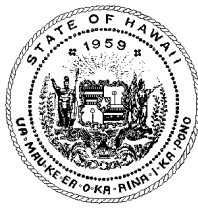


DAVID Y. IGE  
GOVERNOR



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, SENATE DRAFT 2  
RELATING TO MEDICAL CANNABIS.

by  
Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Labor and Public Employment  
Representative Aaron Ling Johanson, Chair  
Representative Stacelynn K.M. Eli, Vice Chair

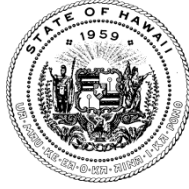
Thursday, March 12, 2020; 9:00 a.m.  
State Capitol, Conference Room 309

Chair Johanson, Vice Chair Eli, and Members of the Committee:

The Department of Public Safety (PSD) **supports** Senate Bill (SB) 2543, Senate Draft (SD) 2, as the amended Subsection (g) exempts key types of employees of PSD whose job descriptions require the carry and use of firearms and/or work in law enforcement or correctional facilities.

SB 2543, SD 2 will ensure compliance with federal law related to prohibitions of firearms possession and also assist correctional facilities in restricting the introduction of contraband into the facility, thereby ensuring the safety and security of offenders, correctional staff, and the public.

Thank you for the opportunity to present this testimony.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 12, 2020  
9:00 a.m.  
State Capitol, Room 309

**S.B. 2543, S.D. 2**  
**RELATING TO MEDICAL CANNABIS.**

House Committee on Labor and Public Employment

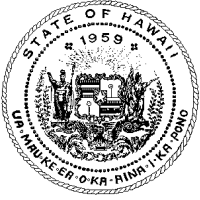
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The Department of Transportation (DOT) **opposes** this bill which prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions; and that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

Currently, there are no accepted tests to determine whether an employee is impaired by cannabis while at work. The Occupational Safety and Health rules currently require employers to provide employees places of employment free from recognized hazards. This bill would place extra burden on employers, endanger employees and could possibly lead to enormous liabilities.

This bill should include all employees being subject to fit for duty testing regardless of their occupation. An impaired employee could cause damages other than safety related injury and place an employer at financial risk. This bill states the use of a fit for duty test and suggests its use as a "risk-based assessment tool". The use of a "risk-based assessment tool" is ambiguous and would need to be clarified in detail. A fit for duty test also should not replace determination based on specific, contemporaneous, and articulable observation concerning the appearance, behavior, speech, or body odor of the employee and allow employers to take a proactive approach to employee safety.

Thank you for the opportunity to provide testimony.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 12, 2020  
Rm. 309, 9:00 a.m.

To: The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
Members of the House Committee on Labor and Public Employment

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

Re: S.B. No. 2543, S.D. 2

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. 2, and offers the following comment.**

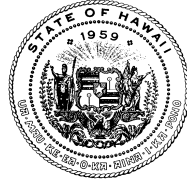
S.B. No. 2543, S.D. 2, amends HRS § 329-125.5 to prohibit an employer from discriminating against a person in the hiring, termination, or condition of employment based on the person’s status as a medical cannabis cardholder, or a registered qualifying medical cannabis patient’s positive drug test for 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. The S.D. 2 also provides nine

enumerated exceptions to the new protections against discrimination for registered qualifying medical cannabis patients.

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, other than those who fall under the exceptions provided, but 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. 2.

DAVID Y. IGE  
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, PHD  
DIRECTOR OF HEALTH

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

**WRITTEN ONLY**

**Testimony COMMENTING on SB 2543 SD2**  
**RELATING TO MEDICAL CANNABIS**

REPRESENTATIVE AARON LING JOHANSON, CHAIR  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Hearing Date: 03/12/20

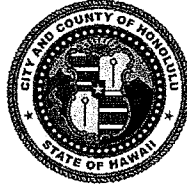
Room Number: 309

- 1 **Fiscal Implications:** None
- 2 **Department Testimony:** The Department Health appreciates and supports the intent of this
- 3 measure. The purpose of this bill is to provide additional employment protections for all
- 4 registered patients, based solely on their status as a medical cannabis patient who are in strict
- 5 compliance with State rules and laws. Continuity of access to medical cannabis is important for
- 6 registered patients.
- 7 Thank you for the opportunity to provide testimony.

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

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

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

March 12, 2020

The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
and Members of the Committee on Labor & Public Employment  
House of Representatives, Room 309  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee:

SUBJECT: Senate Bill No. 2543 SD2  
Relating to Medical Cannabis

The Department of Human Resources, City and County of Honolulu ("the City") respectfully submits **comments** on SB 2543 SD2. The City supports the amendments in SD2 which exempt several categories of work in the interest of maintaining high standards of public safety.

The City further notes, however, that the bill provides for a "risk-based assessment tool" of a fit for duty test. Unfortunately, "fit for duty test" is not further defined, and this "tool" is limited to only "potentially dangerous occupations." The City would find further clarification helpful.

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 employers may continue to send employees for medical evaluations whenever there is a legitimate safety concern, regardless of the occupation. Any other interpretation would provide medical cannabis users greater protection than any other substance, including, for example, prescription medications or alcohol. Medical cannabis should not be treated better than users of any other potentially dangerous substance.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Carolee C. Kubo in black ink.

Carolee C. Kubo  
Director



DEREK S. K. KAWAKAMI  
Mayor

MICHAEL A. DAHLIG  
Managing Director

## POLICE DEPARTMENT COUNTY OF KAUI

3990 KAANA STREET, SUITE 200  
LIHUE, HAWAII 96766-1268  
TELEPHONE (808) 241-1600  
FAX (808) 241-1604  
[www.kauai.gov/police](http://www.kauai.gov/police)



TODD G. RAYBUCK  
Chief of Police

Testimony of Todd G. Raybuck  
Chief of Police  
Kaua'i Police Department

Before the  
House Committee on Labor & Public Employment  
March 12, 2020; 9:00 am  
Conference Room 309

In consideration of  
Senate Bill 2543 SD2  
Relating to Medical Cannabis

Honorable Chair Johanson, Honorable Vice Chair Eli and Members of the Committee

The Kaua'i Police Department is **opposed** to Senate Bill 2543 SD2, 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; and specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

Presently, we know of no effective means of real-time quantitative testing for cannabis impairment. Employers are federally mandated under the Occupational Safety and Health Administration (OSHA) to address impaired employees that contribute to an unsafe working environment. Although the bill provides for "Fitness for Duty" testing for "potentially dangerous occupations" like law enforcement, without a scientifically established means to do so, employers are unable to adhere to OSHA mandates and unable to conduct fitness for duty testing.

Marijuana is a Schedule I substance under federal law, and law enforcement employees who use marijuana, irrespective of their qualified status under the State of Hawaii medical marijuana law, are prohibited from possessing firearms under 18 U.S. Code § 922. Unlawful acts. Law enforcement employees that are required to handle firearms such as firearms clerks, evidence custodians, crime scene specialists and the like are



prohibited by federal law from possessing firearms if under the influence of cannabis. A law enforcement employee that is required to handle firearms and is prohibited from doing so, would be prevented from carrying out the essential job functions they were hired and trained to do. Further, because of the limited amount of personnel within our organization, civilian law enforcement personnel assigned to other duties may be assigned to handle firearms. If under the influence of cannabis, the employee would be prohibited from handling firearms, thereby hindering our organization's ability to utilize personnel in an efficient and effective manner. All law enforcement employees should be exempt.

Public safety is our priority. The conundrum of cannabis impairment testing must be solved before such a bill can be considered and employees that have a direct effect on the safety of the public must be excluded from this bill to include all civilian law enforcement employees.

For these reasons the Kauai Police Department is **opposed** to Senate Bill 2543 SD2.

Thank you for your time and consideration.

Sincerely,



Todd G. Raybuck  
Chief of Police  
Kaua'i Police Department







March 12, 2020

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
LABOR & PUBLIC EMPLOYMENT  
ON SB 2543 SD2 RELATING TO MEDICAL CANNABIS**

Aloha Chair Ling Johanson and committee members. I am Gareth Sakakida Managing Director of the Hawaii Transportation Association (HTA) with over 375 members involved with the commercial ground transportation industry.

HTA supports this bill as written.

Motor carriers are bound by federal motor carrier safety regulations in regards to substance and alcohol testing. Being in non-compliance would mean facing an enforcement case resulting in monetary and/or incarceration penalties.

The exception under paragraph f, number 9 is essential for our industry.

Mahalo.

Testimony of Ku'uhaku Park  
On Behalf of Matson  
Comments on SB2543, SD2  
Before the Committee on Labor  
March 12, 2020

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee,

Matson respectfully provides comments SB2543, SD2 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 with certain exemptions.

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. Matson appreciates that this draft provides exemptions for employees operating heavy machinery and other vehicles.

Matson respectfully requests that your Committee further amend this measure to provide liability protections for employers. Specifically, we encourage consideration of language that explicitly states 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.

Thank you for considering this testimony.

**SB-2543-SD-2**

Submitted on: 3/10/2020 10:46:58 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
jaclyn moore	Big Island Grown Dispensaries	Support	No

Comments:

**SB-2543-SD-2**

Submitted on: 3/10/2020 2:43:03 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tai Cheng	Aloha Green Holdings Inc.	Support	No

Comments:

Protecting patients should be paramount.



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

## TESTIMONY IN SUPPORT OF SB 2543, SD 2

TO: Chair Johanson, Vice Chair Eli, and Members of the House Labor & Public Employment Committee

FROM: Nikos Leverenz  
DPFH Board President

DATE: March 12, 2020 (9:00 AM)

---

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** SB 2543, SD 2, 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](#). Much of the continued trepidation around cannabis comes from eight decades of government disinformation that bears little relation to biological or natural science and its use as medicine for many thousands of years. In contrast to pervasive criminalization and dehumanization, 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.

Further, with respect to the categories outlined under the proposed subsection (g), please bear in mind that many individuals, including those who are in occupations that demand a high level of mental acuity and physical effort, have access to pain medications and sleep aids through their medical providers. These prescription medications can pose significant dangers during use and have a wide range of serious side effects that are simply not present with cannabis use.

That said, 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.

# HAWAI'I CANNABIS INDUSTRY ASSOCIATION

March 12, 2020

To: Representative Aaron Ling Johanson, Chair  
Representative Stacelynn K.M. Eli, Vice Chair  
Members of the House Committee on Labor & Public Employment

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

Re: **SB2543 SD2 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. Exempts certain occupations. Effective 1/2/2050. (SD2)

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, 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

Hawai'i Cannabis Industry Association (HICIA)  
220 S King St #1600, Honolulu, HI 96813  
[www.808hcia.com](http://www.808hcia.com)

## HAWAI'I CANNABIS INDUSTRY ASSOCIATION

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-



## HAWAI'I CANNABIS INDUSTRY ASSOCIATION

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-2**

Submitted on: 3/11/2020 7:36:15 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Miles W. Tuttle	Kush Hawai'i	Support	No

Comments:

**SB-2543-SD-2**

Submitted on: 3/10/2020 9:09:05 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch, Sr.	Individual	Support	No

Comments:

Please pass SB2543.

Mike Golojuch, Sr.

**SB-2543-SD-2**

Submitted on: 3/11/2020 5:15:23 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
dain retzlaff	Individual	Support	No

Comments:

# Late Testimonies



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 309  
THURSDAY, MARCH 12, 2020 AT 9:00 A.M.**

To The Honorable Aaron Ling Johanson, Chair;  
The Honorable Stacelynn K.M. Eli, Vice Chair; and  
Members of the Committee on Labor & Public Employment,

**TESTIMONY IN OPPOSITION TO SB2543 SD2 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.”**

We appreciate the expansion of the list of exemptions and agree with all that have been included. However, there are still examples of positions that require the use of dangerous tools, materials and work in dangerous situations that can be a safety concern and increase liability for businesses and should be exempt, including but not limited to chefs, butchers, unarmed hotel security, landscapers, pool maintenance workers, painters, home fumigators, and roofers. 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. Data from OSHA should be correlated and a task force should be created, including island chambers of commerce and impacted industries, to create this list. Protecting employers and employees is paramount. Even with a comprehensive list of exemptions, we understand this bill will cause significant hardship for professional employer services and their clients, many of which are small businesses, who are not large enough to have their own HR Department and rely on these services to operate.



# 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.



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**Toby Taniguchi**, KTA Superstores, *Advisor*

TO:  
Committee on Labor & Public Employment  
Rep. Aaron Ling Johanson, Chair  
Rep. Stacelynn K.M. Eli, Vice Chair



FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: March 12, 2020  
TIME: 9am  
PLACE: Conference Room 309

RE: SB2543 SD2 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.





**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
March 12, 2020**

**Re: SB 2543 SD2 RELATING TO MEDICAL CANNABIS**

Good morning Chair Johanson and members of the House Committee on Labor and Public Employment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization committed to supporting the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

While we applaud the efforts to exempt many categories in SB 2543 SD2 Relating to Medical Cannabis, we still have a few concerns. This measure 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; exempts certain occupations; and is effective 1/2/2050.

RMH does have questions and concerns regarding this measure. Would retailers be exempt as we work with children, the elderly and other vulnerable populations? Retailers' customers and employees comes in all ages, ethnic and social economic backgrounds. In addition, because retailers use machinery like cash registers, compactors, electric hand trucks would this also make us exempt?

It is our understanding that obtaining a medical cannabis card in Hawaii is not that difficult to do and we do not judge those who have these cards. However, retailers' main concerns are the safety of not only our customers but our employees as well. We are aware that impaired employees could have serious consequences for employers. Retail employees not only handle monetary transactions at the cash register, but the visual merchandisers who are on high ladders dressing windows and the showroom floor, stockers using razor blade box cutters, hand trucks and lifting boxes, employees using compactors to name a few. If an employee is impaired and injured a customer, themselves or another employee, the employer would be held liable and in many cases a lawsuit follows.

This measure still raises a lot of uncertainty and the employer could still easily be held liable for any injury or negative impact.

We hope that you will consider holding this measure.

Mahalo for this opportunity to testify.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Labor and Public Employment**  
**Thursday, March 12, 2020 at 9:00 A.M.**  
**Conference Room 309, State Capitol**

**RE: SB 2543 SD2, RELATING TO MEDICAL CANNABIS**

**LATE**

Chair Johanson, Vice Chair Eli, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has concerns** regarding SB 2543 SD2, 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 and exempts certain 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. We would also note our concerns about what occupations would be defined as a potentially dangerous occupation under this bill and the reliability of a fit for duty test to be used as a tool to determine if an employee is impaired.

Thank you for the opportunity to voice our concerns regarding SB 2543 SD2.



Hawaiian  
Electric

**LATE**

**TESTIMONY BEFORE THE HOUSE  
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

**S.B. No. 2543, SD2**

**Relating to Medical Cannabis**

Thursday, March 12, 2020  
9:00 a.m., Agenda Item #1  
State Capitol, Conference Room 309

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

Dear Chair Johanson, Vice Chair Eli and Members of the Committee,

My name is Wanya Ogata and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) **in support of S.B. No. 2543, SD2, Relating to Medical Cannabis, with an amendment articulated on page 2.**

Hawaiian Electric appreciates the intent of this legislation in its current form, as it would eliminate the concerns shared in our previous testimony. The Senate Committee on Commerce, Consumer Protection, & Health and the Senate Committee on Judiciary proposed the insertion of language to exempt various categories of employment from the protection of this legislation, including “(D) public utilities, such as the electrical power grid or the water source”. Unfortunately, the placement of this exemption (D) under subsection g(9), which begins with “Employees who operate or are in physical control of any of the following” -- this language as drafted is ambiguous and may cause confusion.

**Should the Committee move this legislation forward, Hawaiian Electric respectfully asks that the bill be amended by making “public utilities, such as the electrical power grid or the water source” a stand-alone exemption under subsection (g).**

Thank you for this opportunity to provide written testimony.