
A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

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

PART I.

1
2 SECTION 1. The legislature finds that the State's medical
3 marijuana program, enacted into law in 2000, is a public health
4 program conceived out of concern for the health and welfare of
5 the seriously ill. Registration for the program is currently
6 administered by the narcotics enforcement division of the
7 department of public safety.

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

14 Furthermore, the program's current placement in the
15 narcotics enforcement division is also partly responsible for
16 the reluctance of many physicians to certify patients. These
17 physicians are concerned that their written certifications will



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;
- 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; and



1 (8) Permitting qualifying patients to transport medical
2 marijuana for their personal use, if certain
3 conditions are met.

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

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

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

9 "§329-121 Definitions. As used in this part:

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

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



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

20 "Department" means the department of health.



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

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

13 "Physician" means a person who is licensed to practice
14 medicine or osteopathic medicine under chapter 453 and is
15 licensed with authority to prescribe drugs and is registered
16 under section 329-32. "Physician" does not include
17 [~~physician's~~] a physician assistant as described in section 453-
18 5.3 or an advanced practice registered nurse with prescriptive
19 authority as described in section 457-8.6.

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, oils, [~~+~~]or[~~+~~] infused preparation thereof, that
11 are appropriate for the medical use of [~~marijuana~~] cannabis.

12 [~~"Usable marijuana"~~] "Usable cannabis" does not include the
13 seeds, stalks, 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, recreation or youth center; or

3 (E) Other place open to the public; and

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

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

9 "[+]§329-123[+] **Registration requirements.** (a)

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

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



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

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

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



1 certificate to an out-of-state visitor who provides a valid
2 registration certificate or its equivalent issued by another
3 state government. The department of health or distribution
4 outlet may charge a reasonable fee not to exceed \$25.

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

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

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

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

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



1 caregiver, distribution outlet, licensed farmer, or research
2 center strictly complied with the requirements of this part.

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

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

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

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

20 (1) The physician has diagnosed the patient as having a
21 debilitating medical condition, as defined in section
22 329-121;



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



1 (6) Reporting annually to the county council on the
2 implementation and progress of the program."

3 PART V.

4 SECTION 19. The department of health, in consultation with
5 the University of Hawaii, is directed to establish and implement
6 a program to license the research and development of medical
7 cannabis products to serve the needs of individuals registered
8 with the department for the medical use of cannabis. This
9 research shall include development of:

- 10 (1) Infused cannabis products;
- 11 (2) Cannabis oil products;
- 12 (3) Cannabis strains; and
- 13 (4) Clone production.

14 The department shall adopt rules in accordance with chapter
15 91 for the purposes of this program.

16 PART VI.

17 SECTION 20. 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- Transport of cannabis by qualifying patient.

21 (a) No person shall transport cannabis for the person's own use
22 under this part unless the person:



- 1 (1) Is a qualifying patient;
- 2 (2) Holds and has in the person's physical possession a
- 3 valid and unexpired written certification from a
- 4 physician to use cannabis for medical purposes;
- 5 (3) Registers with the department of health;
- 6 (4) Holds and has in the person's physical possession a
- 7 valid and unexpired registration certificate from the
- 8 department of health;
- 9 (5) Transports no more than three ounces of marijuana;
- 10 (6) Carries the transported marijuana in a closed
- 11 container designed to be resistant to inadvertent
- 12 opening by a child; and
- 13 (7) Affixes a label on the container containing the
- 14 marijuana that bears the person's name, address,
- 15 department of health registration certificate number,
- 16 and name and address of the physician issuing the
- 17 person's written certification.
- 18 (b) If personally transporting cannabis to another state,
- 19 the person shall comply with all laws of the state to which the
- 20 person travels."



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PART VII.

SECTION 21. In codifying the new section added by section 14 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval.

INTRODUCED BY:

Calvin K. Boy
BR
JUNI
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JAN 27 2010



Report Title:

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

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. Permits transport of medical marijuana if certain conditions are met.

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

