



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2306, RELATING TO MEDICAL MARIJUANA.

BEFORE THE:

**SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

DATE: Thursday, February 11, 2016 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Tara K.C.S. Molnar, Deputy Attorney General

Chairs Baker and Nishihara and Members of the Committees:

The Department of the Attorney General provides comments to note that this measure may conflict with existing state law and raise at least one constitutional concern.

This measure would amend section 329D-21, Hawaii Revised Statutes (HRS), to add criteria by which the Department of Health (the Department) could deny, revoke, or suspend any medical marijuana dispensary license and outlines a process by which the department could revoke a license for cause, subject to a ninety-day notice followed by a public hearing within fourteen days of the ninety-day notice (page 2, lines 8-16). One criterion allows the department to deny, revoke or suspend any medical marijuana dispensary license for "criminal activity by an owner or investor of a medical marijuana dispensary." (page 2, lines 8-9). In addition, the bill changes the fine structure for the medical marijuana dispensary system from a maximum \$1,000 fine per violation to a maximum daily fine of \$500 (page 2, line 19, through page 3, line 2). Also, the bill creates an ad hoc special committee comprised of one Senate member, one member of the House of Representatives, and one non-government appointee, to which a licensee could appeal fines issued pursuant to that section (page 3, lines 15-20). However, the bill retains wording in section 329D-21, HRS, that outlines that any proceedings for denial, suspension, fine, or revocation of a license shall be conducted pursuant to chapter 91, HRS (page 3, lines 11-14). Finally, the measure allows the department to choose a new licensee should the department revoke a license pursuant to this section (page 4, lines 1-4).

The requirement that the department hold a public hearing regarding its decision to revoke a medical marijuana license following a ninety-day notice raises concerns (page 1, line 10, through page 2, line 13). If the department determines that a license should be revoked, the proposed wording allows a licensee to continue to operate for ninety days despite violating a provision or provisions of chapter 329D, HRS, and chapter 11-850, Hawaii Administrative Rules (HAR). Thus, the proposed wording would allow a licensee who has not strictly complied with the requirements of chapter 329D, HRS, and chapter 11-850, HAR, to continue to operate in violation of state law. Violations for which a license would be revoked would be serious violations and could endanger public safety or health if allowed to continue for more than three months pending a final decision (ninety days' notice plus fourteen more days before the public hearing, then potentially more time while the decision is made). The proposed wording does not indicate whether the public hearing is in addition to a contested case hearing. If the Committees want to maintain a notice period and public hearing in the revocation process, we suggest that the department have the discretion to suspend a license pending a final decision, when warranted, and clarify what the public hearing would accomplish.

Furthermore, the new criterion would allow the department to deny, revoke, or suspend any medical marijuana dispensary license for "criminal activity by an owner or investor of a medical marijuana dispensary," but the term "criminal activity" is vague. The proposed wording does not indicate whether the activity resulted in a criminal conviction, or whether "criminal activity" could constitute any activity in which an arrest or citation resulted from an alleged violation of a statutory provision. This ambiguity could be resolved by clarifying the term "criminal activity."

Finally, the role of the proposed ad hoc special committee creates an inconsistency within the bill itself and does not appear to be consistent with other state law. The measure as written maintains the existing review process for fines under chapter 91, HRS (page 3, lines 11-14). Section 91-9, HRS, establishes the process by which parties shall be afforded an opportunity for hearing on an agency's decision. In turn, section 91-14, HRS, allows an aggrieved party to seek judicial review of a contested case or preliminary ruling. Together these statutes set forth a clear process by which licensees may appeal fines issued pursuant to section 329D-21, HRS.

In contrast, the proposed ad hoc special committee's decision on an appeal of fines seems to be contrary to chapter 91, HRS. The measure leaves open the effect of any decision the committee might make. For example, it is unclear whether the decision is a final agency decision subject to judicial review under section 91-14, HRS, or whether a full contested case under chapter 91, HRS, comes next. The measure on page 3, lines 15-20, simply establishes the composition of the committee. Furthermore, if the proposed ad hoc committee's role is to issue a decision that equals that of a final agency decision, the committee's actions may create a separation of powers issue. The inconsistencies present in the bill, the conflict with state law, and the potential constitutional concerns may be resolved by either clarifying the effect of the committee's decision appropriately or deleting the wording on page 3, lines 15-20, that would create the ad hoc special committee.

The Department of the Attorney General respectfully recommends that if the Committees move this measure forward, they amend the bill as suggested.

LATE

the *A* Drug Policy Action Group

A sister organization of the Drug Policy Forum of Hawai'i
PO Box 83, Honolulu, HI 96810 ~ (808) 853-3231

Hawaii's Voice for Sensible, Compassionate, and Just Drug Policy

TO: SENATE COMMITTEES ON PUBLIC SAFETY & HEALTH
FROM: PAMELA LICHTY, M.P.H., PRESIDENT
DATE: FEBRUARY 11, 2016, 8:30 a.m., ROOM 229
RE: S.B. 2306 RELATING TO MEDICAL MARIJUANA – COMMENTS

Good morning, Chairs Nishihara & Chair Baker; Vice Chairs Espero and Kidani, and members of the Committees. My name is Pam Lichty and I'm President of the Drug Policy Action Group (DPAG), the government affairs arm of the Drug Policy Forum of Hawaii.

The Drug Policy Action Group is uncertain about the need for this measure. It seems to us that DOH's administrative rules have plenty of details about the procedures used to revoke a license and I was under the impression that they delineate an appeals process as well.

With all due respect, I don't understand why House and Senate appointees and a "non-government appointee employee" (whatever that may mean) appointed by the governor to an "ad hoc special committee" would be sufficiently familiar with the details of the dispensary licensing program to conduct a fair appeals process.

It also looks as though the licensee can appeal the fines, but not the actual license revocation itself. On page 4, lines 1-4, a new licensee shall be chosen by the department pursuant to administrative rules or interim rules after a license is revoked. Two questions come to mind: is this after appeals have been exhausted? And does this mean that new rules have to be promulgated?

As my uncle used to say, this sounds like borrowing trouble. We question the need for this measure.

Mahalo for giving us the opportunity to testify today.

baker2 - Lia/Eve

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 10:01 PM
To: CPH Testimony
Cc: carl@dpfhi.org
Subject: *Submitted testimony for SB2306 on Feb 11, 2016 08:30AM*

Categories: Late (Printed)

SB2306

Submitted on: 2/10/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Drug Policy Forum of Hawaii	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov