

SB2181

Measure Title: RELATING TO ACCESS TO TREATMENT FOR TERMINALLY ILL PATIENTS.

Report Title: Terminally Ill Patients; Investigational Drugs, Biological Products, or Devices; Access

Description: Beginning January 1, 2017, allows manufacturers of investigational drugs, biological products, or devices to make available such drugs, products, or devices to terminally ill patients under certain conditions.

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): ESPERO, GREEN, Baker, Kidani, Shimabukuro

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

Date: Thursday, February 4, 2016

Time: 9:00 am

To: Chair Rosalyn Baker and Members of the Senate Committee on Commerce, Consumer
Protection and Health:

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, 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.

HAI 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, HAI 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.

From: [Alan Yoshimoto](#)
To: [CPH Testimony](#)
Subject: SB2181 written testimony
Date: Tuesday, February 02, 2016 3:37:49 PM

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This bill shows much compassion for patients with terminal illnesses. Normally, investigational drugs, products, and devices take years to pass through stringent testing. But terminal patients do not have that luxury. Allowing these patients to try these products gives them hope of an improvement or a cure, which, as a civil society, we have a moral obligation to provide these terminally ill patients. I strongly urge you to pass SB2181.

Alan Yoshimoto

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: mjgolo@email.phoenix.edu
Subject: *Submitted testimony for SB2181 on Feb 4, 2016 09:00AM*
Date: Thursday, January 28, 2016 11:18:59 PM

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Submitted on: 1/28/2016

Testimony for CPH on Feb 4, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	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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