

A Bill for an Act Relating to Medical Marijuana.

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

PART I

SECTION 1. The legislature finds that Act 241, Session Laws of Hawaii 2015, established a licensing scheme for a statewide system of medical marijuana dispensaries to ensure access to medical marijuana for qualifying patients.

The purpose of this Act is to:

- (1) Clarify and amend statutes pertaining to the dispensary system consistent with guidance provided in the August 29, 2013, memorandum to all United States Attorneys from Deputy Attorney General James M. Cole regarding the exercise of federal prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use;
- (2) Ensure the efficient and responsible operation of medical marijuana dispensaries; and
- (3) Further ensure access to medical marijuana for qualifying patients.

PART II

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201- Medical marijuana; economic and other data; collection. (a)

The department shall continuously collect de-identified information regarding the medical marijuana registry and dispensary programs established pursuant to chapters 329 and 329D, including but not limited to information regarding the:

- (1) Quantities of marijuana cultivated and dispensed;
- (2) Number of qualifying patients;
- (3) Geographic areas in which marijuana is cultivated and consumed;
- (4) Prices of marijuana and related products;
- (5) Number of employment opportunities related to marijuana; and
- (6) Economic impact of marijuana cultivation and sales.

(b) The department of health and dispensaries licensed pursuant to chapter 329D shall provide de-identified aggregated data as required by the department pursuant to this section.

(c) Upon request, the department shall provide an analysis of the aggregated de-identified data to the department of health and the legislature.”

SECTION 3. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definition of “eligible business activity” to read as follows:

““Eligible business activity” means the:

- (1) Manufacture of tangible personal property, the wholesale sale of tangible personal property as described in section 237-4, or a service business as defined in this section;
- (2) Production of agricultural products where the business is a producer as defined in section 237-5, or the processing of agricultural products, all or some of which were grown within an enterprise zone;
- (3) Research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or

(4) Production of electric power from wind energy for sale primarily to a public utility company for resale to the public[-]; provided that medical marijuana dispensary activities pursuant to chapter 329D shall not be considered an eligible business activity for the purposes of this chapter.”

SECTION 4. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Section 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(1)(E) (relating to the motor vehicle sales tax deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), 63(c)(9) (defining the motor vehicle sales tax deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction amounts provided therein shall instead mean:
 - (A) \$4,400 in the case of:
 - (i) A joint return as provided by section 235-93; or
 - (ii) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
 - (B) \$3,212 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
 - (C) \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
 - (D) \$2,200 in the case of a married individual filing a separate return;
- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation shall be the greater of \$500 or the individual’s earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 68 (with respect to the overall limitation on itemized deductions) of the Internal Revenue Code shall be operative; provided that the thresholds shall be those that were operative for federal tax year 2009.

(c) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(d) Section 85 (with respect to unemployment compensation) of the Internal Revenue Code shall be operative for purposes of this chapter, except that section 85(c) shall not be operative for purposes of this chapter.

(e) Section 108 (with respect to income from discharge of indebtedness) of the Internal Revenue Code shall be operative for purposes of this chapter,

except that section 108(i) (relating to deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument) shall not be operative for purposes of this chapter.

(f) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(s) in effect for taxable year 1997.

(g) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the provision in section 132(f)(2) that equalizes the dollar amounts for ~~sections~~ section 132(f)(2)(A) and (B) shall not be operative and except that section 132(n) shall not apply to United States Department of Defense Homeowners Assistance Program payments authorized by the American Recovery and Reinvestment Act of 2009.

(h) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in section 163(d)(4)(B) (defining net investment income to exclude dividends), section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules) and section 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO) shall not be operative for the purposes of this chapter.

(i) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:

- (1) Section 164(a)(6) and (b)(6) shall not be operative for the purposes of this chapter;
- (2) The deductions under section 164(a)(3) and (b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000; and
- (3) Section 164(a)(3) shall not be operative for any amounts for which the credit under section 235-55 has been claimed.

(j) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the amount prescribed by sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and section 165(h)(3)(A) and (B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for the purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(k) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified

disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(l) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that section 172(b)(1)(J) and (j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(m) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except as provided in this subsection:

- (1) The aggregate cost provided in section 179(b)(1), which may be taken into account under section 179(a) for any taxable year, shall not exceed \$25,000;
- (2) The amount at which the reduction in limitation provided in section 179(b)(2) begins shall exceed \$200,000 for any taxable year; and
- (3) The following shall not be operative for purposes of this chapter:
 - (A) Defining section 179 property to include computer software in section 179(d)(1);
 - (B) Inflation adjustments in section 179(b)(5);
 - (C) Irrevocable election in section 179(c)(2); and
 - (D) Special rules for qualified disaster assistance property in section 179(e).

(n) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(o) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(p) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

(q) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that section 265(b)(3)(G) and (7) shall not be operative and section 265 shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. ~~Such~~ These expenses shall be deductible.

(r) Section 280E (with respect to expenditures in connection with the illegal sale of drugs) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 280E shall not be operative with respect to the production and sale of medical marijuana and manufactured marijuana products by dispensaries licensed under chapter 329D and their subcontractors, as defined in section 329D-1.

~~(s)~~ (s) Section 382 (with respect to limitation on net operating loss carryforwards and certain built-in losses following ownership change) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 382(n) shall not be operative for purposes of this chapter.

~~(t)~~ (t) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 408A(d)(3)(A)(iii) shall not be operative for purposes

of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

~~[(t)]~~ (u) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under those sections and to other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(u)]~~ (v) In administering section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 403(b)(8)(A) of the Internal Revenue Code, and those funds shall be subject to income tax under this chapter.

~~[(v)]~~ (w) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that ~~[the provisions of sections]~~ section 451(i)(3) and ~~[451(i)]~~(6), as ~~[they relate]~~ it relates to a qualified electric utility, shall not be operative for purposes of this chapter.

~~[(w)]~~ (x) In administering section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 457(e)(16)(A) of the Internal Revenue Code and those funds shall be subject to income tax under this chapter.

~~[(x)]~~ (y) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(y)]~~ (z) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(z)]~~ (aa) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

~~[(aa)]~~ (bb) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(bb)]~~ (cc) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(ee)]~~ (dd) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that sections 529(c)(6) and 529(e)(3)(A)(iii) shall not be operative.

~~[(dd)]~~ (ee) Section 529A (with respect to qualified ABLE programs) shall be operative for the purposes of this chapter, except that section 529A(c)(3) (with respect to additional tax for distributions not used for disability expenses) shall not be operative.

~~[(ee)]~~ (ff) Section 530 (with respect to Coverdell education savings accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.”

SECTION 5. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.3 **Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received by the manager, submanager, or board of directors of:
 - (A) An association of owners of a condominium property regime established in accordance with chapter 514A or 514B; or
 - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor

thereto and existing pursuant to covenants running with the land,

in reimbursement of sums paid for common expenses;

- (3) Amounts received or accrued from:
 - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
 - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
 - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- (4) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- (5) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (6) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:

"Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; ~~and~~ provided that "prescription drugs" shall not include marijuana or manufactured marijuana products authorized pursuant to chapters 329 and 329D.

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and ~~which~~ that is sold by the practitioner or ~~which~~ that

is dispensed and sold by a dealer of prosthetic devices; provided that “prosthetic device” shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

- (7) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (8) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (9) Amounts received by a labor organization for real property leased to:
 - (A) A labor organization; or
 - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, “labor organization” means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;
- (10) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (11) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of “interstate air transportation” is the same as in 49 U.S.C. section 40102.”

SECTION 6. Section 329-43.5, Hawaii Revised Statutes, is amended to read as follows:

“[§329-43.5] Prohibited acts related to drug paraphernalia. (a) [It] Except as provided in subsection (e), it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(b) [It] Except as provided in subsection (e), it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver[.] drug paraphernalia, knowing[.] or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may

be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(c) Any person eighteen years of age or over who violates subsection (b) by delivering drug paraphernalia to a person or persons under eighteen years of age who are at least three years younger than that adult person is guilty of a class B felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(d) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing[;] or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(e) Subsections (a) and (b) shall not apply to a person who is authorized to:

- (1) Acquire, possess, cultivate, use, distribute, or transport marijuana pursuant to the definition of "medical use" under section 329-121, while the person is facilitating the medical use of marijuana by a qualifying patient; or
- (2) Dispense, manufacture, or produce marijuana or manufactured marijuana products pursuant to and in compliance with chapter 329D, while the person is facilitating the medical use of marijuana by a qualifying patient pursuant to part IX of chapter 329."

SECTION 7. Section 329-121, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read: ““Advanced practice registered nurse” means an advanced practice registered nurse with prescriptive authority as described in section 457-8.6 and registered under section 329-32.”

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

““Debilitating medical condition” means:

- (1) Cancer, glaucoma, 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.”

3. By amending the definition of “physician” to read:

““Physician” means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. “Physician” does not include ~~[physician’s]~~ a physician assistant [or advanced practice registered nurse with prescriptive authority] as described in section 453-5.3 ~~[or 457-8-6].~~”

4. By amending the definition of “primary caregiver” to read:

““Primary caregiver” means a person eighteen years of age or older, other than the qualifying patient and the qualifying patient’s physician~~;~~ or advanced practice registered nurse, who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.”

5. By amending the definition of “qualifying patient” to read:

““Qualifying patient” means a person who has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition.”

6. By amending the definition of “written certification” to read:

““Written certification” means the qualifying patient’s medical records or a statement signed by a qualifying patient’s physician~~,~~ or advanced practice registered nurse, stating that in the physician’s or advanced practice registered nurse’s professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all written certifications comply with a designated form. “Written certifications” are valid for only one year from the time of signing.”

SECTION 8. Section 329-122, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;

(2) The qualifying patient’s physician or advanced practice registered nurse has certified in writing that, in the physician’s or advanced practice registered nurse’s professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of marijuana possessed by the qualifying patient does not exceed an adequate supply.

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

(1) The qualifying patient’s physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

(A) Allow the qualifying patient’s medical use of marijuana;

(B) Serve as the qualifying patient’s primary caregiver; and

(C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.”

2. By amending subsection (d) to read:

“(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; ~~[or]~~
- (2) The production centers and the retail dispensing locations under a dispensary licensee’s license; or
- (3) A production center or retail dispensing location and a certified laboratory for the purpose of laboratory testing;

provided that “transport” does not include the interisland transportation of marijuana, usable marijuana, or any manufactured marijuana product~~[-]~~, except when the transportation is performed 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.”

SECTION 9. Section 329-123, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Physicians or advanced practice registered nurses who issue written certifications shall provide, in each written certification, the name, address, patient identification number, and other identifying information of the qualifying patient. The department of health shall require, in rules adopted pursuant to chapter 91, that all written certifications comply with a designated form completed by or on behalf of a qualifying patient. The form shall require information from the applicant, primary caregiver, and physician or advanced practice registered nurse as specifically required or permitted by this chapter. The form shall require the address of the location where the marijuana is grown and shall appear on the registry card issued by the department of health. The certifying physician or advanced practice registered nurse shall be required to have a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable, with the qualifying patient. All current active medical marijuana permits shall be honored through their expiration date.

(b) Qualifying patients shall register with the department of health. The registration shall be effective until the expiration of the certificate issued by the department of health and signed by the physician[-] or advanced practice registered nurse. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within ten working days. Every qualifying patient shall have only one primary caregiver at any given time. The department of health shall issue to the qualifying patient a registration certificate, and shall charge \$35 per year.”

SECTION 10. Section 329-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A qualifying patient or the primary caregiver may assert the medical use of marijuana authorized under this part as an affirmative defense to any prosecution involving marijuana under this ~~[[part]]~~ or part IV; or part IV of chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.”

SECTION 11. Section 329-125.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An owner or employee of a medical marijuana dispensary that is licensed under chapter 329D may assert the production or distribution of medical marijuana as an affirmative defense to any prosecution involving marijuana under this part[;] or part IV; chapter 329D[;]; or part IV of chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 329D and any administrative rules adopted thereunder.”

SECTION 12. Section 329-126, Hawaii Revised Statutes, is amended to read as follows:

“[[§329-126]] Protections afforded to a treating physician[-] or advanced practice registered nurse. No physician or advanced practice registered nurse shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

- (1) The physician or advanced practice registered nurse has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;
- (2) The physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-122;
- (3) The written certification is based upon the physician’s or advanced practice registered nurse’s professional opinion after having completed a full assessment of the patient’s medical history and current medical condition made in the course of a bona fide physician-patient relationship[;] or bona fide advanced practice registered nurse-patient relationship, as applicable; and
- (4) The physician or advanced practice registered nurse has complied with the registration requirements of section 329-123.”

SECTION 13. Section 329-128, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician or advanced practice registered nurse not covered under section 329-126 for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710.”

SECTION 14. Section 329D-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Enclosed indoor facility” means a permanent, stationary structure with a solid floor, rigid exterior walls that encircle the entire structure on all sides, and a roof that protects the entire interior area from any exterior view and elements of weather; provided that the roof of an enclosed indoor facility utilized as a production center pursuant to a medical marijuana dispensary license application or license renewal application submitted after January 29, 2016, may be partially or completely transparent or translucent. An enclosed indoor fa-

cility excludes a greenhouse or shade house that does not comply with these requirements. Nothing in this definition shall be construed to relieve a medical marijuana dispensary license applicant or license renewal applicant of the duty to comply with all applicable building codes and regulations.

“Subcontractor” or “contractor” means any person or entity with whom the dispensary licensee has a contract to perform any of its production center or retail dispensing location operations; provided that it does not include a person or entity retained by a dispensary licensee to perform services ancillary to the operations of a dispensary, including but not limited to construction, installation, or maintenance of the dispensary’s facility, security systems, or tracking system, and laboratory testing.”

2. By amending the definition of “manufactured marijuana product” to read:

““Manufactured marijuana product” means any capsule, lozenge, oil or oil extract, tincture, ointment or skin lotion, [øf] pill, transdermal patch, or pre-filled and sealed container used to aerosolize and deliver marijuana orally, such as an inhaler or nebulizer, that has been manufactured using marijuana[-], or any other products as specified by the department pursuant to section 329D-10(a)(9).”

SECTION 15. Section 329D-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Up to two production centers shall be allowed under each dispensary license, provided that 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.”

SECTION 16. Section 329D-6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (e), (f), and (g) to read:

(e) Retail dispensing locations shall not be open for retail sales before 8:00 a.m. or after 8:00 p.m., Hawaii-Aleutian Standard Time, Monday through [Saturday-] Sunday. Retail dispensing locations shall be closed on [Sundays and] official state and federal holidays.

(f) All dispensary facilities, including but not limited to production centers and retail dispensing locations, shall be enclosed indoor facilities and shall maintain twenty-four hour security measures, including but not limited to an alarm system, video monitoring and recording on the premises, and exterior lighting. A dispensary licensee who intends to utilize, as a production center, an enclosed indoor facility that includes a roof that is partially or completely transparent or translucent, as provided under section 329D-1, shall notify the department of that intention prior to altering or constructing the facility. Production centers shall remain locked at all times. Retail dispensing locations shall remain locked at all times, other than business hours as authorized by subsection (e), and shall only be opened for authorized persons.

(g) In all dispensary facilities, only the licensee, if an individual, [the] registered employees of the dispensary licensee, [and the] registered employees of [the] a subcontracted production center or retail dispensing [locations] location, employees of a certified laboratory for testing purposes, state employees

authorized by the director of health, and law enforcement and other government officials acting in their official capacity shall be permitted to touch or handle any marijuana or manufactured marijuana products, except that a qualifying patient or the primary caregiver of a qualifying patient may receive manufactured marijuana products at a retail dispensing location following completion of a sale.”

2. By amending subsection (m) to read:

“(m) A dispensary shall not transport marijuana or manufactured marijuana products to another county or another island[-]; provided that this subsection shall not apply to the transportation of marijuana or any manufactured marijuana product solely for the purposes of laboratory testing pursuant to section 329D-8, and subject to subsection (j), if no certified laboratory is located in the county or on the island where the dispensary is located; provided further that a dispensary shall only transport samples of marijuana and manufactured marijuana products for laboratory testing for purposes of this subsection in an amount and manner prescribed by the department, in rules adopted pursuant to this chapter, and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State.”

SECTION 17. Section 329D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The types of medical marijuana products that may be manufactured and distributed pursuant to this chapter shall be limited to:

- (1) Capsules;
- (2) Lozenges;
- (3) Pills;
- (4) Oils and oil extracts;
- (5) Tinctures;
- (6) Ointments and skin lotions; ~~and~~
- (7) Transdermal patches;
- (8) Pre-filled and sealed containers used to aerosolize and deliver marijuana orally, such as with an inhaler or nebulizer; and
- ~~(7)~~ (9) Other products as specified by the department.”

SECTION 18. Section 329D-12, Hawaii Revised Statutes, is amended to read as follows:

~~“[§329D-12] Background checks. [Each applicant and licensee for a medical marijuana dispensary license, including the individual applicant and all officers, directors, shareholders with at least twenty-five per cent ownership interest or more, members, and managers of an entity applicant; each employee of a medical marijuana dispensary; each subcontracted production center and retail dispensing location employee; all officers, directors, shareholders with at least twenty-five per cent ownership interest or more in a subcontracted production center or retail dispensing location; and any person permitted to enter and remain in dispensary facilities pursuant to section 329D-15(a)(4) or 329D-16(a)(3);] (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 marijuana dispensary license, including the individual applicant and all officers, directors, shareholders with at least twenty-five per cent or more ownership interest, members, and managers of an entity applicant;
- (2) Each employee of a medical marijuana dispensary;

- (3) Each employee of a subcontracted production center or retail dispensing location;
- (4) All officers, directors, shareholders with at least twenty-five per cent or more ownership interest in a subcontracted production center or retail dispensing location; and
- (5) Any person permitted to enter and remain in dispensary facilities 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.

(b) This section shall not apply to:

- (1) Qualifying patients and their primary caregivers who enter or remain on the premises of a retail dispensing location for the purpose of a transaction conducted pursuant to sections 329D-6 and 329D-13; or
- (2) Government officials and employees acting in an official capacity and employees of a certified laboratory who enter or remain on the premises of a retail dispensing location or production center for any purpose authorized by this chapter.”

SECTION 19. 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 marijuana 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[~~members,~~] in a corporation; and managers of an entity applicant;
- (2) Each employee of a medical marijuana dispensary;
- (3) Each employee of a subcontracted production center or retail dispensing location;
- (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 ~~facilities~~ 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 20. Section 329D-27, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§329D-27]]~~ **Administrative rules.** (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(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, 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, or until rules are adopted pursuant to subsection (a), whichever occurs sooner.”

PART III

SECTION 21. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§304A- Medical marijuana testing and research programs; established. (a) To the extent permitted by federal and state law, and subject to applicable certification by the department of health, the University of Hawaii may establish medical marijuana testing and research programs that qualify as commercial enterprises of the university under section 304A-113 that provide services to state-approved medical marijuana dispensaries, including assessment of marijuana plant cannabinoid content and concentration, purity of manufactured marijuana products, or additional testing requested by the department of health. The university may assess fees or other charges for services. The fees and charges shall be fair and equitable with respect to the level and quality of services and commercially reasonable. In establishing or amending fees or charges for these services, the university shall be exempt from the requirements of chapter 91. The fees and charges may be established at an open meeting of the board of regents subject to chapter 92.

(b) The fees and charges collected pursuant to subsection (a) shall be deposited into the University of Hawaii commercial enterprises revolving fund established by section 304A-2251.

(c) To the extent permitted by federal and state law, and subject to applicable regulations, compliance standards, and protocols on research activity, the university may conduct research on the efficacy of medical marijuana use, its health outcomes and social impacts, and related safety issues.

(d) This section shall be construed to provide discretionary authority to the university, and nothing in this section shall require the university to engage in any activity that might jeopardize its eligibility to receive any form of state or federal assistance or benefit.”

SECTION 22. Section 304A-2251, Hawaii Revised Statutes, is amended to read as follows:

“§304A-2251 University of Hawaii commercial enterprises revolving fund. There is established the University of Hawaii commercial enterprises revolving fund into which shall be deposited all revenues derived from the operation of commercial enterprises by university programs[-] and all fees and charges collected pursuant to section 304A-. Revenues deposited into this fund may be expended by the university for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, without regard to chapters 76, 78, 89, 103, and 103D. Any law to the contrary notwithstanding, the university may transfer all funds at its disposal, with the exception of general funds and University of Hawaii tuition and fees special fund moneys, into the revolving fund to finance the establishment of new commercial enterprises; except that no more than ten per cent of the tuition and fees special fund moneys

may be loaned to the revolving fund to finance the establishment of new commercial enterprises. Revenues not expended as provided in this section may be transferred to other university funds to be expended for the general benefit of the university.”

PART IV

SECTION 23. (a) There is established within the public policy center in the college of social sciences at the University of Hawaii at Manoa for administrative purposes a legislative oversight working group to develop and recommend legislation to improve the medical marijuana dispensary system in the State to ensure safe and legal access to medical marijuana for qualifying patients.

- (b) The working group shall include the following members:
 - (1) The director of health, or the director’s designee;
 - (2) The director of transportation, or the director’s designee;
 - (3) The chairperson of the senate committee on commerce, consumer protection, and health, who shall serve as co-chair of the working group;
 - (4) The chairperson of the house of representatives committee on health, who shall serve as co-chair of the working group;
 - (5) A state senator who is selected by the president of the senate to serve on the working group;
 - (6) A state representative who is selected by the speaker of the house of representatives to serve on the working group;
 - (7) A representative from the University of Hawaii college of tropical agriculture and human resources or University of Hawaii cancer center, who shall be invited by the president of the University of Hawaii to serve on the working group;
 - (8) A representative of the Drug Policy Forum of Hawaii, who shall be invited by the speaker of the house of representatives to serve on the working group;
 - (9) A physician participating in Hawaii’s medical marijuana program, who shall be invited by the president of the senate to serve on the working group;
 - (10) Two participants in Hawaii’s medical marijuana program, one of whom is a qualifying patient who is over the age of eighteen, and one of whom is a parent or guardian of a qualifying patient who is under the age of ten, who shall be invited by the governor to serve on the working group;
 - (11) A primary caregiver participating in Hawaii’s medical marijuana program, who shall be invited by the president of the senate to serve on the working group;
 - (12) An advanced practice registered nurse participating in Hawaii’s medical marijuana program, who shall be invited by the speaker of the house of representatives to serve on the working group;
 - (13) Two representatives of the Hawaii Dispensary Alliance, one of whom is a resident of the city and county of Honolulu, who shall be invited by the president of the senate to serve on the working group, and one of whom is a resident of a county in the State other than the city and county of Honolulu, who shall be invited by the speaker of the house of representatives to serve on the working group;
 - (14) Two representatives of the medical marijuana dispensary industry, one from each of the remaining counties not represented pursuant to paragraph (13), one of whom shall be invited by the president of

the senate to serve on the working group, and one of whom shall be invited by the speaker of the house of representatives to serve on the working group;

- (15) One representative from a laboratory capable of testing marijuana or manufactured marijuana products, who shall be invited by the governor to serve on the working group; and
- (16) Two representatives of local law enforcement, one of whom is an officer for the Honolulu police department, who shall be invited by the speaker of the house of representatives to serve on the working group, and one of whom is an officer for a police department on a neighbor island, who shall be invited by the president of the senate to serve on the working group.

(c) The working group shall address issues related to the medical marijuana dispensary program in the State, including operations, edibles, and any issues the working group finds relevant as it relates to the medical marijuana dispensary program.

(d) The working group is requested to submit an interim report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2017, and a final report of the working group's findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2018.

(e) The members of the working group shall serve without compensation.

(f) The legislative oversight working group shall cease to exist on June 30, 2018.

PART V

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 25. This Act shall take effect on July 1, 2016; provided that:

- (1) Section 4 shall apply to taxable years beginning after December 31, 2015; and
- (2) Section 19 shall take effect on January 1, 2017, and shall not apply to medical marijuana dispensary license applications submitted on or before January 29, 2016; provided that section 19 shall apply to medical marijuana dispensary license renewal applications and to medical marijuana license applications submitted after January 29, 2016.

(Approved July 11, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 231

H.B. NO. 2561

A Bill for an Act Relating to the Administration of Justice.

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

PART I

SECTION 1. The legislature finds that house concurrent resolution no. 155, S.D. 1, (2015), requested the judicial council to appoint a committee