

JAN 24 2019

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 thirty-one states
2 allow for the medical use of cannabis by qualifying patients,
3 with a growing number of states establishing employment
4 protections for qualifying medical cannabis patients.

5 The legislature further finds that the medical use of
6 cannabis by a qualifying patient to alleviate the symptoms or
7 effects of the qualifying patient's debilitating medical
8 condition is permitted under existing state law. However, there
9 are no corresponding employment protections for qualifying
10 patients. A qualifying patient can therefore be discriminated
11 against in the hiring process, merely because of the patient's
12 status as a qualifying patient, or fired at an employer's
13 discretion for failing a drug test, even if the qualifying
14 patient is not exhibiting any symptoms of being impaired.

15 Accordingly, the purpose of this Act is to:



- 1 (1) Prohibit an employer from discriminating against an
2 employee based on the employee's status as a
3 qualifying patient;
- 4 (2) Prohibit an employer from taking action against an
5 employee based solely on the employee's status as a
6 qualifying patient or if the results of the employee's
7 drug test are positive for cannabis; and
- 8 (3) Specify permissible and impermissible actions by
9 employers and employees.

10 SECTION 2. Chapter 378, Hawaii Revised Statutes, is
11 amended by adding a new section to part III to be appropriately
12 designated and to read as follows:

13 "§378- Qualifying patient; employment; employees;
14 employers; nondiscrimination; prohibitions. (a) An employer
15 shall not:

- 16 (1) Discriminate against a person in hiring, termination,
17 or imposing any term or condition of employment or
18 otherwise penalize a person based on that person's
19 status as a qualifying patient; or
- 20 (2) Take action against an employee solely based upon the
21 employee's status as a qualifying patient or if the



1 results of such employee's drug test show positive for
2 cannabis or its components;
3 unless a failure to do so would cause an employer to lose a
4 monetary or licensing related benefit under federal law or
5 regulations.

6 (b) This section shall not prohibit an employer from:

7 (1) Enforcing a workplace drug policy; provided the policy
8 is applied in a nondiscriminatory manner and does not
9 conflict with the nondiscrimination provisions under
10 subsection (a);

11 (2) Disciplining an employee who is a qualifying patient
12 for failing a drug test, if:

13 (A) Failure to do so would cause an employer to lose
14 a monetary or licensing related benefit under
15 federal law or regulations;

16 (B) The employee performs employment duties at
17 heights or in confined spaces; or

18 (C) Such employee operates or is in physical control
19 of any of the following while impaired:

20 (i) Chemicals that require a permit issued by
21 the federal government, state government, or



1 an agency of the federal government or state
2 government; or

3 (ii) High voltage electricity lines; or

4 (3) Disciplining an employee who is a qualifying patient
5 if the employer has a reasonable belief that the
6 employee is impaired; provided that an employer that
7 elects to discipline an employee under this paragraph
8 shall afford the employee a reasonable opportunity to
9 contest the basis of the determination.

10 (c) Nothing in this section shall be construed to create
11 or imply a cause of action for any person against an employer
12 for:

13 (1) Actions based on the employer's reasonable belief that
14 a registered qualifying patient was impaired while
15 working on the employer's premises during the hours of
16 employment; or

17 (2) Injury or loss to a third party based on an employee's
18 impairment if the employer neither knew nor had reason
19 to know that the employee was impaired.

20 (d) Nothing in this section shall be construed to
21 interfere with any federal restrictions on employment, including



1 but not limited to the United States Department of
2 Transportation regulations pursuant to title 49 Code of Federal
3 Regulations section 40.151(e).

4 (e) For purposes of this section:

5 "Impaired" means an employee who is a qualifying patient
6 and who manifests specific, articulable symptoms while working
7 that decrease or lessen the employee's performance of the duties
8 or tasks of the employee's job position, including symptoms of
9 the employee's speech, physical dexterity, agility,
10 coordination, demeanor, irrational or unusual behavior;
11 negligence or carelessness in operating equipment or machinery;
12 disregard for the safety of the employee or others; involvement
13 in an accident that results in serious damage to equipment or
14 property; disruption of a production or manufacturing process;
15 or carelessness that results in any injury to the employee or
16 others.

17 "Qualifying patient" shall have the same meaning as in
18 section 329-121."

19 SECTION 3. Chapter 378, Hawaii Revised Statutes, is
20 amended by amending the title of part III to read as follows:



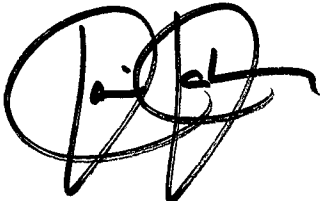

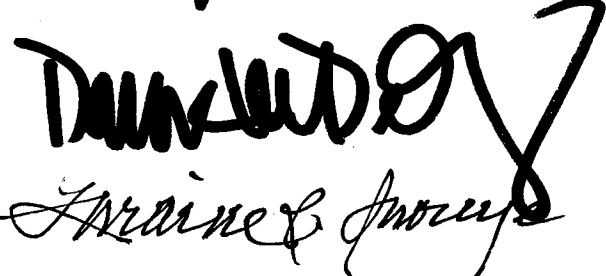
S.B. NO. 1524

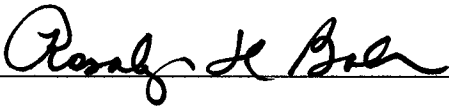
"PART III. UNLAWFUL [~~SUSPENSION OR DISCHARGE~~] EMPLOYMENT
ACTIONS"

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:




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S.B. NO. 1524

Report Title:

Medical Use of Cannabis; Qualifying Patient; Employment;
Employees; Employers; Nondiscrimination; Prohibitions

Description:

Prohibits an employer from discriminating against an employee based on the employee's status as a qualifying patient.
Prohibits an employer from taking action against an employee based solely on the employee's status as a qualifying patient or if the results of the employee's drug test are positive for cannabis. Specifies permissible and impermissible actions by employers and employees.

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

