

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on H.B. 477
RELATING TO CANNABIS.

REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Hearing Date: Friday, February 5, 2021

Room Number:

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities. Increasing the number of licensed facilities will require additional
4 personnel to maintain adequate regulatory oversight to ensure patient safety.

5 **Department Testimony:** The Department of Health (DOH) appreciates the intent of H.B. 477
6 to improve patient access by increasing the allowable number of production centers and retail
7 dispensing locations per dispensary license; and authorizing DOH to allow licensed dispensaries
8 to purchase cannabis or manufactured cannabis products from another licensed dispensary; and
9 provides the following COMMENTS:

10 (1) **Increasing the allowable number of production centers and retail dispensing**
11 **locations per licensee is not needed at this time.** As of December 31, 2020, there were
12 a total of 30,847 registered in-state patients – 47% Oahu, 26% Hawaii, 20% Maui, and
13 7% Kauai. However, only an average of 36% of registered patients made purchases from
14 dispensaries in 2020. In addition, of the eight (8) licensees, only three (3) have used their
15 current allotment of production centers and only three (3) have used their current

1 allotment of retail dispensing locations. Should additional patient access be needed,
2 DOH suggests re-opening a solicitation for additional licensees instead. DOH already
3 has current authority to solicit additional licenses based on patient need. Irrespective of
4 the direction taken, DOH will require additional personnel and operational funding to
5 provide adequate regulatory oversight of additional facilities. DOH conducts inspections
6 of each facility at least once every eight (8) weeks. The existing two (2) Surveyor
7 positions are inadequate for the current 26 facilities statewide and DOH has requested the
8 establishment of at least one additional Surveyor position just to meet current needs.

9 This will also require additional operational costs to provide for travel to the neighbor
10 islands for onsite inspections as 25 of the 40 facilities the current licensees could
11 eventually operationalize would be located on the neighbor islands. DOH believes that
12 additional production centers and retail dispensing locations are not needed at this time.

13 (2) **Allowing licensed dispensaries to purchase cannabis or manufactured cannabis**
14 **products from another licensed dispensary presents potential risks for the licensees.**

15 Although this request would support patient access in the event that a licensee suffers an
16 unexpected catastrophe which impacted their cultivation or manufacturing operations and
17 would relieve each licensee from having to cultivate multiple strains of cannabis and
18 produce the full range of manufactured cannabis products, DOH is concerned about the
19 challenges presented by interisland transport. H.B. 477 proposes allowing the purchase
20 of up to 4,000 grams of cannabis or manufactured cannabis products between licensees.
21 This is the equivalent of almost 9 pounds of cannabis flower or over 200 half-gram
22 cartridges. As an island state, purchase exchange between licensees would require

1 interisland transport. DOH's primary concern here, as with interisland patient transport,
2 is that interisland transport involves the transport of cannabis outside of state jurisdiction
3 and in federal jurisdiction, and there is no exception for medical cannabis under federal
4 law. Secondly, 4,000 grams of cannabis or manufactured cannabis products represents
5 substantial monetary value, raising significant security and liability concerns. For
6 example, at \$30 per eighth (3.5 grams), 4,000 grams of cannabis flower would be worth
7 over \$34,000. At \$52 per 0.5 gram cartridge, 4,000 grams of cartridges would be worth
8 over \$416,000. Although insurance for the cannabis industry is becoming increasingly
9 available, coverage for cannabis operations remains problematic. Carriers will frequently
10 challenge claims arising out of cannabis-related losses and courts have often sided with
11 carriers regardless of whether a company is operating legally within a state's cannabis
12 laws or not. Should the legislature move forward with this request, clarification as to
13 security requirements as well as which party shall bear the cost of losses needs to be
14 clarified.

15 **Offered Amendments:** None

16 Thank you for the opportunity to testify on this measure.



To: Representative Ryan Yamane, Chair
Representative Adrian Tam, Vice-Chair
Members of the House Health, Human Services and Homelessness Committee

Fr: Jaclyn L. Moore, Pharm.D. on behalf of the HICIA Assn.

Re: **Testimony In Strong Support on House Bill (HB) 477**

RELATING TO CANNABIS

Increases the allowable number of production centers and retail dispensing locations per dispensary license. Authorizes the department of health to allow a licensed dispensary to purchase medical cannabis or manufactured cannabis products from another licensed dispensary to ensure ongoing qualified patient access.

Dear Chair Yamane, Vice-Chair Tam, and Members of the Committee:

The Hawai'i Cannabis Industry Association, formerly known as the Hawai'i Educational Association for Therapeutic Health, represents all eight of the state's licensed medical cannabis dispensaries. HICIA **strongly supports HB477** as an important bill for the dispensary industry in order to enhance the medical cannabis dispensary program with additional facilities to strengthen patient access, product controls and safety, and provide improvements to the administration of the program.

There are two main issues that this bill aims to change: **FIRST**, allow each licensee to increase the number of facilities currently allowed from two (2) production facilities and (2) two retail facilities; and **SECOND**, allow the Department of Health (DOH) to permit a licensee to sell and transport medical cannabis and medical cannabis products to another licensee.

ADDITIONAL FACILITIES

When established in 2015, the law envisioned each of the 8 licensees being permitted to have 2 retail facilities and 2 production facilities, with a cap of 3,000 plants per production facility.¹

¹ In 2017, Act 41 (HB1488, HD1, SD1, CD1) increased the number of plants to 5,000 and allowed an additional retail facility, provided that the DOH "shall consider the licensee's capability to serve and supply medical marijuana to qualified patients in a rural or underserved geographical area of a county." Haw. Rev. Stat. Section 329D-2(l).



The dispensaries seek the authority to increase the amount of retail locations from **two** to **five** and increase the amount of production facilities from **two** to **four**. The dispensaries believe this is necessary to strengthen the legal cannabis industry and help secure a stronger position and footing, especially as it faces continued pressure from the illicit and completely unregulated (and untaxed) black market. According to New Frontier Data, the dispensaries provided only 5.2% of the total cannabis consumed in Hawaii in 2020 which means 95% was provided by the illicit market. Another data platform, BDSA Analytics, estimated the illicit market in Hawaii to be approximately 10x the size of the legal medical market in 2020. All data collected on this issue shows the illicit market providing 10-20x the cannabis supply than the amount provided within the legal cannabis framework. We are requesting a reasonable increase in our footprint to be able to provide clean, tested, safe, regulated (and taxed) cannabis medicine.

Some licensees have built out all 3 retail locations, and still have underserved patient populations, such as Big Island. Although some licensees have yet to build out their maximum allotted retail locations (due to various different circumstances such as which island the license operates on, business plan considerations, and patient population location), the licensees are in agreement that additional retail facilities will help increase legal access for qualified patients, their caregivers and out-of-state patients. All eight licenses have agreed that this is best for patients and the industry as a whole.

Additional production facilities will also help strengthen the legal marketplace by allowing dispensaries to diversify their crop, product pipeline, and potential use of subcontractors. Some licensees, given factors such as their geographical location and patient count, have built out the maximum allowable production centers, and still cannot meet demand. When a dispensary sells out of medicine and cannot replace it fast enough it drives patients to seek medicine from the unregulated, untested, and untaxed illicit market.

The current law allows a dispensary to subcontract its production operations to an entity. The definitions under HRS Section 329D-1, “medical cannabis production center” and “subcontractor,” read together with HRS Section 329D-6(g) appear to envision this relationship and holds a subcontractor and its employees to same level of scrutiny and background checks as dispensary employees.

However, the practical limitation is that the current 2 production facilities cap under HRS329D-2(f) means that dispensary licensees have so far only remained a “vertical” system, operating their own productions rather than subcontracting it out.



All of these additional facilities would still be subject to the same rigorous standards of inspection before licensure, security and safety, video surveillance, and tracking of cannabis and cannabis products from seed-to-sale. While the dispensaries recognize these are costly and expensive regulatory systems to put into place, the dispensaries are also willing to make these investments if they know that it will help strengthen and maintain their overall industry.

SALES BETWEEN LICENSEES

The bill also 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. 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. See the following article in the Boston Globe.

[:https://www.bostonglobe.com/business/2017/10/25/state-eyes-flight-rule-ship-marijuana-islands/WDMRa9NnylZ5Z301Oc0AK/story.html](https://www.bostonglobe.com/business/2017/10/25/state-eyes-flight-rule-ship-marijuana-islands/WDMRa9NnylZ5Z301Oc0AK/story.html)

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 . . . marijuana, . . . authorized by or under any Federal or State statute or by any Federal or State agency.”²

² Title 14: Aeronautics and Space
PART 91—GENERAL OPERATING AND FLIGHT RULES
Subpart A—General



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.

However, we recognize that there remain issues with inter-island and intrastate transport. As such, should the Committee seek to address that issue, rather than striking this entire provision, we would respectfully request that you amend the bill so that it reads:

On page 2, lines 13-16

(4) Dispensaries as permitted by section 329D-6(r); provided that **so long as the federal law prohibits transportation of medical cannabis over a body of water and therefore, interisland transport in our state,** a selling dispensary may **only sell and transport medical cannabis or manufactured medical cannabis products within its island to a purchasing dispensary and** only transport up to four thousand grams of cannabis or manufactured cannabis products to a purchasing dispensary; or

And on page 4, lines 6-8:

provided that **so long as the federal law prohibits transportation of medical cannabis over a body of water and therefore, interisland transport in our state,** a selling dispensary may **only sell and transport medical cannabis or manufactured medical cannabis products within its island to a purchasing dispensary and** only transport up to four thousand grams of cannabis or manufactured cannabis products to a purchasing dispensary.

§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.



The bill, as reflected in current language above, has a limit on transport from a dispensary to a dispensary of 4,000 grams of product. 4,000 grams for manufactured products is reasonable, however, 4,000 grams of cannabis would not be enough to satisfy flower demand for some dispensaries for a day. The current law allows patients to receive 4 oz (113 grams) every 15 days for a total of 8 oz (226 grams) per 30 days. 4,000 grams of flower would essentially satisfy the demand of only 17 patients equivalent to less than 1% of any dispensary's patient base. We would respectfully request that the Committee increase this to **45,560 grams (1600 ounces or 100 lbs)**. A 100lb limit would allow dispensaries to ensure that in the case of crop failure or other foreseeable circumstance that devastates or eliminates an entire cannabis crop for a dispensary, they are still able to serve a total of 200 patients for 30 days.

Thank you for the opportunity to testify.



To: Representative Ryan Yamane, Chair
Representative Adrian Tam, Vice-Chair
Members of the House Health, Human Services, and Homelessness Committee

Fr: Jaclyn L. Moore, Pharm.D., CEO Big Island Grown Dispensaries

Re: **Testimony In Support of HB477**
RELATING TO CANNABIS

Increases the allowable number of production centers and retail dispensing locations per dispensary license. Authorizes the department of health to allow a licensed dispensary to purchase medical cannabis or manufactured cannabis products from another licensed dispensary to ensure ongoing qualified patient access.

Dear Chair Yamane, Vice-Chair Tam, and Members of the Committee:

Big Island Grown Dispensaries is one of eight dispensary licensees in the State. We operate a production facility and 3 retail locations on the Big Island of Hawaii. We submit testimony today in **support of HB477**. HB477 is an important bill for the dispensary industry in order to enhance the medical cannabis dispensary program and infrastructure with additional facilities to strengthen patient access, product controls, and safety.

Big Island Grown supports an increased retail and production footprint as proposed in this bill. This will strengthen the legal cannabis industry by securing a stronger position and footing, especially as it faces continued pressure from the illicit and completely unregulated (and untaxed) black market. According to New Frontier Data, the dispensaries provided only 5.2% of the total cannabis consumed in Hawaii in 2020 which means 95% was provided by the illicit market. Another data platform, BDSA Analytics, estimated the illicit market in Hawaii to be approximately 10x the size of the legal medical market in 2020. All data collected on this issue shows the illicit market providing 10-20x the cannabis supply than the amount provided within the legal cannabis framework. Big Island Grown believes this is a reasonable increase to the existing footprint which enhances our ability to provide clean, tested, safe, high quality, regulated (and taxed) cannabis medicine to our island community.

Both Big Island licensees have built out all three-retail location for a total of 6 on the island currently operating. Even with this, there are still underserved patient populations stretching from Pahoia to Kau to Ocean View. Patients in these areas drive upwards of an hour to visit the nearest dispensary locations on the island. Enabling more retail locations per current licensee enables a quicker rollout and opening of additional retail locations increasing legal access for patients. The increase in demand would require an increased plant count and/or additional production facility per licensee. We support the provision in this bill that would allow for an increase in production facilities.

Allowing wholesale between licensees promotes a diverse pipeline of products and enables patients in every County to access specialized formulations, that may not otherwise be available. This a much-needed component to overcome the restrictions that are inherent in a vertical program where each licensee is currently required to grow, process, manufacture, package, transport, and dispense cannabis

Lau Ola LLC, dba Big Island Grown Dispensaries
HILO WAIMEA KONA



and manufactured products that are 100% house only. This essentially requires a licensee to be a jack of all trades in cultivation, and in product development, and formulations. Wholesale between licensees would successfully address this by enabling dispensaries to purchase and dispense formulations that may not otherwise be developed.

All sales and purchases of cannabis and manufactured cannabis products would fall under the same regulations we operate under, and be subject to the data collection and reporting requirements of the computer software tracking system outlined in section 329D-6(j). We support the ability of the selling dispensary 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. The bill also proposes to authorize intrastate transport for this purpose. In order for this process to be implemented though, changes and clarification to the allowance for inter-island transport would need to be made. If there remain issues with inter-island and intrastate transport, we respectfully request the Committee consider revising the bill to amend language in 329D-2(c) that currently restricts licensees to produce, manufacture, and dispense cannabis and manufactured cannabis products “only in” the county for which the license was granted. Please consider the following:

329D-2 Medical cannabis dispensaries; authorized; licensure.

(c) Each medical cannabis dispensary license shall allow production, manufacture, and dispensing of cannabis and manufactured cannabis products ~~only in~~ any the county irrespective of ~~for~~ which county the license is granted.

Lastly, the bill currently has a limit on transport from a dispensary to a dispensary of 4,000 grams of product. 4,000 grams for manufactured products is reasonable, however, 4,000 grams of cannabis would not be enough to satisfy flower demand for some dispensaries for a day. The current law allows patients to receive 4 oz (113 grams) every 15 days for a total of 8 oz (226 grams) per 30 days. 4,000 grams of flower would essentially satisfy the demand of only 17 patients equivalent to less than 1% of any dispensary’s patient base. We would respectfully request that the Committee increase this to **45,560 grams (1600 ounces or 100 lbs)**. A 100lb limit would allow dispensaries to ensure that in the case of crop failure or other foreseeable circumstance that devastates or eliminates an entire cannabis crop for a dispensary, they are still able to serve a total of 200 patients for 30 days.

Thank you for the opportunity to testify.

Jaclyn L. Moore, Pharm.D., CEO Big Island Grown Dispensaries

LATE

HB-477

Submitted on: 2/4/2021 10:14:18 AM

Testimony for HHH on 2/5/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nikos Leverenz	Drug Policy Forum of Hawaii	Support	No

Comments:

Drug Policy Forum of Hawaii (DPFH) supports HB 477, which increases the allowable number of production centers and retail dispensing locations per dispensary license and authorizes the Department of Health to allow licensed dispensaries to purchase cannabis or manufactured cannabis products from another licensed dispensary.

DPFH actively participated in the Act 230 (2016) Medical Cannabis Legislative Oversight Working Group, which addressed, among other concerns, the facilitation of cannabis-infused edible products.

DPFH was also instrumental in the passage of Act 228 (2000), authorizing the acquisition, possession, and use of medical cannabis, and Act 241 (2015), authorizing the establishment and regulation of medical cannabis dispensaries.

DPFH supports efforts that increase the availability of a variety of cannabis flower strains and manufactured cannabis products to better meet the emerging needs of patients.

ON THE FOLLOWING MEASURE: HB477, RELATING TO CANNABIS

COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

DATE: Friday, February 5, 2021

TIME: 8:30AM

TESTIFIER: Brian Goldstein

POSITION: STRONG SUPPORT WITH COMMENTS

Chair Yamane, Vice Chair Tam and Members of the Committee:

This bill is focused on patient access and has important measures that deserve your support;

- Increase the allowable number of production centers and retail dispensing locations
- allows licensed dispensaries to purchase medical cannabis or manufactured cannabis products from another licensed dispensaries to ensure ongoing qualified patient access

There is one more matter regarding patient access that should be added to this bill - **allowing owners of firearms to access medical cannabis.**

Currently, Honolulu Police Department does not allow persons with medical cannabis cards that are current, or expired less than one year, to acquire or possess firearms or ammunition.

According to HPD Chief, Susan Ballard,

under the provisions of the Hawaii Revised Statutes, Section 134-7(a), 329 cardholders are disqualified from owning, possessing, or controlling any firearm in the State of Hawaii.

HRS §134-7(a) states “(a) No person who is a fugitive from justice or is a person prohibited from possessing firearms or ammunition under federal law shall own, possess, or control any firearm or ammunition therefor.”

Even though medical cannabis is legal in Hawaii, HPD’s position is since cannabis is federally illegal, 329 cardholders are disqualified from possessing firearms or ammunition.

Tens, or hundreds, of thousands of Hawaii residents that own firearms are afraid to get a 329 card for fear of having HPD demand that their firearms be surrendered.

I recently received a letter from Chief Ballard demanding that I surrender my recently registered firearm because I have an expired 329 card. According to HPD, if I want to keep my firearm, I need a medical clearance letter stating that I am “no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect”.

This is an outrageous injustice that only you can correct.

It is high time that the Hawaii legislature correct this injustice by **amending HRS §134-7 to prohibit the possession of a 329 card as cause for denying a firearm registration.**

The following pages include a copy of the order to surrender letter from Chief Ballard as well as HPD medical clearance letter instructions.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

RICK BLANGIARDI
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE DN-LC
Certified Mail 7019 0140 0000 4590 7535

January 5, 2021

Mr. Brian Goldstein

[REDACTED]
Honolulu, Hawaii 968 [REDACTED]

Dear Mr. Goldstein:

This letter is to inform you that under the provisions of the Hawaii Revised Statutes, Section 134-7(a), you are disqualified from owning, possessing, or controlling any firearm in the State of Hawaii. Our background investigation revealed that you were recently in possession of a valid medical cannabis card that expired on 09-01-2020, which disqualifies you from ownership of firearms and ammunition.

You must immediately surrender your out of state registered firearm and ammunition to the Honolulu Police Department (HPD) or otherwise transfer ownership. Our firearms records indicate that you recently registered one firearm from out of state.

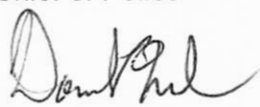
1. [REDACTED], Semi-Auto Pistol, 4.00", [REDACTED]

To be considered for future out of state registrations, firearms applications with the Honolulu Police Department, or return of firearms from HPD evidence, a medical clearance letter will be required within one year of your card's date of expiration.

Personnel from our Firearms Unit are available to assist you. Please contact our office at 723-3190 if you have any questions about your disqualification.

Sincerely,

SUSAN BALLARD
Chief of Police

By 
DAVID P. NILSEN, Major
Records and Identification Division

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE

During the course of your background check, it was determined that you may have received or are currently receiving treatment or counseling for the following:

1. An addiction to, abuse of, or dependence upon any drug, intoxicating compound, or intoxicating liquor;

OR

2. A behavior, emotional, or mental disorder as defined by the most current manual of American Psychiatric Association;

OR

3. An organic brain syndrome.

As such, in order to complete the processing of your application, we will require written certification from a licensed psychologist, psychiatrist, or medical doctor documenting that you are no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect. No further action will be taken on your application until the required letter is received.

The letter must be on the doctor's letterhead, with the doctor's full name, license number, business address, business phone number, and signature.

Section 134-18 of the Hawaii Revised Statutes provides qualified immunity for physicians, psychologists, or psychiatrists who provide information on permit applicants.

There shall be no civil liability for any physician, psychologist, or psychiatrist who provides information or renders an opinion in response to an inquiry made for purposes of issuing a firearm permit under section 134-2 or for purposes of investigating the continuing mental health of the holder of a valid firearm permit provided that the physician, psychologist, or psychiatrist acted without malice.

The letter may be either mailed or faxed to: Honolulu Police Department
Attention: Firearms Unit
801 South Beretania Street
Honolulu, Hawaii 96813
Facsimile: (808) 723-3266

Should you require further assistance in this matter, please call the Firearms Unit at (808) 723-3190.

A handwritten signature in black ink, appearing to read "David P. Nilsen".

DAVID P. NILSEN, Major
Records and Identification Division