
**** HOUSE CONCURRENT ****
RESOLUTION DRAFT

URGING THE DEPARTMENT OF HEALTH TO NOTIFY THE DRUG ENFORCEMENT ADMINISTRATION THAT A FEDERAL SCHEDULING EXEMPTION IS REQUIRED FOR THE MEDICAL USE OF CANNABIS IN HAWAII.

WHEREAS, the authority to decide the medical use of controlled substances is reserved to the states under federalism and the Tenth Amendment of the U.S. Constitution; and

WHEREAS, the U.S. Supreme Court confirmed this authority when it found in *Gonzales v. Oregon*, 546 U.S. 243 (2006), that "the Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard of care and treatment of patients that is specifically authorized under state law"; and

WHEREAS, the State of Hawaii lawfully exercised this authority when it enacted Act 228, Session Laws of Hawaii 2000, and created a state-regulated medical use of cannabis program; and

WHEREAS, The U.S. Department of Justice (DOJ) and the Drug Enforcement Administration (DEA) have never challenged the constitutionality of Hawaii's Medical Use of Cannabis Act; and

WHEREAS, the State of Hawaii never intended to create a positive conflict with federal law, as defined under 21 USC 903; and

WHEREAS, the perceived conflict that exists between the medical use of cannabis in Hawaii and federal drug law is causing numerous unintended consequences that are injuring our medical cannabis patients every day; and

WHEREAS, action by one of our state executive agencies is required to remove the perceived conflict with federal law and recognize that the medical use of cannabis in Hawaii is exempt from federal scheduling; and

WHEREAS, a federal scheduling exemption for the medical use of cannabis in Hawaii will remove the false perception that Hawaii's Medical Cannabis Program is violating federal law; and

WHEREAS, the DEA has the authority to recognize exemptions for legal uses of controlled substances that fall outside of federal scheduling as evidenced by the federal Schedule I exemption that already recognizes the use of peyote by the Native American Church under 21 CFR 1307.31, and the application for controlled substance exemption that exists under 21 CFR 1307.03; now, therefore

BE IT RESOLVED by the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2020, the Senate concurring, that the Hawaii State Department of Health must notify the DEA, as specified under 21 CFR 1307.03, that the medical use of cannabis in Hawaii requires a special use federal controlled substance scheduling exemption; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to Hawaii's Department of Health, Department of Public Safety, Department of Transportation, the Office of the Governor, the Office of the Lieutenant Governor, and the Office of the Attorney General.

OFFERED BY: _____