

JAN 18 2012

A BILL FOR AN ACT

RELATING TO THE MEDICAL USE OF MARIJUANA.

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

1 SECTION 1. Chapter 329, Hawaii Revised Statutes, is
2 amended by adding a new section to part IX to be appropriately
3 designated and to read as follows:

4 "§329- Additional conditions for medical use of
5 marijuana; procedures; legislative approval. (a) In addition
6 to the debilitating medical condition as defined in section 329-
7 121, the department of health may designate other medical
8 conditions that shall qualify for the medical use of marijuana
9 under this part. Any new medical condition shall be added
10 pursuant to subsection (b) and chapter 91.

11 (b) No later than twenty days prior to the convening of
12 any regular session of the state legislature at which the
13 department of health seeks to amend the medical conditions to
14 which this part applies, the department of health shall submit a
15 resolution to the president of the senate and the speaker of the
16 house of representatives for introduction. The proposed
17 resolution shall include the department's recommendations for
18 additions, deletions, or revisions to the list of authorized



1 debilitating medical conditions. If both houses of the
2 legislature adopt the resolution by simple majority, the
3 amendments to the list of debilitating medical conditions shall
4 become effective."

5 SECTION 2. Section 329-32, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) A separate registration shall be required at each
8 principal place of business or professional practice where the
9 applicant manufactures, distributes, prescribes, or dispenses
10 controlled substances, or, pursuant to part IX, diagnoses
11 patients with debilitating conditions or issues written
12 certifications for the use of medical marijuana, except an
13 office used by a practitioner (who is registered at another
14 location) where controlled substances are prescribed but neither
15 administered nor otherwise dispensed as a regular part of the
16 professional practice of the practitioner at [~~such~~] the office,
17 and where no supplies of controlled substances are maintained."

18 SECTION 3. Chapter 329-121, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending the definition of "adequate supply" to
21 read:



1 ""Adequate supply" means an amount of marijuana jointly
2 possessed between the qualifying patient and the primary
3 caregiver that is not more than is reasonably necessary to
4 assure the uninterrupted availability of marijuana for the
5 purpose of alleviating the symptoms or effects of a qualifying
6 patient's debilitating medical condition; provided that an
7 "adequate supply" shall not exceed [~~three mature marijuana~~
8 ~~plants, four immature~~] seven marijuana plants[~~7~~] and [~~one ounce~~]
9 three ounces of usable marijuana [~~per each mature plant~~]. No
10 address registered by a qualifying patient or primary caregiver
11 to grow marijuana for medical use may grow more than twenty-one
12 plants or possess more than nine ounces of usable marijuana,
13 regardless of the number of permits authorized for the
14 registered location."

15 2. By amending the definition of "debilitating medical
16 condition" to read:

17 ""Debilitating medical condition" means:

18 (1) Cancer, glaucoma, positive status for human
19 immunodeficiency virus, acquired immune deficiency
20 syndrome, or the treatment of these conditions[~~7~~] that
21 produces one or more of the following;

22 (A) Cachexia or wasting syndrome;



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- 1 (B) Severe pain;
- 2 (C) Severe nausea;
- 3 (D) Seizures, including those characteristic of
- 4 epilepsy; or
- 5 (E) Severe and persistent muscle spasms, including
- 6 those characteristic of multiple sclerosis or
- 7 Crohn's disease; or

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

- 10 ~~(A) Cachexia or wasting syndrome;~~
- 11 ~~(B) Severe pain;~~
- 12 ~~(C) Severe nausea;~~
- 13 ~~(D) Seizures and persistent muscle spasms, including~~
- 14 ~~those characteristic of multiple sclerosis or~~
- 15 ~~Crohn's disease; or~~

16 ~~(3)]~~ (2) Any other medical condition approved by the
 17 department of health pursuant to administrative rules
 18 in response to a request from a physician or
 19 potentially qualifying patient[-], which rules have
 20 been approved by the legislature by resolution
 21 pursuant to section 329- ."



1 3. By amending the definition of "primary caregiver" to
2 read:

3 ""Primary caregiver" means a person, other than the
4 qualifying patient and the qualifying patient's physician, who
5 does not have a felony conviction, and who is eighteen years of
6 age or older who has agreed to undertake responsibility for
7 managing the well-being of the qualifying patient with respect
8 to the medical use of marijuana. In the case of a minor or an
9 adult lacking legal capacity, the primary caregiver shall be a
10 parent, guardian, or person having legal custody."

11 4. By amending the definition of "written certification"
12 to read:

13 ""Written certification" means the [~~qualifying patient's~~
14 ~~medical records or~~] medical use of marijuana application form
15 provided by the department that includes a statement signed by a
16 qualifying patient's physician, stating that in the physician's
17 professional opinion, the qualifying patient has a debilitating
18 medical condition and the potential benefits of the medical use
19 of marijuana would likely outweigh the health risks for the
20 qualifying patient. The department of public safety may
21 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[-] of the form provided by the department. Any person
3 who violates any section of part IX may be suspended from
4 participating in the medical use of marijuana program by the
5 administrator for a period of up to three years."

6 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

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

- 10 (1) The medical use of marijuana that endangers the health
11 or well-being of another person;
- 12 (2) The medical use of marijuana:
 - 13 (A) In a school bus, public bus, or any moving
14 vehicle;
 - 15 (B) In the workplace of one's employment;
 - 16 (C) On any school grounds;
 - 17 (D) At any public park, public beach, public
18 recreation center, recreation or youth center; or
 - 19 (E) Other place open to the public; and
- 20 (3) The use of marijuana by a qualifying patient, parent,
21 or primary caregiver for purposes other than medical
22 use permitted by this part[-] Any person who violates



1 any section of this part may be suspended from
2 participating in the program by the administrator for
3 a period of up to three years."

4 SECTION 5. Section 329-125, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§329-125 Protections afforded to a qualifying patient or**
7 **primary caregiver.** (a) A qualifying patient or the primary
8 caregiver may assert the medical use of marijuana as an
9 affirmative defense to any prosecution involving marijuana under
10 this [+]part[+] or chapter 712; provided that the qualifying
11 patient or the primary caregiver strictly complied with the
12 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 shall not be afforded the protections against searches
16 and seizures pertaining to the misapplication of the medical use
17 of marijuana.

18 (c) Any qualifying patient or primary caregiver violating
19 the adequate supply provision of this part shall be in violation
20 of the medical use of marijuana program and shall not be
21 afforded protection against arrest or the seizure of marijuana.

1 [~~e~~] (d) No person shall be subject to arrest or
2 prosecution for simply being in the presence or vicinity of the
3 medical use of marijuana as permitted under this part."

4 SECTION 6. Section 329-128, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§329-128 Fraudulent misrepresentation; penalty.** (a)

7 Notwithstanding any law to the contrary, fraudulent
8 misrepresentation by the applicant on the medical use of
9 marijuana application form provided by the department of public
10 safety or statements made to a law enforcement official of any
11 fact or circumstance relating to the medical use of marijuana to
12 avoid arrest or prosecution under this part or chapter 712 shall
13 be a [~~petty misdemeanor and subject to a fine of \$500.~~] class C
14 felony.

15 (b) Notwithstanding any law to the contrary, fraudulent
16 misrepresentation by the applicant on the marijuana application
17 form provided by the department of public safety or statements
18 made to a law enforcement official of any fact or circumstance
19 relating to the issuance of a written certificate by a physician
20 not covered under section 329-126 for the medical use of
21 marijuana shall be a [~~misdemeanor.~~] class C felony. This
22 penalty shall be in addition to any other penalties that may



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1 apply for the non-medical use of marijuana. Nothing in this
2 section is intended to preclude the conviction of any person
3 under section 710-1060 or for any other offense under part V of
4 chapter 710."

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

8 SECTION 8. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect upon its approval.

11

INTRODUCED BY: Clarence K. Michikawa
Gilbert Kolra



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Report Title:

Medical Marijuana

Description:

Amends medical marijuana law. Changes include 3 year revocation of registration identification certificate of any qualifying patient who violates conditions of or registration requirements, and penalty for fraudulent misrepresentation changed from a misdemeanor to a Class C felony.

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

