
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that the State's medical
2 marijuana program, enacted into law in 2000 in Act 228, Session
3 Laws of Hawaii 2000, and codified in part IX, chapter 329,
4 Hawaii Revised Statutes, is a public health program conceived
5 out of concern for the health and welfare of the seriously ill.
6 Registration for the program is currently housed in the
7 narcotics enforcement division of the department of public
8 safety.

9 Section 329-121, Hawaii Revised Statutes, gives the
10 department of health the function of adding new debilitating
11 conditions to those that would permit medical marijuana use
12 under the definition of "debilitating medical condition".
13 Although research indicates that the potential beneficial use of
14 marijuana has been expanding to new conditions, this function
15 has never been exercised by the department of health.

16 This Act provides for an administrative body within the
17 department of health to determine whether to add new



1 debilitating conditions to those listed in section 329-121,
2 Hawaii Revised Statutes.

3 The declining numbers of patients, who are seeking to
4 ameliorate their debilitating conditions with medical marijuana
5 on Oahu, strongly suggest that physicians are refusing to
6 certify medical marijuana use because of fear of possible
7 prosecution under the federal Controlled Substances Act, 21
8 United States Code sections 801 et seq. Cases decided by the
9 United States Court of Appeals for the Ninth Circuit, which are
10 applicable in Hawaii, make clear that physicians may not be
11 prosecuted for recommending medical use of marijuana or for
12 taking steps which will enable patients to acquire medical
13 marijuana if the role of the physician is properly limited to
14 certifying that the patient has a debilitating condition and
15 that, in the physician's opinion, the benefits of marijuana use
16 outweigh the risks for the particular patient. This Act limits
17 the role of the physician to these two functions.

18 It is also possible that declining enrollment may be a
19 result of certifications automatically expiring after one year,
20 as the law requires. This Act allows, but does not require, the
21 department of public safety to mail, thirty days before a
22 qualifying patient's registration expires, a notice of



1 expiration and the need for renewal for continued medical
2 marijuana use.

3 This Act promotes safety by adding the use of stationary
4 heavy equipment to the situations in which medical marijuana may
5 not be used. In addition, it makes other changes to the medical
6 marijuana law designed to simplify the Act for patients
7 suffering from debilitating conditions and to better describe
8 the role of the certifying physician to ensure that the patient
9 will be likely to benefit from the use of medical marijuana and
10 that the certifying physician will not engage in activities that
11 might subject the physician to prosecution under the federal
12 Controlled Substances Act. These changes include:

- 13 (1) Allowing use of medical marijuana in the workplace if
14 the workplace is the patient's own residence;
- 15 (2) Eliminating ambiguity in the description of the
16 quantity of marijuana that may be possessed;
- 17 (3) Making the necessary applications readily available on
18 the department of health's website to patients who
19 seek certification; and
- 20 (4) Limiting the role of the certifying physician in
21 securing certification.



1 To ensure that patients' privacy rights are protected, the
2 physician's certification shall attest that the patient has a
3 debilitating condition as defined in this Act but shall not
4 identify the patient's specific diagnosis.

5 The purpose of this Act is to change certain procedures and
6 definitions to make the program more efficient and more user-
7 friendly to the seriously ill patients who register with the
8 program. It also places the burden of going forward with the
9 registration required by the law on patients and their
10 caregivers, those who are most directly affected by the adverse
11 symptoms of the patients' debilitating conditions.

12 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
13 amended by adding a new section to part IX to be appropriately
14 designated and to read as follows:

15 "§329- Debilitating medical condition; additional
16 medical conditions; procedure. The director of health shall
17 convene a standing committee consisting of two practicing
18 physicians and one representative from the department of health
19 to meet semiannually to consider petitions submitted by
20 physicians to add other medical conditions to the definition of
21 "debilitating medical condition" in section 329-121. In
22 considering the petitions, the committee shall provide public



1 notice of, and an opportunity to comment on, the petitions in a
2 public hearing. The committee shall approve or deny the
3 petitions within thirty days after the hearing. Medical
4 conditions approved by the committee shall be added to the list
5 of debilitating conditions covered by this part, effective
6 immediately upon the date of approval."

7 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding a new definition to be appropriately inserted
10 and to read:

11 "Registration" means filing with the department of public
12 safety all information required by this chapter, including
13 written certification."

14 2. By amending the definitions of "adequate supply",
15 "debilitating medical condition", "primary caregiver", and
16 "written certification" to read:

17 "Adequate supply" means an amount of marijuana jointly
18 possessed between the qualifying patient and the primary
19 caregiver that is not more than is reasonably necessary to
20 assure the uninterrupted availability of marijuana for the
21 purpose of alleviating the symptoms or effects of a qualifying
22 patient's debilitating medical condition; provided that an



1 "adequate supply" shall not exceed [~~three mature~~] seven
2 marijuana plants [~~, four immature marijuana plants, and one ounce~~
3 ~~of usable marijuana per each mature plant.~~] and three ounces of
4 usable marijuana at any given time.

5 "Debilitating medical condition" means:

- 6 (1) Cancer, glaucoma, positive status for human
7 immunodeficiency virus, acquired immune deficiency
8 syndrome, or the treatment of these conditions;
- 9 (2) A chronic or debilitating disease or medical condition
10 or its treatment that produces one or more of the
11 following:
- 12 (A) Cachexia or wasting syndrome;
- 13 (B) Severe pain;
- 14 (C) Severe nausea;
- 15 (D) Seizures, including those characteristic of
16 epilepsy; or
- 17 (E) Severe and persistent muscle spasms, including
18 those characteristic of multiple sclerosis or
19 Crohn's disease; or
- 20 (3) Any other medical condition approved by the department
21 of health pursuant to [~~administrative rules in~~



1 ~~response to a request from a physician or potentially~~
2 ~~qualifying patient.]~~ section 329- .

3 "Primary caregiver" means a person, other than the
4 qualifying patient, another patient registered under part IX,
5 and the qualifying patient's physician, who is eighteen years of
6 age or older who has not been convicted under any federal or
7 state law relating to any controlled substance and who has
8 agreed to undertake responsibility [~~for~~] of growing the
9 marijuana for a qualifying patient and managing the well-being
10 of the qualifying patient with respect to the medical use of
11 marijuana. In the case of a minor or adult lacking legal
12 capacity, the primary caregiver shall be a parent, guardian, or
13 person having legal custody.

14 "Written certification" means the qualifying patient's
15 medical records or a statement signed by a qualifying patient's
16 physician, provided in response to a request for the information
17 from the qualifying patient, stating that in the physician's
18 professional opinion, the qualifying patient has a debilitating
19 medical condition and the potential benefits of the medical use
20 of marijuana would likely outweigh the health risks for the
21 qualifying patient. The department of public safety may
22 require, through its rulemaking authority, that all written



1 certifications comply with a designated form. If a form is
2 required by the department of public safety, it shall be made
3 readily available for reproduction by posting it on the
4 department of health's website and by sending a copy by mail to
5 any person requesting it. "Written certifications" are valid
6 for only one year from the [~~time~~] date of signing[-] unless the
7 physician specifies a shorter duration. The department of
8 public safety may give the patient and primary caregiver, if
9 any, written notice of the pending expiration of a patient's
10 certification not less than thirty days before the certification
11 expires."

12 SECTION 4. Section 329-122, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Notwithstanding any law to the contrary, the medical
15 use of marijuana by a qualifying patient shall be permitted only
16 if:

- 17 (1) The qualifying patient has been diagnosed by a
18 physician as having a debilitating medical condition;
- 19 (2) The qualifying patient's physician, in response to a
20 request for information from the patient, has
21 certified in writing that, in the physician's
22 professional opinion, after having completed a medical



1 examination and assessment of the patient's medical
2 history and current medical condition in the course of
3 a bona fide physician-patient relationship, the
4 potential benefits of the medical use of marijuana
5 would likely outweigh the health risks for the
6 particular qualifying patient; and

7 (3) The amount of marijuana jointly possessed by the
8 qualifying patient and primary caregiver, if any, does
9 not exceed an adequate supply."

10 SECTION 5. Section 329-122, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) The authorization for the medical use of marijuana in
13 this section shall not apply to:

14 (1) The medical use of marijuana that endangers the health
15 or well-being of another person;

16 (2) The medical use of marijuana:

17 (A) In a school bus, public bus, or any moving
18 vehicle[+], or while using stationary heavy
19 equipment;

20 (B) In the workplace of one's employment [+], except
21 if working in one's residence;

22 (C) On any school grounds;



1 (D) At any public park, public beach, public
2 recreation center, [~~recreation~~] or youth center;
3 or

4 (E) Other [~~place~~] places open to the public; and

5 (3) The use of marijuana by a qualifying patient, parent,
6 or primary caregiver for purposes other than medical
7 use permitted by this part."

8 SECTION 6. Section 329-123, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~+~~]§329-123[+] **Registration requirements.** (a)

11 Physicians who issue written certifications shall [~~register the~~
12 ~~names, addresses, patient identification numbers,~~] provide in
13 each certification, the name, address, patient identification
14 number, and other identifying information of the qualifying
15 ~~patients [issued written certifications with the department of~~
16 ~~public safety].~~ The information shall include the physician's
17 attestation that the patient had one of the debilitating medical
18 conditions defined in section 321-121.

19 (b) Qualifying patients shall register with the department
20 of public safety. [~~Such~~] The registration shall be effective
21 until the expiration of the certificate issued by the physician.
22 Every qualifying patient shall provide sufficient identifying



1 information to establish the personal identity of the qualifying
2 patient and the primary caregiver. Qualifying patients shall
3 report changes in information within [~~five~~] ten working days.
4 Every qualifying patient shall have only one primary caregiver
5 at any given time. The department shall [~~then~~] issue to the
6 qualifying patient and primary caregiver a registration
7 certificate[~~]~~ and may charge a reasonable fee not to exceed
8 [~~\$25-~~] \$50 per year. The certificate may state that the patient
9 had a "debilitating medical condition", but may not include the
10 patient's specific medical diagnosis.

11 (c) Primary caregivers shall register with the department
12 of public safety. Every primary caregiver shall be responsible
13 for the care of only one qualifying patient at any given time.

14 (d) Upon [~~an~~] inquiry by a law enforcement agency, the
15 department of public safety shall verify whether the [~~particular~~
16 ~~qualifying patient~~] subject of the inquiry has registered with
17 the department and may provide reasonable access to the registry
18 information for official law enforcement purposes."

19 SECTION 7. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Controlled Substances; Medical Marijuana

Description:

Establishes a committee that may add other medical conditions to the definition of "debilitating medical condition" for the purpose of medical marijuana use; amends the definitions of "primary caregiver" and "written certification"; defines "adequate supply" to include seven plants and three ounces of usable marijuana; adds definition for "registration" and amends the registration requirements. (SD1)

