
A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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

PART I

1
2 SECTION 1. The legislature finds that Act 241, Session
3 Laws of Hawaii 2015, established a licensing scheme for a
4 statewide system of medical marijuana dispensaries to ensure
5 access to medical marijuana for qualifying patients.

6 The purpose of this Act is to:

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



PART II

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

"§201- Medical marijuana; economic and other data; collection. (a) The department shall continuously collect de-identified information regarding the medical marijuana registry and dispensary programs established pursuant to chapters 329 and 329D, including but not limited to information regarding the:

- (1) Quantities of marijuana cultivated and dispensed;
- (2) Number of qualifying patients;
- (3) Geographic areas in which marijuana is cultivated and consumed;
- (4) Prices of marijuana and related products;
- (5) Number of employment opportunities related to marijuana; and
- (6) Economic impact of marijuana cultivation and sales.

(b) The department of health and dispensaries licensed pursuant to chapter 329D shall provide de-identified aggregated data as required by the department pursuant to this section.



1 (c) Upon request, the department shall provide an analysis
2 of the aggregated de-identified data to the department of health
3 and the legislature."

4 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is
5 amended by amending the definition of "eligible business
6 activity" to read as follows:

7 "'Eligible business activity" means the:

- 8 (1) Manufacture of tangible personal property, the
9 wholesale sale of tangible personal property as
10 described in section 237-4, or a service business as
11 defined in this section;
- 12 (2) Production of agricultural products where the business
13 is a producer as defined in section 237-5, or the
14 processing of agricultural products, all or some of
15 which were grown within an enterprise zone;
- 16 (3) Research, development, sale, or production of all
17 types of genetically-engineered medical, agricultural,
18 or maritime biotechnology products; or
- 19 (4) Production of electric power from wind energy for sale
20 primarily to a public utility company for resale to
21 the public[-];



1 provided that medical marijuana dispensary activities pursuant
2 to chapter 329D shall not be considered an eligible business
3 activity for the purposes of this chapter."

4 SECTION 4. Section 235-2.4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§235-2.4 Operation of certain Internal Revenue Code**
7 **provisions; sections 63 to 530.** (a) Section 63 (with respect
8 to taxable income defined) of the Internal Revenue Code shall be
9 operative for the purposes of this chapter, subject to the
10 following:

11 (1) Section 63(c)(1)(B) (relating to the additional
12 standard deduction), 63(c)(1)(C) (relating to the real
13 property tax deduction), 63(c)(1)(D) (relating to the
14 disaster loss deduction), 63(c)(1)(E) (relating to the
15 motor vehicle sales tax deduction), 63(c)(4) (relating
16 to inflation adjustments), 63(c)(7) (defining the real
17 property tax deduction), 63(c)(8) (defining the
18 disaster loss deduction), 63(c)(9) (defining the motor
19 vehicle sales tax deduction), and 63(f) (relating to
20 additional amounts for the aged or blind) of the



1 Internal Revenue Code shall not be operative for
2 purposes of this chapter;

3 (2) Section 63(c)(2) (relating to the basic standard
4 deduction) of the Internal Revenue Code shall be
5 operative, except that the standard deduction amounts
6 provided therein shall instead mean:

7 (A) \$4,400 in the case of:

8 (i) A joint return as provided by section 235-
9 93; or

10 (ii) A surviving spouse (as defined in section
11 2(a) of the Internal Revenue Code);

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

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

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

20 (3) Section 63(c)(5) (limiting the basic standard
21 deduction in the case of certain dependents) of the



1 Internal Revenue Code shall be operative, except that
2 the limitation shall be the greater of \$500 or the
3 individual's earned income; and

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

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

10 (c) Section 72 (with respect to annuities; certain
11 proceeds of endowment and life insurance contracts) of the
12 Internal Revenue Code shall be operative for purposes of this
13 chapter and be interpreted with due regard to section 235-7(a),
14 except that the ten per cent additional tax on early
15 distributions from retirement plans in section 72(t) shall not
16 be operative for purposes of this chapter.

17 (d) Section 85 (with respect to unemployment compensation)
18 of the Internal Revenue Code shall be operative for purposes of
19 this chapter, except that section 85(c) shall not be operative
20 for purposes of this chapter.



1 (e) Section 108 (with respect to income from discharge of
2 indebtedness) of the Internal Revenue Code shall be operative
3 for purposes of this chapter, except that section 108(i)
4 (relating to deferral and ratable inclusion of income arising
5 from business indebtedness discharged by the reacquisition of a
6 debt instrument) shall not be operative for purposes of this
7 chapter.

8 (f) Section 121 (with respect to exclusion of gain from
9 sale of principal residence) of the Internal Revenue Code shall
10 be operative for purposes of this chapter, except that for the
11 election under section 121(f), a reference to section 1034
12 treatment means a reference to section 235-2.4(s) in effect for
13 taxable year 1997.

14 (g) Section 132 (with respect to certain fringe benefits)
15 of the Internal Revenue Code shall be operative for purposes of
16 this chapter, except that the provision in section 132(f)(2)
17 that equalizes the dollar amounts for sections 132(f)(2)(A) and
18 (B) shall not be operative and except that section 132(n) shall
19 not apply to United States Department of Defense Homeowners
20 Assistance Program payments authorized by the American Recovery
21 and Reinvestment Act of 2009.



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

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

12 (1) Section 164(a)(6) and (b)(6) shall not be operative
13 for the purposes of this chapter;

14 (2) The deductions under section 164(a)(3) and (b)(5)
15 shall not be operative for corporate taxpayers and
16 shall be operative only for the following individual
17 taxpayers:

18 (A) A taxpayer filing a single return or a married
19 person filing separately with a federal adjusted
20 gross income of less than \$100,000;



1 (B) A taxpayer filing as a head of household with a
2 federal adjusted gross income of less than
3 \$150,000; and

4 (C) A taxpayer filing a joint return or as a
5 surviving spouse with a federal adjusted gross
6 income of less than \$200,000; and

7 (3) Section 164(a)(3) shall not be operative for any
8 amounts for which the credit under section 235-55 has
9 been claimed.

10 (j) Section 165 (with respect to losses) of the Internal
11 Revenue Code shall be operative for purposes of this chapter,
12 except that the amount prescribed by sections 165(h)(1)
13 (relating to the limitation per casualty) of the Internal
14 Revenue Code shall be a \$100 limitation per casualty, and
15 section 165(h)(3)(A) and (B) (both of which relate to special
16 rules for personal casualty gains and losses in federally
17 declared disasters) of the Internal Revenue Code shall not be
18 operative for the purposes of this chapter. Section 165 as
19 operative for this chapter shall also apply to losses sustained
20 from the sale of stocks or other interests issued through the



1 exercise of the stock options or warrants granted by a qualified
2 high technology business as defined in section 235-7.3.

3 (k) Section 168 (with respect to the accelerated cost
4 recovery system) of the Internal Revenue Code shall be operative
5 for purposes of this chapter, except that sections 168(j)
6 (relating to property on Indian reservations), 168(k) (relating
7 to the special allowance for certain property acquired during
8 the period specified therein), 168(m) (relating to the special
9 allowance for certain reuse and recycling property), and 168(n)
10 (relating to the special allowance for qualified disaster
11 assistance property) of the Internal Revenue Code shall not be
12 operative for purposes of this chapter.

13 (l) Section 172 (with respect to net operating loss
14 deductions) of the Internal Revenue Code shall be operative for
15 purposes of this chapter, as further provided in section 235-
16 7(d), except that section 172(b)(1)(J) and (j) (both of which
17 relate to qualified disaster losses) of the Internal Revenue
18 Code shall not be operative for purposes of this chapter.

19 (m) Section 179 (with respect to the election to expense
20 certain depreciable business assets) of the Internal Revenue



1 Code shall be operative for purposes of this chapter, except as
2 provided in this subsection:

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

6 (2) The amount at which the reduction in limitation
7 provided in section 179(b)(2) begins shall exceed
8 \$200,000 for any taxable year; and

9 (3) The following shall not be operative for purposes of
10 this chapter:

11 (A) Defining section 179 property to include computer
12 software in section 179(d)(1);

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

14 (C) Irrevocable election in section 179(c)(2); and

15 (D) Special rules for qualified disaster assistance
16 property in section 179(e).

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

20 (o) Section 219 (with respect to retirement savings) of
21 the Internal Revenue Code shall be operative for the purpose of



1 this chapter. For the purpose of computing the limitation on
2 the deduction for active participants in certain pension plans
3 for state income tax purposes, adjusted gross income as used in
4 section 219 as operative for this chapter means federal adjusted
5 gross income.

6 (p) Section 220 (with respect to medical savings accounts)
7 of the Internal Revenue Code shall be operative for the purpose
8 of this chapter, but only with respect to medical services
9 accounts that have been approved by the Secretary of the
10 Treasury of the United States.

11 (q) Section 265 (with respect to expenses and interest
12 relating to tax-exempt income) of the Internal Revenue Code
13 shall be operative for purposes of this chapter; except that
14 section 265(b)(3)(G) and (7) shall not be operative and section
15 265 shall not apply to expenses for royalties and other income
16 derived from any patents, copyrights, and trade secrets by an
17 individual or a qualified high technology business as defined in
18 section 235-7.3. Such expenses shall be deductible.

19 (r) Section 280E (with respect to expenditures in
20 connection with the illegal sale of drugs) of the Internal
21 Revenue Code shall be operative for the purposes of this



1 chapter, except section 280E shall not be operative with respect
2 to the production and sale of medical marijuana and manufactured
3 marijuana products by dispensaries licensed under chapter 329D
4 and their subcontractors, which shall include subcontracting
5 operators as defined in section 329D-1.

6 [~~r~~] (s) Section 382 (with respect to limitation on net
7 operating loss carryforwards and certain built-in losses
8 following ownership change) of the Internal Revenue Code shall
9 be operative for the purposes of this chapter, except that
10 section 382(n) shall not be operative for purposes of this
11 chapter.

12 [~~s~~] (t) Section 408A (with respect to Roth Individual
13 Retirement Accounts) of the Internal Revenue Code shall be
14 operative for the purposes of this chapter, except that section
15 408A(d)(3)(A)(iii) shall not be operative for purposes of this
16 chapter. For the purposes of determining the aggregate amount
17 of contributions to a Roth Individual Retirement Account or
18 qualified rollover contribution to a Roth Individual Retirement
19 Account from an individual retirement plan other than a Roth
20 Individual Retirement Account, adjusted gross income as used in



1 section 408A as operative for this chapter means federal
2 adjusted gross income.

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

14 In administering sections 401 to 419A (with respect to
15 deferred compensation) of the Internal Revenue Code, Public Law
16 93-406, section 1017(i), shall be operative for the purposes of
17 this chapter.

18 In administering section 402 (with respect to the
19 taxability of beneficiary of employees' trust) of the Internal
20 Revenue Code, the tax imposed on lump sum distributions by
21 section 402(e) of the Internal Revenue Code shall be operative



1 for the purposes of this chapter and the tax imposed therein is
2 hereby imposed by this chapter at the rate determined under this
3 chapter.

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

13 [~~(v)~~] (w) Section 451 (which provides general rules for
14 taxable year of inclusion) of the Internal Revenue Code shall be
15 operative, except that the provisions of sections 451(i)(3) and
16 451(i)(6), as they relate to a qualified electric utility, shall
17 not be operative for purposes of this chapter.

18 [~~(w)~~] (x) In administering section 457 (with respect to
19 compensation plans of state and local governments and tax-exempt
20 organizations) of the Internal Revenue Code, any funds that
21 represent pre-tax employee deferrals or contributions that are



1 distributed from the deferred compensation plan and used solely
2 to obtain retirement credits under the state employees'
3 retirement system shall not be treated as a rollover for
4 purposes of section 457(e)(16)(A) of the Internal Revenue Code
5 and those funds shall be subject to income tax under this
6 chapter.

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

13 [~~(y)~~] (z) Section 469 (with respect to passive activities
14 and credits limited) of the Internal Revenue Code shall be
15 operative for the purposes of this chapter. For the purpose of
16 computing the offset for rental real estate activities for state
17 income tax purposes, adjusted gross income as used in section
18 469 as operative for this chapter means federal adjusted gross
19 income.

20 [~~(z)~~] (aa) Sections 512 to 514 (with respect to taxation
21 of business income of certain exempt organizations) of the



1 Internal Revenue Code shall be operative for the purposes of
2 this chapter as provided in this subsection.

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

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

15 [~~aa~~] (bb) Section 521 (with respect to cooperatives) and
16 subchapter T (sections 1381 to 1388, with respect to
17 cooperatives and their patrons) of the Internal Revenue Code
18 shall be operative for the purposes of this chapter as to any
19 cooperative fully meeting the requirements of section 421-23,
20 except that Internal Revenue Code section 521 cooperatives need
21 not be organized in Hawaii.



1 [~~(bb)~~] (cc) Sections 527 (with respect to political
2 organizations) and 528 (with respect to certain homeowners
3 associations) of the Internal Revenue Code shall be operative
4 for the purposes of this chapter and the taxes imposed in each
5 section are hereby imposed by this chapter at the rates
6 determined under section 235-71.

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

11 [~~(dd)~~] (ee) Section 529A (with respect to qualified ABLE
12 programs) shall be operative for the purposes of this chapter,
13 except that section 529A(c)(3) (with respect to additional tax
14 for distributions not used for disability expenses) shall not be
15 operative.

16 [~~(ee)~~] (ff) Section 530 (with respect to Coverdell
17 education savings accounts) of the Internal Revenue Code shall
18 be operative for the purposes of this chapter. For the purpose
19 of determining the maximum amount that a contributor could make
20 to an education individual retirement account for state income
21 tax purposes, modified adjusted gross income as used in section



1 530 as operative for this chapter means federal modified
2 adjusted gross income as defined in section 530."

3 SECTION 5. Section 237-24.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§237-24.3 Additional amounts not taxable.** In addition to
6 the amounts not taxable under section 237-24, this chapter shall
7 not apply to:

8 (1) Amounts received from the loading, transportation, and
9 unloading of agricultural commodities shipped for a
10 producer or produce dealer on one island of this State
11 to a person, firm, or organization on another island
12 of this State. The terms "agricultural commodity",
13 "producer", and "produce dealer" shall be defined in
14 the same manner as they are defined in section 147-1;
15 provided that agricultural commodities need not have
16 been produced in the State;

17 (2) Amounts received by the manager, submanager, or board
18 of directors of:

19 (A) An association of owners of a condominium
20 property regime established in accordance with
21 chapter 514A or 514B; or



- 1 (B) A nonprofit homeowners or community association
- 2 incorporated in accordance with chapter 414D or
- 3 any predecessor thereto and existing pursuant to
- 4 covenants running with the land,
- 5 in reimbursement of sums paid for common expenses;
- 6 (3) Amounts received or accrued from:
 - 7 (A) The loading or unloading of cargo from ships,
 - 8 barges, vessels, or aircraft, whether or not the
 - 9 ships, barges, vessels, or aircraft travel
 - 10 between the State and other states or countries
 - 11 or between the islands of the State;
 - 12 (B) Tugboat services including pilotage fees
 - 13 performed within the State, and the towage of
 - 14 ships, barges, or vessels in and out of state
 - 15 harbors, or from one pier to another; and
 - 16 (C) The transportation of pilots or governmental
 - 17 officials to ships, barges, or vessels offshore;
 - 18 rigging gear; checking freight and similar
 - 19 services; standby charges; and use of moorings
 - 20 and running mooring lines;



1 (4) Amounts received by an employee benefit plan by way of
2 contributions, dividends, interest, and other income;
3 and amounts received by a nonprofit organization or
4 office, as payments for costs and expenses incurred
5 for the administration of an employee benefit plan;
6 provided that this exemption shall not apply to any
7 gross rental income or gross rental proceeds received
8 after June 30, 1994, as income from investments in
9 real property in this State; and provided further that
10 gross rental income or gross rental proceeds from
11 investments in real property received by an employee
12 benefit plan after June 30, 1994, under written
13 contracts executed prior to July 1, 1994, shall not be
14 taxed until the contracts are renegotiated, renewed,
15 or extended, or until after December 31, 1998,
16 whichever is earlier. For the purposes of this
17 paragraph, "employee benefit plan" means any plan as
18 defined in section 1002(3) of title 29 of the United
19 States Code, as amended;

20 (5) Amounts received for purchases made with United States
21 Department of Agriculture food coupons under the



1 federal food stamp program, and amounts received for
2 purchases made with United States Department of
3 Agriculture food vouchers under the Special
4 Supplemental Foods Program for Women, Infants and
5 Children;

6 (6) Amounts received by a hospital, infirmary, medical
7 clinic, health care facility, pharmacy, or a
8 practitioner licensed to administer the drug to an
9 individual for selling prescription drugs or
10 prosthetic devices to an individual; provided that
11 this paragraph shall not apply to any amounts received
12 for services provided in selling prescription drugs or
13 prosthetic devices. As used in this paragraph:

14 "Prescription drugs" are those drugs defined
15 under section 328-1 and dispensed by filling or
16 refilling a written or oral prescription by a
17 practitioner licensed under law to administer the drug
18 and sold by a licensed pharmacist under section 328-16
19 or practitioners licensed to administer drugs; ~~and~~
20 provided that "prescription drugs" shall not include



1 marijuana or manufactured marijuana products
2 authorized pursuant to chapters 329 and 329D.

3 "Prosthetic device" means any artificial device
4 or appliance, instrument, apparatus, or contrivance,
5 including their components, parts, accessories, and
6 replacements thereof, used to replace a missing or
7 surgically removed part of the human body, which is
8 prescribed by a licensed practitioner of medicine,
9 osteopathy, or podiatry and [~~which~~] that is sold by
10 the practitioner or [~~which~~] that is dispensed and sold
11 by a dealer of prosthetic devices; provided that
12 "prosthetic device" shall not mean any auditory,
13 ophthalmic, dental, or ocular device or appliance,
14 instrument, apparatus, or contrivance;

15 (7) Taxes on transient accommodations imposed by chapter
16 237D and passed on and collected by operators holding
17 certificates of registration under that chapter;

18 (8) Amounts received as dues by an unincorporated
19 merchants association from its membership for
20 advertising media, promotional, and advertising costs
21 for the promotion of the association for the benefit



1 of its members as a whole and not for the benefit of
2 an individual member or group of members less than the
3 entire membership;

4 (9) Amounts received by a labor organization for real
5 property leased to:

6 (A) A labor organization; or

7 (B) A trust fund established by a labor organization
8 for the benefit of its members, families, and
9 dependents for medical or hospital care, pensions
10 on retirement or death of employees,
11 apprenticeship and training, and other membership
12 service programs.

13 As used in this paragraph, "labor organization" means
14 a labor organization exempt from federal income tax
15 under section 501(c)(5) of the Internal Revenue Code,
16 as amended;

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



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

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

12 1. By adding three new definitions to be appropriately
 13 inserted and to read:

14 "Advanced practice registered nurse" means an advanced
 15 practice registered nurse with prescriptive authority as
 16 described in section 457-8.6.

17 "Bona fide advanced practice registered nurse-patient"
 18 means a relationship in which the advanced practice registered
 19 nurse has ongoing responsibility for the assessment, care, and
 20 treatment of a qualifying patient's debilitating medical



1 condition with respect to the medical use of marijuana, which
2 means the advanced practice registered nurse:

3 (1) Has completed a full assessment of the qualifying
4 patient's medical history and current medical
5 condition, including conducting a review of the
6 qualifying patient's medical records related to the
7 debilitating medical condition and conducting an in-
8 person physical examination;

9 (2) Provides follow up care and treatment to the
10 qualifying patient and assesses the qualifying
11 patient's condition during the course of the
12 qualifying patient's medical use of marijuana; and

13 (3) Maintains records of the qualifying patient's
14 treatment and condition in accordance with medically
15 accepted standards.

16 "Bona fide physician-patient relationship" means a
17 relationship in which the physician has ongoing responsibility
18 for the assessment, care, and treatment of a qualifying
19 patient's debilitating medical condition with respect to the
20 medical use of marijuana, which means the physician:



- 1 (1) Has completed a full assessment of the qualifying
2 patient's medical history and current medical
3 condition, including conducting a review of the
4 qualifying patient's medical records related to the
5 debilitating medical condition and conducting an in-
6 person physical examination;
- 7 (2) Provides follow up care and treatment to the
8 qualifying patient and assesses the qualifying
9 patient's condition during the course of the
10 qualifying patient's medical use of marijuana; and
- 11 (3) Maintains records of the qualifying patient's
12 treatment and condition in accordance with medically
13 accepted standards."

14 2. By amending the definition of "debilitating medical
15 condition" to read:

16 ""Debilitating medical condition" means:

- 17 (1) Cancer, glaucoma, positive status for human
18 immunodeficiency virus, acquired immune deficiency
19 syndrome, or the treatment of these conditions;



1 (2) A chronic or debilitating disease or medical condition
2 or its treatment that produces one or more of the
3 following:

4 (A) Cachexia or wasting syndrome;

5 (B) Severe pain;

6 (C) Severe nausea;

7 (D) Seizures, including those characteristic of
8 epilepsy;

9 (E) Severe and persistent muscle spasms, including
10 those characteristic of multiple sclerosis or
11 Crohn's disease; or

12 (F) Post-traumatic stress disorder; or

13 (3) Any other medical condition approved by the department
14 of health pursuant to administrative rules in response
15 to a request from a physician or advanced practice
16 registered nurse or potentially qualifying patient."

17 3. By amending the definition of "physician" to read:

18 ""Physician" means a person who is licensed to practice
19 under chapter 453 and is licensed with authority to prescribe
20 drugs and is registered under section 329-32. "Physician" does
21 not include physician's assistant [~~or advanced practice~~



1 ~~registered nurse with prescriptive authority]~~ as described in
2 section 453-5.3 [~~er 457-8.6~~]."

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

5 ""Primary caregiver" means a person eighteen years of age
6 or older, other than the qualifying patient and the qualifying
7 patient's physician[~~r~~] or advanced practice registered nurse,
8 who has agreed to undertake responsibility for managing the
9 well-being of the qualifying patient with respect to the medical
10 use of marijuana. In the case of a minor or an adult lacking
11 legal capacity, the primary caregiver shall be a parent,
12 guardian, or person having legal custody."

13 5. By amending the definition of "qualifying patient" to
14 read:

15 ""Qualifying patient" means a person who has been diagnosed
16 by a physician or advanced practice registered nurse as having a
17 debilitating medical condition."

18 6. By amending the definition of "written certification"
19 to read:

20 ""Written certification" means the qualifying patient's
21 medical records or a statement signed by a qualifying patient's



1 physician[~~r~~] or advanced practice registered nurse, stating that
 2 in the physician's or advanced practice registered nurse's
 3 professional opinion, the qualifying patient has a debilitating
 4 medical condition and the potential benefits of the medical use
 5 of marijuana would likely outweigh the health risks for the
 6 qualifying patient. The department of health may require,
 7 through its rulemaking authority, that all written
 8 certifications comply with a designated form. "Written
 9 certifications" are valid for only one year from the time of
 10 signing."

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

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

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

17 (1) The qualifying patient has been diagnosed by a
 18 physician or advanced practice registered nurse as
 19 having a debilitating medical condition;

20 (2) The qualifying patient's physician or advanced
 21 practice registered nurse has certified in writing



1 that, in the physician's or advanced practice
2 registered nurse's professional opinion, the potential
3 benefits of the medical use of marijuana would likely
4 outweigh the health risks for the particular
5 qualifying patient; and

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

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

10 (1) The qualifying patient's physician or advanced
11 practice registered nurse has explained the potential
12 risks and benefits of the medical use of marijuana to
13 the qualifying patient and to a parent, guardian, or
14 person having legal custody of the qualifying patient;
15 and

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

18 (A) Allow the qualifying patient's medical use of
19 marijuana;

20 (B) Serve as the qualifying patient's primary
21 caregiver; and



1 (C) Control the acquisition of the marijuana, the
2 dosage, and the frequency of the medical use of
3 marijuana by the qualifying patient."

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

5 "(d) For the purposes of this section, "transport" means
6 the transportation of marijuana, usable marijuana, or any
7 manufactured marijuana product between:

8 (1) A qualifying patient and the qualifying patient's
9 primary caregiver; [~~or~~]

10 (2) The production centers and the retail dispensing
11 locations under a dispensary licensee's license; or

12 (3) A production center or retail dispensing location and
13 a certified laboratory for the purpose of laboratory
14 testing;

15 provided that "transport" does not include the interisland
16 transportation of marijuana, usable marijuana, or any
17 manufactured marijuana product[~~or~~], except when done for the
18 purpose of laboratory testing, pursuant to section 329D-8, as
19 permitted under section 329D-6(m) and subject to section 329D-
20 6(j), and with the understanding that state law and its



1 protections do not apply outside of the jurisdictional limits of
2 the State."

3 SECTION 8. Section 329-123, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) Physicians or advanced practice registered nurses who
6 issue written certifications shall provide, in each written
7 certification, the name, address, patient identification number,
8 and other identifying information of the qualifying patient.

9 The department of health shall require, in rules adopted
10 pursuant to chapter 91, that all written certifications comply
11 with a designated form completed by or on behalf of a qualifying
12 patient. The form shall require information from the applicant,
13 primary caregiver, and physician or advanced practice registered
14 nurse as specifically required or permitted by this chapter.

15 The form shall require the address of the location where the
16 marijuana is grown and shall appear on the registry card issued
17 by the department of health. The certifying physician or
18 advanced practice registered nurse shall be required to have a
19 bona fide physician-patient relationship or bona fide advanced
20 practice registered nurse-patient relationship with the



1 qualifying patient. All current active medical marijuana
2 permits shall be honored through their expiration date.

3 (b) Qualifying patients shall register with the department
4 of health. The registration shall be effective until the
5 expiration of the certificate issued by the department of health
6 and signed by the physician[-] or advanced practice registered
7 nurse. Every qualifying patient shall provide sufficient
8 identifying information to establish the personal identities of
9 the qualifying patient and the primary caregiver. Qualifying
10 patients shall report changes in information within ten working
11 days. Every qualifying patient shall have only one primary
12 caregiver at any given time. The department of health shall
13 issue to the qualifying patient a registration certificate, and
14 shall charge \$35 per year."

15 SECTION 9. Section 329-125, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) A qualifying patient or the primary caregiver may
18 assert the medical use of marijuana as an affirmative defense to
19 any prosecution involving marijuana under this [+]part[+], part
20 IV, or chapter 712; provided that the qualifying patient or the



1 primary caregiver strictly complied with the requirements of
2 this part."

3 SECTION 10. Section 329-125.6, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) An owner or employee of a medical marijuana
6 dispensary that is licensed under chapter 329D may assert the
7 production or distribution of medical marijuana as an
8 affirmative defense to any prosecution involving marijuana under
9 this part, part IV, chapter 329D, or chapter 712; provided that
10 the owner or employee strictly complied with the requirements of
11 chapter 329D and any administrative rules adopted thereunder."

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

14 "[+]§329-126[+] **Protections afforded to a treating**
15 **physician[-] or advanced practice registered nurse.** No
16 physician or advanced practice registered nurse shall be subject
17 to arrest or prosecution, penalized in any manner, or denied any
18 right or privilege for providing written certification for the
19 medical use of marijuana for a qualifying patient; provided
20 that:



- 1 (1) The physician or advanced practice registered nurse
2 has diagnosed the patient as having a debilitating
3 medical condition, as defined in section 329-121;
- 4 (2) The physician or advanced practice registered nurse
5 has explained the potential risks and benefits of the
6 medical use of marijuana, as required under section
7 329-122;
- 8 (3) The written certification is based upon the
9 physician's or advanced practice registered nurse's
10 professional opinion after having completed a full
11 assessment of the patient's medical history and
12 current medical condition made in the course of a bona
13 fide physician-patient relationship[?] or bona fide
14 advanced practice registered nurse-patient
15 relationship; and
- 16 (4) The physician or advanced practice registered nurse
17 has complied with the registration requirements of
18 section 329-123."

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



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

11 SECTION 13. Section 329D-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding three new definitions to be appropriately
14 inserted and to read:

15 "Enclosed indoor facility" means a permanent, stationary
16 structure with a solid floor, rigid exterior walls that encircle
17 the entire structure on all sides, and a roof that protects the
18 entire interior area from any exterior view and elements of
19 weather. An enclosed indoor facility excludes a greenhouse or
20 shade house that does not comply with these requirements.



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

8 "Subcontractor" or "contractor" means any person or entity
 9 with whom the dispensary licensee has a contract to perform any
 10 of its production center or retail dispensing location
 11 operations; provided that it does not include a person or entity
 12 retained by a dispensary licensee to perform services ancillary
 13 to the operations of a dispensary, including but not limited to
 14 construction, installation, or maintenance of the dispensary's
 15 facility, security systems, or tracking system, and laboratory
 16 testing."

17 2. By amending the definition of "manufactured marijuana
 18 product" to read:

19 "Manufactured marijuana product" means any capsule,
 20 lozenge, oil or oil extract, tincture, ointment or skin lotion,
 21 [~~or~~] pill, transdermal patch, or pre-filled and sealed container



1 used to aerosolize and deliver marijuana orally, such as an
2 inhaler or nebulizer, that has been manufactured using
3 marijuana[-], or any other products as specified by the
4 department pursuant to section 329D-10(a)(9)."

5 SECTION 14. Section 329D-6, Hawaii Revised Statutes, is
6 amended as follows:

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

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

13 2. By amending subsection (g) to read:

14 "(g) In all dispensary facilities, only the licensee, if
15 an individual, the registered employees of the dispensary
16 licensee, and the registered employees of [~~the~~] a subcontracted
17 production center or retail dispensing [~~locations~~] location, and
18 employees of a certified laboratory for testing purposes, shall
19 be permitted to touch or handle any marijuana or manufactured
20 marijuana products, except that a qualifying patient or the
21 primary caregiver of a qualifying patient may receive



1 manufactured marijuana products at a retail dispensing location
2 following completion of a sale."

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

4 "(m) A dispensary shall not transport marijuana or
5 manufactured marijuana products to another county or another
6 island[-] except for the purposes of laboratory testing pursuant
7 to section 329D-8 if no certified laboratory is located in the
8 county or on the island where the dispensary is located, subject
9 to subsection (j); provided further that a dispensary shall only
10 transport samples of marijuana and manufactured marijuana
11 products for laboratory testing for purposes of this subsection
12 in an amount and manner prescribed by the department in rules
13 adopted pursuant to this chapter, and with the understanding
14 that state law and its protections do not apply outside of the
15 jurisdictional limits of the State."

16 SECTION 15. Section 329D-10, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The types of medical marijuana products that may be
19 manufactured and distributed pursuant to this chapter shall be
20 limited to:

21 (1) Capsules;



- 1 (2) Lozenges;
- 2 (3) Pills;
- 3 (4) Oils and oil extracts;
- 4 (5) Tinctures;
- 5 (6) Ointments and skin lotions; [~~and~~]
- 6 (7) Transdermal patches;
- 7 (8) Pre-filled and sealed containers used to aerosolize
- 8 and deliver marijuana orally, such as in an inhaler or
- 9 nebulizer; and
- 10 [~~(7)~~] (9) Other products as specified by the department."

11 SECTION 16. Section 329D-12, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "[~~§~~§329D-12[~~§~~] **Background checks.** (a) Each applicant
 14 and licensee for a medical marijuana dispensary license,
 15 including the individual applicant and all officers, directors,
 16 shareholders with at least twenty-five per cent ownership
 17 interest or more, members, and managers of an entity applicant;
 18 each employee of a medical marijuana dispensary; each employee
 19 of a subcontracted production center [~~and~~ or retail dispensing
 20 location [~~employee~~]; all officers, directors, shareholders with
 21 at least twenty-five per cent ownership interest or more in a



1 subcontracted production center or retail dispensing location;
 2 and any person permitted to enter and remain in dispensary
 3 facilities pursuant to section 329D-15(a)(4) or 329D-16(a)(3),
 4 shall be subject to background checks conducted by the
 5 department or its designee, including but not limited to
 6 criminal history record checks in accordance with section 846-
 7 2.7. The person undergoing the background check shall provide
 8 written consent and all applicable processing fees to the
 9 department or its designee to conduct the background checks.

10 (b) This section shall not apply to:

11 (1) Qualifying patients and their primary caregivers who
 12 enter or remain on the premises of a retail dispensing
 13 location for the purpose of a transaction conducted
 14 pursuant to sections 329D-6 and 329D-13; or

15 (2) Government officials and employees acting in an
 16 official capacity and employees of a certified
 17 laboratory who enter or remain on the premises of a
 18 retail dispensing location or production center for
 19 any purpose authorized by this chapter."

20 SECTION 17. Section 329D-27, Hawaii Revised Statutes, is
 21 amended to read as follows:



1 "~~§329D-27~~ **Administrative rules.** (a) The department
2 shall adopt rules pursuant to chapter 91 to effectuate the
3 purposes of this chapter.

4 (b) No later than January 4, 2016, the department shall
5 adopt interim rules, which shall be exempt from chapter 91 and
6 chapter 201M, to effectuate the purposes of this chapter;
7 provided that the interim rules shall remain in effect until
8 July 1, 2018, or until rules are adopted pursuant ~~to~~
9 subsection (a), whichever occurs sooner.

10 (c) The department may amend the interim rules, and the
11 amendments shall be exempt from chapter 91 and chapter 201M, to
12 effectuate the purposes of this chapter; provided that any
13 amended interim rules shall remain in effect until July 1, 2018,
14 or until rules are adopted pursuant to subsection (a), whichever
15 occurs sooner."

16 **PART III**

17 SECTION 18. Chapter 304A, Hawaii Revised Statutes, is
18 amended by adding a new section to part IV to be appropriately
19 designated and to read as follows:

20 "**§304A- Medical marijuana testing and research programs;**
21 **established.** (a) To the extent permitted by federal and state



1 law, and subject to applicable certification by the department
2 of health, the University of Hawaii may establish medical
3 marijuana testing and research programs that qualify as
4 commercial enterprises of the university under section 304A-113
5 that provide services to state-approved medical marijuana
6 dispensaries, including assessment of marijuana plant
7 cannabinoid content and concentration, purity of manufactured
8 marijuana products, or additional testing requested by the
9 department of health. The university may assess fees or other
10 charges for services. The fees and charges shall be fair and
11 equitable with respect to the level and quality of services and
12 commercially reasonable. In establishing or amending fees or
13 charges for these services, the university shall be exempt from
14 the requirements of chapter 91. The fees and charges may be
15 established at an open meeting of the board of regents subject
16 to chapter 92.

17 (b) The fees and charges collected pursuant to subsection
18 (a) shall be deposited into the University of Hawaii commercial
19 enterprises revolving fund established by section 304A-2251.

20 (c) To the extent permitted by federal and state law, and
21 subject to applicable regulations, compliance standards, and



1 protocols on research activity, the university may conduct
2 research on the efficacy of medical marijuana use, its health
3 outcomes and social impacts, and related safety issues.

4 (d) This section shall be construed to provide
5 discretionary authority to the university, and nothing in this
6 section shall require the university to engage in any activity
7 that might jeopardize its eligibility to receive any form of
8 state or federal assistance or benefit."

9 SECTION 19. Section 304A-2251, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§304A-2251 University of Hawaii commercial enterprises**
12 **revolving fund.** There is established the University of Hawaii
13 commercial enterprises revolving fund into which shall be
14 deposited all revenues derived from the operation of commercial
15 enterprises by university programs[+] and all fees and charges
16 collected pursuant to section 304A- . Revenues deposited into
17 this fund may be expended by the university for all costs and
18 expenses associated with the operation of the enterprises,
19 including hiring personnel, renovating commercial space, and
20 purchasing merchandise, supplies, and equipment, without regard
21 to chapters 76, 78, 89, 103, and 103D. Any law to the contrary



1 notwithstanding, the university may transfer all funds at its
 2 disposal, with the exception of general funds and University of
 3 Hawaii tuition and fees special fund moneys, into the revolving
 4 fund to finance the establishment of new commercial enterprises;
 5 except that no more than ten per cent of the tuition and fees
 6 special fund moneys may be loaned to the revolving fund to
 7 finance the establishment of new commercial enterprises.
 8 Revenues not expended as provided in this section may be
 9 transferred to other university funds to be expended for the
 10 general benefit of the university."

11 **PART IV**

12 SECTION 20. (a) There is established within the public
 13 policy center in the college of social sciences at the
 14 University of Hawaii at Manoa for administrative purposes a
 15 legislative oversight working group to develop and recommend
 16 legislation to improve the medical marijuana dispensary system
 17 in the State to ensure safe and legal access to medical
 18 marijuana for qualified patients.

19 (b) The working group shall include the following members:

20 (1) The director of health, or the director's designee;



- 1 (2) The chairperson of the Senate committee on commerce,
2 consumer protection, and health, who shall serve as
3 co-chair of the working group;
- 4 (3) The chairperson of the house of representatives
5 committee on health, who shall serve as co-chair of
6 the working group;
- 7 (4) A state senator who is selected by the president of
8 the Senate to serve on the working group;
- 9 (5) A state representative who is selected by the speaker
10 of the house of representatives to serve on the
11 working group;
- 12 (6) A representative from the University of Hawaii college
13 of tropical agriculture and human resources or
14 University of Hawaii cancer center;
- 15 (7) A representative of the Drug Policy Forum of Hawaii;
- 16 (8) A physician participating in Hawaii's medical
17 marijuana program;
- 18 (9) Two participants in Hawaii's medical marijuana
19 program, one of whom is a patient who is over the age
20 of eighteen, and one of whom is a parent or guardian
21 of a patient who is under the age of ten;



- 1 (10) A primary caregiver participating in Hawaii's medical
2 marijuana program;
- 3 (11) An advanced practice registered nurse participating in
4 Hawaii's medical marijuana program;
- 5 (12) Two representatives of the Hawaii Dispensary Alliance,
6 one of whom is a resident of the city and county of
7 Honolulu, and one of whom is a resident of a county in
8 the State other than the city and county of Honolulu;
- 9 (13) Two representatives of the medical marijuana
10 dispensary industry, one from each of the remaining
11 counties not represented pursuant to paragraph (12);
- 12 (14) One representative from a laboratory capable of
13 testing marijuana or manufactured marijuana products;
14 and
- 15 (15) Two representatives of local law enforcement, one of
16 whom is an officer for the Honolulu police department,
17 and one of whom is an officer for a police department
18 on a neighbor island.
- 19 (c) The working group shall address issues related to the
20 medical marijuana dispensary program in the State, including
21 operations, edibles, and any issues the working group finds



1 relevant as it relates to the medical marijuana dispensary
2 program.

3 (d) The working group is requested to submit an interim
4 report of its findings and recommendations, including any
5 proposed legislation, to the legislature no later than twenty
6 days prior to the convening of the regular session of 2017, and
7 a final report of the working group's findings and
8 recommendations, including any proposed legislation, to the
9 legislature no later than twenty days prior to the convening of
10 the regular session of 2018.

11 (e) The members of the working group shall serve without
12 compensation.

13 (f) The legislative oversight working group shall cease to
14 exist on June 30, 2018.

15 **PART V**

16 SECTION 21. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 22. This Act shall take effect on July 1, 2050;
19 provided that section 4 shall apply to taxable years beginning
20 after December 31, 2015.



Report Title:

Medical Marijuana; Dispensaries; Paraphernalia; Taxation;
Working Group

Description:

Requires the department of health and licensed medical marijuana dispensaries to provide aggregated de-identified data to the department of business, economic development and tourism upon request. Amends various definitions and provisions relating to medical marijuana dispensary operations, paraphernalia, transport, and testing. Provides that advanced practice registered nurses may certify patients for medical marijuana use. Excludes dispensaries from enterprise zone tax exemptions. Specifies the application and non-application of the Internal Revenue Code to expenses related to the production and sale of medical marijuana and manufactured marijuana products for state income tax purposes. Clarifies that amounts received for the sale of marijuana or manufactured marijuana products are not exempt from the state general excise tax. Allows the University of Hawaii to establish medical marijuana testing and research programs that qualify as commercial enterprises to provide testing services for medical marijuana dispensaries. Establishes a legislative oversight working group. Effective 07/01/2050. (SD1)

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

