

JAN 18 2019

---

---

# A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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

**PART I**

1  
2 SECTION 1. The legislature finds that certain felony  
3 offenses that were created within Act 241, Session Laws of  
4 Hawaii 2015, which created a medical marijuana dispensary system  
5 in the State, are unnecessary and unhelpful. Most of the new  
6 offenses created redundancies between those offenses and other  
7 bodies of law and established more serious penalties than  
8 certain prohibitions relating to potentially harmful substances  
9 such as alcohol, tobacco, and even opiates. The legislature  
10 finds that felony penalties relating to unauthorized access of a  
11 medical marijuana dispensary or production center are  
12 particularly unjustified.

13 Accordingly, the purpose of this Act is to:

14 (1) Repeal unnecessary prohibitions relating to medical  
15 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14 repealed.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 retail~~  
16 ~~dispensing location. (a) No person shall intentionally or~~  
17 ~~knowingly enter or remain upon the premises of a medical~~  
18 ~~cannabis retail dispensing location unless the individual is:~~

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



# S.B. NO. 780

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



1           ~~(D) The person is escorted by an individual licensee~~  
2           ~~or registered employee of the dispensary at all~~  
3           ~~times while in the dispensary facility;~~

4           ~~(E) The person is only permitted within those~~  
5           ~~portions of the dispensary facility as necessary~~  
6           ~~to fulfill the person's purpose for entering;~~

7           ~~(F) The person is only permitted within the~~  
8           ~~dispensary facility during the times and for the~~  
9           ~~duration necessary to fulfill the person's~~  
10          ~~purpose for entering;~~

11          ~~(G) The dispensary shall keep an accurate record of~~  
12          ~~each person's first and last name, date and times~~  
13          ~~upon entering and exiting the dispensary~~  
14          ~~facility, purpose for entering, and the identity~~  
15          ~~of the escort; and~~

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

18          ~~(b) No individual licensee or registered employee of a~~  
19          ~~medical cannabis dispensary with control over or responsibility~~  
20          ~~for a retail dispensing location shall intentionally or~~  
21          ~~knowingly allow another to enter or remain upon the premises of~~



1 ~~the retail dispensing location, unless the other is permitted to~~  
2 ~~enter and remain as specified in subsection (a).~~

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

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

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

11 ~~(1) An individual licensee or registered employee of the~~  
12 ~~production center;~~

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

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



# S.B. NO. 780

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



1 ~~purpose for entering, and the identity of the~~  
2 ~~escort, and~~

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

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

11 ~~(c) Unauthorized access to a production center is a class~~  
12 ~~C felony."~~

13 SECTION 6. Section 329D-18, Hawaii Revised Statutes, is  
14 repealed.

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



1 ~~unauthorized or illegal use, any medical cannabis, manufactured~~  
2 ~~cannabis product, or cannabis concentrate under the person's~~  
3 ~~possession, care, or custody as a licensee, operator, or~~  
4 ~~employee of a medical cannabis dispensary or production center~~  
5 ~~licensed by the department.~~

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

8 **PART III**

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

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

15 (1) Each applicant and licensee for a medical cannabis  
16 dispensary license, including the individual applicant  
17 and all officers, directors, members of a limited  
18 liability corporation; shareholders with at least  
19 twenty-five per cent or more ownership interest in a  
20 corporation; and managers of an entity applicant;

21 (2) Each employee of a medical cannabis dispensary;





1 (3) Each employee of a subcontracted production center or  
2 retail dispensing location; and

3 (4) All officers, directors, members of a limited  
4 liability corporation; and shareholders with at least  
5 twenty-five per cent or more ownership interest in a  
6 corporate owner of a subcontracted production center  
7 or retail dispensing location[~~and~~

8 ~~(5) Any person permitted to enter and remain in a~~  
9 ~~dispensary facility pursuant to section 329D-15(a)(4)~~  
10 ~~or 329D-16(a)(3)].~~

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

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

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

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



- 1           (2) The department of health or its designee on  
2           prospective employees, persons seeking to serve as  
3           providers, or subcontractors in positions that place  
4           them in direct contact with clients when providing  
5           non-witnessed direct mental health or health care  
6           services as provided by section 321-171.5;
- 7           (3) The department of health or its designee on all  
8           applicants for licensure or certification for,  
9           operators for, prospective employees, adult  
10          volunteers, and all adults, except adults in care, at  
11          healthcare facilities as defined in section 321-15.2;
- 12          (4) The department of education on employees, prospective  
13          employees, and teacher trainees in any public school  
14          in positions that necessitate close proximity to  
15          children as provided by section 302A-601.5;
- 16          (5) The counties on employees and prospective employees  
17          who may be in positions that place them in close  
18          proximity to children in recreation or child care  
19          programs and services;
- 20          (6) The county liquor commissions on applicants for liquor  
21          licenses as provided by section 281-53.5;



- 1           (7) The county liquor commissions on employees and  
2           prospective employees involved in liquor  
3           administration, law enforcement, and liquor control  
4           investigations;
- 5           (8) The department of human services on operators and  
6           employees of child caring institutions, child placing  
7           organizations, and foster boarding homes as provided  
8           by section 346-17;
- 9           (9) The department of human services on prospective  
10          adoptive parents as established under section  
11          346-19.7;
- 12          (10) The department of human services or its designee on  
13          applicants to operate child care facilities, household  
14          members of the applicant, prospective employees of the  
15          applicant, and new employees and household members of  
16          the provider after registration or licensure as  
17          provided by section 346-154, and persons subject to  
18          section 346-152.5;
- 19          (11) The department of human services on persons exempt  
20          pursuant to section 346-152 to be eligible to provide



# S.B. NO. 780

1 child care and receive child care subsidies as  
2 provided by section 346-152.5;

3 (12) The department of health on operators and employees of  
4 home and community-based case management agencies and  
5 operators and other adults, except for adults in care,  
6 residing in community care foster family homes as  
7 provided by section 321-15.2;

8 (13) The department of human services on staff members of  
9 the Hawaii youth correctional facility as provided by  
10 section 352-5.5;

11 (14) The department of human services on employees,  
12 prospective employees, and volunteers of contracted  
13 providers and subcontractors in positions that place  
14 them in close proximity to youth when providing  
15 services on behalf of the office or the Hawaii youth  
16 correctional facility as provided by section 352D-4.3;

17 (15) The judiciary on employees and applicants at detention  
18 and shelter facilities as provided by section 571-34;

19 (16) The department of public safety on employees and  
20 prospective employees who are directly involved with  
21 the treatment and care of persons committed to a



- 1           correctional facility or who possess police powers  
2           including the power of arrest as provided by section  
3           353C-5;
- 4       (17) The board of private detectives and guards on  
5           applicants for private detective or private guard  
6           licensure as provided by section 463-9;
- 7       (18) Private schools and designated organizations on  
8           employees and prospective employees who may be in  
9           positions that necessitate close proximity to  
10          children; provided that private schools and designated  
11          organizations receive only indications of the states  
12          from which the national criminal history record  
13          information was provided pursuant to section 302C-1;
- 14       (19) The public library system on employees and prospective  
15          employees whose positions place them in close  
16          proximity to children as provided by section  
17          302A-601.5;
- 18       (20) The State or any of its branches, political  
19          subdivisions, or agencies on applicants and employees  
20          holding a position that has the same type of contact  
21          with children, vulnerable adults, or persons committed



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

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

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

14 (23) The department of human services on foster grandparent  
15 program, senior companion program, and respite  
16 companion program participants as provided by section  
17 346-97;

18 (24) The department of human services on contracted and  
19 subcontracted service providers and their current and  
20 prospective employees that provide home and community-  
21 based services under section 1915(c) of the Social



1 Security Act, title 42 United States Code section  
2 1396n(c), or under any other applicable section or  
3 sections of the Social Security Act for the purposes  
4 of providing home and community-based services, as  
5 provided by section 346-97;

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

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

15 (27) The department of commerce and consumer affairs on the  
16 original chartering applicants and proposed executive  
17 officers of a credit union as provided by section  
18 412:10-103;

19 (28) The department of commerce and consumer affairs on:

20 (A) Each principal of every non-corporate applicant  
21 for a money transmitter license;



1 (B) Each person who upon approval of an application  
2 by a corporate applicant for a money transmitter  
3 license will be a principal of the licensee; and

4 (C) Each person who upon approval of an application  
5 requesting approval of a proposed change in  
6 control of licensee will be a principal of the  
7 licensee,

8 as provided by sections 489D-9 and 489D-15;

9 (29) The department of commerce and consumer affairs on  
10 applicants for licensure and persons licensed under  
11 title 24;

12 (30) The Hawaii health systems corporation on:

13 (A) Employees;

14 (B) Applicants seeking employment;

15 (C) Current or prospective members of the corporation  
16 board or regional system board; or

17 (D) Current or prospective volunteers, providers, or  
18 contractors,

19 in any of the corporation's health facilities as  
20 provided by section 323F-5.5;

21 (31) The department of commerce and consumer affairs on:





- 1           (A) An applicant for a mortgage loan originator  
2           license, or license renewal; and
- 3           (B) Each control person, executive officer, director,  
4           general partner, and managing member of an  
5           applicant for a mortgage loan originator company  
6           license or license renewal,  
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 (A) Applicants for real estate appraiser licensure or  
5 certification as provided by chapter 466K;  
6 (B) Each person who owns more than ten per cent of an  
7 appraisal management company who is applying for  
8 registration as an appraisal management company,  
9 as provided by section 466L-7; and  
10 (C) Each of the controlling persons of an applicant  
11 for registration as an appraisal management  
12 company, as provided by section 466L-7;  
13 [~~(41)~~] ~~The department of health or its designee on all~~  
14 ~~license applicants, licensees, employees, contractors,~~  
15 ~~and prospective employees of medical cannabis~~  
16 ~~dispensaries, and individuals permitted to enter and~~  
17 ~~remain in medical cannabis dispensary facilities as~~  
18 ~~provided under sections 329D-15(a)(4) and~~  
19 ~~329D-16(a)(3);~~  
20 ~~(42)]~~ (41) The department of commerce and consumer affairs  
21 on applicants for nurse licensure or license renewal,



1 reactivation, or restoration as provided by sections  
2 457-7, 457-8, 457-8.5, and 457-9;

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

7 ~~[(44)]~~ (43) The department of commerce and consumer affairs  
8 on:

9 (A) Each of the controlling persons of the applicant  
10 for licensure as an escrow depository, and each  
11 of the officers, directors, and principals who  
12 will be in charge of the escrow depository's  
13 activities upon licensure; and

14 (B) Each of the controlling persons of an applicant  
15 for proposed change in control of an escrow  
16 depository licensee, and each of the officers,  
17 directors, and principals who will be in charge  
18 of the licensee's activities upon approval of  
19 such application,

20 as provided by chapter 449;



1       ~~[(45)]~~ (44) The department of taxation on current or  
2                   prospective employees or contractors who have access  
3                   to federal tax information in order to comply with  
4                   requirements of federal law, regulation, or procedure,  
5                   as provided by section 231-1.6;

6       ~~[(46)]~~ (45) The department of labor and industrial relations  
7                   on current or prospective employees or contractors who  
8                   have access to federal tax information in order to  
9                   comply with requirements of federal law, regulation,  
10                  or procedure, as provided by section 383-110;

11       ~~[(47)]~~ (46) The department of human services on current or  
12                  prospective employees or contractors who have access  
13                  to federal tax information in order to comply with  
14                  requirements of federal law, regulation, or procedure,  
15                  as provided by section 346-2.5;

16       ~~[(48)]~~ (47) The child support enforcement agency on current  
17                  or prospective employees, or contractors who have  
18                  access to federal tax information in order to comply  
19                  with federal law, regulation, or procedure, as  
20                  provided by section 576D-11.5; and



1        [~~49~~] (48) Any other organization, entity, or the State,  
2                    its branches, political subdivisions, or agencies as  
3                    may be authorized by state law."

4                    PART IV

5            SECTION 9. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun before its effective date.

8            SECTION 10. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 11. This Act shall take effect on July 1, 2019.

11

INTRODUCED BY:

R. D. O. J.  
by request



# S.B. NO. 780

**Report Title:**

Medical Marijuana; Penalties; Prohibitions; Repeal

**Description:**

Makes obtaining or attempting to procure medical marijuana fraudulently a petty misdemeanor instead of a class C felony. Makes distribution of medical cannabis to minors a misdemeanor instead of a class B felony. Repeals certain medical marijuana prohibitions related to unauthorized access to medical marijuana dispensaries and production centers. 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.*

