

**COMMENTS OF SHAWN CHING ON BEHALF OF THE HAWAII ASSOCIATION
FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 2181, SD 1**

Date: Thursday, February 26, 2016

Time: 10:00 am

To: Chairman Gilbert Keith-Agaran and Members of the Senate Committee on Judiciary and
Labor:

My name is Shawn Ching and I am presenting testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of S.B. No. 2181, SD 1 Relating to Access to Treatment for Terminally Ill Patients.

The Hawaii Association for Justice generally opposes any limitation of civil liability which reduces protection for consumers and limits or lessens the incentive for everyone to act responsibly to reduce or eliminate harm to others. This measure does reduce civil protections for patients by eliminating strict products liability and strict liability for use of hazardous material, however, it does at least prohibit unreasonable conduct and requires good faith compliance with its terms in order to qualify for reduced liability.

Many states that have adopted similar legislation, commonly referred to as “Right to Try” laws require the exercise of reasonable care provisions that are substantially similar, if not identical, to the liability provisions found in this measure where a person or entity complies in good faith with the terms of this chapter and has exercised reasonable care.

Colorado uses the same phrase: “complying in good faith with the terms of this Part 1, unless there was a failure to exercise reasonable care.” Oklahoma also uses that phrase: “unless there was a failure to exercise reasonable care.” Tennessee uses the similar language: “complying in good faith with the terms of this part and has exercised reasonable care.” So does South Dakota, Florida, Michigan and Montana. North Dakota states the same principle in the affirmative allowing a cause of action “if there was a failure to exercise reasonable care.”

The terminally ill are often in desperation of seeking a cure and are therefore extremely vulnerable. They will, quite understandably, grasp at anything that is presented to them as

offering even a glimmer of hope. Accordingly, some basic protections for these vulnerable people are appropriate. Many states have struck a reasonable balance between making non-approved treatments available to terminally ill people who cannot wait for completion of the approval process on the one hand, and protecting these vulnerable people against unreasonable conduct on the other hand, by allowing non-approved treatments when used with reasonable care.

HAJ recognizes that this measure is well intended and addresses an important option for those who are terminally ill and cannot wait for FDA approval of potential life saving or life extending treatments. Accordingly, HAJ does not object to the liability provision as currently drafted, but will object to any amendments that decrease patient protection or provide additional immunity.

Thank you very much for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.