licenses to agriculturally zoned family farmers to supply  
5 the medical needs of their respective community.

6 (b) The licensed family farmer may have allotments to  
7 allow for the production of five hundred pounds of A grade  
8 medical cannabis and two hundred pounds of infused/oil cannabis  
9 products.

10 § -3 **Medical cannabis allotment system.** An  
11 agriculturally zoned family farmer may qualify for a medical  
12 cannabis allotment by creating a five-year organic farm plan  
13 based on at least two organic crops. The first crop shall be  
14 medical cannabis. The second crop shall be determined by need  
15 in the community, identified by the respective community  
16 oversight committee.

17 § -4 **Community oversight committees.** (a) Community  
18 oversight committees shall be established in each county to  
19 administer implementation of the program, adopt rules under  
20 chapter 91, investigate and discuss procedures to obtain  
21 licenses, focus on growing standards, and develop a legal  
22 distribution system.



1 (b) Each community oversight committee shall consist of:

2 (1) The director of health or the director's designee;

3 (2) The chairperson of the board of agriculture or the  
4 chairperson's designee;

5 (3) One community member appointed by the governor;

6 (4) One community member appointed by the department of  
7 agriculture; and

8 (5) One representative of the county auditor.

9 (c) The responsibilities of each community oversight  
10 committee shall include:

11 (1) Ensuring timely implementation of this chapter;

12 (2) Making recommendations to the county council regarding  
13 appropriate regulations, in accordance with section  
14 -1;

15 (3) Developing a land tax and gram tax for medical  
16 cannabis farmers and submitting allotment, license,  
17 and tax plans;

18 (4) Voting on plans and submitting a final draft to the  
19 county council;

20 (5) Issuing licenses to family farmers that meet the  
21 approved plan requirements; and







# H.B. NO. 2732

1 SECTION 22. This Act shall take effect upon its approval.

2

INTRODUCED BY:

*Edwin K. Day (by request)*  
~~*John (by request)*~~

JAN 26 2010



**Report Title:**

Medical Marijuana; Medical Cannabis; Department of Health; Drug Testing; Distribution Outlets; Family Farms; Research and Development Licensing; Temporary Registration Certificates

**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. Establishes procedure for employment-related marijuana drug testing and review of results by medical review officer. Directs the department of health to establish a system of distribution outlets. Directs the counties to establish a system to license, tax, and regulate medical cannabis family farms. Directs the department of health, in consultation with the University of Hawaii, to establish a system to license research and development for medical cannabis related products. Allows out-of-state visitors who are qualifying patients or primary caregivers to apply for a temporary registration certificate.

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

