
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 thirty-one thousand
7 patients with a valid medical cannabis registration. The
8 legislature further finds that while thirty-six 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. Although 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



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, no employer shall refuse to hire or employ or bar
9 or discharge from employment or otherwise discriminate against a
10 person in any term or condition of employment other than as
11 provided in a collective bargaining agreement based on:

12 (1) The person's status as a medical cannabis cardholder;

13 or

14 (2) A registered qualifying patient's positive drug test
15 for cannabis components or metabolites, unless the
16 registered qualifying patient was impaired by cannabis
17 during the hours of employment;

18 provided that nothing in this subsection shall affect existing
19 rights of an employer to require an employee to undergo a
20 medical evaluation when the employer has safety concerns about
21 an impairment of the employee; provided further that an employer



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

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

7 (e) Subsection (c) shall not apply to:

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

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

11 (3) Water safety officers, lifeguards, swimming
12 instructors, or other employees of the State or
13 counties responsible for the safety of the public at
14 swimming pools or on beaches;

15 (4) Employees authorized to carry or use firearms on the
16 job;

17 (5) Emergency medical services employees of the State or
18 counties;

19 (6) Employees who are authorized to administer controlled
20 substances or other medication or drugs to
21 individuals, whether in hospitals, nursing homes, or



1 in emergency situations that may require attention of
2 emergency medical services personnel;

3 (7) Employees who work with children, the elderly, or
4 other vulnerable persons;

5 (8) Civil defense emergency management personnel; and

6 (9) Employees who operate or are in physical control of:

7 (A) Any combination of vehicles that have a gross
8 combination weight rating or gross combination
9 weight of 11,794 kilograms (26,001 pounds) or
10 more, whichever is greater, inclusive of a towed
11 unit or units with a gross vehicle weight rating
12 or gross vehicle weight of more than 4,536
13 kilograms (10,000 pounds), whichever is greater;

14 (B) Any single vehicle that has a gross vehicle
15 weight rating or gross vehicle weight of 11,794
16 kilograms (26,001 pounds) or more, or any such
17 vehicle towing a vehicle with a gross vehicle
18 weight rating or gross vehicle weight that does
19 not exceed 4,536 kilograms (10,000 pounds);

20 (C) Any single vehicle or combination of vehicles,
21 that does not meet the definitions of class A or



1 class B, but is either designed to transport
2 sixteen or more passengers, including the driver,
3 or is transporting material that has been
4 designated as hazardous under title 49 U.S.C.
5 section 5103 and is required to be placarded
6 under subpart F of title 49 C.F.R. part 172, or
7 is transporting any quantity of a material listed
8 as a select agent or toxin in title 42 C.F.R.
9 part 73; and

10 (D) Public utilities, such as the electrical power
11 grid or water source.

12 ~~(e)~~ (f) No qualifying patient or primary caregiver under
13 this part shall be denied custody of, visitation with, or
14 parenting time with a minor, and there shall be no presumption
15 of neglect or child endangerment, for conduct allowed under this
16 part; provided that this subsection shall not apply if the
17 qualifying patient's or primary caregiver's conduct created a
18 danger to the safety of the minor, as established by a
19 preponderance of the evidence.

20 ~~(d)~~ (g) This section shall apply to qualifying patients,
21 primary caregivers, qualifying out-of-state patients, and



1 caregivers of qualifying out-of-state patients who are validly
2 registered with the department of health pursuant to this part
3 and the administrative rules of the department of health."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Medical Cannabis; Discrimination; Employer; Employee

Description:

Prohibits an employer from discriminating against a person based on the person's status as a medical cannabis cardholder or a registered qualifying patients' positive test result for cannabis, 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. Effective 7/1/2050. (SD1)

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

