ACT 309

H.B. NO. 2260

A Bill for an Act Relating to Cannabis.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that amendments to the State's medical use of cannabis law and medical cannabis dispensary program law are necessary to facilitate the administration of the laws, ensure qualifying patients' access to cannabis, resolve issues that have arisen under existing law, and clarify legislative intent.

The purpose of this Act is to:

(1) Amend the circumstances under which medical cannabis may be transported by and between dispensaries;

(2) Extend the date after which primary caregivers will no longer be authorized to cultivate cannabis for a qualifying patient;
(3) Redefine the term "medical cannabis production center" to include any series of structures located within the same secured perimeter fence-line;
(4) Increase the number of production centers that may be allowed under a dispensary license;
(5) Increase the allowable number of plants for production centers;
(6) Require the department of health to establish the fee structure for the submission of applications for additional production centers and for dispensary-to-dispensary sales; and
(7) Appropriate funds for an assessment of the medical cannabis dispensary licensing framework.

SECTION 2. Section 329-122, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) For the purposes of this section, "transport" means the transportation of cannabis, usable cannabis, or any manufactured cannabis product between:

(1) A qualifying patient and the qualifying patient's primary caregiver;
(2) A qualifying out-of-state patient under eighteen years of age and the caregiver of a qualifying out-of-state patient;
(3) The production centers and the retail dispensing locations under a dispensary licensee's license; [~~or~~]
(4) Dispensaries, to the extent authorized by section 329D-6(r); or
[~~(4)~~] (5) A production center, retail dispensing location, qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and a certified laboratory for the purpose of laboratory testing; provided that a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient may only transport up to one gram of cannabis per test to a certified laboratory for laboratory testing and may only transport the product if the qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient:
(A) Secures an appointment for testing at a certified laboratory;
(B) Obtains confirmation, which may be electronic, that includes the specific time and date of the appointment and a detailed description of the product and amount to be transported to the certified laboratory for the appointment; and
(C) Has the confirmation, which may be electronic, available during transport.

For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis product, by any means is allowable only between dispensaries to the extent authorized by section 329D-6(r) and between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. Allowable transport pursuant to this section does not include interisland transportation by any means or for any purpose between a [~~qualified~~] qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and any other entity or individual, including an individual who is a [~~qualified~~] qualifying patient,

primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient."

SECTION 3. Section 329-130, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After December 31, [~~2023,~~] 2024, a qualifying patient shall obtain medical cannabis or manufactured cannabis products only:

(1) From a dispensary licensed pursuant to chapter 329D; provided that the cannabis shall be purchased and paid for at the time of purchase; or

(2) By cultivating cannabis in an amount that does not exceed an adequate supply for the qualifying patient, pursuant to section 329-122; provided that each location used to cultivate cannabis shall be used by no more than five qualifying patients.

After December 31, [~~2023,~~] 2024, no primary caregiver shall be authorized to cultivate cannabis for any qualifying patient."

SECTION 4. Section 329D-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "medical cannabis dispensary" to read:

""Medical cannabis dispensary" or "dispensary" means a person licensed by the State pursuant to this chapter to own, operate, or subcontract [~~up to two~~] no more than three production centers and up to two retail dispensing locations."

2. By amending the definition of "medical cannabis production center" to read:

""Medical cannabis production center" or "production center" means a farm or [~~facility~~] series of structures located within the same secured perimeter fence-line wholly owned, operated, or subcontracted by a person licensed by the State pursuant to this chapter as a medical cannabis dispensary that produces cannabis and manufactured cannabis products [~~solely~~] to supply cannabis and manufactured cannabis products to one or more of the retail dispensing locations of [~~the~~] any licensed medical cannabis dispensary."

SECTION 5. Section 329D-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

"(f) [~~Up to two~~] No more than three production centers shall be allowed under each dispensary license; provided that, except as otherwise specified in subsection (k), each production center shall be limited to no more than [~~three~~] five thousand cannabis plants. For purposes of this subsection, "plant" means a cannabis plant that is greater than twelve vertical inches in height from where the base of the stalk emerges from the growth medium to the tallest point of the plant, or greater than twelve horizontal inches in width from the end of one branch to the end of another branch; provided that multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant."

2. By amending subsections (k) and (l) to read:

"(k) Notwithstanding any provision of subsection (f) to the contrary, the department may [~~determine whether~~] allow any dispensary [~~licensees shall be allowed~~] licensee an additional two thousand five hundred cannabis plants at each of the licensee's production centers[~~. In~~]; provided that the licensee shall be allowed no more than fifteen thousand cannabis plants in total across all of the licensee's production centers; provided further that in no case shall a licensee be

allowed more than [~~five~~] seven thousand five hundred plants at a single production center.

(l) Notwithstanding any provision of subsection (g) to the contrary, the department may determine whether dispensary licensees shall be allowed [~~one~~] no more than two additional retail dispensing [~~location~~] locations per licensee. In considering whether to allow additional retail dispensing locations, the department shall consider the licensee's capability to serve and supply medical cannabis to [~~qualified~~] qualifying patients in a rural or underserved geographical area of a county. For purposes of this subsection, a "rural or underserved geographical area" shall be determined by considering the number of registered medical cannabis patients [~~that~~] who reside within a certain zip code compared to the quantity of medical cannabis that the closest production center and retail dispensing location have the capability to provide."

SECTION 6. Section 329D-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) [~~A~~] Pursuant to section 329D-7(2), a nonrefundable application fee [~~of $5,000~~] for each license application shall be submitted to the department by certified or cashier's check. Within seven days of approval, a dispensary license fee [~~of $75,000~~] for each license approved shall be submitted to the department by certified or cashier's check or the department shall issue a license to the next qualified applicant."

2. By amending subsection (n) to read:

"(n) [~~A~~] Pursuant to section 239D-7(2), a dispensary license may be renewed annually by payment of an annual renewal fee [~~of $50,000~~] and subject to verification by the department through an unannounced inspection that the individual licensee and entity licensee continue to meet all licensing requirements from the date the initial licenses were issued."

SECTION 7. Section 329D-6, Hawaii Revised Statutes, is amended to read as follows:

"§329D-6 Dispensary operations. (a) No person shall operate a dispensary, [~~nor~~] or engage in the production, manufacture, or sale of cannabis or manufactured cannabis products, unless the person has obtained a license from the department pursuant to this chapter.

(b) No dispensary licensee, its officers, employees, or agents shall provide written certification for the use of medical cannabis or manufactured cannabis products for any person.

(c) No person under the age of twenty-one shall be employed by a dispensary licensee.

(d) Notwithstanding any other law to the contrary, including [~~but not limited to~~] sections 378-2 and 378-2.5, dispensaries:

(1) Shall deny employment to any individual who has been:
    (A) Convicted of murder in any degree;
    (B) Convicted of a class A or class B felony; or
    (C) Convicted of a class C felony involving trafficking, distributing, or promoting a schedule I or II controlled substance other than cannabis within the last ten years; and
(2) May deny employment to any individual who has been convicted of a class C felony involving:
    (A) Fraud, deceit, misrepresentation, embezzlement, or theft; or
    (B) Endangering the welfare of a minor.

Employment under this chapter shall be exempt from section 378-2(a)(1), as it relates to arrest and court record discrimination, and section 378-2.5.

(e) Retail dispensing locations shall not be open for retail sales before 8:00 a.m. or after 8:00 p.m., Hawaii-Aleutian Standard Time, Monday through Sunday.

(f) All dispensary facilities, including [~~but not limited to~~] production centers and retail dispensing locations, shall be enclosed indoor facilities and shall maintain twenty-four hour security measures, including [~~but not limited to~~] an alarm system, video monitoring and recording on the premises, and exterior lighting. A dispensary licensee [~~who~~] that intends to utilize, as a production center, an enclosed indoor facility that includes a roof that is partially or completely transparent or translucent, as provided under section 329D-1, shall notify the department of that intention [~~prior to~~] before altering or constructing the facility. Production centers shall remain locked at all times. Retail dispensing locations shall remain locked at all times, other than business hours as authorized by subsection (e), and shall only be opened for authorized persons.

(g) In all dispensary facilities, only the licensee, if an individual, registered employees of the dispensary licensee, registered employees of a subcontracted production center or retail dispensing location, employees of a certified laboratory for testing purposes, state employees authorized by the director of health, and law enforcement and other government officials acting in their official capacity shall be permitted to touch or handle any cannabis or manufactured cannabis products, except that a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient may receive manufactured cannabis products at a retail dispensing location following completion of a sale.

(h) A dispensary shall provide the department with the address, tax map key number, and a copy of the premises lease, if applicable, of the proposed location of a production center allowed under a license for a county [~~not~~] no later than thirty days [~~prior to~~] before any medical cannabis or manufactured cannabis products being produced or manufactured at that production center.

(i) A dispensary shall provide the department with the address, tax map key number, and a copy of the premises lease, if applicable, of the proposed location of each retail dispensing location allowed under a license [~~not~~] no less than sixty days [~~prior to~~] before opening for business.

(j) The department shall establish, maintain, and control a computer software tracking system that shall have real time, twenty-four-hour access to the data of all dispensaries.

(1) The computer software tracking system shall collect data relating to:

(A) The total amount of cannabis in possession of all dispensaries from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the cannabis, cannabis plants, or manufactured cannabis product is sold or destroyed pursuant to section 329D-7;

(B) The total amount of manufactured cannabis product inventory, including the equivalent physical weight of cannabis that is used to manufacture manufactured cannabis products, purchased by a qualifying patient, primary caregiver, qualifying out-of-state patient, and caregiver of a qualifying out-of-state patient from all retail dispensing locations in the State in any fifteen-day period;

(C) The amount of waste produced by each plant at harvest; and

(D) The transport of cannabis and manufactured cannabis products between production centers and retail dispensing locations[~~,~~] and as authorized by subsection (r), including tracking identification issued by the tracking system, the identity of the person transporting the cannabis or manufactured cannabis products, and the make, model, and license number of the vehicle being used for the transport;

(2) The procurement of the computer software tracking system established pursuant to this subsection shall be exempt from chapter 103D; provided that:

(A) The department shall publicly solicit at least three proposals for the computer software tracking system; and

(B) The selection of the computer software tracking system shall be approved by the director of the department and the chief information officer; and

(3) Notwithstanding any other provision of this subsection to the contrary, once the department has authorized a licensed dispensary to commence sales of cannabis or manufactured cannabis products, if the department's computer software tracking system is inoperable or is not functioning properly, as an alternative to requiring dispensaries to temporarily cease operations, the department may implement an alternate tracking system that will enable a qualifying patient, primary caregiver, qualifying out-of-state patient, and caregiver of a qualifying out-of-state patient to purchase cannabis or manufactured cannabis products from a licensed dispensary on a temporary basis. The department shall seek input regarding the alternate tracking system from medical cannabis licensees. The alternate tracking system may operate as follows:

(A) The department may immediately notify all licensed dispensaries that the computer software tracking system is inoperable; and

(B) Once the computer software tracking system is operational and functioning to meet the requirements of this subsection, the department may notify all licensed dispensaries, and the alternate tracking system in this subsection shall be discontinued.

(k) A dispensary licensed pursuant to this chapter shall purchase, operate, and maintain a computer software tracking system that shall:

(1) Interface with the department's computer software tracking system established pursuant to subsection (j);

(2) Allow each licensed dispensary's production center to submit to the department in real time, by automatic identification and data capture, all cannabis, cannabis plants, and manufactured cannabis product inventory in possession of that dispensary from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the cannabis or manufactured cannabis product is sold or destroyed pursuant to section 329D-7;

(3) Allow the licensed dispensary's retail dispensing location to submit to the department in real time for the total amount of cannabis and manufactured cannabis product purchased by a qualifying patient, primary caregiver, qualifying out-of-state patient, and caregiver of a qualifying out-of-state patient from the dispensary's retail dispensing locations in the State in any fifteen day period; provided that the software tracking system shall impose an automatic stopper in real time, which cannot be overridden, on any further purchases

of cannabis or manufactured cannabis products, if the maximum allowable amount of cannabis has already been purchased for the applicable fifteen day period; provided further that additional purchases shall not be permitted until the next applicable period; and

(4) Allow the licensed dispensary to submit all data required by this subsection to the department and permit the department to access the data if the department's computer software tracking system is not functioning properly and sales are made pursuant to the alternate tracking system under subsection (j).

(l) No free samples of cannabis or manufactured cannabis products shall be provided at any time, and no consumption of cannabis or manufactured cannabis products shall be permitted on any dispensary premises.

(m) [~~A~~] Except as authorized by subsection (r), a dispensary shall not transport cannabis or manufactured cannabis products to another county or another island; provided that this subsection shall not apply to the transportation of cannabis or any manufactured cannabis product solely for the purposes of laboratory testing pursuant to section 329D-8, and subject to subsection (j)[~~:~~], if no certified laboratory is located in the county or on the island where the dispensary is located; provided further that a dispensary shall only transport samples of cannabis and manufactured cannabis products for laboratory testing for purposes of this subsection in an amount and manner prescribed by the department, in rules adopted pursuant to this chapter, and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State.

(n) A dispensary shall be prohibited from off-premises delivery of cannabis or manufactured cannabis products to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient.

(o) A dispensary shall not:

(1) Display cannabis or manufactured cannabis products in windows or in public view; or

(2) Post any signage other than a single sign no greater than one thousand six hundred square inches bearing only the business or trade name in text without any pictures or illustrations; provided that if any applicable law or ordinance restricting outdoor signage is more restrictive, that law or ordinance shall govern.

(p) No cannabis or manufactured cannabis products shall be transported to, from, or within any federal fort or arsenal, national park or forest, any other federal enclave, or any other property possessed or occupied by the federal government.

(q) A dispensary licensed pursuant to this chapter shall be prohibited from providing written certification pursuant to section 329-122 for the use of medical cannabis for any person.

(r) The department may authorize a dispensary to purchase cannabis and manufactured cannabis products from another dispensary in a manner prescribed by the department by rules adopted pursuant to this chapter and chapter 91; provided that:

(1) The purchasing dispensary establishes to the department's satisfaction that:

(A) The purchase is necessary to ensure that qualifying patients have continuous access to cannabis for medical use; or

(B) The cannabis and manufactured cannabis products are for medical, scientific, or other legitimate purposes approved by the State;

(2) The selling dispensary may transport no more than eight hundred ounces of cannabis or manufactured cannabis products to the purchasing dispensary within a thirty-day period;
(3) The cannabis and manufactured cannabis products are transported between the dispensaries for medical, scientific, or other legitimate purposes approved by the State; and
(4) Nothing in this subsection shall relieve any dispensary of its responsibilities and obligations under this chapter and chapter 329."

SECTION 8. Section 329D-7, Hawaii Revised Statutes, is amended to read as follows:

"§329D-7 Medical cannabis dispensary rules. The department shall establish standards with respect to:

(1) The number of medical cannabis dispensaries that shall be permitted to operate in the State;
(2) A fee structure for [~~the~~]:
  (A) The submission of applications and renewals of licenses to dispensaries; provided that the department shall consider the market conditions in each county in determining the license renewal fee amounts;
  (B) The submission of applications for each additional production center; and
  (C) Dispensary-to-dispensary sales authorized by section 329D-6(r);
(3) Criteria and procedures for the consideration and selection, based on merit, of applications for licensure of dispensaries; provided that the criteria shall include but not be limited to an applicant's:
  (A) Ability to operate a business;
  (B) Financial stability and access to financial resources; provided that applicants for medical cannabis dispensary licenses shall provide documentation that demonstrates control of not less than $1,000,000 in the form of escrow accounts, letters of credit, surety bonds, bank statements, lines of credit or the equivalent to begin operating the dispensary;
  (C) Ability to comply with the security requirements developed pursuant to paragraph (6);
  (D) Capacity to meet the needs of qualifying patients and qualifying out-of-state patients;
  (E) Ability to comply with criminal background check requirements developed pursuant to paragraph (8); and
  (F) Ability to comply with inventory controls developed pursuant to paragraph (13);
(4) Specific requirements regarding annual audits and reports required from each production center and dispensary licensed pursuant to this chapter;
(5) Procedures for announced and unannounced inspections by the department or its agents of production centers and dispensaries licensed pursuant to this chapter; provided that inspections for license renewals shall be unannounced;
(6) Security requirements for the operation of production centers and retail dispensing locations; provided that, at a minimum, the following shall be required:
  (A) For production centers:

(i) Video monitoring and recording of the premises; provided that recordings shall be retained for fifty days;
(ii) Fencing that surrounds the premises and that is sufficient to reasonably deter intruders and prevent anyone outside the premises from viewing any cannabis in any form;
(iii) An alarm system; and
(iv) Other reasonable security measures to deter or prevent intruders, as deemed necessary by the department;

(B) For retail dispensing locations:
(i) Presentation of a valid government-issued photo identification and a valid identification as issued by the department pursuant to section 329-123 by a qualifying patient or caregiver, or section 329-123.5 by a qualifying out-of-state patient or caregiver of a qualifying out-of-state patient, upon entering the premises;
(ii) Video monitoring and recording of the premises; provided that recordings shall be retained for fifty days;
(iii) An alarm system;
(iv) Exterior lighting; and
(v) Other reasonable security measures as deemed necessary by the department;

(7) Security requirements for the transportation of cannabis and manufactured cannabis products between production centers and retail dispensing locations and between a production center, retail dispensing location, qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and a certified laboratory, pursuant to section 329-122(f);

(8) Standards and criminal background checks to ensure the reputable and responsible character and fitness of all license applicants, licensees, employees, subcontractors and their employees, and prospective employees of medical cannabis dispensaries to operate a dispensary; provided that the standards, at a minimum, shall exclude from licensure or employment any person convicted of any felony;

(9) The training and certification of operators and employees of production centers and dispensaries;

(10) The types of manufactured cannabis products that dispensaries shall be authorized to manufacture and sell pursuant to sections 329D-9 and 329D-10;

(11) Laboratory standards related to testing cannabis and manufactured cannabis products for content, contamination, and consistency;

(12) The quantities of cannabis and manufactured cannabis products that a dispensary may sell or provide to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient; provided that no dispensary shall sell or provide to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient any combination of cannabis and manufactured products that:
(A) During a period of fifteen consecutive days, exceeds the equivalent of four ounces of cannabis; or
(B) During a period of thirty consecutive days, exceeds the equivalent of eight ounces of cannabis;

(13) Dispensary and production center inventory controls to prevent the unauthorized diversion of cannabis or manufactured cannabis products or the distribution of cannabis or manufactured cannabis

products to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient in quantities that exceed limits established by this chapter; provided that the controls, at a minimum, shall include:

(A) A computer software tracking system as specified in section 329D-6(j) and (k); and

(B) Product packaging standards sufficient to allow law enforcement personnel to reasonably determine the contents of an unopened package;

(14) Limitation to the size or format of signs placed outside a retail dispensing location or production center; provided that the signage limitations, at a minimum, shall comply with section 329D-6(o)(2) and shall not include the image of a cartoon character or other design intended to appeal to children;

(15) The disposal or destruction of unwanted or unused cannabis and manufactured cannabis products;

(16) The enforcement of the following prohibitions against:

(A) The sale or provision of cannabis or manufactured cannabis products to unauthorized persons;

(B) The sale or provision of cannabis or manufactured cannabis products to a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient in quantities that exceed limits established by this chapter;

(C) Any use or consumption of cannabis or manufactured cannabis products on the premises of a retail dispensing location or production center; and

(D) The distribution of cannabis or manufactured cannabis products, for free, on the premises of a retail dispensing location or production center;

(17) The establishment of a range of penalties for violations of this chapter or rule adopted thereto; and

(18) A process to recognize and register patients who are authorized to purchase, possess, and use medical cannabis in another state, a United States territory, or the District of Columbia as qualifying out-of-state patients; provided that this registration process may commence no sooner than January 1, 2018."

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of $50,000 or so much thereof as may be necessary for fiscal year 2022-2023 for an assessment of the medical cannabis dispensary licensing framework.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2022.

(Approved July 12, 2022.)