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TESTIMONY ON SENATE BILL 1263 SENATE DRAFT 1
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT
By
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House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Monday, March 25, 2019; 2:00 PM
State Capitol, Conference Room 325

Thank you for the opportunity to provide testimony on this measure. Please don't miss this chance to make some meaningful changes that will benefit Hawaii's patients. We really need our Legislature to resolve the following critical issues:

Comment #1 – One of the purposes of this bill is to harmonize the state and federal regulation of controlled substances by making scheduling changes to Hawaii's Uniform Controlled Substances Act (UCSA) that correspond with recent changes to federal controlled substance regulation.

In this case, a new FDA-approved botanically derived Cannabidiol (CBD) oil made in England is being considered for placement in Hawaii State Schedule V, which would harmonize with the decision of the Drug Enforcement Administration (DEA) to place such approved CBD drug products on the federal Schedule V list.

Which begs the question: if FDA-approved CBD is going to be placed in Hawaii State Schedule V, then what schedule does unapproved CBD fall under?

This is not a trivial question considering the wave of unregulated and unapproved CBD products that is flooding the health and wellness commercial markets in Hawaii.

From a chemistry perspective, you could say that CBD is a derivative of delta-9-tetrahydrocannabinol (THC), since both can be turned into each other with available chemical methods.

And if CBD is a derivative of THC, then CBD is a tetrahydrocannabinol, which would place unapproved CBD in Schedule I along with the other tetrahydrocannabinols.

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);"

The hemp hustlers will tell you that hemp-derived CBD is legal in all fifty states because hemp has been removed from the federal Controlled Substances Act under the Agriculture Improvement Act of 2018.

What they won't tell you is that now that CBD is an approved drug product in the United States, the Food and Drug Administration (FDA) cannot allow unapproved CBD to be sold as a food additive or marketed as a dietary supplement.

The Agriculture Improvement Act of 2018 did not open the door for the inter-state marketing of unapproved cannabinoids found in hemp. Otherwise, hemp farmers would be able to extract THC from hemp and sell this Schedule I controlled substance on the open market. Why would it be any different for unapproved CBD?

Adding an FDA-approved CBD drug product to Hawaii State Schedule V highlights the need to address the scheduling status of unapproved CBD. Please don't do one without the other.

Comment #2 – At the heart of our inability to effectively regulate the medical use of cannabis in Hawaii is the misconception that our Medical Use of Cannabis Program is violating federal law. Effective enforcement cannot occur when the state and federal regulation of medical use cannabis are at odds with each other.

The good news is that this idea that our program is violating federal law is just a mirage. State medical use is "currently accepted medical use in treatment in the United States", which demonstrates the impact that state law can have upon federal law under federalism.

State law says that cannabis has medical use, and federal law says that a substance cannot be in Schedule I if it has accepted medical use. It would be foolish to think that the federal regulation that still has cannabis listed as a Schedule I controlled substance supersedes both state and federal law.

The answer to this predicament is the phrase "does not apply", for which we already have several notable examples:

Exempt from federal Schedule I:
21 CFR 1307.31 - Native American Church.
"The listing of peyote as a controlled substance in Schedule I **does not apply** to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration."

Exempt from Guam Schedule I:
Section 2. The following *new* subsection (g) is added to Appendix A of Chapter 67 of Title 9 Guam Code Annotated, to read as follows:
"(g) The enumeration of marihuana, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances **does not apply** to the medical use of cannabis pursuant to the Joaquin Concepcion Compassionate Cannabis Use Act of 2013."

Exempt from the federal restriction on carriage aboard aircraft:
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."

Therefore, the first step towards re-harmonizing the state and federal regulation of medical use cannabis is to make the following amendment to Hawaii's UCSA:

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.

Comment #3 – 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 who have been referred by TSA, which is distracting our officers from their other duties and threatening the safety of our airports.

Local law enforcement officers are also telling patients that they cannot travel with their medicine to other islands 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.

Please do not allow this bill to pass out of your committee until these issues have been fully addressed.