

JAN 25 2017

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 Laws
2 of Hawaii 2015, codified as chapter 329D, Hawaii Revised
3 Statutes, established a licensing scheme for a statewide system
4 of medical marijuana dispensaries to ensure access to medical
5 marijuana for qualifying patients. Act 230, Session Laws of
6 Hawaii 2016, amended chapter 329D, Hawaii Revised Statutes, and
7 other sections of the Hawaii Revised Statutes to clarify the
8 system's implementation. Generally, Act 241 required the
9 department of health to announce the selection of medical
10 marijuana dispensary licensees by April 15, 2016, and to allow
11 retail dispensing of medical marijuana from July 15, 2016.
12 However, the department of health has yet to issue to any
13 medical marijuana dispensary licensee a notice to proceed with
14 the planting or cultivation of medical marijuana, and has been
15 unable to provide assurances that the dispensary program
16 envisioned by Acts 241 and 230 will be implemented in the near
17 future.



1 The legislature also finds that the delay in implementing
2 the medical marijuana dispensing system is affecting patient
3 access to medical marijuana. One cause of the delay is the
4 department of health's struggle to implement the computer
5 tracking system required pursuant to Acts 241 and 230. The
6 legislature notes that although the computer tracking system is
7 intended to serve an important role in ensuring the safety of
8 the product, patient, and public, the need for the system must
9 be balanced against the patients' need to receive their
10 medicine. Recently, some medical marijuana dispensary programs
11 on the mainland United States experienced failures of their
12 computer tracking systems, but the affected jurisdictions
13 fortunately had pre-determined alternative systems to track
14 marijuana product sales during any tracking system shutdown.
15 The legislature believes that the department of health should
16 also have a pre-determined alternative system to track marijuana
17 product sales so that qualified patients will have uninterrupted
18 access to medical marijuana during any shutdown of the initial
19 tracking system in this State.

20 The legislature further finds that, although laboratory
21 testing of medical marijuana is necessary to ensure product and



1 patient safety, testing should be performed within reasonable
2 scope and tolerance levels. The State of Oregon has implemented
3 testing standards that are appropriate, practical, and evidence-
4 based. Unreasonably strict and expansive testing standards will
5 lead to unnecessarily high production costs that will result in
6 medical marijuana that is unaffordable for patient use and may
7 push patients to use the black market instead of legal
8 dispensaries.

9 The legislature believes that establishing the office of
10 medical marijuana administration, to be responsible for
11 implementing the medical marijuana dispensary system and
12 administering the medical marijuana patient registry, will
13 facilitate the efficient and fair implementation of the system.

14 Accordingly, the purpose of this Act is to:

15 (1) Establish the office of medical marijuana
16 administration, which shall be responsible for
17 implementing the medical marijuana dispensary system
18 and administering the medical marijuana patient
19 registry;

20 (2) Amend certain dates and deadlines in existing law to
21 address the delays in implementation;



- 1 (3) Establish new deadlines for the department of health
2 to implement the dispensary system, including
3 deadlines for implementation of the department's
4 computer software tracking system and laboratory
5 testing program;
- 6 (4) Provide for an alternative means to track marijuana
7 sales during any shutdown of the department of
8 health's computer tracking system; and
- 9 (5) Amend requirements for laboratory standards and
10 testing to ensure product and patient safety at
11 reasonable tolerance levels with reasonable cost
12 implications.

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

16 "§329D- Office of medical marijuana administration;
17 established; duties. (a) There is established within the
18 department the office of medical marijuana administration, which
19 shall report directly to the deputy director for health
20 resources.



1 (b) The office of medical marijuana administration shall
2 administer medical marijuana dispensary licensure and regulation
3 pursuant to this chapter and the registration of qualifying
4 patients pursuant to section 329-123."

5 SECTION 3. Section 329-130, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) After December 31, [~~2018,~~] 2019, a qualifying patient
8 shall obtain medical marijuana or manufactured marijuana
9 products only:

10 (1) From a dispensary licensed pursuant to chapter 329D;
11 provided that the marijuana shall be purchased and
12 paid for at the time of purchase; or

13 (2) By cultivating marijuana in an amount that does not
14 exceed an adequate supply for the qualifying patient,
15 pursuant to section 329-122.

16 After December 31, [~~2018,~~] 2019, no primary caregiver shall be
17 authorized to cultivate marijuana for any qualifying patient."

18 SECTION 4. Section 329D-2, Hawaii Revised Statutes, is
19 amended by amending subsection (j) to read as follows:

20 "(j) Notwithstanding subsection (d), the department shall
21 determine whether, based on the qualifying patient need,



1 additional dispensary licenses shall be offered to qualified
 2 applicants in the State after October 1, [~~2017~~] 2018; provided
 3 that the department shall make available not more than one
 4 license per five hundred qualifying patients residing in any
 5 single county[~~]~~; provided further that in considering whether
 6 to award a new license, the department shall consider an
 7 applicant's capability to serve and supply medical marijuana to
 8 qualified patients in an underserved geographical area of a
 9 county."

10 SECTION 5. Section 329D-6, Hawaii Revised Statutes, is
 11 amended by amending subsections (j) and (k) to read as follows:

12 "(j) The department shall establish, maintain, and control
 13 a computer software tracking system that shall have real time,
 14 [~~twenty-four hour~~] twenty-four-hour access to the data of all
 15 dispensaries.

16 (1) The computer software tracking system shall collect
 17 data relating to:

18 [~~(1)~~] (A) The total amount of marijuana in possession
 19 of all dispensaries from either seed or immature
 20 plant state, including all plants that are
 21 derived from cuttings or cloning, until the



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1 marijuana, marijuana plants, or manufactured
2 marijuana product is sold or destroyed pursuant
3 to section 329D-7;

4 [~~2~~] (B) The total amount of manufactured marijuana
5 product inventory, including the equivalent
6 physical weight of marijuana that is used to
7 manufacture manufactured marijuana products,
8 purchased by a qualifying patient and primary
9 caregiver from all retail dispensing locations in
10 the State in any fifteen day period;

11 [~~3~~] (C) The amount of waste produced by each plant
12 at harvest; and

13 [~~4~~] (D) The transport of marijuana and manufactured
14 marijuana products between production centers and
15 retail dispensing locations, including tracking
16 identification issued by the tracking system, the
17 identity of the person transporting the marijuana
18 or manufactured marijuana products, and the make,
19 model, and license number of the vehicle being
20 used for the transport~~[-]~~;



1 (2) The procurement of the computer software tracking
2 system established pursuant to this subsection shall
3 be exempt from chapter 103D; provided that: [~~the~~]

4 (A) The department shall publicly solicit at least
5 three proposals for the computer software
6 tracking system; and [~~the~~]

7 (B) The selection of the computer software tracking
8 system shall be approved by the director of the
9 department and the chief information officer[~~-~~];

10 (3) Notwithstanding any other provision of this subsection
11 to the contrary, once the department has authorized a
12 licensed dispensary to commence sales of marijuana or
13 manufactured marijuana products, if the department's
14 computer software tracking system is inoperable or is
15 not functioning properly, the department shall
16 immediately implement an alternate tracking system
17 that will enable qualified patients to purchase
18 marijuana or manufactured marijuana products from a
19 licensed dispensary on a temporary basis. The
20 alternate tracking system shall operate as follows:



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- 1 (A) The department shall immediately notify all
2 licensed dispensaries that the computer software
3 tracking system is inoperable;
- 4 (B) During the period in which the computer software
5 tracking system is inoperable, licensed
6 dispensaries shall be authorized to continue with
7 the sale of marijuana and manufactured marijuana
8 products to qualifying patients under the
9 alternate tracking system, as follows:
- 10 (i) A qualifying patient shall be authorized to
11 purchase marijuana or a manufactured
12 marijuana product from the licensed
13 dispensary at which the patient's last
14 purchase of marijuana or a manufactured
15 marijuana product was made prior to the
16 computer software tracking system becoming
17 inoperable, which shall thereafter be the
18 designated dispensary for that qualifying
19 patient;
- 20 (ii) A qualifying patient shall not be authorized
21 to make a purchase from any other licensed



1 dispensary unless the patient obtains
2 written authorization from the department to
3 make a purchase from a licensed dispensary
4 other than their designated dispensary;
5 (iii) A qualifying patient who has not made any
6 purchase from a licensed dispensary prior to
7 the computer software tracking system being
8 declared inoperable shall designate one
9 licensed dispensary for purchases and shall
10 not be authorized to make purchases from any
11 other licensed dispensary, subject to clause
12 (ii);
13 (iv) A qualifying patient shall not purchase any
14 marijuana or manufactured marijuana product
15 that exceeds the limitations established by
16 section 329D-13; and
17 (C) Once the computer software tracking system is
18 operational and functioning to meet the
19 requirements of this subsection, the department
20 shall notify all licensed dispensaries and the



1 alternate tracking system in this subsection
2 shall be discontinued.

3 (k) A dispensary licensed pursuant to this chapter shall
4 purchase, operate, and maintain a computer software tracking
5 system that shall:

6 (1) Interface with the department's computer software
7 tracking system established pursuant to subsection
8 (j);

9 (2) Allow each licensed dispensary's production center to
10 submit to the department in real time, by automatic
11 identification and data capture, all marijuana,
12 marijuana plants, and manufactured marijuana product
13 inventory in possession of that dispensary from either
14 seed or immature plant state, including all plants
15 that are derived from cuttings or cloning, until the
16 marijuana or manufactured marijuana product is sold or
17 destroyed pursuant to section 329D-7; [~~and~~]

18 (3) Allow the licensed dispensary's retail dispensing
19 location to submit to the department in real time for
20 the total amount of marijuana and manufactured
21 marijuana product purchased by a qualifying patient

1 and primary caregiver from the dispensary's retail
2 dispensing locations in the State in any fifteen day
3 period; provided that the software tracking system
4 shall impose an automatic stopper in real time, which
5 cannot be overridden, on any further purchases of
6 marijuana or manufactured marijuana products, if the
7 maximum allowable amount of marijuana has already been
8 purchased for the applicable fifteen day period;
9 provided further that additional purchases shall not
10 be permitted until the next applicable period[-]; and

11 (4) Allow the licensed dispensary to submit all data
12 required by this subsection to the department and
13 permit the department to access the data if the
14 department's computer software tracking system is not
15 functioning properly and sales are made pursuant to
16 the alternate tracking system under subsection (j)."

17 SECTION 6. Section 329D-7, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§329D-7 Medical marijuana dispensary rules.** The
20 department shall establish standards with respect to:



- 1 (1) The number of medical marijuana dispensaries that
2 shall be permitted to operate in the State;
- 3 (2) A fee structure for the submission of applications and
4 renewals of licenses to dispensaries; provided that
5 the department shall consider the market conditions in
6 each county in determining the license renewal fee
7 amounts;
- 8 (3) Criteria and procedures for the consideration and
9 selection, based on merit, of applications for
10 licensure of dispensaries; provided that the criteria
11 shall include but not be limited to an applicant's:
12 (A) Ability to operate a business;
13 (B) Financial stability and access to financial
14 resources; provided that applicants for medical
15 marijuana dispensary licenses shall provide
16 documentation that demonstrates control of not
17 less than \$1,000,000 in the form of escrow
18 accounts, letters of credit, surety bonds, bank
19 statements, lines of credit or the equivalent to
20 begin operating the dispensary;



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- 1 (C) Ability to comply with the security requirements
2 developed pursuant to paragraph (6);
- 3 (D) Capacity to meet the needs of qualifying
4 patients;
- 5 (E) Ability to comply with criminal background check
6 requirements developed pursuant to paragraph (8);
7 and
- 8 (F) Ability to comply with inventory controls
9 developed pursuant to paragraph (13);
- 10 (4) Specific requirements regarding annual audits and
11 reports required from each production center and
12 dispensary licensed pursuant to this chapter;
- 13 (5) Procedures for announced and unannounced inspections
14 by the department or its agents of production centers
15 and dispensaries licensed pursuant to this chapter;
16 provided that inspections for license renewals shall
17 be unannounced;
- 18 (6) Security requirements for the operation of production
19 centers and retail dispensing locations; provided
20 that, at a minimum, the following shall be required:
21 (A) For production centers:



- 1 (i) Video monitoring and recording of the
2 premises; provided that recordings shall be
3 retained for not less than forty-five days;
- 4 (ii) Fencing that surrounds the premises and that
5 is sufficient to reasonably deter intruders
6 and prevent anyone outside the premises from
7 viewing any marijuana in any form;
- 8 (iii) An alarm system; and
- 9 (iv) Other reasonable security measures to deter
10 or prevent intruders, as deemed necessary by
11 the department;
- 12 (B) For retail dispensing locations:
- 13 (i) Presentation of a valid government-issued
14 photo identification and a valid
15 identification as issued by the department
16 pursuant to section 329-123, by a qualifying
17 patient or caregiver, upon entering the
18 premises;
- 19 (ii) Video monitoring and recording of the
20 premises; provided that recordings shall be
21 retained for not less than forty-five days;



- 1 (iii) An alarm system;
- 2 (iv) Exterior lighting; and
- 3 (v) Other reasonable security measures as deemed
- 4 necessary by the department;
- 5 (7) Security requirements for the transportation of
- 6 marijuana and manufactured marijuana products between
- 7 production centers and retail dispensing locations;
- 8 (8) Standards and criminal background checks to ensure the
- 9 reputable and responsible character and fitness of all
- 10 license applicants, licensees, employees,
- 11 subcontractors and their employees, and prospective
- 12 employees of medical marijuana dispensaries to operate
- 13 a dispensary; provided that the standards, at a
- 14 minimum, shall exclude from licensure or employment
- 15 any person convicted of any felony;
- 16 (9) The training and certification of operators and
- 17 employees of production centers and dispensaries;
- 18 (10) The types of manufactured marijuana products that
- 19 dispensaries shall be authorized to manufacture and
- 20 sell pursuant to sections 329D-9 and 329D-10;



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- 1 (11) Laboratory standards related to testing marijuana and
2 manufactured marijuana products for content,
3 contamination, and consistency;
- 4 (12) The quantities of marijuana and manufactured marijuana
5 products that a dispensary may sell or provide to a
6 qualifying patient or primary caregiver; provided that
7 no dispensary shall sell or provide to a qualifying
8 patient or primary caregiver any combination of
9 marijuana and manufactured products that:
- 10 (A) During a period of fifteen consecutive days,
11 exceeds the equivalent of four ounces of
12 marijuana; or
- 13 (B) During a period of thirty consecutive days,
14 exceeds the equivalent of eight ounces of
15 marijuana;
- 16 (13) Dispensary and production center inventory controls to
17 prevent the unauthorized diversion of marijuana or
18 manufactured marijuana products or the distribution of
19 marijuana or manufactured marijuana products to
20 qualifying patients or primary caregivers in
21 quantities that exceed limits established by this



1 chapter; provided that the controls, at a minimum,
2 shall include:

3 (A) A computer software tracking system as specified
4 in section 329D-6(j) and (k); and

5 (B) Product packaging standards sufficient to allow
6 law enforcement personnel to reasonably determine
7 the contents of an unopened package;

8 (14) Limitation to the size or format of signs placed
9 outside a retail dispensing location or production
10 center; provided that the signage limitations, at a
11 minimum, shall comply with section 329D-6(o)(2) and
12 shall not include the image of a cartoon character or
13 other design intended to appeal to children;

14 (15) The disposal or destruction of unwanted or unused
15 marijuana and manufactured marijuana products;

16 (16) The enforcement of the following prohibitions against:

17 (A) The sale or provision of marijuana or
18 manufactured marijuana products to unauthorized
19 persons;

20 (B) The sale or provision of marijuana or
21 manufactured marijuana products to qualifying



1 patients or primary caregivers in quantities that
2 exceed limits established by this chapter;

3 (C) Any use or consumption of marijuana or
4 manufactured marijuana products on the premises
5 of a retail dispensing location or production
6 center; and

7 (D) The distribution of marijuana or manufactured
8 marijuana products, for free, on the premises of
9 a retail dispensing location or production
10 center;

11 (17) The establishment of a range of penalties for
12 violations of this chapter or rule adopted thereto;
13 and

14 (18) A process to recognize and register patients who are
15 authorized to purchase, possess, and use medical
16 marijuana in another state, United States territory,
17 or the District of Columbia as qualifying patients in
18 this State; provided that this registration process
19 may commence no sooner than January 1, 2018."

20 SECTION 7. Section 329D-8, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The department shall establish and enforce standards
2 for laboratory-based testing of marijuana and manufactured
3 marijuana products for content, contamination, and
4 consistency[-]; provided that in establishing these standards,
5 the department shall:

- 6 (1) Review and take guidance from the testing programs and
7 standards utilized in other jurisdictions;
8 (2) Consider the impact of the standards on the retail
9 cost of the product to the qualifying patient;
10 (3) Review and take guidance from the testing programs and
11 standards for pesticides under the regulations of the
12 United States Environmental Protection Agency; and
13 (4) For the testing for microbiological impurities,
14 consider the benefits of organically grown marijuana
15 that features the use of bacteria in lieu of
16 pesticides."

17 SECTION 8. Section 329D-27, Hawaii Revised Statutes, is
18 amended by amending subsections (b) and (c) to read as follows:

19 "(b) No later than January 4, 2016, the department shall
20 adopt interim rules, which shall be exempt from chapter 91 and
21 chapter 201M, to effectuate the purposes of this chapter;



1 provided that the interim rules shall remain in effect until
2 July 1, [~~2018,~~] 2020, or until rules are adopted pursuant to
3 subsection (a), whichever occurs sooner.

4 (c) The department may amend the interim rules, and the
5 amendments shall be exempt from chapters 91 and 201M, to
6 effectuate the purposes of this chapter; provided that any
7 amended interim rules shall remain in effect until July 1,
8 [~~2018,~~] 2020, or until rules are adopted pursuant to subsection
9 (a), whichever occurs sooner."

10 SECTION 9. Act 241, Session Laws of Hawaii 2015, is
11 amended by amending section 14 to read as follows:

12 "SECTION 14. For the purposes of effectuating this Act,
13 the personnel hired and the contracts entered into by the
14 department of health, pursuant to this Act, shall be exempt from
15 chapter 76, Hawaii Revised Statutes, for a period beginning on
16 July 1, 2015, and ending on June 30, [~~2017,~~] 2020; provided
17 that:

18 (1) All personnel actions taken pursuant to this Act by
19 the department of health after June 30, [~~2017,~~] 2020,
20 shall be subject to chapter 76, Hawaii Revised
21 Statutes, as appropriate; and



1 (2) Any employee hired by the department of health to
2 effectuate this Act, who occupies a position exempt
3 from civil service on July 1, [~~2017,~~] 2020, shall:
4 (A) Be appointed to a civil service position; and
5 (B) Not suffer any loss of prior service credit,
6 vacation or sick leave credits previously earned,
7 or other employee benefits or privileges;
8 provided that the employee possesses the minimum
9 qualifications and public employment requirements for
10 the class or position to which appointed; provided
11 further that subsequent changes in status shall be
12 made pursuant to applicable civil service and
13 compensation laws."

14 SECTION 10. All appropriations records, equipment,
15 machines, files, supplies, contracts, books, papers, documents,
16 maps, and other personal property heretofore made, used,
17 acquired, or held by the office of health care assurance
18 relating to the functions transferred to the office of medical
19 marijuana administration shall be transferred with the functions
20 to which they relate.



1 SECTION 11. Employees performing duties related to medical
2 marijuana dispensary licensure and regulation pursuant to
3 chapter 329D, Hawaii Revised Statutes, and relating to the
4 registration of qualifying patients pursuant to section 329-123,
5 Hawaii Revised Statutes, shall be transferred to the office of
6 medical marijuana administration without loss of salary,
7 seniority (except as prescribed by applicable collective
8 bargaining agreements), retention points, prior service credit,
9 any vacation and sick leave credits previously earned, and other
10 rights, benefits, and privileges, in accordance with state
11 personnel laws and this Act; provided that the employees possess
12 the minimum qualifications and public employment requirements
13 for the class or position to which transferred or appointed, as
14 applicable; provided further that subsequent changes in status
15 may be made pursuant to applicable civil service and
16 compensation laws.

17 Any employee who, prior to this Act, is exempt from civil
18 service and is transferred as a consequence of this Act may
19 retain the employee's exempt status, but shall not be appointed
20 to a civil service position as a consequence of this Act. An
21 exempt employee who is transferred by this Act shall not suffer



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1 any loss of prior service credit, vacation or sick leave credits
 2 previously earned, or other employee benefits or privileges as a
 3 consequence of this Act; provided that the employees possess
 4 legal and public employment requirements for the position to
 5 which transferred or appointed, as applicable; provided further
 6 that subsequent changes in status may be made pursuant to
 7 applicable employment and compensation laws.

8 SECTION 12. This Act does not affect rights and duties
 9 that matured, penalties that were incurred, and proceedings that
 10 were begun before its effective date.

11 SECTION 13. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 14. This Act shall take effect on June 29, 2017.
 14

INTRODUCED BY:

Randy H. Beck
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...



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Report Title:

DOH; Office of Medical Marijuana Administration; Established;
Medical Marijuana Dispensaries; Computer Tracking System;
Alternate Tracking System; Testing Standards; Qualifying
Patients

Description:

Establishes the Office of Medical Marijuana Administration in DOH to administer marijuana dispensary licensing and regulation, and patient registration. Extends civil service exemptions. Extends interim rulemaking authority. Requires an alternate medical marijuana dispensary tracking system for use when the DOH computer tracking system is nonfunctional. Adds considerations for establishing marijuana testing standards and selecting additional dispensary licensees. Requires retention of video security recordings of production centers and dispensaries for not less than 45 days.

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

