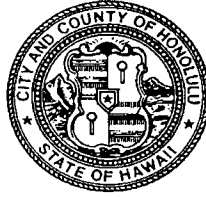


DEPARTMENT OF HUMAN RESOURCES

**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: [www.honolulu.gov/hr](http://www.honolulu.gov/hr)

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

February 18, 2015

The Honorable Josh Green, Chair  
and Members of the Committee on Health  
The Senate  
State Capitol, Room 414  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Green and Members of the Committee:

**SUBJECT: Senate Bill No. 1291  
Relating to Medical Marijuana**

The Department of Human Resources ("DHR"), City and County of Honolulu respectfully opposes SB 1291, which would prohibit employers from disciplining, suspending, discharging, or discriminating against employees based on a positive marijuana test result if the employee used medical marijuana in accordance with the law. The House Committees on Health and Judiciary took up the companion HB 795 last week, and decided to defer the measure indefinitely. We respectfully ask that this committee likewise hold SB 1291 in conference.

While the intent of the measure seems reasonable at first glance, the proposed law fails to take into account the realities of the workplace and the role drug-testing plays in enhancing workplace safety. According to the DEA, marijuana is a mind-altering drug.<sup>1</sup> The short-term effects of marijuana include distorted perception, loss of coordination, and problems with memory, learning, and problem-solving.<sup>2</sup> Long-term use of marijuana is further associated with impairment of judgment, memory, and concentration.<sup>3</sup> To help in creating a safer work environment, employers must have a reliable and practical method for identifying employees whose work may be affected by the mind-altering effects of marijuana. This is particularly critical for those employees who duties include safety-sensitive functions where the effects may not be apparent until an employee is in a life or death, crisis situation. A majority of City positions

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<sup>1</sup> See U.S. Dept. of Justice Drug Enforcement Administration (DEA) Marijuana Drug Fact Sheet, *available at* [http://www.dea.gov/druginfo/drug\\_data\\_sheets/Marijuana.pdf](http://www.dea.gov/druginfo/drug_data_sheets/Marijuana.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The Honorable Josh Green, Chair  
and Members of the Committee on Health  
The Senate  
February 18, 2015  
Page 2

include an element of public safety or first-responder duties, and because of the nature of our workforce, we have negotiated drug-testing programs which include disciplinary action, as well as drug-testing policies covering employees in safety-sensitive functions who are not subject to collective bargaining agreements.

Section 1 subpart (d)(2) and Section 2 subpart (2) restrict use of marijuana only “in the workplace of the employee’s employment.” The bill does not clearly cover on-duty work outside of the workplace, for example, employees who are drivers.

Section 1 subpart (d)(3) and Section 2 subpart (3) enable employers to restrict employees from being “under the influence of marijuana while working in the workplace.” Unfortunately, current urinalysis testing methods do not allow for a determination of whether employees are “under the influence,” only whether cannabinoid metabolites are present in an individual’s urine. To DHR’s knowledge, there is currently no objective and approved laboratory test available which could reliably determine whether an employee is “under the influence” of marijuana. Public safety could be endangered if only employees who are proven to be “under the influence” of marijuana may be subject to personnel action. Even if supervisors receive training on the signs and symptoms of an employee being “under the influence,” factors such as delayed reaction time and ability to make sound decisions in a crisis will not necessarily present themselves in an observable manner prior to the crisis—at which time it would be too late. This is why random testing and actions taken for positive test results remain valuable tools in enhancing the safety of the workplace.

Finally, DHR has concerns about enacting this proposed law via amendment to Hawaii’s discrimination statute, Hawaii Revised Statutes Chapter 378. DHR does not believe it is appropriate to essentially create a new “protected class” of persons in employees who utilize medical marijuana.

Based on the foregoing, we respectfully request that SB 1291 be held. Thank you for the opportunity to testify on this matter.

Sincerely,



Carolee C. Kubo  
Director

cc: Mayor’s Office

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [jcrotteau@honolulu.gov](mailto:jcrotteau@honolulu.gov)  
**Subject:** Submitted testimony for SB1291 on Feb 18, 2015 13:30PM  
**Date:** Tuesday, February 17, 2015 10:54:30 AM  
**Attachments:** [SB1291,Medical Marijuana, oppose.pdf](#)

---

**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Crotteau	Honolulu Police Department	Oppose	Yes

Comments:

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**TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT**

**SENATE BILL 1291**

**RELATING TO MEDICAL MARIJUANA**

**BEFORE THE COMMITTEE ON HEALTH**

DATE : Wednesday, February 18, 2014

TIME : 1:30 P.M.

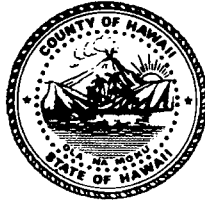
PLACE : Conference Room 414  
State Capitol  
415 South Beretania Street

**PERSON TESTIFYING:**

Police Chief Harry S. Kubojiri  
Hawai`i Police Department  
County of Hawai`i

(Written Testimony Only)

**William P. Kenoi**  
*Mayor*



**Harry S. Kubojiri**  
*Police Chief*

**Paul K. Ferreira**  
*Deputy Police Chief*

## **County of Hawai'i**

### **POLICE DEPARTMENT**

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

February 17, 2015

Senator Josh Green  
Chairperson and Committee Members  
Committee on Health  
415 South Beretania Street, Room 414  
Honolulu, Hawai'i 96813

**Re: Senate Bill 1291 Relating to Medical Marijuana**

Dear Senator Green:

The Hawai'i Police Department opposes Senate Bill 1291, with its purpose being to prohibit an employer from disciplining, suspending, discharging, or discriminating against an employee who is a patient qualified to use medical marijuana solely because the employee tested positive for marijuana use.

The manner in which this Bill is written is ambiguous. Employers conduct drug screens out of concern with matters affecting the overall safety of their organization and their employees. Drug use, to include the use of marijuana as well as a number of other mind-altering drugs, even if the use occurs during non-work hours is a matter of great concern for employers. Depending on the user's body height/weight, frequency of the marijuana use, how ingested, and the potency of the marijuana, the effects of marijuana use can be felt for several hours after ingestion. So even if the marijuana is used at another location during an employee's off duty time, the employee could still feel the effects of the marijuana use during the employee's work time. Long term users of marijuana tend to have decreased energy levels and shorter attention spans which could have a negative impact on any work organization. This could lead to more work related injuries/accidents and/or lower work production. Employers should be able to retain the authority to discipline and terminate employees who test positive for marijuana use.

We recognize that the Bill as written in section 3 notes: "Nothing in this section shall be construed to supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace of the employee's employment." We also note that drug tests are conducted to test if employees have the drugs in their system because it does affect their work maybe at times not to the point of outright intoxicated appearance but certainly in decreased cognitive skills which will certainly hamper their ability to function as a paid employee is expected to.

Senator Josh Green

**Re: Senate Bill 1291 Relating to Medical Marijuana**

February 17, 2015

Page 2

Thank you for allowing the Hawai`i Police Department to provide comments relating to Senate Bill 1291.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF



Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the Senate Committee on Health  
Wednesday, February 18, 2015 at 1:30 P.M.  
Conference Room 414, State Capitol**

**RE: SENATE BILL 1291 RELATING TO MEDICAL MARIJUANA**

Chair Green, Vice Chair Wakai, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1291, which prohibits an employer from disciplining, suspending, discharging, or discriminating against an employee who is a patient qualified to use medical marijuana solely because the employee tested positive for marijuana use.

The Chamber is the largest business organization in Hawaii, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is opposed to SB 1291 as it may create an unsafe workplace environment for employees as well as clients. The bill ties the hands of employers in addressing the aforementioned issue and could create more administrative burden and legal actions against employers.

Thank you for the opportunity to testify.

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**Subject:** \*Submitted testimony for SB1291 on Feb 18, 2015 13:30PM\*  
**Date:** Friday, February 13, 2015 8:23:56 PM

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**SB1291**

Submitted on: 2/13/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kalawai'a Goo	Individual	Support	No

Comments:

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**Cc:** [maumagic5711@hotmail.com](mailto:maumagic5711@hotmail.com)  
**Subject:** \*Submitted testimony for SB1291 on Feb 18, 2015 13:30PM\*  
**Date:** Saturday, February 14, 2015 5:01:32 PM

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**SB1291**

Submitted on: 2/14/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann Evans	Individual	Support	No

Comments:

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**Date:** Saturday, February 14, 2015 11:58:55 PM

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**SB1291**

Submitted on: 2/14/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
stuart saito	Individual	Support	No

Comments: I support this bill as medical use at home does not mean you are under the influence at work since the drug testing for cannabis doesn't show under influence at the time of testing only shows positive for use as far as one month before possibly longer depends on weight of person and usage, it still does not show under the influence at the time of testing.

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**To:** [HTHTestimony](#)  
**Cc:** [bacher.robert@gmail.com](mailto:bacher.robert@gmail.com)  
**Subject:** Submitted testimony for SB1291 on Feb 18, 2015 13:30PM  
**Date:** Sunday, February 15, 2015 2:12:46 PM

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**SB1291**

Submitted on: 2/15/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Bacher	Green Futures	Support	No

Comments: This bill will help clear up the grey area that patients are left in currently. It will help people function at the jobs, while helping them keep their jobs.

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**Subject:** Submitted testimony for SB1291 on Feb 18, 2015 13:30PM  
**Date:** Sunday, February 15, 2015 8:06:19 PM

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**SB1291**

Submitted on: 2/15/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sharon	Individual	Support	No

Comments: Medicine!

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ONLINE TESTIMONY SUBMITTAL  
Senate Committee on Health  
Hearing on Wednesday, February 18, 2015 @ 1:30 p.m.  
Conference Room #414

**DATE:** February 16, 2015

**TO:** Senate Committee on Health  
Senator Josh Green, Chair  
Senator Glenn Wakai, Vice Chair

**FROM:** Eva Andrade, Executive Director

**RE:** Reservations on SB 682; SB 1019; SB 1291: Relating to Medical Marijuana

Aloha and thank you for the opportunity to provide comments on medical marijuana and why we have serious concerns about the bills referenced above. Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii, representing a network of various Christian Churches and denominations. While we have compassion for people who are ill and are staunch supporters of providing better end of life care for people who are in pain and suffering, we have serious concerns about the expansion of access to medical marijuana and their potential ramifications on the wider community – especially with regards to our keiki.

Although we will leave the discussion as to the regulatory functions and applicability to the legal experts, we do offer these five reasons why we are concerned:

**1) Marijuana use, cultivation and dispensing goes against federal law.**

Although 23 states (and D.C.) have enacted laws to legalize medical marijuana, (including Hawai'i which legalized it for medicinal use in 2000)<sup>i</sup>, the bottom line remains that **it is still illegal to possess, use or distribute marijuana according to federal law.**

**2) Expanded access to marijuana will hurt our keiki.**

Once the bridge is built to widen its access and availability, our keiki will be caught in the crossfire. There's a reason marijuana is the most widely used illegal drug in the world – it becomes an addiction. The bottom line is that people can't stop using it once they start<sup>ii</sup>. And once they start, it can become a pathway to other drugs. Even though proponents have tried to dismiss this argument, clinical studies continue to prove otherwise. Medical marijuana use can also hurt a child during his or her mother's pregnancy.<sup>iii</sup>

**3) Medical marijuana opens the door for passage of recreational use of marijuana.**

The argument for medical marijuana usually is just a way of opening the door to the recreational use of marijuana. When a state legalizes smoking marijuana for medical purposes, you can expect the next push to be for legalizing recreational marijuana. People of faith may accept the use of drugs for medicinal necessity but we do not understand why we need to flip to the other extreme and treat marijuana like it's a mild, over-the-counter medication. Even the American Medical



Association maintains its position that it [AMA] “shall encourage model legislation that would require placing the following warning on all cannabis products not approved by the U.S. Food and Drug Administration: “Marijuana has a high potential for abuse. It has no scientifically proven, currently accepted medical use for preventing or treating any disease process in the United States.” (Res 213, I-14) <sup>iv</sup>

#### 4) Benefit of smoking marijuana for medical purposes still not proven

The fact remains that there is not enough scientific data to support marijuana’s medical benefits. According to the Whitehouse website, [Whitehouse.gov](http://Whitehouse.gov)<sup>v</sup>, “To date...neither the FDA<sup>vi</sup> nor the Institute of Medicine have found *smoked* marijuana to meet the modern standard for safe or effective medicine for any condition.” It’s highly unlikely that anyone will be able to prove the substance is entirely safe, because science shows that it is not. As with all drugs, there is always a long list of side effects, warnings, and disclaimers.

#### 5) Hawai’i’s roads could become a testing ground for legal limits

Marijuana use affects driving. It is the most prevalent illegal drug detected in impaired drivers, fatally injured drivers and motor vehicle crash victims. It is not difficult to conclude that drivers who test positive for marijuana can cause serious automobile accidents. Five years after establishing a “medical” marijuana program, California saw an increase in fatal crashes. The California Office of Traffic Safety (OTS) completed a survey in 2012 that reported more drivers tested positive for drugs that can impair driving (14%) than did for alcohol (7.3%). Of the drugs, marijuana was most prevalent at 7.4%.<sup>vii</sup> According to the Colorado Department of Transportation, drivers testing positive for marijuana doubled between 2006-2010, following an influx of pot shops and significant increases in registered “medical” marijuana users.<sup>viii</sup>

Hawaii needs to remain a safe place for families. We hope that you keep these things in mind and not rush into anything until all the problems reported around the country with respect to marijuana are worked out. Mahalo for the opportunity to submit our concerns.

---

<sup>i</sup> Senate Bill 862 passed in 2000, (VOTE IN THE HOUSE: 30 yes-and 20 no (Auwae, Cachola, Halford, Kanoho, Kawakami, Lee, Leong, Marumoto, McDermott, Menor, Meyer, Morihara, Moses, Nakasone, Pendleton, Rath, Stegmaier, Takai, Whalen, Yonamine); (VOTE IN THE SENATE) 15 yes-and 10 no (Buen, Chun, D. Ige, M. Ige, Inouye, Iwase, Kawamoto, Matsuura, Sakamoto, Tam) [ Source:

[http://www.capitol.hawaii.gov/session2000/status/SB862\\_his\\_.htm](http://www.capitol.hawaii.gov/session2000/status/SB862_his_.htm)

<sup>ii</sup> <http://www.drugabuse.gov/publications/drugfacts/marijuana> (02/05/15)

<sup>iii</sup> <http://www.livescience.com/42853-marijuana-during-pregnancy-baby-brain.html> (02/05/15)

<sup>iv</sup> AMA Policy: D-95.976 Cannabis - Expanded AMA Advocacy #4

<sup>v</sup> <https://petitions.whitehouse.gov/response/what-we-have-say-about-legalizing-marijuana> (02/05/15)

<sup>vi</sup> “A growing number of states have passed voter referenda (or legislative actions) making smoked marijuana available for a variety of medical conditions upon a doctor’s recommendation. These measures are inconsistent with efforts to ensure that medications undergo the rigorous scientific scrutiny of the FDA approval process and are proven safe and effective under the standards of the FD&C Act. Accordingly, FDA, as the federal agency responsible for reviewing the safety and efficacy of drugs, DEA as the federal agency charged with enforcing the CSA, and the Office of National Drug Control Policy, as the federal coordinator of drug control policy, do not support the use of smoked marijuana for medical purposes.” [Source: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108643.htm>]

<sup>vii</sup> [http://unmaskingmarijuana.org/Public\\_Safety.html](http://unmaskingmarijuana.org/Public_Safety.html) (February 6, 2015)

<sup>viii</sup> <http://kdvr.com/2014/05/15/study-more-marijuana-positive-drivers-involved-in-fatal-car-accidents-in-colorado/>



The Public Policy Voice for the Roman Catholic Church in the State of Hawaii

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**HEARING:** Senate Committee on Health, hearing on Wednesday, February 18, 2015 @ 1:30 p.m.  
#414

**SUBMITTED:** February 16, 2015

**TO:** Senator Josh Green, Chair  
Senator Glenn Wakai, Vice Chair

**FROM:** Walter Yoshimitsu, Executive Director

**RE:** Reservations on SB 682; SB 1019; SB 1291 Relating to Medical Marijuana

If passed, these bills would allegedly “fix” the problem of medical marijuana distribution and the need for dispensaries and/or regulation. **We understand that medicinal marijuana is already legal in the State of Hawaii.; however, we maintain that promoting the use of marijuana (even for medical reasons) will translate for many, especially young people, as permissiveness, with little or no consideration of its ultimate effect on one’s body.** According to the American Medical Association, marijuana is considered a “dangerous drug” and a “powerful intoxicant” that harms one’s mental, physical, academic, and spiritual well-being, promotes irresponsible sexual behavior, encourages disrespect for traditional values, and threatens Hawaii’s youth. This is not what we want for Hawai’i’s keiki.

**At the federal level, marijuana remains classified as a Schedule I substance under the Controlled Substances Act, where Schedule I substances are considered to have a high potential for dependency, making distribution of marijuana a federal offense.**

Many prescribing physicians for medicinal use of marijuana are arbitrary as to what counts as an authentic medical need so there is no real way for this legislature to make a truly informed decision. Even the American Medical Association’s 527-member House of Delegates decided during its interim meeting in 2013 (National Harbor, Md.), to retain the long-standing position that “cannabis is a dangerous drug and as such is a public health concern.”

Long-term health effects of chronic use, and marijuana’s role as a gateway to the use of other illegal drugs, are serious issues surrounding its use and decriminalization. The Catholic Church cares too much about the family to support this endeavor. Priority legislation should include efforts that strengthen and promote the family, not provide tools to ultimately destroy it.

The Catechism offers useful guidance: “The use of drugs inflicts very grave damage on human health and life” (no. 2291). In 2001, the Vatican’s Pontifical Council for Health Care Ministry issued a pastoral handbook entitled “Church, Drugs, and Drug Addiction.” It extols the virtue of temperance which “disposes us to avoid every kind of excess: the abuse of food, alcohol, tobacco, or medicine” (no. 2290).

Mahalo for the opportunity to submit these comments.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [anny@me.com](mailto:anny@me.com)  
**Subject:** \*Submitted testimony for SB1291 on Feb 18, 2015 13:30PM\*  
**Date:** Monday, February 16, 2015 12:53:55 PM

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann Turner	Individual	Support	No

Comments:

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Angela Huntemer	Individual	Support	No

Comments: Aloha Chair, Vice Chair and Committee Members, I support SB1291 that protects employees from discrimination or discipline if they test positive for marijuana. Mahahlo, Angela Huntemer, North Shore Oahu.

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*Hawaii's Voice for Sensible, Compassionate, and Just Drug Policy*

**TO:** SENATE COMMITTEE ON HEALTH  
**FROM:** PAMELA LICHTY, M.P.H., PRESIDENT

**DATE:** FEBRUARY 18, 2015, 1:30 p.m., ROOM 414

**RE:** S.B. 1291 RELATING TO MEDICAL MARIJUANA – **IN SUPPORT**

Good afternoon, Chair Green, Vice Chair Wakai, and members of the Committee. My name is Pam Lichty and I'm President of the Drug Policy Action Group (DPAG), the government affairs arm of the Drug Policy Forum of Hawaii.

**We strongly support SB 1291** which would emulate other states which prohibit an employer from firing an employee who is a registered medical marijuana patient user based solely on the results of a drug test.

Since there is no test for "current impairment" of a person who uses marijuana, but rather it is the lingering metabolites in the person's blood that show up on a test, it is imperative that any discipline - including dismissal - be based on the actual job performance of the person in question.

Whether or not patient uses medical cannabis is between them and their physician, and it is not the business of the employer, assuming again that their job performance meets expectations.

We urge the committee to pass this far-sighted measure on to the Judiciary Committee with a strong recommendation. Mahalo for the opportunity to testify today.

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sally Waitt	Individual	Support	No

Comments:

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Georgina Mckinley	Individual	Support	No

Comments: I strongly support SB1291. If an employee is using cannabis as a medicine, in accordance with state laws, and is not impaired while at work, they should not be punished for what is a private medical decision they've made with their physician regarding their treatment. It's necessary to have some form of protection in place, for employees to not arbitrarily face disciplinary action, suspension, discharge, or discrimination based solely on the result of a drug test. Cannabis can often control pain without the debilitating side effects of more dangerous prescription narcotics. A patient should not be forced to choose between the pain relief they need to live a normal life and the employment they need to support themselves and their families.

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leah M. Koonce	Individual	Support	No

Comments: I am submitting testimony in support of this bill because having a urine screen test positive for marijuana while holding a legal recommendation for medical marijuana should not be grounds for termination of employment any more than a person who has a positive urine screen for opiates or benzodiazepines if they also have a legal prescriptions for those medications. Thank You. Leah M Koonce (808)561-9521 85-638 Farrington hwy Waianae,Hawaii 96792

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Landes	Individual	Support	No

Comments: Please support SB 1291. Employers should not be able to make discriminatory decisions based SOLELY on a medical marijuana patient's drug test. Medical marijuana patients are using medication prescribed by their doctors for their individual medical conditions. Just as we would never discriminate against a person for having asthma or diabetes, or for needing to take antibiotics or blood-thinners, we should likewise not discriminate against a person with severe medical conditions requiring them to use medical marijuana.

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Edward Coll	Individual	Support	No

Comments: Medical cannabis patients are obeying the law and should not have to fear for their jobs if they are able to work. A drug test alone should not be a reason to fire a medical cannabis patient from their job. More specifically: This law only applies to patients who would be fired solely for testing positive for marijuana on a drug test. This bill does not limit the rights of employers to ensure that their employees are not impaired at work. Medical cannabis patients who are obeying the law should not be punished for what is a private decision about medication between them and their doctors, especially when it happens outside of work. These provisions are in place in several other states such as Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Nevada, and New Hampshire. This is an area where we are sorely behind the times.

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**SB1291**

Submitted on: 2/16/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Alohilani Hue Sing	Individual	Support	No

Comments: Please support SB 1291. Medical cannabis patients are obeying the law, and should not have to fear for their jobs if they are able to work. A drug test alone should not be reason to fire a medical cannabis patient from their job. More specifically: This law only applies to patients who would be fired solely for testing positive for marijuana on a drug test. This bill does not limit the rights of employers to ensure that their employees are not impaired at work. Medical cannabis patients who are obeying the law should not be punished for what is a private decision about medication between them and their doctors, especially when it happens outside of work. These provisions are in place in several other states such as Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Nevada, and New Hampshire. This is an area where we are sorely behind the times. Please say YES to SB1291 and our state Forward!

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

Comments: Support

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TESTIMONY to: Senate Committee on Health

**S. B. 1291** Relating to Medical Marijuana: Patients and Caregivers; Protections

Wednesday, February 18, 2015

1:30 PM -- State Capitol Conference Room 414

Submitted in **OPPOSITION** by: Mary Smart, Mililani, HI 96789

Chair Josh Green, Vice-Chair Glenn Wakai and Committee Members:

**1. I most strongly OPPOSE S.B. 1291.**

2. Employers evaluate their employees competency and also their mental and emotional aptitude for the job in question. Based on his/her evaluation, an employer should make a determination whether an individual medical marijuana user is competent to fulfill particular job requirements. When the employer decides a job applicant/employee cannot fulfill job requirements and/or is unable to work toward the best interest of the business, the other employees, and/or the customers, the employer has the duty and obligation to find someone else for the position. A person who is using medical marijuana should not have special privileges in getting and/or retaining jobs.

3. An employer should not put people in danger. It is well known that there are negative side effects of marijuana and some of them affects a person's mental and emotional health. Not all people react to the drug in the same manner. For that reason, an employer must be given the latitude to make employment and retention decisions that keeps his business productive and his staff and customers safe. To do that, the employer might have to restrict some or all medical (and otherwise) marijuana users from the workplace. This is to protect the medical marijuana user as well as other workers/clients. It might depend on the duties of the particular job (high precision surgery) or the work environment (e.g. high-rise construction, etc). As reported in the [Denver Post](#), one problem with determining impairment is that there aren't tests that can accurately measure that yet. Another is that there is not a good means to control the strength or dose of the medical marijuana except by the [patient's experience](#) and desire to use only the amount needed. It is possible that the patient will intake more drug than the prescribing doctor might have intended. According to a [Washington Post article](#): "Workplace drug testing became commonplace in the 1980s as employers sought to reduce the negative effects of drug use. This practice has succeeded. After implementing drug testing programs, many [employers have reported](#) higher productivity, less absenteeism, lower employee turnover, and declines in workers' compensation claims. In [a 2011 poll of human resources managers](#), the number of employers reporting high absenteeism fell by half after implementing drug-testing programs. Nearly one in five reported improved productivity." From the other perspective [Forbes Magazine](#) reported: "Drug abusers are more likely to become sick or injured, are less productive, can be more distracting to co-workers, have increased absenteeism, and can be a danger to themselves or others."

Maintaining a drug-free workplace is important for the safety, health, and productivity of *all* employees."

4. Organizations must be allowed to make optimal hiring/firing decisions. Too many government mandates are destroying Hawaii's economy and keeping the next generation on the mainland. It is time for government to stop interfering.

**5. Do not pass S.B. 1291 out of committee.**

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daniel Susott, MD, MPH	Individual	Support	No

Comments: Patients should not have to worry about losing their jobs for using cannabis medically. I strongly support removing all criminal penalties involving cannabis. The criminalization of cannabis has cost many lives and enforcement is much more costly and dangerous than the plant itself. Cannabis has been with people for thousands of years, since the dawn of agriculture, and NO deaths have been attributed to it. Hawaii suffers under more layers of organized crime than many places and it is time to remove criminal penalties for cannabis. If you're on the wrong side of this if due, you are either uninformed, which is scary in government, or you're a crook, which is scarier.

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Park	Individual	Support	No

Comments: I support this bill.

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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*Hawaii's voice for sensible, compassionate, and just drug policy*

**COMMITTEE ON HEALTH**

Senator Josh Green, Chair  
Senator Glenn Wakai, Vice Chair

Wednesday, February 18, 2015

1:30PM

Conference Room 414

State Capitol

415 South Beretania Street

**Executive Director Rafael Kennedy in strong support SB1291 -  
Relating to Medical Marijuana**

Aloha Chair Green, Vice Chair Wakai, and members of the Health committee,

Mahalo for your time and consideration in this matter. We support SB1291 because it addresses one of the biggest problems with the current medical cannabis law in Hawaii: the **lack of civil protections**. Many people assume that because medical marijuana use is legal in the state that medical marijuana patients are safe in using their medicine, and this is simply not the case. The medical marijuana law provides protections for patients from criminal prosecution, but not from civil penalties, like eviction, expulsion from school, or the denial of visitation with children.

SB1291 does not address many of these concerns, but does provide some basic protections for patients who are employed and who fail a drug test because of their legal medical cannabis use outside of work, and given the very high costs of living in the state, this can often be an insurmountable issue.

Crucially, this bill **does not harm employers**. Employers will still be able to penalize or fire medical cannabis patients if their work suffers as a result of their medical cannabis use, as they would if patients' work were to suffer due to their use of any prescription drug. The bill will not require employers to allow patients to use their medical cannabis at work, or to work while under the influence, and in this way, it is a very small but

reasonable step forward. Laws that offer these employment protections (some of which go much further than this bill) are already working in states such as: **Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Nevada, and New Hampshire**, (see the attached document outlining these policies in other states). This is an area where we are sorely behind the times.

One amendment that might make the bill more effective at its intent of preventing employment discrimination would be to also protect patients from discipline or termination on the grounds of their status as a medical cannabis patient, especially if it is revealed after a mandatory drug screening test.

Mahalo for your time and consideration in this matter,

Rafael Kennedy  
Executive Director,  
Drug Policy Forum of Hawaii

The Drug Policy Forum of Hawaii works to educate policymakers and the public about effective ways of addressing drug issues in Hawai'i with sensible and humane policies that reduce harm, expand treatment options, and adopt evidence-based practices while optimizing the use of scarce resources.



Marijuana Policy Project  
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*“We change laws.”*

## Medical Marijuana Laws and Civil Protections

This chart reviews medical marijuana laws’ language that *may* support claims for civil protections, such as protections from discrimination in housing, employment, child custody cases, or enrollment in a college. It also includes known court cases related to civil protections and explicit limitations on those protections in the laws. In addition to the medical marijuana laws’ text, other state laws may provide some civil protections, and those are generally not discussed in this memo. This chart does not include information about protections for physicians.

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Alaska	None known.	Alaska Stat. § 17.37.030 (b) “Except as otherwise provided by law, a person is not subject to arrest, prosecution, or penalty in any manner for applying to have the person’s name placed on the confidential registry maintained by the department under AS 17.37.010.”	Alaska Stat. § 17.37.030 (d) “Nothing in this chapter requires any accommodation of any medical use of marijuana (1) in any place of employment ...”
Arizona	None known.	Ariz. Rev. Stat. § 36-2811 (B) says registered patients and caregivers are not “subject to ... penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board ...” for the permissible conduct. § 36-2813 prohibits discrimination by schools, landlords, and employers, as well as discrimination in respect to organ transplants, other medical care, and custody and visitation, unless an exception applies. Employers generally cannot penalize patients for a positive drug test for marijuana “unless the patient used, possessed or was impaired by marijuana at or during work.” Per §36-2805, nursing homes, assisted living centers, and similar facilities generally “may not unreasonably limit a registered qualifying patients’ access to or use of marijuana authorized under this chapter.”	The prohibitions on discrimination by employers, landlords, schools, and assisted living facilities do not apply if “failing to [penalize the cardholder] would cause the [entity] to lose a monetary or licensing related benefit under federal law or regulations.” The law also does not allow anyone to undertake “any task under the influence of marijuana when doing so would constitute negligence or professional malpractice.” HB 2541 (2011) allows employers to take actions based on “good faith” beliefs about employee impairment. HB 2349 (2012) bans the use of marijuana on college campuses and vocational schools. The restrictions the legislature passed might be challenged as illegal meddling with an initiative under the Voter Protection Act.

**NOTE: This is not intended for or offered as legal advice. It is for informational and educational purposes only.**

*Updated September 2014*

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>California</b>	In <i>Ross v. Ragingwire</i> , the state Supreme Court ruled that the law does not protect patients from firing for testing positive for metabolites. It noted that the legislature could enact such protections. The legislature did so in 2008, passing AB 2279, but the bill was vetoed.	In the introduction, voters declared their intent “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and to “ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (Calif. Health & Safety Code § 11362.5 (b))	Calif. Health & Safety Code § 11362.785 (a) provides “Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.”
<b>Colorado</b>	The Colorado Court of Appeals ruled against a medical marijuana patient who was denied unemployment after he was fired for testing positive for marijuana. ( <i>Beinor v. Industrial Claim Appeals Office</i> ). In April 2013, it also ruled against Brandon Coats, a paralyzed patient who sued DISH for terminating him for off-hours medical marijuana use.	Colo. Rev. Stat. § 25-1.5-106 (8) says "the use of medical marijuana is allowed under state law" to the extent it is carried out in accordance with the state constitution, statutes, and regulations. Patients and caregivers may be protected by the state’s “Lawful Off-Duty Activities Statute,” which protects employees from being penalized for legal outside-of-work behavior.	Col. Const. Art. XVIII, § 14. (10) (b) specifies “Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.”
<b>Connecticut</b>	None known.	The law says patients and caregivers should not be “denied any right or privilege, including, but not limited to, being subject to any disciplinary action by a professional licensing board” for the permitted conduct. It also includes protections from discrimination based on one’s status as a patient or caregiver by landlords, employers, and schools.	The protections from discrimination by landlords, schools, and employers include an exception for if it is “required by federal law or required to obtain federal funding.” The law does not “restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours.” Patients cannot use marijuana on any school grounds, including in dorms or other college property.

<b>State</b>	<b>Court Decisions</b>	<b>Language Most Relevant to Civil Protections</b>	<b>Limitations Related to Civil Protections</b>
<b>Delaware</b>	None known.	16 Del. Code §4903A (a-b) says registered patients and caregivers are not “subject to ... denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau ...” for the permissible conduct. §4905A (a-b) prohibits discrimination by schools, landlords, and employers, as well as discrimination in respect to organ transplants, other medical care, and custody or visitation, unless an exception applies. Employers generally cannot penalize patients for a positive drug test for marijuana unless the patient “used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.”	16 Del. Code §4904(A) and 4905A (a-b) provide limitations on the protections. The prohibitions on discrimination by employers, landlords, and schools do not apply if “failing to [penalize the cardholder] would cause the [entity] to lose a monetary or licensing-related benefit under federal law or regulation.” §4904A (a) provides that the chapter does not allow anyone to undertake “any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice.”
<b>District of Columbia</b>	None known.	D.C. Code § 7-1671.02 provides “(a) Notwithstanding any other District law, a qualifying patient may possess and administer medical marijuana, and possess and use paraphernalia, in accordance with this act and the rules issued pursuant to section 14.”	D.C. Code § 7-1671.03 says “Nothing in this act permits a person to: (1) Undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice ...”
<b>Hawaii</b>	None known.	Haw. Rev. Stat. § 329-122 states: “Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if: ...”	Haw. Rev. Stat. § 329-122 (c) provides: “The authorization for the medical use of marijuana in this section shall not apply to: ... (2) The medical use of marijuana: ... (B) In the workplace of one’s employment ...”
<b>Illinois</b>	None known.	Schools, employers, and landlords cannot refuse to enroll, lease to, or otherwise penalize someone for his or her status as a registered patient or caregiver, unless failing to do so would create an issue with federal law, contracts, or licensing. (Sec. 40, HB 1, 2013). Patients' authorized use of marijuana cannot disqualify a person from receiving organ transplants or other medical care and will not result in the denial of custody or parenting time, unless the patient’s actions created an unreasonable danger to the minor's safety. (Sec. 40)	Landlords may prohibit the smoking of cannabis on the rented premises. (Sec. 40) Schools, employers, and landlords, may penalize a person for their status as a patient or caregiver if "failing to do so would put the school, employer, or landlord in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules." (Sec. 40) The law does not "prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner." (Sec. 50, which also includes other limitations on employers' liability.)

State	Court Cases Or Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>Maine</b>	In early 2013, the ACLU of Maine filed suit on behalf of Brittany Thomas, a patient who was fired from Adecco Group North America after testing positive for marijuana. The case is still pending.	Me. Rev. Stat. Ann. tit. 22, § 2423-E provides that persons whose conduct is authorized by the law “may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action.” It also provides, “A school, employer, or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person’s status as a qualifying patient or a primary caregiver” unless an exception applies. It provides, “A person may not be denied parental rights and responsibilities with respect to or contact with a minor child ...” unless the person’s behavior is contrary to the best interests of the child.	The protections from discrimination by employers, landlords, and schools do not apply if “failing to [penalize the person] would put the school, employer, or landlord in violation of federal law or cause it to lose a federal contract or funding.” Maine’s law also does not prohibit a restriction “on the administration or cultivation of marijuana on [rented] premises when that administration or cultivation would be inconsistent with the general use of the premises.” It “does not permit any person to: Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard ...” The law does not require “An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.”
<b>Maryland</b>	None known.	Md. Code Ann. § 13-3313 protects qualifying patients, caregivers, certifying physicians, licensed growers, licensed dispensaries, academic medical centers, those entities’ staff, and hospitals or hospices that are treating a qualifying patient from “any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege” when acting in accordance with the law.	Md. Code Ann. § 13-3314(a)(1) provides that the law does not allow anyone to “[undertake] any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice.” § 13-3314(a)(5) allows landlords and condominiums to restrict marijuana smoking.
<b>Massachusetts</b>	None known.	Sec. 1 provides, “The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana, as defined herein.” The law also says that persons meeting its requirements shall not be “penalized under Massachusetts law in any manner, or denied any right or privilege.”	Sec. 7 provides, “Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.”

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>Michigan</b>	On Sept. 19, 2012, the federal appellate court for the sixth district ruled against sinus cancer survivor Joe Casias, who sued Wal-Mart for terminating his employment for failing a drug test.	Mich. Comp. Laws § 333.26424 (a) provides that those abiding by the act cannot be subject to “arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau” for actions allowed by the law. Sec. 4 (c) provides, “A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.”	Mich. Comp. Laws § 333.26424 provides “(b) This act shall not permit any person to do any of the following: ... (1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice. ... (c) Nothing in this act shall be construed to require: ... (2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.”
<b>Minnesota</b>	None known.	Minn. Code Ann. § 152.32 subd. 3 provides that unless an exception applies, an individual’s status as a registered medical marijuana patient may not be used: 1) by schools as a reason to refuse enrollment; 2) by landlords as reason to refuse to lease to the person; 3) by employers as a reason to refuse to hire or as a reason to terminate employment; or 4) as a reason to deny custody or visitation rights. An employer generally cannot discriminate against a patient based on a failed drug test for marijuana.	The law does not require accommodation if it would violate federal law or regulations, or cause the entity to lose a federal licensing or monetary benefit. Employers may punish patients if they are impaired at work or possess marijuana at work. In addition, Minn. Code Ann. § 152.23 provides that patients may face civil penalties for undertaking a task under the influence of marijuana that would constitute negligence or professional malpractice.
<b>Montana</b>	In 2009, the Montana Supreme Court upheld the dismissal of a patient who tested positive for marijuana metabolites in <i>Johnson v. Columbia Falls Aluminum</i> . The decision is a memorandum opinion, and is not binding precedent on other cases.	Mont. Code Ann. § 50-46-201 provides that those abiding by the act “may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry” for the medical use of marijuana in accordance with the act.	The law does not require employers to accommodate medical marijuana use, a school to allow patients to participate in extracurricular activities, or a landlord to allow medical marijuana cultivation or use. Employers may prohibit medical marijuana, and it does not provide a cause of action for discrimination. Cultivate requires the landlord’s written permission. (Mont. Code Ann. § 50-46-320 and 50-46-307)

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
Nevada	None known.	<p>Nev. Rev. Stat. § 453A.510            “A professional licensing board shall not take any disciplinary action against a person licensed by the board” for engaging in the medical use of marijuana or acting as a caregiver.            An employer must “attempt to make reasonable accommodations for the medical needs of an [employee who is a registered patient] provided that such reasonable accommodation would not:            (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or            (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.” § 453A.800</p>	<p>Nev. Rev. Stat. § 453A.800            “The provisions of this chapter do not: ... Require any employer to allow the medical use of marijuana in the workplace.            3. Require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer ...” with the limitations listed in the previous column.</p>
New Hampshire	None known.	<p>"For the purposes of medical care, including organ transplants, a qualifying patient’s authorized use of cannabis in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a provider, and shall not constitute the use of an illicit substance." (N.H. Rev. Stat. Ann. 126-W:2 (VII))            “A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied such a right solely for conduct allowed under this chapter, and there shall be no presumption of neglect or child endangerment.” (RSA 126-W:2 (VII))</p>	<p>“Nothing in this chapter shall be construed to require:            ... Any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment ... This chapter shall in no way limit an employer’s ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.” (N.H. Rev. Stat. Ann. 126-W:3 (III))</p>

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>New Jersey</b>	None known.	N.J. Rev. Stat. § 24:6I-2 (e) states "... the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes." § 24:6I-6 (b) provides that patients, caregivers, and others acting in accordance with the law "shall not be subject to any civil or administrative penalty, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana."	N.J. Rev. Stat. § 24:6I-14 "Nothing in this act shall be construed to require ... an employer to accommodate the medical use of marijuana in any workplace."
<b>New Mexico</b>	In August 2014, a physician's assistant named Donna Smith filed suit against Presbyterian Healthcare Services after she was reportedly fired for testing positive for marijuana. The case has not been decided..	N.M. Stat. § 26-2B-4 (4) (a) provides that qualified patients "shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply."	N.M. Stat. § 26-2B-5(A) "Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from: ... (3) criminal prosecution or civil penalty for possession or use of cannabis: ... (c) in the workplace of the qualified patient's or primary caregiver's employment ..."
<b>New York</b>	None known.	Patients, caregivers, and dispensaries' staff may not be "subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau" for actions allowed by the medical marijuana law. Being a medical marijuana patient is considered a disability for purposes of the state's anti-discrimination laws. Finally, patients are protected from discrimination in family law and domestic relations cases. (N.Y. Pub. Health § 3369)	N.Y. Public Health Law Art. 33 Title 5-A Section 3362 provides that "possession of medical marihuana shall not be lawful under this title if it is smoked, consumed, vaporized, or grown in a public place."  "A certified medical use does not include smoking." (N.Y. Public Health Law Art. 33 Title 5-A Section 3360)

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>Oregon</b>	In April 2010, the Oregon Supreme Court ruled in <i>Emerald Steel v. BOLI</i> that patients are not protected from being fired for testing positive for metabolites.	Or. Rev. Stat. § 475.302 (10) reads “Registry identification card” means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.” § 475.328 “(1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee’s medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee’s role as a designated primary caregiver to a person who possesses a lawful registry identification card.”	Or. Rev. Stat. provides § “Nothing in ORS 475.300 to 475.346 shall be construed to require: ... (2) An employer to accommodate the medical use of marijuana in any workplace.”
<b>Rhode Island</b>	None known.	R.I. Gen. Laws § 21-28.6-4 (a) and (c) provide that patients and caregivers abiding by the act “shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau” for the medical use of marijuana. § 21-28.6-4 (c) provides, “No school, employer, or landlord may refuse to enroll, employ, or lease to or otherwise penalize a person solely for his or her status as a cardholder.” § 21-28.6-4 (n) provides, “For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance.”	R.I. Gen. Laws § 21-28.6-7 states “(a) This chapter shall not permit: (1) Any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice ...” and “(b) Nothing in this chapter shall be construed to require: ... (2) An employer to accommodate the medical use of marijuana in any workplace.”

State	Court Decisions	Language Most Relevant to Civil Protections	Limitations Related to Civil Protections
<b>Vermont</b>	None known.	The explicit patient and caregiver protections in the medical marijuana law are from criminal penalties, “A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the requirements of this subchapter ... shall be exempt from arrest or prosecution under subsection 4230(a) of this title.” (Vt. Stat. Ann. tit. 18, § 4474b.)	Vt. Stat. Ann. tit. 18, § 4474c. provides “(a) This subchapter shall not exempt any person from arrest or prosecution for: (1) Being under the influence of marijuana while: ... (B) in a workplace or place of employment; or ... (2) The use or possession of marijuana by a registered patient or a registered caregiver: ... (B) in a manner that endangers the health or well-being of another person.”
<b>Washington</b>	In <i>Roe v. Teletech Customer Care Management</i> , the Washington State Supreme Court ruled in favor of an employer who was sued after terminating a medical marijuana patient. The ruling was issued on June 9, 2011.	Medical marijuana cannot be the “sole disqualifying factor” for an organ transplant unless it could cause rejection or organ failure, though a patient could be required to abstain before or during the transplant. (Wash. Rev. Code § 69.51A.110) The law also limits when parental rights and residential time can be limited due to the medical use of marijuana. (§ 69.51A.120)	“Nothing in this chapter requires any accommodation of any on-site medical use of cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking cannabis in any public place or hotel or motel.” (Wash. Rev. Code § 69.51A.060(4).) An employer explicitly does not have to accommodate medical marijuana if it establishes a drug-free workplace. (§ 69.51A.060 (6))

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**Subject:** Submitted testimony for SB1291 on Feb 18, 2015 13:30PM  
**Date:** Tuesday, February 17, 2015 11:33:46 AM

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Ruggles	Alternative Pain Management Pu`uhonua LLC	Support	No

Comments: I support SB 1291. However, I would like to see HRS 329-125 changed to a bar to prosecution rather than an affirmative defense. The affirmative defense is problematic as no one gets charged with violating HRS 329 Medical use of Marijuana law, but instead they are charged with violating HRS 712 and thus do not even get to bring up in court that they are certified for the medical use of marijuana. Additionally, I am concerned that the parts that read "Nothing in this section shall be construed to supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace of the employee' employment", will lead to confusion about the difference between the illicit use of marijuana in the work place and the medical use of marijuana outside of the work place. A medical patient could test positive for cannabis metabolites while at work even if they are not using it nor are under the influence at work. How will "under the influence" be determined?

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February 17, 2015

**TO: COMMITTEE ON HEALTH**

Senator Josh Green, Chair

Senator Glenn Wakai, Vice Chair

From: Wendy Gibson R.N.

Wednesday, February 18, 2015

1:30PM

Conference Room 414 State Capitol

415 South Beretania Street

**Support – SB1291 – Relating to Medical Marijuana**

Dear Senate Chair Green and Vice Chair Wakai and members of the committee,

This bill would protect medical cannabis patients from being fired for the sole reason of testing positive for marijuana on a drug screening test. Likewise they should not be subjected to disciplinary actions, suspension or discriminating.

I feel that as long as these medical cannabis patients are obeying laws and rules, they should not be punished by being fired from their job.

Using cannabis as medicine is a private decision between the patient and doctor and use of the medicine happens outside of the workplace.

Thank you for your consideration,

Wendy Gibson R.N.

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**Date:** Tuesday, February 17, 2015 11:40:41 AM

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brent Neal	Individual	Support	No

Comments: I support SB 1291. However, I would like to see HRS 329-125 changed to a bar to prosecution rather than an affirmative defense. The affirmative defense is problematic as no one gets charged with violating HRS 329 Medical use of Marijuana law, but instead they are charged with violating HRS 712 and thus do not even get to bring up in court that they are certified for the medical use of marijuana. Additionally, I am concerned that the parts that read “Nothing in this section shall be construed to supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace of the employee' employment”, will lead to confusion about the difference between the illicit use of marijuana in the work place and the medical use of marijuana outside of the work place. A medical patient could test positive for cannabis metabolites while at work even if they are not using it nor are under the influence at work. How will “under the influence” be determined?

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brittany Neal	Individual	Support	No

Comments: I support SB 1291. However, I would like to see HRS 329-125 changed to a bar to prosecution rather than an affirmative defense. The affirmative defense is problematic as no one gets charged with violating HRS 329 Medical use of Marijuana law, but instead they are charged with violating HRS 712 and thus do not even get to bring up in court that they are certified for the medical use of marijuana. Additionally, I am concerned that the parts that read “Nothing in this section shall be construed to supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace of the employee' employment”, will lead to confusion about the difference between the illicit use of marijuana in the work place and the medical use of marijuana outside of the work place. A medical patient could test positive for cannabis metabolites while at work even if they are not using it nor are under the influence at work. How will “under the influence” be determined?

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Larry Caldwell	Individual	Support	No

Comments:

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hawaii Cannabis Care	Hawaii Cannabis Care	Support	Yes

Comments: This is a great bill for MMJ patients. We support!!

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**Subject:** Submitted testimony for SB1291 on Feb 18, 2015 13:30PM  
**Date:** Tuesday, February 17, 2015 12:26:51 PM

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**SB1291**

Submitted on: 2/17/2015

Testimony for HTH on Feb 18, 2015 13:30PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rev. Nancy Harris	Individual	Support	No

Comments: Aloha, I strongly support SB1291, which begins the process of guaranteeing civil rights for medical marijuana patients. Use of medical marijuana should be no more reason to discriminate against a person than use of a prescription drug, especially considering that marijuana has been ruled "one of the safest therapeutically active substances known to man" by the DEA's own Administrative Law Judge Francis L. Young. Please remember that a positive result on a urinalysis simply reflects that a patient has used his medicine within the last few weeks, and does not reflect impairment.

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## **Testimony before the Senate Committee on Health**

By Wanya Ogata, MPH  
Director, Corporate Health & Wellness  
Hawaiian Electric Company, Inc.

Wednesday, February 18, 2015  
1:30 pm, Conference Room 414

Senate Bill 1291 – Relating to Medical Marijuana

Chair Green, Vice-Chair Wakai, and Members of the Committee:

My name is Wanya Ogata and I am testifying on behalf of Hawaiian Electric Company in opposition of SB 1291.

Hawaiian Electric Company is a drug free workplace and urges you to oppose SB 1291. Studies have shown that marijuana is a mind altering drug that contains more than 400 chemicals. One of those chemicals, THC, is believed to be the main cause of psychoactive effects as it travels from the bloodstream to the brain. According to the Drug Enforcement Agency, short term effects of marijuana also include distorted perception, loss of coordination, problems with memory, learning and problem solving.

The drug can pose dangers in the workplace and can increase the risk of injuries or accidents especially for employees who work in safety sensitive positions, as many Hawaiian Electric employees do. For these reasons, medical marijuana has no place within the workplace and the substance should be limited to bring relief only for the seriously ill or terminally ill patients.

Thank you for time and consideration on this matter.