

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO THE MEDICAL USE OF CANNABIS.

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

1       SECTION 1. The legislature finds that there are over  
2       fifteen thousand medical cannabis patients currently registered  
3       in Hawaii. In 2000, the State enacted chapter 329, part IX,  
4       Hawaii Revised Statutes, authorizing the use of cannabis by  
5       patients with a qualifying medical condition. The legislature  
6       further finds that a regulatory system brings transparency,  
7       accountability, safety, and security to the community through  
8       the tracking and monitoring of medical cannabis in such a way  
9       that promotes public health and safety, generates tax revenue,  
10      and prevents diversion.

11       By implementing the medical cannabis program and defining  
12      an adequate supply, the legislature intended to assure the  
13      uninterrupted availability of medical cannabis to alleviate the  
14      symptoms or effects of a qualifying patient's debilitating  
15      medical condition. However, it was not until July 2015 that a  
16      statewide regulatory dispensary system for medical cannabis



1 became law to ensure safe and legal access to qualifying  
2 patients.

3       In 2013, the Hawaii Supreme Court ruled in *State v.*  
4 *Woodhall* that "Chapter 329, Part IX, as enacted, does not  
5 clearly carry out its purpose, leaving qualified patients  
6 vulnerable to prosecution", and further asserts that it is  
7 "reasonably necessary to assure the uninterrupted availability  
8 of [cannabis] for the purpose of alleviating the symptoms or  
9 effects of a qualifying patient's debilitating medical  
10 condition". Furthermore, Congress amended the Controlled  
11 Substances Act with the Secure and Responsible Drug Disposal Act  
12 of 2010 in order to facilitate the collection and destruction of  
13 unused, unwanted, or expired controlled substances in a secure,  
14 convenient, and responsible manner, as well as to prevent  
15 diversion. There are currently no viable distribution or  
16 collection systems for Hawaii's medical cannabis program, and  
17 diversion is occurring.

18       Chapter 329, part IX, Hawaii Revised Statutes, does not  
19 squarely address the question of how qualifying patients who are  
20 most in need may obtain medical cannabis. Furthermore, the  
21 language inconsistencies between chapters 329 and 712, Hawaii



1 Revised Statutes, undermine the affirmative defense currently  
2 provided for in the medical cannabis program, thus compromising  
3 the health and safety of the community.

4 Qualifying patients seeking an adequate supply of medical  
5 cannabis have no legal option for the acquisition of the  
6 substance. The burden and risk posed to qualifying patients  
7 makes chapter 329, part IX, Hawaii Revised Statutes,  
8 ineffective. Without a well-regulated distribution and  
9 collection system that allows qualified patients to maintain an  
10 adequate supply of medical cannabis, diversion will continue and  
11 patients will be subjected to substandard medicine, social  
12 stigmas, theft, and violence on the black market.

13 Amending existing law is necessary to protect qualifying  
14 patients from criminal activity and risk of arrest, while  
15 ensuring that qualifying patients who have a medical need to use  
16 cannabis are provided a safe, reliable, and uninterrupted  
17 cannabis supply as intended by the legislature.

18 An individual seeking to reduce the amount of unwanted  
19 medical cannabis in the individual's household has no legal  
20 options for the appropriate disposal of the substance.  
21 Moreover, crop failure and impacts from pests, insects, mold,



1 and disease inherent in agriculture necessitate an increase in  
2 the number of allowable plants per patient.

3 The purpose of this Act is to promote the interest of  
4 public health and safety; expressly restate, reiterate, and  
5 declare the intent of the legislature in enacting chapter 329,  
6 part IX, Hawaii Revised Statutes, concerning the medical use of  
7 cannabis; and permit and define the regulation of medical  
8 cannabis collective disposal and transfer access centers. This  
9 Act also offers legislative guidance on the development of a tax  
10 system for medical cannabis collective disposal and transfer  
11 access centers.

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

15 "§329- Registration requirements for medical cannabis  
16 collective disposal and transfer access centers. (a) There  
17 shall be established within the department of health a  
18 registration system for medical cannabis collective disposal and  
19 transfer access centers, or collectives, in each county for the  
20 purpose of regulating the distribution and disposal of medical  
21 cannabis. The department shall adopt rules under chapter 91



1 necessary to implement this section no later than November 1,  
2 2018. The rules shall include:

3 (1) Procedures for the registration, renewal, suspension,  
4 and revocation of a collective license;

5 (2) A requirement that all third party collective members  
6 shall be residents of Hawaii and may be primary  
7 caregivers or qualifying patients;

8 (3) Fee schedule and time table of registration,  
9 licensing, and renewal fees;

10 (4) Qualifications for licensing that are directly and  
11 demonstrably related to the operation of a collective;

12 (5) Safety and security requirements for collectives;

13 (6) Requirements to prevent the sale or diversion of  
14 cannabis and cannabis products to persons under the  
15 age of twenty-one years;

16 (7) Labeling requirements for cannabis and cannabis  
17 products distributed by a collective;

18 (8) Health and safety requirements and standards for the  
19 cultivation of cannabis and manufacture of cannabis  
20 compounds and products;



1        (9) Restrictions on the advertising and display of  
2                    cannabis and cannabis products;

3        (10) Restrictions to ensure that individual privacy is  
4                    protected; and

5        (11) Civil penalties for the failure to comply with any  
6                    rule adopted pursuant to this section.

7        (b) At least one collective in each county shall be  
8                    functional no later than July 1, 2019.

9        §329- Patient-determined, self-titrated dosing model;  
10       method of administration. (a) Medical cannabis shall be  
11                    treated as a pro re nata medication. The dosage of medical  
12                    cannabis shall depend upon the individual qualifying patient's  
13                    medical needs and tolerance toward side effects.

14       (b) Physicians shall implement a patient-determined, self-  
15                    titrated dosing model. A qualifying patient using medical  
16                    cannabis shall titrate the qualifying patient's dose in order to  
17                    relieve the symptoms or effects related to the qualifying  
18                    patient's debilitating medical condition.

19       (c) Physicians shall instruct each new qualifying patient  
20                    to start with the lowest possible dose and titrate up to achieve



1 the desired therapeutic effect for all methods of administration  
2 of medical cannabis.

3 (d) Cannabis for medical use administered through the  
4 ingestion method of administration shall not exceed one hundred  
5 twenty doses of cannabis edibles per qualifying patient per  
6 month, unless otherwise specified by a physician. Cannabis for  
7 medical use administered through the inhalation method of  
8 administration shall not exceed one-half pound of dried cannabis  
9 flowers, inner leaves, or cannabis concentrate per qualifying  
10 patient per month, unless otherwise specified by a physician.

11 Cannabis for medical use administered through the topical method  
12 of administration shall not exceed one hundred twenty  
13 applications of cannabis compounds or products per qualifying  
14 patient per month, unless otherwise specified by a physician.

15 §329- Taxation of collectives. (a) Collectives shall  
16 register with the department of health and shall be responsible  
17 for paying all federal, state, and local taxes, fees, fines,  
18 penalties, and other financial responsibilities, including  
19 income taxes, business taxes, registration fees, and property  
20 taxes.



1        (b) There shall be an excise tax at a rate of fifteen per  
2 cent to be levied upon proceeds of all collective sales to be  
3 distributed in the following order of priority:

4        (1) Research and development in health applications; and

5        (2) Education, mental health, and community outreach  
6 programs.

7        (c) The department of taxation shall establish procedures  
8 by rules under chapter 91 for the collection of all taxes levied  
9 under this section."

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

12        1. By adding seventeen new definitions to be appropriately  
13 inserted and to read:

14        "Acquisition" means to obtain start-up cannabis seeds or  
15 plants for new qualifying patients or to obtain replacement  
16 cannabis seeds or plants for existing qualifying patients.

17        "Cannabis concentrate" shall have the same meaning as  
18 "marijuana concentrate" as provided in section 712-1240.

19        "Cannabis edibles" means the mixture or preparation of  
20 cannabis with any edible component to allow cannabis to be  
21 ingested.





1       "Disposal" means the transfer of cannabis and paraphernalia  
2 from the primary caregiver, a qualifying patient, or a third  
3 party collective member to another qualifying patient or a  
4 primary caregiver who also may legally possess cannabis for  
5 medical purposes.

6       "Distribution" means the transfer of cannabis and  
7 paraphernalia from the primary caregiver to the qualifying  
8 patient, from a third party collective member to the qualifying  
9 patient or the primary caregiver, or from one qualifying patient  
10 to another qualifying patient.

11       "Dried" means when only fifteen per cent of the moisture in  
12 the flowers and inner leaves of the Cannabis sativa plant  
13 remain, and does not include the plant resin.

14       "Individual possession" means the legal possession of an  
15 adequate supply of cannabis by a qualifying patient.

16       "Ingestion method of administration" means when qualifying  
17 patients consume cannabis via the gastrointestinal tract.

18       "Inhalation method of administration" means when qualifying  
19 patients smoke or vaporize cannabis via the respiratory tract.

20       "Joint possession" means the legal possession of an  
21 adequate supply of cannabis by a qualifying patient in addition



1 to an adequate supply of cannabis by a primary caregiver for the  
2 qualifying patient.

3 "Medical cannabis collective disposal and transfer access  
4 center" or "collective" means a state-licensed enterprise or  
5 organization jointly owned or managed by those who use its  
6 facilities or services for the distribution of cannabis to  
7 qualifying patients or the facilitation of disposal of cannabis  
8 from qualifying patients.

9 "One month supply" means the amount of medical cannabis  
10 that is likely to alleviate the symptoms or effects related to  
11 the qualifying patient's debilitating medical condition for the  
12 timeframe of one month in the context of the qualifying  
13 patient's individualized needs and various methods of medication  
14 administration.

15 "Possession" means to have in one's control and includes  
16 growing cannabis. Possession may refer to individual possession  
17 or joint possession.

18 "Pro re nata medication" means medication that is  
19 prescribed as needed by an individual qualifying patient.

20 "Third party collective member" means an individual who  
21 legally grows cannabis for a qualifying patient and may legally



1 possess an adequate supply of cannabis while growing it for a  
2 patient's benefit, but has no right to use the cannabis being  
3 grown for the qualifying patient and does not manage the  
4 qualifying patient's well-being.

5 "Titrate" means to continuously monitor and adjust the  
6 dosage of a drug.

7 "Topical method of administration" means when qualifying  
8 patients externally apply cannabis to the skin."

9 2. By amending the definitions of "adequate supply",  
10 "cannabis," "medical use", "primary caregiver", and "usable  
11 cannabis" to read:

12 "Adequate supply" means an amount of medical cannabis  
13 jointly possessed between the qualifying patient and the primary  
14 caregiver that is not more than is reasonably necessary to  
15 ensure the uninterrupted availability of cannabis for the  
16 purpose of alleviating the symptoms or effects of a qualifying  
17 patient's debilitating medical condition; provided that an  
18 "adequate supply" shall not exceed~~[:- ten cannabis plants,~~  
19 ~~whether immature or mature, and four ounces of usable cannabis~~  
20 ~~at any given time. The four ounces of usable cannabis shall~~  
21 ~~include any combination of usable cannabis and manufactured~~



1 ~~cannabis products, as provided in chapter 329D, with the~~  
2 ~~cannabis in the manufactured cannabis products being calculated~~  
3 ~~using information provided pursuant to section 329D-9(c).~~ ] a  
4 one month supply of usable cannabis and twenty-four plants of  
5 any maturity.

6 "Cannabis" shall have the same meaning as "marijuana" [~~and~~  
7 ~~"marijuana concentrate"~~] as provided in sections 329-1 and 712-  
8 1240.

9 "Medical use" means the acquisition, possession,  
10 cultivation, use, distribution, or transportation of cannabis  
11 [~~or~~], cannabis edibles, cannabis concentrate, or paraphernalia  
12 relating to the administration of cannabis to alleviate the  
13 symptoms or effects of a qualifying patient's debilitating  
14 medical condition[-], regardless of method of administration,  
15 including the ingestion method of administration, inhalation  
16 method of administration, and topical method of administration.

17 For the purposes of "medical use", the term distribution is  
18 limited to the transfer of cannabis and paraphernalia[-],  
19 including from the primary caregiver to the qualifying patient,  
20 from a third party collective member to the qualifying patient



1 or the primary caregiver, or from one qualifying patient to  
2 another qualifying patient.

3 "Primary caregiver" means a person eighteen years of age or  
4 older, other than the qualifying patient and the qualifying  
5 patient's physician or advanced practice registered nurse, who  
6 has agreed to undertake responsibility for managing the well-  
7 being of the qualifying patient with respect to the medical use  
8 of cannabis. A primary caregiver may manage a qualifying  
9 patient's well being by growing or providing the qualifying  
10 patient with cannabis, but does not have the right to use  
11 cannabis unless the primary caretaker is also a qualifying  
12 patient. In the case of a minor or an adult lacking legal  
13 capacity, the primary caregiver shall be a parent, guardian, or  
14 person having legal custody. A primary caregiver shall be a  
15 resident of Hawaii and may also be a qualifying patient.

16 "Usable cannabis" means the dried leaves and flowers of the  
17 plant Cannabis family [~~Moraceae,~~] Cannabaceae, and any mixture  
18 or preparation thereof, that are appropriate for the medical use  
19 of cannabis. "Usable cannabis" does not include the seeds,  
20 stalks, and roots of the plant. Usable cannabis includes  
21 cannabis edibles and cannabis concentrate."



SECTION 4. Section 329-122, Hawaii Revised Statutes, is amended to read as follows:

**"§329-122 Medical use of cannabis; conditions of use. (a)**

Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

- (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;
- (2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and
- (3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

- (1) The qualifying patient's physician or advanced practice registered nurse has explained the potential



1 risks and benefits of the medical use of cannabis to  
2 the qualifying patient and to a parent, guardian, or  
3 person having legal custody of the qualifying patient;  
4 and

5 (2) A parent, guardian, or person having legal custody  
6 consents in writing to:

7 (A) Allow the qualifying patient's medical use of  
8 cannabis;

9 (B) Serve as the qualifying patient's primary  
10 caregiver; and

11 (C) Control the acquisition of the cannabis, the  
12 dosage, and the frequency of the medical use of  
13 cannabis by the qualifying patient.

14 (c) The authorization for the medical use of cannabis in  
15 this section shall not apply to:

16 (1) The medical use of cannabis that endangers the health  
17 or well-being of another person;

18 (2) The medical use of cannabis:

19 (A) In a school bus, public bus, or any moving  
20 vehicle;

21 (B) In the workplace of one's employment;



- 1 (C) On any school grounds;
- 2 (D) At any public park, public beach, public
- 3 recreation center, recreation or youth center; or
- 4 (E) At any other place open to the public; provided
- 5 that a qualifying patient, primary caregiver, or
- 6 an owner or employee of a medical cannabis
- 7 dispensary licensed under chapter 329D shall not
- 8 be prohibited from transporting cannabis or any
- 9 manufactured cannabis product, as that term is
- 10 defined in section 329D-1, in any public place;
- 11 provided further that the cannabis or
- 12 manufactured cannabis product shall be
- 13 transported in a sealed container, not be visible
- 14 to the public, and shall not be removed from its
- 15 sealed container or consumed or used in any way
- 16 while it is in the public place; and
- 17 (3) The use of cannabis by a qualifying patient, parent,
- 18 or primary caregiver for purposes other than medical
- 19 use permitted by this part.





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

4           (1) A qualifying patient and the qualifying patient's  
5 primary caregiver;

6           (2) The production centers and the retail dispensing  
7 locations under a dispensary licensee's license; or

8           (3) A production center, retail dispensing location,  
9 qualifying patient, or primary caregiver and a  
10 certified laboratory for the purpose of laboratory  
11 testing; provided that a qualifying patient or primary  
12 caregiver may only transport up to one gram of  
13 cannabis per test to a certified laboratory for  
14 laboratory testing and may only transport the product  
15 if the qualifying patient or primary caregiver:

16           (A) Secures an appointment for testing at a certified  
17 laboratory;

18           (B) Obtains confirmation, which may be electronic,  
19 that includes the specific time and date of the  
20 appointment and a detailed description of the



1 product and amount to be transported to the  
2 certified laboratory for the appointment; and  
3 (C) Has the confirmation, which may be electronic,  
4 available during transport.

5 For purposes of interisland transportation, "transport" of  
6 cannabis, usable cannabis, or any manufactured cannabis product,  
7 by any means is allowable only between a production center or  
8 retail dispensing location and a certified laboratory for the  
9 sole purpose of laboratory testing pursuant to section 329D-8,  
10 as permitted under section 329D-6(m) and subject to section  
11 329D-6(j), and with the understanding that state law and its  
12 protections do not apply outside of the jurisdictional limits of  
13 the State. Allowable transport pursuant to this section does  
14 not include interisland transportation by any means or for any  
15 purpose between a [~~qualified~~] qualifying patient or primary  
16 caregiver and any other entity or individual, including an  
17 individual who is a [~~qualified~~] qualifying patient or primary  
18 caregiver~~[-]~~, except as provided in subsection (e).

19 (e) Intrastate medical cannabis collective disposal and  
20 transfer access center, or collectives, shall be permitted.

21 Qualifying patients shall be permitted to obtain cannabis from a



1 collective upon the production of a doctor's written  
2 certification and a valid photo identification.

3 (f) Qualifying patients shall be permitted to medicate in  
4 designated smoking areas; provided that the medical use of  
5 cannabis is not within one thousand feet of a school for minors  
6 or a youth center.

7 (g) Qualifying patients shall not operate a motor vehicle  
8 while impaired and under the influence of cannabis. Impairment  
9 shall be determined by conducting a field sobriety test upon  
10 probable cause.

11 (h) Private cultivation and use of cannabis for medical  
12 purposes within the confines of the law shall not be construed  
13 as conduct that endangers a minor's health and safety in and of  
14 itself."

15 SECTION 5. Section 329-125, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§329-125 Protections afforded to a qualifying patient**  
18 **[~~or~~], primary caregiver[~~-~~], or third party collective member.**

19 **(a) No qualifying patient, primary caregiver, or third party**  
20 **collective member shall be subject to arrest or prosecution,**



1 penalized in any manner, or denied any right or privilege  
2 because of the medical use of cannabis.

3       ~~[(a)]~~ (b) A qualifying patient ~~[or the]~~, primary  
4 caregiver, or third party collective member may assert the  
5 medical use of cannabis authorized under this part as ~~[an~~  
6 ~~affirmative]~~ a defense to any prosecution involving ~~[+]cannabis~~  
7 or marijuana~~[+]~~ under this part or part IV; or part IV of  
8 chapter 712~~[- provided that the qualifying patient or the~~  
9 ~~primary caregiver strictly complied with the requirements of~~  
10 ~~this part]~~.

11       ~~[(b)]~~ (c) Any qualifying patient ~~[or]~~, primary caregiver,  
12 or third party collective member not complying with the  
13 permitted scope of the medical use of cannabis shall not be  
14 afforded the protections against searches and seizures  
15 pertaining to the misapplication of the medical use of cannabis.

16       ~~[(c)]~~ (d) No person shall be subject to arrest or  
17 prosecution for simply being in the presence or vicinity of the  
18 medical use of cannabis as permitted under this part."

19       SECTION 6. 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 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 8. This Act shall take effect upon its approval.  
4

INTRODUCED BY:

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# S.B. NO. 2468

**Report Title:**

Medical Use of Cannabis; Medical Cannabis Cooperative Disposal and Transfer Access Centers

**Description:**

Requires the department of health to establish a registration system for medical cannabis collective disposal and transfer access centers. Requires the department of health to adopt rules to regulate the medical cannabis collective disposal and transfer access centers. Requires a patient-determined, self-titrated dosing model for medical cannabis. Requires medical cannabis collective disposal and transfer access centers to register with the department of health and pay federal, state, and local taxes, including a fifteen per cent excise tax on proceeds. Authorizes intrastate disposal and transfer of medical cannabis. Establishes additional protections and restrictions regarding the medical use of cannabis and activities of collectives. Defines new terms and amends existing definitions relating to medical cannabis.

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

