

JAN 18 2013

S.B. NO. 703

A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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

1 SECTION 1. The legislature finds that the highest priority
2 of the medical cannabis working group, which examined issues
3 relating to Hawaii's medical marijuana program and conducted a
4 survey of registered patients in Hawaii, is to create a
5 distribution system to prevent patients from being forced to
6 resort to the black market to obtain medicine. The medical
7 cannabis working group's February 2010 report to the Hawaii
8 legislature notes that without a system of medical marijuana
9 dispensaries, qualifying patients in the medical marijuana
10 program in Hawaii do not have access to a safe and legal supply
11 of medicine.

12 The current system has forced many patients to turn to
13 black market sources to obtain medication when they are unable
14 to grow a sufficient supply for their medical needs, thus
15 running the risk of violence, robbery, and procurement of low
16 quality or adulterated marijuana, which is unacceptable as
17 medicine. All of the stakeholders involved in the medical
18 cannabis working group, from patients to caregivers to



1 physicians, agree that it is imperative to address this serious
2 omission in Hawaii's medical marijuana program.

3 Other jurisdictions have found that well regulated
4 dispensaries can protect public safety while providing patients
5 with high quality medicine in a confidential setting with
6 professional standards of care. In addition to meeting this
7 compelling need, a dispensary system offers revenue potential
8 for the State or counties.

9 The purpose of this Act is to improve Hawaii's medical
10 marijuana program by establishing registered dispensaries for
11 medical marijuana patients in each county and transferring the
12 medical marijuana program from the department of public safety
13 to the department of health.

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

17 "§329- Registered dispensaries. (a) Dispensaries shall
18 register with the department of health. Not later than ninety
19 days after receiving an application for a nonprofit medical
20 marijuana dispensary, the department of health shall register
21 the dispensary to acquire, process, possess, transfer,
22 transport, sell, distribute, dispense, and administer marijuana



1 for medical use, and shall also issue a cultivation registration
2 if:
3 (1) The prospective dispensary has submitted:
4 (A) An application fee in an amount to be determined
5 by the department of health consistent with
6 subsection (e);
7 (B) An application, including:
8 (i) The legal name and physical address of the
9 dispensary and the physical address of one
10 additional location, if any, where marijuana
11 will be cultivated; and
12 (ii) The name, address, and date of birth of each
13 principal officer and board member; and
14 (C) Operating procedures consistent with department
15 of health rules for oversight, including
16 cultivation and storage of marijuana only in
17 secured facilities.
18 (2) None of the principal officers or board members has
19 served as a principal officer or board member for a
20 dispensary that has had its registration certificate
21 revoked; and



1 (3) From July 1, 2013, to July 1, 2014, the department of
2 health shall issue registrations for up to
3 dispensaries; provided that at least one dispensary
4 shall be located in each county, and not more than
5 shall be located in any one county. In the
6 event the department of health determines that the
7 number of dispensaries is insufficient to meet patient
8 needs, the department of health shall have the power
9 to increase or modify the number of registered
10 dispensaries.

11 (b) A dispensary registered under this section, and its
12 dispensary agents registered under subsection (c), shall not be
13 penalized or arrested under Hawaii law for acquiring,
14 possessing, cultivating, processing, transferring, transporting,
15 selling, distributing, and dispensing marijuana, products
16 containing marijuana, and related supplies and educational
17 materials, to qualifying patients or their personal caregivers.

18 (c) Dispensary agents shall register with the department
19 of health before working or volunteering at a dispensary. No
20 one shall be a dispensary agent who has been convicted of a
21 felony drug offense. The department of health is authorized to

1 conduct criminal record checks to enforce this subsection. All
2 dispensaries shall:

3 (1) Apply to the department of health for a registration
4 card for each affiliated dispensary agent by
5 submitting the name, address, and date of birth of the
6 agent; and

7 (2) Notify the department of health within one business
8 day if a dispensary agent ceases to be associated with
9 the dispensary, and the agent's registration card
10 shall be immediately revoked.

11 (d) A dispensary agent shall not be subject to arrest,
12 prosecution, or civil penalty under Hawaii law for actions taken
13 under the authority of a dispensary; provided that the agent:

14 (1) Presents the agent's registration card to any law
15 enforcement official who questions the agent
16 concerning the agent's marijuana-related activities;
17 and

18 (2) Is acting within all of the requirements of this
19 section.

20 (e) The department of health shall adopt rules necessary
21 for the implementation of this section, including rules
22 establishing application fees for dispensaries to defray the



1 department of health's administrative costs, no later than
2 November 1, 2013."

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

5 1. By adding three new definitions to be appropriately
6 inserted and to read:

7 "Dispensary" means a not-for-profit entity registered with
8 the department of health pursuant to section 329- that
9 acquires, cultivates, possesses, processes (including developing
10 related products such as food, tinctures, aerosols, oils, or
11 ointments), transfers, transports, sells, distributes,
12 dispenses, or administers marijuana, products containing
13 marijuana, related supplies, or educational materials to
14 qualifying patients who have designated the dispensary or their
15 registered primary caregivers to cultivate an adequate supply of
16 medical marijuana for medical use.

17 "Dispensary agent" means an employee, staff volunteer,
18 officer, or board member of a dispensary, who shall be at least
19 twenty-one years of age.

20 "Secured facility" means an area equipped with locks,
21 security cameras, alarms, or other security devices to prevent



1 unauthorized access and theft, accessible only to dispensary
2 agents, patients, or personal caregivers."

3 2. By amending the definitions of "qualifying patient" and
4 "written communication" to read:

5 "Qualifying patient" means a person who has been diagnosed
6 by a physician as having a debilitating medical condition. A
7 qualifying patient may either cultivate an adequate supply of
8 marijuana or designate a primary caregiver or dispensary to
9 cultivate an adequate supply of marijuana for the medical use of
10 the patient.

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

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



1 "§329-123 Registration requirements. (a) Physicians who
2 issue written certifications shall [~~register the names,~~
3 ~~addresses, patient identification numbers,~~] provide, in each
4 certification, the name, address, patient identification number,
5 and other identifying information of the qualifying patients
6 [issued written certifications with the department of public
7 safety]. The information shall include the physician's
8 attestation that the qualifying patient has one of the
9 debilitating medical conditions defined in section 329-121 but
10 shall not name or describe the particular condition. If the
11 physician issuing the written certification is not the
12 qualifying patient's primary care physician, the issuing
13 physician shall send a copy of the written certification to the
14 qualifying patient's primary care physician, if any.

15 (b) Qualifying patients shall register with the department
16 of [~~public safety~~] health. The registration shall be effective
17 until the expiration of the certificate issued by the department
18 of health and signed by the physician. Every qualifying patient
19 shall provide sufficient identifying information to establish
20 the personal identities of the qualifying patient and the
21 primary caregiver. The registration form will also require
22 qualifying patients to specify whether they will cultivate



1 marijuana on their own or designate a primary caregiver or
2 dispensary to cultivate on their behalf. Qualifying patients
3 shall report changes in information within [~~five~~] ten 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
7 certificate[~~7~~] and may charge a reasonable fee not to exceed
8 \$35[~~7~~] per year.

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~~] not more than five
12 qualifying [~~patient~~] patients at any given time.

13 (d) The department of health may require, in rules adopted
14 under chapter 91, that a registration be based on information
15 contained in a designated form completed by or on behalf of a
16 qualifying patient. The form shall only require information
17 from the applicant, primary caregiver, and certifying physician
18 as specifically required or permitted by this chapter.

19 [~~(d)~~] (e) Upon [~~an~~] inquiry by a law enforcement agency,
20 the department of [~~public safety~~] health shall verify whether
21 the [~~particular qualifying patient~~] subject of the inquiry has
22 registered with the department of health and may provide



1 reasonable access to the registry information for official law
2 enforcement purposes."

3 SECTION 5. 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 responsibility for the medical marijuana program as contained in
8 this Act.

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

18 SECTION 6. All rights, powers, functions, and duties of
19 the department of public safety relating to the medical use of
20 marijuana under chapter 329, part IX, Hawaii Revised Statutes,
21 are transferred to the department of health.



1 All officers and employees whose functions are transferred
2 by this Act shall be transferred with their functions and shall
3 continue to perform their regular duties upon their transfer,
4 subject to the state personnel laws and this Act.

5 No officer or employee of the State having tenure shall
6 suffer any loss of salary, seniority, prior service credit,
7 vacation, sick leave, or other employee benefit or privilege as
8 a consequence of this Act, and such officer or employee may be
9 transferred or appointed to a civil service position without the
10 necessity of examination; provided that the officer or employee
11 possesses the minimum qualifications for the position to which
12 transferred or appointed; and provided that subsequent changes
13 in status may be made pursuant to applicable civil service and
14 compensation laws.

15 An officer or employee of the State who does not have
16 tenure and who may be transferred or appointed to a civil
17 service position as a consequence of this Act shall become a
18 civil service employee without the loss of salary, seniority,
19 prior service credit, vacation, sick leave, or other employee
20 benefits or privileges and without the necessity of examination;
21 provided that such officer or employee possesses the minimum



1 qualifications for the position to which transferred or
2 appointed.

3 If an office or position held by an officer or employee
4 having tenure is abolished, the officer or employee shall not
5 thereby be separated from public employment, but shall remain in
6 the employment of the State with the same pay and classification
7 and shall be transferred to some other office or position for
8 which the officer or employee is eligible under the personnel
9 laws of the State as determined by the head of the department or
10 the governor.

11 SECTION 7. All appropriations, records, equipment,
12 machines, files, supplies, contracts, books, papers, documents,
13 maps, and other personal property heretofore made, used,
14 acquired, or held by the department of public safety relating to
15 the functions transferred to the department of health shall be
16 transferred with the functions to which they relate.

17 SECTION 8. All designated forms for written certifications
18 issued by the department of public safety shall be valid under
19 the department of health until the department of health issues
20 new designated forms.

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



1 SECTION 10. This Act shall take effect on July 1, 2013.

2

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Report Title:

Medical Marijuana; Registration; Department of Health

Description:

Requires medical marijuana dispensaries to register their agents and their business with the department of health by submitting an application and fee. Transfers departmental jurisdiction of the medical marijuana laws from the department of public safety (DPS) to the department of health (DOH) and requires DPS to assist with the transfer. To facilitate the transfer, requires the DPS to continue to maintain a verification service to confirm registration that is accessible 24/7 to the DOH.

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