

JAN 23 2015

A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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 was enacted by Act 228, Session Laws of Hawaii
3 2000, as a public health program conceived out of compassion for
4 the health and welfare of the seriously ill. More than twelve
5 thousand patients are currently registered to legally use
6 medical marijuana in Hawaii. There is no provision in the law,
7 however, for safe and legal access to medical marijuana for the
8 thousands of patients registered with the program, resulting in
9 many patients having to obtain marijuana on the black market.

10 After fourteen years, the experience in Hawaii and
11 elsewhere shows that a tightly regulated and controlled
12 dispensary system is of crucial importance to the future of the
13 program for the registered patients who obtain relief from
14 medical marijuana and are unable to grow their own supply or to
15 obtain a competent caregiver to do so. A dispensary system will
16 bring transparency and accountability through the tracking and



1 monitoring of medical marijuana, which promotes public health
2 and safety and prevents diversion.

3 The purpose of this Act is to permit the establishment of a
4 limited number of medical marijuana dispensaries for the purpose
5 of providing medical marijuana for symptom relief to registered
6 patients with qualifying medical conditions.

7 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
8 amended by adding a new section to Part IX to be appropriately
9 designated and to read as follows:

10 "§329- Medical marijuana dispensaries. (a) This
11 section applies to the distribution of marijuana for medical
12 use, as defined in section 329-121.

13 (b) A dispensary registered under this section may
14 acquire, possess, cultivate, manufacture, deliver, transfer,
15 transport, supply, or dispense marijuana, or related supplies
16 and educational materials, to registered qualifying patients and
17 their registered primary caregivers who have designated the
18 dispensary as one of their primary caregivers.

19 (c) Not later than June 30, 2016, the department shall
20 adopt rules governing the manner in which it shall consider



applications for registration certificates for dispensaries,
including regulations governing:

- (1) The form and content of registration and renewal applications;
- (2) Minimum oversight requirements for dispensaries;
- (3) Minimum record-keeping requirements for dispensaries;
- (4) Minimum security requirements for dispensaries;
- (5) The ability of a dispensary to advertise in any appropriate medium or manner; and
- (6) Procedures for suspending, revoking, or terminating the registration of dispensaries that violate this section or rules adopted pursuant to this section.

(d) No later than June 30, 2016, the department shall commence accepting applications for the operation of a single dispensary in each county. No later than September 1, 2016, the department shall provide for at least one public hearing on the granting of an application to a single dispensary in each county. No later than November 1, 2016, the department shall grant a single registration certificate to a single dispensary in each county; provided that at least one applicant in each county meets the requirements of this chapter.



1 (e) If at any time after January 1, 2017, there is no
2 operational dispensary in each county, the department shall
3 accept applications, provide for input from the public, and
4 issue a registration certificate for a dispensary in a county
5 that is lacking one if a qualified applicant exists.

6 (f) No later than June 30, 2017, the department may begin
7 accepting applications to provide registration certificates for
8 additional dispensaries. If the department determines that the
9 number of dispensaries in each county is insufficient to meet
10 patient needs, the department may increase or modify the number
11 of registered dispensaries by adopting rules pursuant to chapter
12 91.

13 (g) Any time a dispensary certificate is revoked, is
14 relinquished, or expires, the department may accept applications
15 for a new dispensary.

16 (h) Every application for a dispensary shall include:

17 (1) A non-refundable application fee paid to the
18 department in the amount of \$1,000;

19 (2) A proposed legal name and proposed articles of
20 incorporation of the dispensary;



1 (3) The proposed physical address of the dispensary, if a
2 precise address has been determined, or, if not, the
3 general location where it would be located. This may
4 include a second location for the cultivation of
5 medical marijuana;

6 (4) A description of the secured facility that would be
7 used in the cultivation of marijuana;

8 (5) The name, address, and date of birth of each principal
9 officer and board member of the dispensary center;

10 (6) Proposed security and safety measures, which shall
11 include at least one security alarm system for each
12 location, planned measures to deter and prevent the
13 unauthorized entrance into areas containing marijuana
14 and the theft of marijuana, as well as a draft
15 employee instruction manual including security
16 policies, safety and security procedures, and personal
17 safety and crime prevention techniques; and

18 (7) Proposed procedures to ensure accurate record keeping.

19 (i) Any time one or more dispensary registration
20 applications are being considered, the department shall also
21 allow for comment by the public and shall solicit input from



1 registered qualifying patients, registered primary caregivers,
2 and the communities where the applicants would be located.

3 (j) When determining whether to grant a dispensary
4 certificate, the department shall consider the overall health
5 needs of qualified patients and the safety of the public,
6 including but not limited to the following factors:

7 (1) Convenience for patients throughout the State to
8 access the dispensaries if the applicant is approved;

9 (2) The applicant's ability to provide a steady supply to
10 the registered qualifying patients in the State;

11 (3) The applicant's experience in running a nonprofit
12 corporation or business;

13 (4) Which applicant or applicants could best serve the
14 interests of qualifying patients;

15 (5) The interests of the county where the dispensary would
16 be located;

17 (6) The sufficiency of the applicant's plans for record
18 keeping and security, which records shall be
19 considered confidential health care information under
20 Hawaii law and are intended to be deemed protected
21 health care information for purposes of the federal



1 Health Insurance Portability and Accountability Act of
2 1996, as amended; and

3 (7) The sufficiency of the applicant's plans for safety
4 and security, including proposed location, security
5 devices employed, and staffing.

6 (k) After a dispensary is approved, but before it begins
7 operations, it shall submit the following to the department:

8 (1) A fee paid to the department in the amount of \$10,000;

9 (2) The legal name and articles of incorporation of the
10 dispensary;

11 (3) The physical address of the dispensary, which may
12 include a second address for the secure cultivation of
13 marijuana;

14 (4) The name, address, and date of birth of each principal
15 officer and board member of the dispensary; and

16 (5) The name, address, and date of birth of any person who
17 will be an agent, employee, or volunteer of the
18 dispensary at its inception.

19 (1) The department shall track the number of registered
20 qualifying patients who designate each dispensary as a primary
21 caregiver, and issue a written statement to the dispensary of



the number of qualifying patients who have designated the dispensary to serve as a primary caregiver for them. This statement shall be updated each time a new registered qualifying patient designates the dispensary or ceases to designate the dispensary and may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements will not be issued more frequently than twice each week.

(m) Within ten days of receipt of the following, the department shall issue each principal officer, board member, agent, volunteer, and employee of a dispensary a registry identification card or renewal card: the person's name, address, and date of birth; a fee in an amount established by the department; and notification to the department by the attorney general that the person has not been convicted of a felony drug offense or has not entered a plea of nolo contendere for a felony drug offense and received a sentence of probation. Each card shall specify that the cardholder is a principal officer, board member, agent, volunteer, or employee of a dispensary and shall contain the following:



1 (1) The name, address, and date of birth of the principal
2 officer, board member, agent, volunteer, or employee;

3 (2) The legal name of the dispensary to which the
4 principal officer, board member, agent, volunteer, or
5 employee is affiliated;

6 (3) A random identification number that is unique to the
7 cardholder;

8 (4) The date of issuance and expiration date of the
9 registry identification card; and

10 (5) A photograph of the cardholder, if required by the
11 department.

12 (n) Except as provided in this subsection, the department
13 shall not issue a registry identification card to any principal
14 officer, board member, agent, volunteer, or employee of a
15 dispensary who has been convicted of a felony drug offense or
16 has entered a plea of nolo contendere for a felony drug offense
17 and received a sentence of probation. The department shall
18 notify the dispensary in writing of the purpose for denying the
19 registry identification card. The department may grant such
20 person a registry identification card if the department
21 determines that the offense was for conduct that occurred prior



1 to the enactment of Act 228, Session Laws of Hawaii 2000, or
2 that was prosecuted by an authority other than the State of
3 Hawaii and for which Act 228, Session Laws of Hawaii 2000, would
4 otherwise have prevented a conviction. The following procedures
5 shall apply for an application for a registry identification
6 card:

7 (1) The attorney general shall conduct a national criminal
8 identification records check on all registry
9 identification card applicants that shall include
10 fingerprints submitted to the Federal Bureau of
11 Investigation. Upon the discovery of a felony drug
12 offense conviction or a plea of nolo contendere for a
13 felony drug offense with a sentence of probation, the
14 attorney general shall inform the applicant, in
15 writing, of the nature of the felony. In those
16 situations in which no felony drug offense conviction
17 or plea of nolo contendere for a felony drug offense
18 with probation is found, the attorney general shall
19 inform the applicant and the department, in writing,
20 of this fact; and



1 (2) All registry identification card applicants shall be
2 responsible for any expense associated with the
3 criminal background check with fingerprints.

4 (o) A registry identification card of a principal officer,
5 board member, agent, volunteer, or employee of a dispensary
6 shall expire one year after its issuance, or upon the expiration
7 of the dispensary certificate, or upon the termination of the
8 principal officer, board member, agent, volunteer, or employee's
9 relationship with the dispensary, whichever occurs first. A
10 dispensary certificate shall expire two years after the
11 registration certificate is issued. The dispensary may submit a
12 renewal application beginning sixty days prior to the expiration
13 of its dispensary certificate. The department shall grant a
14 dispensary's renewal application within thirty days of its
15 submission if the following conditions are satisfied:

16 (1) The dispensary submits the required materials,
17 including a \$10,000 fee; and

18 (2) The dispensary's registration has never been suspended
19 for violations of this part or rules adopted pursuant
20 to this part;



1 (p) The department shall issue a dispensary one or more
2 thirty day temporary certificates after that dispensary's
3 certificate would otherwise expire, if the following conditions
4 are all satisfied:

5 (1) The dispensary previously applied for a renewal, but
6 the department had not come to a decision;

7 (2) The dispensary requested a temporary certificate; and

8 (3) The dispensary has not had its certificate revoked due
9 to violations of this part or rules adopted pursuant
10 to this part.

11 (q) A dispensary's registry identification card shall be
12 subject to revocation if the dispensary:

13 (1) Possesses an amount of marijuana exceeding the limits
14 established by this part;

15 (2) Is in violation of the laws of this State;

16 (3) Is in violation of other departmental rules; or

17 (4) Employs or enters into a business relationship with a
18 medical practitioner who provides written
19 certification of a qualifying patient's medical
20 condition.



1 (r) Dispensaries are subject to reasonable inspection by
2 the department. During an inspection, the department may review
3 the dispensary's confidential records, including its dispensing
4 records, which shall track transactions according to qualifying
5 patients' registry identification numbers to protect their
6 confidentiality. Dispensaries shall be subject to the following
7 requirements:

8 (1) A dispensary shall be operated on a not-for-profit
9 basis for the mutual benefit of its patients. A
10 dispensary need not be recognized as a tax-exempt
11 organization by the Internal Revenue Service;

12 (2) A dispensary shall not be located within one thousand
13 feet of the property line of a preexisting public or
14 private school;

15 (3) A dispensary shall notify the department within ten
16 days of when a principal officer, board member, agent,
17 volunteer or employee ceases to work at the
18 dispensary. The person's card shall be void and the
19 person shall be liable for any penalties that may
20 apply to any nonmedical possession or use of marijuana
21 by the person;



1 (4) A dispensary shall notify the department in writing of
2 the name, address, and date of birth of any new
3 principal officer, board member, agent, volunteer, or
4 employee and shall submit a fee in an amount
5 established by the department for a new registry
6 identification card before that person begins a
7 relationship with the dispensary;

8 (5) A dispensary shall implement appropriate security
9 measures to deter and prevent the unauthorized
10 entrance into areas containing marijuana and the theft
11 of marijuana and shall ensure that each location has
12 an operational security alarm system;

13 (6) The operating documents of a dispensary shall include
14 procedures for the oversight of the dispensary and
15 procedures to ensure accurate record keeping;

16 (7) A dispensary is prohibited from acquiring, possessing,
17 cultivating, manufacturing, delivering, transferring,
18 transporting, supplying, or dispensing marijuana for
19 any purpose except to assist registered qualifying
20 patients with the medical use of marijuana directly or



1 through the qualifying patient's other primary
2 caregiver;

3 (8) All principal officers and board members of a
4 dispensary shall be residents of the State of Hawaii;

5 (9) Each time a new registered qualifying patient visits a
6 dispensary, the dispensary shall provide the patient
7 with a frequently asked questions sheet designed by
8 the department, which explains the limitations on the
9 right to use medical marijuana under state law;

10 (10) A dispensary shall include labels on all marijuana and
11 marijuana products that are dispensed. The labels
12 shall identify the particular strain of marijuana
13 contained therein and reflect the properties of the
14 plant;

15 (11) A dispensary shall have a sliding fee scale system
16 that takes into account a registered patient's ability
17 to pay;

18 (12) Each dispensary shall develop, implement, and maintain
19 on the premises employee, volunteer, and agent
20 policies and procedures to address the following
21 requirements:



1 (A) A job description or employment contract
2 developed for all employees and agents and a
3 volunteer agreement for all volunteers, which
4 includes duties, authority, responsibilities,
5 qualifications, and supervision; and

6 (B) Training in and adherence to state
7 confidentiality laws;

8 (13) Each dispensary shall maintain a personnel record for
9 each employee, agent, and volunteer that includes an
10 application and a record of any disciplinary action
11 taken;

12 (14) Each dispensary shall develop, implement, and maintain
13 on the premises an on-site training curriculum, or
14 enter into contractual relationships with outside
15 resources capable of meeting employee training needs,
16 which include but are not limited to the following
17 topics:

18 (A) Professional conduct, ethics, and patient
19 confidentiality; and

20 (B) Informational developments in the field of
21 medical use of marijuana;



1 (15) Each dispensary shall provide each employee, agent,
2 and volunteer, at the time of initial appointment or
3 training, the following:

4 (A) The proper use of security measures and controls
5 that have been adopted; and

6 (B) Specific procedural instructions on how to
7 respond to an emergency, including robbery or
8 violent accident;

9 (16) All dispensaries shall prepare training documentation
10 for each employee and volunteer and have employees and
11 volunteers sign a statement indicating the date, time,
12 and place the employee and volunteer received the
13 training and topics discussed, to include name and
14 title of presenters. The dispensary shall maintain
15 documentation of an employee's and a volunteer's
16 training for a period of at least six months after
17 termination of an employee's employment or the
18 volunteer's volunteering.

19 (s) The maximum amount of usable marijuana to be dispensed
20 shall be as follows:



1 (1) A dispensary or principal officer, board member,
2 agent, volunteer, or employee of a dispensary shall
3 not dispense more than two and one-half ounces of
4 usable marijuana or the equivalent in a tincture, oil,
5 ointment, or edible form to a qualifying patient
6 directly or through a qualifying patient's other
7 primary caregiver during a fifteen day period; and

8 (2) A dispensary or principal officer, board member,
9 agent, volunteer, or employee of a dispensary shall
10 not dispense an amount of usable marijuana, marijuana
11 plants, seeds, or clones to a qualifying patient or a
12 qualifying patient's other primary caregiver that the
13 dispensary, principal officer, board member, agent,
14 volunteer, or employee knows would cause the recipient
15 to possess more marijuana than an adequate supply.

16 (t) No registered dispensary shall be subject to criminal
17 prosecution, search, seizure, or penalty, if the registered
18 dispensary is not in violation of criminal laws. No registered
19 dispensary shall be denied any right or privilege, including
20 civil penalty or disciplinary action by a business,
21 occupational, or professional licensing board or entity, solely



1 for acting in accordance with this section to assist registered
2 qualifying patients to whom it is connected through the
3 department's registration process with the medical use of
4 marijuana. No registered dispensary shall be subject to
5 prosecution, seizure, or penalty in any manner or denied any
6 right or privilege, including but not limited to civil penalty
7 or disciplinary action by a business, occupational, or
8 professional licensing board or entity, for selling, giving or
9 distributing marijuana in whatever form and within the limits
10 established by the department to another registered dispensary.
11 No principal officers, board members, agents, volunteers, or
12 employees of a registered dispensary shall be subject to arrest,
13 prosecution, search, seizure, or penalty in any manner or denied
14 any right or privilege, including civil penalty or disciplinary
15 action by a business, occupational, or professional licensing
16 board or entity, solely for working for or with a dispensary to
17 engage in acts permitted by this section.

18 No state employee shall be subject to arrest, prosecution,
19 or penalty in any manner, or denied any right or privilege,
20 including but not limited to civil penalty, disciplinary action,
21 termination, or loss of employee or pension benefits, for any



1 and all conduct that occurs within the scope of employment
2 regarding the administration, execution, or enforcement of this
3 section.

4 (u) The following additional prohibitions shall apply:

5 (1) A dispensary shall not possess an amount of marijuana
6 at any given time that exceeds one hundred fifty
7 marijuana plants of which no more than ninety-nine are
8 mature, and one thousand five hundred ounces of usable
9 marijuana; and

10 (2) A dispensary shall not dispense, deliver, or otherwise
11 transfer marijuana to a person other than a qualifying
12 patient who has designated the dispensary as a primary
13 caregiver or to the patient's other primary caregiver.

14 An employee, agent, volunteer, principal officer, or
15 board member of any dispensary found in violation of
16 this paragraph shall have the registry identification
17 revoked immediately.

18 (v) No person who has been convicted of a felony drug
19 offense or has entered a plea of nolo contendere for a felony
20 drug offense with a sentence or probation shall be the principal
21 officer, board member, agent, volunteer, or employee of a



1 dispensary unless the department has determined that the
2 person's conviction was for the medical use of marijuana or
3 assisting with the medical use of marijuana in accordance with
4 the terms and conditions of this part. A person who is employed
5 by or is an agent, volunteer, principal officer, or board member
6 of a dispensary in violation of this section is guilty of a
7 civil violation punishable by a fine of up to \$1,000. A
8 subsequent violation of this section is a misdemeanor.

9 (w) A nonresident card shall be recognized only under the
10 following circumstances:

11 (1) The state or jurisdiction from which the holder or
12 bearer obtained the nonresident card grants an
13 exemption from criminal prosecution for the medical
14 use of marijuana;

15 (2) The state or jurisdiction from which the holder or
16 bearer obtained the nonresident card requires, as a
17 prerequisite to the issuance of such a card, that a
18 physician advise the person that the medical use of
19 marijuana may mitigate the symptoms or effects of the
20 person's medical condition;



1 (3) The nonresident card has an expiration date and has
2 not yet expired; and

3 (4) The holder or bearer of the nonresident card agrees to
4 abide by, and does abide by, the conditions of use, as
5 set forth in section 329-122.

6 (x) For the purposes of the reciprocity described in
7 subsection (w):

8 (1) The amount of medical marijuana that the holder or
9 bearer of a nonresident card is entitled to possess in
10 the nonresident's state or jurisdiction of residence
11 is not relevant; and

12 (2) Under no circumstances, while in this State, shall the
13 holder or bearer of a nonresident card possess
14 marijuana for medical purposes in excess of an
15 adequate supply as provided in section 329-121.

16 (y) As used in this section:

17 "Department" means the department of health.

18 "Nonresident card" means a card or other identification
19 that is issued by a state or jurisdiction other than Hawaii for
20 the purpose of identifying patients legally authorized to
21 possess medical marijuana."



1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act shall take effect on July 1, 2015.

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INTRODUCED BY:

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S.B. NO. 595

Report Title:

Medical Marijuana; Dispensaries

Description:

Enacts a medical use of marijuana statute to regulate the dispensing of medical marijuana.

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

