



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 673, H.D. 2, RELATING TO MEDICAL CANNABIS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 21, 2019 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Tara K.C.S. Molnar, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General provides comments on this bill.

This measure would: (1) add a section to chapter 329D, Hawaii Revised Statutes (HRS), and amend section 329D-3, HRS, to allow for the sale or transfer of a medical cannabis dispensary license; (2) amend section 329D-1, HRS, to add definitions for "production locations," "cultivation centers," and "manufacturing or processing centers;" (3) amend section 329D-2, HRS, to allow a dispensary licensee to operate up to two separate manufacturing or processing facilities; (4) amend section 329D-6, HRS, to allow a dispensary to purchase medical cannabis and manufactured cannabis products from another dispensary in the event of a crop failure; (5) amend section 329D-10, HRS, to allow a licensed dispensary to produce edible cannabis and cannabidiol products; and (5) amend section 329D-16, HRS, to prohibit unauthorized entry into a manufacturing or processing center.

Comments on section 4, adding definitions for "production locations," "cultivation centers," and "manufacturing or processing centers." (page 4, line 15, through page 5, line 4)

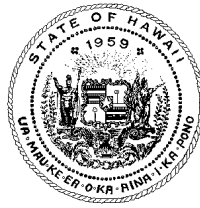
This bill amends section 329D-1, HRS, to add definitions for "production locations," "cultivation centers," and "manufacturing or processing centers." However, the proposed wording does not repeal the definition for, or all references to, "medical cannabis production center" or "production center" currently present in section 329D-1,

HRS, and chapter 329D, HRS. It appears that the definitions for “cultivation center” and “production locations” may be unnecessary, since they appear together to define what the singular definition for “medical cannabis production center” or “production center” in section 329D-1, HRS, already accomplishes. If the Committee is inclined to move this measure forward, we suggest that it make the following changes: (1) delete the proposed definitions for “production locations” and “cultivation centers” and (2) replace the proposed definition for “manufacturing or processing centers” in HB No. 673, H.D. 2, on page 5, line 1-4, with the proposed definition for “manufacturing or processing facility” in HB No. 673, H.D. 1, on page 4, line 20, to page 5, line 2.

Comments on section 8, allowing a dispensary to produce edible cannabis. (page 21, line 1, through page 22, line 11)

In amending section 329D-10, HRS, to allow a licensed dispensary to produce edible cannabis and cannabidiol products, the measure does not specify minimum manufacturing standards. Second, it does not remove edible cannabis products from the definition of “food” in chapter 328, HRS, which prohibits production of things like edible cannabis and cannabidiol products because the addition of cannabinoids would render the product adulterated. If the Committee is inclined to allow the production of edible cannabis products, we suggest it make the following changes: (1) set forth minimum production standards and (2) remove edible cannabis products from the definition of “food” in chapter 328, HRS.

The Department of the Attorney General respectfully recommends that, if the Committee moves this measure forward, that it consider the foregoing suggestions.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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No. _____

TESTIMONY ON HOUSE BILL 673, HOUSE DRAFT 2
RELATING TO MEDICAL CANNABIS.

by
Nolan P. Espinda, Director

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Thursday, February 21, 2019; 11:00 a.m.
State Capitol, Conference Room 308

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 673, House Draft (HD) 2, which proposes to, among other things, allow physician assistants to provide written (medical cannabis) certifications for qualifying patients.

Under section 16-85-49.1, Hawaii Administrative Rules (HARs), physician assistants are authorized to prescribe, dispense, and administer medications and medical devices to the extent delegated by the supervising physician. Based upon this rule, PSD presently requires that when a physician assistant (PA) applies for a controlled substances registration under section 329-32, Hawaii Revised Statutes (HRS), the PA's supervising physician must inform PSD of the extent of the authorization that he/she has granted to his/her physician assistant related to prescribing, administering or dispensing controlled substances.

This measure defines "Physician" on page 4, lines 7-11 as follows:

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" ~~does not~~ shall include a physician assistant as described in section 453-5.3."

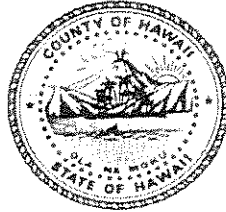
To be consistent with section 16-85-49.1, HAR, and PSD's current procedure for issuance of a controlled substances registration, PSD respectfully requests that the proposed definition of a "physician" in HB 673, HD 1, be amended as follows:

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" ~~does not~~ shall include a physician assistant as described in section 453-5.3, to the extent that the physician assistant is authorized to issue written certifications by his or her supervision physician."

Thank you for the opportunity to testify on this measure.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 673 HD2

A BILL FOR AN ACT RELATING TO AGRICULTURE

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

Thursday, February 21, 2019, 11:00 a.m.

State Capitol, Conference Room 308

Honorable Chair Luke, Vice-Chair Cullen, and Members of the Committee on Finance, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in OPPOSITION to House Bill No. 673 HD2.

This measure allows physician assistants to provide written certification for qualifying patients. Allows licensed dispensaries to have up to two additional manufacturing or processing facilities separate from their production facilities. Provides a process for the voluntary or involuntary sale or transfer of an individual dispensary license. Allows retail dispensaries to operate on state and federal holidays. Allows a licensed dispensary to purchase medical cannabis or manufactured cannabis products from another licensed dispensary, with department approval, in the event of a crop failure. Allows licensed retail dispensaries to sell edible cannabis and cannabidiol products. (HB673 HD1)

Edible marijuana is a very different form of marijuana product, and the effects of THC when consumed in edibles compared to smoking sometimes takes several hours. There are continued concerns on patient, product, and public safety. Dosing levels and dosing consistency is not well established, absorption rates differ among individuals, and certain edibles could be attractive to minors such as baked goods and candies.

According to a November 2015 report from the Canadian Centre on Substance Abuse entitled "Cannabis Regulation: Lessons Learned in Colorado and Washington State," stakeholders in Colorado and Washington recommended that any jurisdiction considering policy change, including commercialization and legalization of marijuana, should:

- "Promote collaboration to bring diverse partners to the table from the beginning and to promote open, consistent communication and collaborative problem-solving;"
- "Develop a clear, comprehensive communication strategy to convey details of the regulations prior to implementation, so that the public and other stakeholders

understand what is permitted, as well as the risks and harms associated with use, so that individuals can make informed choices;” as well as

- “Ensure consistent enforcement of regulations by investing in training and tools for those responsible for enforcement, particularly to prevent and address impaired driving”

Stakeholders in both states agreed that “moving gradually and decreasing the restrictiveness of regulations is easier than increasing them, so they recommended beginning with a more restrictive framework and easing restrictions as evidence indicates. Colorado’s experience with edible cannabis products illustrates the importance of this theme.” It is vital that the public is properly educated on the effects and dangers of consuming marijuana and driving while impaired.

In Hawaii, a local study on motor vehicle crash fatalities and undercompensated care associated with legalization on medical marijuana finds that “THC positivity among driver fatalities increased since legalization, with a threefold increase from 1993-2000 to 2001-2015. THC positivity among all injured patients tested at our highest level trauma center increased from 11% before to 20% after legalization. From 2011 to 2015, THC, positive patients were significantly less likely to wear a seatbelt or helmet (33% vs 56%).” The study was published in the *Journal of Trauma and Acute Care Surgery* in May 2018.

Additionally, 22 percent of fatal crashes that occurred in Hawaii during calendar years 2013 through 2017 involved drivers, bicyclists and pedestrians who tested positive for having marijuana in their systems. Legalizing edible cannabis will result in an increase in traffic crashes that may lead to serious injuries and deaths on our roads.

The County of Hawaii, Office of the Prosecuting Attorney is concerned about improving highway safety and protecting the lives of our community members, visitors and further targeting of youth in the misuse of edibles.

For all of the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i opposes the passage of House Bill No. 673 HD 2. Thank you for the opportunity to testify on this matter.

Harry Kim
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

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February 19, 2019

Representative Sylvia Luke
Chairperson and Committee Members
Committee on Finance
415 South Beretania Street, Room 308
Honolulu, Hawai'i 96813

RE: HOUSE BILL 673 HD2 RELATING TO MEDICAL CANNABIS

Dear Representative Luke:

The Hawai'i Police Department **opposes House Bill 672 HD2**, with its purpose amongst other items to allow licensed retail dispensaries to sell edible cannabis and cannabidiol products.

We have grave concerns about allowing marijuana edibles due to the harm that has occurred in other States where this has been allowed. These harms are often documented in overdose cases in which not only adults end up in an emergent condition but has included children who have ingested the edible marijuana product.

A large concern is the fact that Marijuana remains an extremely unregulated drug in terms of limits or control on the amount of Tetrahydrocannabinol (THC), the principal psychoactive constituent in marijuana, which will be allowed in the edibles. In addition, the allowance of edibles will certainly lead to an increase in the number of impaired drivers on our highways and the carnage that these impaired drivers continue to cause in our community.

It is for these reasons, we urge this committee to **not approve this legislation**.

Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 673 HD2.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF



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

TO: House Committee on Finance
FROM: Carl Bergquist, Executive Director
HEARING DATE: February 21, 2019, 11AM
RE: HB673 HD2, Relating to Medical Cannabis, **SUPPORT**

Dear Chair Luke, Vice Chair Cullen and Committee Members:

The Drug Policy Forum of Hawai'i (DPFH) **supports** this measure to facilitate the operation of the medical cannabis dispensary system in ways that will help ensure that the needs of Hawaii's 25,000 medical cannabis patients are met. Soon our local patients will be joined by out-of-state visitors who will be authorized to enter the dispensaries and buy medical cannabis during their business or holiday visit to the islands.

The edibles provisions of this bill are particularly important. Edibles have been discussed in two separate working groups formed pursuant to Act 230 of 2016 & Act 116 of 2018. They are available in numerous other states including in Oklahoma, which got its entire program up and running in a matter of months. In fact, only 5 other of the 33 states that have legalized medical cannabis prohibit edibles as Hawai'i does. Most with a strong anti-smoking stance like Hawaii's allow them.

Edibles are often the only form of medicine that can help patients who do not want, or cannot, inhale. In addition, as many of our local resident patients are renters, they often cannot smoke their medicine. Under current law, they have to prepare edibles themselves, putting them at risk of getting the dosage wrong. Moreover, soon our out of state patients, who mostly stay in hotels that prohibit smoking, will visit dispensaries. Imagine their surprise when they have gone through the process to register with our Department of Health, only to find out that there is no form of medicine that they can consume in public or in their hotel accommodation.

Finally, I wish to point out the testimony alluding to a connection between the availability of tested, regulated edibles and impaired driving is not based on any evidence. As the local study that is cited by the Hawai'i Department of Transportation (HIDOT) itself states, "the data is insufficient to demonstrate causality between cannabis use and crashes, nor does it prove that cannabis is an independent risk factor for injury or death. . ."¹ Other evidence cited is about legalized cannabis for adult-use and not edibles per se, and the causality is absent here as well. Research by RTI International actually studied edibles specifically, and found the following:

The study, published in Drug and Alcohol Dependence, found that in the context of legalization, many marijuana users will try new marijuana products and use edibles, and that doing so markedly increases the odds of experiencing an unexpected high. *The research shows that most people who experienced an unexpected high slept it off, and others engaged in protective behaviors such as **deciding not to drive or changing or cancelling plans.***²

Alaska's Department of Health & Human Services, Division of Public Health has a great education page about edibles that speaks to science rather than stigma.³ Please see Appendix 1 for useful graphics to consider.

At issue here are edibles produced specifically for Hawaii's suffering medical cannabis patients not the unfairly maligned edibles from other states.

Mahalo for the opportunity to testify.

¹ Susan Steinemann, Daniel Galanis, Tiffany Nguyen and Walter Biffel, "Motor vehicle crash fatalities and undercompensated care associated with legalization of marijuana," Journal of Trauma and Acute Care Surgery 85, Number 3 (Honolulu, HI, May 2018): 566-571.

² <https://www.rti.org/news/study-trying-new-marijuana-products-and-edibles-associated-unexpected-highs>.

³ <http://dhss.alaska.gov/dph/Director/Pages/marijuana/edibles.aspx>.

APPENDIX 1: Alaska's Public Education Campaign & Edibles



Be Careful When You Eat and Drink Marijuana.

THESE AREN'T YOUR GRANDMA'S BROWNIES.

Learn more about marijuana edibles.



Be Careful When Eating and Drinking Marijuana

Start low... Start with a single serving of 5 mg of THC or even less. THC is the chemical in marijuana that makes a person high.

And go slow. You may feel fine for several hours after consuming a marijuana edible, and then suddenly feel very high. Don't eat or drink more of a marijuana product until you have waited at least 2-4 hours.

First-time using? Be cautious. Eating too much of a marijuana edible too soon may lead to unwanted effects.



Driving while high is a DUI.

If you've consumed marijuana edibles, do not get behind the wheel.



Don't give marijuana to children or anyone under 21 years old.

Steer clear if you are pregnant or breastfeeding.

Using marijuana while pregnant or breastfeeding may harm your baby.

Store your marijuana and edibles safely.

Lock it up, out of reach from children and pets.



If you consumed too much, call for help. Call the Poison Control Hotline at 1-800-222-1222 for free, fast, expert help anytime.

For more information visit marijuana.dhss.alaska.gov



SOURCE: <http://dhss.alaska.gov/dph/Director/Pages/marijuana/edibles.aspx>.

HB-673-HD-2

Submitted on: 2/16/2019 4:27:59 PM

Testimony for FIN on 2/21/2019 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 673 HD2.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii



HAWAII EDUCATIONAL ASSOCIATION FOR LICENSED THERAPEUTIC HEALTHCARE

To: Representative Sylvia Luke, Chair
Representative Ty Cullen, Vice-Chair
Members of the House Finance Committee

Fr: Blake Oshiro, Esq. on behalf of the HEALTH Assn.

Re: Testimony **Strong Support - House Bill (HB) 673, House Draft (HD) 2**
RELATING TO MEDICAL CANNABIS

Dear Chair Luke, Vice-Chair Cullen, and Members of the Committee:

HEALTH is the trade association made up of the eight (8) licensed medical cannabis dispensaries under Haw. Rev. Stat. (HRS) Chapter 329D. We **support HB673, HD2** as an important bill to enhance the medical cannabis dispensary program with additional patient access, product controls and safety, and improvements to the administration of the program.

We generally support the amendments made by the House Health Committee and the House Judiciary Committee, with the exception of some of the conditions on the sale of cannabidiol products, as explained in #6 of our testimony below, and a request to revisit the bill's original language on laboratory testing standards that was deleted from the bill based on DOH objections.

(1) SALE OR TRANSFER OF LICENSE

While licensed medical cannabis dispensaries are still a new and emerging industry since their establishment in 2015, most production centers and retail facilities have only been operating for several months and less than 2 years.

However, there are already instances of the leadership within a licensed dispensary having changed. The current law does not provide for a process for a transfer or sale of any significant interest in the licensed dispensary entities and applicants. As such, SECTION 3 of the bill proposes to create a process for the individual who applied for and is the recognized initial "applicant," to transfer their interest if it is an involuntary circumstance (death, disability, incapacity), or to notify the Department of Health (DOH) of an intention to sell or transfer voluntarily, all of which is subject to the DOH's approval



to ensure that any new individual would meet the qualifications required under the law for the initial applicant.

(2) PHYSICIAN ASSISTANTS

SECTION 4 of the bill propose to increase patient access by allowing physician assistants to provide written certification for qualifying patients. The current law allows physicians or advance practice registered nurses to provide written certifications and to also be afforded certain protections in their professional roles in doing so. Physician assistants, are another profession authorized to prescribe controlled substances under a physician's supervision. In many rural areas, we believe that access to such professionals can be a challenge. As such, we believe that allowing physician assistants to certify qualified patients will improve patient access to medical cannabis.

(3) SEPARATE PROCESSING FACILITIES FROM PRODUCTION FACILITIES

SECTION 5, 6, 8 and 10 of the bill proposes to allow licensed dispensaries to have manufacturing or processing facilities separate from their production facilities, while remaining subject to all regulations under the law. The current law only allows two (2) production facilities, and so having a processing facility under the current law would be required to be one of the two, or combined with, a production facility.

However, this is not feasible, especially if there is a move to allow edible products. There are regulatory issues and burdens with processing facilities that are not compatible with the location of production facilities. For example, if medical cannabis is made into an edible product, this would be required to be made and processed in a commercial kitchen for food safety purposes. These standards include infrastructure like grease traps, walk-in refrigeration, and other standards that are not allowed or compatible on agricultural lands where a production facility would be located. Simply stated, a commercial kitchen will not be permitted on agriculture land.

As such, the bill proposes to separate out processing facilities from production centers, but all still subject these processing facilities to the DOH's authority.

(4) STATE AND FEDERAL HOLIDAYS

SECTION 8 of the bill proposes to delete the current prohibition, and instead, would allow licensed retail dispensary locations to operate on state and federal holidays. As medical cannabis is recognized as medicine, there seems to be no reasonable



justification to deny patient's access to such medicine on a holiday. It is our understanding that the DOH is agreeable with this change.

(5) CROP FAILURE SAFEGUARD FOR PATIENT ACCESS AND INTRASTATE TRANSPORT

SECTIONS 7 and 8 of the bill allows a licensed dispensary to purchase medical cannabis or manufactured cannabis products from another licensed dispensary, with approval from the DOH to ensure patient access to cannabis in the event of a crop failure. The bill also proposes to authorize intrastate transport for this purpose.

Other states have created a provision so that in the event of a crop failure or other foreseeable circumstance that devastates or eliminates an entire cannabis crop for a dispensary, there is an alternative safeguard by which a licensed dispensary can purchase from another dispensary to ensure that their patients continue to have access to their medical cannabis. This is especially important for counties such as Kauai which only have one licensed dispensary, or Hawaii Island where the dispensaries could be located far away from one another. All transactions would be monitored and regulated by the DOH.

In order for this process to be implemented though, changes and clarification to the allowance for inter-island transport would need to be made.

The law on transport appears to be uncertain. While there is an old law that MAY permit transport, there is also some opinion that a state law authorizing such transport is necessary. The 1972 Federal Aviation Administration (FAA) rule that bans pilots from operating aircraft with illegal substances on board specifies that it "does not apply to any . . . marihuana, . . . authorized by or under any Federal or State statute or by any Federal or State agency."¹

¹ Title 14: Aeronautics and Space
PART 91—GENERAL OPERATING AND FLIGHT RULES
Subpart A—General

§91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
(a) Except as provided in paragraph (b) of this SECTION, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.



Thus, the adoption of this language into law would provide some necessary protection and clarification on the state's position, and some further support for dispensaries to be able to transport medical cannabis under these limited circumstances.

(6) EDIBLES AND CBD

The current marketplace is quite changed since this law was passed less than 4 years ago. A plethora of retail shops that now sell cannabidiol (CBD), and the recent Agriculture Improvement Act of 2018, P.L. 115-334, or the federal Farm Act, no longer considers CBD as an illegal substance.

With these changes, a person can walk into any of these many places (health food stores, grocery and drug stores, convenience stores, or even stores that specialize in CBD products) and purchase any CBD product with no regulations or requirements. These products have no laboratory testing, no labeling requirement, no assurances of accurate potency, and moreover, could easily exceed the lawful tetrahydrocannabinol (THC) limit of 0.3%.

Thus, SECTION 9 of the bill proposes to add CBD products as another item that can be sold at retail locations. ~~This puts the dispensaries on equal footing with any other retail facility. But more importantly,~~ qualified patients are requesting CBD products to supplement their medical cannabis and medical cannabis products that contain lawful THC from the dispensary. However, we request that the standards for CBD products outlined in SECTION 9 (11)(B) and (C) be removed or modified. Requiring dispensaries to enforce Hawaii medical cannabis regulation standards on CBD products legal under the federal farm act is excessive regulation. That said, the DOH has the administrative authority to establish standards regarding the laboratory testing and packaging of medical cannabis products pursuant to 329D. Therefore, the DOH could establish and enforce laboratory testing and packaging standards for third-party CBD products that are permitted to be sold or transferred to a licensed dispensary. Further, we strongly recommend modified labeling standards for 3rd-Party CBD products. HRS 329D-11 contains prohibitive standards that are specific to the quality and safety of medical cannabis produced by a licensed medical cannabis dispensary, but are extraneous for 3rd party CBD producers, which are not regulated under medical cannabis laws:

(b) Paragraph (a) of this SECTION does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.



- 329D-11 (a) (2) “...only black lettering on a white background with no pictures or graphics.”
- 329D-11 (a) (3) ”For medical use only”
- 329D-11 (a) (4) “Not for resale or transfer to another person”
- 329D-11 (a) (7) Includes the name of the production center where marijuana in the product was produced, including the batch number and date of packaging

Therefore, the current packaging and labeling requirements under 329D and Administrative rules 11-850 are not fully applicable to 3rd-party CBD products. SECTION 2 and 9 also allows dispensaries to sell edible products, but under regulation by the DOH. There are several states, such as Colorado, that have vigorous and stringent standards for edible products that the DOH could look to for guidance. These include mandatory symbols, labeling warnings, banned products, and prohibitions on use of words or images that could be considered as child-appealing.²

More importantly, a large percentage of Hawai'i's registered patients are requesting edible products from dispensaries. Many prefer to administer cannabinoids orally rather than smoking. The option to use an edible product becomes even more important for patients with lung disease or those who use supplemental oxygen. Many patients like the discretion and longer lasting effects of edible products. It is puzzling that Hawai'i, with some of the most restrictive smoke-free laws in the nation, bans edible products from dispensary shelves, effectively encouraging registered patients to smoke.

SECTION 9 of the bill does not lay out these provisions, but instead allows the DOH to regulate this area and determine how, what, and when such edible products would be available.

(7) REMEDICATION OF BATCHES FOR FINAL PRODUCT TO PASS LABS

The House Health Committee deleted one section of the original HB673 which deals with laboratory testing which we would like the committee to consider re-inserting in the bill.

Section 329D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department shall establish and enforce standards for laboratory-based testing of cannabis and manufactured

² <https://www.colorado.gov/pacific/enforcement/med-rules>



cannabis products for content, contamination, and consistency; provided that in establishing these standards, the department shall:

(1) Review and take guidance from the testing programs and standards utilized in other jurisdictions;

(2) Consider the impact of the standards on the retail cost of the product to the qualifying patient;

(3) Review and take guidance from the testing programs and standards for pesticides under the regulations of the United States Environmental Protection Agency;

(4) Consider processes that allow any batch of cannabis or manufactured cannabis products that does not meet testing standards to be corrected and manufactured as long as any final cannabis or manufactured cannabis product passes testing standards;

(5) For the testing for microbiological impurities, consider the benefits of organically grown cannabis that features the use of bacteria in lieu of pesticides; and

~~[-5-]~~ (6) Include permission for qualifying patients and primary caregivers to obtain testing services directly from certified laboratories on the island where the qualifying patient and primary caregiver reside."

We believe this portion was taken out of the bill by the Health Committee based on the DOH's objections. However, we believe that there is a need for policy clarification on the process of laboratory testing and what is supposed to happen when a batch does not meet the stringent standards. We understand that certain DOH officials have taken the position that such a batch, and its represented crop, needs to be destroyed. Yet, we also are aware of instances where a batch of product that did not initially meet testing standards was allowed to be corrected and then re-tested so that the final product passed the laboratory testing. We believe that this latter approach is consistent with every other state and jurisdiction in their handling of such a situation.



Should a batch not meet the requirements for microbial testing, such batches and the crop they represent can be corrected by processing the herbal cannabis. The resulting processed product would be required to pass all required third-party lab tests. For example, if a batch of flower is found to have moisture levels above the acceptable range, it can be processed into a medical cannabis product like oil or ointment that would then be tested again, and required to meet and pass the laboratory standards prior to dispensing.

We believe this is a more reasonable approach to the testing and helps to ensure sufficient supply for registered patients. The purpose of laboratory standards is to ensure that any final product, purchased from a licensed dispensary, is safe. This clarified laboratory testing process would meet this purpose while helping to ensure a wide range of cannabis products are available in sufficient quantities to registered patients.

Thank you for your consideration.



Akamai Cannabis Clinic

3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON HOUSE BILL 673 HOUSE DRAFT 2
RELATING TO MEDICAL CANNABIS

By
Clifton Otto, MD

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Thursday, February 21, 2019; 11:00 AM
State Capitol, Conference Room 308

Thank you for the opportunity to provide testimony on this measure. Please consider the following comments related to this bill, which do not seem to have been addressed by the two previous House committees:

Comment #1 – In its previous testimony on HB673 HD1, the Department of Health (DOH) offered the following comments regarding adding additional production facilities:

“If this provision is approved, the total number of facilities to monitor and inspect will increase by 50%. To maintain the current level of oversight, the Department would require at least one additional inspector position for this purpose. However, this position and funding are not in the Governor’s budget.”

Could you please tell us how the revenue from annual online registrations (\$38.50 x 22,000 patients = \$847,000) is currently being used by DOH.

Comment #2 - It is not necessary to specifically authorize Physician’s Assistants to perform Written Certifications and provide an ongoing doctor-patient relationship for the supervision of the medical use of cannabis. This function is already possible under the provision that allows a Physician to supervise the activities of an associated Physician’s Assistant in Hawaii. In addition, a Physician’s Assistant is a Physician’s Assistant, not a Physician. You cannot define the two as being the same when there is a separate definition for Physician’s Assistant under HRS 453-5.3. If a Physician’s Assistant will be performing a Written Certification under the supervision of a Physician, then the

“An Accepted Medical Use Supporter”

supervising Physician should be required to sign off on the Written Certification and Registration Application. Failing to include this requirement will only lead to further abuse of the registration process.

Comment #3 – If you want dispensaries to transport material to other islands for the purpose of selling to other dispensaries in the event of crop failure, then the issue of the inter-island transportation of cannabis needs to be fully addressed. We can no longer allow this kind of transport to occur, as it is now being done with laboratory samples, under the false assumption that such activity violates federal law.

Federal Aviation Regulation 14 CFR 91.91 clearly states that the carriage of cannabis aboard aircraft is exempt from federal regulation if authorized by state law or state agency.

[14 CFR 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.](#)

“(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section **does not apply** to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances **authorized by** or under any Federal or **State statute** or by any Federal or **State agency.**”

If the problem is that certain state agencies are refusing to recognize the authority of state law as it applies to the inter-island transport of cannabis, then the following amendment should be made to this section:

(4) The selling dispensary is permitted by the department to transport cannabis or manufactured cannabis products to another county or another island, for the limited purpose of completing its sale to the purchasing dispensary pursuant to this subsection, in an amount and manner prescribed by the department by rules adopted pursuant to this chapter and chapter 91 and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State; and

(5) Nothing in this subsection shall relieve any dispensary of its responsibilities and obligations under this chapter and chapter 329.”

(6) The Department of Public Safety and the Department of Transportation shall adopt rules that provide for the provisions of this section.

Comment #4 - However, it would be a discrimination against registered patients, and a violation of the Americans with Disabilities Act, to only focus on the inter-island transport of cannabis by dispensaries, and not to recognize the medical necessity of patients to transport their Medical Use Cannabis to other islands as well.

The current situation for patients is being made worse by the fact that local law enforcement officers are telling patients that they cannot transport their cannabis for personal medical use to another island because such transport is against federal law, which is an unauthorized enforcement of federal law, and is not entirely true because of the federal aviation regulation noted above.

Therefore, the following amendment needs to be made to the Medical Use of Cannabis section of Hawaii's Uniform Controlled Substances Act (UCSA), in order to protect the right of patients to carry their cannabis for personal medical use to other islands:

HRS 329-122(f):

"For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis product, by any means is allowable only by a qualifying patient or qualifying out-of-state patient for their personal medical use, or between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. The Department of Public Safety and the Department of Transportation shall adopt rules that provide for the provisions of this section.

Comment #5 – The Legislature is nearly 19 years overdue for re-harmonizing the Medical Use of Cannabis in Hawaii with the scheduling provisions of Hawaii's UCSA.

A controlled substance with accepted medical use cannot have the highest degree of danger. Therefore, in order to clarify that Medical Use Cannabis is not subject to being regulated as a state Schedule I controlled substance, the following amendment needs to be made to the scheduling section of Hawaii's UCSA:

Section 329-14, Hawaii Revised Statutes, is amended by adding the following subsection:

(f) The enumeration of cannabis, tetrahydrocannabinols or chemical derivatives of these as Schedule I controlled substances does not apply to the medical use of cannabis pursuant to Section 329, Part IX, and Section 329D, Hawaii Revised Statutes.

Comment #6 – Cannabidiol (CBD) products that have been produced under the Agriculture Improvement Act of 2018 cannot be sold for medical use. Producing CBD that is intended for medical use would require Food and Drug Administration (FDA) approval as an approved drug product for inter-state marketing.

In fact, the [FDA](#) is very clear that any compound that has FDA-approved medical use (ie. THC in Dronabinol and CBD in Epidiolex) may not be sold as a food additive or a dietary supplement.

“Under the FD&C Act, it’s illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements. This is a requirement that we apply across the board to food products that contain substances that are active ingredients in any drug.”

However, the situation is very different for CBD this is produced by locally licensed hemp manufacturers in compliance with the Agriculture Improvement Act of 2018, since such products do not require FDA approval if they will not enter inter-state commerce. If you want dispensaries to be able to sell CBD products derived from hemp, then one solution would be to allow dispensaries to contract with local hemp manufacturers for the production of CBD that will be sold exclusively by dispensaries for medical use.

HB-673-HD-2

Submitted on: 2/17/2019 4:19:42 PM

Testimony for FIN on 2/21/2019 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

HB-673-HD-2

Submitted on: 2/18/2019 9:40:01 PM

Testimony for FIN on 2/21/2019 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cynthia C DiMartino	Individual	Support	Yes

Comments:

Fully support this bill in its entirety. PAs ought to be allowed to prescribe medical marijuana along with doctors and nures practioners.It ought to be included in their scope of practice ,

Thank you

HB-673-HD-2

Submitted on: 2/18/2019 9:13:55 AM

Testimony for FIN on 2/21/2019 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

Sadly, this will pass because Hawaii Legislatures are only interested in the blood money that will result in the passing of this bill, and similiar bills like this.

The current empricial data of the negative effects that legalized recreational marijuana, which is the goal of Hawaii's Legislature, has on said states that have done so and will have on our people, our home, will being ignored.

Please read this accurately. I oppose this bill.

LATE

HB-673-HD-2

Submitted on: 2/20/2019 6:48:16 PM

Testimony for FIN on 2/21/2019 11:00:00 AM

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

Comments:

HB-673-HD-2

Submitted on: 2/21/2019 7:05:23 AM

Testimony for FIN on 2/21/2019 11:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Brady	Community Alliance on Prisons	Support	No

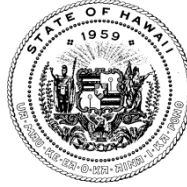
Comments:

Aloha Chair Luke, Vice Chair Cullen and Committee Members!

Community Alliance on Prisons supports this measure, especially the section on edibles, which can help ameliorate the nausea and discomfort that patients endure during the process of chemotherapy. Please help our suffering community members and pass this measure!

Mahalo nui!

Kat Brady, Coordinator



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 21, 2019
11:00 a.m.
State Capitol, Room 308

H.B. 673, H.D.2
RELATING TO MEDICAL CANNABIS.

House Committee on Finance

The Hawaii Department of Transportation (DOT) **opposes** H.B. 673, H.D. 2, relating to medical cannabis.

Among other provisions, this bill allows licensed retail dispensaries to sell edible cannabis and cannabidiol products. Edible marijuana is very different from “joints” and other marijuana products, and the effects of THC when consumed in edibles compared to smoking sometimes takes several hours. People are more likely to eat more than the recommended serving since they don’t immediately feel the effects. These same people may get into a car and start driving.

According to a November 2015 report from the Canadian Centre on Substance Abuse entitled “Cannabis Regulation: Lessons Learned in Colorado and Washington State,” stakeholders in Colorado and Washington recommended that any jurisdiction considering policy change, including commercialization and legalization of marijuana, should:

- “Promote collaboration to bring diverse partners to the table from the beginning and to promote open, consistent communication and collaborative problem-solving;”
- “Develop a clear, comprehensive communication strategy to convey details of the regulations prior to implementation, so that the public and other stakeholders understand what is permitted, as well as the risks and harms associated with use, so that individuals can make informed choices;” as well as
- “Ensure consistent enforcement of regulations by investing in training and tools for those responsible for enforcement, particularly to prevent and address impaired driving”

Stakeholders in both states agreed that “moving gradually and decreasing the restrictiveness of regulations is easier than increasing them, so they recommended beginning with a more restrictive framework and easing restrictions as evidence

indicates. Colorado's experience with edible cannabis products illustrates the importance of this theme." It is vital that the public is properly educated on the effects and dangers of consuming marijuana and driving while impaired.

In Hawaii, a local study on motor vehicle crash fatalities and undercompensated care associated with legalization on medical marijuana finds that "THC positivity among driver fatalities increased since legalization, with a threefold increase from 1993-2000 to 2001-2015. THC positivity among all injured patients tested at our highest level trauma center increased from 11% before to 20% after legalization. From 2011 to 2015, THC, positive patients were significantly less likely to wear a seatbelt or helmet (33% vs 56%)." The study was published in the Journal of Trauma and Acute Care Surgery in May 2018.

Additionally, 22 percent of fatal crashes that occurred in Hawaii during calendar years 2013 through 2017 involved drivers, bicyclists and pedestrians who tested positive for having marijuana in their systems. DOT believes that legalizing edible cannabis will result in an increase in traffic crashes that may lead to serious injuries and deaths on our roads.

HDOT is primarily concerned about improving highway safety and protecting the lives of our community members and visitors. DOT coordinates specialized training and certifies law enforcement officers to recognize impairment in drivers under the influence of drugs through its Drug Recognition Expert (DRE) program to combat this issue.

Thank you for the opportunity to provide testimony.

LATE

HB-673-HD-2

Submitted on: 2/21/2019 8:34:05 AM

Testimony for FIN on 2/21/2019 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Mitsuyasu-Gapero	Individual	Support	No

Comments:



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
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LATE

**Testimony COMMENTING on HB0673 HD2
RELATING TO MEDICAL CANNABIS.**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: Thursday, February 21, 2019 Room Number: 308

1 **Fiscal Implications:** The Department estimates that \$186,385 in general funds (\$75,539
2 personnel, \$110,846 operational) that is not in the Governor's Executive Biennium Budget
3 request will be required for 1.0 FTE surveyor position and operational costs to maintain
4 inspection oversight for the additional manufacturing and processing centers. The Department
5 defers to the to the priorities set forth in the Governor's Executive Biennium Budget request.

6 **Department Testimony:** Thank you for the opportunity to COMMENT on this measure. The
7 Department SUPPORTS some provisions with recommended language changes and OPPOSES
8 other provisions.

9 In summary, this measure would:

- 10 1. Allow for transfer of ownership of a dispensary license in specified
11 circumstances;
- 12 2. Allow physician assistants practicing under supervision to certify patients as
13 having qualifying debilitating medical conditions;
- 14 3. Allow each dispensary licensee up to two separate manufacturing or processing
15 facilities in addition to the two production centers currently allowed;

- 1 4. Allow licensed dispensaries to open retail locations on state and federal holidays.
- 2 5. Allow dispensary-to-dispensary sales of medical cannabis and manufactured
- 3 cannabis products in the event of a crop failure of cannabis plants; and
- 4 6. Add edible cannabis products and cannabidiol (CBD) products to the types of
- 5 medical cannabis products that may be manufactured and distributed by licensed
- 6 dispensaries.

7 The Department responds to each proposal as follows:

8 **Transfer of Ownership:** The Department SUPPORTS the HD2 version of this measure
9 which provides the department with discretion to allow transfer of dispensary license ownership
10 in specified circumstances providing that the transferee has met all the requirements of section
11 329D-3, HRS, for ownership.

12 **Adding Certifying Professionals:** The Department SUPPORTS the addition of
13 “physician assistants under supervision” to certify patients with debilitating medical conditions
14 for the medical use of cannabis. Physician assistants may register under section 329-32, HRS,
15 are allowed prescriptive authority of controlled substances, and adding physician assistants to
16 physicians and APRNs will improve patient access.

17 **Additional Manufacturing and Processing Centers:** The Department COMMENTS
18 that approximately \$186,385 in general funds (\$75,539 personnel, \$110,846 operational) will be
19 required to maintain inspection oversight for the additional manufacturing and processing
20 centers. These funds are for 1.0 FTE surveyor position, a contracted surveyor for periods of
21 increased inspections (e.g., operationalizing new facilities, and staffing shortage due to position
22 vacancies), and inter-island travel costs since most of the facilities are located on the neighbor

1 islands. These positions and funding are not in the Governor's Executive Biennium Budget
2 request.

3 Adding up to two "manufacturing or processing facilities" will double the number of
4 production facilities inspected by the Department, i.e., up to six additional on Oahu, four
5 additional each on Hawaii and Maui, and two additional on Kauai. Routine, ongoing on-site
6 inspections of each facility is conducted every 3-4 weeks, with each inspection taking from
7 several hours to a full day or longer to complete. Surveyors also review facility records,
8 laboratory testing results, manage and respond to dispensary inquiries, and investigate
9 complaints to ensure patient, product, and public safety.

10 **Retail Sales Days of Operation:** The Department SUPPORTS allowing dispensaries to
11 open for retail sales between 8:00 a.m. and 8:00 p.m., Hawaii-Aleutian Standard Time, Monday
12 through Sunday, including state and federal holidays.

13 **Dispensary to Dispensary Sales:** The Department OPPOSES this provision as it
14 conflicts with the very purposeful vertical system designed by the Legislature and increases the
15 risk of federal intervention. Inter-island transportation of cannabis and cannabis manufactured
16 products is subject to federal law. Currently, certified testing laboratories transport samples
17 inter-island for the purpose of quality assurance testing; however, the quantities transported are
18 limited and even so, samples are, on occasion, confiscated by federal authorities. This proposal
19 would allow transporting of much larger volumes of cannabis and/or manufactured cannabis
20 products, thereby significantly increasing the risk of confiscation and monetary and product loss,
21 with possible criminal trafficking of cannabis offenses on both the sending and receiving
22 dispensaries.

1 **Edibles and CBD Products:** The Department OPPOSES allowing edible products. The
2 Department continues to have substantial reservations over the risks of inadvertent over-
3 intoxication and accidental poisoning in adults and especially in children. Edible products are
4 responsible for most cannabis over-intoxications. Edible products may be indistinguishable from
5 cannabis-free counterparts and are meant to be palatable, resulting in a risk of over-dosing as a
6 result of consuming multiple dose-units. In addition, users may fail to appreciate the delayed
7 effects of ingested cannabis and overconsume edibles. For example, while the initial effects of
8 inhaled cannabis can be felt within minutes and have peak effect in 20 to 30 minutes, edibles can
9 take as long as 2 hours to be felt, with peak effect at 2 to 4 hours after ingestion. Individual
10 factors can also affect how soon a person will feel the effect of an edible product.

11 Children are the most likely to be impacted by edibles. Changes in laws which made
12 edible products more accessible to children have resulted in increased intoxications of children.
13 For example, following changes to cannabis possession laws, cannabis-related visits to a
14 Colorado pediatric hospital increased from 0% to 2.4% with 57% involving medical cannabis
15 and 50% involving cannabis-containing food.¹ Call volume to U.S. poison centers for
16 unintentional pediatric cannabis exposures from 2005-2011 increased by 30% per year in
17 decriminalized states, while call rates in non-legal states did not change.² Ninety-one percent
18 (91%) of edible cannabis exposure reports to the National Poison Data System from 2013-2015

¹ Wang GS, Roosevelt G, Heard K. Pediatric Marijuana Exposures in a Medical Marijuana State. JAMA Pediatr. 2013;167(7):630–633. doi:10.1001/jamapediatrics.2013.140

² Wang, George S. et al. Association of Unintentional Pediatric Exposures With Decriminalization of Marijuana in the United States. Annals of Emergency Medicine, Volume 63, Issue 6, 684 - 689

1 came from states with medical and/or recreational cannabis and that call volume increased each
2 year, with the most common age groups being ≤ 5 years and 13-19.³

3 Children are the most likely to suffer severe illness from acute cannabis intoxication.
4 Adolescents and adults experience tachycardia, hypertension, increased respiratory rate, dry
5 mouth, increased appetite, nystagmus, ataxia, and slurred speech. However, neurological
6 symptoms are more prominent in children, e.g., ataxia, hyperkinesia, lethargy, and prolonged
7 coma with depressed respiration, which may be life-threatening. Toxicity in children is usually
8 as a result of ingesting edibles.⁴

9 There is no antidote for acute cannabis intoxication. Treatment is symptom-based
10 support to control anxiety, vomiting, and to maintain respiratory and cardiovascular function.⁵

11 Should edible cannabis products be allowed, the language of this measure should be
12 amended as follows to align with recommendations of the Act 116, HB2719, HD2, SD2, CD1
13 (2018) Medical Cannabis Outstanding Issues Working Group:

- 14 1. Define edibles as “manufactured cannabis products intended to be used for
15 gastrointestinal administration of medical cannabis;”
- 16 2. Specify that edibles are not food and shall not be subject to regulatory enforcement under
17 Chapter 11-50 HAR or new administrative rules to be promulgated by the Food and Drug
18 Branch;

³ Dazhe Cao, Sahaphume Srisuma, Alvin C. Bronstein & Christopher O. Hoyte (2016) Characterization of edible marijuana product exposures reported to United States poison centers, *Clinical Toxicology*, 54:9, 840-846, DOI: 10.1080/15563650.2016.1209761

⁴ *Id.* at 1.

⁵ Lee Stinnett, Virginia et al. Cannabinoid Hyperemesis Syndrome: An Update for Primary Care Providers. *The Journal for Nurse Practitioners*, Volume 14, Issue 6, 450 - 455

- 1 3. Require manufacturing and laboratory testing such that each serving contains no more
2 than ten milligrams of activated THC;
- 3 4. Prohibit edible products that DOH determines may attract minors or bear resemblance to
4 other commercially available products;
- 5 5. Prohibit non-shelf-stable, potentially hazardous food items, or products containing
6 ingredients that would increase the potency, toxicity, or addictive potential of cannabis,
7 or create an unsafe combination with other psychoactive substances; and
- 8 6. Require use of a universal symbol on packaging to ensure that products containing
9 cannabis or cannabinoid extracts are readily identifiable.

10 The Department SUPPORTS allowing the medical cannabis licensees to dispense
11 3rd party manufactured CBD products as stated in the amended language provided in HD2.

12 **Offered Amendments:**

13 The following amended language is requested to allow the Department to establish and
14 expend these funds accordingly: “There is appropriated out of the general revenues of the State
15 of Hawaii the sum of \$186,385 or so much thereof as may be necessary for fiscal year 2020-
16 2021, and the same sum or so much thereof as may be necessary for fiscal year 2021-2022, to be
17 deposited into the medical cannabis regulation special fund established pursuant to section 321-
18 30.1, Hawaii Revised Statutes. The sums appropriated shall be expended by the department of
19 health for the purposes of this Act.”

20
21
22 Thank you for the opportunity to testify on this measure.