

JAN 23 2014

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 State's medical
2 marijuana program was enacted by Act 228, Session Laws of Hawaii
3 2000, as a public health program conceived out of compassion for
4 the health and welfare of the seriously ill. More than twelve
5 thousand patients are currently registered to legally use
6 medical marijuana in Hawaii. There is no provision in the law,
7 however, for safe and legal access to medical marijuana for the
8 thousands of patients registered with the program, resulting in
9 many patients having to obtain marijuana on the black market.

10 After fourteen years, the experience in Hawaii and
11 elsewhere shows that a tightly regulated and controlled
12 dispensary system is of crucial importance to the future of the
13 program for the registered patients who obtain relief from
14 medical marijuana and are unable to grow their own supply or to
15 obtain a competent caregiver to do so. A dispensary system will
16 bring transparency and accountability through the tracking and



1 monitoring of medical marijuana, which promotes public health
2 and safety and prevents diversion.

3 The purpose of this Act is to permit the establishment of a
4 limited number of medical marijuana dispensaries for the purpose
5 of providing medical marijuana for symptom relief to registered
6 patients with qualifying medical conditions.

7 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§329- Medical marijuana dispensaries. (a) This
11 section applies to the distribution of marijuana for medical
12 use, as defined in section 329-121.

13 (b) A dispensary registered under this section may
14 acquire, possess, cultivate, manufacture, deliver, transfer,
15 transport, supply, or dispense marijuana, or related supplies
16 and educational materials, to registered qualifying patients and
17 their registered primary caregivers who have designated the
18 dispensary as one of their primary caregivers.

19 (c) Not later than June 30, 2015, the department shall
20 adopt rules governing the manner in which it shall consider
21 applications for registration certificates for dispensaries,
22 including regulations governing:



- 1 (1) The form and content of registration and renewal
2 applications;
- 3 (2) Minimum oversight requirements for dispensaries;
- 4 (3) Minimum record-keeping requirements for dispensaries;
- 5 (4) Minimum security requirements for dispensaries;
- 6 (5) The ability of a dispensary to advertise in any
7 appropriate medium or manner; and
- 8 (6) Procedures for suspending, revoking, or terminating
9 the registration of dispensaries that violate the
10 provisions of this section or rules adopted under to
11 this section.

12 (d) No later than June 30, 2015, the department shall
13 commence accepting applications for the operation of a single
14 dispensary in each county. No later than September 1, 2015, the
15 department shall provide for at least one public hearing on the
16 granting of an application to a single dispensary in each
17 county. No later than November 1, 2015, the department shall
18 grant a single registration certificate to a single dispensary
19 in each county; provided that at least one applicant in each
20 county meets the requirements of this chapter.

21 (e) If at any time after January 1, 2016, there is no
22 operational dispensary in each county, the department shall



1 accept applications, provide for input from the public, and
2 issue a registration certificate for a dispensary in a county
3 that is lacking one if a qualified applicant exists.

4 (f) No later than June 30, 2016, the department may begin
5 accepting applications to provide registration certificates for
6 additional dispensaries. If the department determines that the
7 number of dispensaries in each county is insufficient to meet
8 patient needs, the department may increase or modify the number
9 of registered dispensaries by adopting rules pursuant to chapter
10 91.

11 (g) Any time a dispensary registration certificate is
12 revoked, is relinquished, or expires, the department may accept
13 applications for a new dispensary.

14 (h) Every application for a dispensary shall include:

15 (1) A non-refundable application fee paid to the
16 department in the amount of \$1,000;

17 (2) A proposed legal name and proposed articles of
18 incorporation of the dispensary;

19 (3) The proposed physical address of the dispensary, if a
20 precise address has been determined, or, if not, the
21 general location where it would be located. This may



- 1 include a second location for the cultivation of
2 medical marijuana;
- 3 (4) A description of the secured facility that would be
4 used in the cultivation of marijuana;
- 5 (5) The name, address, and date of birth of each principal
6 officer and board member of the dispensary center;
- 7 (6) Proposed security and safety measures which shall
8 include at least one security alarm system for each
9 location, planned measures to deter and prevent the
10 unauthorized entrance into areas containing marijuana
11 and the theft of marijuana, as well as a draft
12 employee instruction manual including security
13 policies, safety and security procedures, and personal
14 safety and crime prevention techniques; and
- 15 (7) Proposed procedures to ensure accurate record keeping.
- 16 (i) Any time one or more dispensary registration
17 applications are being considered, the department shall also
18 allow for comment by the public and shall solicit input from
19 registered qualifying patients, registered primary caregivers;
20 and the communities where the applicants would be located.
- 21 (j) Each time a dispensary certificate is granted, the
22 decision shall be based upon the overall health needs of



1 qualified patients and the safety of the public, including but
2 not limited to the following factors:

3 (1) Convenience to patients from throughout the State to
4 the dispensaries if the applicant is approved;

5 (2) The applicant's ability to provide a steady supply to
6 the registered qualifying patients in the State;

7 (3) The applicant's experience in running a nonprofit
8 corporation or business;

9 (4) The interests of qualifying patients regarding which
10 applicant be granted a registration certificate;

11 (5) The interests of the county where the dispensary would
12 be located;

13 (6) The sufficiency of the applicant's plans for record
14 keeping and security, which records shall be
15 considered confidential health care information under
16 Hawaii law and are intended to be deemed protected
17 health care information for purposes of the federal
18 Health Insurance Portability and Accountability Act of
19 1996, as amended; and

20 (7) The sufficiency of the applicant's plans for safety
21 and security, including proposed location, security
22 devices employed, and staffing.



1 (k) After a dispensary is approved, but before it begins
2 operations, it shall submit the following to the department:

3 (1) A fee paid to the department in the amount of \$10,000;

4 (2) The legal name and articles of incorporation of the
5 dispensary;

6 (3) The physical address of the dispensary, which may
7 include a second address for the secure cultivation of
8 marijuana;

9 (4) The name, address, and date of birth of each principal
10 officer and board member of the dispensary; and

11 (5) The name, address, and date of birth of any person who
12 will be an agent, employee, or volunteer of the
13 dispensary at its inception.

14 (1) The department shall track the number of registered
15 qualifying patients who designate each dispensary as a primary
16 caregiver, and issue a written statement to the dispensary of
17 the number of qualifying patients who have designated the
18 dispensary to serve as a primary caregiver for them. This
19 statement shall be updated each time a new registered qualifying
20 patient designates the dispensary or ceases to designate the
21 dispensary and may be transmitted electronically if the
22 department's rules so provide. The department may provide by



1 rule that the updated written statements will not be issued more
2 frequently than twice each week.

3 (m) The department shall issue each principal officer,
4 board member, agent, volunteer, and employee of a dispensary a
5 registry identification card or renewal card within ten days of
6 receipt of the person's name, address, date of birth; a fee in
7 an amount established by the department; and notification to the
8 department by the attorney general that the registry
9 identification card applicant has not been convicted of a felony
10 drug offense or has not entered a plea of nolo contendere for a
11 felony drug offense and received a sentence of probation. Each
12 card shall specify that the cardholder is a principal officer,
13 board member, agent, volunteer, or employee of a dispensary and
14 shall contain the following:

15 (1) The name, address, and date of birth of the principal
16 officer, board member, agent, volunteer, or employee;

17 (2) The legal name of the dispensary to which the
18 principal officer, board member, agent, volunteer, or
19 employee is affiliated;

20 (3) A random identification number that is unique to the
21 cardholder;



1 (4) The date of issuance and expiration date of the
2 registry identification card; and

3 (5) A photograph, if required by the department.

4 (n) Except as provided in this subsection, the department
5 shall not issue a registry identification card to any principal

6 officer, board member, agent, volunteer, or employee of a

7 dispensary who has been convicted of a felony drug offense or

8 has entered a plea of nolo contendere for a felony drug offense

9 and received a sentence of probation. The department shall

10 notify the dispensary in writing of the purpose for denying the

11 registry identification card. The department may grant such

12 person a registry identification card if the department

13 determines that the offense was for conduct that occurred prior

14 to the enactment of Act 228, Session Laws of Hawaii 2000, or

15 that was prosecuted by an authority other than the State of

16 Hawaii and for which Act 228, Session Laws of Hawaii 2000, would

17 otherwise have prevented a conviction. The following procedures

18 shall apply for an application for a registry identification

19 card:

20 (1) The attorney general shall conduct a national criminal
21 identification records check on all registry

22 identification card applicants that shall include



1 fingerprints submitted to the Federal Bureau of
2 Investigation. Upon the discovery of a felony drug
3 offense conviction or a plea of nolo contendere for a
4 felony drug offense with a sentence of probation, the
5 attorney general shall inform the applicant, in
6 writing, of the nature of the felony. In those
7 situations in which no felony drug offense conviction
8 or plea of nolo contendere for a felony drug offense
9 with probation is found, the attorney general shall
10 inform the applicant and the department, in writing,
11 of this fact; and

12 (2) All registry identification card applicants shall be
13 responsible for any expense associated with the
14 criminal background check with fingerprints;

15 (o) A registry identification card of a principal officer,
16 board member, agent, volunteer, or employee shall expire one
17 year after its issuance, or upon the expiration of the
18 registered organization's registration certificate, or upon the
19 termination of the principal officer, board member, agent,
20 volunteer, or employee's relationship with the dispensary,
21 whichever occurs first. A dispensary's registration shall
22 expire two years after its registration certificate is issued.



1 The dispensary may submit a renewal application beginning sixty
2 days prior to the expiration of its registration certificate.
3 The department shall grant a dispensary's renewal application
4 within thirty days of its submission if the following conditions
5 are satisfied:

6 (1) The dispensary submits the required materials,
7 including a \$10,000 fee; and

8 (2) The dispensary's registration has never been suspended
9 for violations of this chapter or rules adopted
10 pursuant to this chapter;

11 (p) The department shall issue a dispensary one or more
12 thirty day temporary registration certificates after that
13 dispensary's registration would otherwise expire, if the
14 following conditions are all satisfied:

15 (1) The dispensary previously applied for a renewal, but
16 the department had not come to a decision;

17 (2) The dispensary requested a temporary registration
18 certificate; and

19 (3) The dispensary has not had its registration
20 certificate revoked due to violations of this chapter
21 or rules adopted pursuant to this chapter.



1 (q) A dispensary's registry identification card shall be
2 subject to revocation if the dispensary:

3 (1) Possesses an amount of marijuana exceeding the limits
4 established by this chapter;

5 (2) Is in violation of the laws of this State;

6 (3) Is in violation of other departmental rules; or

7 (4) Employs or enters into a business relationship with a
8 medical practitioner who provides written
9 certification of a qualifying patient's medical
10 condition.

11 (r) Dispensaries are subject to reasonable inspection by
12 the department. During an inspection, the department may review
13 the dispensary's confidential records, including its dispensing
14 records, which shall track transactions according to qualifying
15 patients' registry identification numbers to protect their
16 confidentiality. Dispensaries shall be subject to the following
17 requirements:

18 (1) A dispensary shall be operated on a not-for-profit
19 basis for the mutual benefit of its patients. A
20 dispensary need not be recognized as a tax-exempt
21 organization by the Internal Revenue Services;



- 1 (2) A dispensary may not be located within one thousand
2 feet of the property line of a preexisting public or
3 private school;
- 4 (3) A dispensary shall notify the department within ten
5 days of when a principal officer, board member, agent,
6 volunteer or employee ceases to work at the
7 dispensary. The person's card shall be deemed null
8 and void and the person shall be liable for any
9 penalties that may apply to any nonmedical possession
10 or use of marijuana by the person;
- 11 (4) A dispensary shall notify the department in writing of
12 the name, address, and date of birth of any new
13 principal officer, board member, agent, volunteer, or
14 employee and shall submit a fee in an amount
15 established by the department for a new registry
16 identification card before that person begins a
17 relationship with the dispensary;
- 18 (5) A dispensary shall implement appropriate security
19 measures to deter and prevent the unauthorized
20 entrance into areas containing marijuana and the theft
21 of marijuana and shall ensure that each location has
22 an operational security alarm system;



- 1 (6) The operating documents of a dispensary shall include
2 procedures for the oversight of the dispensary and
3 procedures to ensure accurate record keeping;
- 4 (7) A dispensary is prohibited from acquiring, possessing,
5 cultivating, manufacturing, delivering, transferring,
6 transporting, supplying, or dispensing marijuana for
7 any purpose except to assist registered qualifying
8 patients with the medical use of marijuana directly or
9 through the qualifying patient's other primary
10 caregiver;
- 11 (8) All principal officers and board members of a
12 dispensary shall be residents of the state of Hawaii;
- 13 (9) Each time a new registered qualifying patient visits a
14 dispensary, the dispensary shall provide the patient
15 with a frequently asked questions sheet designed by
16 the department, which explains the limitations on the
17 right to use medical marijuana under state law;
- 18 (10) A dispensary shall include labels on all marijuana and
19 marijuana products that are dispensed. The labels
20 shall identify the particular strain of marijuana
21 contained therein and reflect the properties of the
22 plant;



1 (11) A dispensary shall have a sliding fee scale system
2 that takes into account a registered patient's ability
3 to pay;

4 (12) Each dispensary shall develop, implement, and maintain
5 on the premises employee, volunteer, and agent
6 policies and procedures to address the following
7 requirements:

8 (A) A job description or employment contract
9 developed for all employees and agents and a
10 volunteer agreement for all volunteers, which
11 includes duties, authority, responsibilities,
12 qualifications, and supervision; and

13 (B) Training in and adherence to state
14 confidentiality laws;

15 (13) Each dispensary shall maintain a personnel record for
16 each employee, agent, and volunteer that includes an
17 application and a record of any disciplinary action
18 taken;

19 (14) Each dispensary shall develop, implement, and maintain
20 on the premises an on-site training curriculum, or
21 enter into contractual relationships with outside
22 resources capable of meeting employee training needs,



1 which include but are not limited to the following
2 topics:

3 (A) Professional conduct, ethics, and patient
4 confidentiality; and

5 (B) Informational developments in the field of
6 medical use of marijuana;

7 (15) Each dispensary shall provide each employee, agent,
8 and volunteer, at the time of initial appointment or
9 training, the following:

10 (A) The proper use of security measures and controls
11 that have been adopted; and

12 (B) Specific procedural instructions on how to
13 respond to an emergency, including robbery or
14 violent accident;

15 (16) All dispensaries shall prepare training documentation
16 for each employee and volunteer and have employees and
17 volunteers sign a statement indicating the date, time,
18 and place the employee and volunteer received said
19 training and topics discussed, to include name and
20 title of presenters. The dispensary shall maintain
21 documentation of an employee's and a volunteer's
22 training for a period of at least six months after



1 termination of an employee's employment or the
2 volunteer's volunteering.

3 (s) The maximum amount of usable marijuana to be dispensed
4 shall be as follows:

5 (1) A dispensary or principal officer, board member,
6 agent, volunteer, or employee of a dispensary shall
7 not dispense more than two and one-half ounces of
8 usable marijuana or the equivalent in a tincture, oil,
9 ointment, or edible form to a qualifying patient
10 directly or through a qualifying patient's other
11 primary caregiver during a fifteen day period; and

12 (2) A dispensary or principal officer, board member,
13 agent, volunteer, or employee of a dispensary shall
14 not dispense an amount of usable marijuana, marijuana
15 plants, seeds, or clones to a qualifying patient or a
16 qualifying patient's other primary caregiver that the
17 dispensary, principal officer, board member, agent,
18 volunteer, or employee knows would cause the recipient
19 to possess more marijuana than an adequate supply.

20 (t) No registered dispensary shall be subject to criminal
21 prosecution, search, seizure, or penalty, if the registered
22 dispensary is not in violation of criminal laws. No registered



1 dispensary shall be denied any right or privilege, including
2 civil penalty or disciplinary action by a business,
3 occupational, or professional licensing board or entity, solely
4 for acting in accordance with this section to assist registered
5 qualifying patients to whom it is connected through the
6 department's registration process with the medical use of
7 marijuana. No registered dispensary shall be subject to
8 prosecution, seizure, or penalty in any manner or denied any
9 right or privilege, including but not limited to civil penalty
10 or disciplinary action by a business, occupational, or
11 professional licensing board or entity, for selling, giving or
12 distributing marijuana in whatever form and within the limits
13 established by the department to another registered dispensary.
14 No principal officers, board members, agents, volunteers, or
15 employees of a registered dispensary shall be subject to arrest,
16 prosecution, search, seizure, or penalty in any manner or denied
17 any right or privilege, including civil penalty or disciplinary
18 action by a business, occupational, or professional licensing
19 board or entity, solely for working for or with a dispensary to
20 engage in acts permitted by this section.

21 No state employee shall be subject to arrest, prosecution,
22 or penalty in any manner, or denied any right or privilege,



1 including but not limited to civil penalty, disciplinary action,
2 termination, or loss of employee or pension benefits, for any
3 and all conduct that occurs within the scope of employment
4 regarding the administration, execution, or enforcement of this
5 section.

6 (u) The following additional prohibitions shall apply:

7 (1) A dispensary shall not possess an amount of marijuana
8 at any given time that exceeds one hundred fifty
9 marijuana plants of which no more than ninety-nine are
10 mature, and one thousand five hundred ounces of usable
11 marijuana.

12 (2) A dispensary shall not dispense, deliver, or otherwise
13 transfer marijuana to a person other than a qualifying
14 patient who has designated the dispensary as a primary
15 caregiver or to such patient's other primary
16 caregiver. An employee, agent, volunteer, principal
17 officer, or board member of any dispensary found in
18 violation of this paragraph shall have the registry
19 identification revoked immediately.

20 (v) No person who has been convicted of a felony drug
21 offense or has entered a plea of nolo contendere for a felony
22 drug offense with a sentence or probation shall be the principal



1 officer, board member, agent, volunteer, or employee of a
2 dispensary unless the department has determined that the
3 person's conviction was for the medical use of marijuana or
4 assisting with the medical use of marijuana in accordance with
5 the terms and conditions of this chapter. A person who is
6 employed by or is an agent, volunteer, principal officer, or
7 board member of a dispensary in violation of this section is
8 guilty of a civil violation punishable by a fine of up to
9 \$1,000. A subsequent violation of this section is a
10 misdemeanor.

11 (w) A nonresident card shall be recognized only under the
12 following circumstances:

13 (1) The state or jurisdiction from which the holder or
14 bearer obtained the nonresident card grants an
15 exemption from criminal prosecution for the medical
16 use of marijuana;

17 (2) The state or jurisdiction from which the holder or
18 bearer obtained the nonresident card requires, as a
19 prerequisite to the issuance of such a card, that a
20 physician advise the person that the medical use of
21 marijuana may mitigate the symptoms or effects of the
22 person's medical condition;



1 (3) The nonresident card has an expiration date and has
2 not yet expired; and

3 (4) The holder or bearer of the nonresident card agrees to
4 abide by, and does abide by, the conditions of use, as
5 set forth in section 329-122.

6 (x) For the purposes of the reciprocity described in
7 subsection (w):

8 (1) The amount of medical marijuana that the holder or
9 bearer of a nonresident card is entitled to possess in
10 the nonresident's state or jurisdiction of residence
11 is not relevant; and

12 (2) Under no circumstances, while in this State, shall the
13 holder or bearer of a nonresident card possess
14 marijuana for medical purposes in excess of an
15 adequate supply as provided in section 329-121.

16 As used in this section, "nonresident card" means a card or
17 other identification that is issued by a state or jurisdiction
18 other than Hawaii for the purpose of identifying patients
19 legally authorized to possess medical marijuana."

20 SECTION 3. New statutory material is underscored.

21



S.B. NO. 2942

1 SECTION 4. This Act shall take effect on January 2, 2015.

2

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S.B. NO. 2942

Report Title:

Medical Marijuana; Dispensaries

Description:

Enacts a medical use of marijuana statute to regulate the dispensing of medical marijuana. Takes effect January 2, 2015.

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

