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GOVERNOR OF HAWAII



**LATE TESTIMONY**

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**WRITTEN TESTIMONY ONLY**

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony COMMENTING on H.B. 1488, HD1, SD1  
RELATING TO MEDICAL MARIJUANA.**

SENATOR GILBERT S.C. KEITH-AGARAN, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
SENATOR JILL N. TOKUDA, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date: Thursday, March 30, 2017 Room Number: 211

1 **Fiscal Implications:** Unknown

2 **Department Testimony:** The Department generally opposes the passage of new laws related to  
3 marijuana until the medical marijuana dispensaries open and the Department has the chance to  
4 gauge the impact upon the State. However, this bill contains several specific proposals which  
5 the Department supports, opposes, or on which comments are warranted, based on the  
6 Department's foundational principles of patient safety, product safety, and public safety. In  
7 addition, the state should recognize recent statements made by the current federal administration  
8 regarding recreational marijuana and take heed to not dilute the state's current robust regulatory  
9 system to the point where the State's medical marijuana program begins to resemble a  
10 recreational marijuana program.

11 Allow me to testify on each proposal:

12 1. Office of Medical Marijuana (MM) Administration: The original HB1488  
13 included a requirement to establish an Office of Medical Marijuana. The Department opposed  
14 this requirement and appreciates that the Senate Committee on Consumer Protection and Health  
15 deleted it.

2. Delay Dates to Require MMJ Products Only from Dispensaries: **Position:**

**Support.**

The Department supports the extended time period to allow registered caregivers to continue to cultivate marijuana for their patients. This can work well as a way to cover the gaps in availability of MMJ products as dispensaries continue to prepare for cultivation and retail sale. Four (4) of the eight (8) licensees have been issued Notices to Proceed by the Department of Health to cultivate and manufacture medical marijuana. In addition, this extended time will provide a continued alternative for low cost access to personal MMJ products.

The Department also supports limiting the number of patients to five (5) that can use a single grow site.

3. Delays to Award Additional Licenses: **Position: Support.**

The Department supports the delay in considering the award of additional licenses while the Department continues major work efforts to ensure the start-up of cultivation and sales by current licensees.

The Department also supports the language in SD1 to allow current licensees the ability to expand their operations by allowing for an increase in plant count, an increase in the number of production centers, and/or an increase in the number of retail locations based on the licensees' ability to service rural or geographically underserved areas. This could provide a quicker way of making medical marijuana available to underserved geographic locations, provide an improved return on investment (ROI) for current licensees, avoid for the Department the significant added burden of a license application and award process, and avoid the delays of new licensees getting

1 products to the market place. The Department also appreciates the definition of "rural or  
2 geographically underserved areas".

3 4. Alternate Tracking System: **Position: Comments.**

4 The draft bill does not identify a time period of inoperability of the state's computer  
5 tracking system before the Department would authorize the alternative system.

6 Nevertheless, the Department appreciates that SD1 allows rather than requires the  
7 Department to work with dispensary licensees to determine an appropriate tracking system.  
8 Please be aware, however, that any alternative system, whether electronic or other, will cost  
9 money to implement or to enforce which the program does not currently have nor will those  
10 costs be supported through the current licensure fees. Allowing the Department to work with  
11 licensees to implement an alternative tracking system will require the Department to monitor the  
12 State's tracking system every day from 8 am to 8 pm except for holidays and to take necessary  
13 and immediate action to inform all dispensaries of a system outage and of when the outage is  
14 resolved. This will require unbudgeted overtime for staff equating to almost a full-time person.

15 5. Retention of Video Security Recordings: **Position: Oppose, based on the need**  
16 **to maintain a robust regulatory system especially in light of recent statements by the**  
17 **current federal administration regarding recreational marijuana, and based on the**  
18 **intended use of security recordings as an inspection, enforcement, and safety tool.**

19 The Department has the ability to change this retention period in rules and opposes  
20 statutory changes at this time. The State should retain a robust regulatory system and wait until  
21 the State and the Department gain better experience on the use of video recordings before  
22 making changes.

1 Video recordings will be used by the Department as an inspection tool to verify written  
2 records and can be used to investigate past events if or when suspicions of fraud, theft, diversion,  
3 or other irregularities come to light after a period of time. This could help to protect dispensary  
4 employees or be used as proof of regulatory noncompliance or criminal activity by others and  
5 could be used in criminal cases by law enforcement. It could also protect the Department's  
6 inspection staff from accusations of impropriety. Otherwise, a decreased retention period could  
7 be viewed as diluting the State's robust regulatory oversight of the industry.

8 As a result, the Department asks that this language be deleted.

9 6. Adding New Debilitating Medical Conditions: **Position: Oppose as**  
10 **unnecessary since a process for adding new medical conditions exists in Chapter 160,**  
11 **Hawaii Administrative Rules.**

12 The Department also testified in opposition to SB 174, which seeks to add new  
13 conditions to the definition of debilitating medical conditions. The Department already has a  
14 comprehensive annual process contained in Chapter 160, Hawaii Administrative Rules, to  
15 consider the addition or deletion of qualifying medical conditions for the medical use of  
16 marijuana. Physicians or potential medical marijuana patients may petition the Department for  
17 new conditions. This process ensures that the criteria for adding conditions are medical  
18 conditions for which the use of marijuana has been shown to be effective rather than just adding  
19 broad category conditions that may be viewed by the federal government as diluting the  
20 program's medical intent. In addition, the process will include a public hearing where public  
21 testimony may be received. The evidence and testimony will be compiled along with  
22 recommendations and will be forwarded to the Director of Health for decision making.

1           7.     Laboratory Testing Standards: **Position: Oppose as unnecessary except for**  
2 **Support for allowing lab testing of patient-grown marijuana and manufactured marijuana**  
3 **products.**

4           Concerning the language allowing patients to transport one (1) gram of marijuana to  
5 certified labs for testing purposes, statute already allows patients to possess an ounce of self-  
6 grown marijuana or may purchase four (4) ounces of marijuana within a 15 day period from  
7 dispensaries. One (1) ounce equates to more than 28 grams. So this language is unnecessary.  
8 However, should the Legislature wish to retain the one (1) gram measurement, the Department  
9 recommends amending the bill to clarify the amount of medical marijuana that a patient may  
10 transport to a certified lab for testing purposes. One (1) gram is sufficient for an individual test,  
11 and patients should be allowed to transport more than one (1) gram in the event they wish to  
12 have spectrum or panel tests performed. A spectrum or panel test may be considered one (1) test  
13 but may require more than one (1) gram of medical marijuana product.

14           Concerning lab standards, the State Labs Division (SLD) wrote the lab section of the  
15 current interim administrative rules using guidance and standards found in other jurisdictions.  
16 SLD also participates in a national MMJ laboratory working group through the Association of  
17 Public Health Laboratories and was provided specific testing guidance from Oregon, New York  
18 and Colorado for prospective laboratories.

19           SLD took guidance from the testing programs and standards for pesticides under the  
20 regulations of the United States Environmental Protection Agency (EPA). And as for the testing  
21 for microbiological impurities, SLD considered the use of bacteria in lieu of pesticides. The use

1 of bacteria is acceptable as long as the bacterial counts conform to sanitary standards outlined in  
2 the administrative rules.

3 While cost is an understandable consideration, the Department's primary concern is  
4 patient safety, product safety, and public safety. The health and safety of patients should remain  
5 the State's main focus.

6 The Department supports lab testing of patients' home-grown marijuana for patient and  
7 product safety reasons.

8 8. Extends Interim Rulemaking Authority: **Position: Support.**

9 This will provide greater flexibility to quickly revise interim administrative rules based  
10 on input from the Legislative Oversight Working Group, patients and caregivers, licensed  
11 dispensaries, other stakeholders, and based on actual operating experiences of licensees and of  
12 the Department.

13 9. Extend Civil Service Exemptions: **Position: Support.**

14 The Department asks the conversion of exempt positions to civil service positions be  
15 delayed from July 1, 2017, to July 1, 2020, to preserve the current workforce. This will help to  
16 ensure continuity of patient safety, product safety and public safety.

17 Thank you for the opportunity to testify on this bill.

Aloha members of the Senate Committees on Judiciary and Labor and Ways and Means. My name is Michelle Tippens, I am the founder and Executive Director of the Hawaii Veteran's Cannabis Alliance and Legislative Liaison for the Libertarian Party of Hawaii. These comments are regarding measure HB1488, heard March 30, 2017 at 9:50am.

As an expert in the field of Criminal Justice (I hold both a BA and MS in the field), specializing in vice and drug crimes, I have a well-documented academic background and demonstrated aptitude in all aspects of the Crime and Justice field, including an extensive knowledge regarding the development of American drug law. Along with this, I am a veteran of the US Army, single mother of 4 and medical marijuana patient. Although I look "healthy" to most people, I not only suffer from PTSD, I also have fibromyalgia, prosthetic neck implants, 5 fractured thoracic vertebrae and several other injuries. I am able to manage all of these conditions with cannabis therapy and was able to discontinue use of a pulmonary walker in 2012, less than two years after beginning cannabis therapy.

I am opposed to the enactment of HB1488 and the veterans represented by the Hawaii Veteran's Cannabis Alliance also oppose this legislation. When examining HB1488, it is easy to see it is riddled with flaws and does little more than legislate extensions, additional resources and funds to the Department of Health; all to continue to develop a system they have demonstrated is beyond their capacity to establish in a timely manner and which most people in Hawaii feel is unnecessary. Additionally, HB1488 legislates the creation of an Office of Medical Marijuana Administration within the Department of Health, which is a blatant waste of taxpayer money and yet another legislated hurdle and delay to the opening of legitimate dispensaries in the state of Hawaii. Creating an entire new department before the dispensary system is functional forces all the resources that are currently being used to develop and implement this system to be redirected into developing a new department and will surely cause even more delays. The people of Hawaii are not interested in the creation of another ineffective department, justified by the boogeyman mentality of the 80s. Even DARE has removed marijuana from their "Gateway Drugs" list.

Furthermore, instead of removing the provision in the original statute that eliminates primary caregiver cultivation authority, this legislation reschedules the deadline a year later. The people of Hawaii are not interested in delaying this provision, the people of Hawaii want this provision removed. Furthermore, the removal of the Primary Caregiver affects who may enter a dispensary or production center for a homebound or under-aged patient; as the law is currently written, it is a felony (Class C) to enter a dispensary or production center if an individual is not a state registered patient or caregiver.

HB1488 provides for interisland transportation of medical marijuana, but the restricts its protections to only dispensaries for laboratory testing. This is inappropriate and exclusionary to patients for no reason related to public health or safety. Throughout the creation of the dispensary system, the legislature acknowledged the value and benefit to patient safety laboratory testing provides, yet the laws have been written in a way that impedes and prevents that very demographic from transporting their medicine to or utilizing the testing offered by cannabis testing labs in the state. Removing the language that excludes patients from legally transporting their medicine interisland would help to make this legislation better, but this small correction cannot overcome this bill's many shortcomings.

This legislation also proposes the DOH create an alternative (backup) system for dispensary sale and stock tracking. The first and most obvious flaw in this is that the initial (primary) system hasn't been

created or put into use. The second issue is that this does not need to be a legislative requirement for the initiation of dispensary sales; by enacting this bill, dispensaries (AND PATIENTS) would be forced to wait for the secondary systems to be created, put in place and operational before sales could begin. The current reality is that under the primary system dispensaries are required to maintain their own local tracking systems on site that are capable of interfacing with the state system. If the state system goes down, dispensaries could continue to operate as normal, feeding their data into the local monitoring systems and once the state database is back up, the interfaces at the dispensary locations could simply sync their data; similar to the sync function of thousands of other electronic programs, such as Google Calendar or Quickbooks. Legislating a requirement for backup data systems when the primary isn't even in place is premature, unnecessary and creates an indeterminate delay for the commencement of medical marijuana sales.

The legislature acknowledges in Section 1 of this bill that the regulatory demands of the medical marijuana dispensary system must be weighed against patient need. The reality is that medical marijuana distribution in the state of Hawaii has been conducted in the black market for over 15 years without harm to the over 15,000 patients who currently declare their participation in the system (and the multitudes that do not) without even the availability of laboratory testing, "seed to sale" tracking, backup systems or warning labels. To assert now that these things are necessary for the "safety of the product, patient, and public" (HB1488, Page 2, Lines 7-8) and use these assertions as an excuse to justify further delay of dispensary operation is misleading at best.

HB1488 does not represent the best interest or desire of the Hawaiian people or the US veterans that call these islands home and creates an environment of permissive delay regarding the completion of dispensary regulation and operation. I would like to finish by stating my clear and decisive opposition to this legislation and hope that you will vote no on the passage of this bill.

Mahalo for your time, aloha.



## LATE TESTIMONY

**From:** [jes.consult2015@gmail.com](mailto:jes.consult2015@gmail.com)  
**To:** [JDL Testimony](#)  
**Subject:** HB1488 Bill  
**Date:** Thursday, March 30, 2017 7:45:19 AM

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Aloha,

My name is John Smith, I am a veteran and concerned citizen.

I oppose HB1488 for multiple reasons, including the lack of funding for the creation of a new department within the DOH, the lack of demand for creating a backup monitoring system for a program that doesn't exist yet and for which the primary is redundant, the retention of the primary caregiver sunset provision and the environment for permissive delay created by the blanket extensions provided by this program - most especially the delay to allowing the DOH to issue additional dispensary licenses for an additional year, which specifically reduces potential patient access despite the bill's introduction stressing the importance of patient access.

It's important we do this for the right reason, for the patients best interest.

Much mahalos,

-John Smith