

ACT 41

H.B. NO. 1488

A Bill for an Act Relating to Medical Marijuana.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 241, Session Laws of Hawaii 2015, codified as chapter 329D, Hawaii Revised Statutes, established a licensing framework for a statewide system of medical marijuana dispensaries to ensure access to medical marijuana for qualifying patients. Act 230, Session Laws of Hawaii 2016, clarified the system's implementation. Generally, Act 241 required the department of health to announce the selection of medical marijuana dispensary licensees by April 15, 2016, and to allow retail dispensing of medical marijuana from July 15, 2016. However, the department of health only recently authorized a few medical marijuana dispensary licensees to proceed with the planting or cultivation of medical marijuana, and has been unable to provide assurances that the dispensary program envisioned by Acts 241 and 230 will be fully implemented in the near future.

The legislature also finds that the delay in implementing the medical marijuana dispensing system is affecting patient access to medical marijuana. One cause of the delay is the department of health's struggle to implement the computer tracking system required pursuant to Acts 241 and 230. The legislature notes that although the computer tracking system is intended to serve an important role in ensuring the safety of the product, patient, and public, the need for the system must be balanced against the patients' need to receive their medicine. Recently, some medical marijuana dispensary programs on the mainland United States experienced failures of their computer tracking systems, but the affected jurisdictions fortunately had pre-determined alternate systems to track marijuana product sales during any tracking system shutdown. The legislature believes that the department of health should also have a pre-determined alternate system to track marijuana product sales so that qualified patients will have uninterrupted access to medical marijuana during any shutdown of the initial tracking system in this State.

The legislature further finds that, although laboratory testing of medical marijuana is necessary to ensure product and patient safety, testing should be performed within reasonable scope and tolerance levels. The State of Oregon has implemented testing standards that are appropriate, practical, and evidence-based. Unreasonably strict and expansive testing standards will lead to unnecessarily high production costs that will result in medical marijuana that

is unaffordable for patient use and may push patients to use the black market instead of legal dispensaries.

Accordingly, the purpose of this Act is to amend and clarify the regulatory framework for the use of medical marijuana and the dispensary system by:

- (1) Increasing the number of marijuana plants that a qualified patient and primary caregiver may jointly possess from seven to ten plants at any stage of growth;
- (2) Including rheumatoid arthritis, lupus, epilepsy, and multiple sclerosis as conditions that qualify a patient for the legal use of medical marijuana;
- (3) Permitting qualified patients and primary caregivers to access laboratory testing for their medical marijuana;
- (4) Amending certain dates and deadlines in existing law and establishing new deadlines to address the delays in implementation of the medical marijuana dispensary system;
- (5) Authorizing the department of health to permit additional retail dispensing locations and cultivation of additional plants for dispensary licensees;
- (6) Allowing an alternate, backup system for tracking and monitoring data related to dispensary sales;
- (7) Requiring retention of video security recordings of production centers and dispensaries for not less than fifty days;
- (8) Amending requirements for laboratory standards and testing to ensure product and patient safety at reasonable tolerance levels with reasonable cost implications; and
- (9) Ensuring that qualifying patients who require transportation or mobility assistance are able to access dispensary premises by permitting providers of paratransit or other assistive services to have limited access to the premises while providing assistance to a qualifying patient.

SECTION 2. Section 329-121, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “adequate supply” to read:

““Adequate supply” means an amount of medical marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient’s debilitating medical condition; provided that an “adequate supply” shall not exceed: ~~seven~~ ten marijuana plants, whether immature or mature, and four ounces of usable marijuana at any given time. The four ounces of usable marijuana shall include any combination of usable marijuana and manufactured marijuana products, as provided in chapter 329D, with the marijuana in the manufactured marijuana products being calculated using information provided pursuant to section 329D-9(c).”

2. By amending the definition of “debilitating medical condition” to read:

““Debilitating medical condition” means:

- (1) Cancer, glaucoma, lupus, epilepsy, multiple sclerosis, rheumatoid arthritis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - (A) Cachexia or wasting syndrome;

- (B) Severe pain;
 - (C) Severe nausea;
 - (D) Seizures, including those characteristic of epilepsy;
 - (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
 - (F) Post-traumatic stress disorder; or
- (3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or advanced practice registered nurse or potentially qualifying patient."

SECTION 3. Section 329-122, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) A qualifying patient and the qualifying patient's primary caregiver;
- (2) The production centers and the retail dispensing locations under a dispensary licensee's license; or
- (3) A production center ~~[or]~~, retail dispensing location, qualifying patient, or primary caregiver and a certified laboratory for the purpose of laboratory testing; provided that a qualifying patient or primary caregiver may only transport up to one gram of marijuana per test to a certified laboratory for laboratory testing and may only transport the product if the qualifying patient or primary caregiver:
 - (A) Secures an appointment for testing at a certified laboratory;
 - (B) Obtains confirmation, which may be electronic, that includes the specific time and date of the appointment and a detailed description of the product and amount to be transported to the certified laboratory for the appointment; and
 - (C) Has the confirmation, which may be electronic, available during transport.

For purposes of interisland transportation, "transport" [does not include the interisland transportation] of marijuana, usable marijuana, or any manufactured marijuana product, [except when the transportation is performed] by any means is allowable only between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. Allowable transport pursuant to this section does not include interisland transportation by any means or for any purpose between a qualified patient or primary caregiver and any other entity or individual, including an individual who is a qualified patient or primary caregiver."

SECTION 4. Section 329-130, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After December 31, ~~[2018;]~~ 2023, a qualifying patient shall obtain medical marijuana or manufactured marijuana products only:

- (1) From a dispensary licensed pursuant to chapter 329D; provided that the marijuana shall be purchased and paid for at the time of purchase; or
- (2) By cultivating marijuana in an amount that does not exceed an adequate supply for the qualifying patient, pursuant to section 329-

122[-]; provided that each location used to cultivate marijuana shall be used by no more than five qualifying patients.
After December 31, ~~[2018;]~~ 2023, no primary caregiver shall be authorized to cultivate marijuana for any qualifying patient.”

SECTION 5. Section 329D-2, Hawaii Revised Statutes, is amended to read as follows:

“**§329D-2 Medical marijuana dispensaries; authorized; licensure.** (a) No person shall operate a medical marijuana dispensary unless the person has a license issued by the department pursuant to this chapter.

(b) The director of health shall grant medical marijuana dispensary licenses to allow dispensaries to produce, manufacture, and dispense marijuana and manufactured marijuana products pursuant to this chapter.

(c) Each medical marijuana dispensary license shall allow production, manufacture, and dispensing of marijuana and manufactured marijuana products only in the county for which the license is granted.

(d) The department shall issue eight dispensary licenses statewide; provided that three dispensary licenses shall be issued for the city and county of Honolulu, two dispensary licenses each shall be issued for the county of Hawaii and the county of Maui, and one dispensary license shall be issued for the county of Kauai; provided further that no dispensary license shall be issued for the county of Kalawao.

(e) No person may be granted a dispensary license in more than one county.

(f) Up to two production centers shall be allowed under each dispensary license~~[-];~~ provided that, except as otherwise specified in subsection (k), each production center shall be limited to no more than three thousand marijuana plants. For purposes of this subsection, “plant” means a marijuana plant that is greater than twelve vertical inches in height from where the base of the stalk emerges from the growth medium to the tallest point of the plant, or greater than twelve horizontal inches in width from the end of one branch to the end of another branch; provided that multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(g) A dispensary licensee may establish up to two retail dispensing locations under the licensee’s dispensary license~~[-];~~ except as otherwise specified in subsection (l).

(h) Each dispensary licensee may commence dispensing medical marijuana and manufactured marijuana products to qualifying patients or primary caregivers no sooner than July 15, 2016, with approval by the department, in accordance with this chapter.

(i) Retail dispensing locations shall not be at the same location as the dispensary licensee’s production centers.

(j) Notwithstanding subsection (d), the department shall determine whether, based on the qualifying patient need, additional dispensary licenses shall be offered to qualified applicants in the State after October 1, ~~[2017;]~~ 2018; provided that the department shall make available not more than one license per five hundred qualifying patients residing in any single county~~[-];~~ provided further that in considering whether to award a new license, the department shall consider an applicant’s capability to serve and supply medical marijuana to qualified patients in a rural or underserved geographical area of a county; provided further that a “rural or underserved geographical area” shall be determined by considering the number of registered medical marijuana patients that reside within a

certain zip code compared to the quantity of medical marijuana that the closest production center and retail dispensing location have the capability to provide.

(k) Notwithstanding subsection (f) to the contrary, the department may determine whether dispensary licensees shall be allowed an additional two thousand marijuana plants at each of the licensee's production centers. In no case shall a licensee be allowed more than five thousand plants at a single production center.

(l) Notwithstanding any provision of subsection (g) to the contrary, the department may determine whether dispensary licensees shall be allowed one additional retail dispensing location per licensee. In considering whether to allow additional retail dispensing locations, the department shall consider the licensee's capability to serve and supply medical marijuana to qualified patients in a rural or underserved geographical area of a county. For purposes of this subsection, a "rural or underserved geographical area" shall be determined by considering the number of registered medical marijuana patients that reside within a certain zip code compared to the quantity of medical marijuana that the closest production center and retail dispensing location have the capability to provide.

~~[(k)]~~ (m) Notwithstanding any other law to the contrary, a dispensary shall not be subject to the prescription requirement of section 329-38 or to the board of pharmacy licensure or regulatory requirements under chapter 461."

SECTION 6. Section 329D-6, Hawaii Revised Statutes, is amended by amending subsections (j) and (k) to read as follows:

"(j) The department shall establish, maintain, and control a computer software tracking system that shall have real time, ~~[twenty-four-hour]~~ twenty-four-hour access to the data of all dispensaries.

(1) The computer software tracking system shall collect data relating to:

~~[(1)]~~ (A) The total amount of marijuana in possession of all dispensaries from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the marijuana, marijuana plants, or manufactured marijuana product is sold or destroyed pursuant to section 329D-7;

~~[(2)]~~ (B) The total amount of manufactured marijuana product inventory, including the equivalent physical weight of marijuana that is used to manufacture manufactured marijuana products, purchased by a qualifying patient and primary caregiver from all retail dispensing locations in the State in any fifteen day period;

~~[(3)]~~ (C) The amount of waste produced by each plant at harvest; and

~~[(4)]~~ (D) The transport of marijuana and manufactured marijuana products between production centers and retail dispensing locations, including tracking identification issued by the tracking system, the identity of the person transporting the marijuana or manufactured marijuana products, and the make, model, and license number of the vehicle being used for the transport~~[-];~~

(2) The procurement of the computer software tracking system established pursuant to this subsection shall be exempt from chapter 103D; provided that: ~~[the]~~

(A) The department shall publicly solicit at least three proposals for the computer software tracking system; and [the]

(B) The selection of the computer software tracking system shall be approved by the director of the department and the chief information officer~~[-]; and~~

- (3) Notwithstanding any other provision of this subsection to the contrary, once the department has authorized a licensed dispensary to commence sales of marijuana or manufactured marijuana products, if the department's computer software tracking system is inoperable or is not functioning properly, as an alternative to requiring dispensaries to temporarily cease operations, the department may implement an alternate tracking system that will enable qualifying patients to purchase marijuana or manufactured marijuana products from a licensed dispensary on a temporary basis. The department shall seek input regarding the alternate tracking system from medical marijuana licensees. The alternate tracking system may operate as follows:
- (A) The department may immediately notify all licensed dispensaries that the computer software tracking system is inoperable; and
- (B) Once the computer software tracking system is operational and functioning to meet the requirements of this subsection, the department may notify all licensed dispensaries, and the alternate tracking system in this subsection shall be discontinued.
- (k) A dispensary licensed pursuant to this chapter shall purchase, operate, and maintain a computer software tracking system that shall:
- (1) Interface with the department's computer software tracking system established pursuant to subsection (j);
- (2) Allow each licensed dispensary's production center to submit to the department in real time, by automatic identification and data capture, all marijuana, marijuana plants, and manufactured marijuana product inventory in possession of that dispensary from either seed or immature plant state, including all plants that are derived from cuttings or cloning, until the marijuana or manufactured marijuana product is sold or destroyed pursuant to section 329D-7; ~~and~~
- (3) Allow the licensed dispensary's retail dispensing location to submit to the department in real time for the total amount of marijuana and manufactured marijuana product purchased by a qualifying patient and primary caregiver from the dispensary's retail dispensing locations in the State in any fifteen day period; provided that the software tracking system shall impose an automatic stopper in real time, which cannot be overridden, on any further purchases of marijuana or manufactured marijuana products, if the maximum allowable amount of marijuana has already been purchased for the applicable fifteen day period; provided further that additional purchases shall not be permitted until the next applicable period~~[-]; and~~
- (4) Allow the licensed dispensary to submit all data required by this subsection to the department and permit the department to access the data if the department's computer software tracking system is not functioning properly and sales are made pursuant to the alternate tracking system under subsection (j)."

SECTION 7. Section 329D-7, Hawaii Revised Statutes, is amended to read as follows:

"§329D-7 Medical marijuana dispensary rules. The department shall establish standards with respect to:

- (1) The number of medical marijuana dispensaries that shall be permitted to operate in the State;

- (2) A fee structure for the submission of applications and renewals of licenses to dispensaries; provided that the department shall consider the market conditions in each county in determining the license renewal fee amounts;
- (3) Criteria and procedures for the consideration and selection, based on merit, of applications for licensure of dispensaries; provided that the criteria shall include but not be limited to an applicant's:
 - (A) Ability to operate a business;
 - (B) Financial stability and access to financial resources; provided that applicants for medical marijuana dispensary licenses shall provide documentation that demonstrates control of not less than \$1,000,000 in the form of escrow accounts, letters of credit, surety bonds, bank statements, lines of credit or the equivalent to begin operating the dispensary;
 - (C) Ability to comply with the security requirements developed pursuant to paragraph (6);
 - (D) Capacity to meet the needs of qualifying patients;
 - (E) Ability to comply with criminal background check requirements developed pursuant to paragraph (8); and
 - (F) Ability to comply with inventory controls developed pursuant to paragraph (13);
- (4) Specific requirements regarding annual audits and reports required from each production center and dispensary licensed pursuant to this chapter;
- (5) Procedures for announced and unannounced inspections by the department or its agents of production centers and dispensaries licensed pursuant to this chapter; provided that inspections for license renewals shall be unannounced;
- (6) Security requirements for the operation of production centers and retail dispensing locations; provided that, at a minimum, the following shall be required:
 - (A) For production centers:
 - (i) Video monitoring and recording of the premises; provided that recordings shall be retained for fifty days;
 - (ii) Fencing that surrounds the premises and that is sufficient to reasonably deter intruders and prevent anyone outside the premises from viewing any marijuana in any form;
 - (iii) An alarm system; and
 - (iv) Other reasonable security measures to deter or prevent intruders, as deemed necessary by the department;
 - (B) For retail dispensing locations:
 - (i) Presentation of a valid government-issued photo identification and a valid identification as issued by the department pursuant to section 329-123, by a qualifying patient or caregiver, upon entering the premises;
 - (ii) Video monitoring and recording of the premises; provided that recordings shall be retained for fifty days;
 - (iii) An alarm system;
 - (iv) Exterior lighting; and
 - (v) Other reasonable security measures as deemed necessary by the department;
- (7) Security requirements for the transportation of marijuana and manufactured marijuana products between production centers and retail dispensing locations[;] and between a production center, retail

dispensing location, qualifying patient, or primary caregiver and a certified laboratory, pursuant to section 329-122(d);

- (8) Standards and criminal background checks to ensure the reputable and responsible character and fitness of all license applicants, licensees, employees, subcontractors and their employees, and prospective employees of medical marijuana dispensaries to operate a dispensary; provided that the standards, at a minimum, shall exclude from licensure or employment any person convicted of any felony;
- (9) The training and certification of operators and employees of production centers and dispensaries;
- (10) The types of manufactured marijuana products that dispensaries shall be authorized to manufacture and sell pursuant to sections 329D-9 and 329D-10;
- (11) Laboratory standards related to testing marijuana and manufactured marijuana products for content, contamination, and consistency;
- (12) The quantities of marijuana and manufactured marijuana products that a dispensary may sell or provide to a qualifying patient or primary caregiver; provided that no dispensary shall sell or provide to a qualifying patient or primary caregiver any combination of marijuana and manufactured products that:
 - (A) During a period of fifteen consecutive days, exceeds the equivalent of four ounces of marijuana; or
 - (B) During a period of thirty consecutive days, exceeds the equivalent of eight ounces of marijuana;
- (13) Dispensary and production center inventory controls to prevent the unauthorized diversion of marijuana or manufactured marijuana products or the distribution of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter; provided that the controls, at a minimum, shall include:
 - (A) A computer software tracking system as specified in section 329D-6(j) and (k); and
 - (B) Product packaging standards sufficient to allow law enforcement personnel to reasonably determine the contents of an unopened package;
- (14) Limitation to the size or format of signs placed outside a retail dispensing location or production center; provided that the signage limitations, at a minimum, shall comply with section 329D-6(o)(2) and shall not include the image of a cartoon character or other design intended to appeal to children;
- (15) The disposal or destruction of unwanted or unused marijuana and manufactured marijuana products;
- (16) The enforcement of the following prohibitions against:
 - (A) The sale or provision of marijuana or manufactured marijuana products to unauthorized persons;
 - (B) The sale or provision of marijuana or manufactured marijuana products to qualifying patients or primary caregivers in quantities that exceed limits established by this chapter;
 - (C) Any use or consumption of marijuana or manufactured marijuana products on the premises of a retail dispensing location or production center; and

- (D) The distribution of marijuana or manufactured marijuana products, for free, on the premises of a retail dispensing location or production center;
- (17) The establishment of a range of penalties for violations of this chapter or rule adopted thereto; and
- (18) A process to recognize and register patients who are authorized to purchase, possess, and use medical marijuana in another state, United States territory, or the District of Columbia as qualifying patients in this State; provided that this registration process may commence no sooner than January 1, 2018.”

SECTION 8. Section 329D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall establish and enforce standards for laboratory-based testing of marijuana and manufactured marijuana products for content, contamination, and consistency[-]; provided that in establishing these standards, the department shall:

- (1) Review and take guidance from the testing programs and standards utilized in other jurisdictions;
- (2) Consider the impact of the standards on the retail cost of the product to the qualifying patient;
- (3) Review and take guidance from the testing programs and standards for pesticides under the regulations of the United States Environmental Protection Agency;
- (4) For the testing for microbiological impurities, consider the benefits of organically grown marijuana that features the use of bacteria in lieu of pesticides; and
- (5) Include permission for qualifying patients and primary caregivers to obtain testing services directly from certified laboratories on the island where the qualifying patient and primary caregiver reside.”

SECTION 9. Section 329D-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall intentionally or knowingly enter or remain upon the premises of a medical marijuana retail dispensing location unless the individual is:

- (1) An individual licensee or registered employee of the dispensary;
- (2) A qualifying patient or primary caregiver of a qualifying patient;
- (3) A government employee or official acting in the person’s official capacity; or
- (4) Previously included on a current department-approved list provided to the department by the licensee of those persons who are allowed into that dispensary’s facilities for a specific purpose for that dispensary, including but not limited to construction, maintenance, repairs, legal counsel, providers of paratransit or other assistive services required by a qualifying patient to access a retail dispensary location, or investors; provided that:
 - (A) The person has been individually approved by the department to be included on the list;
 - (B) The person is at least twenty-one years of age, as verified by a valid government issued identification card;
 - (C) The department has confirmed that the person has no felony convictions;

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- (D) The person is escorted by an individual licensee or registered employee of the dispensary at all times while in the dispensary facility;
- (E) The person is only permitted within those portions of the dispensary facility as necessary to fulfill the person's purpose for entering;
- (F) The person is only permitted within the dispensary facility during the times and for the duration necessary to fulfill the person's purpose for entering;
- (G) The dispensary shall keep an accurate record of each person's first and last name, date and times upon entering and exiting the dispensary facility, purpose for entering, and the identity of the escort; and
- (H) The approved list shall be effective for one year from the date of the department approval."

SECTION 10. Section 329D-27, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) No later than January 4, 2016, the department shall adopt interim rules, which shall be exempt from chapter 91 and chapter 201M, to effectuate the purposes of this chapter; provided that the interim rules shall remain in effect until July 1, [2018,] 2020, or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

(c) The department may amend the interim rules, and the amendments shall be exempt from chapters 91 and 201M, to effectuate the purposes of this chapter; provided that any amended interim rules shall remain in effect until July 1, [2018,] 2020, or until rules are adopted pursuant to subsection (a), whichever occurs sooner."

SECTION 11. Act 241, Session Laws of Hawaii 2015, is amended by amending section 14 to read as follows:

"SECTION 14. For the purposes of effectuating this Act, the personnel hired and the contracts entered into by the department of health, pursuant to this Act, shall be exempt from chapter 76, Hawaii Revised Statutes, for a period beginning on July 1, 2015, and ending on June 30, [2017,] 2020; provided that:

- (1) All personnel actions taken pursuant to this Act by the department of health after June 30, [2017,] 2020, shall be subject to chapter 76, Hawaii Revised Statutes, as appropriate; and
- (2) Any employee hired by the department of health to effectuate this Act, who occupies a position exempt from civil service on July 1, [2017,] 2020, shall:
 - (A) Be appointed to a civil service position; and
 - (B) Not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges;provided that the employee possesses the minimum qualifications and public employment requirements for the class or position to which appointed; provided further that subsequent changes in status shall be made pursuant to applicable civil service and compensation laws."

SECTION 12. The department of health shall submit a report to the legislative oversight working group established by Act 230, Session Laws of Ha-

waii 2016, no later than sixty days prior to the convening of the regular session of 2018 with information and recommendations about the alternate tracking system, including input obtained from medical marijuana licensees.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on June 29, 2017.

(Approved June 20, 2017.)