

Honolulu, Hawaii

FEB 14 2020

RE: S.B. No. 2543
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred S.B. No. 2543 entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL CANNABIS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions; and
- (2) Specify that an employer may use a fit for duty test for medical cannabis users in potentially dangerous occupations.

Your Committee received testimony in support of this measure from the Hawai'i Civil Rights Commission, Community Alliance on Prisons, Hawai'i Cannabis Industry Association, Drug Policy Forum of Hawai'i, and three individuals. Your Committee received testimony in opposition to this measure from the Department of Transportation, County of Hawai'i Police Department, Matson, The Queen's Health Systems, Hawaiian Electric, Hawaii Employment, Maui Chamber of Commerce, and Chamber of Commerce Hawaii. Your Committee received comments on this measure from the Department of Health; Department of Public Safety; Department of Human



Resources, City and County of Honolulu; Maui Police Department; Hawaii Transportation Association; and Hawai'i Pacific Health.

Your Committee finds that the conflict between state and federal medical cannabis laws causes confusion for employers, who are unsure whether state medical cannabis laws supersede their power to enforce drug-free workplace policies against employees. Courts consistently rule in favor of employers when medical cannabis users challenge drug-free workplace policies, but they have not foreclosed the possibility that state medical cannabis laws could protect employees. Tools like fit for duty tests are even available for employers to manage workplace risk in potentially dangerous occupations. Nevertheless, without explicit statutory guidance, the courts will not recognize these rights. Therefore, Hawaii's medical cannabis laws should clearly address the scope of accommodation that employers must provide to medical cannabis users.

Your Committee has heard the concerns in testimony regarding ambiguous language. Accordingly, your Committee has amended this measure by:

- (1) Clarifying that employers who would lose monetary benefits under a contract would be exempt;
- (2) Specifying that employers can consider a positive drug test where a worker is impaired during hours of employment or in a "potentially dangerous occupation;
- (3) Clarifying that "potentially dangerous occupations" include "law enforcement officers and correction facility employees"; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2543, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2543, S.D. 1, and be referred to your Committees on Commerce, Consumer Protection, and Health and Judiciary.



Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,




BRIAN T. TANIGUCHI, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Labor, Culture and the Arts
LCA

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|--|--|---------------------------|----------------------------------|----------|
| Bill / Resolution No.:* SB 2543 | Committee Referral: LCA, CPH/JDC | Date: 2/11/2020 | | |
| <input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: | | | | |
| <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| TANIGUCHI, Brian T. (C) | ✓ | | | |
| IHARA, Jr., Les (VC) | ✓ | | | |
| CHANG, Stanley | ✓ | | | |
| GABBARD, Mike | | | | ✓ |
| FEVELLA, Kurt | | | | ✓ |
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| TOTAL | 3 | 0 | 0 | 2 |
| Recommendation: | | | | |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature:  | | | | |
| Distribution: | | | | |
| Original File with Committee Report | Yellow Clerk's Office | Pink Drafting Agency | Goldenrod Committee File Copy | |

*Only one measure per Record of Votes