

JAN 17 2020

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 several states have
2 given people suffering from illness and disability access to
3 medical cannabis, which can help address pain and generally make
4 them feel better. However, some medical cannabis users risk
5 their jobs if they use it, even if that use is off-site and does
6 not affect the workplace.

7 The legislature further finds that the conflict between
8 state and federal medical cannabis laws causes confusion for
9 employers, who are unsure whether state medical cannabis laws
10 supersede their power to enforce drug-free workplace policies
11 against employees. Courts consistently rule in favor of
12 employers when medical cannabis users challenge drug-free
13 workplace policies, but they have not foreclosed the possibility
14 that state medical cannabis laws could protect employees. Tools
15 like fit for duty tests are even available for employers to
16 manage workplace risk in potentially dangerous occupations.
17 Nevertheless, without explicit statutory guidance, the courts



1 will not recognize these rights. Therefore, Hawaii's medical
2 cannabis laws should clearly address the scope of accommodation
3 that employers must provide to medical cannabis users.

4 The purpose of this Act is to:

- 5 (1) Prohibit an employer from discriminating against a
6 person in hiring, termination, or condition of
7 employment based on the person's status as a medical
8 cannabis cardholder, under certain conditions; and
9 (2) Specify that an employer may use a fit for duty test
10 for medical cannabis users in potentially dangerous
11 occupations.

12 SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§329-125.5 Medical cannabis patient and caregiver**
15 **protections.** (a) No school shall refuse to enroll or otherwise
16 penalize, and no landlord shall refuse to lease property to or
17 otherwise penalize, a person solely for the person's status as a
18 qualifying patient or primary caregiver in the medical cannabis
19 program under this part, unless failing to do so would cause the
20 school or landlord to lose a monetary or licensing-related
21 benefit under federal law or regulation; provided that the



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1 qualifying patient or primary caregiver strictly complied with
2 the requirements of this part; provided further that the
3 qualifying patient or primary caregiver shall present a medical
4 cannabis registry card or certificate and photo identification,
5 to ensure that the qualifying patient or primary caregiver is
6 validly registered with the department of health pursuant to
7 section 329-123.

8 (b) For the purposes of medical care, including organ
9 transplants, a registered qualifying patient's use of cannabis
10 in compliance with this part shall be considered the equivalent
11 of the use of any other medication under the direction of a
12 physician and shall not constitute the use of an illicit
13 substance or otherwise disqualify a registered qualifying
14 patient from medical care.

15 (c) No qualifying patient or primary caregiver under this
16 part shall be denied custody of, visitation with, or parenting
17 time with a minor, and there shall be no presumption of neglect
18 or child endangerment, for conduct allowed under this part;
19 provided that this subsection shall not apply if the qualifying
20 patient's or primary caregiver's conduct created a danger to the



1 safety of the minor, as established by a preponderance of the
2 evidence.

3 (d) This section shall apply to qualifying patients,
4 primary caregivers, qualifying out-of-state patients, and
5 caregivers of qualifying out-of-state patients who are validly
6 registered with the department of health pursuant to this part
7 and the administrative rules of the department of health.

8 (e) Unless a failure to do so would cause the employer to
9 lose a monetary or licensing-related benefit under federal law
10 or federal regulations, an employer shall not discriminate
11 against a person in hiring, termination, or any term or
12 condition of employment, or other penalize a person, if the
13 discrimination is based upon either of the following:

- 14 (1) The person's status as a cardholder; or
15 (2) A registered qualifying patient's positive drug test
16 for cannabis components or metabolites, unless the
17 patient was impaired by cannabis on the premises of
18 the place of employment during the hours of
19 employment.



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1 (f) In potentially dangerous occupations, an employer may
2 use a fit for duty test as a tool for a registered qualifying
3 patient."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: Rossly H Baker
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Report Title:

Medical Cannabis; Discrimination; Employer; Employee

Description:

Prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

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