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# 2016 Hawaii Revised Statutes

## TITLE 19. HEALTH

### 329. Uniform Controlled Substances Act

#### 329-122 Medical use of marijuana; conditions of use.

**Universal Citation:** [HI Rev Stat § 329-122 \(2016\)](#)

**§329-122 Medical use of marijuana; conditions of use.** (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.
- (c) The authorization for the medical use of marijuana in this section shall not apply to:
- (1) The medical use of marijuana that endangers the health or well-being of another person;
  - (2) The medical use of marijuana:
    - (A) In a school bus, public bus, or any moving vehicle;
    - (B) In the workplace of one's employment;
    - (C) On any school grounds;
    - (D) At any public park, public beach, public recreation center, recreation or youth center; or
    - (E) At any other place open to the public; provided that a qualifying patient, primary caregiver, or an owner or employee of a medical marijuana dispensary licensed under chapter 329D shall not be prohibited from transporting marijuana or any manufactured marijuana product, as that term is defined in section 329D-1, in any public place; provided further that the marijuana or manufactured marijuana product shall be transported in a sealed container, not be visible to the public, and shall not be removed from its sealed container or consumed or used in any way while it is in the public place; and
  - (3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this part.
- (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;

(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. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3; am L 2015, c 241, §7; am L 2016, c 230, §8]

### **Law Journals and Reviews**

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

### **Case Notes**

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under subsection [(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negated penal liability. 129 H. 397, 301 P.3d 607 (2013).

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