

REPORT TITLE:

Medical Use of Marijuana

DESCRIPTION:

Allows for the acquisition, possession, cultivation, distribution, transportation, administration, and use of marijuana for medical purposes.

THE SENATE
TWENTIETH LEGISLATURE, 1999
STATE OF HAWAII

S.B. NO.

862

A BILL FOR AN ACT

RELATING TO MEDICAL USE OF MARIJUANA.

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

1 SECTION 1. The legislature finds that modern medical
2 research has discovered a beneficial use for marijuana in
3 alleviating certain serious illnesses. Medical usage of
4 marijuana has been permitted in California, Arizona, Oregon,
5 Washington, and Alaska.

6 The legislature further finds that allowing the medical use
7 of marijuana could promote Hawaii as being an international
8 center for medical treatment and research.

9 The legislature further finds that although federal law
10 prohibits marijuana use, states are not required to enforce
11 federal law and the State is not precluded from passing its own
12 laws.

13 The purpose of this Act is to ensure that seriously ill
14 people are not penalized for the use of marijuana for strictly
15 medical purposes when the patient's treating physician provides a
16 professional opinion that marijuana is medically beneficial to
17 the patient.

18 SECTION 2. Chapter 329, Hawaii Revised Statutes is amended
19 by adding a new part to be appropriately designated and to read

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1 as follows:

2 "PART .

3 **MEDICAL USE OF MARIJUANA**

4 **§329-A Definitions.** As used in this part:

5 "Adequate supply" means an amount of marijuana that is not
6 more than is necessary to assure, throughout the projected course
7 of treatment, the uninterrupted availability for purposes of
8 alleviating the symptoms or effects of a qualifying patient's
9 debilitating medical condition.

10 "Debilitating medical condition" means:

- 11 (1) Cancer, glaucoma, positive status for human
12 immunodeficiency virus, acquired immune deficiency
13 syndrome, or the treatment of these conditions;
- 14 (2) A chronic or debilitating disease or medical condition
15 or its treatment that produces one or more of the
16 following: cachexia or wasting syndrome; severe pain;
17 severe nausea; seizures, including those characteristic
18 of epilepsy; or severe and persistent muscle spasms,
19 including those characteristic of multiple sclerosis;
- 20 or
- 21 (3) Any other medical condition approved by the department
22 of health pursuant to administrative rules in response

1 "Marijuana" shall have the same meaning as provided in
2 section 329-1.

3 "Medical use" means the acquisition, possession,
4 cultivation, use, distribution, or transportation of marijuana or
5 paraphernalia relating to the administration of marijuana to
6 alleviate the symptoms or effects of a qualifying patient's
7 debilitating medical condition.

8 "Parent" means the custodial mother or father, the legal
9 guardian, or any other person having legal custody of a
10 qualifying patient under the age of eighteen years.

11 "Physician" means a person who is licensed under
12 chapter 453.

13 "Primary caregiver" means a person, other than the
14 qualifying patient and the qualifying patient's physician, who is
15 eighteen years of age or older and has significant responsibility
16 for managing the well-being of the qualifying patient.

17 "Qualifying patient" means a person who has been diagnosed
18 by a physician as having a debilitating medical condition.

19 "Written documentation" means a statement signed by a
20 qualifying patient's physician or medical records of the
21 qualifying patient stating that in the physician's professional
22 opinion, the potential benefits of the medical use of marijuana
23 would likely outweigh the health risks for the qualifying

1 patient.

2 **§329-B Medical use of marijuana; permitted when.**(a)

3 Notwithstanding any law to the contrary, the medical use of
4 marijuana by a qualifying patient, or the furnishing of marijuana
5 for medical use by the qualifying patient's primary caregiver, as
6 appropriate, shall be permitted, if that qualifying patient has
7 been diagnosed by a physician as having a debilitating medical
8 condition; provided that the physician shall have written

9 documentation pertaining to that qualifying patient; and further
10 provided that the amount of marijuana does not exceed an adequate
11 supply.

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

14 (1) The qualifying patient's physician has explained the
15 potential risks and benefits or the medical use of
16 marijuana to the qualifying patient and to at least one
17 of the qualifying patient's parents; and

18 (2) At least one of the qualifying patient's parents
19 consents in writing to: the qualified patient's
20 medical use of marijuana; serve as the qualifying
21 patient's primary caregiver; and control the
22 acquisition of the marijuana and the dosage and
23 frequency of the medical use of marijuana by the

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1 qualifying patient.

2 (c) This section shall not apply to:

3 (1) Medical use of marijuana that endangers the health or
4 well-being of another person;

5 (2) Medical use of marijuana in a school bus or public bus;
6 on any school grounds; or at any public park, public
7 beach, public recreation center, recreation or youth
8 center, or other place open to the public; and

9 (3) Use of marijuana by a qualifying patient, parent, or
10 primary caregiver for purposes other than medical use.

11 **§329-C Insurance not applicable.** This part shall not be
12 construed to require insurance coverage for the medical use of
13 marijuana."

14 SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended
15 by adding a new section to be appropriately designated and to
16 read as follows:

17 "§453- Medical use of marijuana. No physician shall be
18 subject to arrest or prosecution, penalized in any manner, or
19 denied any right or privilege, for providing a professional
20 opinion or written documentation to a person, whom that physician
21 has diagnosed as having a debilitating medical condition, as

22 defined in section 329-A, about the potential risks and benefits
23 of the medical use of marijuana, as defined in section 329-A;

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1 provided that the professional opinion or written documentation
2 is based upon the physician's assessment of the person's medical
3 history and current medical condition made in the course of a
4 bona fide physician-patient relationship."

5 SECTION 4. Chapter 712, Hawaii Revised Statutes, is amended
6 by adding a new section to part IV, to be appropriately
7 designated and to read as follows:

8 "~~S712-~~ **Marijuana.** (1) No provision of this part that
9 applies to marijuana shall be construed to be violated due to the
10 medical use of marijuana in accordance with part of
11 chapter 329.

12 (2) Marijuana subject to part of chapter 329 and any
13 property used in connection with the medical use of marijuana
14 shall not be subject to search or seizure. Marijuana,
15 paraphernalia, or other property seized from a qualifying patient
16 or primary caregiver in connection with claimed medical use shall
17 be returned immediately upon the determination by a court that
18 the qualifying patient or primary caregiver is entitled to the
19 protections of part of chapter 329, as evidenced by a
20 decision not to prosecute, dismissal of the charges, or an
21 acquittal.

22 (3) A person shall not be subject to arrest for being in
23 the presence or vicinity of the medical use of marijuana.

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1 (4) It shall be an affirmative defense for prosecution
2 involving marijuana under this part that there was compliance
3 with part of chapter 329; provided that the qualifying
4 patient's physician, in the context of a bona fide
5 physician-patient relationship, has stated that in the
6 physician's professional opinion, the potential benefits of the
7 medical use of marijuana would likely outweigh the health risks

8 for the particular qualifying patient.

9 (5) Misrepresentation of any fact or circumstance relating
10 to subsection (1), (2), or (3) to avoid prosecution under this
11 part shall be subject to imprisonment of up to thirty days and a
12 fine of \$500, in addition to any other penalties that may apply
13 for the non-medical use of marijuana.

14 (6) In any criminal proceeding under this part in which a
15 physician is called to testify, testimony by the physician shall
16 be in private in chambers. Upon request of the physician who
17 testifies, if the testimony is subsequently used in a public
18 proceeding, whether criminal or civil, the name of the physician
19 shall not be disclosed.

20 (7) For the purposes of this section:

21 "Marijuana" shall have the same meaning as provided in
22 section 712-1240; and

23 "Medical use" shall have the same meaning as provided in

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1 section 329-A.

2 "Physician" shall have the same meaning as provided in
3 section 329-A."

4 SECTION 5. Section 453-8, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) In addition to any other actions authorized by law,
7 any license to practice medicine and surgery may be revoked,
8 limited, or suspended by the board at any time in a proceeding
9 before the board, or may be denied, for any cause authorized by
10 law, including but not limited to the following:

- 11 (1) Procuring, or aiding or abetting in procuring, a
12 criminal abortion;
- 13 (2) Employing any person to solicit patients for one's
14 self;
- 15 (3) Engaging in false, fraudulent, or deceptive
16 advertising, including, but not limited to:
- 17 (A) Making excessive claims of expertise in one or
18 more medical specialty fields;
- 19 (B) Assuring a permanent cure for an incurable
20 disease; or

21 (C) Making any untruthful and improbable statement in
22 advertising one's medical or surgical practice or
23 business;

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- 1 (4) Being habituated to the excessive use of drugs or
2 alcohol; or being addicted to, dependent on, or a
3 habitual user of a narcotic, barbiturate, amphetamine,
4 hallucinogen, or other drug having similar effects;
- 5 (5) Practicing medicine while the ability to practice is
6 impaired by alcohol, drugs, physical disability, or
7 mental instability;
- 8 (6) Procuring a license through fraud, misrepresentation,
9 or deceit or knowingly permitting an unlicensed person
10 to perform activities requiring a license;
- 11 (7) Professional misconduct, hazardous negligence causing
12 bodily injury to another, or manifest incapacity in the
13 practice of medicine or surgery;
- 14 (8) Incompetence or multiple instances of negligence,
15 including, but not limited to, the consistent use of
16 medical service which is inappropriate or unnecessary;
- 17 (9) Conduct or practice contrary to recognized standards of
18 ethics of the medical profession as adopted by the
19 Hawaii Medical Association or the American Medical
20 Association;
- 21 (10) Violation of the conditions or limitations upon which a
22 limited or temporary license is issued;
- 23 (11) Revocation, suspension, or other disciplinary action by

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1 another state or federal agency of a license,
2 certificate, or medical privilege for reasons as
3 provided in this section;

- 4 (12) Conviction, whether by nolo contendere or otherwise, of
5 a penal offense substantially related to the
6 qualifications, functions, or duties of a physician,

7 notwithstanding any statutory provision to the

8 contrary;

9 (13) Violation of chapter 329, the uniform controlled
10 substances act, or any rule adopted thereunder[;]
11 except as provided in section 329-B;

12 (14) Failure to report to the board, in writing, any
13 disciplinary decision issued against the licensee or
14 the applicant in another jurisdiction within thirty
15 days after the disciplinary decision is issued; or

16 (15) Submitting to or filing with the board any notice,
17 statement, or other document required under this
18 chapter, which is false or untrue or contains any
19 material misstatement or omission of fact."

20 SECTION 6. This Act shall not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.

23 SECTION 7. If any provision of this Act, or the application

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1 thereof to any person or circumstance is held invalid, the
2 invalidity does not affect other provisions or applications of
3 the Act which can be given effect without the invalid provision
4 or application, and to this end the provisions of this Act are
5 severable.

6 SECTION 8. In codifying the new sections added by this Act,
7 the revisor shall substitute the appropriate section numbers for
8 the letters used in designating the new sections of this Act.

9 SECTION 9. Statutory material to be repealed is bracketed.
10 New statutory material is underscored.

11 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

