



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1488, H.D. 1, RELATING TO MEDICAL MARIJUANA.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 14, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General provides comments on this bill.

This measure would amend section 329D-6, Hawaii Revised Statutes (HRS), to enable the Department of Health to implement an alternate tracking system that would allow qualified patients to purchase marijuana or manufactured marijuana products from a designated licensed dispensary on a temporary basis (page 10, line 1, through page 12, line 13; and page 14, lines 1-6). The bill would also allow a qualifying patient or primary caregiver to transport samples of marijuana and manufactured marijuana products to a certified laboratory for testing (page 5, lines 6-11; and page 6, lines 1-2, 5, and 7-9).

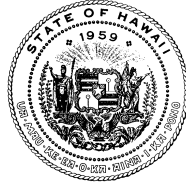
The proposed wording on page 10, line 1, through page 12, line 13; and page 14, lines 1-6, raises concerns, because the alternate tracking system does not provide a means for actually tracking the sale of marijuana or manufactured marijuana products in real time if the Department's computer tracking system is not working properly, and may allow qualified patients to purchase marijuana or manufactured marijuana products in excess of statutory limits. In order to maintain the robust regulatory scheme required by the U.S. Department of Justice (DOJ) Memorandum for All United States Attorneys dated August 29, 2013 (the Cole memo), we suggest that the wording creating an alternate tracking system be deleted. If the Committee is inclined to provide a backup system, we recommend that this measure include a means of tracking the sale of

marijuana or manufactured marijuana products in as close to real time, as possible through some other means.

In addition, the proposed wording on page 5, lines 6-11; and page 6, lines 1-2, 5, and 7-9, raises concerns because it could allow for unlimited transport of marijuana and manufactured marijuana products by qualifying patients and primary caregivers. While the Department of the Attorney General does not oppose a means of allowing qualifying patients and primary caregivers to obtain independent testing of either the marijuana products they obtain from dispensaries or which they grow themselves, the proposed wording could allow for unfettered transport of marijuana and manufactured marijuana products, which could increase the risk of possible diversion of marijuana and manufactured marijuana products. Without any limitation to the amount being transported for testing and without a requirement for documentation of the purpose of transport, any qualifying patient or primary caregiver, if questioned by law enforcement about being in possession of marijuana, could claim to be transporting it to a laboratory for testing, and use the proposed amendment as a legal defense to otherwise illegal activity.

If this Committee decides to pass this bill, we strongly recommend that wording be inserted to allow transport of marijuana or its products by qualifying patients or primary caregivers to a certified laboratory only if the qualifying patient or primary caregiver (1) secures an appointment with a certified laboratory, (2) obtains a written confirmation from the laboratory of the exact date and time of the appointment, including a detailed description of the products and the exact amount that will be transported to the laboratory; (3) carries the written confirmation attached to the marijuana or manufactured marijuana products during transport, and (4) transports the marijuana or marijuana products directly to the certified laboratory at the appointed time. All of the marijuana or manufactured marijuana products transported directly to certified laboratories by qualifying patients or primary caregivers would be retained by the certified laboratory for testing and subsequent disposal, with none being returned to the qualifying patient or primary caregiver. The Department of the Attorney General

respectfully recommends that, if the Committee moves this measure forward, it amends the bill as suggested.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony COMMENTING on HB1488 HD1
RELATING TO MEDICAL MARIJUANA.**

REPRESENTATIVE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: Tuesday, February 14, 2017 Room Number: 325

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.

7 Allow me to testify on each proposal:

8 1. Office of Medical Marijuana (MM) Administration: **Position: Oppose.**

9 The Department had already intended to combine the currently separate Registry and
10 Licensing sections into a combined section but intended to wait to begin the process until after
11 the major work to establish most/all of the dispensaries is better underway and for the biennium
12 since this may require additional resources. To combine both sections before this time will likely
13 take away time and effort to accomplish the more critical and immediate work needs.

14 The Department emphasizes that it should be allowed to exercise its executive and
15 managerial authority and discretion to identify the best organizational structure for the combined

1 MM Administration and where within the DOH it best fits. As a result, the Department asks that
2 language be deleted.

3 This proposal has no noticeable or direct impact on patient safety, product safety, or
4 public safety.

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

6 The Department offers comments that the extension will allow registered caregivers to
7 continue to cultivate marijuana for their patients. This can work well as a way to cover the gaps
8 in availability of MMJ products as dispensaries continue to prepare for cultivation later this
9 calendar year. This also provides a continued alternative for low cost access to personal MMJ
10 products.

11 The Department also recommends the Legislature to consider limiting the number of
12 patients to five (5) that can use a single grow site. As the number of caregivers decline, more
13 patients are using a single site.

14 3. Delays to Award Additional Licenses: **Position: Comments; the Department**
15 **appreciates the intent and offers an alternative to additional licenses.**

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

19 However, the Department respectfully asks the Legislature to consider a more practical
20 first step before awarding additional new licenses, namely to allow current licensees the ability
21 to expand their operations by allowing for an increase in plant count, an increase in the number
22 of production centers, and/or an increase in the number of retail locations based on the same or

1 similar criteria for new licenses. This could provide a quicker way of making medical marijuana
2 available to underserved geographic locations, provide an improved return on investment (ROI)
3 for current licensees, avoid for the Department the significant added burden of a license
4 application and award process, and avoid the delays of new licensees getting products to the
5 market place. This would also allow for greater competition among the current licensees and
6 allow for market forces to drive industry growth and efficiencies. This could also provide the
7 rationale for an increase in fees for licensure renewal. More specifically, as a way to address an
8 apparent concern about the availability of medical marijuana in more rural areas of the State, the
9 Legislature could amend current statute to allow current licensees up to two (2) additional retail
10 locations for a total of up to four (4) retail locations as long as the additional retail locations are
11 located in rural areas. However, the Legislature should define what it considers "rural".

12 4. Alternate Tracking System: **Position: Oppose.**

13 The current statutory language is very prescriptive and requires a single system to track
14 MMJ inventory and sales. This language could be viewed as diluting the State's robust
15 regulatory oversight of the industry and for the industry to become a target of federal authorities
16 and it would be expensive to implement and maintain.

17 Any alternative system, whether electronic or other, will cost money to implement or to
18 enforce which the program does not current have nor will those costs be supported through the
19 current licensure fees. HD-1 would require the Department to monitor the State's tracking
20 system every day from 8 am to 8 pm except for holidays and to take necessary and immediate
21 action to inform all dispensaries of a system outage and of when the outage is resolved. This
22 will require unbudgeted overtime for staff equating to almost a full-time person. However, the

1 MMJ program will experience an annual operating deficit and will run out of cash reserves in
2 2021 at the latest. The Legislature would be required to provide funding but the Department will
3 likely oppose any funding that takes away from the Governor's budget package.

4 Meanwhile, the Department will ask its vendor, BioTrackTHC™, to provide data on
5 system outages in their other jurisdictions, and to offer alternative or duplicate systems that have
6 been successful elsewhere for the Department to consider.

7 5. Retention of Video Security Recordings: **Position: Oppose, the Department proposes**
8 **an alternative based on the intended use of security recordings as an inspection tool.**

9 The Department testified in opposition to SB0305, the sole purpose of which was aimed
10 at reducing the administrative rule requirement of one (1) year retention of video security
11 recordings.

12 The Department has the ability to change this retention period in rules and opposes
13 statutory changes at this time. The State should retain a robust regulatory system and wait until
14 the Department knows whether the current retention requirement will indeed be more costly to
15 the dispensary licensees.

16 The Department intends to use video recordings as an inspection tool and will pursue the
17 ability to live-stream video views from licensee locations. The video recordings will be used to
18 verify written records and can be used to investigate past events if/when suspicions of fraud,
19 theft, diversion, or other irregularities come to light after a 45 day period. A 45 day retention
20 period essentially provides for a statute of limitations. Decreasing the retention period could be
21 viewed as diluting the State's robust regulatory oversight of the industry.

1 6. Laboratory Testing Standards: **Position: Oppose except for allowing lab**
2 **testing of patient-grown marijuana and manufactured marijuana products.**

3 The State Labs Division (SLD) wrote the lab section of the current interim administrative
4 rules using guidance and standards found in other jurisdictions. SLD also participates in a
5 national MMJ laboratory working group through the Association of Public Health Laboratories
6 and was provided specific testing guidance from New York and Colorado for prospective
7 laboratories.

8 SLD took guidance from the testing programs and standards for pesticides under the
9 regulations of the United States Environmental Protection Agency (EPA). And as for the testing
10 for microbiological impurities, SLD considered the use of bacteria in lieu of pesticides. The use
11 of bacteria is acceptable as long as the bacterial counts conform to sanitary standards outlined in
12 the admin rules.

13 The Department's primary concern is patient safety, product safety, and public safety.
14 While cost is an understandable consideration, health and safety have been and should remain
15 the State's main focus.

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

18 7. Extends Interim Rulemaking Authority: **Position: Support.**

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

1 A quicker mechanism to revise administrative rules can be used to improve patient safety,
2 product safety and public safety.

3 8. Extend Civil Service Exemptions: **Position: Support. Prefer Admin bill H.B. 1104.**

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

7 The Department has made good progress in implementing the MMJ licensing program.
8 Much work remains to bring all dispensaries to the point of being allowed to cultivate marijuana
9 and to sell MMJ products.

10 The Department would be in jeopardy of losing medical marijuana dispensary licensing
11 staff prior to June 30, 2017, because of the reduction in salary from conversion to civil service.
12 The additional 3 years is necessary to stabilize program operations.

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

14 **Offered Amendments:** In conjunction with the Department's recommendation to consider
15 limiting the number of patients to five (5) that can use a single grow site, the Department
16 requests that Section 321-121, HRS, be amended by amending the definition of "adequate
17 supply" to read as follows: "Adequate supply" means an amount of marijuana jointly possessed
18 between the qualifying patient and the primary caregiver that is not more than is reasonably
19 necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the
20 symptoms of effects of a qualifying patient's debilitating medical condition; provided that no
21 more than five patients shall be permitted to register the same grow site location..."

PATIENTS WITHOUT TIME

**TO: HAWAII STATE LEGISLATURE
TESTIMONY**

Aloha Legislators,

LEGALIZE MARIJUANA NOW!

SAVE LIVES! 90,000 Americans die from alcohol every year, yet Hawaii celebrates the success of Hawaii's wineries and microbreweries. Tourists are encouraged to visit production centers and tasting rooms. Meanwhile, requiring cannabis production centers to have 24/7 video surveillance, and concealment from the public view. This is unfounded prejudice and paranoia. The CDC states marijuana kills ZERO Americans, so why the prejudice against it?

For 16 years, Hawaii has practiced SELECTIVE PROSECUTION against marijuana consumers. Protecting some folks with "329 cards" from prosecution (stating that marijuana is medicine), while sending others to jail for "marijuana crimes," (stating marijuana has no medical value). There exists a clear, facial contradiction between marijuana's classification as a schedule I drug and its allowable use by qualifying patients for medical conditions.

The only just solution is to legalize marijuana. Tax and regulate Hawaii's estimated \$billion-plus dollar-a-year illegal marijuana industry, and raise a \$100-million-plus dollars-a-year in revenue, decrease expenses fighting the failed prohibition, clear court dockets, save families broken by incarceration, and create thousands of new legal jobs and business. WIN- WIN -WIN

Mahalo for your kind consideration,

PATIENTS WITHOUT TIME, Maui, HI, submitted by Brian Murphy, Director



Aloha Green Holdings Inc.
449 Kapahulu Avenue STE 209
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USA 96815

T/808.679.6737
<http://www.alohagreen.org>

To: Representative Della Au Belatti, Chair Health Committee
Representative Bertrand Kobayashi, Vice-Chair Health Committee
Members of the House Health Committee

Fr: Tai Cheng, COO

Re: Testimony in **Support of House Bill (HB) 1488**

RELATING TO MEDICAL MARIJUANA.

Establishes the Office of Medical Marijuana Administration in DOH to administer marijuana dispensary licensing and regulation, and patient registration. Extends civil service exemptions. Extends interim rulemaking authority. Requires an alternate medical marijuana dispensary tracking system for use when the DOH computer tracking system is nonfunctional. Adds considerations for establishing marijuana testing standards and selecting additional dispensary licensees. Requires retention of video security recordings of production centers and dispensaries for not less than 45 days.

Dear Chair Belatti, Vice-Chair Kobayashi, Members of the Committee:

Aloha Green Holdings Inc. received one of the eight (8) licensed medical marijuana dispensary licenses under Haw. Rev. Stat. (HRS) Chapter 329D. Aloha Green has repeatedly shown that the core tenants of its business revolve around patient safety, product safety and public safety.

Aloha Green submits the following testimony in **SUPPORT of HB1488** as it addresses 4 primary issues for our emerging industry:

- 1) **Administration:** Aloha Green works closely with the Department of Health and the Medical Marijuana Dispensary Licensing Program. The DOH has been inundated with requests from media, the public, the licensees, failed license applicants, potential license applicants, patients, politicians and other stakeholders. The response time for emails and phone calls to the DOH by Aloha Green is often between 2 – 10 business days (and in some cases even longer). Aloha Green believes that currently the DOH does not have the resources to address all enquiries in a timely manner. Aloha Green believes that these communication delays are one reason why the medical marijuana dispensary program is not ready.

- 2) **Tracking system:** Aloha Green is concerned that the BioTrackTHC tracking system will not be ready in time for licensees to begin the sale of product, and that the BioTrackTHC tracking system may encounter technical issues in its rollout and during operations. Any further delay in beginning sales or a prolonged period of halted sales due to issues with the BioTrackTHC tracking system will prove disastrous for the licensees. Aloha Green submits that it is only prudent to have a back-up plan for the instance when technology fails.
- 3) **Videotape recording period of 45-days:** Aloha Green will have daily, weekly, monthly, quarterly and annual inventory audit reviews. The one-year requirement for video storage creates an unnecessary financial burden on licensees, which will be passed to patients. For example, high definition online cloud storage for the approximately 200+ cameras at the production center and the dispensaries would be over \$250,000 per year. The reduction of video storage to 45 days will allow Aloha Green to retain high definition full frame video for that period instead of being forced to reduce video quality and frame rates.
- 4) **Laboratory testing standards:** Aloha Green wishes to use sustainable growing practices to grow marijuana in an organically conscious manner. When looking at testing standards, Aloha Green submits that the State of Hawaii must consider the availability of alternative pesticides and fertilizers that are available on the US mainland but not in Hawaii due to unique agricultural and quarantine procedures. It would be presumptuous to select a testing standard from another state when that state's growers have access to alternative pesticides and fertilizers which allow it to pass set standards. For example, commercial marijuana producers on the US mainland do not need to use harmful pesticides because they are able to order and buy weekly deliveries of beneficial insects which act as predators for marijuana pests. These beneficial insects have changed the way that commercial growers use chemicals in light of strict lab testing requirements. These beneficial insects are not available for delivery to Hawaii due to agricultural sensitivities. There are no companies that provide these types of predatory insects for marijuana production in Hawaii; and there are no companies willing to establish a presence in Hawaii due to its small market. Therefore, Hawaii commercial growers are left with few options when not using chemical pesticides. In addition, Aloha Green submits that cannabis grown without the use of pesticides should either bypass testing or be subject to random testing for pesticides and should not have to be tested for microbes since local farm produce does not require additional testing even though they are consumed farm to table.

Aloha Green asserts that when cannabis is cured and dried properly, microbes and bacterial organisms are killed during the drying process and the reduced water activity does not allow any growth. Aloha Green submits that to insure patient safety, licensees must certify that they are growing organically, not using pesticides and submit to random testing. If pesticides are found, such licensee should have their license suspended. Aloha Green submits that the State should look at a balanced approach for lab testing in light of the unique challenges facing Hawaii growers. Aloha Green believes that the current testing ambiguity will lead failure rates over 80% for all licensed marijuana and high prices for patients.

HAWAII EDUCATIONAL ASSOCIATION FOR LICENSED THERAPEUTIC HEALTHCARE

To: Representative Scott Nishimoto, Chair Judiciary Committee
Representative Joy San Buenaventura, Vice-Chair Judiciary
Committee
Members of the House Judiciary Committee

Fr: Blake Oshiro, Esq. on behalf of the HEALTH Assn.

Re: Testimony - **Support House Bill (HB) 1488, House Draft 1 (HD) 1**

RELATING TO MEDICAL MARIJUANA

Establishes the Office of Medical Marijuana Administration in DOH to administer dispensary system and patient registration. Extends civil service exemptions and interim rulemaking authority. Requires an alternate tracking system for use when the DOH computer tracking system is nonfunctional. Adds considerations for establishing testing standards and selecting additional dispensary licensees. Specifies retention requirements for video security recordings.

Dear Chair Nishimoto, Vice-Chair San Buenaventura, Members of the
Committee:

HEALTH is a recently formed trade association made up of the eight (8) licensed medical marijuana dispensaries under Haw. Rev. Stat. (HRS) Chapter 329D. HEALTH's members are all committed to ensuring the goals of patient safety, product safety and public safety. HB1488 addresses the following issues for our emerging industry:

- 1) Administration: reconfiguration of the medical marijuana program within the Department of Health (DOH) by consolidating the dispensary and registration programs, extending civil service exemption, extending the DOH interim rulemaking authority, extending deadlines and additional criteria for issuance of new licenses and extending deadlines for caregivers - **comment with support for extensions**
- 2) Laboratory testing transport for caregivers - **support**
- 3) Tracking system: creates an alternative system that allows patients continued access in the event that the computerized tracking system becomes inoperable – **strong support**
- 4) Videotape recording period of 45-days – **support with suggested amendments**
- 5) Laboratory testing standards: creates new considerations for the standards of laboratory testing – **strong support**

I. ADMINISTRATIVE ISSUES

Much of the bills need to extend certain deadlines under the original law , Act 241, Session Laws of Hawaii 2015, is because recent delays have precluded licensed dispensaries from moving forward. While licenses were awarded somewhat timely, shortly after the April 15, 2016 deadline, the law's allowance for retail dispensing of medical marijuana on July 15, 2016 will likely be about 1 year late. While three (3) dispensaries have been issued a notice to proceed on cultivation of medical marijuana, there will have several months before such plants are ready for harvest, production and then retail sale. HEALTH therefore **supports** all of the extended deadlines in the bill.

However, it is regrettable that such extensions are necessary. And it appears to be due to these delays, that the bill also contemplates some reconfiguration in the DOH for the medical marijuana programs. HEALTH does not take any position on this because there is no assurance whether this will improve, or could exacerbate, the existing delays experienced thus far. However, to the extent that such changes could facilitate a more effective and efficient operation within DOH, we would be supportive of that effort.

Based on testimony before the prior committee, we understand that the DOH supports increasing the plant count and looking at providing additional dispensary production or retail facilities, instead of issuing new licenses. HEALTH is open to such an approach, however, this is not one of the priority issues for our association. At this point, our focus and primary goals are to get our dispensaries up and running and getting qualified patients safe quality medical marijuana as soon as possible.

II. TESTING FOR QUALIFIED PATIENTS AND CAREGIVERS

This language allows qualified patients and caregivers to test their marijuana or marijuana products at certified labs and allows for transport in limited circumstances. The House Health Committee added this language as part of its HD1, which was a portion of the original language in HB836. HEALTH supports this provision as we believe it will help eliminate barriers for qualified patients and caregivers and additional approaches that will help cultivate a competitive and stable laboratory marketplace.

III. TRACKING SYSTEM

HEALTH **strongly support** HB1488's approach to create an alternative access and tracking system in the remote and hopefully unlikely event that the DOH's tracking system goes down or is inoperable. HEALTH will continue to work with

DOH on an approach to ensure compliance with the computer tracking program on a reasonable timetable. However, HEALTH understands that there have been such difficulties in other states with tracking systems, and so we believe that it is important to learn from their experiences.

We recognize that the computer tracking system serves an important role in upholding and ensuring product, patient and public safety, but HEALTH also believes that this must be balanced against the patients' need to receive their medicine. It is our understanding that the alternative access system in this bill mirrors systems in other states like Connecticut, Washington, Illinois, Maine, Nevada, New Jersey, Rhode Island and Vermont where a patient is allowed to designate a dispensary to provide access to the products, which again, is only necessary IF THE SYSTEM GOES DOWN. If that even never occurs, this process never becomes necessary. Unfortunately, given our experiences thus far with the delays in the implementation of the DOH's tracking system, HEALTH supports having prudent proactive approach enacted now, through a pre-determined alternative system to track marijuana product sales. This will allow qualified patients to be able to continue to have their supply of medical marijuana uninterrupted during any shutdown of the initial system with a process that still has the necessary safeguards, and has worked in other states.

Based on the testimony in the prior committee, we understand that the Department of the Attorney General (AG) has concerns over this provision asserting that this alternative process could be viewed as undermining a "rigorous" regulatory system to track medical marijuana contrary to the U.S. Department of Justice (DOJ) Memorandum for All United States Attorneys dated August 29, 2013 ("Cole memo").¹

The Cole memo provides guidance for state law enforcement to set certain broad parameters of public safety where it lessens the likelihood of federal prosecution. The Cole memo states "jurisdictions that have . . . also implemented strong and effective regulatory and enforcement systems . . . is less likely to threaten the federal priorities."

However, these are broad guidelines and there is no specific requirement for a "real-time" tracking system or one that prevents the state from enacting an alternative remedial solution in the event that the state tracking system is inoperable. Dispensaries must have their own tracking systems and are ultimately held liable to ensure that no qualified patient receives marijuana in excess of the statutory limits. Any dispensary that fails to have such safeguards in place, potentially may lose their license, or be subject to criminal penalties.

¹ <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

IV. LABORATORY TESTING

HEALTH **supports** the language to have the standards established in the interim rules for laboratory testing, be revised to ensure that there are some considerations of the implicated costs of the extensive testing that is mandated in no other jurisdiction.

Hawaii Administrative Rules (Interim Rules) Section 11-850-85, Laboratory standards and testing, requires testing of the tetrahydrocannabinol and cannabiniol levels, and sets testing for levels for certain contaminants like metals, microbiological impurities, moisture. But, the Interim Rules just require testing for:

(B) Pesticides regulated by the U.S. Environmental Protection Agency: 1.0 ppm (part per million)

There are hundreds of pesticides registered with and regulated by the EPA under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), which dates back to 1947. Scientific and agriculture advances have obviously made certain pesticides obsolete in use and production, and while it may be possible to test for every pesticide basically ever known, there seems to be little basis to do so.

While HEALTH supports ensuring product and patient safety, such testing must be done with reasonable tolerance levels and scope. Other states with years of experience, like State of Oregon have implemented testing standards that are appropriate, practical and evidence-based. HEALTH believes that the State Department of Agriculture, which regulates are restricted use pesticides (RUPs) and is knowledgeable about which pesticides are more commonly used for pests in Hawaii, could provide insight, guidance and assistance. But, that could only be done if there is a mechanism alternative to testing “all pesticides” is provided for.

HEALTH supports finding a more balanced approach to testing because we are concerned that unreasonably strict and expansive testing standards will lead to unnecessarily high production costs which will result in unaffordable medical marijuana for patient use.

V. VIDEO STORAGE

HEALTH **supports** changing the requirement for video storage periods since the current administrative rules on the requirements for video storage are extremely large, and it is our understanding that 365 days is over and beyond the requirements of any other jurisdiction which more commonly are at 30-45 days.

However, we respectfully **request an amendment** to simply make the requirement 45 days.

Attached, is a chart that shows the current requirements in AZ, NV, OR, CO, AK, WA, NY, IL, and Hawaii. We are unaware of any issues or problems with the 30-45 days in terms of criminal prosecution or any other needs for law enforcement.

The current 365-day requirement of stored video data, will not only likely affect the resolution quality of the video capable of being stored, more importantly, it will lead likely to significant infrastructure and administrative expenses increasing production costs and therefore, affecting patients' affordability.

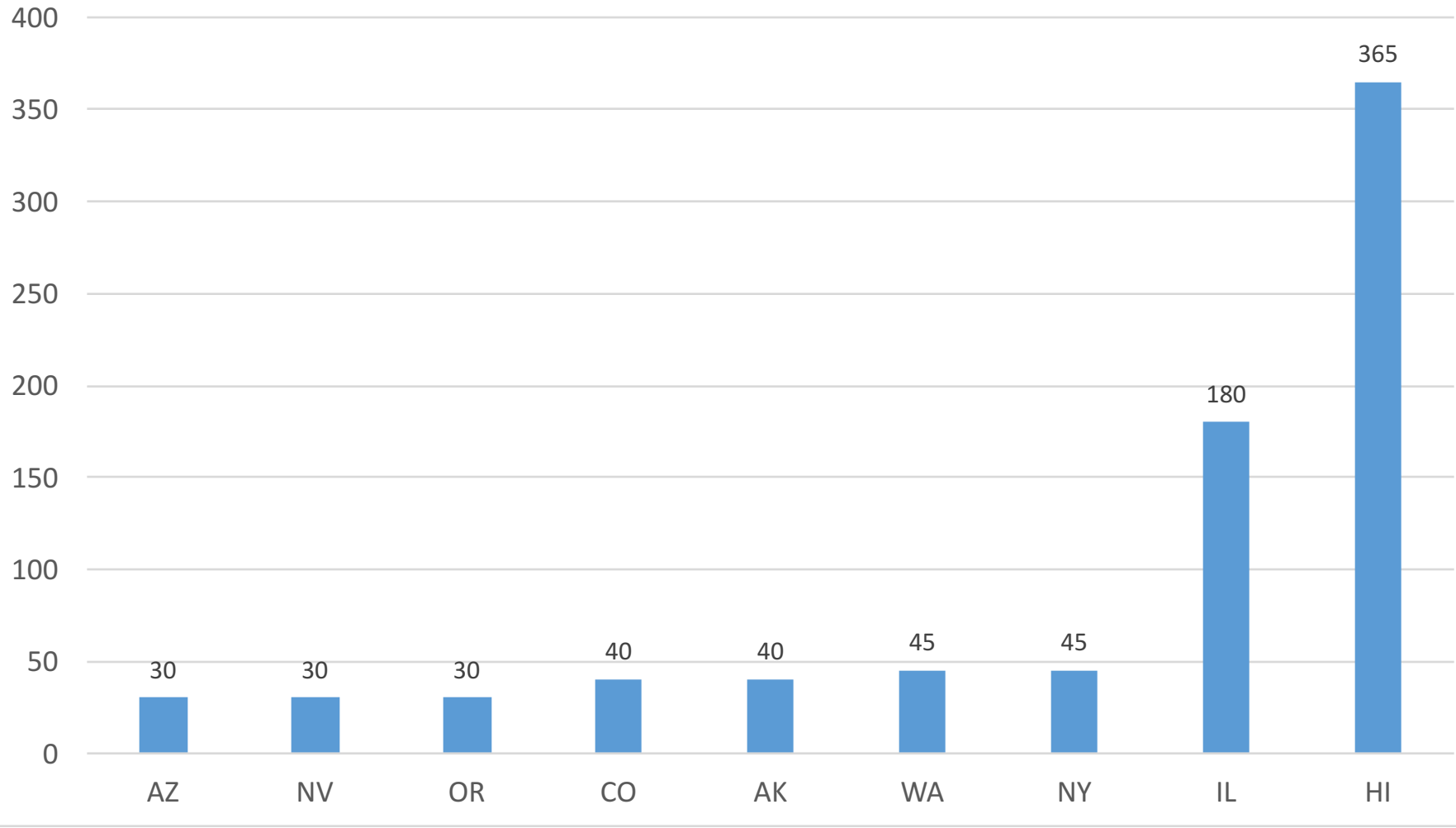
Under the Department of Health's *Interim* Administrative Rules, Section 11-850-41(b): "[a] dispensary licensee shall retain for a minimum of one year all security recordings." The rules spell out the requirements for such security recordings under Section 11-850-51, including:

- Professionally installation
- 24-hour continuous video monitoring and recoding of all dispensary facilities
- back-up capability
- clearly displayed with time/date
- internet protocol compatible
- minimum resolution for a clear and certain identification of persons to include any area where products are produced, moved, stored, sold, packed/unpacked into containers for transport, surveillance storage areas, exists/entrances to indoor and outdoor locations
- secured in a lockbox, cabinet or closet to minimize access to tampering or theft

The required computerized tracking system in the law and rules will already ensure that marijuana and marijuana products are detailed and monitored from every seed to sale, or even possible disposal. Together with the video surveillance system referenced above, these safeguards will provide much needed security and safety at the dispensary facilities.

Therefore, we support changing the requirement for the duration of storage to 45 days since that mirrors that of other jurisdictions, and we are unaware of any issues or concerns arising out of this more common video storage duration requirement.

MMD Days Video Storage Required



IL - 90 days onsite and 90 days off-site



mānoabotanicals

ON THE FOLLOWING MEASURE:

HB1488, HD1, RELATING TO MEDICAL MARIJUANA

BEFORE THE:

COMMITTEE ON JUDICIARY

DATE: Wednesday, February 14 TIME: 2:00PM

LOCATION: Conference Room 325

TESTIFIER: Brian Goldstein, Founder and CEO
Mānoa Botanicals LLC

POSITION: SUPPORT WITH COMMENTS

Chair Nishimoto, Vice Chair Buenaventura and Members of the Committee:

Mānoa Botanicals (Mānoa or MB) is a licensed medical marijuana dispensary in the City and County of Honolulu.

Mānoa submits the following testimony in **SUPPORT WITH COMMENTS**.

- 1) Laboratory testing for qualified patients and caregivers – **support**
- 2) Tracking system: creates an alternative system that allows patients continued access if the computerized tracking system becomes inoperable – **strong support**
- 3) Videotape recording period of 45-days – **support with suggested amendments**
- 4) Laboratory testing standards: creates new considerations for the standards of laboratory testing – **strong support**

In addition, Manoa requests that the committee consider three other important issues as well;

- Retail Dispensary entry restrictions - Allow individuals who are not qualified patients or caregivers to accompany a qualified patient or caregiver into a dispensary waiting room
- Limitation on pre-filled cartridges - Allow for the sale of pre-filled vaporizing cartridges in dispensaries
- Dose size limits - Increase the dose size limit from 100mg THC to 100mg THC per container



HB1488, HD1 COMMENTS

1. Lab testing for qualified patients and caregivers – MB supports this provision as we believe it will help eliminate barriers for qualified patients and caregivers and will help cultivate a competitive and stable laboratory marketplace.
2. Alternative tracking system – MB supports having an alternative tracking system in place in the event that the State’s BioTrack system is inoperable.
3. Videotape recording period of 45 days – The current requirement to store videos for 365 is excessive. A 45 day storage requirement is equal to or better than nearly every State with medical marijuana programs (see attached chart) and will provide sufficient history for any law enforcement needs.
 - a. Suggested change: The requirement should not be “not less than” or “at least”, both of which would allow the requirement to remain at 365 days. We request that the bill be amended to “...recordings shall be retained for forty-five days”.
4. Laboratory testing standards – MB understands and supports that DOH is looking at other jurisdictions in the development of testing standards. We believe that any testing standards utilize a cost/benefit approach that considers the impact testing costs may have on the retail prices. Furthermore, it is critical that the number of pesticides testing for only include those that are being used in Hawaii.

OTHER IMPORTANT ISSUES

Retail Dispensary entry restrictions

- 1) In order to enter a dispensary, HRS 329D-7(6)(B)(i) requires “presentation of valid government-issued photo identification and a valid identification as issued by the department pursuant to section 329-123, by a qualifying patient or caregiver, upon entering the *premises*.” (emphasis added)
- 2) Issue - Drivers or caregivers (non-329D) that accompany a patient must wait outside. As an example, a qualified patient needs a driver or aide to push their wheelchair where will the driver or caregiver wait? Per current statute and rule the driver or aide need to wait outside in the hot sun while the patient is in the dispensary.
- 3) Recommendation - Clarify statute so that ONLY access to the “secured room for sales”, and not “premises”, is limited to qualifying patients or caregivers

Limitation on pre-filled cartridges

- 1) Act 230 added as allowed products “Pre-filled and sealed containers used to aerosolize and deliver marijuana orally, such as with an inhaler or nebulizer”
- 2) Issue - Does not allow for sales of pre-filled vaporizer cartridges, which are a popular and safe method of ingestion
- 3) Recommendation - Change definition to “Pre-filled and sealed containers used to aerosolize or vaporize and deliver marijuana orally, such as with an inhaler or nebulizer or pre-filled vaporizer cartridge”

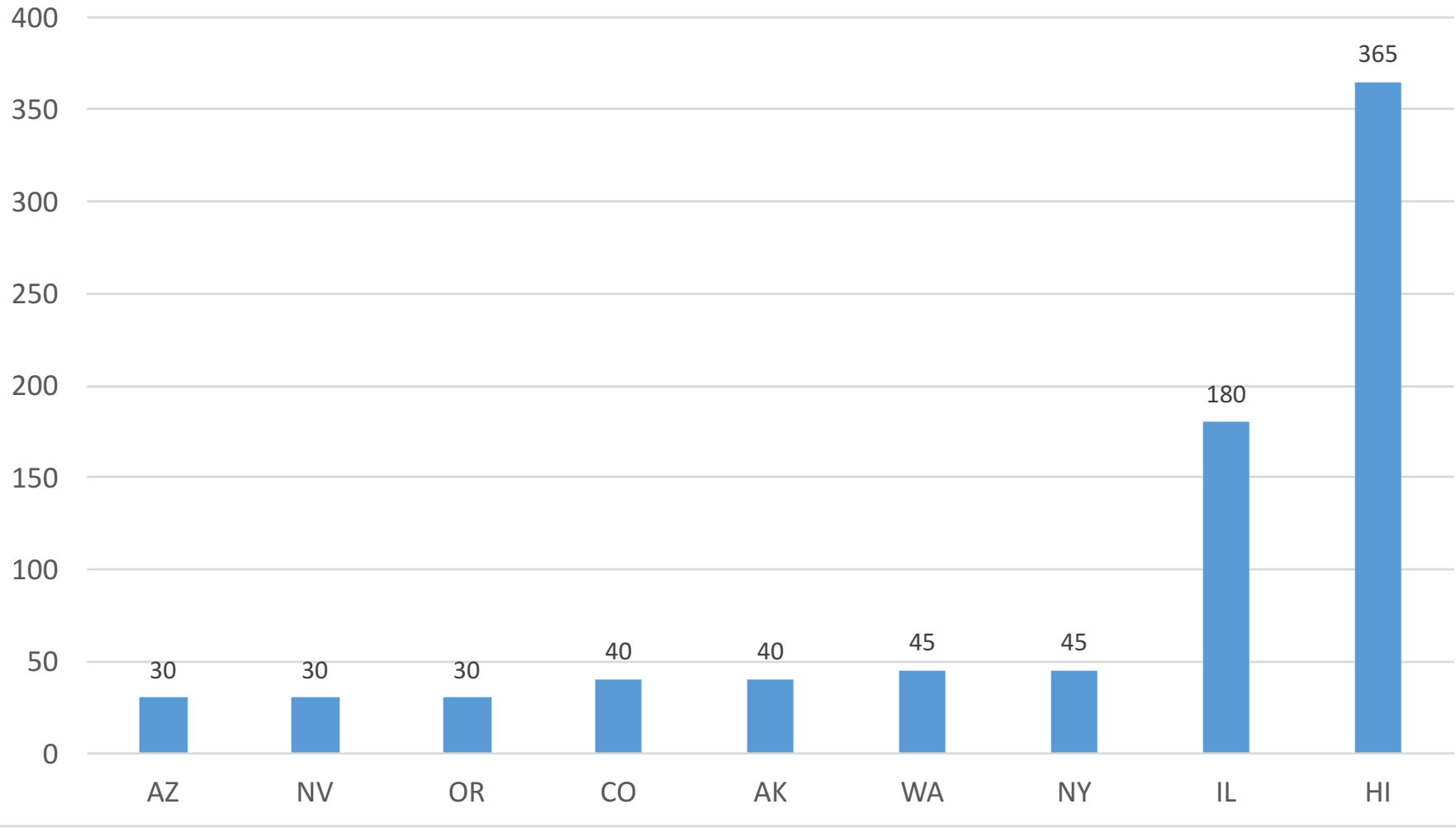


mānoabotanicals

Does size limits

- 1) §329D-11(b) states “manufactured marijuana product that is sold in a pack of multiple doses, servings, or single wrapped items, nor any containers of oils, shall contain more than a total of 100mg THC per pack or container”
- 2) Issue - 100mg containers are small and most patients need higher dosages. This size limitation simply means that to purchase the same amount of medicine patients need to purchase multiple containers, leading to higher costs. In medical marijuana dispensaries on the mainland typical container sizes are 200mg-250mg.
- 3) Recommendation – Change limit to 200mg THC per pack or container

MMD Days Video Storage Required



IL - 90 days onsite and 90 days off-site



ON THE FOLLOWING MEASURE:

HB1488 HD1, RELATING TO MEDICAL MARIJUANA

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 14, 2017 TIME: 2:00 P.M.

LOCATION: State Capitol, Conference Room 325

TESTIFIER: Christopher Garth, Executive Director

Honorable Chair Nishimoto and Members of the Committee:

The Hawai‘i Dispensary Alliance submits the following testimony in **SUPPORT (with suggested amendments) of HB1488 HD1 RELATING TO MEDICAL MARIJUANA**, which establishes the Office of Medical Marijuana Administration in DOH to administer marijuana dispensary licensing and regulation, and patient registration; extends civil service exemptions; extends interim rulemaking authority; requires an alternate medical marijuana dispensary tracking system for use when the DOH computer tracking system is nonfunctional; adds considerations for establishing marijuana testing standards and selecting additional dispensary licensees; requires retention of video security recordings of production centers and dispensaries for not less than 45 days.

The Hawaii Dispensary Alliance is a patient-centric organization that aims to appropriately introduce the legitimate cannabis industry to the state of Hawaii. Our membership is drawn from patients and caregivers, ancillary businesses related to and involved in the physical and intellectual cannabis space, and those who generally support the value of a legal right to cannabis-based medicine. The Alliance has established itself as a consistent voice in the conversation for greater patient access to safe and quality cannabis resources; and it is from this perspective that we support and suggest amendments to several components of HB1488 HD1.

Section 1 of HB1488 HD1 carries a tone that is succinctly consistent with the intent of Act 241, Session Laws of Hawaii 2015; however, the language of SECTION 2, which establishes a new “office of medical marijuana administration” is a provision that our membership finds to be untimely as well as one that may seriously detract from DOH’s standing obligation and commitment to meeting patient needs.

The language of SECTIONS 2, 5, and 6, of HB1488 HD1, make no provisions or assurances for continued patient access throughout the eminent period of stagnation that DOH will endure as this new office is established and developed. HB1488 HD1 provides no resources or direction for the maintenance of program operations during the transition to a new oversight structure, yet the Department will be continuously held accountable for the timely execution of the tasks to which they are currently assigned. The proposed lack of commitment to act in the best interest of registered patients and qualified caregivers is evidenced in the proposal to delay an evaluation of additional licenses from after October 1, 2017, to October 1, 2018. HB1488 HD1 also includes other postponements of current DOH obligations, such as the postponement of the phase-out of caregivers (while the Alliance is strongly in support of removing the

phase-out of caregivers in accordance with future recommendations of the Act 230 Working Group, we do not believe a postponement through this bill will fulfill this need). The Alliance interprets these various language changes and others to imply that the development of a new regulatory body and its functions will be so great of a distraction to DOH that the department will not be capable of executing its current tasks; and therefore, it should be granted the right to fail those who depend on its daily operations in hopes of future administrative efficiencies.

Additional consideration of this measure include that a revenue and funding source must be delineated to appropriately install the proposed new Office of Medical Marijuana Administration. An amendment to §321-30.1 is a preliminary yet ultimately vital component to the construction and designation of this new office. Act 241, Session Laws of Hawaii 2015, established a funding provision for DOH's Medical Marijuana Dispensary Program allowing for a loan of \$750,000 over fiscal year (2015-16). Current revenue streams for the dispensary program are insufficient to cover both this loan and current operating requirements; and the registry program is similarly underfunded and understaffed. Combining these two programs without both necessary appropriations for the transition and a mechanism for increasing program revenue is not an act of prudence and should be avoided at all costs. These staffing considerations are mentioned in SECTIONS 10 & 11 and only start to investigate the delays that the creation of a new office may instigate.

It is the suggestion of the Hawaii Dispensary Alliance that, while a new authority may be a necessity in the not too distant future, creating a new office should not be a priority of this legislative session, nor should delaying DOH's evaluation of the need for additional qualified licensees. **In this, we humbly request that the language establishing a new authority and the language delaying DOH's evaluation of the need for additional qualified licensees be removed from this and any future versions of HB1488 HD1 and that the original language remain as established by Act 241, Session Laws of Hawaii 2015.**

Our board and membership support the language and amendments proposed throughout the remaining sections of HB1488 HD1. We find that the language establishes practical and proactive solutions to ensuring patient access to safe and affordable medicine remain priorities of the regulating authority and this legislative body, especially in the areas of providing an additional seed-to-sale tracking method, and considering new lab testing requirements.

For all of the foregoing reasons, the Hawai'i Dispensary Alliance **SUPPORTS (with suggested amendments)** the language of this measure and recommends that **HB1488 HD1**, which establishes the Office of Medical Marijuana Administration in DOH to administer marijuana dispensary licensing and regulation, and patient registration; extends civil service exemptions; extends interim rulemaking authority; requires an alternate medical marijuana dispensary tracking system for use when the DOH computer tracking system is nonfunctional; adds considerations for establishing marijuana testing standards and selecting additional dispensary licensees; requires retention of video security recordings of production centers and dispensaries for not less than 45 days be moved forward for further discussion.

Thank you very much for the opportunity to provide testimony on this measure.



February 13, 2017

TO: Representative Scott Nishimoto, Chair, Judiciary Committee
Representative Joy San Buenaventura, Vice-Chair, Judiciary Committee
Members of the House Judiciary Committee

FROM: Gregory Park, MD, Co-Founder & Chief Compliance Officer
Maui Wellness Group, DBA Maui Grown Therapies

RE: Testimony-**SUPPORT HOUSE BILL (HB) 1488, HOUSE DRAFT 1 (HD) 1**
RELATING TO MEDICAL MARIJUANA

Establishes the Office of Medical Marijuana Administration in DOH to administer dispensary system and patient registration. Extends civil service exemptions and interim rulemaking authority. Requires an alternate tracking system for use when the DOH computer tracking system is nonfunctional. Adds considerations for establishing testing standards and selecting additional dispensary licensees. Specifies retention requirements for video security recordings.

Dear Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the Committee:

Maui Wellness Group earned the state's first medical marijuana dispensary license last April after achieving a near perfect score of 510 of a possible 520 points. On February 1, 2017 we became the first licensee to receive our *Notice to Proceed with Cultivation*. Since receiving our license, we have worked closely with Department of Health staff and are pleased with the collaborative relationship we have developed during this time. We are also grateful to the legislature for careful oversight of this new industry. I submit this testimony in support of HB 1488 as detailed below:

- 1) Administration: reconfiguration of the medical marijuana program within the Department of Health (DOH) by consolidating the dispensary and registration programs, extending civil service exemption, extending the DOH interim rulemaking authority, extending deadlines and additional criteria for issuance of new licenses and extending deadlines for caregivers and issuance of new licensees – **support**
- 2) Laboratory testing transport for caregivers - **support**
- 3) Tracking system: creates an alternative system that allows patients continued access should the statewide computerized tracking system becomes inoperable – **support**
- 4) Videotape recording period of 45-days – **support with suggested amendment**
- 5) Laboratory testing standards: creates new considerations for the standards of laboratory testing – **support**



ADMINISTRATIVE ISSUES

HB 1488 includes two deadline extensions under the original law, Act 241, Session Laws of Hawaii 2015, due to the lengthy delay in approving licensees to begin cultivating medical cannabis. It will be several months before licensees will be able to sell medical cannabis, we believe it is fair and reasonable to extend the deadline for caregivers to provide cannabis for qualified patients and to postpone the issuance of new dispensary licenses for at least one year. We **support** the extended deadlines in the bill.

Regarding the reconfiguration within the DOH for the medical marijuana program, we support these efforts only if such changes will facilitate a more effective and efficient operation within DOH.

I. TESTING FOR QUALIFIED PATIENTS AND CAREGIVERS

The bill allows qualified patients and caregivers to test their marijuana or marijuana products at certified labs and allows for transport in limited circumstances. The House Health Committee added this language as part of its HD. Maui Wellness Group supports this provision as it will encourage a competitive and stable laboratory marketplace to the benefit of all stakeholders.

II. TRACKING SYSTEM

Maui Wellness Group **strongly supports** HB1488's suggested creation of an alternative access and tracking system in the unlikely event that the DOH's tracking system fails. Several other states currently provide for registered patients to select one dispensary for their purchases because it preserves necessary controls to ensure patients do not exceed legal limits for purchases. Patients can easily switch to another dispensary with sufficient notice. All dispensaries are required to have seed-to-sale tracking software, so this system would be easy to implement if it becomes necessary. It is both prudent and responsible to proactively plan for a possible temporary failure of the DOH tracking system to ensure patients maintain regulated access to medical cannabis in accordance with statutory limits.

III. LABORATORY TESTING

Maui Wellness Group **supports** revisions to the laboratory testing standards established in the interim rules. These rules require review and reconsideration. Testing for all pesticides regulated by the U.S. Environmental Protection Agency is unrealistic, prohibitively expensive and would lead to long delays in bringing products to market.

Our company strongly supports vigorous laboratory testing to ensure product and patient safety, but such testing must be done with reasonable tolerance levels and scope. Other states such as Oregon have implemented testing standards that are appropriate, practical and evidence-base.

IV. VIDEO STORAGE

Maui Wellness Group **supports** changing the requirement for video storage periods since the current administrative rules on the requirement for 365 days of video storage is over and beyond the requirements of any other jurisdiction which more commonly are at 30-45 days. We respectfully **request an amendment** to simply establish the requirement at 45 days.

Mahalo for your consideration.



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

TO: House Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: 14 February 2017, 2PM
RE: HB1488 HD1, Relating to Medical Marijuana, **COMMENTS**

Dear Chair Nishimoto, Vice Chair San Buenaventura, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **wholeheartedly agrees with this amended measure's findings** that the current delays experienced in the implementation of the medical cannabis dispensary system are detrimental to the long suffering patients of Hawai'i. The access to tested, quality medicine has effectively been put on hold for many current and many prospective patients. As such, while we find ourselves in agreement with many of the provisions including the amended language to allow for patient and caregiver testing at certified laboratories, we wish to offer **a few comments** regarding those with which we do not agree.

1) **SECTION 3**: Regarding the new date for the *phasing out of caregivers* (moved from 12/31/18 to 12/31/19), we find it more reasonable to scrap this phasing out entirely. For the medical cannabis programs to be successful, they need to allow for a variety of patient circumstances: Permitting the continuation of the patient/caregiver relationship is one of those.

2) **SECTION 4**: Regarding *a delay in the Department of Health's assessment of a need for additional licenses* (moved from 10/1/17 to 10/1/18), we do not understand the reason for this. Rather, the new language giving additional weight to applications that would "serve and supply medical marijuana...in an underserved geographical area..." underscores the need to assess if e.g. parts of O'ahu or the Big Island risk being underserved in 2017.

3) **SECTION 5**: Regarding *an alternate tracking system*, we welcome this in principle. However, the additional permission a patient would need to seek in order to buy medicine from more than one "designated dispensary" seems unduly burdensome. Instead, some form of communication between dispensaries could act as a safeguard to protect against patient overconsumption.

Mahalo for the opportunity to testify.



LATE

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

TO: HOUSE COMMITTEE ON JUDICIARY

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

DATE: February 14, 2017, 2 p.m., Room 329

RE: H.B. 1488, H.D. 1 RELATING TO MEDICAL MARIJUANA – **IN SUPPORT OF INTENT**

Good afternoon, Chair Nishimoto, Vice Chair San BuenaventuraKobayashi, 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 Hawai'i.

We support the intent of this measure and are pleased to see that HB 1488, H.D. addresses the needs of patients first and foremost.

Having said that, we want to emphasize that timely access to medicine is of the utmost importance. Many patients travel between islands for various reasons including to access specialized medical care. And sometimes the stay on an island different from their home island can be lengthy. We like the idea of an alternate tracking system but are concerned that this could place undue burdens on the patient. **Therefore the proposal to have them designate a single dispensary from which to obtain their medicine is unworkable & impractical.**

We also believe that the year-long delay in considering additional dispensary licenses is too long. We think the demand, especially in "underserved" areas, will be evident during the first few months of dispensary operations.

We're glad to see that the deadline for phasing out primary caregivers has been pushed back one year, but we think there are situations in which caregivers will still be necessary to assist some patients, and we prefer to see this possibility retained in the law.

Thank you for introducing this measure and hearing it today. And mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2017 3:42 PM
To: JUDtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for HB1488 on Feb 14, 2017 14:00PM*

HB1488

Submitted on: 2/11/2017

Testimony for JUD on Feb 14, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

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Cc: georgina808@gmail.com
Subject: Submitted testimony for HB1488 on Feb 14, 2017 14:00PM

HB1488

Submitted on: 2/13/2017

Testimony for JUD on Feb 14, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Georgina Mckinley	Individual	Support	No

Comments: - We appreciate the patient-centric approach of this bill, but we do not agree with the year-long delay proposed in envisioning additional dispensary licenses. - The delay makes even less sense when you consider the new provision that the Department of Health shall consider favorably those applicants who wish to serve and supply patients in an "underserved area geographical area of a county." This problem will likely exist as soon as the dispensaries open, and there is no need to wait until 1 October 2018 to assess that need. - The creation of an alternate tracking system is good, but it would seem to impose some burdens on patients. Will the process to procure medicine from more than one dispensary, pursuant to Department of Health authorization, be smooth? Many patients travel within the state and need to be able to purchase from more than one dispensary.

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HB1488

Submitted on: 2/14/2017

Testimony for JUD on Feb 14, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Frances	Individual	Support	No

Comments:

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