



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
RELATING TO MEDICAL CANNABIS

SENATOR BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
Hearing Date: 01/30/20 Room Number: 224

- 1 **Fiscal Implications:** None
- 2 **Department Testimony:** The Department Health appreciates the intent of this measure and
- 3 provides comments. The purpose of this bill is to provide additional employment protections for
- 4 registered patients who are in compliance with State rules and laws. Continuity of access to
- 5 medical cannabis is important for registered patients.
- 6 Although the department does not have expertise in the area of employment laws and
- 7 protections, there are concerns regarding the implementation because there are no general
- 8 standards to be applied in determining which employees are required to be “cannabis free”, and
- 9 the difficulty in determining which employer might lose a monetary or licensing-related benefit.
- 10 Thank you for the opportunity to provide testimony.



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. AMENDED

TESTIMONY ON SENATE BILL 2543
RELATING TO MEDICAL CANNABIS

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Labor, Culture and the Arts
Senator Brian T. Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair

Thursday, January 30, 2020; 2:45 p.m.
State Capitol, Conference Room 224

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

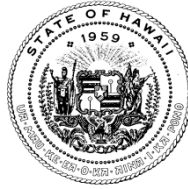
The Department of Public Safety (PSD) offers comments to Senate Bill (SB) 2543. While well-intended, PSD is concerned how this measure would affect our department employees who are law enforcement officers or who work in any State correctional facility. These employees are subject to not only the requirements of federal laws relative to the shipping, transporting, receiving, or possessing firearms or ammunition, as referenced by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives' Open Letter, dated September 21, 2011 (attached) but also the prohibitions related to negotiated Collective Bargaining Agreements.

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 the following amendment on page 4, line 8, and 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 federal law or federal regulations, an employer shall not discriminate against a person in hiring, termination, or any term or condition of employment, or other penalize a person, if the discrimination is based upon either of the following: . . .”

This proposed amendment will ensure compliance with the federal law related to prohibitions of firearms possession, and would also assist correctional facilities with restricting 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.



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

January 30, 2020
2:45 p.m.
State Capitol, Room 224

S.B. 2543
RELATING TO MEDICAL CANNABIS

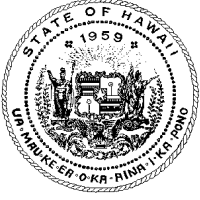
Senate Committee on Labor, Culture and the Arts

The Department of Transportation (DOT) is in **opposition** to S.B. 2543 relating to medical cannabis. This bill 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. It specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupants.

The DOT is federally prohibited from allowing any person with a commercial driver license to operate a commercial motor vehicle with any illicit drug as prescribed by the federal law. Under federal rules, Section 382.213 of the Federal Motor Carrier Safety Administration, drivers may be tested prior to driving and upon being tested positive, regardless if they possess a medical license, it is grounds for termination. In part if the driver's duty is required to perform safety-sensitive functions, unless a medical practitioner has advised the driver that the substance will not adversely affect the driver's ability to operate a commercial motor vehicle they will be subject to the federal laws.. Under these circumstances, a person may be hired but if it is known that the person is licensed to medically induce federally illicit drugs, that person may be tested each time prior to undertaking safety-sensitive functions.

The DOT is opposed the S.B. 2543 based on the above regulations by the Federal Motor Carrier Safety Administration and urge you not to pass this bill.

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

January 30, 2020
Rm. 224, 2:45 p.m.

To: The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

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

Re: S.B. No. 2543

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 and offers the following comment.

S.B. No. 2543 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 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.

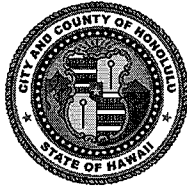
The HCRC appreciates that the bill places this new protection in HRS chapter 329, within the statute governing the Department of Health's administration of the state medical cannabis program, recognizing that the HCRC's interest is more narrowly focused on the rights of persons with a disability. It 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 affect the right of persons with a disability to a reasonable accommodation.

The HCRC supports the intent of S.B. No. 2543.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH 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

January 30, 2020

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

SUBJECT: Senate Bill No. 2543
Relating to Medical Cannabis

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Department of Human Resources, City and County of Honolulu (“the City”) is concerned by the provisions of SB 2543, proposing non-discrimination in employment against medical cannabis patients and cardholders. In the interest of maintaining the highest standards of public safety, we respectfully submit the following comments.

Certain occupations, such as first responders, positions which allow for use of firearms, and other highly safety-sensitive positions or those involving law enforcement, are simply incongruous with cannabis use or possession, irrespective of whether the employer would lose a monetary or licensing-related benefit. The City would prefer that a limited number of positions be exempt, so that employers would be able to decline to employ a person merely by virtue of the prospective candidate being a cardholder.

We further note that the bill as currently written provides little clarity or certainty for employers or cannabis users. To the City’s knowledge, there is currently no objective and approved laboratory test available which could reliably determine whether an employee is “impaired” by cannabis. As such, the bill’s standard of “impaired” could place a large burden on employers. Currently, City supervisors already receive training on identifying “specific, articulable” signs and symptoms of drug use and substance abuse—even so, the reality is that “impairment” does not always present itself in an observable manner, prior to an accident—at which time it is already too late. We would be much more comfortable with a standard relying on a pre-determined cutoff-level of cannabinoid metabolite, in urine or saliva. Though we understand science is currently unable to reliably predict “impairment” via laboratory tests, a simple bright-line standard,

The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
and Members of the Committee
on Labor, Culture and the Arts
January 30, 2020
Page 2

to objectively give an estimation as to how recently a person had come into contact with cannabis and/or the estimated potency, quantity, regularity and/or frequency of use, would be preferable to a subjective observation of supervisors. Employers and patients alike would benefit from such clarity.

The City is heartened by the inclusion of subpart (f), “[i]n potentially dangerous occupations, an employer may use a fit for duty test as a tool for registered qualifying patient.” However, definitions of “dangerous occupations” and “fit for duty test” should be included, to provide both employers and cannabis cardholders with clear standards and expectations.

Thank you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo". The signature is written in a cursive, flowing style.

Carolee C. Kubo
Director

Harry Kim
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

January 28, 2020

Senator Brian T. Taniguchi
Chairperson and Committee Members
Committee On Labor, Culture and the Arts
415 South Beretania Street, Room 224
Honolulu, Hawai'i 96813

RE: SENATE BILL 2543 RELATING TO MEDICAL CANNABIS

Dear Senator Taniguchi:

The Hawai'i Police Department opposes Senate Bill 2543, with its stated purpose to 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.

I am of the belief that the Bill as proposed although providing limited protections for the employers, fails to provide sufficient protection. First and foremost, Marijuana contains hallucinogenic compounds. An employee who is involved in an accident or injury while under the influence is a huge liability for any company. Further, the language fails to reference that any user of Marijuana is by Federal law disqualified from ownership and possession of a firearm and obviously unqualified for not only sworn law enforcement positions, but several civilian positions as well.

It is for these reasons, we urge this committee to oppose this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 2543.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF



MICHAEL P. VICTORINO
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

January 29, 2020



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
and Members of the Committee on Labor, Culture, and the Arts

The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: Senate Bill No. 2543 – Relating To Medical Cannabis

Dear Chair Taniguchi and Members of the Committee on Labor, Culture, and the Arts:

The Maui Police Department supports the following information into the above-referenced bill to emphasize prohibiting the use of marijuana by a law enforcement officer.

To cite an Open Letter to All Federal Firearms Licensees dated September 21, 2011, by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives in complying with Federal firearms laws and regulations:

Currently, 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. To clarify, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana 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.

Furthermore, in reference to the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives; Firearms Transaction Record states: “WARNING: You may not receive a firearm if prohibited by Federal or State law”. Question 11e, states: “Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it

The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
and Members of the Committee on Labor, Culture, and the Arts
January 29, 2020
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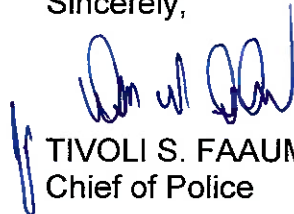
has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside”.

We recommend including the following language into this bill, **“The use or possession of marijuana to include possessing a medical marijuana card under Federal law prohibits any law enforcement officer from carrying a firearm or ammunition”**.

The Maui Police Department asks that you consider this language in Senate Bill No. 2543.

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU
Chief of Police

Testimony of Ku'uhaku Park
On Behalf of Matson
Opposition to SB2543
Before the Committee on Labor, Culture, and the Arts
January 30, 2020

Dear Chair Taniguchi, Vice Chair Ihara, and Members of the Committee,

Matson respectfully opposes SB2543, 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.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members, Committee on Labor, Culture and the Arts

From:  Paula Yoshioka, Vice President, Government Relations & External Affairs, The Queen's Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: January 28, 2020

Hrg: Senate Committee on Labor, Culture and the Arts Hearing; Thursday, January 30, 2020 at 2:45 P.M. in Room 224

Re: **Opposition of S.B. 2543, Relating to Medical Cannabis**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer testimony in opposition of SB2543, 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 and specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

Health care providers are certified by the Centers for Medicare and Medicaid Services (CMS) and subject to a Condition of Participation that requires providers to operate and provide services in accordance with all applicable Federal and State laws. Cannabis remains illegal under federal law as a Schedule I drug and health care providers are at risk of losing licensure or CMS certification for violating federal regulation. Queen's has standing policies and procedures for a drug and alcohol-free workplace, which ensures a safer and healthier environment for all employees, patients, and the community we serve. As written, the proposed bill would make it extremely difficult to take action against an employee or candidate who has tested positive for cannabis. It is also unclear what constitutes a "potentially dangerous occupation". We would appreciate an exemption for health care employers from the provisions of the bill.

Thank you for the opportunity to testify on this measure.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



January 30, 2020

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE, AND THE ARTS
ON SB 2543 RELATING TO MEDICAL CANNABIS**

Aloha Chair Taniguchi 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 requests a small amendment to this bill to clarify the cannabis issue for the motor carrier industry. The amendment is on page 4, involving lines 8-10 with our requested amendment in bold:

(e) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit **or cause it to be in non-compliance** under federal law or federal regulations.

Motor carriers are bound by federal motor carrier safety regulations in regards to substance and alcohol testing. Being in non-compliance would not mean losing a monetary benefit, nor would a motor carrier suffer loss of a licensing-related benefit.

An employee (driver) would lose certain licensing abilities. A motor carrier would be faced with an enforcement case resulting in monetary and/or incarceration penalties.

Mahalo.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON LABOR, CULTURE AND THE ARTS

Senator Brian Taniguchi, Chair

Senator Les Ihara, Vice Chair

Thursday, January 30, 2020

2:45 PM - Room 224

STRONG SUPPORT FOR SB 2543 - EMPLOYMENT DISCRIMINATION

Aloha Chair Taniguchi, Vice Chair Ihara and Members of the Committee!

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 **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 ten people who have died in the last 5 months, as well as 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. 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 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. We also support the amendments proposed by the Drug Policy Forum of Hawai'i. 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.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE AND THE ARTS**

S.B. No. 2543

Relating to Medical Cannabis

Thursday, January 30, 2020
2:45 p.m., Agenda Item 13
State Capitol, Conference Room 224

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

Dear Chair Taniguchi, Vice Chair Ihara and Members of the Committee,

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

While Hawaiian Electric Company appreciates 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 Company respectfully asks 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.

SB-2543

Submitted on: 1/29/2020 5:20:01 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kwanza Woodson	Testifying for Hawaii Employment	Oppose	No

Comments:

Aloha Hawaii Legislators,
I am writing testimony in opposition of SB2543.

I am uncomfortable with the idea of being legally restricted from making employment decisions when provided with proof that an employee has violated federal law.

The United States Federal government has classified cannabis as schedule 1 drug.

Defined as:

“ substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse.”

Drug tests are a reliable indicator of usage (and of law breaking behavior). Fit for duty tests are not reliable indicators of impairment or hazard.

Edibles when consumed may not cause impairment until hours after ingestion. While there clearly isn't enough information available, some studies on the length of impairment from cannabis have been able to detect and measure some impairment 72 hours after usage.

Off-site usage does effect the workplace.

Let's be clear, this is a safety issue. Workers who are under the influence of Cannabis have a higher chance of injuring themselves and their co-workers.

This will effect workplace injuries, and not just for the user. This will cause insurance costs to go up.

States with "legalized" cannabis usage are already reporting a spike in cannabis related traffic accidents.

This bill is well intended but the practical effects will be disastrous. People will get hurt!

Please find a better solution than just adding to the burdens of employers in what is already a very difficult business environment.

Thank you for your time and consideration,

HAWAI'I CANNABIS INDUSTRY ASSOCIATION

January 30, 2020

TO: Senator Brian T. Taniguchi, Chair Labor, Culture and the Arts
Senator Les Ihara, Jr., Vice Chair Labor, Culture and the Arts
Members of the Senate Committee on Labor, Culture and the Arts

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

RE: **SB2543 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, 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.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
LABOR, CULTURE AND THE ARTS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
THURSDAY, JANUARY 30, 2020 AT 2:45 P.M.**

To The Honorable Brian T. Taniguchi, Chair;
The Honorable Les Ihara, Jr., Vice Chair; and
Members of the Committee on Labor, Culture and the Arts,

TESTIMONY IN OPPOSITION TO SB2543 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. In addition to federal requirements, 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. In addition, businesses with high-risk positions have concerns with the safety of their employees if they cannot have a zero tolerance policy. 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.

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,”** and more work should be done on identifying industries where this exemption would be vital. 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.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Labor, Culture and the Arts
Thursday, January 30, 2020 at 2:45 P.M.
Conference Room 224, State Capitol**

RE: SB 2543, RELATING TO MEDICAL CANNABIS

Chair Taniguchi, Vice Chair Ihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **has concerns** regarding SB 2543 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.



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

TESTIMONY IN SUPPORT OF SB 2313

TO: Chair Taniguchi, Vice Chair Ihara & Members
Senate Committee on Labor, Culture, and the Arts

FROM: Nikos Leverenz
DPFH Board President

DATE: January 30, 2020 (2:45 PM)

Drug Policy Forum of Hawai'i (DPFH) **strongly supports** SB 2313, 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.

We respectfully request the following amendments to provide semantic clarity:

- On page 4, lines 11-12, delete "in hiring, termination, or any term or condition of employment, or other penalize a person" and replace with "in hiring or discharge decisions, or otherwise undertaking an adverse employment action"
- On page 4, line 13, replace "discrimination" with "action"
- On page 5, line 2, insert "risk-based assessment" between "a" and "tool"

Thank you for the opportunity to testify on this measure.

SB-2543

Submitted on: 1/28/2020 4:35:06 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rodney Evans	Individual	Support	No

Comments:

I support total deregulation of cannabis as it is of no danger to persons using it or the community. The very idea that it was is a lie drummed up by racists profiteering from wood based paper products. When they enacted these laws it was to protect their profits as the Dept of AG had developed a more efficient way to make paper from cannabis (hemp).

SB-2543

Submitted on: 1/29/2020 11:49:55 AM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

SB-2543

Submitted on: 1/29/2020 5:36:27 PM

Testimony for LCA on 1/30/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Support	No

Comments:

Aloha Chair Taniguchi, Vice Chair Ihara and Committee Members,

Please support SB2543 and medical cannabis patients who may not be employable because of their choice of medicines.

I am Wendy Gibson, an R.N./BSN, member of the American Cannabis Nurses Association and a medical cannabis patient advocate. I have witnessed multiple medical cannabis patients have to make a decision between keeping a job that they love and using a medicine that was the ONLY medicine that worked for them. Passage of this bill will not jeopardize workplace safety. It will help ensure that medical cannabis patients do not face discrimination in being hired for or fired from a job simply because a drug test shows the drug in their system.

Thank you for your consideration of this important topic. We have over 27,000 patients in our medical cannabis registry in Hawaii who could potentially benefit from this bill.

Wendy Gibson R.N./BSN

Palolo

HAWAI'I CANNABIS INDUSTRY ASSOCIATION

January 30, 2020

To: Senator Brian Taniguchi, Chair
Senator Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

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

Re: TESTIMONY IN SUPPORT OF SENATE BILL 2543

RELATING TO MEDICAL CANNABIS.

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, 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

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.

Thursday, January 28, 2020 at 2:45pm
Conference Room 224

Senate Committee on Labor, Culture and the Arts

To: Senator Brian Taniguchi, Chair
Senator Les Ihara, Jr. Vice-Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: **Comments on SB 2543**
Relating to Medical Cannabis

My name is Michael Robinson, Vice President, Government Relations & Community Affairs at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I write to provide comments on SB 2543 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. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations.

The proposed bill as written will cause substantial and unavoidable harm to our ability to be reimbursed for the medical services we provide to our patients. While the proposed bill allows an exception to its requirements to employers where failing to do so would cause them to "...lose a monetary or licensing-related benefit under federal law or federal regulations..." the reality is that those exceptions do not extend far enough in the context of current hospital contracting practices.

Healthcare providers are almost universally engaged in providing services under the requirements of a contract with federal government, state government and/or private companies. For example it is commonplace – if not universal – for all types of health insurers to require healthcare providers to agree to the following provision, or something similar:

“Both parties agree that they shall observe and comply, and shall cause their employees, agents and subcontractors to observe and comply, with federal and state law with respect to the performance of this Agreement.”

As a result, virtually all healthcare providers that rely on third party reimbursement with a health insurer are engaged in a contract that obligates them to comply with federal law as a stated condition of receiving reimbursement for services rendered to patients.

Accordingly, in order to avoid violating the terms of existing payer contracts, healthcare providers must ensure that their employees are in compliance with federal controlled substances laws, including the Federal laws designating marijuana as a Schedule 1 controlled substance and which also establish the possession and use of Schedule 1 controlled substances as a crime under federal law.

The proposed bill as written will essentially make it unlawful for healthcare providers to remain compliant with the terms of their existing payer contracts and will cause them to lose the benefit of those payer agreements.

The situation is similar for hospital contracts with federal agencies and as recipients of federal grants, which are both contractually required to maintain and enforce a Drug Free Workplace Policy which prohibits employees providing contracted or grant-funded services from using DEA Schedule 1 controlled substances (including cannabis) and imposes discipline if an employee's drug test shows positive results for any such substance. If a federal contractor or grant recipient fails to maintain or enforce a required Drug Free Workplace Policy, the consequences include contract suspension, contract termination, and/or debarment from all federal programs for up to 5 years.

If required to comply with SB 2543, healthcare providers, federal contractors and federal grant recipients will not be able to comply with the terms of their contracts, which will lead to substantial financial losses. Without the revenue from those contractual arrangements, many will likely be forced to reduce – or even eliminate – the services available to the community.

Therefore in order to adequately ensure healthcare providers contractual processes are not disrupted, we propose that the exception be amended to address these concerns by including the following language amendment in Section 2:

(e) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law, ~~or~~ federal regulations, or any contractual arrangement, an employer shall not discriminate against a person in hiring, termination, or any term or condition of employment, or other penalize a person, if the discrimination is based upon either of the following:

(1) The person's status as a cardholder; or

(2) A registered qualifying patient's positive drug test for cannabis components or metabolites, unless the patient was impaired by cannabis on the premises of the place of employment during the hours of employment.

(f) In potentially dangerous occupations, an employer may use a fit for duty test as a tool for a registered qualifying patient."

In addition, Section 2(f) is unworkably ambiguous in its language and relation to Section 2(e). For example, we share concerns regarding what constitutes a "potentially dangerous occupation". In addition, it is not clear how an employer is expected to use a

fit for duty test “as a tool for a registered qualifying patient” and how this provision relates to the prohibition set forth in Section 2(e).

Finally, we would suggest the term “cardholder” and “registered qualified patient” be replaced with “qualified patient registered in accordance with Hawai’i law and regulations” to ensure that Section 2(e) applies only to employees who have followed all the processes and regulations required under Hawai’i law. Without this language, our concern is that the proposed bill could be interpreted to apply to employees who are registered in other states but not Hawai’i.

Based upon the concerns expressed above, HPH is unable to fully support the measure at this time.

Thank you for the opportunity to testify.