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 certain felony offenses that were created within Act 241, Session Laws of Hawaii 2015, which created a medical marijuana dispensary system in the State, are unnecessary and unhelpful. Most of the new offenses created redundancies between those offenses and other bodies of law and established more serious penalties than certain prohibitions relating to potentially harmful substances such as alcohol, tobacco, and even opiates. The legislature finds that felony penalties relating to unauthorized access of a medical marijuana dispensary or production center are particularly unjustified.

Accordingly, the purpose of this Act is to:

(1) Repeal unnecessary prohibitions relating to medical marijuana; and
(2) Amend certain penalties relating to medical marijuana prohibitions to make them more commensurate with prohibitions relating to alcohol.

PART II

SECTION 2. Section 329D-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who violates subsection (a) shall be guilty of a [class C felony] petty misdemeanor."

SECTION 3. Section 329D-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who violates this section shall be guilty of a [class B felony] misdemeanor."

SECTION 4. Section 329D-15, Hawaii Revised Statutes, is repealed.

["§329D-15 Criminal offense; unauthorized access to retail dispensing location. (a) No person shall intentionally or knowingly enter or remain upon the premises of a medical cannabis retail dispensing location unless the individual is:

(1) An individual licensee or registered employee of the dispensary,
(2) A qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state 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;
(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.

(b) No individual licensee or registered employee of a medical cannabis dispensary with control over or responsibility for a retail dispensing location shall intentionally or knowingly allow another to enter or remain upon the premises of
the retail dispensing location, unless the other is permitted to
enter and remain as specified in subsection (a).

(c) Unauthorized access to a retail dispensing location is
a class C felony."

SECTION 5. Section 329D-16, Hawaii Revised Statutes, is
repealed.

"[§329D-16]—Criminal offense; unauthorized access to
production centers. (a) No person shall intentionally or
knowingly enter or remain upon the premises of a medical
cannabis production center unless the person is:

(1) An individual licensee or registered employee of the
production center;

(2) A government employee or official acting in the
person’s official capacity; or

(3) 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, 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;

(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 identity, 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 department approval.

(b) No individual licensee or registered employee of a
medical cannabis dispensary with control over or responsibility
for a production center shall intentionally or knowingly allow
another to enter or remain upon the premises of the production
center, unless the other is permitted to enter and remain as
specified in subsection (a).

(c) Unauthorized access to a production center is a class
C felony."

SECTION 6. Section 329D-18, Hawaii Revised Statutes, is
repealed.

"[§329D-18]—Diversion from dispensary or production
center; penalties. (a) A person commits diversion from a
dispensary or production center if the person is a licensee,
operator, or employee of a dispensary or production center and
intentionally or knowingly diverts to the person's own use or
other unauthorized or illegal use, or takes, makes away with, or
secretes, with intent to divert to the person's own use or other
unauthorized or illegal use, any medical cannabis, manufactured
cannabis product, or cannabis concentrate under the person's
possession, care, or custody as a licensee, operator, or
employee of a medical cannabis dispensary or production center
licensed by the department.

(b) Any person who violates this section shall be guilty
of a class G felony.

PART III

SECTION 7. Section 329D-12, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) The following shall be subject to background checks
conducted by the department or its designee, including but not
limited to criminal history record checks in accordance with
section 846-2.7:

(1) Each applicant and licensee for a medical cannabis
dispensary license, including the individual applicant
and all officers, directors, members of a limited
liability corporation; shareholders with at least
twenty-five per cent or more ownership interest in a
corporation; and managers of an entity applicant;

(2) Each employee of a medical cannabis dispensary;
(3) Each employee of a subcontracted production center or retail dispensing location; and

(4) All officers, directors, members of a limited liability corporation; and shareholders with at least twenty-five per cent or more ownership interest in a corporate owner of a subcontracted production center or retail dispensing location[; and

(5) Any person permitted to enter and remain in a dispensary facility pursuant to section 329D-15(a)(4) or 329D-16(a)(3)].

The person undergoing the background check shall provide written consent and all applicable processing fees to the department or its designee to conduct the background checks."

SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

(1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
(2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;

(3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;

(4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;

(5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;

(6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
(7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;

(8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

(9) The department of human services on prospective adoptive parents as established under section 346-19.7;

(10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;

(11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide
child care and receive child care subsidies as provided by section 346-152.5;

(12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;

(13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;

(14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;

(15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;

(16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a
correctional facility or who possess police powers
including the power of arrest as provided by section
353C-5;

(17) The board of private detectives and guards on
applicants for private detective or private guard
licensure as provided by section 463-9;

(18) Private schools and designated organizations on
employees and prospective employees who may be in
positions that necessitate close proximity to
children; provided that private schools and designated
organizations receive only indications of the states
from which the national criminal history record
information was provided pursuant to section 302C-1;

(19) The public library system on employees and prospective
employees whose positions place them in close
proximity to children as provided by section
302A-601.5;

(20) The State or any of its branches, political
subdivisions, or agencies on applicants and employees
holding a position that has the same type of contact
with children, vulnerable adults, or persons committed
to a correctional facility as other public employees
who hold positions that are authorized by law to
require criminal history record checks as a condition
of employment as provided by section 78-2.7;
(21) The department of health on licensed adult day care
center operators, employees, new employees,
subcontracted service providers and their employees,
and adult volunteers as provided by section 321-15.2;
(22) The department of human services on purchase of
service contracted and subcontracted service providers
and their employees serving clients of the adult
protective and community services branch, as provided
by section 346-97;
(23) The department of human services on foster grandparent
program, senior companion program, and respite
companion program participants as provided by section
346-97;
(24) The department of human services on contracted and
subcontracted service providers and their current and
prospective employees that provide home and community-
based services under section 1915(c) of the Social
Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

(25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;

(26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;

(27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;

(28) The department of commerce and consumer affairs on:

(A) Each principal of every non-corporate applicant for a money transmitter license;
(B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and

(C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a principal of the licensee,
as provided by sections 489D-9 and 489D-15;

(29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;

(30) The Hawaii health systems corporation on:

(A) Employees;

(B) Applicants seeking employment;

(C) Current or prospective members of the corporation board or regional system board; or

(D) Current or prospective volunteers, providers, or contractors,
in any of the corporation's health facilities as provided by section 323F-5.5;

(31) The department of commerce and consumer affairs on:
(A) An applicant for a mortgage loan originator license, or license renewal; and

(B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal,
as provided by chapter 454F;

(32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;

(33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;

(34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
(35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;

(36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;

(38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;

(39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position
responsibilities provide them with access to proprietary, confidential, or sensitive information;

(40) The department of commerce and consumer affairs on:

(A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;

(B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section 466L-7; and

(C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466L-7;

[(41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical cannabis dispensaries, and individuals permitted to enter and remain in medical cannabis dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3)];

(42)] (41) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal,
reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;

[(42)] The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;

[(43)] The department of commerce and consumer affairs on:

(A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and

(B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449;
[(44)] The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231-1.6;

[(45)] The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383-110;

[(46)] The department of human services on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 346-2.5;

[(47)] The child support enforcement agency on current or prospective employees, or contractors who have access to federal tax information in order to comply with federal law, regulation, or procedure, as provided by section 576D-11.5; and
Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

PART IV

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 11. This Act shall take effect on July 1, 2019.

INTRODUCED BY:
Report Title:
Medical Marijuana; Penalties; Prohibitions; Repeal

Description:
Makes obtaining or attempting to procure medical marijuana fraudulently a petty misdemeanor instead of a class C felony. Makes distribution of medical cannabis to minors a misdemeanor instead of a class B felony. Repeals certain medical marijuana prohibitions related to unauthorized access to medical marijuana dispensaries and production centers. Makes conforming amendments.

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