



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

SENATE BILL NO. 642, PROPOSED H.D. 1, RELATING TO HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, March 20, 2013 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Blair Goto, Deputy Attorney General, or
Lance M. Goto, Deputy Attorney General, or
Earl R. Hoke, Jr., Deputy Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General appreciates the intent of Part I of this proposed draft in trying to reduce the number of youth who use tobacco products. However, we strongly oppose Part II because it would make enforcement of the medical marijuana program problematic.

The purpose of Part I of this proposed draft is to add a new section to chapter 328J, Hawaii Revised Statutes, that would require that cigarettes or tobacco products be sold, permitted to be sold, offered for sale, or displayed for sale only in a direct, face-to-face exchange between the retailer and the consumer.

The purpose of the newly added Part II of this proposed draft, which tracks the wording of House Bill No. 667, H.D. 2, is to expand the medical marijuana program, allowing easier distribution of marijuana between qualifying patients and primary caregivers, allowing qualifying patients from other jurisdictions to easily obtain and use marijuana in Hawaii, altering the definition of "adequate supply" from one ounce to five ounces of usable marijuana, adding the definition of "reimbursement" to include compensation to primary caregivers, increasing the number of qualifying patients per primary caregiver from one to three, limiting the information to appear on the registry card to keep the location of where marijuana is grown confidential, and clarifying that the prescribing physician need not be the primary care physician. In addition, this bill references a transfer of the administration of the program from the Department of Public

Safety (PSD) to the Department of Health (DOH), which transfer is also proposed in House Bill No. 668, H.D. 2.

As to what is now Part I of the bill, the revised wording has addressed the main concerns of the Department of the Attorney General with respect to the original version of the bill. The only remaining concern is that the revised wording in section 2, page 2, lines 19-22, requires that a retailer not “sell, permit to be sold, offer for sale, or display for sale any cigarettes or tobacco products except only in a direct, face-to-face exchange between the retailer and the consumer.” It is unclear how a retailer is to offer for sale or display for sale a tobacco product in a face-to-face exchange. To clarify, we recommend the deletion of “offer for sale, or display for sale” on lines 19-20 and the insertion of “or” on line 19 to read: “. . . sell[;] or permit to be sold[;] any cigarettes or tobacco products except only in a direct, face-to-face exchange between the retailer and the consumer.”

As to what is now Part II, this proposed draft expands the medical marijuana program in ways that will make it extremely difficult for program administrators and law enforcement to ensure that the law is followed. We strongly oppose Part II of this measure for the following reasons:

1. This proposed draft, by making distribution between multiple primary caregivers and qualifying patients much easier, and by increasing the number of patients per caregiver from one to three, and making it harder to determine where medical marijuana is being grown, will make it much more difficult to ensure compliance with the medical marijuana program, and much more difficult for law enforcement agencies to determine when a crime is being committed.
2. Marijuana is still a schedule I controlled substance under federal law. It is in violation of federal law to grow, distribute, or use marijuana. Although this proposed draft could legalize conduct that is currently prohibited under state law, federal law cannot be ignored. Federal law enforcement agencies make arrests and conduct raids on medical marijuana operations in other jurisdictions.

The Department has additional concerns about other provisions of this proposed draft. First, in section 7, page 8, line 22, to page 9, line 3, the bill provides:

The form may request the address of the location where the marijuana is grown, but that information shall be **confidential** and shall not appear on the registry card issued by the department of health.

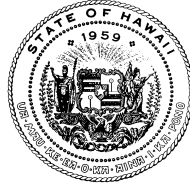
(Emphasis added). As the term “confidential” is not defined, it is not clear who would have access to that information, and who would not.

Second, in section 7, page 9, at lines 3-7, the bill provides that the physician issuing the written certification shall only attest that the patient has a debilitating medical condition, but shall not identify the condition. The attestation requirement appears to prevent the registering authority from identifying the debilitating medical condition and confirming that the patient qualifies under the law for medical marijuana.

If this proposed draft were passed, it would be extremely difficult to regulate and control the medical marijuana program, which was carefully tailored by legislation to reduce the chances of abuse.

Accordingly, due to the enforcement issues with Part II, we respectfully ask the Committee to delete Part II of the proposed draft. In addition, if the proposed draft is to advance, we respectfully ask the Committee to pass the proposed draft with the recommended amendment to Part I. A return to the original version of this bill as passed by the Senate would result in the Department of the Attorney General requesting that the bill be held as we did in our testimony before this Committee during the March 15, 2013, hearing on the original version of this bill.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

HOUSE COMMITTEE ON HEALTH

PROPOSED SB0642HD1, RELATING TO HEALTH

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

March 20, 2013
8:30 AM, Rm. 329

1 **Department's Position:** The Department of Health (DOH) supports Part I of proposed SB0642HD1 as
2 it requires cigarettes and tobacco products to be placed in locations within a store that are inaccessible to
3 youth and uses language relating to product placement that is consistent with the Family Smoking
4 Prevention and Tobacco Control Act (FSPTCA) of 2009. The DOH defers to the Office of the Attorney
5 General on the legal issues relating to non-tobacco products in Part II.

6 **Fiscal Implications:** None.

7 **Purpose and Justification:** The DOH supports the requirement for placement of cigarettes and tobacco
8 products in SB0642 which now parallels the federal FSPTCA language and offers a proven protective
9 strategy in preventing and reducing the number of Hawaii's youth who smoke by reducing exposure to
10 self-service displays.

11 Smoking and tobacco use remain Hawaii's and the nation's leading cause of preventable
12 morbidity and mortality. As reported by the Campaign for Tobacco-Free Kids, in Hawaii there are over
13 1,100 deaths each year attributed to a tobacco-related illness costing approximately \$336 million in
14 medical and health care costs. Each year approximately 1,500 Hawaii youth become new daily smokers.

1 The tobacco companies spend more than \$42 million annually in Hawaii on advertising, marketing, and
2 promotions to attract ‘replacement smokers.’

3 Numerous reports, particularly a longitudinal study published in the journal, *Pediatrics*, 2010,
4 have established that there is a clear relationship between advertising/promotion and increased tobacco
5 use particularly among youth. Because of restrictions on mass media ads in the Master Settlement
6 Agreement, the tobacco companies have now made commercial storefronts and points-of-sale the new
7 venue for advertising their tobacco products, providing financial incentives to retail stores for product
8 placement. Studies show that tobacco marketing has more power to influence youth to smoke than peer
9 pressure or parental smoking.

10 The 2011 Hawaii Youth Tobacco Survey indicated that over 75% of high school students and
11 over 71% of middle school students reported seeing tobacco product ads at local stores and gas stations.
12 In 2008, the Tobacco and Alcohol Advertising Survey found that 44% of stores surveyed in Hawaii had
13 tobacco products placed by the chips and candy and 62% had tobacco products at the eye- level of
14 children (3 feet or less).

15 The DOH recognizes that prohibiting self-service displays where the customer has direct access
16 to tobacco products is a realistic action to discourage tobacco company products at point-of-sale. This
17 measure would reduce consumer, and specifically youth, exposure to and impulse purchases of these
18 products. Smokers who are attempting to quit believe that these restrictions can support their cessation
19 efforts. By limiting the placement of tobacco products in retail stores, this policy can help prevent a new
20 generation of youth in Hawaii from being influenced to start smoking and support people in quitting
21 tobacco.

22 Thank you for the opportunity to testify on this measure.

Testimony in Opposition to SB 642 HD1 – Relating to Health

March 20, 2013

8:30 am in Room 329

TO: Committee on Health
Representative Della Au Bellati, Chair
Representative Dee Morikawa, Vice Chair

FR: Alan Shinn, Executive Director
Coalition for a Drug-Free Hawaii
1130 N. Nimitz Hwy, Suite A-259
Honolulu, HI 96817
(808) 545-3228 x29

Please accept this testimony in opposition to *SB 642 HD1 – Relating to Health*, that attempts to regulate tobacco for minors and at the same time liberalizes medical marijuana regulations that will encourage more use by our youth.

It is a confusing bill that pits tobacco control advocates in Part I against those advocating to maintain existing medical marijuana regulations in Part II. Both substances are obviously harmful to our youth and should be controlled.

SB 642 HD1, greatly expands the legal amount of possession, distribution and transportation of marijuana by individuals with medical marijuana cards. And it permits “pikalolo tourism” that will negatively impact to our state’s image with prospective tourists in other states and from foreign countries and affect our economy.

It presumes that marijuana is a harmless substance and presents no harmful effects to users. It effectively lowers the perception of harm and gives the green light to use to our youth.

My agency provides substance abuse prevention and family treatment services. We have seen behavioral and psychological problems such as depression, mood swings, paranoia, and overall lower functioning associated with youth and adults who chronically use high potency marijuana. It is not a harmless substance for many chronic users and adolescents who are still maturing mentally, emotionally, and physically. According to NIDA, recent studies showed that chronic marijuana use before the age of 18 could affect learning and memory in some youth and that those deficits persisted into adulthood even when use was stopped.

Thank you for the opportunity to provide testimony on SB 642 HD1.

This bill's introduction also comes after several years of social service budget reductions, where millions of dollars of state funding for substance abuse prevention and education programs, non-school hour program, cultural arts, and other positive youth development programs have been cut. This has left our youth with more unsupervised and unstructured time on their hands and more opportunities for alcohol and drug use and other related negative behaviors. Prevention requires consistent messaging, alternative structured activities, and realistic deterrents to use to be effective.

Thank you for the opportunity to provide testimony on SB 472.



Dedicated to safe, responsible, humane and effective drug policies since 1993

March 20, 2013

To: Rep. Della Au Belatti, Chair

Rep. Dee Morikawa, Vice Chair and
Members of the Committee on Health

RE: Proposed SB 642 HDI

Hearing: Wednesday, March 20, 2013, 8:30 a.m., Room 329

Position: Strong Support Part II

The Drug Policy Forum of Hawai'i testifies in strong support of Part II of SB 642 HDI Relating to Medical Marijuana. Part II of the proposed bill addresses changes that the Medical Cannabis Working Group identified as top priorities:

#2 was to "Increase the allowable number of plants and the amount of usable cannabis to ensure that patients have an adequate supply of their medicine.

#3 was to allow caregivers to care for at least five patients to ensure that patients are assured of an adequate supply and a competent caregiver.

TRANSPORTATION

The medical marijuana section allows transportation, however, this measure is needed to clarify that intrastate transportation is allowed. Four medical marijuana patients were arrested on the Big Island while transporting their marijuana. Of those cases, one patient was convicted and two cases were dismissed. In her ruling dismissing the case, Judge Barbara Takase ruled that "HRS §329 is void for vagueness." All of the cases were appealed. One case is being heard in March by the Hawaii State Supreme Court. However, none of the decisions clarified the issue of transporting marijuana by a patient.

We suggest deleting the "transportation section" of HD1, and instead, amending [§329-122] Subsection (c) to read:

"(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 other than transportation or possession:
- (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) Other place open to the public; and
- (3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter.”

Caregivers are difficult to find and allowing them to care for additional patients improves patient access to needed medicine. Many patients need caregivers because they are too sick to grow their own plants or live in a location where it is dangerous or impractical to grow their own plants. Many do not have the needed expertise.

Caregivers are also allowed to be reimbursed for the costs they incur. This provides them protection from prosecution for selling or trafficking marijuana.

This measure allows patients and caregivers to help other patients by allowing them to give some of their medicine to qualifying caregivers and patients. This is especially helpful to patients who cannot wait to grow their own; or who have had a crop failure. Many cancer patients undergoing chemo therapy need medicine immediately and have nowhere to turn except to a current patient, who can also provide information on how to use vaporizers. etc.

In a survey, many patients have said that the current limit on how much cannabis they can possess is not sufficient for their needs. Patients have said that they use more medicine when using vaporizers. If they cannot possess sufficient supply, then they are forced to smoke their medicine rather than use their preferred method which may be safer than smoking. Those who prepare edibles also need a larger supply of cannabis.

Part II of this measure protects patient privacy by eliminating the address of where the marijuana is grown from the registry card. If a wallet is stolen, for instance, the location of the marijuana is available to the thief.

Patients are law abiding citizens who are seriously ill, or who have chronic conditions and who want to comply with the law. The Medical Marijuana program is a compassionate care program established to relieve suffering. Patients are simply asking for changes to the program so that it will meet their needs. These changes are needed immediately because although a legal dispensary or compassion center model is being considered, it may be some time before they are in operation. In the mean time, patients need improvements in the program.

We respectfully ask the committees to pass this measure. Thank you for the opportunity to provide testimony today.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE JK-TA

March 20, 2013

The Honorable Della Au Belatti, Chair
and Members
Committee on Health
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Belatti and Members:

Subject: Senate Bill No. 642, H.D. 1, Proposed, Relating to Health

I am Jason Kawabata, Captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 642, H.D. 1, Proposed, Relating to Health.

This bill seeks to expand the provisions of the Medical Use of Marijuana law pursuant to part IX of Chapter 329, Hawaii Revised Statutes.

By increasing the number of patients per primary caregiver and amending the definition of "adequate supply" to seven plants and five ounces of usable marijuana, this bill exponentially increases the amount of marijuana allowed. This greatly increases the chance of diversion to non-patients, particularly juveniles. Part I of this bill states the legislature's "compelling interest in reducing the number of teens and children in Hawaii who smoke." We contend that this interest extends to marijuana because studies have shown that it can be just as harmful, if not more so, than tobacco.

The Honolulu Police Department urges you to oppose House Bill No. 642, H.D. 1, Proposed, Relating to Health.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


LOUIS M. KEALOHA
Chief of Police


JASON KAWABATA, Captain
Narcotics/Vice Division

morikawa2 - Shaun

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 19, 2013 8:37 PM
To: HLTtestimony
Cc: anthony_Orozco@yahoo.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Orozco	Individual	Oppose	No

Comments:

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To: HLTtestimony
Cc: dhayashi@hardwarehawaii.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Danford M. Hayashi	Individual	Oppose	No

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morikawa2 - Shaun

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Sent: Tuesday, March 19, 2013 7:29 PM
To: HLTtestimony
Cc: jjw333333@gmail.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Jake J. Watkins	Individual	Oppose	No

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From: mailinglist@capitol.hawaii.gov
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Cc: mikenakas@hotmail.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michael S. Nakasone	Individual	Oppose	No

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To: HLTtestimony
Cc: mz9995@hotmail.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Zehner	Individual	Oppose	No

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To: HLTtestimony
Cc: wintersnicholas@rocketmail.com
Subject: *Submitted testimony for SB642 on Mar 20, 2013 08:30AM*

SB642

Submitted on: 3/19/2013

Testimony for HLT on Mar 20, 2013 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Nicholas Winters	Individual	Oppose	No

Comments:

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To: Representative Della Au Belatti, Chair, Committee on Health
Representative Dee Morikawa, Vice Chair, Committee on Health
Members, House Committee on Health

Re: Strong Support for SB 642 HD1, Relating to Health
Committee on Health
Hearing; March 20th, 2013 at 8:30am; Room 329

Aloha Committee:

My name is Nicole Sutton and I am a registered voter in Hawaii, as well as a representative of REAL: Hawaii Youth Movement Exposing the Tobacco Industry. I'm in strong support of only section 1 of SB 642 HD1 to require a face to face interaction in order to obtain tobacco and restrict the placement of tobacco products in stores throughout Hawaii.

Campaign for Tobacco Free Kids in Washington, DC, estimates that **more than \$33.5 million is spent on tobacco advertising each year in Hawaii by the tobacco industry**, resulting in the placement of tobacco ads and special tobacco displays that we see everyday in our local community stores. **Research shows that young people are more sensitive to this form of tobacco marketing than adults and that exposure to ads is more powerful than peer pressure or parental smoking in influencing youth to use tobacco.** Results from Hawaii's Youth Tobacco Survey from 2007 revealed that **76.6% of high school students and 71.3% of middle school students reported seeing advertisements for tobacco in convenience stores, Mom-and-Pop stores, and gas stations.**

The Tobacco and Alcohol Advertising Survey (TAAS) conducted in 2009 by the University of Hawaii Cancer Center and School of Public Health found that **97% of stores surveyed throughout Hawaii had tobacco products at the point-of-purchase and 90% had tobacco ads at the point-of-purchase** where everyone shopping in the store must see them, including children. That same study also found **that 62% of stores had tobacco products at the eye level of children (3 feet or less)** and 44% of stores surveyed had tobacco products placed near chips, candy, ice cream, or toys.

Requiring contact with a clerk to obtain tobacco will ultimately restrict the positioning of tobacco products helps to keep them out of the hands of youth and helps protect Hawaii's youth from the direct targeting by tobacco companies.

I ask you to please support this measure to **protect our kids from the aggressive targeting by the tobacco industry** through the intrusive visibility of tobacco products and easy access of tobacco products in our stores.

Mahalo,

Nicole Sutton
Pearl City, Hawaii
REAL: Hawaii Youth Movement Exposing the Tobacco Industry