

JAN 17 2020

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

1 SECTION 1. The legislature finds that the authority to
2 decide the medical use of controlled substances is reserved to
3 the State. The Supreme Court of the United States confirmed
4 this authority when it found in *Gonzales v. Oregon*, 546 U.S. 243
5 (2006), that "[t]he Attorney General has rulemaking power to
6 fulfill his duties under the [Controlled Substance Act]. The
7 specific respects in which he is authorized to make rules,
8 however, instruct us that he is not authorized to make a rule
9 declaring illegitimate a medical standard for care and treatment
10 of patients that is specifically authorized under state law."

11 The legislature also finds that the State of Hawaii
12 lawfully exercised its authority when it enacted Act 228,
13 Session Laws of Hawaii 2000, and created a state-regulated
14 medical use of cannabis program. The United States Department
15 of Justice and the Drug Enforcement Administration have never
16 challenged the constitutionality of Hawaii's medical use of
17 cannabis program. The legislature further finds that it never



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1 intended to create a positive conflict with federal law, as
2 defined in title 21 United States Code section 903. The Drug
3 Enforcement Administration has the authority to recognize
4 exemptions for the special use of controlled substances as
5 evidenced by the federal schedule I exemption recognizing the
6 nondrug use of peyote by the Native American Church according to
7 title 21 Code of Federal Regulations section 1307.31. A federal
8 scheduling exemption for Hawaii's medical cannabis program would
9 recognize that Hawaii's medical use of cannabis act does not
10 create a positive conflict with federal law and does not violate
11 or authorize the violation of federal law.

12 The purpose of this Act is to require the department of
13 health to request a special use exemption from the Drug
14 Enforcement Administration recognizing that the listing of
15 marijuana as a federal schedule I controlled substance does not
16 apply to Hawaii's medical cannabis program.

17 SECTION 2. Section 329D-25, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§329D-25 Coordination among state and federal agencies.**

20 The department shall initiate ongoing dialogue among relevant
21 state and federal agencies to identify processes and policies

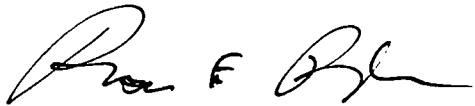



1 that ensure the privacy of qualifying patients and qualifying
2 out-of-state patients and the compliance of qualifying patients,
3 primary caregivers, qualifying out-of-state patients, and
4 caregivers of qualifying out-of-state patients and medical
5 cannabis dispensaries with state laws and regulations related to
6 medical cannabis. The department shall submit a written
7 request, in accordance with title 21 C.F.R. section 1307.03, to
8 the Office of Diversion Control, Drug Enforcement Administration
9 by September 1, 2020, stating that part IX of chapter 329 and
10 this chapter do not create any positive conflict with state or
11 federal drug laws and regulations and are consistent with title
12 21 U.S.C. section 903, and requesting formal written
13 acknowledgement that the listing of marijuana as a controlled
14 substance in federal schedule I does not apply to the non-
15 prescription use of cannabis under the medical cannabis registry
16 and dispensary programs established pursuant to chapters 329 and
17 329D."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

20

INTRODUCED BY: 




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Report Title:

Controlled Substances; Medical Cannabis; Federal Exemption

Description:

Requires, by September 1, 2020, that the department of health request the Drug Enforcement Administration to grant a federal schedule I exemption for the medical use of cannabis in Hawaii.

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

