
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 Act 241, Session
2 Laws of Hawaii 2015, established a licensing scheme for a
3 statewide system of medical marijuana dispensaries to ensure
4 access to medical marijuana for qualifying patients.

5 The purpose of this Act is to:

- 6 (1) Clarify and amend statutes pertaining to the
7 dispensary system consistent with guidance provided in
8 the August 29, 2013, memorandum to all United States
9 Attorneys from Deputy Attorney General James M. Cole
10 regarding the exercise of federal prosecutorial
11 discretion in states with laws authorizing marijuana
12 cultivation and distribution for medical use;
- 13 (2) Ensure the efficient and responsible operation of
14 medical marijuana dispensaries; and
- 15 (3) Further ensure access to medical marijuana for
16 qualifying patients.



1 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§201- Medical marijuana; economic and other data;

5 collection. (a) The department shall continuously collect de-
6 identified information regarding the medical marijuana registry
7 and dispensary programs established pursuant to chapters 329 and
8 329D, including but not limited to information regarding the:

9 (1) Quantities of marijuana cultivated and dispensed;

10 (2) Number of qualifying patients;

11 (3) Geographic areas in which marijuana is cultivated and
12 consumed;

13 (4) Prices of marijuana and related products;

14 (5) Number of employment opportunities related to
15 marijuana; and

16 (6) Economic impact of marijuana cultivation and sales.

17 (b) Executive agencies shall cooperate with the department
18 of business, economic development, and tourism to provide
19 information required by the department pursuant to this section.

20 (c) The department shall provide the aggregated de-
21 identified information to the department of health and the



1 medical marijuana advisory commission established pursuant to
 2 section 329D- . The department shall provide any data analysis
 3 to the department of health or medical marijuana advisory
 4 commission upon request of either agency."

5 SECTION 3. Chapter 329D, Hawaii Revised Statutes, is
 6 amended by adding a new section to be appropriately designated
 7 and to read as follows:

8 "§329D- Medical marijuana advisory commission. (a)

9 There is established within the department of health, for
 10 administrative purposes, a medical marijuana advisory
 11 commission.

12 (b) The commission shall advise the department regarding:

13 (1) Administrative rules related to medical marijuana;

14 (2) The number of medical marijuana dispensary licenses to
 15 be issued in the State;

16 (3) The operation of medical marijuana dispensaries; and

17 (4) The operation of the medical marijuana registry
 18 program.

19 (c) The commission shall comprise eleven members, who
 20 shall be appointed for four-year nonrenewable terms as follows:

21 (1) The senate president shall appoint two members;



1 (2) The house speaker shall appoint two members;
2 (3) The governor shall appoint three members; and
3 (4) The mayor of each county shall appoint one member,
4 provided that no member shall be an elected official or
5 government official; provided further that the members appointed
6 pursuant to paragraphs (3) and (4) shall be subject to the
7 advice and consent of the senate.

8 (d) The members shall serve without compensation, but
9 shall be reimbursed for necessary expenses incurred in carrying
10 out their duties.

11 (e) The governor shall appoint a chairperson from among
12 the members."

13 SECTION 4. Section 209E-2, Hawaii Revised Statutes, is
14 amended by amending the definition of "eligible business
15 activity" to read as follows:

16 "Eligible business activity" means the:

17 (1) Manufacture of tangible personal property, the
18 wholesale sale of tangible personal property as
19 described in section 237-4, or a service business as
20 defined in this section;



- 1 (2) Production of agricultural products where the business
2 is a producer as defined in section 237-5, or the
3 processing of agricultural products, all or some of
4 which were grown within an enterprise zone;
- 5 (3) Research, development, sale, or production of all
6 types of genetically-engineered medical, agricultural,
7 or maritime biotechnology products; or
- 8 (4) Production of electric power from wind energy for sale
9 primarily to a public utility company for resale to
10 the public[-],
11 provided that medical marijuana dispensary activities pursuant
12 to chapter 329D shall not be considered an eligible business
13 activity for the purposes of this chapter."

14 SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§235-2.4 Operation of certain Internal Revenue Code**
17 **provisions; sections 63 to 530.** (a) Section 63 (with respect
18 to taxable income defined) of the Internal Revenue Code shall be
19 operative for the purposes of this chapter, subject to the
20 following:



- 1 (1) Section 63(c)(1)(B) (relating to the additional
2 standard deduction), 63(c)(1)(C) (relating to the real
3 property tax deduction), 63(c)(1)(D) (relating to the
4 disaster loss deduction), 63(c)(1)(E) (relating to the
5 motor vehicle sales tax deduction), 63(c)(4) (relating
6 to inflation adjustments), 63(c)(7) (defining the real
7 property tax deduction), 63(c)(8) (defining the
8 disaster loss deduction), 63(c)(9) (defining the motor
9 vehicle sales tax deduction), and 63(f) (relating to
10 additional amounts for the aged or blind) of the
11 Internal Revenue Code shall not be operative for
12 purposes of this chapter;
- 13 (2) Section 63(c)(2) (relating to the basic standard
14 deduction) of the Internal Revenue Code shall be
15 operative, except that the standard deduction amounts
16 provided therein shall instead mean:
- 17 (A) \$4,400 in the case of:
- 18 (i) A joint return as provided by section 235-
19 93; or
- 20 (ii) A surviving spouse (as defined in section
21 2(a) of the Internal Revenue Code);



1 (B) \$3,212 in the case of a head of household (as
2 defined in section 2(b) of the Internal Revenue
3 Code);

4 (C) \$2,200 in the case of an individual who is not
5 married and who is not a surviving spouse or head
6 of household; or

7 (D) \$2,200 in the case of a married individual filing
8 a separate return;

9 (3) Section 63(c)(5) (limiting the basic standard
10 deduction in the case of certain dependents) of the
11 Internal Revenue Code shall be operative, except that
12 the limitation shall be the greater of \$500 or the
13 individual's earned income; and

14 (4) The standard deduction amount for nonresidents shall
15 be calculated pursuant to section 235-5.

16 (b) Section 68 (with respect to the overall limitation on
17 itemized deductions) of the Internal Revenue Code shall be
18 operative; provided that the thresholds shall be those that were
19 operative for federal tax year 2009.

20 (c) Section 72 (with respect to annuities; certain
21 proceeds of endowment and life insurance contracts) of the



1 Internal Revenue Code shall be operative for purposes of this
2 chapter and be interpreted with due regard to section 235-7(a),
3 except that the ten per cent additional tax on early
4 distributions from retirement plans in section 72(t) shall not
5 be operative for purposes of this chapter.

6 (d) Section 85 (with respect to unemployment compensation)
7 of the Internal Revenue Code shall be operative for purposes of
8 this chapter, except that section 85(c) shall not be operative
9 for purposes of this chapter.

10 (e) Section 108 (with respect to income from discharge of
11 indebtedness) of the Internal Revenue Code shall be operative
12 for purposes of this chapter, except that section 108(i)
13 (relating to deferral and ratable inclusion of income arising
14 from business indebtedness discharged by the reacquisition of a
15 debt instrument) shall not be operative for purposes of this
16 chapter.

17 (f) Section 121 (with respect to exclusion of gain from
18 sale of principal residence) of the Internal Revenue Code shall
19 be operative for purposes of this chapter, except that for the
20 election under section 121(f), a reference to section 1034



1 treatment means a reference to section 235-2.4(s) in effect for
2 taxable year 1997.

3 (g) Section 132 (with respect to certain fringe benefits)
4 of the Internal Revenue Code shall be operative for purposes of
5 this chapter, except that the provision in section 132(f)(2)
6 that equalizes the dollar amounts for sections 132(f)(2)(A) and
7 (B) shall not be operative and except that section 132(n) shall
8 not apply to United States Department of Defense Homeowners
9 Assistance Program payments authorized by the American Recovery
10 and Reinvestment Act of 2009.

11 (h) Section 163 (with respect to interest) of the Internal
12 Revenue Code shall be operative for the purposes of this
13 chapter, except that provisions in section 163(d)(4)(B)
14 (defining net investment income to exclude dividends), section
15 163(e)(5)(F) (suspension of applicable high-yield discount
16 obligation (AHYDO) rules) and section 163(i)(1) as it applies to
17 debt instruments issued after January 1, 2010, (defining AHYDO)
18 shall not be operative for the purposes of this chapter.

19 (i) Section 164 (with respect to taxes) of the Internal
20 Revenue Code shall be operative for the purposes of this
21 chapter, except that:



- 1 (1) Section 164(a)(6) and (b)(6) shall not be operative
2 for the purposes of this chapter;
- 3 (2) The deductions under section 164(a)(3) and (b)(5)
4 shall not be operative for corporate taxpayers and
5 shall be operative only for the following individual
6 taxpayers:
- 7 (A) A taxpayer filing a single return or a married
8 person filing separately with a federal adjusted
9 gross income of less than \$100,000;
- 10 (B) A taxpayer filing as a head of household with a
11 federal adjusted gross income of less than
12 \$150,000; and
- 13 (C) A taxpayer filing a joint return or as a
14 surviving spouse with a federal adjusted gross
15 income of less than \$200,000; and
- 16 (3) Section 164(a)(3) shall not be operative for any
17 amounts for which the credit under section 235-55 has
18 been claimed.
- 19 (j) Section 165 (with respect to losses) of the Internal
20 Revenue Code shall be operative for purposes of this chapter,
21 except that the amount prescribed by sections 165(h)(1)



1 (relating to the limitation per casualty) of the Internal
2 Revenue Code shall be a \$100 limitation per casualty, and
3 section 165(h) (3) (A) and (B) (both of which relate to special
4 rules for personal casualty gains and losses in federally
5 declared disasters) of the Internal Revenue Code shall not be
6 operative for the purposes of this chapter. Section 165 as
7 operative for this chapter shall also apply to losses sustained
8 from the sale of stocks or other interests issued through the
9 exercise of the stock options or warrants granted by a qualified
10 high technology business as defined in section 235-7.3.

11 (k) Section 168 (with respect to the accelerated cost
12 recovery system) of the Internal Revenue Code shall be operative
13 for purposes of this chapter, except that sections 168(j)
14 (relating to property on Indian reservations), 168(k) (relating
15 to the special allowance for certain property acquired during
16 the period specified therein), 168(m) (relating to the special
17 allowance for certain reuse and recycling property), and 168(n)
18 (relating to the special allowance for qualified disaster
19 assistance property) of the Internal Revenue Code shall not be
20 operative for purposes of this chapter.



1 (1) Section 172 (with respect to net operating loss
2 deductions) of the Internal Revenue Code shall be operative for
3 purposes of this chapter, as further provided in section 235-
4 7(d), except that section 172(b)(1)(J) and (j) (both of which
5 relate to qualified disaster losses) of the Internal Revenue
6 Code shall not be operative for purposes of this chapter.

7 (m) Section 179 (with respect to the election to expense
8 certain depreciable business assets) of the Internal Revenue
9 Code shall be operative for purposes of this chapter, except as
10 provided in this subsection:

11 (1) The aggregate cost provided in section 179(b)(1) which
12 may be taken into account under section 179(a) for any
13 taxable year shall not exceed \$25,000;

14 (2) The amount at which the reduction in limitation
15 provided in section 179(b)(2) begins shall exceed
16 \$200,000 for any taxable year; and

17 (3) The following shall not be operative for purposes of
18 this chapter:

19 (A) Defining section 179 property to include computer
20 software in section 179(d)(1);

21 (B) Inflation adjustments in section 179(b)(5);



1 (C) Irrevocable election in section 179(c)(2); and
2 (D) Special rules for qualified disaster assistance
3 property in section 179(e).

4 (n) Section 198A (with respect to the expensing of
5 qualified disaster assistances expenses) of the Internal Revenue
6 Code shall not be operative for purposes of this chapter.

7 (o) Section 219 (with respect to retirement savings) of
8 the Internal Revenue Code shall be operative for the purpose of
9 this chapter. For the purpose of computing the limitation on
10 the deduction for active participants in certain pension plans
11 for state income tax purposes, adjusted gross income as used in
12 section 219 as operative for this chapter means federal adjusted
13 gross income.

14 (p) Section 220 (with respect to medical savings accounts)
15 of the Internal Revenue Code shall be operative for the purpose
16 of this chapter, but only with respect to medical services
17 accounts that have been approved by the Secretary of the
18 Treasury of the United States.

19 (q) Section 265 (with respect to expenses and interest
20 relating to tax-exempt income) of the Internal Revenue Code
21 shall be operative for purposes of this chapter; except that



1 section 265(b)(3)(G) and (7) shall not be operative and section
2 265 shall not apply to expenses for royalties and other income
3 derived from any patents, copyrights, and trade secrets by an
4 individual or a qualified high technology business as defined in
5 section 235-7.3. Such expenses shall be deductible.

6 (r) Section 280E (with respect to expenditures in
7 connection with the illegal sale of drugs) of the Internal
8 Revenue Code shall be operative for the purposes of this
9 chapter, except section 280E shall not be operative with respect
10 to the production and sale of medical marijuana and manufactured
11 marijuana products by dispensaries licensed under chapter 329D.

12 [~~r~~] (s) Section 382 (with respect to limitation on net
13 operating loss carryforwards and certain built-in losses
14 following ownership change) of the Internal Revenue Code shall
15 be operative for the purposes of this chapter, except that
16 section 382(n) shall not be operative for purposes of this
17 chapter.

18 [~~s~~] (t) Section 408A (with respect to Roth Individual
19 Retirement Accounts) of the Internal Revenue Code shall be
20 operative for the purposes of this chapter, except that section
21 408A(d)(3)(A)(iii) shall not be operative for purposes of this



1 chapter. For the purposes of determining the aggregate amount
2 of contributions to a Roth Individual Retirement Account or
3 qualified rollover contribution to a Roth Individual Retirement
4 Account from an individual retirement plan other than a Roth
5 Individual Retirement Account, adjusted gross income as used in
6 section 408A as operative for this chapter means federal
7 adjusted gross income.

8 [~~(t)~~] (u) In administering the provisions of sections 410
9 to 417 (with respect to special rules relating to pensions,
10 profit sharing, stock bonus plans, etc.), sections 418 to 418E
11 (with respect to special rules for multiemployer plans), and
12 sections 419 and 419A (with respect to treatment of welfare
13 benefit funds) of the Internal Revenue Code, the department of
14 taxation shall adopt rules under chapter 91 relating to the
15 specific requirements under those sections and to other
16 administrative requirements under those sections as may be
17 necessary for the efficient administration of sections 410 to
18 419A.

19 In administering sections 401 to 419A (with respect to
20 deferred compensation) of the Internal Revenue Code, Public Law



1 93-406, section 1017(i), shall be operative for the purposes of
2 this chapter.

3 In administering section 402 (with respect to the
4 taxability of beneficiary of employees' trust) of the Internal
5 Revenue Code, the tax imposed on lump sum distributions by
6 section 402(e) of the Internal Revenue Code shall be operative
7 for the purposes of this chapter and the tax imposed therein is
8 hereby imposed by this chapter at the rate determined under this
9 chapter.

10 [~~(u)~~] (v) In administering section 403 (with respect to
11 taxation of employee annuities) of the Internal Revenue Code,
12 any funds that represent pre-tax employee deferrals or
13 contributions that are distributed from the annuity and used
14 solely to obtain retirement credits under the state employees'
15 retirement system shall not be treated as a rollover for
16 purposes of section 403(b)(8)(A) of the Internal Revenue Code,
17 and those funds shall be subject to income tax under this
18 chapter.

19 [~~(v)~~] (w) Section 451 (which provides general rules for
20 taxable year of inclusion) of the Internal Revenue Code shall be
21 operative, except that the provisions of sections 451(i)(3) and



1 451(i)(6), as they relate to a qualified electric utility, shall
2 not be operative for purposes of this chapter.

3 ~~[(w)]~~ (x) In administering section 457 (with respect to
4 compensation plans of state and local governments and tax-exempt
5 organizations) of the Internal Revenue Code, any funds that
6 represent pre-tax employee deferrals or contributions that are
7 distributed from the deferred compensation plan and used solely
8 to obtain retirement credits under the state employees'
9 retirement system shall not be treated as a rollover for
10 purposes of section 457(e)(16)(A) of the Internal Revenue Code
11 and those funds shall be subject to income tax under this
12 chapter.

13 ~~[(x)]~~ (y) Section 468B (with respect to special rules for
14 designated settlement funds) of the Internal Revenue Code shall
15 be operative for the purposes of this chapter and the tax
16 imposed therein is hereby imposed by this chapter at a rate
17 equal to the maximum rate in effect for the taxable year imposed
18 on estates and trusts under section 235-51.

19 ~~[(y)]~~ (z) Section 469 (with respect to passive activities
20 and credits limited) of the Internal Revenue Code shall be
21 operative for the purposes of this chapter. For the purpose of



1 computing the offset for rental real estate activities for state
2 income tax purposes, adjusted gross income as used in section
3 469 as operative for this chapter means federal adjusted gross
4 income.

5 [~~z~~] (aa) Sections 512 to 514 (with respect to taxation
6 of business income of certain exempt organizations) of the
7 Internal Revenue Code shall be operative for the purposes of
8 this chapter as provided in this subsection.

9 "Unrelated business taxable income" means the same as in
10 the Internal Revenue Code, except that in the computation
11 thereof sections 235-3 to 235-5, and 235-7 (except subsection
12 (c)), shall apply, and in the determination of the net operating
13 loss deduction there shall not be taken into account any amount
14 of income or deduction that is excluded in computing the
15 unrelated business taxable income. Unrelated business taxable
16 income shall not include any income from a legal service plan.

17 For a person described in section 401 or 501 of the
18 Internal Revenue Code, as modified by section 235-2.3, the tax
19 imposed by section 235-51 or 235-71 shall be imposed upon the
20 person's unrelated business taxable income.



1 ~~[(aa)]~~ (bb) Section 521 (with respect to cooperatives) and
2 subchapter T (sections 1381 to 1388, with respect to
3 cooperatives and their patrons) of the Internal Revenue Code
4 shall be operative for the purposes of this chapter as to any
5 cooperative fully meeting the requirements of section 421-23,
6 except that Internal Revenue Code section 521 cooperatives need
7 not be organized in Hawaii.

8 ~~[(bb)]~~ (cc) Sections 527 (with respect to political
9 organizations) and 528 (with respect to certain homeowners
10 associations) of the Internal Revenue Code shall be operative
11 for the purposes of this chapter and the taxes imposed in each
12 section are hereby imposed by this chapter at the rates
13 determined under section 235-71.

14 ~~[(ee)]~~ (dd) Section 529 (with respect to qualified tuition
15 programs) shall be operative for the purposes of this chapter,
16 except that sections 529(c)(6) and 529(e)(3)(A)(iii) shall not
17 be operative.

18 ~~[(dd)]~~ (ee) Section 529A (with respect to qualified ABLE
19 programs) shall be operative for the purposes of this chapter,
20 except that section 529A(c)(3) (with respect to additional tax



1 for distributions not used for disability expenses) shall not be
2 operative.

3 [~~ee~~] (ff) Section 530 (with respect to Coverdell
4 education savings accounts) of the Internal Revenue Code shall
5 be operative for the purposes of this chapter. For the purpose
6 of determining the maximum amount that a contributor could make
7 to an education individual retirement account for state income
8 tax purposes, modified adjusted gross income as used in section
9 530 as operative for this chapter means federal modified
10 adjusted gross income as defined in section 530."

11 SECTION 6. Section 237-24.3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§237-24.3 Additional amounts not taxable.** In addition to
14 the amounts not taxable under section 237-24, this chapter shall
15 not apply to:

16 (1) Amounts received from the loading, transportation, and
17 unloading of agricultural commodities shipped for a
18 producer or produce dealer on one island of this State
19 to a person, firm, or organization on another island
20 of this State. The terms "agricultural commodity",
21 "producer", and "produce dealer" shall be defined in



1 the same manner as they are defined in section 147-1;
2 provided that agricultural commodities need not have
3 been produced in the State;

4 (2) Amounts received by the manager, submanager, or board
5 of directors of:

6 (A) An association of owners of a condominium
7 property regime established in accordance with
8 chapter 514A or 514B; or

9 (B) A nonprofit homeowners or community association
10 incorporated in accordance with chapter 414D or
11 any predecessor thereto and existing pursuant to
12 covenants running with the land,

13 in reimbursement of sums paid for common expenses;

14 (3) Amounts received or accrued from:

15 (A) The loading or unloading of cargo from ships,
16 barges, vessels, or aircraft, whether or not the
17 ships, barges, vessels, or aircraft travel
18 between the State and other states or countries
19 or between the islands of the State;

20 (B) Tugboat services including pilotage fees
21 performed within the State, and the towage of



1 ships, barges, or vessels in and out of state
2 harbors, or from one pier to another; and
3 (C) The transportation of pilots or governmental
4 officials to ships, barges, or vessels offshore;
5 rigging gear; checking freight and similar
6 services; standby charges; and use of moorings
7 and running mooring lines;
8 (4) Amounts received by an employee benefit plan by way of
9 contributions, dividends, interest, and other income;
10 and amounts received by a nonprofit organization or
11 office, as payments for costs and expenses incurred
12 for the administration of an employee benefit plan;
13 provided that this exemption shall not apply to any
14 gross rental income or gross rental proceeds received
15 after June 30, 1994, as income from investments in
16 real property in this State; and provided further that
17 gross rental income or gross rental proceeds from
18 investments in real property received by an employee
19 benefit plan after June 30, 1994, under written
20 contracts executed prior to July 1, 1994, shall not be
21 taxed until the contracts are renegotiated, renewed,



1 or extended, or until after December 31, 1998,
2 whichever is earlier. For the purposes of this
3 paragraph, "employee benefit plan" means any plan as
4 defined in section 1002(3) of title 29 of the United
5 States Code, as amended;

6 (5) Amounts received for purchases made with United States
7 Department of Agriculture food coupons under the
8 federal food stamp program, and amounts received for
9 purchases made with United States Department of
10 Agriculture food vouchers under the Special
11 Supplemental Foods Program for Women, Infants and
12 Children;

13 (6) Amounts received by a hospital, infirmary, medical
14 clinic, health care facility, pharmacy, or a
15 practitioner licensed to administer the drug to an
16 individual for selling prescription drugs or
17 prosthetic devices to an individual; provided that
18 this paragraph shall not apply to any amounts received
19 for services provided in selling prescription drugs or
20 prosthetic devices. As used in this paragraph:



1 "Prescription drugs" are those drugs defined under
2 section 328-1 and dispensed by filling or refilling a
3 written or oral prescription by a practitioner
4 licensed under law to administer the drug and sold by
5 a licensed pharmacist under section 328-16 or
6 practitioners licensed to administer drugs; ~~and~~
7 provided that "prescription drugs" shall not include
8 the medical use of marijuana pursuant to chapters 329
9 and 329D; and

10 "Prosthetic device" means any artificial device or
11 appliance, instrument, apparatus, or contrivance,
12 including their components, parts, accessories, and
13 replacements thereof, used to replace a missing or
14 surgically removed part of the human body, which is
15 prescribed by a licensed practitioner of medicine,
16 osteopathy, or podiatry and ~~which~~ that is sold by
17 the practitioner or ~~which~~ that is dispensed and sold
18 by a dealer of prosthetic devices; provided that
19 "prosthetic device" shall not mean any auditory,
20 ophthalmic, dental, or ocular device or appliance,
21 instrument, apparatus, or contrivance;



- 1 (7) Taxes on transient accommodations imposed by chapter
2 237D and passed on and collected by operators holding
3 certificates of registration under that chapter;
- 4 (8) Amounts received as dues by an unincorporated
5 merchants association from its membership for
6 advertising media, promotional, and advertising costs
7 for the promotion of the association for the benefit
8 of its members as a whole and not for the benefit of
9 an individual member or group of members less than the
10 entire membership;
- 11 (9) Amounts received by a labor organization for real
12 property leased to:
- 13 (A) A labor organization; or
- 14 (B) A trust fund established by a labor organization
15 for the benefit of its members, families, and
16 dependents for medical or hospital care, pensions
17 on retirement or death of employees,
18 apprenticeship and training, and other membership
19 service programs.
- 20 As used in this paragraph, "labor organization" means
21 a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,
2 as amended;

3 (10) Amounts received from foreign diplomats and consular
4 officials who are holding cards issued or authorized
5 by the United States Department of State granting them
6 an exemption from state taxes; and

7 (11) Amounts received as rent for the rental or leasing of
8 aircraft or aircraft engines used by the lessees or
9 renters for interstate air transportation of
10 passengers and goods. For purposes of this paragraph,
11 payments made pursuant to a lease shall be considered
12 rent regardless of whether the lease is an operating
13 lease or a financing lease. The definition of
14 "interstate air transportation" is the same as in 49
15 U.S.C. section 40102."

16 SECTION 7. Section 329-43.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 " [H]§329-43.5 [H] **Prohibited acts related to drug**
19 **paraphernalia.** (a) It is unlawful for any person to use, or to
20 possess with intent to use, drug paraphernalia to plant,
21 propagate, cultivate, grow, harvest, manufacture, compound,



1 convert, produce, process, prepare, test, analyze, pack, repack,
2 store, contain, conceal, inject, ingest, inhale, or otherwise
3 introduce into the human body a controlled substance in
4 violation of this chapter. Any person who violates this section
5 is guilty of a class C felony and upon conviction may be
6 imprisoned pursuant to section 706-660 and, if appropriate as
7 provided in section 706-641, fined pursuant to section 706-640.

8 (b) It is unlawful for any person to deliver, possess with
9 intent to deliver, or manufacture with intent to deliver, drug
10 paraphernalia, knowing, or under circumstances where one
11 reasonably should know, that it will be used to plant,
12 propagate, cultivate, grow, harvest, manufacture, compound,
13 convert, produce, process, prepare, test, analyze, pack, repack,
14 store, contain, conceal, inject, ingest, inhale, or otherwise
15 introduce into the human body a controlled substance in
16 violation of this chapter. Any person who violates this section
17 is guilty of a class C felony and upon conviction may be
18 imprisoned pursuant to section 706-660 and, if appropriate as
19 provided in section 706-641, fined pursuant to section 706-640.

20 (c) Any person eighteen years of age or over who violates
21 subsection (b) by delivering drug paraphernalia to a person or



1 persons under eighteen years of age who are at least three years
2 younger than that adult person is guilty of a class B felony and
3 upon conviction may be imprisoned pursuant to section 706-660
4 and if appropriate as provided in section 706-641, fined
5 pursuant to section 706-640.

6 (d) It is unlawful for any person to place in any
7 newspaper, magazine, handbill, or other publication any
8 advertisement, knowing, or under circumstances where one
9 reasonably should know, that the purpose of the advertisement,
10 in whole or in part, is to promote the sale of objects designed
11 or intended for use as drug paraphernalia. Any person who
12 violates this section is guilty of a class C felony and upon
13 conviction may be imprisoned pursuant to section 706-660 and, if
14 appropriate as provided in section 706-641, fined pursuant to
15 section 706-640.

16 (e) Subsections (a) and (b) shall not apply to a person
17 who is authorized to cultivate, possess, or use medical
18 marijuana pursuant to part IX of chapter 329 and who:

- 19 (1) Uses;
20 (2) Possesses with intent to use;
21 (3) Delivers;



- 1 (4) Possesses with intent to deliver; or
- 2 (5) Manufacturers with intent to deliver,
- 3 drug paraphernalia that is consistent with the cultivation,
- 4 manufacture, possession, provision, sale, or use of medical
- 5 marijuana or medical marijuana products authorized pursuant to
- 6 part IX of chapter 329 or chapter 329D."

7 SECTION 8. Section 329-121, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding a new definition to be appropriately inserted
10 and to read:

11 "Health care professional" means:

12 (1) A physician licensed to practice under chapter 453
13 with authority to prescribe drugs and registered under
14 section 329-32; or

15 (2) An advanced practice registered nurse with
16 prescriptive authority as described in section 457-
17 8.6."

18 2. By amending the definitions of "debilitating medical
19 condition", "primary caregiver", "qualifying patient", and
20 "written certification" to read:

21 "Debilitating medical condition" means:



- 1 (1) Cancer, glaucoma, positive status for human
2 immunodeficiency virus, acquired immune deficiency
3 syndrome, or the treatment of these conditions;
- 4 (2) A chronic or debilitating disease or medical condition
5 or its treatment that produces one or more of the
6 following:
- 7 (A) Cachexia or wasting syndrome;
8 (B) Severe pain;
9 (C) Severe nausea;
10 (D) Seizures, including those characteristic of
11 epilepsy;
12 (E) Severe and persistent muscle spasms, including
13 those characteristic of multiple sclerosis or
14 Crohn's disease; or
15 (F) Post-traumatic stress disorder; or
- 16 (3) Any other medical condition approved by the department
17 of health pursuant to administrative rules in response
18 to a request from a physician health care
19 professional or potentially qualifying patient.
- 20 "Primary caregiver" means a person eighteen years of age or
21 older, other than the qualifying patient and the qualifying



1 patient's [~~physician,~~] health care professional, who has agreed
2 to undertake responsibility for managing the well-being of the
3 qualifying patient with respect to the medical use of marijuana.
4 In the case of a minor or an adult lacking legal capacity, the
5 primary caregiver shall be a parent, guardian, or person having
6 legal custody.

7 "Qualifying patient" means a person who has been diagnosed
8 by a [~~physician~~] health care professional as having a
9 debilitating medical condition.

10 "Written certification" means the qualifying patient's
11 medical records or a statement signed by a qualifying patient's
12 [~~physician,~~] health care professional, stating that in the
13 [~~physician's~~] health care professional'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 health may require, through its rulemaking
18 authority, that all written certifications comply with a
19 designated form. "Written certifications" are valid for only
20 one year from the time of signing."

21 3. By repealing the definition of "physician":



1 ~~["Physician" means a person who is licensed to practice~~
2 ~~under chapter 453 and is licensed with authority to prescribe~~
3 ~~drugs and is registered under section 329-32. "Physician" does~~
4 ~~not include physician's assistant or advanced practice~~
5 ~~registered nurse with prescriptive authority as described in~~
6 ~~section 453-5.3 or 457-8.6."]~~

7 SECTION 9. Section 329-122, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsections (a) and (b) to read:

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

13 (1) The qualifying patient has been diagnosed by a
14 ~~[physician]~~ health care professional as having a
15 debilitating medical condition;

16 (2) The qualifying patient's ~~[physician]~~ health care
17 professional has certified in writing that, in the
18 ~~[physician's]~~ health care professional's professional
19 opinion, the potential benefits of the medical use of
20 marijuana would likely outweigh the health risks for
21 the particular qualifying patient; and



1 (3) The amount of marijuana possessed by the qualifying
2 patient does not exceed an adequate supply.

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

5 (1) The qualifying patient's [~~physician~~] health care
6 professional has explained the potential risks and
7 benefits of the medical use of marijuana to the
8 qualifying patient and to a parent, guardian, or
9 person having legal custody of the qualifying patient;
10 and

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

13 (A) Allow the qualifying patient's medical use of
14 marijuana;

15 (B) Serve as the qualifying patient's primary
16 caregiver; and

17 (C) Control the acquisition of the marijuana, the
18 dosage, and the frequency of the medical use of
19 marijuana by the qualifying patient."

20 2. By amending subsection (d) to read:



1 "(d) For the purposes of this section, "transport" means
2 the transportation of marijuana, usable marijuana, or any
3 manufactured marijuana product between:

4 (1) A qualifying patient and the qualifying patient's
5 primary caregiver; or

6 (2) The production centers and the retail dispensing
7 locations under a dispensary licensee's license;
8 provided that "transport" does not include the interisland
9 transportation of marijuana, usable marijuana, or any
10 manufactured marijuana product [-], except for testing pursuant
11 to section 329D-8 as permitted under section 329D-6(m) and
12 subject to section 329D-6(j)."

13 SECTION 10. Section 329-123, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) [~~Physicians~~] Health care professionals who issue
16 written certifications shall provide, in each written
17 certification, the name, address, patient identification number,
18 and other identifying information of the qualifying patient.
19 The department of health shall require, in rules adopted
20 pursuant to chapter 91, that all written certifications comply
21 with a designated form completed by or on behalf of a qualifying



1 patient. The form shall require information from the applicant,
2 primary caregiver, and [~~physician~~] health care professional as
3 specifically required or permitted by this chapter. The form
4 shall require the address of the location where the marijuana is
5 grown and shall appear on the registry card issued by the
6 department of health. The certifying [~~physician~~] health care
7 professional shall be required to have a bona fide [~~physician-~~
8 ~~patient~~] health care professional-patient relationship with the
9 qualifying patient. All current active medical marijuana
10 permits shall be honored through their expiration date.

11 (b) Qualifying patients shall register with the department
12 of health. The registration shall be effective until the
13 expiration of the certificate issued by the department of health
14 and signed by the [~~physician-~~] health care professional. Every
15 qualifying patient shall provide sufficient identifying
16 information to establish the personal identities of the
17 qualifying patient and the primary caregiver. Qualifying
18 patients shall report changes in information within ten working
19 days. Every qualifying patient shall have only one primary
20 caregiver at any given time. The department of health shall



1 issue to the qualifying patient a registration certificate, and
2 shall charge \$35 per year."

3 SECTION 11. Section 329-126, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

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

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



1 ~~[physician-patient]~~ health care professional-patient
2 relationship; and

3 (4) The ~~[physician]~~ health care professional has complied
4 with the registration requirements of section 329-
5 123."

6 SECTION 12. Section 329-128, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

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

18 SECTION 13. Section 329D-1, Hawaii Revised Statutes, is
19 amended by adding eight new definitions to be appropriately
20 inserted and to read as follows:



1 "Accreditation body" means an impartial organization that
2 is a signatory to the International Laboratory Accreditation
3 Cooperation Mutual Recognition Arrangement for Testing and that
4 requires laboratories to conform to ISO/IEC 17025, the general
5 requirements for the competence of laboratories established by
6 the International Organization for Standardization and the
7 International Electrotechnical Commission.

8 "Batch" means the amount of marijuana or the amount of each
9 type of manufactured marijuana product that is prepared for sale
10 at one time.

11 "Certificate of accreditation" means a certificate issued
12 by an accreditation body for a laboratory facility, entity, or
13 site to be registered in this State.

14 "Certified laboratory" means a laboratory that is certified
15 by the department to test marijuana and manufactured marijuana
16 products for content, contamination, and consistency as provided
17 in this chapter.

18 "Enclosed indoor facility" means a permanent, stationary
19 structure with a solid floor, rigid exterior walls that encircle
20 the entire structure on all sides, and a roof that protects the
21 entire interior area from any exterior view and elements of



1 weather. An enclosed indoor facility excludes a greenhouse or
2 shade house that does not comply with these requirements.

3 "Plant" means a marijuana plant having at least three
4 distinguishable and distinct leaves, each leaf being at least
5 three centimeters in diameter, and a readily observable root
6 formation consisting of at least two separate and distinct
7 roots, each being at least two centimeters in length. Multiple
8 stalks emanating from the same root ball or root system is
9 considered part of the same single plant.

10 "Service contractor" means any person or entity that a
11 dispensary licensee has engaged to perform any work or service
12 related to the planning, designing, construction, maintenance,
13 repair, renovation, expansion, modernization, product testing,
14 or security of a production center or retail dispensing
15 location, other than the actual operation of a production center
16 or retail dispensing location or the actual cultivating,
17 dispensing, manufacturing, or selling marijuana or marijuana
18 products.

19 "Subcontracting operator" means any person or entity that a
20 dispensary licensee has engaged to operate a production center
21 or retail dispensing location or to perform any cultivating,



1 dispensing, manufacturing, or selling of marijuana or marijuana
2 products in relation to the operation of a production center or
3 retail dispensing location."

4 SECTION 14. Section 329D-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 " [f] §329D-2 [f] **Medical marijuana dispensaries; authorized;**
7 **licensure.** (a) No person shall operate a medical marijuana
8 dispensary unless the person has a license issued by the
9 department pursuant to this chapter.

10 (b) The director of health shall grant medical marijuana
11 dispensary licenses to allow dispensaries to produce,
12 manufacture, and dispense marijuana and manufactured marijuana
13 products pursuant to this chapter.

14 (c) Each medical marijuana dispensary license shall allow
15 production, manufacture, and dispensing of marijuana and
16 manufactured marijuana products only in the county for which the
17 license is granted.

18 (d) The department shall issue eight dispensary licenses
19 statewide; provided that three dispensary licenses shall be
20 issued for the city and county of Honolulu, two dispensary
21 licenses each shall be issued for the county of Hawaii and the



1 county of Maui, and one dispensary license shall be issued for
2 the county of Kauai; provided further that no dispensary license
3 shall be issued for the county of Kalawao.

4 (e) No person may be granted a dispensary license in more
5 than one county.

6 (f) Up to two production centers shall be allowed under
7 each dispensary license[7]; provided that each production center
8 shall be limited to no more than three thousand marijuana
9 plants.

10 (g) A dispensary licensee may establish up to two retail
11 dispensing locations under the licensee's dispensary license.

12 (h) Each dispensary licensee may commence dispensing
13 medical marijuana and manufactured marijuana products to
14 qualifying patients or primary caregivers no sooner than July
15 15, 2016, with approval by the department, in accordance with
16 this chapter.

17 (i) Retail dispensing locations shall not be at the same
18 location as the dispensary licensee's production centers.

19 (j) Notwithstanding subsection (d), the department shall
20 determine whether, based on the qualifying patient need,
21 additional dispensary licenses shall be offered to qualified



1 applicants in the State after October 1, 2017; provided that the
2 department shall make available not more than one license per
3 five hundred qualifying patients residing in any single county.

4 (k) Notwithstanding any other law to the contrary, a
5 dispensary shall not be subject to the prescription requirement
6 of section 329-38 or to the board of pharmacy licensure or
7 regulatory requirements under chapter 461.

8 (l) A dispensary licensee may engage one or more
9 subcontracting operators to operate or assist in the operation
10 of production centers and retail dispensary locations authorized
11 pursuant to this section; provided that at no time shall any
12 subcontracting operator be employed by or under contract with
13 more than one dispensary licensee to operate production centers
14 or retail dispensary locations.

15 (m) A dispensary licensee may engage one or more service
16 contractors to assist in the planning, design, construction,
17 expansion, maintenance, modernization, product testing,
18 renovation, repair, and security of production centers and
19 retail dispensary locations authorized pursuant to this
20 section."



1 SECTION 15. Section 329D-6, Hawaii Revised Statutes, is
2 amended by amending as follows:

3 1. By amended subsection (e) to read:

4 "(e) Retail dispensing locations shall not be open for
5 retail sales before 8:00 a.m. or after 8:00 p.m., Hawaii-
6 Aleutian Standard Time, Monday through [~~Saturday.~~] Sunday.
7 Retail dispensing locations shall be closed on [~~Sundays and~~]
8 official state and federal holidays."

9 2. By amending subsection "g" to read:

10 "(g) In all dispensary facilities, only the licensee, if
11 an individual, the registered employees of the dispensary
12 licensee, and the registered employees of the [~~subcontracted~~]
13 subcontracting operator for a production center or retail
14 dispensing [~~locations~~] location shall be permitted to touch or
15 handle any marijuana or manufactured marijuana products, except
16 that a qualifying patient or the primary caregiver of a
17 qualifying patient may receive manufactured marijuana products
18 at a retail dispensing location following completion of a sale."

19 3. By amended subsection (m) to read:

20 "(m) A dispensary shall not transport marijuana or
21 manufactured marijuana products to another county or another



1 island[-]; provided that this subsection shall not apply to the
2 transportation of medical marijuana for testing pursuant to
3 section 329D-8 and subject to section 329D-6(j)."

4 SECTION 16. Section 329D-8, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§329D-8[+] **Laboratory standards and testing;**

7 **laboratory certification.** (a) The department shall establish
8 and enforce standards for laboratory-based testing of marijuana
9 and manufactured marijuana products for content, contamination,
10 and consistency.

11 (b) The department may certify laboratories that can test
12 marijuana and manufactured marijuana products prior to the sale
13 of marijuana and manufactured marijuana products.

14 (c) A certified laboratory shall issue to the dispensary
15 licensee and the department a certificate of analysis for each
16 batch of marijuana and manufactured marijuana products tested
17 for that dispensary; provided that a certified laboratory may
18 only test and report on those things for which it is certified.
19 The certificate of analysis shall include the results with
20 supporting data for the following:



1 (1) The chemical profile of the batch for the following
2 compounds:

3 (A) (delta 9) - Tetrahydrocannabinol (THC);

4 (B) Tetrahydrocannabinol Acid (THCA);

5 (C) Cannabidiol (CBD);

6 (D) Cannabidiolic Acid (CBDA);

7 (E) Cannabigerol (CBG);

8 (F) Cannabinol (CBN);

9 (2) The presence of the following contaminants, which
10 shall not exceed the following levels:

11 (A) Pesticides regulated by the United States
12 Environmental Protection Agency and approved by
13 the state department of agriculture for use on
14 marijuana and plants similar to marijuana: 1
15 part per million;

16 (B) Solvents:

17 (i) Butanes: 800 parts per million;

18 (ii) Heptanes: 500 parts per million;

19 (iii) Benzene: 1 part per million;

20 (iv) Toluene: 1 part per million;

21 (v) Hexane: 150 parts per million;



- 1 (vi) Total xylenes (m,o,p-xylene): 1 part per
- 2 million;
- 3 (C) Any visible foreign or extraneous material that
- 4 is not intended to be part of the product being
- 5 produced, including but not limited to mold,
- 6 hair, insects, metal, or plastic;
- 7 (D) Moisture content of plant material less than 15
- 8 per cent;
- 9 (E) Microbiological impurities, including but not
- 10 limited to:
- 11 (i) Total viable aerobic bacteria in unprocessed
- 12 and processed materials: 105 colony forming
- 13 units per gram;
- 14 (ii) Total viable aerobic bacteria in carbon
- 15 dioxide and solvent based extracts: 104
- 16 colony forming units per gram;
- 17 (iii) Total yeast and mold in unprocessed and
- 18 processed materials: 105 colony forming
- 19 units per gram;



- 1 (iv) Total yeast and mold in carbon dioxide and
- 2 solvent based extracts: 102 colony forming
- 3 units per gram;
- 4 (v) Total coliforms in unprocessed and processed
- 5 materials: 103 colony forming units per
- 6 gram;
- 7 (vi) Total coliforms in carbon dioxide and
- 8 solvent based extracts: 102 colony forming
- 9 units per gram;
- 10 (vii) E. coli (generic): 100 colony forming units
- 11 per gram;
- 12 (viii) Salmonella spp: not detected in 1 gram;
- 13 (ix) Aspergillus fumigatus, aspergillus flavus,
- 14 aspergillus niger, aspergillus terreus:
- 15 less than 1 colony forming unit per gram;
- 16 and
- 17 (3) Additional testing requested at the discretion of the
- 18 department."

19 SECTION 17. Section 329D-10, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) The types of medical marijuana products that may be
2 manufactured and distributed pursuant to this chapter shall be
3 limited to:

4 (1) Capsules;

5 (2) Lozenges;

6 (3) Pills;

7 (4) Oils and oil extracts;

8 (5) Tinctures;

9 (6) Ointments and skin lotions; ~~and~~

10 (7) Transdermal patches;

11 (8) Substances specifically designed to be inhaled; and

12 ~~(7)~~ (9) Other products as specified by the department."

13 SECTION 18. Section 329D-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§~~329D-12 ~~{}~~ **Background checks.** Each applicant and
16 licensee for a medical marijuana dispensary license, including
17 the individual applicant and all officers, directors,
18 shareholders with at least twenty-five per cent ownership
19 interest or more, members, and managers of an entity applicant;
20 each employee of a medical marijuana dispensary; each
21 ~~subcontracted~~ employee of a subcontracting operator performing



1 work at a production center [and] or retail dispensing location
2 [employee]; all officers, directors, shareholders with at least
3 twenty-five per cent ownership interest or more in a
4 [~~subcontracted~~] subcontracting operator performing work at a
5 production center or retail dispensing location; and any person
6 permitted to enter and remain in dispensary facilities pursuant
7 to section 329D-15(a)(4) or 329D-16(a)(3), shall be subject to
8 background checks conducted by the department or its designee,
9 including but not limited to criminal history record checks in
10 accordance with section 846-2.7. The person undergoing the
11 background check shall provide written consent and all
12 applicable processing fees to the department or its designee to
13 conduct the background checks."

14 SECTION 19. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 20. This Act shall take effect on July 1, 2016;
17 provided that section 5 shall apply to taxable years beginning
18 after December 31, 2015.

19

INTRODUCED BY:

Della A. Balotti
[Signature]



H.B. NO. 2707

DM

Or

RR

Abraham

Jo

Kal Rhoad

[Signature]

JAN 27 2016



H.B. NO. 2707

Report Title:

Medical Marijuana; Dispensaries; Advisory Commission;
Paraphernalia; Certification; Testing; Taxation

Description:

Establishes the medical cannabis advisory commission. Amends various definitions and provisions relating to medical marijuana dispensary operations, paraphernalia, and testing. Provides that advanced practice registered nurses may certify patients for medical marijuana use. Excludes dispensaries from enterprise zone tax exemptions. Excludes medical marijuana from certain federal tax provisions.

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

