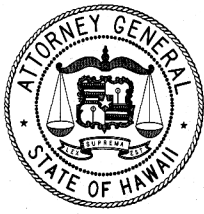


SB2177

Measure Title:	RELATING TO MEDICAL MARIJUANA.
Report Title:	Medical Marijuana; Temporary Registration Certificate; Fraudulent Misrepresentation; Physician
Description:	Requires the department of health to issue a receipt that shall serve as a temporary registration certificate for the medical use of marijuana upon receipt of a written certification form completed by or on behalf of a qualifying patient. Increases penalty for fraudulent misrepresentation to a law enforcement official relating to the issuance of a written certificate by a physician.
Companion:	HB2709
Package:	None
Current Referral:	CPH/PSM, WAM
Introducer(s):	ESPERO, GREEN, Baker, Kidani, Shimabukuro



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

S.B. NO. 2177, RELATING TO MEDICAL MARIJUANA.

BEFORE THE:

**SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

DATE: Thursday, February 11, 2016 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Jill T. Nagamine, Deputy Attorney General

Chairs Baker and Nishihara and Members of the Committees:

The Department of the Attorney General opposes this bill.

This bill would amend the medical use of marijuana registration requirements in section 329-123, Hawaii Revised Statutes (HRS), to require the Department of Health (DOH) to issue a temporary registration certificate to allow the use and possession of marijuana by a person who applies for a medical use of marijuana registration, provides a written certification from a physician, and pays any applicable registration fees. It bypasses the current requirement where the DOH determines whether a person is indeed a qualifying patient before issuing a registration card. The temporary registration certificate created by this bill would be considered valid for up to forty-five days, even in situations where the person may not actually qualify as a patient. There is no requirement that temporary registration certificates be returned to the DOH if the DOH subsequently determines the temporary registration certificate is invalid because the person is not a qualifying patient, and there are no means for the DOH to prevent the use of invalid temporary registration certificates.

This bill does not address the process that is needed to determine if the patient is qualified. The current process involves evaluating the supporting documents¹ submitted in the application. Without an opportunity to evaluate the application and its supporting documents,

¹ Supporting documents include the patient's valid identification, a caregiver certification and caregiver identification, if applicable, a grow site verification for either the patient or the caregiver, a completed physician's statement certifying the patient for the medical use of marijuana, and a signed agreement by the physician on file with the DOH that allows the physician to use the electronic application process.

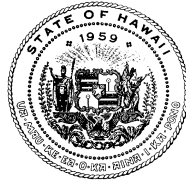
there is no way for the DOH to determine if a patient qualifies for the medical use of marijuana. To force the DOH to approve the use of marijuana for someone who may not qualify is tantamount to forcing the DOH to enable marijuana use by unqualified applicants and risk federal scrutiny.

Because marijuana is a Schedule I controlled substance and illegal to produce, possess, sell, or use according to the federal government, federal guidelines mandate that a state regulatory system be consistent with federal law enforcement priorities. The U.S. Department of Justice (DOJ) issued its Memorandum for All United States Attorneys dated August 29, 2013 (the Cole Memo), providing guidance regarding marijuana enforcement. The DOJ has confirmed that it will enforce the Controlled Substances Act consistent with Congress' determination that marijuana is a dangerous drug. Notwithstanding this, the Cole Memo sets forth the DOJ's expectation that states that have enacted laws that authorize marijuana-related conduct must implement strong and effective regulatory and enforcement systems to address threats to public safety, public health, and other law enforcement interests. The DOJ enforcement priorities include prevention of state-authorized marijuana activity from being used as a cover or pretext for illegal activity. The regulatory scheme of the current law is designed to accomplish that, but as stated in the Cole Memo, "[i]f state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on these harms." We believe that the DOH's screening requirements to determine if a patient qualifies for the medical use of marijuana must be unambiguous and consistent with the priorities set forth in the Cole Memo. Allowing a person who has not been determined qualified to nonetheless possess and use marijuana under a nearly automatic state approval process for a temporary registration certificate is not consistent with a robust enforcement scheme.

If it is an urgent health concern to provide a means for some patients with debilitating medical conditions to be able to legally possess and use marijuana within a short time after being advised by their physician that the potential benefits of the medical use of marijuana would likely outweigh the health risks for that particular patient, we suggest it would be preferable to provide a means for the DOH to expedite its evaluation of appropriate cases. Otherwise, the

State may appear to undermine the law enforcement priorities of the United States Department of Justice.

We respectfully request that this bill be held.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in OPPOSITION to SB2177
RELATING TO MEDICAL MARIJUANA

SENATOR CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hearing Date: February 11, 2016

Room Number: 229

1 **Fiscal Implications:** To implement the provisions of this measure, additional funds of
2 approximately \$100,000 will be needed for medical marijuana registration systems development,
3 testing and deployment, and possibly for one additional clerical staff

4 **Department Testimony:** The Department of Health (DOH) opposes SB2177. This measure
5 requires the DOH to issue a temporary registration certificate to patients upon receipt of their
6 written certification form and payment, which is valid for 45 days or until the department issues
7 or denies the permanent registry certificate. The intention is to reduce the wait time for patients
8 to be able to use medical marijuana.

9 Currently, the DOH sends medical marijuana registration cards directly to patients within
10 three to five days of receipt of a complete online application and payment. Use of a temporary
11 registration certificate, presumably generated electronically after the patient and physician
12 submit information, would not permit law enforcement's online verification of patient, care
13 giver, or grow site. It would not permit the tagging of plants using the patient registration
14 number and expiration date as required in administrative rules. As this temporary registration
15 cannot be electronically verified, it can be easily duplicated, altered, or used illegally by non
16 registered patients. This will potentially create friction between patients and law enforcement
17 and not protect legitimate patients. Similarly, dispensaries will not be able to electronically

1 verify patients with temporary certificates or be able to track and stop purchase when the four
2 ounce per month purchase limit for any patient has been reached. In addition, it is not clear how
3 the Department would be able to stop the use of a temporary registration certificate if a patient's
4 application is denied.

5 Temporary certification will require the DOH to essentially maintain two registry
6 systems at the same time with the additional one for temporary certificates. This will require
7 significant changes to the electronic registration system and major software development, as well
8 as testing and training by a contractor, which will necessitate additional funding and staffing.
9 This process will ultimately lead to extended delays in processing and issuing registration cards
10 that will penalize all patients.

11 Importantly, this bill could unintentionally force the DOH into a position of authorizing
12 activity that is illegal under both State and Federal law.

13 Thank you for the opportunity to testify.

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Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: Senate Committees on Public Safety, Intergovernmental, and Military Affairs; Commerce, Consumer Protection and Health

FROM: Carl Bergquist, Executive Director

HEARING DATE: 11 February 2016, 8:30AM

RE: SB2177, Relating to Medical Marijuana, **STRONG SUPPORT**

Dear Chairs Nishihara & Baker, Vice Chairs Espero & Kidani, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to ensure that the thousands of medical marijuana patients of Hawai'i have access to their medicine without undue delay. As the state gears up for the launch of the dispensary system created by Act 241, the Department of Health (DOH) is expecting significant growth in the number of registered patients. In addition, Act 241 added post-traumatic stress disorder (PTSD) to the list of qualifying conditions, and the Legislature is considering others during the current session. Accordingly, to offset any current or future backlogs it is prudent to allow the receipts sent out by DOH to serve as temporary registration certificates.

While the current wait time for a new patient to receive their medical marijuana registry card is reportedly down to a week or less, and the renewals for current patients is less than that, it is well documented that until recently that wait was much longer. Indeed, we are familiar with many cases of up to two-three month delays for patients who, to the best of their knowledge, had all their ducks in a row. There may be a whole host of good reasons for such delays, from understaffing to errors on applications, but there is no reason whatsoever to delay the eligibility for a life-improving medicine.

The 45 days limit on the validity of a temporary certificate based on a DOH receipt, and the substantial fine of \$2,500 for fraudulent representation regarding such a certificate appropriately combine to safeguard against abuse and to act as a deterrent.

Mahalo for the opportunity to testify.

From: [Alan Yoshimoto](#)
To: [CPH Testimony](#)
Subject: SB2177 support
Date: Monday, February 08, 2016 4:22:00 PM

SB2177

SB2177 is a sensible bill that provides a quicker path for qualifying patients to access their medicine. Most patients who qualify need the medicine sooner but must wait weeks to get their card certificate. This bill delivers compassion, and I support it fully.

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: georgina808@gmail.com
Subject: *Submitted testimony for SB2177 on Feb 11, 2016 08:30AM*
Date: Wednesday, February 10, 2016 8:03:40 AM

SB2177

Submitted on: 2/10/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Georgina Mckinley	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: ncsugano@gmail.com
Subject: Submitted testimony for SB2177 on Feb 11, 2016 08:30AM
Date: Tuesday, February 09, 2016 7:00:46 PM

SB2177

Submitted on: 2/9/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jari S.K. Sugano	Individual	Support	No

Comments: Chairs Baker & Nishihara, Vice Chairs Kidani & Espero and members of the Senate Commerce, Consumer Protection, and Public Safety Committees. Thank you for the opportunity to provide personal testimony in strong support of SB 2177 relating to temporary medical marijuana registration cards. As a caregiver of a medical marijuana (Mmj) patient, I am concerned about the gap in time between Mmj application submittal and registration card receipt. A temporary registration card or clarification on a patient's level of coverage during this wait period would be most helpful. Thank you for the opportunity to express my strong support of SB 2177.

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: j.bobich@tcu.edu
Subject: *Submitted testimony for SB2177 on Feb 11, 2016 08:30AM*
Date: Tuesday, February 09, 2016 3:45:17 PM

SB2177

Submitted on: 2/9/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph A. Bobich	Individual	Support	No

Comments:

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From: [Mike Landes](#)
To: [CPH Testimony](#)
Subject: SB2177 testimony
Date: Monday, February 08, 2016 9:40:23 PM

Aloha Senators -

I write to you today in regards to **SB2177 Medical Marijuana; Temporary Registration Certificate; Fraudulent Misrepresentation; Physician.**

This bill will allow medical marijuana patients to continue to receive the medical treatment they need while they wait for the bureaucracy to process their paperwork and send out their official registration card. Patients currently have to jump through enough hoops to be able to use this medicine prescribed by their doctors, without having to try to predict how long the state will take to give them their legal certification. The process can sometimes take months, during which time, patients cannot legally use the medicine prescribed by their doctors. By allowing patients to receive a temporary registration certificate while they wait for the state to complete their paperwork, this bill will allow those who are sick or in chronic pain to receive the medical treatment they need in a timely manner. Please support this bill.

Mahalo!

- Mike Landes
Kihei, HI

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: miles@hawaii.edu
Subject: *Submitted testimony for SB2177 on Feb 11, 2016 08:30AM*
Date: Wednesday, February 10, 2016 7:00:39 AM

SB2177

Submitted on: 2/10/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Miles W. Tuttle	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for SB2177 on Feb 11, 2016 08:30AM*
Date: Tuesday, February 09, 2016 10:35:10 PM

SB2177

Submitted on: 2/9/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: lady.flach@gmail.com
Subject: Submitted testimony for SB2177 on Feb 11, 2016 08:30AM
Date: Tuesday, February 09, 2016 4:26:42 PM

SB2177

Submitted on: 2/9/2016

Testimony for CPH/PSM on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments: Talk about confusing the patients! In the past this was been accepted that as soon as you filed the paperwork with your doctor, you were covered. Please make this EASY for patients and NOT HARDER!

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