
A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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

1 SECTION 1. The legislature finds that support for the
2 medical use of marijuana in the State is strong and that the
3 experience of the State with the medical use of marijuana has
4 been favorable, but that existing protections for patients are
5 very weak regarding civil penalties. Patients within the
6 medical marijuana program should not be less secure in their
7 employment, housing, school enrollment, or supplemental medical
8 care than patients who have made different private decisions
9 with their doctors concerning medication or treatment.

10 The legislature is mindful of the difficult position of
11 medical marijuana patients under federal law and seeks to ensure
12 that the rights of patients are protected, while at the same
13 time respecting the needs of institutions and individuals to
14 protect themselves from federal penalties. For this reason, the
15 rights afforded under this Act are limited to those situations
16 in which a school or landlord would not lose a monetary or
17 licensing-related benefit for compliance with state law, and to



1 those situations in which patients and caregivers are in strict
2 compliance with the State's medical marijuana law.

3 SECTION 2. Chapter 329, Hawaii Revised Statutes, is
4 amended by adding a new section to part IX to be appropriately
5 designated and to read as follows:

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



1 (b) For the purposes of medical care, including organ
 2 transplants, a registered qualifying patient's use of marijuana
 3 in compliance with this part shall be considered the equivalent
 4 of the use of any other medication under the direction of a
 5 physician and shall not constitute the use of an illicit
 6 substance or otherwise disqualify a registered qualifying
 7 patient from medical care.

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

16 SECTION 3. Section 329-125, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "[+]§329-125[+] Protections afforded to a qualifying
 19 patient or primary caregiver. (a) A qualifying patient or the
 20 primary caregiver may assert the medical use of marijuana as an
 21 affirmative defense to any prosecution involving marijuana under



1 this [†]part[†] or chapter 712; provided that the qualifying
2 patient or the primary caregiver strictly complied with the
3 requirements of this part.

4 (b) Any qualifying patient or primary caregiver not
5 complying with the permitted scope of the medical use of
6 marijuana shall not be afforded the protections against searches
7 and seizures pertaining to the misapplication of the medical use
8 of marijuana.

9 (c) No person shall be subject to arrest or prosecution
10 for simply being in the presence or vicinity of the medical use
11 of marijuana as permitted under this part.

12 (d) It shall be unlawful for any employer to discipline,
13 suspend, discharge, or discriminate against any of the
14 employer's employees solely because the employee tested positive
15 for the presence of marijuana or its metabolites in a substance
16 abuse test conducted in accordance with section 329B-5 or
17 section 329B-5.5; provided that:

18 (1) The qualifying patient strictly complied with the
19 requirements of this part;



- 1 (2) Nothing in this section shall be construed to
2 authorize the use of medical marijuana in the
3 workplace of an employee's employment;
- 4 (3) Nothing in this section shall be construed to
5 supersede any statute, rule, employment contract,
6 collective bargaining agreement, or workplace
7 regulation or policy prohibiting an employee from
8 being under the influence of marijuana while working
9 in the workplace of the employee's employment; and
- 10 (4) Nothing in this section shall be construed to affect
11 the rights of a person with disabilities who is a
12 qualified medical marijuana patient to request a
13 reasonable accommodation in employment in accordance
14 with Hawaii Administrative Rules Section 12-46-187 if
15 the person tests positive for marijuana use, except
16 that reasonable accommodation does not include
17 intoxication or marijuana use at work."

18 SECTION 4. Chapter 421J, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§421J- Medical marijuana; discrimination. A provision
2 in any association documents allowing for any of the
3 discriminatory practices listed in paragraphs (1) to (7) of
4 section 515-3 against a person residing in a unit who has a
5 valid certificate for the medical use of marijuana as provided
6 in section 329-123 in any form is void, unless the association
7 documents prohibit smoking tobacco and the medical marijuana is
8 used by means of smoking."

9 SECTION 5. Chapter 514A, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§514A- Medical marijuana; discrimination. A provision
13 in any articles of incorporation, declaration, bylaws,
14 administrative rules, house rules, association documents, or a
15 similar document of a condominium property regime allowing for
16 any of the discriminatory practices listed in paragraphs (1) to
17 (7) of section 515-3 against a person residing in an apartment
18 who has a valid certificate for the medical use of marijuana as
19 provided in section 329-123 in any form is void, unless such
20 documents prohibit smoking tobacco and the medical marijuana is
21 used by means of smoking."



1 SECTION 6. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514B- Medical marijuana; discrimination. A provision
5 in any articles of incorporation, declaration, bylaws,
6 administrative rules, house rules, or association documents
7 allowing for any of the discriminatory practices listed in
8 paragraphs (1) to (7) of section 515-3 against a person residing
9 in a unit who has a valid certificate for the medical use of
10 marijuana as provided in section 329-123 in any form is void,
11 unless such documents prohibit smoking tobacco and the medical
12 marijuana is used by means of smoking."

13 SECTION 7. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect on January 7, 2112.



Report Title:

Medical Marijuana; Protections

Description:

Prohibits discrimination against medical marijuana patients and caregivers by schools, landlords, courts with regard to medical care or parental rights, employers, planned community associations, condominium property regimes, and condominiums. Effective 1/7/2112. (SB1291 HD2)

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

