

STAND. COM. REP. NO.

470

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 64
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committees on Labor, Culture and the Arts and Health, to which was referred S.B. No. 64 entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL CANNABIS,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit employment discrimination based on a person's status as a medical cannabis cardholder or a registered qualifying patient's positive drug test for cannabis components under certain circumstances;
- (2) Specify that an employer may use a fit-for-duty test for registered qualifying patients in potentially dangerous occupations; and
- (3) Specify certain categories of occupations that are exempt from the protections under the prohibition.

Your Committees received testimony in support of this measure from the Department of Public Safety, Drug Policy Forum of Hawai'i, Hawai'i Cannabis Industry Association, and eleven individuals. Your Committees received testimony in opposition to this measure from the Department of Transportation; Hawaii Food Industry Association; Matson Navigation Company, Inc.; Maui Chamber of Commerce; Maui Economic Opportunity, Inc.; The Queen's Health



Systems; Retail Merchants of Hawaii, Inc.; and one individual. Your Committees received comments on this measure from the Department of Health, Hawai'i Civil Rights Commission, Akamai Cannabis Clinic, and Chamber of Commerce of Hawaii.

Your Committees find that under existing law, individuals who are registered to use cannabis for medical purposes can be summarily terminated solely on the basis of their status as a medical cannabis cardholder or positive drug test for cannabis components. Consequently, registered medical cannabis users frequently find themselves in situations in which they must choose between the job they need to support themselves and their families and foregoing medication needed to effectively relieve their pain and suffering. This measure will provide protection to medical cannabis cardholders and registered qualifying patients against employment discrimination, while providing employers clarity on conditions under which they may enforce their drug-free policy against their employees.

You Committees acknowledge the concerns raised in the testimonies that the exemption for employers from liability towards employees who are injured or killed during the performance of their jobs may strip employees of their right to workers' compensation, which is an employee's exclusive remedy for work-related injuries. Your Committees also find that certain provisions in the exempt occupation section are overly broad.

Your Committees discussed the adequacy of allowing employers to use fit-for-duty tests as a risk assessment tool for medical cannabis users in potentially dangerous occupations. First, "dangerous occupations" are not defined. Second, your Committees note that most fit-for-duty substance tests are urine tests. Since cannabinoids that reside in fat stay in a person's system for an extended period of time, a urine test may test positive even if the individual is not impaired. Therefore, your Committees acknowledge the need for a workplace testing method and standard by which an employer can quickly and accurately assess the level of an individual's impairment due to cannabinoids. Your Committees considered deleting this provision from this measure; however, concluded that further discussion is necessary for this complex issue.

Accordingly, your Committees have amended this measure by:



- (1) Deleting language that would have exempted registered qualifying patients in a potentially dangerous occupation from discrimination protections;
- (2) Deleting language that would have exempted employers from liability towards employees who are injured or killed during the performance of their jobs if impairment by medical cannabis was the sole contributing factor;
- (3) Removing employees who operate or are in physical control of machinery, power equipment, or motor vehicles from the list of exempt occupations;
- (4) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Labor, Culture and the Arts and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 64, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 64, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committees on Labor, Culture
and the Arts and Health,



JARRETT KEOHOKALOLE, Chair




BRIAN T. TANIGUCHI, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Labor, Culture and the Arts
LCA

Bill / Resolution No.:* SB 64	Committee Referral: LCA/HTH, JDC	Date: 2/17/21		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)	✓			
CHANG, Stanley	✓			
KEOHOKALOPE, Jarrett	✓			
FEVELLA, Kurt	✓			
TOTAL	5	0	0	0
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
Thirty-First Legislature
State of Hawai'i

**Record of Votes
Committee on Health
HTH**

Bill / Resolution No.:* SB 64	Committee Referral: LCA/HTH, JDC	Date: 2-17-2021
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The Committee is reconsidering its previous decision on this measure.
If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
BAKER, Rosalyn (VC)	✓			
MORIWAKI, Sharon Y.	✓			✓ JDB
SAN BUENAVENTURA, Joy A.	✓			
FEVELLA, Kurt	✓			
TOTAL	5	-	-	-

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:
Rosalyn H Baker

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