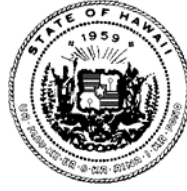


JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



CATHY BETTS  
DIRECTOR  
KA LUNA HO'OKELE

JOSEPH CAMPOS II  
DEPUTY DIRECTOR  
KA HOPE LUNA HO'OKELE

STATE OF HAWAII  
KA MOKU'ĀINA O HAWAI'I  
**DEPARTMENT OF HUMAN SERVICES**  
KA 'OIHANA MĀLAMA LAWELAWE KANAKA  
Office of the Director  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 28, 2023

TO: The Honorable Senator Jarrett Keohokalole, Chair  
Senate Committee on Commerce and Consumer Protection

FROM: Cathy Betts, Director

SUBJECT: [HB 218 HD2 SD1](#) – RELATING TO PRESCRIPTION DRUGS.

Hearing: March 29, 2023, 10:01 a.m.  
Conference Room 229 & Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of the measure, provides comments, and defers to the Board of Pharmacy and pharmacists regarding resources needed to implement.

**PURPOSE:** This bill requires certain pharmacies to provide accessible prescription drug label information to individuals who have difficulty seeing or reading prescription drug container labels and inform the public that prescription drug label information is available in alternate accessible formats for individuals who have difficulty seeing or reading prescription drug container labels. Requires the board of pharmacy to adopt certain rules by 12/31/2024. Effective 6/30/3000. (SD1)

The HD1 amended the measure by:

- (1) Requiring the Board of Pharmacy to adopt rules by December 31, 2025, rather than December 31, 2023;
- (2) Changing the effective date to June 30, 3000, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The HD 2 amended the measure by:

- (1) Exempting pharmacies that are sole proprietorships with no more than two pharmacists;
- (2) Specifying that the rules required to be adopted under this measure be done pursuant to the Hawaii Administrative Procedure Act; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The SD 1 amended the measure by:

- (1) Requiring the Board of Pharmacy to adopt rules to carry out the purposes of this Act by December 31, 2024;
- (2) Requiring the Board of Pharmacy to adopt rules in accordance with this measure applicable to hospital pharmacies and manufacturers of medication who provide their products directly to consumers;
- (3) Amending section 1 to reflect its intended purpose; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

DHS appreciates local pharmacies' assistance to Hawaii's vulnerable populations throughout the pandemic and defers to them regarding implementing the measure's provisions. However, the ability to read one's prescription medication labels in an accessible format is an essential matter of public health and safety and should be available to all Hawaii residents. In addition, DHS supports efforts that improve accessibility for individuals with disabilities and enhances their independence.

Thank you for the opportunity to provide comments on this measure.

## **Testimony of the Board of Pharmacy**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Wednesday, March 29, 2023  
10:01 a.m.  
Conference Room 229 and Videoconference**

**On the following measure:  
H.B. 218, H.D. 2, S.D. 1, RELATING TO PRESCRIPTION DRUGS**

Chair Keohokalole and Members of the Committee:

My name is James Skizewski, and I am the Executive Officer for the Board of Pharmacy (Board). The Board appreciates the intent of this measure, but offers comments expressing its concerns.

The purposes of this bill are to : (1) require pharmacies to provide accessible prescription drug label information to individuals who have difficulty seeing or reading prescription drug container labels and inform the public that prescription drug label information is available in alternate accessible formats for individuals who have difficulty seeing or reading prescription drug container labels; and (2) require the Board to adopt certain rules by December 31, 2024.

The Board is concerned about the associated costs to pharmacies to obtain technology and implement procedures to facilitate prescription drug label information being made available in alternate accessible formats. Some larger retail pharmacies currently offer this service, but requiring all pharmacies, including independent and mid-sized family-owned businesses to ensure prescription drug label information is made available in alternate accessible formats, would pose an additional and unnecessary hardship on smaller businesses for a service that is already provided through prescription counseling.

The Board would like to emphasize that prescription counseling is readily available as required by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90). OBRA-90 mandates that pharmacists offer patient counseling related to descriptive information, intended use expectation, dosage schedule, side effects, proper storage, refill information, and action to be taken in the event of a missed dose.

The Board appreciates the amendments by the House Committee on Consumer Protection and Commerce in the H.D. 2, but requests clarification on the exemption provided for sole proprietors with not more than two pharmacists. Will the exemption be provided to only pharmacies with two pharmacists on staff, or pharmacists actively working in the pharmacies? If the exemption is applied by counting the pharmacists on staff, the Board asks for the bill to be amended on page 4, lines 1 and 2, to read:

(d) This section shall not apply to a pharmacy that is a sole proprietorship with no more than ~~two~~ four pharmacists.

Thank you for the opportunity to testify on this bill.

Testimony of James Gashel  
Submitted for National Federation of the Blind of Hawaii  
Committee on Commerce and Consumer Protection (CPN)  
Hawaii State Senate  
Thirty-second Legislature, regular session of 2023  
March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning chair, vice chair, and members. I am James Gashel, representing National Federation of the Blind of Hawaii, testifying in support of HB218, H.D. 2, S.D. 1, and offering an amendment. This bill is similar to SB608 S.D. 1, which this committee approved in February.

This is essentially the same bill you previously approved but with two important differences:

The first material change is, extending by one year the time given the Board of Pharmacy to issue rules. The date would be December 31, 2024, not 2023. This is ok.

The second material change is a blanket exemption of any pharmacy that is a sole proprietorship with not more than two pharmacists. This is not ok. The NFB of Hawaii does not support this exemption. Although it may be well intended on behalf of certain small pharmacies, the result will more likely be adverse to their interests.

Technology needed by a pharmacy to comply is available from a company called "ScriptAbility" at a cost of less than \$500. ScriptAbility provides end users devices able to read the electronic labels free of charge; no cost to the pharmacy. Pharmacies not willing to spend around \$500 should consider they will lose a certain number of customers if they don't. This will happen more and more as the technology is known and becomes popular with consumers.

The amendment proposed by National Federation of the Blind of Hawaii would change the blanket exemption now in HB218, in subsection (d) at the top of page 4, to an undue burden exemption with words added to the present provision. Undue burden is a well understood standard used in title II of the Americans with Disabilities Act (ADA), applicable to state and local government (including health care services), and ADA title III, applicable to public accommodations, such as pharmacies.

All pharmacies, not just big ones, are clearly ADA covered entities. ADA says they have to make their services accessible but does not tell them how to do it. That's where this bill fills a need. Regulation of prescription drug labels is largely a state responsibility. The legislature will help all pharmacies fulfill their ADA obligation by passing this bill. Once implemented, the result will be better accessibility and safety for everyone.

Mahalo for your consideration of the need for HB218. The amendment we propose is intended to better harmonize this bill's objectives with the needs of all pharmacies and the customers they serve.

Suggested Senate amendment to HB218, H.D. 2, S.D. 1

On page 4, line 1, at the end of subsection (d), add a comma and the following new text after pharmacists: "when the pharmacy requests, and the Board of Pharmacy approves, an exemption, subject to annual review and approval, which the Board may grant on a case by case basis upon finding that compliance with this section would result in an undue burden for the pharmacy, determined by the Board in accordance with the Americans with Disabilities Act (42 U.S.C. §12182)."

Full text of revised new section: "(d) This section shall not apply to a pharmacy that is a sole proprietorship with not more than two pharmacists, when the pharmacy requests, and the Board of Pharmacy approves, an exemption, subject to annual review and approval, which the Board may grant on a case by case basis upon finding that compliance with this section would result in an undue burden for the pharmacy, determined by the Board in accordance with the Americans with Disabilities Act (42 U.S.C. §12182)."

**HB-218-SD-1**

Submitted on: 3/27/2023 8:48:56 PM

Testimony for CPN on 3/29/2023 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tabatha Mitchell	Testifying for National Organization of Parents of Blind Children Hawaii	Support	Written Testimony Only

Comments:

Testimony of Tabatha Mitchell

Committee on Commerce and Consumer Protection (CPN)

Hawaii State Senate

Thirty-second Legislature, regular session of 2023

March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning chair, vice chair, and members. I am Tabatha Mitchell, supporting HB218, H.D. 2, S.D. 1, with the amendment suggested by the National Federation of the Blind of Hawaii.

I am a mother of a blind teenager and I serve the National Organization of Parents of Blind Children where I work directly with blind keiki of Hawaii and their families. This bill will help our keiki that are coming of age to identify their own prescriptions and to access the instructions on their own to know how to manage their own medicine - which is a very large part of learning to manage your own healthcare - privately and independently.

Our blind kids access their education curriculum in their schools every day. They use technology tools &/or they read Braille. Our blind teenagers fail to understand WHY our pharmacies aren't held to the laws of the Americans with Disabilities Act and why it is OK for them to not provide private medical information to blind citizens in a format they can access. These are very good questions that come from our young Hawaiian citizens that I have a lot of trouble answering - because it makes no sense.

Following the law is part of doing business, and making label information accessible to all is a deductible business expense.

No one wants a death or an adverse event to occur because a pharmacy didn't provide prescription information in a way that was effective for the patient. As the bill explains, label information can & should be displayed in alternate accessible formats. This important bill PROTECTS our pharmacists & small businesses by making it MUCH SAFER for anyone that can't see well.

I strongly disagree with the blanket exemption given to small pharmacies as currently written in the bill. I can support a temporary exemption based on an undue burden when justified, but I strongly oppose a blanket exemption. A blanket exemption creates a loophole for small pharmacies. Most pharmacies across Hawaii are small pharmacies.

As written, the blanket exemption in the bill introduces and promotes an unnecessary high risk for negative consequences up to and including death all over the state.

How is that ok!?!?

Our blind keiki and citizens that can't see very well are not dispensable. Please vote to save lives by supporting this important bill with the amendment presented by the National Federation of the Blind.



**HB-218-SD-1**

Submitted on: 3/25/2023 11:57:31 PM

Testimony for CPN on 3/29/2023 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cards Pintor	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill.

Mahalo nui,

Cards Pintor

Brandon Young

3/26/2023

Senate Commerce and Consumer and Protection Affairs Committee

Chair: Jared

[Keohokalole](#)

Decision Making on HB 218

Mar 29, 2023

Dear Chair,

My name is Brandon Young, and I am a member of the National Federation of the Blind of Hawaii. I am submitting testimony in favor of HB 218. This bill is very important to me and the many blind and visually impaired people here in Hawaii. I want to thank you and your committee for hearing this bill and considering it for decision making. I would wish that your committee pass this bill forward. This bill would help all of us to be able to identify our medications in an accessible manner.

The bill that we are supporting would create a mechanism to make prescription bottles accessible to those who are blind or visually impaired. This bill would cause pharmacies to attach a label that could be read by a smart phone application or a stand alone tool that can be obtained by blind people a service known as Script Talks. Currently, blind or visually blind or visually impaired have to get assistance from others to determine what medicine they are taking. This bill would allow this to be an independent matter going forward. I want to again thank you and your committee for taking the time in hearing our bill. I would suggest your committee to pass this bill to support the lives of blind people all across our wonderful state.

**HB-218-SD-1**

Submitted on: 3/27/2023 6:04:11 PM

Testimony for CPN on 3/29/2023 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ann Lemke	Individual	Support	Written Testimony Only

Comments:

Hello CPN Committee Chair, Vice Chair and members,

I am a retired blind person and live alone. Even though I take several medications, none of them is sent to me with label information that is accessible to me. This legislation will go a long way to remedy this situation. I do oppose the blanket exception for small pharmacies; there are just too many advances in access technology to suppose that small pharmacies could never comply. Perhaps very small pharmacies could have a longer lead time or could appeal the requirement, if circumstances do not ever permit compliance.

Respectfully,

Ann Lemke

**HB-218-SD-1**

Submitted on: 3/27/2023 9:32:11 PM

Testimony for CPN on 3/29/2023 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Adrie Jo Mitchell-Butler	Individual	Support	Written Testimony Only

Comments:

My sister is blind. She deserves and should have the right to read her prescription labels. I have worked as a pharmacy technician and the accuracy of the label a top priority. All individuals, including those with low/no vision, should have the right to read the labels of the drugs they are putting into their body. The warnings, the drug name, the expiration date, etc!

Please support HB218 and the amendments suggested by the National Federation of the Blind.

Testimony of Virgil Stinnett

Committee on Commerce and Consumer Protection (CPN)

Hawaii State Senate

Thirty-second Legislature, regular session of 2023

March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning chair, vice chair, and members. My name is Virgil Stinnett, President of The National Federation of the Blind of Hawaii, in support of HB218, H.D. 2, S.D. 1.

If passed, HB218 will help people like myself, a blind businessman, identify my prescriptions. Easily enable me to access instructions about when and how much to take. For most of us, the older we get the more types of prescriptive medications we must take. If only using 1 medication, I might know what it is, but don't always know the milligrams or how often to take it. If I have an emergency medication, then it starts to compound the lack of accurate use of my medications safely. If passed, this bill will remove barriers, create timely access and reduce the cost of getting personal support used to see the labels.

I stand in full support of the testimony submitted by the National Federation of the Blind of Hawai'i.

Mahalo for your consideration and yes vote to pass HB218, H.D. 2, S.D. 1.

Testimony of Hoku Burrows

Committee on Commerce and Consumer Protection (CPN)

Hawaii State Senate

Thirty-second Legislature, regular session of 2023

March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning chair, vice chair, and members. My name is Hoku Burrows, a local blind kupuna and member of the National Federation of the Blind of Hawaii, testifying in support of HB218, H.D. 2, S.D. 1.

I stand in strong support of the testimony submitted by the National Federation of the Blind of Hawai'i. Our Kupuna like myself, struggle when blindness comes reading our prescriptions, relying on others to assist. Our ability to independently, successfully and safely manage our prescriptions can be made possible by passing this bill.

Mahalo nui loa for seriously considering my testimony in support of this bill.

Testimony of Katie Keim

Committee on Commerce and Consumer Protection (CPN)

Hawaii State Senate

Thirty-second Legislature, regular session of 2023

March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning chair, vice chair, and members. I am Katie Keim, a member and leader in The National Federation of the Blind of Hawaii, in support of HB218, H.D. 2, S.D. 1

HB218 is very personal to me and if passed, this bill will help people like myself, a blind type 1 diabetic and local professional in Honolulu. Blindness came to me at the age of 36 as a result of long term, 56 years today, of juvenile diabetes. Identifying my increasing quantity of prescriptions during my 28 years of blindness has become an overwhelming issue to manage independently and safely. It was fine when I had only insulin, yet added medications has come with time and age causing potential safety issues in my personal management of my medications. A simple accessible plan to identify expiration dates, daily dosage, milligrams of each dose, how many refills, and potential contradicting medication or foods of my regular let alone emergency medications would support my continuing to manage and monitor my own health independently and safely as I have for most of my life.

I stand in full support of the testimony submitted by the National Federation of the Blind of Hawai'i.

Mahalo for your serious consideration and vote to pass HB218, H.D. 2, S.D. 1 into law.

**HB-218-SD-1**

Submitted on: 3/28/2023 7:41:26 AM

Testimony for CPN on 3/29/2023 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Emerie Mitchell-Butler	Individual	Support	Written Testimony Only

Comments:

Testimony of Emerie Mitchell-Butler

Committee on Commerce and Consumer Protection (CPN)

Hawaii State Senate

Thirty-second Legislature, regular session of 2023

March 29, 2023, 10:01 AM, hearing on HB218, H.D. 2, S.D. 1

Good morning Chair, Vice Chair, and members of the committee. My name is Emerie Mitchell-Butler, a blind student in Hawaii, and I strongly support HB218 with amendments suggested by the National Federation of the blind of Hawaii.

As a person, I sometimes need to take prescription medications. As a blind person, I struggle to access the information on the labels of those prescriptions. The law regulates what must be on the label but does not ensure that everyone can actually read it. Providing the label information in an accessible format is a trivial matter of using electronic RFID tags on the packaging that the customer can read with an electronic device of their choice.

This information is not something that is nice to have; rather, it is information one needs to have. When to take a medication and how much to take each time is information everyone needs to stay safe and healthy. I do not want to, and often cannot, rely on another person to tell me which medicine is which and when I should take it. This is not just about convenience. This is a matter of public safety.

Amendments were made that exempt all small pharmacies. These businesses are critical community resources. I understand they might need a little more time to adjust to the new standard, but as critical community resources, they must also be usable by folks with any amount of vision. We cannot restrict anybody to a large pharmacy, which may be far away or not carry a specific medication that a smaller specialized pharmacy might. Please support the amendment propose by the National Federation of the Blind of Hawaii that gives smaller pharmacies more time but not a blanket exemption.



Prescription drug labels are primarily regulated by the state. As a state matter, this bill with amendments from the NFB of Hawaii is necessary for the safety of everyone in Hawaii. Anybody could lose their vision at any time. So many people already don't have enough vision to accurately read their prescription drug labels. Please support HB218 with amendments proposed by the National Federation of the Blind of Hawaii. The safety of the state depends on it.

Thank you for the opportunity to testify.

Emerie Mitchell-Butler