

JAN 17 2014

A BILL FOR AN ACT

RELATING TO THE MEDICAL USE OF CANNABIS.

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

1 SECTION 1. The legislature finds that there are currently
2 no viable distribution or collection systems for Hawaii's
3 medical marijuana program, and as a consequence, diversion is
4 occurring. The laws do not squarely address the issue of how
5 the sickest and most needy, qualifying patients may obtain
6 medical marijuana. Furthermore, language inconsistencies
7 between chapters 329 and 712, Hawaii Revised Statutes, undermine
8 the affirmative defense currently provided for in the medical
9 marijuana program, thus compromising the health and safety of
10 the community, and creating a public health and safety emergency
11 in Hawaii. The burden and risk posed to qualified patients
12 result in the inability of the medical marijuana program to
13 fulfill its purposes. Without a well-regulated distribution and
14 collection system that allows qualified patients to maintain an
15 adequate supply, diversion cannot be prevented and patients will
16 continue to be subjected to the potential for substandard
17 medicine, theft, and violence in the black market, and social
18 stigmas, not to mention arrest and prosecution.



1 The purpose of this Act is to:

- 2 (1) Redesignate the medical marijuana laws as medical
3 cannabis laws;
- 4 (2) Provide for a system that registers establishments
5 that distribute cannabis to qualifying patients for
6 medical use; and
- 7 (3) Make other clarifying changes to the law on medical
8 marijuana.

9 SECTION 2. Chapter 329, part IX, Hawaii Revised Statutes,
10 is amended by adding five new sections to be appropriately
11 designated and to read as follows:

12 "§329- Protection afforded to co-op. No member of a
13 co-op shall be subject to arrest or prosecution, penalized in
14 any manner, or denied any right or privilege for acquiring,
15 distributing, transferring, or disposing of cannabis for medical
16 use to a qualifying patient or primary caregiver; provided that
17 the qualifying patient presents to the co-op a physician's
18 written recommendation and valid photo identification.

19 §329- Patient-determined, self-titrated doses; self-
20 administration. (a) Medical cannabis shall be treated as a pro
21 re nata medication. The proper dosage of medical cannabis shall



1 depend upon the qualifying patient's need and tolerance toward
2 side effects.

3 (b) Subject to subsection (c), a qualifying patient may
4 determine and titrate the qualifying patient's own dose of
5 medical cannabis in order to relieve the symptoms or effects
6 related to the qualifying patient's debilitating medical
7 condition.

8 (c) The maximum monthly dose for self-treatment, unless
9 otherwise specified by a treating physician, shall be as
10 follows:

11 (1) For ingestion, not more than one hundred twenty doses
12 of edible cannabis compounds or products per month;

13 (2) For inhalation, not more than one-half pound of dried
14 cannabis flowers, inner leaves, and cannabis
15 concentrate per month; or

16 (3) For topical use, not more than one hundred twenty
17 applications of cannabis compounds or products per
18 month.

19 (d) The treating physician shall instruct each qualifying
20 patient to start with the lowest dose possible and to increase
21 the dosage accordingly in order to achieve the desired
22 therapeutic effect.



1 §329- Medical cannabis cooperative disposal and
2 transfer access centers; registration requirements. (a) The
3 department of health shall establish a registration system for
4 co-ops. Not later than one hundred twenty days after January 2,
5 2015, the department of health shall adopt rules pursuant to
6 chapter 91 to implement this section. The rules shall include:

- 7 (1) Procedures for the issuance, renewal, suspension, or
8 revocation of a registration for a co-op;
- 9 (2) A fee schedule and timetable for registration and the
10 renewal of a registration;
- 11 (3) Qualifications for registration that are directly and
12 demonstrably related to the operation of a co-op;
- 13 (4) Safety and security requirements for co-ops;
- 14 (5) Prohibitions against the sale or diversion of cannabis
15 and cannabis products to persons under the age of
16 twenty-one;
- 17 (6) Labeling requirements for cannabis and cannabis
18 products distributed by a co-op;
- 19 (7) Health and safety requirements and standards for the
20 manufacture of cannabis compounds and products, and
21 the cultivation of cannabis;

- 1 (8) Restrictions on the advertising and display of
- 2 cannabis and cannabis products;
- 3 (9) Restrictions to ensure that individual privacy is
- 4 protected; and
- 5 (10) Fines for the failure to comply with any rule adopted
- 6 pursuant to this section.

7 (b) Within one year of January 2, 2015, the department of
8 health shall register not less than one co-op in each county of
9 the State.

10 (c) Until the department of health adopts rules pursuant
11 to subsection (a), no person shall be prohibited from
12 establishing and operating a co-op in this State; provided that
13 the co-op has policies or rules in place to regulate its
14 distribution and disposal of cannabis for medical use.

15 §329- Taxation of co-ops. Co-ops shall be subject to
16 all federal, state, and local taxes; fees; fines; penalties; or
17 other financial responsibilities.

18 §329- Severability; conflicting provisions. The
19 provisions of this part are severable and, except where
20 otherwise indicated, shall supersede conflicting statutes and
21 county charters and ordinances."

1 SECTION 3. Section 321-30.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§321-30.1[+] **Medical [marijuana] cannabis registry**
4 **special fund; established.** (a) There is established within the
5 state treasury the medical [marijuana] cannabis registry special
6 fund. The fund shall be expended at the discretion of the
7 director of health:

8 (1) To offset the cost of the processing and issuance of
9 patient registry identification certificates and
10 primary caregiver registration certificates;

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

12 (3) To establish and manage a secure and confidential
13 database; and

14 (4) For any other expenditure necessary, as authorized by
15 the legislature, to implement a medical [marijuana]
16 cannabis registry program.

17 (b) The fund shall consist of all moneys derived from fees
18 collected pursuant to subsection (c). All fees collected
19 pursuant to subsection (c) shall be deposited into the medical
20 [marijuana] cannabis registry special fund.

21 (c) The department, upon completion of the transfer of the
22 medical use of [marijuana] cannabis program, shall charge a



1 medical [~~marijuana~~] cannabis registration fee of no more than
2 \$35."

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

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

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

8 1. By adding two new definitions to read:

9 "Cannabis" means marijuana.

10 "Co-op" means an intrastate medical cannabis cooperative
11 disposal and transfer access center established to transfer,
12 distribute, or dispose of excess or unwanted medical cannabis to
13 qualifying patients and primary caregivers and whose membership
14 is open to persons who are at least twenty-one years of age and
15 are:

16 (1) Qualifying patients who are registered with the
17 department of health;

18 (2) Primary caregivers who are registered with the
19 department of health; or

20 (3) Third parties who possess and cultivate cannabis for
21 distribution, transfer, or disposal to qualifying



1 patients and primary caregivers without the
2 expectation of compensation."

3 2. By amending the definitions of "adequate supply",
4 "medical use", "primary caregiver", and "written certification"
5 to read:

6 "Adequate supply" means an amount of [~~marijuana~~] cannabis
7 jointly possessed between the qualifying patient and the primary
8 caregiver that is not more than is reasonably necessary to
9 assure the uninterrupted availability of [~~marijuana~~] cannabis
10 for the purpose of alleviating the symptoms or effects of a
11 qualifying patient's debilitating medical condition; provided
12 that an "adequate supply" shall not exceed [~~seven marijuana~~
13 ~~plants, whether immature or mature, and four ounces of usable~~
14 ~~marijuana at any given time.~~] a one-month supply of usable
15 cannabis and twenty-four plants of any maturity.

16 For the purposes of this definition:

17 (1) "One-month supply" means the amount of cannabis in a
18 one-month period that is likely to alleviate the
19 symptoms or effects related to the qualifying
20 patient's debilitating medical condition; and

21 (2) "Usable cannabis" means the "dried" flowers and inner
22 leaves of the Cannabis sativa plant of the Cannabaceae



1 family and any mixture or preparation thereof that are
2 appropriate for the medical use of cannabis so that it
3 may alleviate the symptoms or effects of a qualifying
4 patient's debilitating medical condition. "Usable
5 cannabis" does not include fan leaves, the seeds,
6 stalks and roots of the plant or contaminated flowers
7 and inner leaves.

8 "Medical use" means the acquisition, possession,
9 cultivation, use, distribution, or transportation of [~~marijuana~~]
10 cannabis or paraphernalia relating to the administration of
11 [~~marijuana~~] cannabis to alleviate the symptoms or effects of a
12 qualifying patient's debilitating medical condition. For the
13 purposes of "medical use", the term distribution is limited to
14 the transfer of [~~marijuana~~] cannabis and paraphernalia[~~-~~] from
15 the primary caregiver to the qualifying patient or from a third-
16 party co-op member to either the qualifying patient or primary
17 caregiver.

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



1 case of a minor or an adult lacking legal capacity, the primary
2 caregiver shall be a parent, guardian, or person having legal
3 custody.

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

15 SECTION 6. Section 329-122, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~§329-122 Medical use of [~~marijuana~~]~~ cannabis; conditions
18 of use. (a) Notwithstanding any law to the contrary, the
19 medical use of [~~marijuana~~] cannabis by a qualifying patient
20 shall be permitted only if:

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



1 (2) The qualifying patient's physician has certified in
2 writing that, in the physician's professional opinion,
3 the potential benefits of the medical use of
4 [~~marijuana~~] cannabis would likely outweigh the health
5 risks for the particular qualifying patient; and

6 (3) The amount of [~~marijuana~~] cannabis possessed by the
7 qualifying patient does not exceed an adequate
8 supply[-]; provided that an adequate supply may be
9 exceeded if the qualifying patient obtains a
10 physician's statement that an increased supply is
11 medically necessary.

12 (b) Subsection (a) shall not apply to a qualifying patient
13 under the age of eighteen years, unless:

14 (1) The qualifying patient's physician has explained the
15 potential risks and benefits of the medical use of
16 [~~marijuana~~] cannabis to the qualifying patient and to
17 a parent, guardian, or person having legal custody of
18 the qualifying patient; and

19 (2) A parent, guardian, or person having legal custody
20 consents in writing to:

21 (A) Allow the qualifying patient's medical use of
22 [~~marijuana~~] cannabis;



- 1 (B) Serve as the qualifying patient's primary
- 2 caregiver; and
- 3 (C) Control the acquisition of the [~~marijuana,~~
- 4 cannabis, the dosage, and the frequency of the
- 5 medical use of [~~marijuana~~] cannabis by the
- 6 qualifying patient.
- 7 (c) The authorization for the medical use of [~~marijuana~~]
- 8 cannabis in this section shall not apply to:
- 9 (1) The medical use of [~~marijuana~~] cannabis that endangers
- 10 the health or well-being of another person;
- 11 (2) The medical use of [~~marijuana+~~] cannabis:
- 12 (A) In a school bus, public bus, or any moving
- 13 vehicle;
- 14 (B) In the workplace of one's employment;
- 15 (C) On any school grounds;
- 16 (D) At any public park, public beach, public
- 17 recreation center, recreation or youth center; or
- 18 (E) Other place open to the public; and
- 19 (3) The use of [~~marijuana~~] cannabis by a qualifying
- 20 patient, parent, or primary caregiver for purposes
- 21 other than medical use permitted by this part.



1 (d) Co-ops shall be permitted to transfer, distribute, or
2 dispose of cannabis pursuant to this part.

3 (e) Qualifying patients may obtain cannabis from a co-op
4 by presenting a physician's written recommendation and a valid
5 photo identification.

6 (f) Qualifying patients may medicate themselves in
7 designated smoking areas; provided that the medical use of
8 cannabis is not within one thousand feet of a school for
9 elementary or secondary education minors or a youth center.

10 (g) Qualified patients are strictly prohibited from
11 operating a motor vehicle while impaired and under the influence
12 of cannabis. Impairment shall be determined by a field sobriety
13 test conducted by a law enforcement official, based upon
14 probable cause.

15 (h) The private cultivation and use of cannabis for
16 medical purposes within the limits of the law shall not in and
17 of itself be construed as conduct that endangers a minor's
18 health and safety."

19 SECTION 7. Section 329-124, Hawaii Revised Statutes, is
20 amended to read as follows:



1 " [†]§329-124[†] **Insurance not applicable.** This part shall
2 not be construed to require insurance coverage for the medical
3 use of [~~marijuana~~] cannabis."

4 SECTION 8. Section 329-125, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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

21 (d) A primary caregiver may manage a qualifying patient's
22 well-being without growing or providing the qualifying patient



1 with cannabis; provided that the primary caregiver shall not
2 have the right to use cannabis."

3 SECTION 9. Section 329-126, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§329-126[+] **Protections afforded to a treating**
6 **physician.** No physician shall be subject to arrest or
7 prosecution, penalized in any manner, or denied any right or
8 privilege for providing written certification for the medical
9 use of [~~marijuana~~] cannabis for a qualifying patient; provided
10 that:

11 (1) The physician has diagnosed the patient as having a
12 debilitating medical condition, as defined in section
13 329-121;

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

17 (3) The written certification is based upon the
18 physician's professional opinion after having
19 completed a full assessment of the patient's medical
20 history and current medical condition made in the
21 course of a bona fide physician-patient relationship;
22 and



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

3 SECTION 10. Section 329-127, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§329-127[+] Protection of [marijuana] cannabis and
6 other seized property. [~~Marijuana,~~] Cannabis, paraphernalia, or
7 other property seized from a qualifying patient or primary
8 caregiver in connection with a claimed medical use of
9 [marijuana] cannabis under this part shall be returned
10 immediately upon the determination by a court that the
11 qualifying patient or primary caregiver is entitled to the
12 protections of this part, as evidenced by a decision not to
13 prosecute, dismissal of charges, or an acquittal; provided that
14 law enforcement agencies seizing live plants as evidence shall
15 not be responsible for the care and maintenance of [~~such~~] the
16 plants."

17 SECTION 11. Section 329-128, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§329-128[+] Fraudulent misrepresentation; penalty.

20 (a) Notwithstanding any law to the contrary, fraudulent
21 misrepresentation to a law enforcement official of any fact or
22 circumstance relating to the medical use of [marijuana] cannabis



1 to avoid arrest or prosecution under this part or chapter 712
2 shall be a petty misdemeanor and subject to a fine of \$500.

3 (b) Notwithstanding any law to the contrary, fraudulent
4 misrepresentation to a law enforcement official of any fact or
5 circumstance relating to the issuance of a written certificate
6 by a physician not covered under section 329-126 for the medical
7 use of [~~marijuana~~] cannabis shall be a misdemeanor. This
8 penalty shall be in addition to any other penalties that may
9 apply for the non-medical use of [~~marijuana~~] cannabis. Nothing
10 in this section is intended to preclude the conviction of any
11 person under section 710-1060 or for any other offense under
12 part V of chapter 710."

13 SECTION 12. Section 712-1240, Hawaii Revised Statutes, is
14 amended by amending the definition of "marijuana" to read as
15 follows:

16 ""Marijuana" or "cannabis" means any part of the plant
17 (genus) cannabis, whether growing or not, including the seeds
18 and the resin, and every alkaloid, salt, derivative,
19 preparation, compound, or mixture of the plant, its seeds or
20 resin, except that, as used herein, "marijuana" or "cannabis"
21 does not include hashish, tetrahydrocannabinol, and any



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1 alkaloid, salt, derivative, preparation, compound, or mixture,
2 whether natural or synthesized, of tetrahydrocannabinol."

3 SECTION 13. Section 712-1240.1, Hawaii Revised Statutes,
4 is amended by amending subsection (2) to read as follows:

5 "(2) It is an affirmative defense to prosecution for any
6 [~~marijuana-related~~] cannabis-related offense defined in this
7 part that the person who possessed or distributed the
8 [~~marijuana~~] cannabis was authorized to possess or distribute the
9 [~~marijuana~~] cannabis for medical purposes pursuant to part IX of
10 chapter 329."

11 SECTION 14. This Act does not affect rights and duties
12 that matured, penalties that were incurred, and proceedings that
13 were begun before its effective date.

14 SECTION 15. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 16. This Act shall take effect on January 2, 2015.

17

INTRODUCED BY:

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S.B. NO. 2601

Report Title:

Medical Marijuana; Cannabis; Co-ops

Description:

Redesignates the medical marijuana law as the medical cannabis law. Requires DOH to register co-ops, which distribute and dispose of medical cannabis. Effective 1/2/15.

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

