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TESTIMONY ON HOUSE RESOLUTION 112 HOUSE DRAFT 1
REQUESTING DOH TO FILE FOR FEDERAL EXEMPTION

By
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House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Monday, March 29, 2021; 2:00 PM
State Capitol, Videoconference

Thank you for the opportunity to provide testimony in **STRONG SUPPORT** of this measure.

It has been nearly twenty-one years since Hawaii exercised its constitutional authority to decide how controlled substances are used within the state and created a state regulated medical cannabis program.

However, by doing so, a conflict was created between the federal regulation of marijuana and the state authorized use of cannabis for medical purposes in Hawaii. This conflict has created numerous unintended consequences that have negatively impacted our medical cannabis patients and dispensaries for years.

This resolution is a first step towards resolving this conflict and harmonizing the state and federal regulation of cannabis. Such harmonization is necessary to end the current discrimination against our patients and dispensaries and to reign in a disregard for the rule of law that is encouraging criminal activity across the State.

Allow me to address concerns that the Department of Health (DOH) raised in its written testimony on this measure for the public hearing held by the House Committee on Health, Human Services, & Homelessness on March 23, 2021.

In its written testimony on HCR132, DOH stated:

“Obtaining an exception from the Federal Controlled Substance Act for the state-authorized use of medical cannabis would potentially benefit the State's residents. However, the department's understanding is that 21 CFR § 1308.35 precludes petitioning the DEA to reschedule or exempt any processed plant material containing

any amount of tetrahydrocannabinol (THC) that is used or intended for use for human consumption.”

Let’s take a closer look at this federal exemption:

[21 CFR 1308.35:](#)

“§1308.35 Exemption of certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols.

(a) Any processed plant material or animal feed mixture containing any amount of tetrahydrocannabinols (THC) that is both:

(1) Made from any portion of a plant of the genus Cannabis excluded from the definition of marijuana under the Act [i.e., the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination] and (2) Not used, or intended for use, for human consumption, has been exempted by the Administrator from the application of the Act and this chapter.”

Basically, this federal rule exempts from the Schedule I list products made for animals from parts of the cannabis plant that fall outside the federal definition of marijuana (ie. stems, sterilized seeds) that may contain trace amounts of THC.

An exemption for cannabis material that falls outside the federal definition of marijuana and is not intended for human use does not preclude an exemption that would simply recognize a state’s authority to decide how controlled substances are used within the state.

A federal administrative rule ([21 CFR 1308.11](#)) does not pre-empt an authority reserved to the states by the U.S. Constitution. It is the unconstitutional application of the federal Schedule I rule for marijuana to Hawaii’s Medical Cannabis Program, and the negative consequences this is inflicting upon our patients and dispensaries, that makes a federal exemption so necessary.

DOH also raised concerns about the wording of the proposed rule in this resolution. The language “persons using marijuana in compliance with state are exempt from registration” is important because it ensures that patients do not need to get federal Schedule I registration from the DEA, which is nearly impossible to obtain, in order to engage in the state authorized use of cannabis for medical purposes in Hawaii.

Because this wording would appear in a federal regulation, it should be clear that the exemption from registration applies to federal registration with the DEA and not registration with Hawaii’s Medical Cannabis Registry Program. If DOH is concerned that the wording of such a federal exemption will be construed by patients to mean that they don’t need to register with the program, then DOH could easily provide patient

education under the education requirement of the [Medical Cannabis Registry and Regulation Special Fund](#) so that such misunderstanding does not occur.

In addition, please consider the following minor edits for clarity and consistency:

WHEREAS, Act 228, Session Laws of Hawaii 2000 (Act 228), was enacted, making Hawaii the first state via the legislative process to authorize the medical use of [~~medical marijuana to treat~~] cannabis for debilitating medical conditions including cancer, glaucoma, human immunodeficiency virus, acquired immune deficiency syndrome, and other chronic or debilitating diseases; and

WHEREAS, at the time Act 228 was enacted there was ample evidence to show that medical [~~marijuana~~] cannabis helps to alleviate pain and has other benefits for severely ill patients; and

~~[WHEREAS, federal law expressly prohibits the use of marijuana, despite the evidence of the benefits of using medical cannabis, and]~~

WHEREAS, [~~this lack of clarity between state and federal marijuana laws~~] the current conflict between the state authorized use of cannabis for medical purposes in Hawaii and the federal regulation of marijuana has repercussions for medical cannabis patients and the State's medical cannabis dispensaries, including loss of employment and discrimination in child custody hearings, federally subsidized housing, and applications for federal firearms permits, life insurance, and disability insurance for patients who use medical cannabis in compliance with state law; and

WHEREAS, Title 21 Code of Federal Regulations section 1307.03 allows the Administrator of the Drug Enforcement Administration to grant exceptions to certain federal regulations; and

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WHEREAS, obtaining an exception from the [~~federal Controlled Substances Act~~] Drug Enforcement Administration for the state-authorized use of [~~medical~~] cannabis would benefit the State's residents who use [~~medical~~] cannabis for medical purposes and the State's medical cannabis dispensaries; now, therefore, BE IT RESOLVED by the House of Representatives of the Thirty-first Legislature of the State of Hawaii, Regular Session of 2021, the Senate concurring, that the Department of Health is requested to submit [~~a request~~] an application to the Drug Enforcement Administration for an immediate exception to regulations and a petition to initiate proceedings for federal rulemaking to clarify that the state-authorized use of [~~medical~~] cannabis does not violate the federal Controlled Substances Act; and

BE IT FURTHER RESOLVED that when [~~making the request~~] submitting an application for an exception to regulations in accordance with Title 21 Code of Federal Regulations section 1307.03, the Department of Health is urged to argue that Hawaii's medical cannabis laws do not create any positive conflict with state or federal drug laws and to request a written acknowledgement from the Drug Enforcement Administration that the listing of marijuana as a controlled substance in Schedule I of the federal Controlled Substances Act does not apply to the [~~non-prescription~~] state authorized use of cannabis under Hawaii's medical cannabis registry and medical cannabis dispensary programs; and

BE IT FURTHER RESOLVED that when making a petition for federal rule making in accordance with Title 21 Code of Federal Regulations section 1308.43, the Department of Health is urged to offer the following proposed [~~language~~] rule: "\$1307.

State Authorization. The listing of marijuana as a controlled substance in Schedule I does not apply to the state-authorized use of marijuana, and persons using marijuana in compliance with state law are exempt from registration.”; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the members of Hawaii’s Congressional Delegation, Governor, Attorney General, and Director of Health.

Thank you for considering these suggestions for changes.

Aloha.