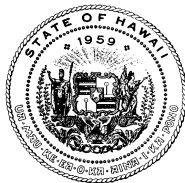


DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER,  
M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

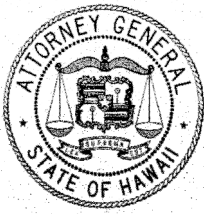
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TESTIMONY ONLY

**Testimony COMMENTING on SB682 SD1  
RELATING TO MEDICAL MARIJUANA.**

SENATOR GILBER KEITH-AGARAN, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 26, 2015                      Room Number: 016

- 1    **Fiscal Implications:** None.
  
- 2    **Department Testimony:** The Department of Health (DOH) **supports the intent** of this bill to
- 3    limit discrimination against medical marijuana patients and caregivers by schools, landlords,
- 4    employers, courts, and licensing boards, or with regard to medical care or parental rights.
  
- 5    Certified medical marijuana patients have the right to use their medication and be treated with
- 6    the same standards applied to other legal medications. Patients meeting the legal and clinical
- 7    standards for eligible disabling medical conditions should not have to face additional stress and
- 8    anxiety related to employment, family status, or education.
  
- 9    DOH defers to the Department of Human Resources Development, the Department of Labor and
- 10   Industrial Relations, and other agencies on matters relating to collective bargaining, workplace
- 11   safety and enforcement, and family status.
  
- 12   Thank you for the opportunity to offer comments.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2015**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 682, S.D. 1, RELATING TO MEDICAL MARIJUANA.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, February 26, 2015 **TIME:** 9:05 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, Attorney General, or  
Jill T. Nagamine, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill.

This bill would prohibit discrimination by schools, landlords, and employers against users of medical marijuana and their caregivers who are in strict compliance with the State's medical marijuana laws, except by those schools, landlords, or employers who need to protect themselves from federal penalties of losing a monetary or licensing benefit. It provides protections for patients receiving medical care and parents dealing with custodial or visitation issues. It also provides protections against civil penalties or disciplinary actions by a court or occupational or professional licensing board.

There are federal laws and regulations that proscribe the use of marijuana even if the person using it is not actually impaired at work. Notably, the Department of Transportation's Drug and Alcohol Testing Regulation, found at 49 CFR Part 40, section 40.151(e), prohibits Medical Review Officers from verifying a drug test as negative based on information that a physician recommended that the employee use medical marijuana. It remains unacceptable for any safety sensitive employee subject to drug testing, such as those using Commercial Driver's Licenses, to use marijuana. Also, the Solomon-Lautenberg amendment to the 1990 Highway Appropriations Act requires that U.S. states impose a mandatory six-month driver's license suspension for drug offenses, or face loss of federal highway funds.

This bill recognizes that some employers would be subject to monetary or licensing penalties, but it also needs to clarify at page 2, lines 16-20, that no employer shall discriminate

"unless a failure to do so would cause an employer to be in violation of any federal law or regulation."

Proposed new section 329- (a), Hawaii Revised Statutes (HRS), beginning at page 2, line 7, prohibits certain discriminatory behavior so long as the qualifying patient or primary caregiver complied with the requirements of chapter 329, part IX, HRS. The problem with that requirement is that schools and landlords are not in a position to know whether a patient or caregiver is in compliance, and they would have no means of finding out because of the privacy protections afforded to qualifying patients and primary caregivers, other than by what the patient or caregiver tells them. A second problem with that requirement is that once a student is enrolled or a lease agreement is signed, there is no allowance for disenrollment or eviction if compliance stops. To make this work, the Legislature could consider allowing schools and landlords to obtain information from the Department of Health about the status of patients and caregivers, while protecting the patients' and caregivers' privacy.

Proposed new section 329- (b)(2), beginning at page 3, line 4, provides an exception for employee-patients who used, possessed, or were impaired on the premises of the place of employment. "Impaired" needs to be defined so that employers have a consistent standard to follow and employees have the notice they need to make their decisions. One possible definition would be "a condition of being unable to perform adequately any of the normal duties required of the employee."

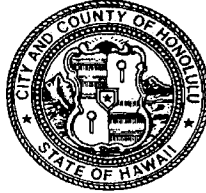
Proposed new section 329- (d), beginning at page 3, line 17, provides that no person shall be denied certain rights pertaining to the individual's children, but this subsection does not apply if the person's conduct creates an "unreasonable danger" to the safety of the minor, page 4, line 4. "Unreasonable danger" is subjective and, although a clear and convincing standard applies to it, it would benefit from a definition that can be applied at the time the dangerous situation is occurring, so it can legally be stopped. A definition of unreasonable danger that includes "putting a child at risk for neglect or physical or psychological injury" might be helpful. We also think that a standard of preponderance of the evidence might be more protective of a child at risk than the very high standard of clear and convincing evidence.

Thank you for the opportunity to present comments.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: [www.honolulu.gov/hr](http://www.honolulu.gov/hr)

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR  
NOËL T. ONO  
ASSISTANT DIRECTOR

February 26, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Senate  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

**SUBJECT: Senate Bill No. 682, SD1  
Relating to Medical Marijuana**

The Department of Human Resources ("DHR"), City and County of Honolulu respectfully opposes SB 682, SD1. The proposed draft seeks to prohibit discrimination against qualified patients or primary caregivers in the medical marijuana program, however, DHR respectfully submits that the proposal would have unintended consequences for employers. DHR respectfully requests that this committee hold SB 682 in conference.

While the intent of the measure seems reasonable at first glance, the proposed law fails to take into account the realities of the workplace and the role drug-testing plays in enhancing workplace safety. According to the DEA, marijuana is a mind-altering drug.<sup>1</sup> The short-term effects of marijuana include distorted perception, loss of coordination, and problems with memory, learning, and problem-solving.<sup>2</sup> Long-term use of marijuana is further associated with impairment of judgment, memory, and concentration.<sup>3</sup> To help in creating a safer work environment, employers must have a reliable and practical method for identifying employees whose work may be affected by the mind-altering effects of marijuana. This is particularly critical for our first responders and other employees whose duties include safety-sensitive functions, where the effects may not be apparent until an employee is in a life or death, crisis situation. This is why

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1 See U.S. Dept. of Justice Drug Enforcement Administration (DEA) Marijuana Drug Fact Sheet, *available at* [http://www.dea.gov/druginfo/drug\\_data\\_sheets/Marijuana.pdf](http://www.dea.gov/druginfo/drug_data_sheets/Marijuana.pdf)

2 *Id.*

3 *Id.*

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Senate  
February 26, 2015  
Page 2

random testing and actions taken for positive test results remain valuable tools in enhancing the public safety, as well as the safety of the workplace.

SD1's Section 2 subpart (b) seeks to prohibit employment "discrimination" against qualified patients or primary caregivers in the medical marijuana program. DHR believes the practical effect of the new language, as written, would be to open employers up to potential discrimination claims *anytime* employment action against a qualified patient or primary caregiver is taken, even if the employment action were reasonable. The only exception laid out in the current language is "unless a failure to do so would cause an employer to lose a monetary- or licensing-related benefit under federal law or regulation." This language fails to exclude other federal regulations which employers are obliged to follow, but which are not tied to a loss of monetary- or licensing-related benefits. For example, the U.S. Department of Transportation's regulations on drug testing for commercial driver's license holders (frequently referred to as "CDL drivers") is mandated by the federal Omnibus Transportation Employee Testing Act of 1991.<sup>4</sup> The language of SB 682 SD1 subjects employers to discrimination claims whenever there is no link to a monetary- or licensing-related benefit, even, for example, if the employer had a reasonable belief that workplace safety was compromised.

SD1's Section 2, subpart (b)(2) restricts employers from taking action based on a qualified patient's positive drug test for marijuana components or metabolites, unless the patient "used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment." Unfortunately, current urinalysis testing methods do not allow for a determination of whether employees are "impaired" by marijuana, only whether cannabinoid metabolites are present in an individual's urine. To DHR's knowledge, there is currently no objective and approved laboratory test available which could reliably determine whether an employee is "impaired" by marijuana.

Based on the foregoing, DHR respectfully requests that SB 682 be held. Thank you for the opportunity to testify on this matter.

Sincerely,



Carolee C. Kubo  
Director

cc: Mayor's Office

---

<sup>4</sup> See 49 CFR Part 382.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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



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DEPUTY CHIEFS

OUR REFERENCE **RN-JK**

February 26, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

**SUBJECT: Senate Bill No. 682, S.D. 1, Relating to Medical Marijuana  
Senate Bill No. 682, Proposed S.D. 2, Relating to Medical  
Marijuana**

I am Ryan Nishibun, Captain of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 682, S.D. 1, and Proposed S.D. 2, Relating to Medical Marijuana. It would appear by the current language of the bill that if an employee had a medical marijuana card, he or she could be under the influence of marijuana at any time other than during work.

The HPD tests employees for the presence of marijuana but does not test to see if an employee is "under the influence" of marijuana. Unlike alcohol, marijuana has not been quantified to determine varying levels of impairment and can have impairing effects of up to 30 days. HPD officers and essential civilian employees are expected to report for duty when called upon, perform their duties, and make split-second decisions with a clear and conscious mind. Having marijuana in their system will negatively impact their judgment and performance and could jeopardize their safety as well as the safety of other employees and the public.

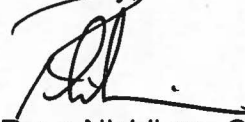
The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
February 26, 2015  
Page 2

The HPD and the unions recognize the serious adverse effects illegal drugs can have on the safety and performance of its employees and the potential impact to the public; and, therefore, agree that they will not tolerate their employees using illegal drugs on or off duty. Collective bargaining agreements and departmental policy prohibit the use and presence of any illegal substance.

The HPD urges you to oppose Senate Bill No. 682, S.D. 1, and Proposed S.D. 2, Relating to Medical Marijuana.

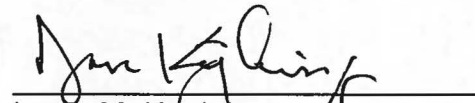
Thank you for the opportunity to testify.

Sincerely,



Ryan Nishibun, Captain  
Human Resources Division

APPROVED:

  
\_\_\_\_\_  
Louis M. Kealoha  
Chief of Police



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

**TO:** SENATE COMMITTEE ON JUDICIARY & LABOR

**FROM:** PAMELA LICHTY, M.P.H., PRESIDENT

**DATE:** FEBRUARY 26, 2015, 9:05 a.m., ROOM 016

**RE:** S.B. 682, **S.D. 1** RELATING TO MEDICAL MARIJUANA – **IN SUPPORT OF INTENT**

Good morning, Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee. 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.

**We support the intent of S.B. 682, S.D. 1 which prohibits discrimination against both medical marijuana patients and caregivers in employment and housing discrimination, discrimination by schools, courts, licensing boards, and also protect both medical and parental rights. These protections, however, are delineated in a more comprehensive manner in the proposed S.D. 2 of S.B. 1291 and we therefore prefer that version.**

As you all know, the Hawaii state legislature was the first policy-making body to authorize the medical use of marijuana in 2000. Prior to that the laws were put into place in four or five states by voter initiative. Since then, some 16 other states plus Washington, D.C. have passed similar, but far more comprehensive measures.

In short, our medical marijuana statute has become antiquated, as other states have leapfrogged ahead of us in terms of the services they offer to patients (e.g. dispensaries) and the civil protections they provide.

The bottom line is that registered medical cannabis patients and caregivers who are complying with existing state law should not have to fear that their status will jeopardize their jobs, their education, their parental rights or their right to necessary medical care. It's time to modernize our medical marijuana law as many other jurisdictions have done. **Again, we prefer S.D. 1291 S.D. 2 as the**



**most comprehensive vehicle and we urge this committee to move that measure to the full Senate with a strong recommendation.**

Mahalo for hearing this measure today and for giving us the opportunity to testify.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB682 on Feb 26, 2015 09:05AM\*  
**Date:** Tuesday, February 24, 2015 12:25:45 PM

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**SB682**

Submitted on: 2/24/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB682 on Feb 26, 2015 09:05AM  
**Date:** Wednesday, February 25, 2015 1:28:07 PM

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**SB682**

Submitted on: 2/25/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Larry Caldwell	Individual	Oppose	No

Comments: Being a medical marijuana patient you think I should support this bill but how can I when it doesn't become active until 2050 that's a joke is this really saying we are not going to have dispensaries or legal marijuana here until 2050?

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**Cc:**  
**Subject:** Submitted testimony for SB682 on Feb 26, 2015 09:05AM  
**Date:** Wednesday, February 25, 2015 7:42:45 PM

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**SB682**

Submitted on: 2/25/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Georgina Mckinley	Individual	Support	No

Comments: I strongly support SB682 SD1 as it would grant some protections against discrimination in education, hiring, housing, parental rights, and protection against being denied other medical care, such as organ transplants, on the grounds of being a medical cannabis patient. Medical cannabis patients who are complying with the law should be treated with the same fairness, compassion and humanity with which we treat patients who use other medicines.

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**Subject:** \*Submitted testimony for SB682 on Feb 26, 2015 09:05AM\*  
**Date:** Wednesday, February 25, 2015 8:46:35 PM

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**SB682**

Submitted on: 2/25/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark Nelson	Individual	Support	No

Comments:

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**Cc:**  
**Subject:** Submitted testimony for SB682 on Feb 26, 2015 09:05AM  
**Date:** Wednesday, February 25, 2015 8:53:03 PM

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**SB682**

Submitted on: 2/25/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leah M. Koonce	Individual	Support	No

Comments: I am submitting testimony in support of this bill because transporting medical marijuana by patients, caregivers and dispensary owners/employees needs to be protected as any other legal medications. Also, please remove requirement that the certifying physicians for medical marijuana be a patients primary care physician. Please support this bill. Thank You.

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.

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