

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 21, 2020

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
and Members of the Committee on Commerce, Consumer Protection, and Health
The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and Members of the Committee on Judiciary
The Senate, Room 229
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

SUBJECT: Senate Bill No. 2543 SD1
Relating to Medical Cannabis

Dear Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees:

The Department of Human Resources, City and County of Honolulu (“the City”) recognizes that employers and medical cannabis patients alike are in need of clear standards and expectations on the topic of medical cannabis as it relates to employment. However, Senate Bill 2543, SD1, fails to consider the overarching interest of public safety. Therefore, the City respectfully **opposes** this measure in its current form.

To the City’s knowledge, there are currently no objective and scientifically sound methods by which an employer may reliably determine whether an employee is “impaired” by cannabis. As such, this bill would put the burden on individual users, their coworkers, and supervisors, to be responsible for an individual’s condition at work. While this might be sufficient for an ordinary desk job, for certain occupations, the risk is simply too high to rely on the honesty of individuals. An uncomfortable truth is that impairment by cannabis use does not always present itself in an observable manner until it is too late. Furthermore, many employees are expected to work independently, and there may not always be sufficient opportunity for a supervisor or coworker to observe that an individual could appear unsafe to work.

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
and Members of the Committee on Commerce, Consumer Protection, and Health
The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and Members of the Committee on Judiciary
February 21, 2020
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The City firmly believes that certain occupations are simply incongruous with cannabis use or possession, in order to ensure that no employee in a critical public-facing position performs the job while impaired. Irrespective of whether the employer would lose a monetary or licensing-related benefit, the general public would also face a plethora of safety risks, including loss of life, should this bill be enacted as presently worded. In that regard, the City suggests, at a minimum, that the following categories of work should be exempted:

- (a) law enforcement officers in the State or counties or employees of a state correctional facility;
- (b) firefighters employed by the State or counties;
- (c) water safety officers, lifeguards, swimming instructors, or other employees of the State or counties responsible for the safety of the public at swimming pools or on beaches;
- (d) employees authorized to carry or use, or both, firearms on the job;
- (e) emergency medical services employees of the State or counties;
- (f) employees who administer or may administer controlled substances or other drugs to patients whether in hospitals, nursing homes, or in emergency situations such as would be encountered by emergency medical services personnel;
- (g) employees who work with children, the elderly, or other vulnerable populations;
- (h) civil defense emergency management personnel;
- (i) employees who operate or are in physical control of any of the following:
 - • •
 - (i) any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds) whichever is greater (*e.g.*, requires a Class A commercial drivers' license as defined by the Federal Department of Transportation); or
 - (ii) any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,000 pounds) (*e.g.*, requires a Class

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and Members of the Committee on Judiciary
February 21, 2020
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- B commercial drivers' license as defined by the Federal Department of Transportation); or
- (iii) any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Part 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR Part 73 (*e.g.*, requires a Class C commercial drivers' license as defined by the Federal Department of Transportation); or
- (iv) public utilities, such as the electrical power grid or the water source; or
- (v) machinery or power equipment; or
- (vi) a motor vehicle.

We further note that the bill as currently written provides for an employer "tool" of a fitness for duty test. The bill does not define "fitness for duty test." The City's understanding of a "fitness for duty test" in a medical cannabis context would be that, if an employer learns that an employee or candidate is a medical marijuana cardholder, the employer at that point would be allowed to enter into a conversation with a treating physician to determine whether the individual has been appropriately directed to use cannabis only while off-duty, allowing, for example, at least 6 hours to sober before reporting for duty. This type of conversation could prove extremely helpful at the outset of employment or cannabis use, but it should not and cannot take the place of a reliable manner of determining "impairment" on a day-to-day basis, nor should it be limited to only "dangerous occupations." If this is the sort of "fitness-for-duty test" contemplated, the City fears this "tool" would be neither effective nor appropriate in this context.

Furthermore, to limit this "tool" to only "law enforcement officers and correctional facility employees," would seem wholly inadequate, and provides medical cannabis users greater protection than any other substance, including, for example, prescription medications or alcohol. Medical cannabis should not be treated any differently than any other potentially dangerous substance.

Currently, employers are allowed to send employees for a medical evaluation in a variety of scenarios, including when the employer has a reasonable suspicion of impairment or other legitimate concern about an individual's fitness for the job. We would hope that, even if this bill passes, employers may continue to send employees for

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and Members of the Committee on Judiciary
February 21, 2020
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medical evaluations whenever there is a legitimate safety concern, regardless of the occupation.

Thank you for the opportunity to testify in **opposition** to SB 2543 SD1.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo" with a horizontal line extending to the right.

Carolee C. Kubo
Director



Chamber of Commerce HAWAII

The Voice of Business

Testimony to the Senate Committees on Commerce, Consumer Protection, and Health, and Judiciary
Friday, February 21, 2020 at 10:30 A.M.
Conference Room 229, State Capitol

RE: SB 2543 SD1, RELATING TO MEDICAL CANNABIS

Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **has concerns** regarding SB 2543 SD1, which prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. This bill also specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber remains concerned about the unintended consequences that this bill could have regarding employee safety and the overall workplace environment. The language in the bill also remains unclear on the impact that this legislation would have on an employer who might be entered into a contract that must be compliant with federal laws. Finally, we would also note our concerns about what exactly represents a potentially dangerous occupation under this bill.

Thank you for the opportunity to voice our concerns regarding SB 2543 SD1.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH AND THE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229
FRIDAY, FEBRUARY 21, 2020 AT 10:30 A.M.**

To The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair; and
Members of the Committee on Commerce, Consumer Protection & Health,

To The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Judiciary,

TESTIMONY IN OPPOSITION TO SB2543 SD1 RELATING TO MEDICAL CANNABIS

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our opposition to SB2543.

The Maui Chamber of Commerce has significant concerns on this bill that would prohibit an employer from discriminating against a person in hiring, termination or condition of employment based on the person's status as a medical cannabis cardholder. As was mentioned in the Medical Cannabis Outstanding Issues Working Group Final Report, the bill should include other exempt work classes such as **“safety-sensitive positions and other industries where having a qualifying medical cannabis patient as an employee would increase the risk of liability, negligence, or exposure to an employer or the employee.”**

While we agree with protection of the two categories you included, law enforcement officers and correctional facility employees, we can see arenas where other categories of government employees should also be considered and this bill should not only protect government employees, but private sector employees who need protections as well. Given the recommendation from the working group, we strongly believe more time needs to be spent on defining and creating a list of potentially dangerous occupations to be included in the bill so those affected industries can ring in. We can think of many industries, various occupations and job functions where there is potential harm. Protecting employers and employees is paramount.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

In addition, we understand the bill allows for fit for duty tests to be used as a tool, however, this is not a reliable way to ensure the safety of the card holding employee and other employees and would create a time and cost burden to complete the test daily. Businesses simply cannot afford to do a fit for duty test every day and the test is unreliable as medicines can affect the same person differently each day.

Further, many businesses must have a zero tolerance policy for drug tests to meet contractual obligations and agreements with their insurance companies and may incur higher insurance rates if they cannot uphold that agreement. Since monetary or licensing -related benefit under contract is not defined, it is not clear if this would cover those who incur higher insurance rates due to the liability. This bill should define this further and exempt those businesses.

The bottom line is this is not about discrimination and businesses wanting to discriminate against those who need to use medical cannabis. This is not a federally protected discrimination class. This is about protecting those individuals using medical cannabis and all other employees from dangerous situations that exist in many different industries and throughout various occupations and job functions. Not addressing this opens up many businesses and their employees to extreme harm. This would take more work, but it is possible and skirting this important fix leave businesses and all their employees unprotected. This should not be taken lightly.

Until such exemptions are included that cover affected industries, we cannot support this bill. Therefore, we ask that this bill be deferred.

We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



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

TESTIMONY IN SUPPORT OF SB 2543, SD 1

TO: Chair Baker, Vice Chair Chang & Senate Commerce, Consumer Protection, and Health Committee Members

Chair Rhoads, Vice Chair Keohokalole, & Senate Judiciary Committee Members

FROM: Nikos Leverenz
DPFH Board President

DATE: February 21, 2020 (10:30 AM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** SB 2543, SD 1, which would provide much needed employment protections for Hawai'i workers who are registered medical cannabis patients. The bill also authorizes "fit for duty" tests in "potentially dangerous occupations."

DPFH was instrumental in the passage of Act 228 (2000), authorizing the acquisition, possession, and use of medical cannabis, and Act 241 (2015), authorizing the establishment and regulation of medical cannabis dispensaries. DPFH also actively participated in the Act 230 (2016) Medical Cannabis Legislative Oversight Working Group, which addressed, among other concerns, the issue of discrimination against medical cannabis patients in the context of employment.

Medical cannabis patients face significant stigma due to longstanding misperceptions regarding cannabis and its uses, [fueled by a longstanding, costly "war on drugs" that is disproportionately waged against those impacted by social determinants of health](#). In contrast, DPFH strongly believes that those with medically diagnosed behavioral health conditions, including substance use disorder, should have meaningful access to needed community-based, medically supervised treatment regardless of ability to pay.

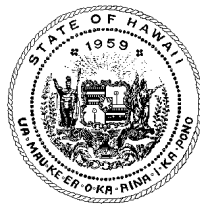
One conspicuous example of the pervasive stigma faced by medical cannabis patients is found in the unduly caustic comments of a notable business executive last year in the *Honolulu Star-Advertiser*: "This is another vice, just like alcohol.... This guy had an itchy eye and was screwing something in, and he poked his eye out. He wasn't paying attention. He was high on pakalolo." (Kristen Consillio, "[Medical Cannabis Raises Issues in the Workplace](#)," *Honolulu Star-Advertiser*, July 8, 2019.)

As cannabis use poses substantially lower levels of preventable injury, preventable illness, and preventable death than two widely used licit substances, alcohol and smoked tobacco, a comment like this is indicative of a supervisory posture that can seriously jeopardize the ability of medical cannabis patients to earn, and continue to earn, a living through gainful employment.

Hawai'i should join the sixteen states that currently prohibit employers from discriminating against workers based on their status as medical cannabis patients: Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island and West Virginia.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Shari L. Kimoto
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2543
RELATING TO MEDICAL CANNABIS.**

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Friday, February 21, 2020; 10:30 a.m.
State Capitol, Conference Room 229

Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees:

The Department of Public Safety (PSD) is opposed to Senate Bill (SB) 2543, Senate Draft (SD) 1, which would prohibit an employer from discriminating against a person in hiring, termination, or condition of employment, based on the person's status as a medical cannabis cardholder, under certain conditions, because it does not include a necessary exemption for law enforcement and correctional facilities employees.

PSD is concerned that this measure will result in civil tort liability for the State and its employees, whose job classification mandates the use of firearms, and criminally implicate the parties under Federal controlled substances laws. These employees are subject not only to the requirements of Federal laws relative to the shipping, transporting, receiving, or possession of firearms or ammunition, as referenced by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Open Letter, dated September 21,

2011 (attached) and/or controlled substance provisions contained in Collective Bargaining Agreements.

ATF has explicitly stated that “any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition.” The Gun Control Act of 1968 states that “unlawful use of all substances on Schedule 1” prohibits the possession of guns, which under federal law means the use of cannabis is strictly prohibited for users of firearms.

The Department respectfully requests that this measure be amended to exempt employees who are law enforcement officers or employees of any State correctional facility. We suggest deleting subsection (f) and amending on page 4, line 8, subsection (e):

“(e) This section is not applicable if the individual **is employed as a law enforcement officer in the State or is employed at a State correctional facility under the Department of Public Safety** or where a failure to do so would cause an employer to lose a monetary or licensing-related benefit under a contract or federal law, an employer shall not discriminate against a person in hiring, termination, or any term or condition of employment, other than contained in a collective bargaining agreement, if the discrimination is based upon either of the following: . . .”

The proposed amendment will ensure compliance with Federal law related to prohibitions of firearms possession and would also assist correctional facilities in limiting the introduction of contraband into the facility for the safety and security of the offenders, correctional staff, and the public.

Thank you for the opportunity to present this testimony.



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

September 21, 2011

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received a number of inquiries regarding the use of marijuana for medicinal purposes¹ and its applicability to Federal firearms laws. The purpose of this open letter is to provide guidance on the issue and to assist you, a Federal firearms licensee, in complying with Federal firearms laws and regulations.

A number of States have passed legislation allowing under State law the use or possession of marijuana for medicinal purposes, and some of these States issue a card authorizing the holder to use or possess marijuana under State law. During a firearms transaction, a potential transferee may advise you that he or she is a user of medical marijuana, or present a medical marijuana card as identification or proof of residency.

As you know, Federal law, 18 U.S.C. § 922(g)(3), prohibits any person who is an "unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))" from shipping, transporting, receiving or possessing firearms or ammunition. Marijuana is listed in the Controlled Substances Act as a Schedule I controlled substance, and there are no exceptions in Federal law for marijuana purportedly used for medicinal purposes, even if such use is sanctioned by State law. Further, Federal law, 18 U.S.C. § 922(d)(3), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or **having reasonable cause to believe** that such person is an unlawful user of or addicted to a controlled substance. As provided by 27 C.F.R. § 478.11, "an inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time."

Therefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer "yes" to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have "reasonable cause to believe" that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered "no" to question 11.e. on ATF Form 4473.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF's Firearms Industry Programs Branch at (202) 648-7190.

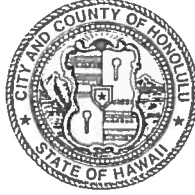
Arthur Herbert
Assistant Director

Enforcement Programs and Services

¹ The Federal government does not recognize marijuana as a medicine. The FDA has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks an accepted level of safety for use under medical supervision. See 66 Fed. Reg. 20052 (2001). This Open Letter will use the terms "medical use" or "for medical purposes" with the understanding that such use is not sanctioned by the federal agency charged with determining what substances are safe and effective as medicines.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE ATY-JK

February 10, 2020

LATE

The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Labor, Culture and the Arts
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 224
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: Senate Bill No. 2543, Relating to the Medical Use of Cannabis

I am Aaron Takasaki-Young, Major of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 2543. The current language of the proposed bill would prohibit the HPD from discriminating against a medical cannabis cardholder or qualified patient for employment/hiring purposes. We believe that the hiring of such individuals conflicts with a federal law under United States Code Section 18, Subsection 922(g)(3).

This federal law prohibits the possession of a firearm by an "unlawful user" of any controlled substance, which still includes marijuana as a Schedule I drug, and there is no federal law exception that grants the usage of marijuana for medicinal purposes. Therefore, any person who uses marijuana is considered an "unlawful user" despite state laws allowing individuals to use marijuana for medicinal purposes. This determination was documented within a published memorandum by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives in September 2011 (refer to the attachment).

The Honorable Brian T. Taniguchi, Chair
and Members
February 10, 2020
Page 2

In addition to federal law, Hawaii Revised Statutes Section 134-7, Subsection (a), mandates that individuals who are prohibited from possessing a firearm under federal law, shall not own, possess, or control any firearm. In consideration of that federal law, those individuals, who use marijuana for medical purposes, would potentially be ineligible to be hired for HPD sworn officer positions via state law.

Though HPD civilian positions do not require employees to possess and/or use a firearm, their duties have a direct impact to our operations (e.g., Police Radio Dispatchers are the lifeline of vital communications between the sworn officers and the community; Criminalists examine or analyze key evidentiary items that are necessary for perpetrators to be charged or convicted; and Fleet Mechanics are able to maintain and ensure that HPD vehicles are operating properly). As such, any drug usage, which includes marijuana, can have serious adverse effects on an employee's work performance that would be detrimental to ensuring the safety and welfare of the community.

The current language of the bill would further prohibit the HPD from discriminating against a medical cannabis or qualified patient by imposing administrative discipline against employees of such status or if those employees would test positive for cannabis during drug testing. This would be conflicting with the current collective bargaining agreement and departmental policy regarding drug testing, which includes the testing for the presence of marijuana metabolites.

Thank you for the opportunity to testify.

Sincerely,



Aaron Takasaki-Young, Major
Human Resources Division

APPROVED:



Susan Ballard
Chief of Police

Attachment



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

September 21, 2011

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

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Therefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer “yes” to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have “reasonable cause to believe” that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered “no” to question 11.e. on ATF Form 4473.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF’s Firearms Industry Programs Branch at (202) 648-7190.

Arthur Herbert
Assistant Director

Enforcement Programs and Services

¹ The Federal government does not recognize marijuana as a medicine. The FDA has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks an accepted level of safety for use under medical supervision. See 66 Fed. Reg. 20052 (2001). This Open Letter will use the terms “medical use” or “for medical purposes” with the understanding that such use is not sanctioned by the federal agency charged with determining what substances are safe and effective as medicines.

SB-2543-SD-1

Submitted on: 2/15/2020 3:51:00 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Testifying for Maui Police Department	Oppose	No

Comments:



**SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH; AND
COMMITTEE ON JUDICIARY
Conference Room 229
10:30 am**

February 4, 2020

RE: SENATE BILL NO. 2543, RELATING TO MEDICAL CANNABIS

Chair Lowen, Vice Chair Wildberger, and members of the committee:

My name is Dwight Mitsunaga, 2020 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in opposition to SB 2543, which would prohibit an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions.

While we understand the intent of this bill, we cannot support it as currently drafted. In the construction industry, it would jeopardize the health and safety of the public and other employees to allow for a medical cannabis patient to operate the necessary heavy machinery. While we acknowledge the "fit for duty" test that this bill allows for, there would be too much risk involved.

We are in opposition of SB 2543, and appreciate the opportunity to provide our comments on this matter.



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Joe Carter, Coca-Cola Bottling of Hawaii, *Chair*
Charlie Gustafson, Tamura Super Market, *Vice Chair*
Eddie Asato, The Pint Size Corp., *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
John Schlif, Rainbow Sales and Marketing, *Advisor*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Commerce, Consumer Protection and Health, and Committee on Judiciary
Senator Rosalyn H. Baker and Senator Karl Rhoads, Chairs
Senator Stanley Chang and Senator Jarrett Keohokalole, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: February 21, 2020

TIME: 10:30am

PLACE: Conference Room 229

RE: SB2543 Relating to Medical Cannabis

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA respectfully understands the intent of this measure. There are a range of occupations like driving or operating heavy machinery to name just two, which are incompatible with cannabis use for safety reasons. The definitions in this bill and the fit for duty test simply do not provide adequate safety protections or legal protections to mitigate the potential risks of cannabis use in certain occupations.

It is also important to note that Federal law still does not recognize medical marijuana. This law would create a conflict between Federal and State law that would be impossible for companies to reconcile in their hiring policies. For these reasons we ask that this measure be held. We thank you for the opportunity to testify.

HAWAI'I CANNABIS INDUSTRY ASSOCIATION

February 21, 2020

TO: Senator Rosalyn H. Baker, Chair Commerce, Consumer Protection, and Health
Senator Stanley Chang, Vice Chair Commerce, Consumer Protection, and Health
Members of the Senate Committee on Commerce, Consumer Protection, and Health

Senator Karl Rhoads, Chair Judiciary
Senator Jarrett Keohokalole, Vice Chair Judiciary
Members of the Senate Committee on Judiciary

FR: Teri Freitas Gorman, 2020 Chair
Hawai'i Cannabis Industry Association (HICIA)

RE: **SB2543 SD1 RELATING TO MEDICAL CANNABIS. - SUPPORT**

Prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

The Hawai'i Cannabis Industry Association, formerly known as the Hawai'i Educational Association for Therapeutic Health (HEALTH), represents all eight of the state's licensed medical cannabis dispensaries plus associate members. We submit testimony today in support of SB2543 SD1, a necessary bill that reduces employment barriers for Hawai'i's registered medical cannabis patients and provides important protection for them.

The association supports legislation that defines the scope of accommodation that employers must provide to patients who choose state-regulated medical cannabis therapy as part of an integrative healthcare program. Furthermore, an employee's status as a state-registered medical cannabis should not be sufficient reason for denying employment.

It is important to understand that medical cannabis use does not equal impairment. Before termination or taking any serious disciplinary action, employers should be required to provide evidence that medical use of cannabis outside of work hours has impaired the ability of an employee to do their job. About a dozen states prohibit employers from discriminating against registered medical cannabis states or from firing employees for testing positive for THC used while off-duty. Some of these states also require employers to reasonably accommodate an employee who needs medical cannabis to treat a medical condition. Employers should not discriminate based solely on an employee's status as a registered medical cannabis, unless it would cause the employer to violate federal law or lose money or licensing-related benefits under federal law. In the event an employer believes an employee is impaired while working on company property during work hours, the employee should be given an opportunity to challenge that determination.

The association would also like to share legislation from the other states that currently provide legal protections for registered medical cannabis patients who are employees:

Arizona. Rev. Stat. Ann. §§ 36-2801 to 36-2819 Employers may not discriminate against medical cannabis users based solely on their status as registered cardholders or for testing positive on a drug test for cannabis, unless it would cause the employer to lose money or licensing benefits under federal law. Employers may fire or take other adverse action against employees who use, possess, or are impaired by medical cannabis on company property or during work hours.

Arkansas. Const. amend. XCVIII, §§ 3, 6 Employers with 9 or more employees may not discriminate against applicants or employees based on past or present status as a medical cannabis cardholder or as a designated caregiver for a physically disabled medical cannabis patient. Employers may take adverse action against employee based on a good faith belief that the employee used, possessed, or was impaired by medical cannabis on company property or during work hours. A positive drug test alone is not sufficient grounds for a good faith belief. Employers may, however, exclude employees from safety-sensitive positions based on a positive drug test.

Connecticut. Gen. Stat. Ann. §§ 21a-408 to 21a-408v Employers may not discriminate against applicants or employees based on their status as a qualifying patient or primary caregiver of a qualifying patient under medical cannabis laws. Employers may prohibit employees from using cannabis during work hours and discipline employees for being under the influence of cannabis during work hours.

Delaware. Code Ann. tit. 16, §§ 4901A to 4928a Employers may not discriminate against medical cannabis users based solely on their status as registered cardholders or for testing positive for cannabis on a drug test, unless it would cause the employer to lose money or other licensing-related benefits under federal law. Employers may take adverse action against employees who use, possess, or are impaired by cannabis on company property or during work hours.

410 Illinois. Comp. Stat. Ann. §§ 130/30 to 130/50 Employers may not discriminate based solely on status as a registered medical cannabis patient or designated caregiver of a medical cannabis patient, unless it causes the employer to violate federal law or lose money or licensing-related benefits under federal law. Employers may take adverse action based on a good faith belief that the employee used or possessed cannabis on company property or during work hours. Employers may also take adverse action based on a good faith belief that the employee was impaired while working on company property during work hours, but the employee must be given a chance to challenge the basis for the determination.

Maine. Rev. Stat. tit. 22, §§ 2421 to 2430-B; Me. Rev. Stat. tit. 7, §§ 2441 to 2455 Employers may not discriminate based on status as a medical cannabis patient or primary caregiver of a medical cannabis patient, unless it would cause the employer to violate federal law or lose a federal contract or funding. Employers are not required to allow employees to use cannabis on company premises or allow employees to work under the influence of cannabis.

Massachusetts Gen. Laws Ann. Ch. 94I §§ 1 to 8; 105 Mass. Code Regs. 725.650; *Barbuto v. Advantage Sales and Marketing, LLC*, 477 Mass. 456 (2017); Mass. Gen. Laws Ann. ch. 94G, § 2 An employee who uses medical cannabis to treat a disability is entitled to reasonable accommodation under the state disability discrimination law. Under that law, employers with 6 or more employees must accommodate off-site, off-duty use, unless there is an equally effective alternative treatment available or it would cause the employer undue hardship.

Minnesota. Stat. Ann. §§ 152.21 to 152.37 Employers may not discriminate against applicants or employees based on status as a registered medical cannabis patient or for testing positive for cannabis on a drug test, unless it would cause the employer to violate federal law or lose money or licensing-related benefits under federal law. Employers may take adverse action against an employee who uses, possesses, or is impaired by cannabis on company property or during work hours.

Nevada. Rev. Stat. Ann. §§ 453A.800, 453D.100 Employers must try to make reasonable accommodations for registered medical cannabis patients, as long as it would not pose a safety threat to responsibilities.

New York Pub. Health Law §§ 3360 to 3369-E; N.Y. Comp. Codes R. & Regs. Tit. 10, § 1004.18 Employers may not discriminate against applicants or employees based on status as a medical cannabis patient, but they may enforce a policy that prohibits employees from working while impaired by cannabis. Employers with four or more employees must also provide reasonable accommodations to medical cannabis users. Employers are not required to take any action that would cause them to violate federal law or lose a federal contract or funding.

Oklahoma HB2612 (The Unity Act) signed by the governor 3/14/2019 An employer can designate jobs that it reasonably believes “affect the safety and health of the employee performing the tasks or others” as safety-sensitive. The law offers a non-exclusive list of jobs that may fall under the classification, including positions involving hazardous material, operating vehicles or machinery, maintaining equipment, working with utilities, dispensing prescriptions, carrying a firearm, and providing direct patient care or child care. For jobs that are properly designated as safety-sensitive, an employer may refuse to hire an applicant or discharge an employee who tests positive for cannabis– even if that applicant or employee holds a valid medical cannabis license.

Pennsylvania. 35 Pa. Stat. Ann. §§ 10231.510, 10231.1309, 10231.2103. Employers may not discriminate based on status as a medical cannabis patient. Employers may discipline employees for being under the influence of cannabis at the workplace, or for working while under the influence of medical cannabis, but only when the employee’s conduct falls below the normally accepted standard of care for that job. Employers are not required to accommodate medical cannabis use on company property and may prohibit employees from performing any duty that would pose a health or safety risk. Employers are not required to take any action that would violate federal law.

Rhode Island. § 21-28.6-4. Protections for the medical use of cannabis. No school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder.

W. Va. Code Ann. §§ 16A-5-10, 16A-15-4 Employers may not discriminate against employees based solely on their status as certified to use medical cannabis. Employers may discipline an employee for falling below normally accepted standard of care while under the influence of medical cannabis. Employers may also prohibit employees from performing any duty that would be life-threatening, or that would pose a public health or safety risk, while under the influence of cannabis. Employers are not required to take any action that would violate federal law.

Mahalo for the opportunity to provide our testimony and for your consideration to move this bill forward on behalf of the state's 27,152 registered medical cannabis patients.

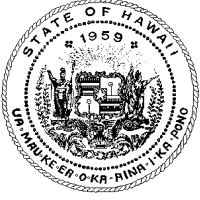
SB-2543-SD-1

Submitted on: 2/18/2020 10:59:01 AM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tai Cheng	Testifying for Aloha Green Holdings Inc.	Support	No

Comments:



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 · FAX: 586-8655 · TDD: 568-8692

February 21, 2020
Rm. 229, 10:30 a.m.

To: The Honorable Rosalyn H. Baker Chair
The Honorable Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole Vice Chair
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2543, S.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports the intent of S.B. No. 2543 S.D. 1, and offers the following comment.

S.B. No. 2543, S.D. 1, amends HRS § 329-125.5 to prohibit an employer from discriminating against a person in the hiring, termination, or condition of employment based on the person’s status as a medical cannabis cardholder, or a registered qualifying medical cannabis patient’s positive drug test for cannabis components or metabolites, unless the patient was impaired on the premises of the place of employment during hours of employment. The new statutory protection expressly does not apply if failure to hire, terminate, impose any term or condition of employment or otherwise penalize an employee would cause the employer to lose a

monetary benefit or license-related benefit under a contract or federal law. And, the new statute would expressly allow employers to use a “fit for duty” test as a tool for a registered qualifying medical cannabis patient in a potentially dangerous occupation, including law enforcement officers and correction facility employees.

The HCRC appreciates that the bill places this new protection in HRS chapter 329, within the statute governing the Department of Health’s administration of the state medical cannabis program, recognizing that the HCRC’s interest is more narrowly focused on the rights of persons with a disability. It is noteworthy that the HRS § 329-121 definition of “debilitating medical condition” is not identical to the HRS § 378-1 and HAR § 12-46-182 definition of “disability,” so not every registered qualifying medical cannabis patient will necessarily be a person with a disability entitled to a reasonable accommodation (and not every person with a disability has a debilitating medical condition). This measure will protect all registered qualifying medical cannabis patients, and does not directly affect the right of persons with a disability to a reasonable accommodation.

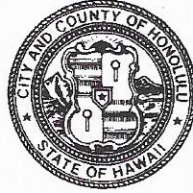
The HCRC supports the intent of S.B. No. 2543, S.D. 1.

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1814
Phone: (808) 723-7800 • Fax: (808) 723-7836

LATE

KIRK CALDWELL
MAYOR



JAMES D. HOWE, JR.
DIRECTOR

IAN T.T. SANTEE
DEPUTY DIRECTOR

February 21, 2020

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
and Members of the Committee on Commerce, Consumer Protection, and Health
The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and Members of the Committee on Judiciary
The Senate, Room 229
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

SUBJECT: Senate Bill No. 2543 SD1
Relating to Medical Cannabis
In Opposition

Dear Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees:

The Honolulu Emergency Services Department which manages both the Emergency Medical Services (EMS) and Ocean Safety and Lifeguard Services Divisions (OSD) for the City and County of Honolulu submits the following clarification regarding its opposition to this measure.

The Department provides licensed pre-hospital medical services to the community via its Emergency Medical Services Division. As noted in testimony from other medical providers licensure requires compliance with Federal law, as noted by Human Resources experts the current collective bargaining agreement and DOT licensure have provisions for mandatory drug testing and specify actions the employer must take to be in compliance with these requirements which are contradicted by this proposed legislation.

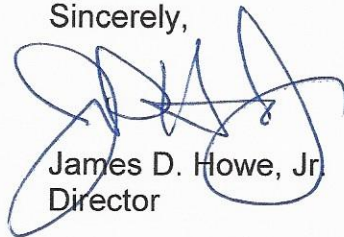
The Department provides ocean safety preventive, ocean safety rescue and pre-hospital emergency medical response services to the community via its Ocean Safety and Lifeguard Services Division. Employees in this specialized work group are required to provide constant vigilance of beach and ocean patrons, identify and respond to life threatening emergencies and utilize a high degree of discernment and judgment in the execution of these responses in the ocean environment. Due to these job duties these employees have been identified as Health,

Safety, Public Trust employees in the Collective Bargaining Agreement for BU14 and are subject to mandatory random drug and alcohol screening to ensure they are in a constant state of fitness to ensure the safety of the community, the lifeguard, and the lifeguard's co-workers.

The Department does not believe that the use of a fitness for duty evaluation is sufficient to ensure both employee and public safety as many of these employees work remotely and independently.

Thank you for the opportunity to provide the Department's concerns in regards to this bill in the provision of EMS and Ocean Safety services for our community.

Sincerely,

A handwritten signature in blue ink, appearing to read "James D. Howe, Jr.", is written over the typed name. The signature is stylized and somewhat illegible due to overlapping loops and lines.

James D. Howe, Jr.
Director

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn Baker, Chair

Senator Stanley Chang, Vice Chair

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Friday, February 21, 2020

10:30 AM - Room 229

STRONG SUPPORT FOR SB 2543 SD1 - EMPLOYMENT DISCRIMINATION

Aloha Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2543 SD1 prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

Community Alliance on Prisons is in strong support of this measure and urges the committee to pass SB 2543 SD1. The amendment begs the question: **Are there 'fitness for duty' tests for other drugs - namely narcotics?** If there are, what method is used? If not, why is medical cannabis singled out when we know that there have been accidents caused by people using narcotics?

Hawai'i should join the sixteen states that currently prohibit employers from discriminating against workers based on their status as medical cannabis patients: Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island and West Virginia.

Please protect our people who have been certified as medical cannabis patients by passing this important measure.

Mahalo for this opportunity to testify.

SB-2543-SD-1

Submitted on: 2/16/2020 7:06:58 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Ching, MD, MPH	Testifying for American Academy of Pediatrics, Hawaii Chapter	Support	No

Comments:

The American Academy of Pediatrics, Hawai'i Chapter offers its support for SB2543 SD1, relating to general excise tax exemption for medical services provided by physicians.

The goal of this bill is to improve access to healthcare for Hawai'i's families by reducing our state's physician workforce shortage. Primary care providers and specialists today practice on ever narrow margins. Changes to the way our state's major health insurer pays for care have resulted in decreased revenue for many of our member physicians.

In addition, the federal Centers for Medicare & Medicaid Services do not allow providers to pass on the general excise tax to patients like many other businesses in Hawai'i. The general excise tax effectively creates a disincentive for providers to care for Medicare patients.

Our Chapter would appreciate your support to pass this bill from your committee. Thank you for this opportunity to testify.

SB-2543-SD-1

Submitted on: 2/15/2020 1:46:18 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND HEALTH**

S.B. 2543, SD1

Relating to Medical Cannabis

Friday, February 21, 2020
10:30 a.m., Agenda Item #6
State Capitol, Conference Room 229

Wanya Ogata
Manager, Corporate Health and Wellness
Hawaiian Electric Company, Inc.

Dear Chair Baker, Vice Chair Chang and Members of the Committee,

My name is Wanya Ogata and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) **in opposition of S.B. No. 2543, SD1** as currently drafted.

While Hawaiian Electric appreciate the intent of this legislation and its overall concept, we believe safety of our employees and the public is paramount, and this legislation as proposed could potentially compromise such. Further, as cannabis remains prohibited under federal law as a Schedule 1 drug, it is unclear how this law may impact a federal contractor's obligations and liabilities under federal laws, such as the Drug Free Workplace Act, which requires federal contractors to meet certain requirements in order to be eligible for federal contracts, and employers operating under the Department of Transportation and Federal Motor Carrier Safety Administration, who must follow detailed drug testing criteria. For example, where a federal contractor has an existing contract with the federal government, federal contract conditions must be maintained throughout

the life of such contract. The failure to comply with such conditions, like ensuring a drug-free workplace, could result in a contractor being suspended, debarred, or terminated.

With respect to safety, it is generally accepted that similar to alcohol and other drugs, being under the influence of cannabis can significantly impair judgment, motor coordination, and reaction time. However, unlike alcohol, there are presently no effective and viable testing methodologies that can determine whether an employee is currently impaired by cannabis or simply used cannabis within a few days of the test. Until new testing methods become available, employees should be prohibited from testing positive for cannabis use for any reason.

At a minimum, consideration should be given to those employees that work within “safety sensitive” positions, which are employees with duties that, if performed while impaired, could reasonably and foreseeably cause significant injury or death to the employee, other employees or members of the public. This approach was taken in an Oklahoma House Bill No. 2612, referred to as the “Unity Bill”, in which Oklahoma Governor signed into law in March 2019. The bill made clear that employers may take adverse employment action against a medical cannabis cardholder-employee who tests positive for cannabis if the position is held by the employee or sought by the applicant involves safety-sensitive job duties.¹ Similarly, at the end of 2019, the National Safety

¹ The Unity Bill defines “safety-sensitive” to mean:

any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:

- a. The handling, packaging, processing, storage, disposal or transport of hazardous materials,
- b. The operation of a motor vehicle, other vehicle, equipment, machinery or power tools,
- c. Repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage,
- d. Performing firefighting duties,

Council issued a policy position that there is no acceptable level of use for workers in safety-sensitive positions.

Should the Committee move this legislation forward, Hawaiian Electric Companies respectfully ask that the bill be amended to exclude federal contractors (and their employees) and “safety-sensitive” employees, adopting such definition from the Unity Bill. Employers should be allowed the latitude to manage risk in the workplace. We must balance the lawful medical use of cannabis with very real safety and liability concerns.

Thank you for this opportunity to provide written testimony.

-
- e. The operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution,
 - f. The extraction, compressing, processing, manufacturing, handling, package, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other regulated component,
 - g. Dispensing pharmaceuticals,
 - h. Carrying a firearm, or
 - i. Direct patient care or direct child care.

Testimony of Ku'uhaku Park
On Behalf of Matson
Opposition to SB2543, SD1
Before the Committees on Commerce, Consumer Protection, and Health
and Judiciary
February 21, 2020

Dear Chair Baker, Chair Rhoads, Vice Chair Chang, Vice Chair Keohokalole, and Members of the Committees,

Matson respectfully opposes SB2543, SD1 Relating to Medical Cannabis. This measure prohibits employers from discriminating against a person in the hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder. This measure allows an employer to use a fit for duty test in potentially dangerous occupations.

Matson's operations involve the use of heavy machinery, which if used incorrectly or under the influence of an intoxicant can cause death or serious bodily injury. Accordingly, Matson maintains a strict zero-tolerance marijuana policy that applies to both on-duty and off-duty use. Although this measure allows an employer to use a "fit for duty" test for a registered qualifying patient in potentially dangerous occupations, testing of medical marijuana use is in its infancy at this time. There is no "fit for duty" test that can accurately determine if an employee who has used medical marijuana is impaired while on the job. This measure increases the possibility of severe on-the-job injuries while subjecting employers to liability for discrimination against employees who use medical marijuana.

This measure also interferes with collective bargaining agreements, which contain provisions with respect to controlled substances like marijuana.

At a minimum, this measure should be amended to:

- (1) Not apply to any potentially dangerous job which could result in bodily injury or death to a third party if a cannabis cardholder-employee were to be impaired during the performance of the employee's job;
- (2) Explicitly state that no employer shall have any liability to any employee who is injured or killed during the performance of the employee's job if an employee's impairment by cannabis was a contributing factor to the employee's death or injury;
- (3) Exempt from this bill employees who are subject to collective bargaining agreements; and
- (4) Amend page 4, lines 15-19 to read: "(2) A registered qualifying patient's positive drug test for cannabis components or metabolites, unless the employer had a good faith belief that the registered qualifying patient was impaired by cannabis on the premises of the employment."

Thank you for considering this testimony in opposition.

SB-2543-SD-1

Submitted on: 2/16/2020 5:39:00 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Miles W. Tuttle	Testifying for Kush Hawai'i	Support	No

Comments:



Akamai Cannabis Clinic

3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON SENATE BILL 2543 SD1
RELATING TO MEDICAL CANNABIS

By
Clifton Otto, MD

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Friday, February 21, 2020; 10:30 AM
State Capitol, Conference Room 229

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this bill:

If the goal of the Legislature is to remove the discrimination that our medical cannabis patients are currently experiencing in the workplace, then a better solution would be one that gets to the source of the problem, rather than putting another band-aid on a wound that should have been prevented two decades ago.

The source of this problem is the ongoing misconception that our medical cannabis program violates federal law.

The way to fix this problem is to obtain a federal exemption from the DEA for the medical use of cannabis in Hawaii, which would prevent the federal regulation of the non-medical use of marijuana from being misapplied to our program. Such an exemption would also allow employers to grant waivers to employees for the state-authorized medical use of cannabis outside of work.

“An Accepted Medical Use Supporter”

The federal exemption option has already been successfully applied to the special use of peyote by members of the Native American Church, and there is even an application process posted on the DEA's website for filing an exemption.

Unfortunately, the Attorney Generals of several states, including our own, are slow to recognize that a state solution exists to correct the misperception that our program is violating federal law. All these Attorney Generals realize that the current situation is unacceptable and a threat to public safety but have failed to recognize that the federal exemption option is a viable solution. Instead, these Attorney Generals believe that Congress should fix a situation that the states created.

Yes, it's a bit crazy, but this is what we are faced with. Which means that we must look beyond the limitations of our own Attorney General and the Attorney Generals of twenty-one other states. We are smart enough to figure this out for ourselves. Our patients are depending upon us to stop the injury they are suffering from being forced to live under the assumption that they are violating federal law in order to engage in the state-authorized medical use of cannabis in Hawaii.

Another issue that must also be addressed regarding medical cannabis patient employment is the ability of an employer to accurately test for cannabis impairment at work. The federal drug-free workplace policy requires that employees be unimpaired in the workplace, but it relies upon an outdated urine test, that can be positive for weeks, to test for cannabis use at work.

What we need is an accurate test that employers can use when acute cannabis intoxication is suspected. Several companies are now working on THC breathalyzer devices that should be commercially available in the near future that would allow an employer to test for cannabis use by an employee within the past 3-4 hours. The Legislature may want to allocate funding to beta test such a device using lawfully registered patients in Hawaii to assist with the implementation of such testing in our state.

The federal exemption amendment below is from SB2462. Written and in-person testimony was presented on this proposed amendment at the hearing for SB2462 by CPH on 01/31/20 and for SB2916 by PSM/CPH on 02/10/20. Therefore, you have everything you need to go ahead and insert the language below into any medical cannabis or controlled substances bill you wish.

Thank you for being brave enough to do the right thing for our patients and our medical cannabis program.

Aloha.

"An Accepted Medical Use Supporter"

"329D-25 Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and qualifying out-of-state patients and the compliance of qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients and medical cannabis dispensaries with state laws and regulations related to medical cannabis. The department shall submit a written request, in accordance with title 21 C.F.R. section 1307.03, to the Office of Diversion Control, Drug Enforcement Administration by September 1, 2020, stating that part IX of chapter 329 and this chapter do not create any positive conflict with state or federal drug laws and regulations and are consistent with title 21 U.S.C. section 903, and requesting formal written acknowledgement that the listing of marijuana as a controlled substance in federal schedule I does not apply to the nonprescription use of cannabis under the medical cannabis registry and dispensary programs established pursuant to chapters 329 and 329D."

September 23, 2019

Hon. Nancy Pelosi
Speaker of the House
H-232, The Capitol
Washington, DC 20515

Hon. Kevin McCarthy
Minority Leader
H-204, The Capitol
Washington, DC 20515

Hon. Mitch McConnell
Majority Leader
317 Russell Bldg.
Washington, DC 20510

Hon. Charles E. Schumer
Minority Leader
322 Hart Bldg.
Washington, DC 20510

Hon. Steny Hoyer
Majority Leader
H-107, The Capitol
Washington, DC 20515

Hon. Steve Scalise
Minority Whip
1705 Longworth Office Building
Washington, DC 20515

Hon. James E. Clyburn
Majority Whip
H-329. The Capitol.
Washington, DC 20510

Hon. Richard J. Durbin
Minority Whip
711 Hart Bldg.
Washington, DC 20510

Hon. Peter DeFazio
Chair
House Committee on Transportation and
Infrastructure
2134 Rayburn Office Building
Washington, DC 20515

Hon. Sam Graves
Ranking Member
House Committee on Transportation and
Infrastructure
1135 Longworth House Office Building
Washington, DC 20515

Hon. Frank Pallone
Chair
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Greg Walden
Ranking Member
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Karen Bass
Chair
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

Hon. John Ratcliffe
Ranking Member
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

Hon. Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Congressional Leaders:

We are a bipartisan group of state and territorial attorneys general who share a strong interest in defending states' rights, protecting public safety, improving our criminal justice systems, and regulating new industries appropriately. To address these concerns, we urge Congress to advance legislation like the bipartisan STATES Act (Strengthening the Tenth Amendment Through Entrusting States Act), currently proceeding as S.B. 1028 in the Senate and H.R. 2093 in the House of Representatives. The proposed STATES Act, or legislation like it, would allow each State and territory to determine, for itself, the best approach to marijuana legalization within its borders, while at the same time creating protections to ensure that such regulation does not impose negative externalities on those states and territories that choose other approaches. **Indeed, nothing in the proposed STATES Act, and nothing in this letter, is meant as an endorsement of any state or territory's particular approach to cannabis policy.** Instead, legislation like the proposed STATES Act is simply meant to ensure that if a state or territory does choose to legalize some form of marijuana use – which at least 33 states and several territories have done – its residents are not subject to a confusing and dangerous regulatory limbo.

As noted, the majority of Americans are affected by this issue. Today, some 33 states and several territories have passed laws that legalize the use of marijuana in at least some capacity. However, under the Controlled Substances Act and 18 U.S.C. § 1956 and 1957, businesses and individuals who produce, sell, or possess marijuana, or engage in financial transactions with proceeds thereby derived are still in violation of federal law. This inconsistency puts a significant burden upon businesses working to operate in a legal industry in a manner that is safe and compliant with state law, as well as on law enforcement agencies trying to ensure complicity to regulations. It also represents a substantial imposition on the prerogative of states and territories to choose those policies that work best for them and their citizens.

Beyond imposing on states' rights, the status quo poses a serious threat to public safety. Under 18 U.S.C. § 1956 and 1957, financial institutions face substantial constraints in providing financial services to the cannabis industry. The result is that much of this industry is forced to conduct business on a cash-only model. In turn, this contributes to a public safety threat as cash-intensive businesses are often targets for criminal activity and make it more difficult to track revenues for taxation and regulatory compliance purposes.

Legislation such as the STATES Act, by ensuring the CSA does not “apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, [sale,] or delivery of mari[j]uana,” will strike at the root of these challenges. In particular, it will lift the cloud of regulatory uncertainty that hangs over legitimate businesses operating in most states in the union and in several territories. In turn, this will reduce the industry's reliance on cash, bring greater clarity to the industry, prevent crime by limiting opportunities for potentially violent robberies and thefts, and ensure that each state has the freedom to determine policy in this area. At the same time, the Act also includes crucial guardrails to ensure that the choices any state makes does not adversely impact its neighbors.

Ultimately, legislation like the proposed STATES Act recognizes the reality on the ground: across the country, state governments, America's "laboratories of democracy," have been working toward those cannabis policies that work best for them. Against this backdrop, the CSA's outdated restrictions imperil states' rights, and in the process, impose serious regulatory and public safety consequences. As law enforcement officers and as lawyers representing our states and territories, we believe the time has come to do better. We urge the adoption of legislation like the proposed STATES Act.

Sincerely,



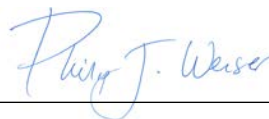
KARL RACINE
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KEVIN CLARKSON
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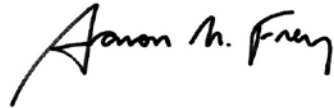
TOM MILLER
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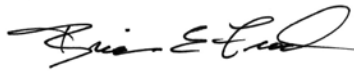
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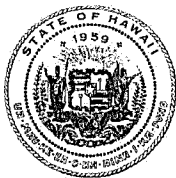


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February 5, 2020

The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce, Consumer Protection, and Health
State Senator, 6th District
State Capitol, Room 230
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: Exemption of Cannabis from the Controlled Substances Act

Dear Senator Baker:

On January 31, 2020, you requested guidance and clarification regarding Senate Bill No. 2462. Specifically, you asked about the effect of the Department of Health (Department) requesting a special use exemption from the Drug Enforcement Administration (DEA) recognizing that the listing of marijuana as a federal schedule I controlled substance does not apply to Hawaii's medical cannabis program.

Senate Bill No. 2462 directs the Department to submit a written request pursuant to 21 C.F.R. § 1307.03 to the DEA. Section 1307.03 states in relevant part that:

[a]ny person may apply for an exception to the application of any provision of this chapter by filing a written request with the Office of Diversion Control, Drug Enforcement Administration, stating the reasons for such exception The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

21 C.F.R. § 1307.03 (2010). While the Department may apply for an exception to the Controlled Substances Act (CSA) for the medical use of cannabis at any time, the likelihood of such a petition being granted is extremely low. Multiple previous petitions seeking to exempt marijuana from the CSA have been denied by the DEA. These denials have been upheld by

federal courts in various circuits. In affirming the DEA's decision to deny a petition to exempt marijuana from the CSA for religious use, the court in Olsen v. Drug Enforcement Admin., 878 F.2d 1458, 1462 (D.C. Cir. 1989), noted that:

[t]he pivotal issue, therefore, is whether marijuana usage by Olsen and other members of his church can be accommodated without undue interference with the government's interest in controlling the drug. Three circuits have so far considered pleas for religious exemption from the marijuana laws; each has rejected the argument that accommodation to sacramental use of the drug is feasible and therefore required.

While both the text of Senate Bill No. 2462 and multiple testifiers assert that a special use exemption for marijuana would be analogous to the exemption granted to the Native American Church (NAC) for the use of peyote in 21 C.F.R. § 1307.31, the two examples differ greatly. The exemption granted to the NAC for peyote did not result from a petition to exempt. Rather, the DEA drafted the rule following the California Supreme Court's ruling in People v. Woody, 61 Cal. 2d 716 (1964), which found that the Free Exercise Clause of the First Amendment prohibited the state from prosecuting a member of the NAC for using peyote in religious practices. Following the Woody case, the 89th Congress introduced and passed a measure, H.R. 2, which explicitly provided that the term "depressant or stimulant drug" did not include "peyote (mescaline) but only insofar as its use is in connection with the ceremonies of a bona fide religious organization." H.R. Rep. No. 130, 89th Cong., 1st Sess. 35 (1965). Thus, the exemption granted to the NAC for peyote remains consistent with Congressional intent as well as judicial review, unlike the proposed exemption for the medical use of cannabis.

The court in Olsen highlighted the differences between a proposed exemption for marijuana and the established exemption for peyote by noting that:

[t]he DEA has cogently explained why a tightly-cabined exemption for peyote use in a religious rite need not mean that religious use of marijuana (or any other widely used controlled substance) must be accommodated:

[T]he actual abuse and availability of marijuana in the United States is many times more pervasive . . . than that of peyote . . . The amount of peyote seized and analyzed by the DEA between 1980 and 1987 was 19.4 pounds. The amount of marijuana seized and analyzed by the DEA between 1980 and 1987 was 15,302,468.7 pounds. This overwhelming difference explains why an accommodation can be made for a religious organization which uses peyote in circumscribed ceremonies, and not for a religion which espouses continual use of marijuana.

Olsen, 878 F.2d at 1463.

Even if the DEA were to grant the Department's petition to exempt marijuana, it could have unintended consequences regarding the medical use of cannabis currently enjoyed by our state's qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients. The freedom that qualifying patients and qualifying out-of-state patients currently enjoy to use cannabis medicinally would likely be significantly curtailed should a petition for exemption be granted. In Olsen, the court characterized a proposed exemption which allowed cannabis use one day a week during a three-hour ceremony as burdensome for the government to regulate. Olsen, 878 F.2d at 1460, 1463. Here, part IX of chapter 329, Hawaii Revised Statutes (HRS), enables qualifying patients and qualifying out-of-state patients to possess up to four ounces of cannabis or manufactured cannabis products at any given time, which significantly exceeds the amounts and usage proposed in Olsen. HRS § 329-121 (2018). Thus, an exemption for the medical use of cannabis could likely impose additional controls on our state's patients and caregivers beyond what state law currently requires.

While Senate Bill No. 2462 does not currently address the rescheduling of marijuana, it is also an idea that has been pursued in the past. Rescheduling, as you may know, is different from requesting an exemption. Rescheduling would likely impose additional controls on our state's patients and caregivers beyond what is currently required under state law. In short, it could have the effect of eliminating our dispensary system and a patient's ability to grow their own cannabis, in favor of dispensing and prescription regulations required under the CSA that would severely limit patient access to cannabis. The United States Supreme Court raised this possibility in Gonzales v. Raich, 545 U.S. 1, 27-28 (2005). In Gonzales, two medical marijuana patients in California whose marijuana plants were seized by the DEA sought to have the CSA declared unconstitutional. The Court noted that:

even if respondents are correct that marijuana does have accepted medical uses and thus should be redesignated as a lesser schedule drug, the CSA would still impose controls beyond what is required by California law. The CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements. See §§ 21 C.F.R. 821-830; 21 C.F.R. § 1301, et seq. (2004). Furthermore, the dispensing of new drugs, even when doctors approve their use, must await federal approval. United States v. Rutherford, 442 U.S. 544 (1979). Accordingly, the mere fact that marijuana – like virtually every other controlled substance regulated by the CSA – is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.

Gonzales, 541 U.S. at 27-28.

The Honorable Rosalyn H. Baker
February 5, 2020
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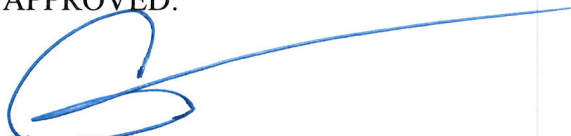
We hope that the foregoing is helpful. If you have any further questions, please do not hesitate to contact me at 587-3050.

Very truly yours,



Tara K.C.S. Molnar
Deputy Attorney General

APPROVED:



Clare E. Connors
Attorney General



Akamai Cannabis Clinic

3615 Harding Ave, Suite 304
Honolulu, HI 96816

February 9, 2020

The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 230
415 S. Beretania, Street
Honolulu, HI 96813

Re: State Attorney General Guidance on SB2462

Dear Senator Baker,

Thank you for requesting guidance from the Office of the Attorney General on the effect that obtaining a federal Schedule I exemption for the medical use of cannabis in Hawaii could have upon our Medical Cannabis Program.

Unfortunately, this guidance contains serious errors in its interpretation of the facts in this matter.

In [People v. Woody](#) (1964), the Native American Church (NAC) was granted a state exemption for the ceremonial use of peyote by the California Supreme Court, and they were able to go on to obtain a federal exemption for such use. In [Olsen v. Drug Enforcement Administration](#) (1989), Olsen's church had no such state exemption, and his petition for a federal exemption was denied.

This is a critical difference, which supports my argument that the State is justified in obtaining a federal exemption for the medical use of cannabis in Hawaii because there is already a preceding state exemption for such use.

The Attorney General's guidance also incorrectly states that the NAC's federal exemption for peyote did not result from an exemption petition:

"The exemption granted to the NAC for peyote did not result from a petition to exempt. Rather, the DEA drafted the rule following the California Supreme Court's ruling in [People v. Woody](#). 61 Cal. 2d 716 (1964),"

In fact, just the opposite is true. As noted in the Congressional record, the NAC specifically requested that their ceremonial use of peyote be recognized during hearings for the 1965 amendments to the Food, Drug and Cosmetic Act (see Assistant U.S. Attorney General Theodore Olson's 1981 paper on "[Peyote Exemption for Native American Church](#)", p. 406).

"We have been advised by a representative of the North [s/c Native] American Church that this church is a bona fide religious organization and that peyote has bona fide use in the sacrament of the church. The representative has agreed to document both of these statements."

This request from the NAC resulted in the promulgation of an administrative rule by the Department of Health, Education, and Welfare, recognizing a federal exemption for the ceremonial use of peyote by the NAC (see "Peyote Exemption for Native American Church", p. 407).

Then again in 1970, when Congress was creating the federal Controlled Substances Act (CSA), the NAC requested in writing that the existing exemption be continued, which the Deputy Chief Counsel for the Bureau of Narcotics and Dangerous Drugs (BNDD) supported (see "Peyote Exemption for Native American Church, p. 407):

"Mr. Sonnenreich [Deputy Chief Counsel of BNDD]. In the first instance, Mr. Satterfield, the Native American Church did ask us by letter as to whether or not the regulation, exempting them by regulation, would be continued and we assured them that it would because of the history of the church."

Thereafter, the federal NAC peyote exemption was preserved under the CSA as [21 CFR 1307.31](#), using the same language as the original rule (see "Peyote Exemption for Native American Church, p. 407). BNDD later became the Drug Enforcement Administration (DEA) in 1973. The NAC's federal peyote exemption exists to this day.

In light of these findings, I respectfully request that you reconsider your position on this issue and allow the proposed federal exemption amendment to be included in current measures that have a very high likelihood of making it to the Governor's desk.

Thank you for everything you are doing for our patients.

Aloha,



Clifton Otto, MD
cliftonotto@hotmail.com
808-233-8267

Proposed amendment in [SB2462](#):

"329D-25 Coordination among state and federal agencies. The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and qualifying out-of-state patients and the compliance of qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients and medical cannabis dispensaries with state laws and regulations related to medical cannabis. The department shall submit a written request, in accordance with title 21 C.F.R. section 1307.03, to the Office of Diversion Control, Drug Enforcement Administration by September 1, 2020, stating that part IX of chapter 329 and this chapter do not create any positive conflict with state or federal drug laws and regulations and are consistent with title 21 U.S.C. section 903, and requesting formal written acknowledgement that the listing of marijuana as a controlled substance in federal schedule I does not apply to the nonprescription use of cannabis under the medical cannabis registry and dispensary programs established pursuant to chapters 329 and 329D."

SB-2543-SD-1

Submitted on: 2/14/2020 5:46:12 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Gordon	Individual	Support	No

Comments:

Aloha

Employees who need to use medical marijuana should not be discriminated against at work, housing or anywhere else. If an individual tests positive for marijuana, the individual may have not have taken the marijuana recently. This material can accumulate in a person's body for up to 30 days without any negative, harmful or dangerous side effects.

Most medical marijuana users would have no problem performing their work duties properly and safely.

I agree with the employer option in SB 2543. If an employee performs potentially dangerous or hazardous work, the employer has the option to perform a fit for duty test.

Please Support SB 2543 - Related to Non Discrimination to Medical Marijuana patients.

Mark Gordon,

Waikoloa HI.

SB-2543-SD-1

Submitted on: 2/16/2020 6:25:52 PM

Testimony for CPH on 2/21/2020 10:30:00 AM

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

Comments:

SB-2543-SD-1

Submitted on: 2/15/2020 6:21:06 AM

Testimony for CPH on 2/21/2020 10:30:00 AM

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

Comments:

SB-2543-SD-1

Submitted on: 2/19/2020 9:03:43 AM

Testimony for CPH on 2/21/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Taryn Dizon	Individual	Support	No

Comments:

Aloha Chair Baker and Vice Chair Chang, and member of the Committee on Commerce, Consumer Protection, and Health.

My name is Taryn Dizon and I am very proud to testify today in support of SB2543, which prohibits an employer from discriminating against a person who legally holds a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupation.

During most situations, medication is never taken while employed and a person shall not be punished for their type of medication.

Mahalo for the opportunity to testify,

Taryn Dizon