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TESTIMONY ON HOUSE BILL 477 HOUSE DRAFT 2
RELATING TO CANNABIS

By
Clifton Otto, MD

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Thursday, February 25, 2021; 1:00 PM
State Capitol, Videoconference

Thank you for the opportunity to COMMENT on this measure.

Hawaii's Medical Cannabis Program will never be successful as long as it must operate under the misconception that the state authorized use of cannabis for medical purposes in Hawaii violates federal law.

The federal Schedule I list is an administrative rule, not a law, and administrative rules do not pre-empt an authority reserved to the states by the U.S. Constitution to decide how controlled substances are used within the state.

Therefore, I respectfully recommend that the following statutory amendment be added to this bill to help end the current conflict with the federal regulation of marijuana:

SECTION 8b. The following section is added to read as follows:

"§329-132 Regarding the state authorized use of cannabis.

The department of health shall submit to the administrator of the United States Department of Justice, Drug Enforcement Administration, Diversion Control Division:

[1] An application for immediate relief pursuant to title 21 Code of Federal Regulations section 1307.03 to the Office of

Diversion Control. This application shall state that part IX of chapter 329, Hawaii Revised Statutes, and chapter 329D, Hawaii Revised Statutes, create an exemption from federal drug laws and do not create any positive conflict pursuant to title 21 United States Code Annotated section 903; and that the federal scheduling of marijuana does not apply to the state authorized use of cannabis. The application shall also include a proposed rule containing the following: "The listing of marijuana as a controlled substance does not apply to the state authorized use of marijuana, and persons using marijuana in compliance with state law are exempt from registration"; and

[2] A petition for permanent relief pursuant to title 21 Code of Federal Regulations section 1308.43. This petition shall state that part IX of chapter 329, Hawaii Revised Statutes, and chapter 329D, Hawaii Revised Statutes, create an exemption from federal drug laws and do not create any positive conflict pursuant to title 21 United States Code Annotated section 903; and that the federal scheduling of marijuana does not apply to the state authorized use of cannabis. The petition shall also include a proposed rule containing the following:

"The listing of marijuana as a controlled substance does not apply to the state authorized use of marijuana, and persons

using marijuana in compliance with state law are exempt from registration.""

Second, federal drug law already provides an exemption for the carriage of cannabis aboard aircraft if authorized under state law ([14 CFR 91.19](#)), so there is no reason to use language in this bill that ignores the impact that the state authorized use of cannabis in Hawaii has upon the federal regulation of marijuana, especially in an island state such as ours.

Therefore, I recommend the following amendment to this bill at page 3, line 11:

(4) Dispensaries as permitted by section 329D-6(r); with the understanding that federal drug law provides an exemption for the carriage of cannabis aboard aircraft if authorized under state law [~~provided that so long as federal law prohibits transportation of medical cannabis over a body of water, a selling dispensary may only sell and transport up to three thousand grams of cannabis or manufactured cannabis products to a purchasing dispensary located on the same island as the selling dispensary~~] ; or

Third, private patient collectives perform a vital function for patients who require organic cannabis medicine and who are unable to afford high dispensary prices, cannot maintain consistent treatment protocols using dispensary products that change frequently in their selection, have legitimate concerns about dispensary product safety, and cannot grow for themselves.

Instead of doing away with these collectives, they should be protected, and brought under proper regulatory control.

Therefore, I recommend the following amendment to this bill at page 7, line 9:

(2) By cultivating cannabis in an amount that does not exceed an adequate supply for the qualifying patient, pursuant to section 329-122; provided that each new location used to cultivate cannabis shall be used by no more than ~~[five]~~ ~~[two]~~ nine qualifying patients and that any existing locations shall be granted grandfather rights until location ownership changes or the location owner no longer wishes to continue; and provided further that the department ~~[,or law enforcement upon the request of the department,]~~ may make requests to location owners for administrative inspections of registered grow sites to verify compliance with the requirements of this chapter pursuant to authority under this chapter. [After December 31, [2023,] 2021, no primary caregiver shall be authorized to cultivate cannabis for any qualifying patient.]”

Fourth, the problems we are facing with regards to dispensary and grow site regulation are not because of a lack of staffing. It is because the Health Resources Administration (HRA), where the Office of Medical Cannabis Control and Regulation (OMCCR) currently resides, does not have the experience or expertise necessary to provide adequate regulatory oversight. The Environmental Health Administration (EHA), which contains the Food Safety Branch, is the proper place for OMCCR.

Therefore, please add the following statutory amendment to this bill:

“§329D-2.5 Office of medical cannabis control and regulation; established; duties. (a) There is established within the department the office of medical cannabis control and regulation, which shall report to the deputy director of environmental health administration effective September 1, 2021 [~~health resources administration~~].

Fifth, any changes to the dispensary statute will require new dispensary administrative rules, which need to be available for public comment. The Department of Health must adopt final dispensary rules as soon as possible to allow re-instatement of Chapter 91 administrative procedures.

Therefore, please add the following statutory amendment to this bill:

“§329D-27 Administrative rules. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(b) No later than January 4, 2016, the department shall adopt interim rules, which shall be exempt from chapter 91 and chapter 201M, to effectuate the purposes of this chapter; provided that the interim rules shall remain in effect until September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

(c) The department may amend the interim rules, and the amendments shall be exempt from chapters 91 and 201M, to

effectuate the purposes of this chapter; provided that any amended interim rules shall remain in effect until September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner.”

And finally, OMCCR is in desperate need of a Medical Cannabis Advisory Board to provide local scientific and medical expertise that can help guide department decision making on cannabis related issues.

Therefore, please add the following statutory amendment to this bill:

§321-30.1 Medical cannabis registry and regulation special fund; established.

(a) There is established within the state treasury the medical cannabis registry and regulation special fund. The fund shall be expended at the discretion of the director of health:

(1) To establish and regulate a system of medical cannabis dispensaries in the State;

(2) To offset the cost of the processing and issuance of patient registry identification certificates and primary caregiver registration certificates;

(3) To fund positions and operating costs authorized by the legislature;

(4) To establish and manage a secure and confidential database;

(5) To fund public education as required by section 329D-26;

(6) To fund substance abuse prevention and education programs; and

(7) For any other expenditure necessary, consistent with this chapter and chapter 329D, to implement medical cannabis registry and regulation programs.

(8) To establish and fund a Medical Cannabis Advisory Board.

Thank you for considering these amendment recommendations.

Aloha.