



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2718, RELATING TO MEDICAL CANNABIS.

BEFORE THE:

SENATE COMMITTEE ON HEALTH

DATE: Monday, February 7, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Andrew Goff, Deputy Attorney General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

This bill seeks to amend the medical cannabis law to allow any individual the age of sixty-five (65) or older to use cannabis for medical purposes by: (1) amending the definition of "qualifying patient" in section 329-121, Hawaii Revised Statutes (HRS), to include anyone who has reached the age of 65; and (2) amending section 329-122, HRS, to exempt people 65 or older from section 329-122(a), HRS.

Section 329-122(a), HRS, provides as follows:

- (a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:
- (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;
 - (2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and
 - (3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

The wording "[n]otwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted" is the only place in the law that explicitly authorizes qualified patients to use medical cannabis. By removing the applicability of subsection (a) to "a qualifying patient aged sixty-five or older," the effect would be to completely prohibit senior citizens from using medical cannabis.

To address this concern, the Department recommends that subsection (c) be revised as follows: "~~[Subsection (a)]~~ The requirements in subsection (a)(1) to (3) shall not apply to a qualifying patient aged sixty-five or older."

However, even with this change, this bill presents problems. The amendment would exempt anyone 65 or older, as well as the person's primary caregiver, from the requirement that a qualified patient only possess an adequate supply. An "adequate supply" is defined in pertinent part in section 329-121, HRS, as:

[A]n amount of medical cannabis jointly possessed between the qualifying patient and the primary caregiver that is **not more than is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition**; provided that an "adequate supply" shall not exceed: ten cannabis plants, whether immature or mature, and four ounces of usable cannabis at any given time.

(Emphasis added.)

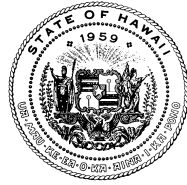
Consequently, this amendment seeks to allow anyone 65 or older, as well as their primary caregiver, to purchase, grow, or possess an unlimited supply of cannabis. This restriction was put into place to ensure that no person has access to more cannabis than is medically necessary, and to prevent diversion of cannabis to the illicit market. We recommend keeping this restriction in place for everyone that is authorized to use medical cannabis to inhibit the illicit use or sale of any excess supply of cannabis. This can be done by not removing the requirement of subsection (a)(3) in subsection (c). We recommend subsection (c) be amended to read: "[s]ubsections (a)(1) and (a)(2) shall not apply to a qualifying patient aged sixty-five or older."

Finally, the measure may present an age discrimination issue. The preamble identifies the debilitating or chronic conditions that this measure seeks to address as

"insomnia, stress, and other issues." Page 1, lines 5-7. However, no rationale is given for allowing all senior citizens access to cannabis, regardless of their medical condition. Without that rationale, an argument can be made that expanding medical cannabis access to all senior citizens, and removing possession restrictions, effectively legalizes recreational cannabis only for those of a certain age.

If the intent is to expand access to senior citizens, then we recommend adding additional conditions for people 65 or older to the definition of "debilitating conditions" found in section 329-121, HRS, and including a stated rationale for why the age restriction is necessary.

Thank you for the opportunity to provide comments.



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Testimony in OPPOSITION to SB2718
RELATING TO MEDICAL CANNABIS

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: 02/07/2022

Room Number: VIDEOCONFERENCE

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department **STRONGLY OPPOSES** this measure which would
3 permit the medical use of cannabis by a person 65 years of age or older regardless of any
4 debilitating medical condition and without consultation with a medical provider.

5 As intended by the Legislature when creating the state's medical cannabis program, one
6 of the major determinants of a patient's access to medical cannabis is the patient's medical
7 condition. A patient must have at least one of several qualifying debilitating medical conditions.
8 The debilitating condition(s) must be verified by the patient's medical provider in conformance
9 with part IX, chapter 329, HRS. Senior citizens often have many other medical conditions.
10 Removing the medical providers' role to examine patients who have other medical conditions
11 and may be taking many other prescription and over-the-counter medications jeopardizes patient
12 health and safety.

13 Further, the proposed amendment to §329-122, HRS, would exempt senior citizens from
14 any limit on the permissible supply of cannabis. Adequate supply limits are specified for all other
15 qualifying patients and there appears to be no clear medical justification for applying limits to
16 patients with debilitating conditions, and not to senior citizens.

17 Lastly, this bill places an adult-use program under the guise of medical cannabis and
18 could jeopardize the medical cannabis program by exposing it to federal scrutiny.

19 Thank you for the opportunity to testify in **STRONG OPPOSITION** on this measure.



To: Senator Jarrett Keohokalole, Chair
Senator Roz Baker, Vice-Chair
Members of the Senate Committee on Health

From: Randy Gonce, Executive Director of the Hawaii Cannabis Industry Association

Re: Testimony **In Support** on **Senate Bill (SB) 2718**

RELATING TO MEDICAL CANNABIS

Exempts any person who has reached the age of sixty-five from the requirement of having a debilitating medical condition to be eligible for the use of medical cannabis.

Dear Chair Keohokalole, Vice-Chair Baker, and Members of the Committee:

The Hawai'i Cannabis Industry Association is the trade association for the state's licensed medical cannabis dispensaries. HICIA **supports** SB2718 which exempts persons who are above the age of 65 from the requirement of having a debilitating medical condition to be eligible for the use of medical cannabis.

Thank you for the opportunity to testify.