
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. The legislature finds that the tobacco industry
3 spends more than \$12,000,000,000 annually on advertising and
4 marketing its products in the United States. Each year, tobacco
5 companies spend over \$42,000,000 promoting their brands in
6 stores throughout Hawaii. The National Cancer Institute has
7 reported that the total weight of evidence from multiple studies
8 demonstrates a causal relationship between tobacco advertising
9 and promotion and increased tobacco use.

10 The legislature additionally finds that retail stores are
11 given incentives to place tobacco advertisements and products in
12 strategic locations near the cash register, known as a point-of-
13 sale, or in self-service displays. Research indicates the
14 presence of these products and advertisements may stimulate
15 impulse purchases. Furthermore, a 2009 study found that
16 frequent visits to stores selling tobacco and a greater
17 awareness of cigarettes sold in stores increased the likelihood



1 of teenagers being susceptible to initiating smoking,
2 experimenting with smoking, or becoming smokers.

3 The legislature has a compelling interest in reducing the
4 number of children and teens in Hawaii who smoke. The
5 legislature finds that because of the documented connection
6 between children and youth exposure to tobacco advertisements
7 and youth tobacco initiation, regulations on the placement of
8 cigarette and tobacco products is needed.

9 The purpose of this part is to require cigarettes and
10 tobacco products to be sold, offered for sale, or displayed for
11 sale behind the check-out counter so that sales occur only in a
12 direct, face-to-face exchange between the retailer and the
13 consumer where the consumer specifically requests the cigarettes
14 or tobacco products.

15 SECTION 2. Chapter 328J, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 **"§328J- Placement of cigarettes and tobacco products.**

19 (a) A person who owns, manages, operates, or otherwise controls
20 any establishment where cigarettes or tobacco products are sold
21 or offered for sale shall not sell, permit to be sold, or offer
22 for sale any cigarettes or tobacco products except in a direct,



1 face-to-face exchange between the retailer and the consumer
2 where the consumer specifically requests the cigarettes or
3 tobacco products and shall display cigarettes or tobacco
4 products only behind the checkout counter.

5 (b) This section shall not apply to in-bond concession or
6 to retail tobacco stores, bars, or any establishment for which
7 the minimum age for admission is eighteen."

8 PART II

9 SECTION 3. The legislature finds that the State's medical
10 marijuana program was enacted into law in 2000 as a public
11 health program conceived out of compassion for the health and
12 welfare of the seriously ill. After twelve years, the
13 experience of the program indicates that improvements to the law
14 will help to fulfill its original intent by clarifying
15 provisions and removing serious obstacles to patient access and
16 physician participation.

17 The purpose of this part is to amend the medical use of
18 marijuana law to address the concerns of Hawaii's seriously ill
19 patients.

20 SECTION 4. Chapter 329, Hawaii Revised Statutes, is
21 amended by adding two new sections to part IX to be
22 appropriately designated and to read as follows:



1 "§329- Transfers. (a) A qualifying patient who has a
2 primary caregiver who is registered under section 329-123 may
3 provide usable marijuana or any part of the marijuana plant,
4 including seeds, seedlings, or clones, to a second qualifying
5 patient for whom the primary caregiver is also responsible;
6 provided that no consideration is paid for the marijuana and
7 that the total amount of marijuana possessed by the recipient
8 does not exceed the adequate supply amount specified in section
9 329-121.

10 (b) A primary caregiver who is registered under section
11 329-123 may provide usable marijuana or any part of the
12 marijuana plant, including seeds, seedlings, or clones, to no
13 more than two qualifying patients who are registered to the
14 primary caregiver under section 329-123; provided that no
15 consideration is paid for the marijuana and that the total
16 amount of marijuana possessed by the recipient does not exceed
17 the adequate supply amount specified in section 329-121.

18 §329- Limitation of marijuana plants grown.
19 Notwithstanding the adequate supply amount authorized for each
20 qualifying patient and primary caregiver pursuant to this
21 chapter, there shall be no more than twenty-one marijuana plants



1 located at a single property as defined by a single Tax Map
2 Key."

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

5 1. By adding a new definition to be appropriately
6 inserted and to read:

7 "Reimbursement" means consideration provided to a primary
8 caregiver as compensation for costs associated with assisting
9 qualifying patients who are registered under section 329-123 to
10 obtain marijuana for medical use; provided that "reimbursement"
11 shall not include the sale of controlled substances."

12 2. By amending the definition of "adequate supply" to
13 read:

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



1 ~~ounce]~~, whether immature or mature, and five ounces of usable
2 marijuana [~~per each mature plant.~~] at any given time."

3 3. By amending the definition of "medical use" to read:

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

13 4. By amending the definition of "primary caregiver" to
14 read:

15 "Primary caregiver" means a person[~~7~~] eighteen years of
16 age or older, other than the qualifying patient and the
17 qualifying patient's physician, [~~who is eighteen years of age or~~
18 ~~older~~] who has agreed, with or without reimbursement, to
19 undertake responsibility for managing the well-being of the
20 qualifying patient with respect to the medical use of marijuana.
21 In the case of a minor or an adult lacking legal capacity, the



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

3 5. By amending the definition of "usable marijuana" to
4 read:

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

10 6. By amending the definition of "written certification"
11 to read:

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 would
17 likely outweigh the health risks for the qualifying patient.
18 The department of [~~public safety~~] health may require, through
19 its rulemaking authority, that all written certifications comply
20 with a designated form. "Written certifications" are valid for
21 only one year from the time of signing."



1 SECTION 6. Section 329-122, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Notwithstanding any law to the contrary, the medical
4 use of marijuana by a qualifying patient shall be permitted only
5 if:

6 (1) The qualifying patient has been diagnosed by a
7 physician as having a debilitating medical condition;

8 (2) The qualifying patient's physician has certified in
9 writing that, in the physician's professional opinion,
10 the potential benefits of the medical use of marijuana
11 would likely outweigh the health risks for the
12 particular qualifying patient; and

13 (3) The amount of marijuana possessed by the qualifying
14 patient does not exceed an adequate supply."

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

17 "**§329-123 Registration requirements.** (a) Physicians who
18 issue written certifications shall [~~register the names,~~
19 ~~addresses, patient identification numbers,~~] provide, in each
20 written certification, the name, address, patient identification
21 number, and other identifying information of the [patients
22 ~~issued written certifications with the department of public~~



1 ~~safety.]~~ qualifying patient. The department of health may
2 require, in rules adopted pursuant to chapter 91, that all
3 written certifications comply with a designated form completed
4 by or on behalf of a qualifying patient. The form shall only
5 require information from the applicant, primary caregiver, and
6 certifying physician as specifically required or permitted by
7 this chapter. The form may request the address of the location
8 where the marijuana is grown, but that information shall be
9 confidential and shall not appear on the registry card issued by
10 the department of health. The information required shall
11 include the physician's attestation that the qualifying patient
12 has one of the debilitating medical conditions defined in
13 section 329-121 but shall not name or describe the particular
14 condition. The certifying physician shall not be required to be
15 the qualifying patient's primary care physician. If the
16 physician issuing the written certification is not the
17 qualifying patient's primary care physician, the issuing
18 physician shall send a copy of the written certification to the
19 qualifying patient's primary care physician, if any.

20 (b) Qualifying patients shall register with the department
21 of ~~[public safety.]~~ health. The registration shall be effective
22 until the expiration of the certificate issued by the department



1 of health and signed by the physician. Every qualifying patient
2 shall provide sufficient identifying information to establish
3 the personal identities of the qualifying patient and the
4 primary caregiver. Qualifying patients shall report changes in
5 information within [~~five~~] ten working days. Every qualifying
6 patient shall have only one primary caregiver at any given time.
7 The department of health shall [~~then~~] issue to the qualifying
8 patient a registration certificate[~~7~~] and may charge a
9 reasonable fee not to exceed \$35[~~7~~] per year.

10 (c) Primary caregivers shall register with the department
11 of [~~public safety~~] health. Every primary caregiver shall be
12 responsible for the care of [~~only one~~] not more than two
13 qualifying [~~patient~~] patients at any given time[~~7~~]; provided
14 that a primary caregiver shall disclose the number of qualifying
15 patients for whom the primary caregiver is responsible upon
16 registration and that number shall be included in a registration
17 certificate provided to the primary caregiver. The primary
18 caregiver shall notify the department of health in writing of
19 any changes to the number of the qualifying patients for whom
20 the primary caregiver is responsible. The department of health
21 shall then issue to the primary caregiver a registration
22 certificate that includes the name of the qualifying patients



1 for whom the primary caregiver is responsible, and may charge a
2 reasonable fee not to exceed \$35.

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

9 PART III

10 SECTION 8. The legislature finds that one of the top
11 recommendations of the "Medical Cannabis Working Group Report to
12 the Hawaii State Legislature" in 2010 was the transfer of the
13 administration of Hawaii's medical use of marijuana program from
14 the department of public safety to the department of health.
15 The status of the medical use of marijuana program as a public
16 health program is more in line with the mission and expertise of
17 the department of health. The department of health is
18 experienced in working with patients and health programs,
19 including important tasks such as public outreach and education,
20 and safeguarding patient privacy.



1 The purpose of this part is to transfer the State's medical
2 use of marijuana program from the department of public safety to
3 the department of health.

4 SECTION 9. Chapter 321, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§321- Medical marijuana registry revolving fund;
8 established. (a) There is established within the state
9 treasury the medical marijuana registry revolving fund. The
10 fund shall be expended at the discretion of the director of
11 health:

12 (1) To offset the cost of the processing and issuance of a
13 patient registry identification certificate;

14 (2) To fund positions authorized by the legislature;

15 (3) To establish and manage a secure and confidential
16 database; and

17 (4) For any other expenditure necessary, as authorized by
18 the legislature, to implement a medical marijuana
19 registry program.

20 (b) The fund shall consist of all moneys derived from fees
21 collected pursuant to subsection (c). All fees collected



1 pursuant to subsection (c) shall be deposited into the medical
2 marijuana registry revolving fund.

3 (c) The department may charge a medical marijuana
4 registration fee of no more than \$35."

5 SECTION 10. Section 329-59, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The fund shall consist of all moneys derived from
8 fees collected pursuant to sections 329-31[7] and 329-67[7 ~~and~~
9 ~~329-123(b)~~] and legislative appropriations. All fees collected
10 pursuant to sections 329-31[7] and 329-67[7 ~~and 329-123(b)~~]
11 shall be deposited in the controlled substance registration
12 revolving fund."

13 SECTION 11. (a) No later than June 30, 2014, all rights,
14 powers, functions, and duties of the department of public safety
15 relating to the medical use of marijuana under part IX of
16 chapter 329, Hawaii Revised Statutes, shall be transferred to
17 the department of health.

18 (b) All employees who occupy civil service positions and
19 whose functions are transferred to the department of health by
20 this Act shall retain their civil service status, whether
21 permanent or temporary. Employees shall be transferred without
22 loss of salary, seniority (except as prescribed by applicable



1 collective bargaining agreement), retention points, prior
2 service credit, any vacation and sick leave credits previously
3 earned, and other rights, benefits, and privileges, in
4 accordance with state personnel laws and this Act; provided that
5 the employees possess the minimum qualifications and public
6 employment requirements for the class or position to which
7 transferred or appointed, as applicable; provided further that
8 subsequent changes in status may be made pursuant to applicable
9 civil service and compensation laws.

10 Any employee who, prior to this Act, is exempt from civil
11 service and is transferred as a consequence of this Act, may
12 continue to retain the employee's exempt status, but shall not
13 be appointed to a civil service position as a consequence of
14 this Act. An exempt employee who is transferred by this Act
15 shall not suffer any loss of prior service credit, vacation or
16 sick leave credits previously earned, or other employee benefits
17 or privileges as a consequence of this Act; provided that the
18 employees possess legal and public employment requirements for
19 the position to which transferred or appointed, as applicable;
20 provided further that subsequent changes in status may be made
21 pursuant to applicable employment and compensation laws. The
22 director of health may prescribe the duties and qualifications



1 of such employees and fix their salaries without regard to
2 chapter 76, Hawaii Revised Statutes.

3 SECTION 12. The department of public safety shall
4 facilitate the transfer of functions pursuant to this Act by
5 collaborating with, cooperating with, and assisting the
6 department of health with assuming jurisdiction of and
7 responsibilities for the medical use of marijuana program.

8 In order to facilitate the transfer of functions pursuant
9 to this Act, until all relevant records are transferred to the
10 department of health, the duties of the department of public
11 safety shall include but not be limited to maintaining a
12 confirmation service of the registration and certification of
13 physicians, qualifying patients, and primary caregivers,
14 pursuant to section 329-123, Hawaii Revised Statutes, which
15 service shall operate twenty-four hours per day, seven days per
16 week, and shall be accessible to the department of health.

17 SECTION 13. All appropriations, fees, records, equipment,
18 machines, files, supplies, contracts, books, papers, documents,
19 maps, and other personal property heretofore made, used,
20 acquired, or held by the department of public safety relating to
21 the functions transferred to the department of health shall be
22 transferred with the functions to which they relate.



1 SECTION 14. All rules, policies, procedures, guidelines,
2 and other material adopted or developed by the department of
3 public safety that are reenacted or made applicable to the
4 department of health by this Act shall remain in full force and
5 effect until amended or repealed by the department of health
6 pursuant to chapter 91, Hawaii Revised Statutes. In the
7 interim, every reference to the department of public safety or
8 director of public safety in those rules, policies, procedures,
9 guidelines, and other material is amended to refer to the
10 department of health or director of health.

11 SECTION 15. All designated forms for written
12 certifications issued by the department of public safety shall
13 be valid under the department of health until the department of
14 health issues new designated forms.

15 SECTION 16. The department of public safety and the
16 department of health shall develop a plan for transferring the
17 medical use of marijuana program from the department of public
18 safety to the department of health by June 30, 2014, pursuant to
19 this Act. The plan shall include a timeline for the transfer.

20 SECTION 17. The department of public safety and the
21 department of health shall submit a joint report on the transfer
22 of the medical use of marijuana program, including the plan and



1 timeline for the transfer, and the progress made, to the
2 legislature no later than twenty days prior to the convening of
3 the regular session of 2014.

4 PART IV

5 SECTION 18. This Act does not affect rights and duties
6 that matured, penalties that were incurred, and proceedings that
7 were begun before its effective date.

8 SECTION 19. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 20. This Act shall take effect on July 1, 2112.



Report Title:

Tobacco; Tobacco Product Placement; Medical Use of Marijuana;
Medical Use of Marijuana Program

Description:

Requires cigarettes and tobacco products to be sold, offered for sale, or displayed behind the check-out counter only in a direct, face-to-face exchange between the retailer and the consumer. Amends the Medical Use of Marijuana Law. Transfers the Medical Use of Marijuana Program from the Department of Public Safety to the Department of Health by June 30, 2014. Effective July 1, 2112. (SB642 HD2)

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