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March 29, 2018

To: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair, and
Members of the Senate Committee on Ways and Means

Date: Thursday, March 29, 2018
Time: 10:50 a.m.
Place: Conference Room 211, State Capitol

From: Leonard Hoshijo, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B 2729 HD2 SD1 RELATING TO CANNABIS FOR MEDICAL USE

I. OVERVIEW OF PROPOSED LEGISLATION

The relevant part of the legislation that the DLIR would like to address is the provisions on page 53 of the bill that amends section 378-32 to add a new paragraph to prohibit employers from suspending, discharging, or discriminating against an employee who is authorized for the use of medical cannabis and tests positive for the presence of cannabis in a substance abuse on-site screening test.

DLIR provides comments on this measure.

II. CURRENT LAW

Section 378-32, Hawaii Revised Statutes (HRS) protects employees from an employer suspending, discharging or discriminating against them because the employer was summoned as a garnishee in an employee's bankruptcy proceeding, the employee had a work injury, or the employee tested positive for drugs or alcohol in a substance abuse on-site screening test.

III. COMMENTS ON THE HOUSE BILL

This measure intends to protect those employees who are registered medical patients under Chapter 329, HRS, and are prescribed the controlled substance cannabis for

medical reasons, from being fired or treated unfairly solely because of their medical use of cannabis. The protection is limited to those registered patients who follow up on the positive substance abuse on-site screening test with a laboratory test and do not use the prescribed medication in the workplace of one's employment.

Since the passage of paragraph §378-32(4) in Act 179 (SLH, 2007) the DLIR has had less than a handful of claims under this provision.

Should the measure generate increased hearings on the Wage Standards Division, DLIR may come back to the Legislature and request additional resources.



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TO: Senate Committee on Ways & Means
FROM: Carl Bergquist, Executive Director
HEARING DATE: 29 March 2018, 10:50AM
RE: HB2729 HD2, RELATING TO CANNABIS FOR MEDICAL USE, **SUPPORT/COMMENTS**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to reform the medical cannabis systems and offers the following comments. Among the provisions are several that would directly benefit *current* patients registered with the Department of Health (DOH) as well as help encourage *prospective* patients to register. This is essential given the continuing **stigma** surrounding this medicine, dissuading people from trying what may provide them relief from longtime suffering. These reforms will make the process easier for long-time patients and lower the obstacles to entry for both residents as well as visitors to our state. A majority of the Act 230 Legislative Oversight Working Group recommended most of these provisions to the Legislature, and they made their way into omnibus bills such as this one or various stand along bills.

We are particularly gratified by the hard work put in by the Senate Committee on Commerce, Consumer Protection and Health, working with DOH and advocates, in drafting the SD1 version of this bill. *What has emerged is a much-improved product with the patient at the core.* We acknowledge that these reforms are not the end point and that DOH is currently looking to improve its registry system, something that will become even more important when out of state patients become eligible for the use of medical cannabis. The current twelve (12) day wait for a 329-card proving eligibility is too long for our in-state patients and it would make visitor access to medical cannabis a mere mirage on the horizon. **We continue to believe that the certification of an eligible for a medical cannabis eligible debilitating condition by a health care professional, and a receipt to that effect, should be the point when a patient can legally use and buy medical cannabis:**

- Several states follows this process, e.g. Oregon. [Oregon Revised Statutes 475B.797](#) specifically says:

(12) For any purpose described in ORS 475B.785 to 475B.949, including exemption from criminal liability under ORS 475B.907, *a receipt issued by the authority* verifying that an application has been submitted to the authority under subsection (2), (3) or (6)(b) of this section *has the same legal effect as a registry identification card for 30 days* following the date on which the receipt was issued to the applicant.

The other three provisions we would like to highlight as extremely important are the **protections from employment discrimination** contained in Part I, Section 8, the **inclusion of edibles** as a product that dispensaries can sell in Part III, Section 27 and the **modification of the prohibitions related to dispensaries hiring individuals with a non-violent criminal record** in Part IV, Section 33. These reforms are compassionate and make sense – firing someone for using medical cannabis when it does not impact their job performance is unjust, edibles are the form of medical cannabis that certain patients need and we should not expect them to make it themselves, and excluding someone from gainful employment for a small misstep is anathema to the concept of rehabilitation.

The instant bill would be improved still by incorporating the following from [HB2740](#), which also includes recommendations from the Act 230 Working Group:

- **An end to the prohibition on interisland travel by patients and caregivers, including those visiting from out of state, carrying medicine**, whether for personal use, for delivery to a patient or for testing at a laboratory on another island, see Part I, Section 4 of [HB2740](#):
 - The explicit language in HRS 329-122 (d) prohibiting such travel blocks any kind of accommodation of the kind seen in other states, including Alaska, which also has a complex geography;
 - Federal law has not stood in the way of a solution in other states like Alaska;
 - It would not in Hawai'i but for our current state law;
 - If compliance with the spirit of the now rescinded Cole Memo is the guiding principle of our medical cannabis system, this simple fix would adhere to that principle;
- **Protections for using medical cannabis, not including smoking, in places of public accommodation** such as a café, restaurant or other place of business, see Part I, Section 10 of [HB2740](#), this is especially important to out of state patients as well as residents living in rental units or public housing.

Thank you for the opportunity to testify.

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GCA of Hawaii

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March 29, 2018

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE MAILE GIL
KEITH AGARAN, VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **OPPOSITION TO H.B. 2729 HD2, SD1 RELATING TO CANNABIS FOR**

MEDICAL USE. Part I: Establishes a reciprocity process for medical cannabis patients that requires the department of health to register qualifying out-of-state patients and caregivers of qualifying out-of-state patients under certain conditions. Clarifies certain safeguards for qualifying out-of-state patients and caregivers of a qualifying out-of-state patient. Authorizes the department of health to extend the maximum period of validity of any written certification to three years for debilitating medical conditions that are chronic. Clarifies a dispensary licensee's ability to retest, at its own expense, a batch of cannabis or manufactured cannabis products that do not meet the department of health's standards for patient safety. Prohibits an employer from suspending, discharging, or discriminating against an employee for testing positive for cannabis if the employee is a registered qualifying patient who is authorized for the medical use of cannabis, with certain exceptions. Part II: Allows a bona fide physician-patient or advanced practice registered nurse-patient relationship to be established via telehealth. Part III: Allows and regulates the manufacturing of edible cannabis products as manufactured cannabis products by licensed medical cannabis dispensaries. Establishes requirements for manufacturing, handling, labeling, and packaging of manufactured cannabis products. Adds certain devices that provide safe pulmonary administration to the list of medical cannabis products that may be manufactured and distributed. Increases the tetrahydrocannabinol limit per pack or container of certain manufactured cannabis products. Part IV: Specifies certain felonies and conditions that will preclude employment, and other felonies and conditions that may preclude employment, at a medical cannabis dispensary. Effective 7/1/2050. (SD1)

Public Decision Making

DATE: Wednesday, March 29, 2018
TIME: 10:50 a.m.
PLACE: Capitol Room 211

Dear Chair Dela Cruz, Vice Chair Keith Agaran and Members of the Ways and Means Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA opposes Part I of H.B. 2729, HD2, SD1 which prohibits an employer from suspending, discharging, or discriminating against an employee for testing positive for cannabis if the employee is a registered qualifying patient to use medical cannabis. While the bill includes exceptions including the provisions of the prohibition not being applicable to “(4) An employee whose job requires the employee to not be under the influence of substances, such as a bus driver, heavy machinery operator, a construction worker, or other employee with a job that has safety issues; or (5) an employee whose employer would be in violation of any federal law or regulation by having an employee who tests positive for the presence of cannabis as set forth in this subsection,” concerns still exist. *Emphasis added.*

The language that purports to offer safeguards or exceptions still concerns the construction industry as it is overbroad and lacks guidance for employers on what “other job may have safety issues” and particularly, who would be able to determine what job has a safety risk? A recent

article by Hireimage.com captured the industry's concern quite clearly when it said, "[m]aintaining a safe and productive workplace is paramount for employers, and pre-employment and ongoing drug testing is key. However, tests for marijuana do not measure current impairment, making it nearly impossible for an employer to ensure a safe workplace. Some states significantly restrict the circumstances under which employers can drug test employees. As such, employers are increasingly finding themselves with no effective way to guard against impaired medical marijuana users and to protect not only that employee, but also those working with them." *Medical Marijuana Cases Impacting Employer Rights to Drug Free Workplace, June 24, 2017.*

This clause related to employer prohibition and medical cannabis has not been properly vetted or discussed with employers particularly the construction industry. This bill provides unclear guidance for employers if an employee is found to be under the influence of marijuana when expected to be on the job. Notwithstanding the inability to test for impairment of marijuana due to its ability to remain in one's system for long periods of time.

The question remains of what may be the means of action an employer would have, if in fact an employee tests positive at the worksite and is expected to perform on the job. If an employer's manual or a collective bargaining agreement allows disciplinary action, would it be in violation of this law? The exceptions set forth in the measure are a haphazard attempt to protect an employer's right to ensure a safe and secure worksite not only for other fellow workers, the general public, but other affected parties that may still be at risk.

Accordingly, the GCA opposes HB 2729, HD2, SD1 and requests that the provision related to the employer's prohibition be deleted, particularly from pages 22 (Line 12) through page 24, Line 2). Thank you for your consideration.



March 28, 2018

TO: Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gil Keith-Agaran, Vice Chair

RE: Testimony-**SUPPORT SENATE BILL (HB) 2729, HD 2, SD1**
RELATING TO CANNABIS FOR MEDICAL USE

FROM: Teri Freitas Gorman, Maui Grown Therapies

Aloha e Chair Dela Cruz, Vice Chair Keith-Agaran and committee members,

As Director of Community Relations & Patient Affairs for Maui Grown Therapies and board member of the Hawai'i Educational Association for Licensed Therapeutic Healthcare (HEALTH), the trade association for all state-licensed dispensaries, mahalo for allowing me to testify in favor of SB 2729, HD2, SD1.

Maui Grown Therapies made history on August 8, last year when we became Hawai'i's first licensed medical cannabis dispensary. Those of you who have toured our facilities can appreciate the financial and intellectual investment we've made in the state's medical cannabis dispensary program. During the past six months we have worked closely with Department of Health (DOH) to launch our business as well as our fledgling industry.

My testimony today is delivered as patient advocate who understands that our industry must thrive if we are to serve our fellow islanders with cannabis products that are second to none.

We support these key provisions of HB 2729, HD2, SD1:

1. Amend a Program to Serve Visiting Patients

Act 231 provides that qualifying patients, verified as a patient in their home state, may be served by licensed dispensaries beginning January 1, 2018. Maui Grown Therapies started receiving inquiries from hopeful out-of-state patients as soon as we opened our doors. However, both phone and email inquiries have accelerated dramatically last month because some websites are erroneously reporting that qualified visitors to Hawai'i may shop at a state-licensed dispensary beginning this year.

Even with information on our homepage explaining the status of reciprocity, we have received 178 email inquiries from out-of-state patients and our staff has answered more than 300 telephone queries over the past four months. Although we do not request personal information, many of those inquiring through our website offer medical reasons for their requests. Mentioned most often are cancer/chemotherapy, severe pain, and end-of-life care. Compassion dictates that Hawai'i develop a program to serve visiting patients without further delay.

For this reason, we support the Department of Health's plan to verify and register out-of-state medical cannabis patients for the purpose of purchasing and possessing medical cannabis in

Hawai'i. We believe the DOH Registry staff has developed an approach does not undermine the integrity of the program, is fair and equitable to Hawai'i residents, and is not too burdensome for patients visiting Hawai'i. We and our fellow members of the HEALTH trade association have met with DOH officials to discuss the out-of-state patient program and we are in full support.

Smart business dictates that serving out-of-state patients must begin before the end of this year. Licensees have invested millions of dollars based upon statute that promised out-of-state visitors would have access to dispensaries in 2018. As a result of DOH staffing shortages, the rate of growth for registered 329 patients has fallen from 4 percent per month one year ago to less than 1 percent percent during recent months. This is an area of deep concern for all licensees, especially those operating on the neighbor islands serving several small rural communities.

Because the Hawai'i medical cannabis program requires high fixed costs, product prices are tied to the number of patients served. Our ability to serve out-of-state patients will benefit Hawai'i patients. In every single jurisdiction, when the sector becomes economically viable, prices to patients inevitably fall. This is especially important for our kūpuna and others who live on fixed incomes.

2. Extend the maximum validity of a qualifying patient's written certification

The current requirement for annual renewal for a 329 card does not consider the chronic nature of the vast majority of Hawai'i's qualifying conditions. Annual renewals add both cost and inconvenience for patients, and because of unpredictable registry response times patients often experience a lapse in treatment. The Department of Health should have to option to extend validity for patients with chronic health conditions.

3. Allow the Department of Health to provide a dispensary the opportunity for retesting a failed batch of cannabis

In the interest of transparency and fairness, dispensaries must have a mechanism to appeal failed lab results. The complexities of various methods for cannabis lab-testing is a matter for analytical chemists, but Maui Grown Therapies works closely with Justin Fishedick, Ph. D, principal scientist at Excelsior Analytical Labs in Union City, California. Dr. Fishedick has authored, or co-authored several scientific articles on cannabis, cannabinoids and terpenoids that were published in top scientific and medical journals.

Dr. Fishedick has identified anomalies in Hawai'i lab test results that he believes are directly tied to the use of deficient testing methods. Currently licenses have no mechanism to appeal suspect lab results. In our case, the affected products include CBD-dominant cannabis flower preferred by several of our patients for its therapeutic effects. The inability to appeal the validity of lab results and lab testing methods is unfair to both patients and licensees.

4. Add certain devices that provide safe pulmonary administration to the list of medical cannabis products that may be distributed

This provision is crucial for the large number of our patients who do not want to smoke herbal cannabis. Pulmonary administration of cannabinoids provides quick relief for severe pain, nausea and other conditions; effects are typically felt within two minutes of dosage. Ingestible forms of cannabis (tinctures, capsules, etc.) can take up to three hours before patients experience relief.

With DOH permission, Maui Grown Therapies sold pre-filled cartridges intended for use in personal vaporization devices for about four weeks in October of 2017. This position was later

reversed and we were required to sell concentrate oils packaged in syringes that forced patients to fill their own cartridges. Our patients were angry about this development and wanted to express their displeasure, so we provided printed postcards for their signature and comment. We are aware of 148 signed postcards that our patients have mailed to Department Director Pressler.

Because so many of our older patients live in multigenerational households, they prefer to use vaporization devices to get quick relief without the pungent, tell-tale smell of burning cannabis. Other patients have conditions such as paralysis, arthritis, tremors, or injuries that prevent them from using a syringe to fill a cartridge. This is not only callous it is also discriminatory because it prevents patients with disabilities from using this form of administration.

5. Increase the tetrahydrocannabinol limit per pack or container of certain manufactured cannabis products

As with all packaged products, smaller sizes are always more expensive for consumers than larger sizes. The current limit of 10 mg. per dose and 100 mg. per package for THC does not accomplish much more than increase final cost to patients. Many conditions and symptoms require larger doses of THC for relief so increasing the THC limit for manufactured products is important for our patients both therapeutically and economically.

6. Define the types of felony convictions that would preclude employment by a licensed dispensary

Act 241 as codified in HRS 329D-6(d) prohibits a dispensary from hiring any person convicted with a felony regardless of the nature of the crime, or when the crime occurred. The change proposed in HB2729 maintains a high standard for public safety by retaining the ban on employing applicants who have been convicted of very serious Class A and Class B felonies and persons with Class C felony convictions for fraud, misrepresentation and crimes against children (endangering child welfare) and involving drugs (trafficking, distribution.) However, this provision provides for discretion the option of hiring persons with a non-violent felony conviction. This bill allows for licensed dispensaries to use discretion in offering or denying employment to individual applicants as appropriate.

7. Allow a bona fide physician-patient or advanced practice registered nurse-patient relationship to include telehealth.

A University of Hawai'i study released in September 2017 concluded that the physician shortage in the state is worsening. The university's Physician Workforce Assessment found O'ahu needs 381 physicians; Hawai'i Island is short 196 providers; Maui County has a deficit of 139, and the island of Kaua'i is short 53 doctors. Telemedicine is an efficient way to help bridge this gap especially for patients living in rural areas. Telemedicine is especially important for house-bound patients including those receiving end-of-life care. Existing regulations for telehealth consultations ensure that a patient's first visit is face-to-face, but patients with chronic conditions should have the ability to renew their medical cannabis certification through telehealth.

8. Prohibit an employer from suspending, discharging, or discriminating against an employee for testing positive for cannabis if the employee is a registered qualifying patient who is authorized for the medical use of cannabis, with certain exceptions.

This provision provides protection for patients who legally use cannabis to manage a qualifying condition under the advisement of their physician or APRN. Since opening our dispensary, we have witnessed the wide range of benefits that patients receive from cannabis therapy, including five patients who have been able to completely wean themselves off of opiate medication and

others who are in the process of doing so. They succeed by stepping down opiate doses while concurrently supplementing with cannabis until the opiates are no longer needed to manage pain. Ironically, opiate medication is much more harmful and addictive than cannabis but a positive result for THC metabolites from a random drug test could lead to termination of employment. This is discriminatory to patients who choose cannabis as a safe and legal alternative therapy. We acknowledge that certain exceptions must be made to ensure employee and public safety, but for the vast majority of employment situations, the medical use of cannabis does not interfere with an employee's ability to safely and competently fulfill their job duties.

9. Additional considerations not in this bill

In addition to the above provisions, we join our fellow licensees in HEALTH in requesting this amendment to Section 329D-6 to be added to this bill:

(r) A dispensary licensed pursuant to this chapter may communicate with the public via social media, email or text message or other electronic medium in which the patient or member of the public has opted-in or requested to be included in such communications.

Mahalo for your consideration.
Me ka ha'a ha'a (humbly yours),



Teri Freitas Gorman
Director of Community Relations & Patient Affairs

HB-2729-SD-1

Submitted on: 3/28/2018 9:43:49 AM

Testimony for WAM on 3/29/2018 10:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Miles W. Tuttle	Testifying for Kush Bottles Hawaii	Support	No

Comments:

HB-2729-SD-1

Submitted on: 3/28/2018 10:42:01 AM

Testimony for WAM on 3/29/2018 10:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Individual	Support	No

Comments:

HB-2729-SD-1

Submitted on: 3/27/2018 10:11:04 PM

Testimony for WAM on 3/29/2018 10:50:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
dain retzlaff	Individual	Support	No

Comments:

Everything in this bill is great, especially employment protections.

thank you!