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TESTIMONY ON SENATE BILL 1263
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT
By
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Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Wednesday, February 20, 2019; 9:15 AM
State Capitol, Conference Room 229

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this bill:

1 - If the reason for annually updating Hawaii's Uniform Controlled Substances Act is to harmonize the state and federal regulation of controlled substances, then the Drug Enforcement Administration (DEA) Marijuana Extract rule needs to be considered:

<https://www.federalregister.gov/documents/2016/12/14/2016-29941/establishment-of-a-new-drug-code-for-marihuana-extract>

[21 CFR 1308.11\(d\)](#)
(58) Marihuana Extract - 7350

“Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant.”

https://www.dea.gov/schedules/marijuana/m_extract_7350.html

2 - A controlled substance with accepted medical use cannot have the highest degree of danger. The following amendment needs to be made to Hawaii's Uniform Controlled Substances Act in order to harmonize the accepted medical use of cannabis in Hawaii with state scheduling regulations:

“An Accepted Medical Use Supporter”

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Section 329-14, Hawaii Revised Statutes, is amended by adding the following subsection:

(f) The enumeration of cannabis, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances does not apply to the medical use of cannabis pursuant to Section 329, Part IX, and Section 329D, Hawaii Revised Statutes.

3 – It is still unclear whether Cannabidiol (CBD) is a controlled substance in Hawaii, and whether the unregulated CBD products that are flowing into our state are safe or legal for human consumption. The Legislature is currently considering an amendment to our Uniform Controlled Substances Act that would place FDA-approved CBD products, such as Epidiolex, into state Schedule V, the least restrictive of our controlled substance schedules.

However, our Department of Public Safety (PSD) still has not told us the scheduling status of non-FDA approved CBD, which makes it impossible to regulate the imported CBD products that are being sold in smoke shops, health food stores, and ink cartridge stores throughout the state. Even imported dried hemp flowers with questionable levels of THC are being sold in our smoke shops without any oversight.

While the unresolved situation with CBD in Hawaii continues to put our residents at risk, states like California are starting to take action. In July of 2018, the [California Department of Public Health](#) issued a FAQ on Industrial Hemp and CBD in food products based on federal law, which clearly prohibits the use of hemp-derived CBD as a food additive or dietary supplement in that state.

New York's [Department of Health and Mental Hygiene](#) has also started prohibiting the addition of CBD to food products, a signal that other states are starting to recognize that regulation in this area is necessary in order to protect consumers and comply with federal law.

The [Food and Drug Administration](#) (FDA) is very clear about the status of CBD and THC as food additives or dietary supplements:

“Under the FD&C Act, it’s illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements. This is a requirement that we apply across the board to food products that contain substances that are active ingredients in any drug.”

Perhaps a good place to start is by requiring that PSD provide testimony on this matter in order to answer the following question before this bill passes through your committee:

“An Accepted Medical Use Supporter”

Is CBD a tetrahydrocannabinol or a derivative of a tetrahydrocannabinol ?

[HRS 329-14. Schedule I.](#) (a) The controlled substances listed in this section are included in Schedule I.

(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, **derivatives**, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6154432/pdf/can.2018.0030.pdf>

Delta-8-THC (Delta-6-THC):

<https://pubchem.ncbi.nlm.nih.gov/compound/2977#section=Top>

Delta-9 THC (Delta-1-THC):

<https://pubchem.ncbi.nlm.nih.gov/compound/Dronabinol#section=Top>

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TABLE 1. Cannabinoids of the Δ^9 -trans-tetrahydrocannabinol Type (Turner et al. 1980)

Cannabinoid	Abbreviation	R ₁	R ₂	R ₃
Δ^9 -trans-tetrahydrocannabinolic acid A	Δ^9 -THCA	COOH	C ₂ H ₁₁	H
Δ^9 -trans-tetrahydrocannabinolic acid B	Δ^9 -THCA	H	C ₂ H ₁₁	COOH
Δ^9 -trans-tetrahydrocannabinol	Δ^9 -THC	H	C ₂ H ₁₁	H
Δ^9 -trans-tetrahydrocannabinolic acid-C ₄		COOH or H	C ₄ H ₉	H or COOH
Δ^9 -trans-tetrahydrocannabinol-C ₄	Δ^9 -THC-C ₄	H	C ₄ H ₉	H
Δ^9 -trans-tetrahydrocannabinovarinic acid		COOH	C ₂ H ₇	H
Δ^9 -trans-tetrahydrocannabinovarin	Δ^9 -THCV	H	C ₂ H ₇	H
Δ^9 -trans-tetrahydrocannabinoriolic acid		COOH or H	CH ₃	H or COOH
Δ^9 -trans-tetrahydrocannabinoriol	Δ^9 -THC-C ₁	H	CH ₃	H

FIGURE 3. Cannabinoids of the Δ^9 -THC type. The most widespread cannabinoids are the phenolic Δ^9 -THC with 21 carbon atoms and a C₅ side chain (R₂ = C₂H₁₁) and its two corresponding carboxylic acids A and B (see Table 1).

<https://cannabis-med.org/data/pdf/2003-01-1.pdf>

4 – The inter-island transportation of cannabis for personal medical use continues to be an issue that is requiring significant amounts of local law enforcement time due to the processing of patients at our state airports who have been referred by TSA, which is threatening the safety of our airports. Local law enforcement officers are also telling patients that they cannot travel with their medicine because it is against federal law, which is beyond the authority of a state law enforcement agency, and not entirely true because of the federal aviation regulation that specifically exempts the carriage of cannabis aboard aircraft if authorized by state law or state agency.

Therefore, in order to clarify the existing provisions for inter-island transport within Hawaii's Medical Use of Cannabis Act and to protect the right of patients to transport legal amounts of cannabis for personal medical use to other islands under state law and the Americans with Disabilities Act, the following amendment needs to be made to the Medical Use of Cannabis section of Hawaii's Uniform Controlled Substances Act:

[HRS 329-122\(f\):](#)

"For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis product, by any means is allowable only by a qualifying patient or qualifying out-of-state patient for their personal medical use, or between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. The Department of Transportation and the Department of Public Safety shall adopt rules to provide compliance with this section.

[14 CFR 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.](#)

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section **does not apply** to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances **authorized by** or under any Federal or **State statute** or by any Federal or **State agency**.