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# A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

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

1           SECTION 1. The legislature finds that as licensed medical  
2 cannabis dispensaries are still a new and emerging industry  
3 since their establishment in 2015, most production centers and  
4 facilities have only been operating for less than two years.  
5 The legislature further finds that there may be situations where  
6 the leadership within a licensed dispensary has changed;  
7 however, existing law does not provide a process for the sale or  
8 transfer of any significant interest in a licensed dispensary.  
9           The legislature also finds that although the medical use of  
10 cannabis by a qualifying patient to alleviate the symptoms or  
11 effects of the qualifying patient's debilitating medical  
12 condition is permitted under state law, there are no  
13 corresponding employment protections for qualifying patients. A  
14 qualifying patient can therefore be discriminated against in the  
15 hiring process, merely because of the patient's status as a  
16 qualifying patient, or fired at an employer's discretion for



1 failing a drug test, even if the qualifying patient is not  
2 exhibiting any symptoms of being impaired.

3 Accordingly, the purpose of this Act is to:

4 (1) Provide a process for the voluntary or involuntary  
5 sale or transfer of a dispensary license;

6 (2) Prohibit an employer from discriminating against an  
7 employee based on the employee's status as a  
8 qualifying patient;

9 (3) Prohibit an employer from taking action against an  
10 employee based solely on the employee's status as a  
11 qualifying patient or if the results of the employee's  
12 drug test are positive for cannabis; and

13 (4) Specify permissible and impermissible actions by  
14 employers and employees.

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

18 "§329D- Sale or transfer of dispensary license. (a) In  
19 the event of death, legal incapacity, or permanent disability of  
20 an individual dispensary licensee, the relevant entity licensee  
21 shall notify the department within thirty days of the individual



1 licensee's inability to continue in the individual's capacity as  
2 a licensee, and shall provide to the department within another  
3 thirty days a plan for the sale or transfer of the individual  
4 license to another individual who shall meet all the  
5 requirements under this chapter and shall have been a resident  
6 of the State for not less than five years preceding the date of  
7 transfer.

8 (b) In the event of a voluntary resignation by an  
9 individual licensee, termination of an individual licensee's  
10 employment with an entity licensee with or without cause, or any  
11 other permanent separation of the relationship between an  
12 individual licensee and an entity licensee, the relevant entity  
13 licensee shall submit a plan to the department for approval at  
14 least thirty days prior to any sale or transfer of the  
15 individual license to another individual who shall meet all the  
16 requirements under this chapter and shall have been a resident  
17 of the State for not less than five years preceding the date of  
18 transfer.

19 (c) The department may deny a request for transfer of  
20 ownership if it deems the transferee has failed to meet all the  
21 requirements of section 329D-3 for ownership."



1 SECTION 3. Chapter 378, Hawaii Revised Statutes, is  
2 amended by adding a new section to part III to be appropriately  
3 designated and to read as follows:

4 "§378- Qualifying patient; employment; employees;  
5 employers; nondiscrimination; prohibitions. (a) An employer  
6 shall not:

7 (1) Discriminate against a person in hiring, termination,  
8 or imposing any term or condition of employment or  
9 otherwise penalize a person based on that person's  
10 status as a qualifying patient; or

11 (2) Take action against an employee solely based upon the  
12 employee's status as a qualifying patient or if the  
13 results of such employee's drug test show positive for  
14 cannabis or its components;

15 unless the employee is a law enforcement officer in the State or  
16 the employee works in a state correctional facility, or unless a  
17 failure to do so would cause an employer to lose a monetary or  
18 licensing related benefit under federal law or regulations.

19 (b) This section shall not prohibit an employer from:

20 (1) Enforcing a workplace drug policy; provided the policy  
21 is applied in a nondiscriminatory manner and does not



1           conflict with the nondiscrimination provisions under  
2           subsection (a);  
3       (2) Disciplining an employee who is a qualifying patient  
4           for failing a drug test, if:  
5           (A) Failure to do so would cause an employer to lose  
6               a monetary or licensing related benefit under  
7               federal law or regulations;  
8           (B) The employee performs employment duties at  
9               heights or in confined spaces; or  
10          (C) Such employee operates or is in physical control  
11               of any of the following while impaired:  
12               (i) Chemicals that require a permit issued by  
13                   the federal government, state government, or  
14                   an agency of the federal government or state  
15                   government; or  
16               (ii) High voltage electricity lines; or  
17       (3) Disciplining an employee who is a qualifying patient  
18           if the employer has a reasonable belief that the  
19           employee is impaired; provided that an employer that  
20           elects to discipline an employee under this paragraph



1           shall afford the employee a reasonable opportunity to  
2           contest the basis of the determination.

3           (c) Nothing in this section shall be construed to create  
4           or imply a cause of action for any person against an employer  
5           for:

6           (1) Actions based on the employer's reasonable belief that  
7           a registered qualifying patient was impaired while  
8           working on the employer's premises during the hours of  
9           employment; or

10          (2) Injury or loss to a third party based on an employee's  
11          impairment if the employer neither knew nor had reason  
12          to know that the employee was impaired.

13          (d) Nothing in this section shall be construed to  
14          interfere with any federal restrictions on employment, including  
15          but not limited to the United States Department of  
16          Transportation regulations pursuant to title 49 Code of Federal  
17          Regulations section 40.151(e).

18          (e) For purposes of this section:

19          "Impaired" means an employee who is a qualifying patient  
20          and who manifests specific, articulable symptoms while working  
21          that decrease or lessen the employee's performance of the duties



1 or tasks of the employee's job position, including symptoms of  
 2 the employee's speech, physical dexterity, agility,  
 3 coordination, demeanor, irrational or unusual behavior;  
 4 negligence or carelessness in operating equipment or machinery;  
 5 disregard for the safety of the employee or others; involvement  
 6 in an accident that results in serious damage to equipment or  
 7 property; disruption of a production or manufacturing process;  
 8 or carelessness that results in any injury to the employee or  
 9 others.

10 "Qualifying patient" shall have the same meaning as in  
 11 section 329-121."

12 SECTION 4. Chapter 378, Hawaii Revised Statutes, is  
 13 amended by amending the title of part III to read as follows:

14 "PART III. UNLAWFUL [~~SUSPENSION OR DISCHARGE~~] EMPLOYMENT  
 15 ACTIONS"

16 SECTION 5. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 2019.



**Report Title:**

Department of Health; Cannabis; License; Dispensary; Sale or Transfer of License; Employment Discrimination; Qualifying Patient

**Description:**

Provides a process for the voluntary or involuntary sale or transfer of an individual dispensary license. Prohibits an employer from discriminating against a person in hiring, termination, or conditions of employment based on the person's status as a qualifying patient and from taking action against an employee based solely on the employee's status as a qualifying patient or if the results of the employee's drug test are positive for cannabis, subject to certain exceptions. Specifies permissible and impermissible actions by employers and employees. (SD1)

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