A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

PART I.

SECTION 1. The legislature finds that Hawaii's medical use of marijuana law was enacted on June 14, 2000, as Act 228, Session Laws of Hawaii 2000, to provide medical relief for seriously ill individuals in the State. While the current law recognizes the beneficial use of marijuana in treating or alleviating pain or other symptoms associated with certain debilitating illnesses, it is silent on how patients can obtain medical marijuana if they or their caregivers are unable to grow their own supply of medical marijuana. The legislature further finds that many of the State's nearly thirteen thousand qualifying patients lack the ability to grow their own supply of medical marijuana due to a number of factors, including disability and limited space to grow medical marijuana. As a result, a regulated statewide dispensary system for medical marijuana is urgently needed by qualifying patients in the State.
Accordingly, the purpose of this Act is to establish a regulated statewide dispensary system for medical marijuana to ensure safe and legal access to medical marijuana for qualifying patients.

PART II

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . MEDICAL MARIJUANA DISPENSARY SYSTEM

§321-A Definitions. As used in this part:

"Department" means the department of health.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a substance containing marijuana or its principal psychoactive constituent tetrahydrocannabinol, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; provided that "manufacture" shall not include the preparation or compounding of marijuana or
tetrahydrocannabinol by a qualifying patient or primary
caregiver for the qualifying patient's use.

"Marijuana" shall have the same meaning as in section 329-
121.

"Medical marijuana dispensary" or "dispensary" means an
establishment operated by an organization or business licensed
by the State pursuant to this part where medical marijuana is
made available for retail sale to qualifying patients or primary
caregivers pursuant to this part and to section 329-122.

"Medical marijuana production center" or "production
center" means a farm or facility operated by an organization or
business licensed by the State pursuant to this part where
marijuana or marijuana products are cultivated, processed, or
packaged with the limited and express intent that the marijuana
or marijuana products be supplied to medical marijuana
dispensaries or other medical marijuana production centers,
pursuant to this part and to section 329-122.

"Person" means an individual, firm, corporation,
partnership, association, or any form of business or legal
entity.
"Primary caregiver" shall have the same meaning as in section 329-121.

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

§ -B Medical marijuana dispensaries; licensure; fees; inspection. (a) No person may act as a dispensary unless the person has obtained a license from the department pursuant to this part.

(b) The department shall adopt rules, in accordance with chapter 91, to provide for the licensure and standards for dispensaries in this State.

(c) The department shall determine the number of dispensaries appropriate to meet the needs of qualifying patients in this State; provided that:

(1) Not less than twenty-six dispensaries shall be licensed in the State by January 1, 2019;

(2) At least one dispensary shall be licensed in each county; provided that a dispensary shall not be required in the county of Kalawao;

(3) Licenses shall be issued in proportion to qualifying patient density within each county, which the
department shall review and determine annually;
provided that the department shall make available one
license per five hundred registered patients. For the
purposes of this section, qualifying patient density
shall be calculated by using a qualifying patient's
county of residency; and

(4) If an island in the State, or the county of Kalawao,
lacks a single licensed dispensary by July 1, 2017, a
dispensary that is licensed and established on another
island or in another county may petition the
department to allow an owner or employee of the
licensed dispensary to deliver medical marijuana
products to a qualified patient or caregiver on the
island that lacks a dispensary or in the county of
Kalawao; provided that the owner or employee of the
licensed dispensary shall at all times retain
possession of the medical marijuana products until
they are delivered to the qualified patient or
caregiver. The department shall grant the petition
within sixty days unless the department determines
that there is good cause to deny the petition.
(d) The department may begin offering licenses to
dispensaries on January 1, 2017;
(e) Dispensaries licensed pursuant to this section may
begin operations on July 1, 2017.
(f) Each person seeking licensure as a dispensary shall
submit an application in the form prescribed by the department,
as well as a fee of $20,000; provided that:
   (1) The applicant shall submit the fee in the form of one
   check in the amount of $2,000 and a second check in
   the amount of $18,000;
   (2) If the application is unsuccessful, the department
   shall retain the fee of $2,000, and destroy the check
   for $18,000; and
   (3) Application fees of successful applicants are
   nonrefundable.
(g) The department shall establish and collect an annual
renewal fee of $30,000 from a medical marijuana dispensary;
provided that the amount of the renewal fee shall be subject to
review and revision by the department; provided further that the
renewal fee shall be sufficient to cover the department's
expenses in carrying out this part.
(h) All fees collected pursuant to this section shall be deposited in the medical marijuana registry and regulation special fund pursuant to section 321-30.1.

§321-C Medical marijuana production centers; licensure; fees; inspection. (a) No person may act as a medical marijuana production center unless the person has obtained a license from the department pursuant to this part.

(b) The department shall adopt rules, in accordance with chapter 91, to provide for the licensure and standards for medical marijuana production centers in this State.

(c) Medical marijuana production centers may distribute marijuana only to dispensaries or other production centers licensed pursuant to this part. Medical marijuana production centers shall not distribute marijuana directly to qualifying patients or primary caregivers.

(d) The department shall determine the number of medical marijuana production centers appropriate to meet the needs of qualifying patients and dispensaries in this State; provided that the department shall base this determination on the presumption that no single production center shall acquire, cultivate, manufacture, possess, or transport more than one
thousand marijuana plants in total at any one time; provided

further that not less than production centers shall be

licensed in the State by .

(e) The department may begin offering a minimum of thirty

licenses to production centers on January 1, 2017.

(f) The department shall offer two types of licenses,

which shall authorize qualified production centers to acquire,
cultivate, manufacture, possess, or transport either no more
than:

(1) Five hundred plants in total at any one time; or

(2) One thousand plants in total at any one time.

(g) Each person seeking a license pursuant to subsection

(f)(1) shall submit an application in the form prescribed by the
department, as well as a fee of $2,000; provided that:

(1) The applicant shall submit the fee in the form of two

checks in the amount of $1,000 each;

(2) If the application is unsuccessful, the department

shall retain the fee of $1,000, and destroy the second

check for $1,000; and

(3) Application fees of successful applicants are

nonrefundable.
(h) Each person seeking a license pursuant to subsection (f)(2) shall submit an application in the form prescribed by the department, as well as a fee of $4,000; provided that:

1. The applicant shall submit the fee in the form of two checks in the amount of $2,000 each;
2. If the application is unsuccessful, the department shall retain the fee of $2,000, and destroy the second check for $2,000; and
3. Application fees of successful applicants are nonrefundable.

(i) The department shall establish and collect an annual renewal fee from medical marijuana production centers sufficient to cover the department's expenses in carrying out this part.

(j) All fees collected pursuant to this section shall be deposited in the medical marijuana registry and regulation special fund pursuant to section 321-30.1.

§321-D Public education. (a) The department shall engage in a continuing education and training program to explain and clarify the purposes and requirements of this part. The program shall target community partner agencies, physicians and other health care providers, patients and caregivers, law enforcement
agencies, individuals under eighteen years of age, law and
policy makers, and the general public.

(b) The department shall employ at least one full time
staff member whose qualifications and duties include the
provision of medical marijuana health education.

§321-E Manufacturing of medical marijuana products. (a)
Any medical marijuana dispensary or production center licensed
by the department pursuant to this part shall be permitted to
manufacture medical marijuana; provided that the dispensary or
production center shall also obtain any other state or county
permits or licenses that may be necessary for a particular
manufacturing activity.

(b) The department shall establish standards regarding the
manufacture of medical marijuana products; provided that any
area within a dispensary or production center where marijuana
will be manufactured into an edible form shall comply with the
food safety code, chapter 11-50, Hawaii Administrative Rules.

§321-F Types of medical marijuana products. (a) The
department shall adopt rules regarding the type of medical
marijuana products that may be manufactured and distributed
pursuant to this part; provided that no candy products
containing medical marijuana shall be permitted; provided further that nothing in this section shall be construed as prohibiting the manufacture and distribution of lozenges.

(b) As used in this section, "lozenge" means a small tablet manufactured in a manner to allow for the dissolving of its medicinal or therapeutic component slowly in the mouth.

§321-G Advertising and packaging. (a) The department shall establish standards regarding the advertising and packaging of medical marijuana products; provided that the standards, at a minimum, shall require the use of packaging that:

(1) Is child-resistant and opaque so that the product cannot be seen from outside the packaging;

(2) Is clearly labeled with the phrase "For medical use only"; and

(3) Contains information about the contents and potency of the product.

(b) Any lozenge, capsule, or pill containing medical marijuana or its principal psychoactive constituent tetrahydrocannabinol shall be packaged so that one dose,
serving, or single wrapped item contains no more than ten
milligrams of tetrahydrocannabinol.

§321-H Medical marijuana production center and dispensary
rules. The department shall adopt rules pursuant to chapter 91
for the purposes of this part and with respect to:

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

(2) A fee structure for the submission of applications and
renewal of licenses to operate production centers or
dispensaries;

(3) Any specific requirements regarding annual audits and
reports pertaining to each production center and
dispensary that is licensed pursuant to this part;

(4) Security requirements for the operation of production
centers and dispensaries; provided that the
requirements, at a minimum, shall require:

(A) For production centers:

   (i) Video monitoring and recording of the
   premises;
(ii) Fencing that surrounds the premises and that is sufficient to reasonably deter intruders and prevent anyone outside the premises from viewing any area where marijuana is cultivated, processed, or stored;

(iii) An alarm system; and

(iv) Other reasonable security measures to deter or prevent intruders, as deemed necessary by the department;

(B) For dispensaries:

(i) Presentation of 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;

(iii) An alarm system;

(iv) Exterior lighting; and

(v) Other reasonable security measures as deemed necessary by the department;
(5) Standards and criminal backgrounds checks for operators and employees of production centers and dispensaries; provided that the standards, at a minimum, shall exclude from licensure or employment any person convicted of any felony; provided that the department may adopt rules exempting from this paragraph a person who was convicted of a felony that was specifically related to marijuana, if the conviction was at least ten years prior to the licensure or employment;

(6) The training and certification of operators and employees of production centers and dispensaries; provided that the department shall establish a training or certification program for dispensary employees;

(7) The types of medical marijuana products that production centers and dispensaries shall be authorized to grow, manufacture, sell, or provide;

(8) Standards and methodologies related to testing medical marijuana products for content, contamination, and consistency;
(9) Dispensary and production center inventory controls to prevent the unauthorized diversion of marijuana; provided that the controls, at a minimum, shall include:

(A) A computer software tracking system that will allow the department to track all medical marijuana and medical marijuana product inventory from either seed or immature plant stage until the marijuana or marijuana product is sold to a customer or destroyed; and

(B) Product packaging standards sufficient to allow law enforcement personnel to reasonably determine the contents of an unopened package;

(10) The enforcement of prohibitions against the sale or provision of medical marijuana products to unauthorized persons;

(11) Any limitations to the size or format of any signs placed outside a dispensary or production center; provided that no sign shall include the image of a cartoon character or other design intended to appeal to children; and
(12) Penalties for violations of this part or rules adopted thereunder.

§321-I Medical marijuana zoning. Medical marijuana production centers and dispensaries shall comply with all county zoning ordinances, rules, or regulations; provided that:

(1) A medical marijuana production center shall be permitted in any area in which agricultural production is permitted except as provided within this part;

(2) A medical marijuana dispensary shall be permitted in any area in which a pharmacy is permitted; and

(3) No medical marijuana production center or dispensary shall be permitted within five hundred feet of the real property comprising a public school as defined in section 302A-101.

§321-J Annual inspections, audits, and reports. (a) Each medical marijuana production center and dispensary licensed pursuant to this part shall:

(1) Be subject to an annual announced inspection and unannounced inspections of its operations by the department; and
(2) Annually cause an independent financial audit, at the production center or dispensary operator's own expense, to be conducted of the production center or dispensary and shall submit the audit’s findings to the department.

(b) The department shall report annually to the governor and the legislature on the establishment and regulation of medical marijuana production centers and dispensaries including, but not limited to, the number and location of production centers and dispensaries licensed, the total licensing fees collected, and any licensing violations determined by the department.

§321-K Cultivation of medical marijuana by qualifying patients and primary caregivers. Nothing in this part shall be construed as prohibiting a qualifying patient or primary caregiver from cultivating or possessing an adequate supply of medical marijuana pursuant to part IX of chapter 329.

§321-L Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of medical marijuana patients and the
compliance of patients, caregivers, producers, and dispensaries with state laws and regulations related to medical marijuana."

PART III

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

"§46-4 County zoning. (a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of
the land to allow and encourage the most beneficial use of the
land consonant with good zoning practices. The zoning power
granted herein shall be exercised by ordinance which may relate
to:
(1) The areas within which agriculture, forestry,
industry, trade, and business may be conducted;
(2) The areas in which residential uses may be regulated
or prohibited;
(3) The areas bordering natural watercourses, channels,
and streams, in which trades or industries, filling or
dumping, erection of structures, and the location of
buildings may be prohibited or restricted;
(4) The areas in which particular uses may be subjected to
special restrictions;
(5) The location of buildings and structures designed for
specific uses and designation of uses for which
buildings and structures may not be used or altered;
(6) The location, height, bulk, number of stories, and
size of buildings and other structures;
(7) The location of roads, schools, and recreation areas;
(8) Building setback lines and future street lines;
The density and distribution of population;

The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;

Minimum and maximum lot sizes; and

Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.
Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole.

This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or
signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents for purposes or functions that are licensed, certified, registered, or monitored by the State; provided that a resident manager or a resident supervisor and the resident manager's or resident supervisor's family shall not be included in this resident count. These group living
facilities shall meet all applicable county requirements not
inconsistent with the intent of this subsection, including but
not limited to building height, setback, maximum lot coverage,
parking, and floor area requirements.

(e) Neither this section nor any other law, county
ordinance, or rule shall prohibit the use of land for employee
housing and community buildings in plantation community
subdivisions as defined in section 205-4.5(a)(12); in addition,
no zoning ordinance shall provide for the elimination,
amortization, or phasing out of plantation community
subdivisions as a nonconforming use.

(f) Neither this section nor any other law, county
ordinance, or rule shall prohibit the use of land for medical
marijuana production centers or dispensaries established and
licensed pursuant to part of chapter 321."

PART IV

SECTION 4. Section 321-30.1, Hawaii Revised Statutes, is
amended to read as follows:

"[{}§321-30.1{}] Medical marijuana registry and regulation
special fund; established. (a) There is established within the
state treasury the medical marijuana registry and regulation
special fund. The fund shall be expended at the discretion of
the director of health:

(1) To establish and regulate a system of medical
marijuana production centers and dispensaries in the
State;

(2) To offset the cost of the processing and issuance
of patient registry identification certificates and
primary caregiver registration certificates;

(3) To fund positions authorized by the legislature;

(4) To establish and manage a secure and confidential
database; and

(5) For any other expenditure necessary, as
authorized by the legislature, to implement [a]
medical marijuana registry and regulation [program-]
programs.

(b) The fund shall consist of all moneys derived from fees
collected pursuant to subsection (c) and sections 321-B and
321-C. There is established within the medical marijuana
registry and regulation special fund:

(1) A medical marijuana registry program sub-account, into
which shall be deposited [All] all fees collected
pursuant to subsection (c) [shall be deposited into the medical marijuana registry special fund.]; and

(2) A medical marijuana dispensary program sub-account, into which shall be deposited all fees collected pursuant to sections 321-B and 321-C.

(c) The department, upon completion of the transfer of the medical use of marijuana program, shall charge a medical marijuana registration fee of no more than $35."

PART V

SECTION 5. Chapter 329, Hawaii Revised Statutes, is amended by adding a new section to part IX to be appropriately designated and to read as follows:

"§329- Protections afforded to an owner or qualified employee of a licensed production center or dispensary. (a) An owner or employee of a medical marijuana production center or a medical marijuana dispensary licensed under section 321-B or 321-C may assert the medical production or medical distribution of marijuana as an affirmative defense to any prosecution involving marijuana under this part or chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 321, part____."
(b) An owner or employee of a licensed medical marijuana production center or licensed medical marijuana dispensary not complying with the permitted scope of the medical production or medical distribution of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical production or medical distribution of marijuana.

(c) No person shall be subject to arrest or prosecution for merely being in the presence or vicinity of a medical marijuana production center or medical marijuana dispensary licensed and operating under chapter 321, part ___.

SECTION 6. Section 329-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

(2) The medical use of marijuana:

(A) In a school bus, public bus, or any moving vehicle;

(B) In the workplace of one's employment;
(C) On any school grounds;
(D) At any public park, public beach, public recreation center, recreation or youth center; or
(E) Other At any other place open to the public;
provided that a qualifying patient, parent, primary caregiver, or an owner or employee of a medical marijuana production center or dispensary licensed under sections 321-B and 321-C shall not be prohibited from transporting medical marijuana in any public place; and
(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this part."

PART VI

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of $510,000 or so much thereof as may be necessary for fiscal year 2015-2016, and the same sum or so much thereof as may be necessary for fiscal year 2016-2017, to be deposited into the medical marijuana registry and regulation special fund established pursuant to section 321-30.1, Hawaii Revised Statutes.
SECTION 8. There is appropriated out of the medical marijuana registry and regulation special fund the sum of $510,000 or so much thereof as may be necessary for fiscal year 2015-2016 and the same sum or so much thereof as may be necessary for fiscal year 2016-2017 to carry out the purposes of this Act, including the hiring of five full-time equivalent (FTE) positions to carry out the purposes of the medical marijuana dispensary program established pursuant to this Act.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 9. Not later than July 1, 2016, the department of health shall establish and commence a repayment plan and schedule to repay to the general fund, the sums deposited into the medical marijuana registry and regulation special fund established pursuant to section 321-30.1, Hawaii Revised Statutes. The department of health shall only use moneys from the medical marijuana registry and regulation special fund to repay the general fund. The repayment schedule shall not extend beyond June 30, .
PART VII

SECTION 10. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 13. This Act shall take effect provided that part VI shall take effect on July 1, 2015.

INTRODUCED BY:  

[Signatures]
Report Title:
Medical Marijuana; Dispensaries and Production Centers; Appropriation

Description:
Establishes a system of medical marijuana dispensaries and production centers. Prohibits counties from enacting zoning regulations that discriminate against licensed dispensaries and production centers. Clarifies the right of qualifying patients and primary caregivers to transport medical marijuana. Appropriates funds.

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