

JAN 21 2021

A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

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

1 SECTION 1. The legislature recognizes that the use of
2 medical cannabis in Hawaii has been legal since 2000 and that
3 subsequent laws were passed to establish a licensing program for
4 a statewide system of medical cannabis dispensaries to ensure
5 access for qualifying patients. The department of health
6 recently reported that there are over twenty-nine thousand
7 patients with a valid medical cannabis registration. The
8 legislature further finds that while thirty-three states, the
9 District of Columbia, Guam, Puerto Rico, and the U.S. Virgin
10 Islands have approved comprehensive medical cannabis programs,
11 only about a dozen states have enacted anti-discrimination
12 employment laws to protect qualifying patients. Though the
13 medical use of cannabis has become increasingly accepted,
14 qualifying patients risk losing their jobs because there are no
15 clear protections against employment discrimination.

16 The legislature further finds that the ongoing conflict
17 between state and federal medical cannabis laws causes confusion



1 for employers, who are unsure whether state medical cannabis
2 laws supersede their power to enforce drug-free workplace
3 policies against employees. The courts have consistently ruled
4 in favor of employers when qualifying patients challenge drug-
5 free workplace policies; yet, on the other hand, they have not
6 entirely foreclosed the possibility that state medical cannabis
7 laws might operate to protect qualifying patients against
8 employment discrimination. Without explicit statutory guidance,
9 the courts may not properly balance the needs of qualifying
10 patients for employment protections and an employer's need to
11 provide a safe workplace.

12 The purpose of this Act is to:

- 13 (1) Prohibit an employer from discriminating against a
14 person in hiring, termination, or any term or
15 condition of employment based on the person's status
16 as a medical cannabis cardholder, under certain
17 conditions;
- 18 (2) Specify that an employer may use a fit-for-duty test
19 for medical cannabis qualifying patients in
20 potentially dangerous occupations; and



1 (3) Specify certain categories of employment that are
2 exempt from the protections of this Act.

3 SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§329-125.5 Medical cannabis patient and caregiver**

6 **protections.** (a) No school shall refuse to enroll or otherwise
7 penalize, and no landlord shall refuse to lease property to or
8 otherwise penalize, a person solely for the person's status as a
9 qualifying patient or primary caregiver in the medical cannabis
10 program under this part, unless failing to do so would cause the
11 school or landlord to lose a monetary or licensing-related
12 benefit under federal law or regulation; provided that the
13 qualifying patient or primary caregiver strictly complied with
14 the requirements of this part; provided further that the
15 qualifying patient or primary caregiver shall present a medical
16 cannabis registry card or certificate and photo identification,
17 to ensure that the qualifying patient or primary caregiver is
18 validly registered with the department of health pursuant to
19 section 329-123.

20 (b) For the purposes of medical care, including organ
21 transplants, a registered qualifying patient's use of cannabis



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1 in compliance with this part shall be considered the equivalent
2 of the use of any other medication under the direction of a
3 physician and shall not constitute the use of an illicit
4 substance or otherwise disqualify a registered qualifying
5 patient from medical care.

6 (c) Unless a failure to do so would cause the employer to
7 lose a monetary or licensing-related benefit under a contract or
8 federal law, an employer shall not discriminate against a person
9 in hiring, termination, or any term or condition of employment,
10 other than that contained in a collective bargaining agreement,
11 if the discrimination is based upon either of the following:

12 (1) The person's status as a cardholder; or
13 (2) A registered qualifying patient's positive drug test
14 for cannabis components or metabolites, unless the
15 registered qualifying patient was impaired by cannabis
16 during the hours of employment or in a potentially
17 dangerous occupation;

18 provided that nothing in this subsection shall abridge any
19 existing right of an employer to send an employee for medical
20 evaluation when the employer has safety concerns about the
21 impairment of the employee; provided further that an employer



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1 may take adverse action or discipline an employee who uses or
2 possesses medical cannabis in the workplace and is impaired.

3 (d) In a potentially dangerous occupation, an employer may
4 use a fit-for-duty test as a risk-based assessment tool for a
5 registered qualifying patient.

6 (e) No employer shall have any liability to any employee
7 who is injured or killed during the performance of the
8 employee's job if the employee's impairment by medical cannabis
9 was the sole contributing factor to the employee's death or
10 injury.

11 (f) Subsection (c) shall not apply to:

12 (1) Law enforcement officers in the State or counties or
13 employees of a state correctional facility;

14 (2) Firefighters employed by the State or counties;

15 (3) Water safety officers, lifeguards, swimming
16 instructors, or other employees of the State or
17 counties responsible for the safety of the public at
18 swimming pools or on beaches;

19 (4) Employees authorized to carry or use, or both,
20 firearms on the job;



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- 1 (5) Emergency medical services employees of the State or
2 counties;
- 3 (6) Employees who administer or may administer controlled
4 substances or other drugs to patients, whether in
5 hospitals, nursing homes, or in emergency situations
6 that would be encountered by emergency medical
7 services personnel;
- 8 (7) Employees who work with children, the elderly, or
9 other vulnerable populations;
- 10 (8) Civil defense emergency management personnel; and
- 11 (9) Employees who operate or are in physical control of
12 any of the following:
- 13 (A) Any combination of vehicles that have a gross
14 combination weight rating or gross combination
15 weight of 11,794 kilograms or more (26,001 pounds
16 or more), whichever is greater, inclusive of a
17 towed unit or units with a gross vehicle weight
18 rating or gross vehicle weight of more than 4,536
19 kilograms (10,000 pounds), whichever is greater;
- 20 (B) Any single vehicle that has a gross vehicle
21 weight rating or gross vehicle weight of 11,794



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1 or more kilograms (26,001 pounds or more), or any
2 such vehicle towing a vehicle with a gross
3 vehicle weight rating or gross vehicle weight
4 that does not exceed 4,536 kilograms (10,000
5 pounds);

6 (C) Any single vehicle, or combination of vehicles,
7 that does not meet the definition of class A or
8 class B, but is either designed to transport
9 sixteen or more passengers, including the driver,
10 or is transporting material that has been
11 designated as hazardous under title 49 U.S.C.
12 section 5103 and is required to be placarded
13 under subpart F of 49 C.F.R. part 172, or is
14 transporting any quantity of a material listed as
15 a select agent or toxin in 42 C.F.R. part 73;

16 (D) Public utilities, such as the electrical power
17 grid or water source;

18 (E) Machinery or power equipment; or

19 (F) A motor vehicle.

20 [+e)] (g) No qualifying patient or primary caregiver under
21 this part shall be denied custody of, visitation with, or



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1 parenting time with a minor, and there shall be no presumption
2 of neglect or child endangerment, for conduct allowed under this
3 part; provided that this subsection shall not apply if the
4 qualifying patient's or primary caregiver's conduct created a
5 danger to the safety of the minor, as established by a
6 preponderance of the evidence.

7 ~~(d)~~ (h) This section shall apply to qualifying patients,
8 primary caregivers, qualifying out-of-state patients, and
9 caregivers of qualifying out-of-state patients who are validly
10 registered with the department of health pursuant to this part
11 and the administrative rules of the department of health."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY: Roselynn H. Beh



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Report Title:

Medical Cannabis; Discrimination; Employer; Employee

Description:

Prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit-for-duty test as a tool for medical cannabis qualifying patients in potentially dangerous occupations. Exempts certain occupations.

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

