

JAN 20 2017

A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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

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PART I

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SECTION 1. The legislature finds that certain felony

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offenses that were created within Act 241, Session Laws of

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Hawaii 2015, which created a medical marijuana dispensary system

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in the State, are unnecessary and unhelpful. Most of the new

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offenses created redundancies between those offenses and other

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bodies of law and established more serious penalties than

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certain prohibitions relating to potentially harmful substances

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such as alcohol, tobacco, and even opiates. The legislature

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finds that felony penalties relating to unauthorized access of a

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medical marijuana dispensary or production center are

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particularly unjustified.

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Accordingly, the purpose of this Act is to:

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(1) Repeal unnecessary prohibitions relating to medical

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marijuana; and



1 (2) Amend certain penalties relating to medical marijuana
2 prohibitions to make them more commensurate with
3 prohibitions relating to alcohol.

4 PART II

5 SECTION 2. Section 329D-14, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Any person who violates subsection (a) shall be
8 guilty of a [~~class C felony~~] petty misdemeanor."

9 SECTION 3. Section 329D-17, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Any person who violates this section shall be guilty
12 of a [~~class B felony~~] misdemeanor."

13 SECTION 4. Section 329D-15, Hawaii Revised Statutes, is
14 repealed.

15 ~~["§329D-15] Criminal offense, unauthorized access to~~
16 ~~retail dispensing location. (a) No person shall intentionally~~
17 ~~or knowingly enter or remain upon the premises of a medical~~
18 ~~marijuana retail dispensing location unless the individual is:~~

19 ~~(1) An individual licensee or registered employee of the~~
20 ~~dispensary;~~



- 1 ~~(2) A qualifying patient or primary caregiver of a~~
2 ~~qualifying patient;~~
- 3 ~~(3) A government employee or official acting in the~~
4 ~~person's official capacity; or~~
- 5 ~~(4) Previously included on a current department approved~~
6 ~~list provided to the department by the licensee of~~
7 ~~those persons who are allowed into that dispensary's~~
8 ~~facilities for a specific purpose for that dispensary,~~
9 ~~including but not limited to construction,~~
10 ~~maintenance, repairs, legal counsel, or investors;~~
11 ~~provided that:~~
 - 12 ~~(A) The person has been individually approved by the~~
13 ~~department to be included on the list;~~
 - 14 ~~(B) The person is at least twenty one years of age,~~
15 ~~as verified by a valid government issued~~
16 ~~identification card;~~
 - 17 ~~(C) The department has confirmed that the person has~~
18 ~~no felony convictions;~~
 - 19 ~~(D) The person is escorted by an individual licensee~~
20 ~~or registered employee of the dispensary at all~~
21 ~~times while in the dispensary facility;~~



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- 1 ~~(E) The person is only permitted within those~~
2 ~~portions of the dispensary facility as necessary~~
3 ~~to fulfill the person's purpose for entering;~~
- 4 ~~(F) The person is only permitted within the~~
5 ~~dispensary facility during the times and for the~~
6 ~~duration necessary to fulfill the person's~~
7 ~~purpose for entering;~~
- 8 ~~(G) The dispensary shall keep an accurate record of~~
9 ~~each person's first and last name, date and times~~
10 ~~upon entering and exiting the dispensary~~
11 ~~facility, purpose for entering, and the identity~~
12 ~~of the escort; and~~
- 13 ~~(H) The approved list shall be effective for one year~~
14 ~~from the date of the department approval.~~
- 15 ~~(b) No individual licensee or registered employee of a~~
16 ~~medical marijuana dispensary with control over or responsibility~~
17 ~~for a retail dispensing location shall intentionally or~~
18 ~~knowingly allow another to enter or remain upon the premises of~~
19 ~~the retail dispensing location, unless the other is permitted to~~
20 ~~enter and remain as specified in subsection (a).~~



1 ~~(c) Unauthorized access to a retail dispensing location is~~
2 ~~a class C felony."]~~

3 SECTION 5. Section 329D-16, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§329D-16~~ Criminal offense, unauthorized access to~~
6 ~~production centers. (a) No person shall intentionally or~~
7 ~~knowingly enter or remain upon the premises of a medical~~
8 ~~marijuana production center unless the person is:~~

9 ~~(1) An individual licensee or registered employee of the~~
10 ~~production center;~~

11 ~~(2) A government employee or official acting in the~~
12 ~~person's official capacity; or~~

13 ~~(3) Previously included on a current department approved~~
14 ~~list provided to the department by the licensee of~~
15 ~~those persons who are allowed into that dispensary's~~
16 ~~facilities for a specific purpose for that dispensary,~~
17 ~~including but not limited to construction,~~
18 ~~maintenance, repairs, legal counsel, or investors;~~
19 ~~provided that:~~

20 ~~(A) The person has been individually approved by the~~
21 ~~department to be included on the list;~~



- 1 ~~(B) The person is at least twenty one years of age,~~
2 ~~as verified by a valid government issued~~
3 ~~identification card;~~
- 4 ~~(C) The department has confirmed that the person has~~
5 ~~no felony convictions;~~
- 6 ~~(D) The person is escorted by an individual licensee~~
7 ~~or registered employee of the dispensary at all~~
8 ~~times while in the dispensary facility;~~
- 9 ~~(E) The person is only permitted within those~~
10 ~~portions of the dispensary facility as necessary~~
11 ~~to fulfill the person's purpose for entering;~~
- 12 ~~(F) The person is only permitted within the~~
13 ~~dispensary facility during the times and for the~~
14 ~~duration necessary to fulfill the person's~~
15 ~~purpose for entering;~~
- 16 ~~(G) The dispensary shall keep an accurate record of~~
17 ~~each person's identity, date and times upon~~
18 ~~entering and exiting the dispensary facility,~~
19 ~~purpose for entering, and the identity of the~~
20 ~~escort; and~~



1 ~~(H) The approved list shall be effective for one year~~
2 ~~from the date of department approval.~~

3 ~~(b) No individual licensee or registered employee of a~~
4 ~~medical marijuana dispensary with control over or responsibility~~
5 ~~for a production center shall intentionally or knowingly allow~~
6 ~~another to enter or remain upon the premises of the production~~
7 ~~center, unless the other is permitted to enter and remain as~~
8 ~~specified in subsection (a).~~

9 ~~(c) Unauthorized access to a production center is a class~~
10 ~~C felony."]~~

11 SECTION 6. Section 329D-18, Hawaii Revised Statutes, is
12 repealed.

13 ~~["~~§329D-18~~ Diversion from dispensary or production~~
14 ~~center; penalties. (a) A person commits diversion from a~~
15 ~~dispensary or production center if the person is a licensee,~~
16 ~~operator, or employee of a dispensary or production center and~~
17 ~~intentionally or knowingly diverts to the person's own use or~~
18 ~~other unauthorized or illegal use, or takes, makes away with, or~~
19 ~~secretes, with intent to divert to the person's own use or other~~
20 ~~unauthorized or illegal use, any medical marijuana, manufactured~~
21 ~~marijuana product, or marijuana concentrate under the person's~~



1 ~~possession, care, or custody as a licensee, operator, or~~
2 ~~employee of a medical marijuana dispensary or production center~~
3 ~~licensed by the department.~~

4 ~~(b) Any person who violates this section shall be guilty~~
5 ~~of a class C felony."]~~

6 PART III

7 SECTION 7. Section 329D-12, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The following shall be subject to background checks
10 conducted by the department or its designee, including but not
11 limited to criminal history record checks in accordance with
12 section 846-2.7:

- 13 (1) Each applicant and licensee for a medical marijuana
14 dispensary license, including the individual applicant
15 and all officers, directors, members of a limited
16 liability corporation; shareholders with at least
17 twenty-five per cent or more ownership interest in a
18 corporation; and managers of an entity applicant;
- 19 (2) Each employee of a medical marijuana dispensary;
- 20 (3) Each employee of a subcontracted production center or
21 retail dispensing location; and



- 1 (4) All officers, directors, members of a limited
2 liability corporation; and shareholders with at least
3 twenty-five per cent or more ownership interest in a
4 corporate owner of a subcontracted production center
5 or retail dispensing location[~~; and~~
6 ~~(5) Any person permitted to enter and remain in a~~
7 ~~dispensary facility pursuant to section 329D-15(a)(4)~~
8 ~~or 329D-16(a)(3)] .~~

9 The person undergoing the background check shall provide written
10 consent and all applicable processing fees to the department or
11 its designee to conduct the background checks."

12 SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) Criminal history record checks may be conducted by:

15 (1) The department of health or its designee on operators
16 of adult foster homes for individuals with
17 developmental disabilities or developmental
18 disabilities domiciliary homes and their employees, as
19 provided by section 321-15.2;

20 (2) The department of health or its designee on
21 prospective employees, persons seeking to serve as



1 providers, or subcontractors in positions that place
2 them in direct contact with clients when providing
3 non-witnessed direct mental health or health care
4 services as provided by section 321-171.5;

5 (3) The department of health or its designee on all
6 applicants for licensure or certification for,
7 operators for, prospective employees, adult
8 volunteers, and all adults, except adults in care, at
9 healthcare facilities as defined in section 321-15.2;

10 (4) The department of education on employees, prospective
11 employees, and teacher trainees in any public school
12 in positions that necessitate close proximity to
13 children as provided by section 302A-601.5;

14 (5) The counties on employees and prospective employees
15 who may be in positions that place them in close
16 proximity to children in recreation or child care
17 programs and services;

18 (6) The county liquor commissions on applicants for liquor
19 licenses as provided by section 281-53.5;

20 (7) The county liquor commissions on employees and
21 prospective employees involved in liquor



1 administration, law enforcement, and liquor control
2 investigations;

3 (8) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;

7 (9) The department of human services on prospective
8 adoptive parents as established under section
9 346-19.7;

10 (10) The department of human services or its designee on
11 applicants to operate child care facilities, household
12 members of the applicant, prospective employees of the
13 applicant, and new employees and household members of
14 the provider after registration or licensure as
15 provided by section 346-154, and persons subject to
16 section 346-152.5;

17 (11) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;



- 1 (12) The department of health on operators and employees of
2 home and community-based case management agencies and
3 operators and other adults, except for adults in care,
4 residing in community care foster family homes as
5 provided by section 321-15.2;
- 6 (13) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (14) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (15) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (16) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers



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1 including the power of arrest as provided by section
2 353C-5;

3 (17) The board of private detectives and guards on
4 applicants for private detective or private guard
5 licensure as provided by section 463-9;

6 (18) Private schools and designated organizations on
7 employees and prospective employees who may be in
8 positions that necessitate close proximity to
9 children; provided that private schools and designated
10 organizations receive only indications of the states
11 from which the national criminal history record
12 information was provided pursuant to section 302C-1;

13 (19) The public library system on employees and prospective
14 employees whose positions place them in close
15 proximity to children as provided by section
16 302A-601.5;

17 (20) The State or any of its branches, political
18 subdivisions, or agencies on applicants and employees
19 holding a position that has the same type of contact
20 with children, vulnerable adults, or persons committed
21 to a correctional facility as other public employees



1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7;

4 (21) The department of health on licensed adult day care
5 center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 321-15.2;

8 (22) The department of human services on purchase of
9 service contracted and subcontracted service providers
10 and their employees serving clients of the adult
11 protective and community services branch, as provided
12 by section 346-97;

13 (23) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346-97;

17 (24) The department of human services on contracted and
18 subcontracted service providers and their current and
19 prospective employees that provide home and community-
20 based services under section 1915(c) of the Social
21 Security Act, title 42 United States Code section



1 1396n(c), or under any other applicable section or
2 sections of the Social Security Act for the purposes
3 of providing home and community-based services, as
4 provided by section 346-97;

5 (25) The department of commerce and consumer affairs on
6 proposed directors and executive officers of a bank,
7 savings bank, savings and loan association, trust
8 company, and depository financial services loan
9 company as provided by section 412:3-201;

10 (26) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a
12 nondepository financial services loan company as
13 provided by section 412:3-301;

14 (27) The department of commerce and consumer affairs on the
15 original chartering applicants and proposed executive
16 officers of a credit union as provided by section
17 412:10-103;

18 (28) The department of commerce and consumer affairs on:
19 (A) Each principal of every non-corporate applicant
20 for a money transmitter license;



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- 1 (B) The executive officers, key shareholders, and
2 managers in charge of a money transmitter's
3 activities of every corporate applicant for a
4 money transmitter license; and
- 5 (C) The persons who are to assume control of a money
6 transmitter licensee in connection with an
7 application requesting approval of a proposed
8 change in control of licensee,
9 as provided by sections 489D-9 and 489D-15;
- 10 (29) The department of commerce and consumer affairs on
11 applicants for licensure and persons licensed under
12 title 24;
- 13 (30) The Hawaii health systems corporation on:
- 14 (A) Employees;
- 15 (B) Applicants seeking employment;
- 16 (C) Current or prospective members of the corporation
17 board or regional system board; or
- 18 (D) Current or prospective volunteers, providers, or
19 contractors,
20 in any of the corporation's health facilities as
21 provided by section 323F-5.5;



- 1 (31) The department of commerce and consumer affairs on:
 - 2 (A) An applicant for a mortgage loan originator
 - 3 license; and
 - 4 (B) Each control person, executive officer, director,
 - 5 general partner, and manager of an applicant for
 - 6 a mortgage loan originator company license,
 - 7 as provided by chapter 454F;
- 8 (32) The state public charter school commission or public
- 9 charter schools on employees, teacher trainees,
- 10 prospective employees, and prospective teacher
- 11 trainees in any public charter school for any position
- 12 that places them in close proximity to children, as
- 13 provided in section 302D-33;
- 14 (33) The counties on prospective employees who work with
- 15 children, vulnerable adults, or senior citizens in
- 16 community-based programs;
- 17 (34) The counties on prospective employees for fire
- 18 department positions which involve contact with
- 19 children or vulnerable adults;



- 1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or vulnerable adults;
- 4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable citizens
10 during emergencies or crises;
- 11 (37) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;
- 16 (38) The State and counties on employees and prospective
17 employees whose positions involve the handling or use
18 of firearms for other than law enforcement purposes;
- 19 (39) The State and counties on current and prospective
20 systems analysts and others involved in an agency's
21 information technology operation whose position



1 responsibilities provide them with access to
2 proprietary, confidential, or sensitive information;

3 (40) The department of commerce and consumer affairs on
4 applicants for real estate appraiser licensure or
5 certification as provided by chapter 466K;

6 ~~[(41) The department of health or its designee on all~~
7 ~~license applicants, licensees, employees, contractors,~~
8 ~~and prospective employees of medical marijuana~~
9 ~~dispensaries, and individuals permitted to enter and~~
10 ~~remain in medical marijuana dispensary facilities as~~
11 ~~provided under sections 329D 15(a)(4) and~~
12 ~~329D 16(a)(3);~~

13 ~~(42)]~~ (41) The department of commerce and consumer affairs
14 on applicants for nurse licensure or license renewal,
15 reactivation, or restoration as provided by sections
16 457-7, 457-8, 457-8.5, and 457-9;

17 ~~[(43)]~~ (42) The county police departments on applicants for
18 permits to acquire firearms pursuant to section 134-2
19 and on individuals registering their firearms pursuant
20 to section 134-3;



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1 SECTION 10. This Act shall take effect upon its approval.

2 INTRODUCED BY: Will Lyons BY REQUEST

Paul R. DJ



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Report Title:

Medical Marijuana; Prohibitions; Penalties

Description:

Amends penalties pertaining to certain medical marijuana prohibitions. Repeals certain medical marijuana prohibitions. Makes conforming amendments.

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

