
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 losing their jobs if they use it, even if that use is off-site
6 and does 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 rights of medical
3 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 any term or
7 condition of employment based on the person's status
8 as a medical cannabis cardholder, under certain
9 conditions;
- 10 (2) Specify that an employer may use a fit for duty test
11 for medical cannabis users in potentially dangerous
12 occupations; and
- 13 (3) Specify certain categories of employment that are
14 exempt from the protections of this Act.

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

17 **"§329-125.5 Medical cannabis patient and caregiver**
18 **protections.** (a) No school shall refuse to enroll or otherwise
19 penalize, and no landlord shall refuse to lease property to or
20 otherwise penalize, a person solely for the person's status as a
21 qualifying patient or primary caregiver in the medical cannabis



1 program under this part, unless failing to do so would cause the
2 school or landlord to lose a monetary or licensing-related
3 benefit under federal law or regulation; provided that the
4 qualifying patient or primary caregiver strictly complied with
5 the requirements of this part; provided further that the
6 qualifying patient or primary caregiver shall present a medical
7 cannabis registry card or certificate and photo identification,
8 to ensure that the qualifying patient or primary caregiver is
9 validly registered with the department of health pursuant to
10 section 329-123.

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

18 (c) No qualifying patient or primary caregiver under this
19 part shall be denied custody of, visitation with, or parenting
20 time with a minor, and there shall be no presumption of neglect
21 or child endangerment, for conduct allowed under this part;



1 provided that this subsection shall not apply if the qualifying
2 patient's or primary caregiver's conduct created a danger to the
3 safety of the minor, as established by a preponderance of the
4 evidence.

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

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

- 16 (1) The person's status as a cardholder; or
17 (2) A registered qualifying patient's positive drug test
18 for cannabis components or metabolites, unless the
19 registered qualifying patient was impaired by cannabis
20 during the hours of employment or in a potentially
21 dangerous occupation;



1 provided that nothing in this subsection shall abridge any
2 existing right of an employer to send an employee for medical
3 evaluation when the employer has safety concerns about the
4 impairment of the employee; provided further that an employer
5 may take adverse action or discipline an employee who uses or
6 possesses medical cannabis in the workplace and is impaired.

7 (f) In a potentially dangerous occupations, an employer
8 may use a fit for duty test as a risk-based assessment tool for
9 a registered qualifying patient.

10 (g) No employer shall have any liability to any employee
11 who is injured or killed during the performance of the
12 employee's job if the employee's impairment by medical cannabis
13 was the sole contributing factor to the employee's death or
14 injury.

15 (h) Subsection (e) shall not apply to:

16 (1) Law enforcement officers in the State or counties or
17 employees of a state correctional facility;

18 (2) Firefighters employed by the State or counties;

19 (3) Water safety officers, lifeguards, swimming
20 instructors, or other employees of the State or



1 counties responsible for the safety of the public at
2 swimming pools or on beaches;

3 (4) Employees authorized to carry or use, or both,
4 firearms on the job;

5 (5) Emergency medical services employees of the State or
6 counties;

7 (6) Employees who administer or may administer controlled
8 substances or other drugs to patients, whether in
9 hospitals, nursing homes, or in emergency situations
10 that would be encountered by emergency medical
11 services personnel;

12 (7) Employees who work with children, the elderly, or
13 other vulnerable populations;

14 (8) Civil defense emergency management personnel; and

15 (9) Employees who operate or are in physical control of
16 any of the following:

17 (A) Any combination of vehicles that have a gross
18 combination weight rating or gross combination
19 weight of 11,794 kilograms or more (26,001 pounds
20 or more), whichever is greater, inclusive of a
21 towed unit or units with a gross vehicle weight



- 1 rating or gross vehicle weight of more than 4,536
2 kilograms (10,000 pounds), whichever is greater;
- 3 (B) Any single vehicle that has a gross vehicle
4 weight rating or gross vehicle weight of 11,794
5 or more kilograms (26,001 pounds or more), or any
6 such vehicle towing a vehicle with a gross
7 vehicle weight rating or gross vehicle weight
8 that does not exceed 4,536 kilograms (10,000
9 pounds);
- 10 (C) Any single vehicle, or combination of vehicles,
11 that does not meet the definition of class A or
12 class B, but is either designed to transport
13 sixteen or more passengers, including the driver,
14 or is transporting material that has been
15 designated as hazardous under title 49 U.S.C.
16 section 5103 and is required to be placarded
17 under subpart F of 49 C.F.R. part 172, or is
18 transporting any quantity of a material listed as
19 a select agent or toxin in 42 C.F.R. part 73;
- 20 (D) Public utilities, such as the electrical power
21 grid or the water source;



1 (E) Machinery or power equipment; or

2 (F) A motor vehicle."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Medical Cannabis; Discrimination; Employer; Employee

Description:

Prohibits an employer from discriminating against a person in hiring, termination, or term 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. Exempts certain occupations. Effective 1/1/2050. (HD1)

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

