

# SB2306

**Measure Title:** RELATING TO MEDICAL MARIJUANA.

**Report Title:** Medical Marijuana Dispensaries; Fines; License; Revocation

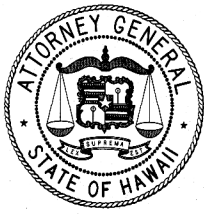
**Description:** Allows the department of health to revoke a medical marijuana dispensary license under certain conditions and subject to a ninety day notice followed by a public hearing within fourteen days. Establishes a fine of up to \$500 per day for any licensee who violates state law or administrative rules. Allows a licensee to appeal a fine to an ad hoc special committee. Allows the department of health to choose a new licensee if the department revokes a license.

**Companion:**

**Package:** None

**Current Referral:** CPH/PSM, WAM

**Introducer(s):** ESPERO, GREEN, Baker, Dela Cruz, Galuteria



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

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**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

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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).

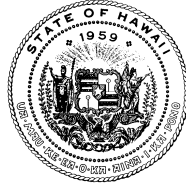
The requirement that the department hold a public hearing regarding its decision to revoke a medical marijuana license following a ninety-day notice raises concerns (page 1, line 10, through page 2, line 13). If the department determines that a license should be revoked, the proposed wording allows a 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.



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DEPARTMENT OF HEALTH  
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**Testimony in OPPOSITION to SB2306  
RELATING TO MEDICAL MARIJUANA**

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH  
SENATOR CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS

Hearing Date: Thursday, February 11, 2016      Room Number: 229

1    **Fiscal Implications:** None.

2    **Department Testimony:** Thank you for the opportunity to testify in OPPOSITION to this bill.

3            The Department is opposed to the establishment of an ad hoc special committee that  
4    effectively operates as, and is a substitute for, the normal administrative hearings process for the  
5    appeals of medical marijuana dispensary licensees regarding fines imposed by the Department of  
6    Health.

7            The Legislature established an administrative appeal process for fines imposed pursuant  
8    to Chapter 91 of the Hawaii Administrative Rules (HAR) as provided in Section 329D-21,  
9    Hawaii Revised Statutes. Under subsection (d), all proceedings for denial, suspension, fine or  
10    revocation of a license are subject to judicial review by the First Circuit Court of the State of  
11    Hawaii. This bill would remove the review of fines from the Chapter 91 administrative review  
12    process and have it reviewed by an ad hoc special committee comprised of one member of the  
13    State Senate, one member of the State House of Representatives, and one non-government  
14    employee appointed by the Governor. The Department is very concerned that the amendment

1 may lead to the perception that it is an attempt to politicize the appeals process by removing the  
2 issue of the imposition of fines from review by a hearings officer and the judiciary. The  
3 preemption of the administrative review process by the Department and the reassignment of the  
4 responsibility to a politically appointed ad hoc committee is troubling to the Department. The  
5 Legislature and the Department have worked very hard to ensure the integrity of the  
6 establishment of the Medical Marijuana Dispensary Program. The Department is extremely  
7 apprehensive that the proposed amendment may lead to the perception that it is an attempt to  
8 politicize the process and "take care" of certain individuals. It may also generate a lack of faith  
9 in the integrity of the Medical Marijuana Dispensary Program due to the substitution of elected  
10 officials to a role that is ordinarily left to an administrative hearings process that includes judicial  
11 review. These perceptions must be avoided in order to ensure a safe, effective, and trusted  
12 dispensary program for qualifying patients.

13 The other aspects of this bill are not necessary since the Department's interim  
14 administrative rules contain enforcement requirements and an appeals process, and this bill may  
15 be premature since the Department has yet to issue its first medical marijuana dispensary license.

16 **Offered Amendments:** None.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [CPH Testimony](#)  
**Cc:** [rkailianu57@gmail.com](mailto:rkailianu57@gmail.com)  
**Subject:** \*Submitted testimony for SB2306 on Feb 11, 2016 08:30AM\*  
**Date:** Tuesday, February 09, 2016 10:35:44 PM

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**SB2306**

Submitted on: 2/9/2016

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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**Date:** Tuesday, February 09, 2016 9:09:20 AM

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**SB2306**

Submitted on: 2/9/2016

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Support	No

Comments:

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