



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 241, RELATING TO MEDICAL CANNABIS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 24, 2021 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Tara K.C.S. Molnar,
Deputy Attorney General, at 587-3050)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

This measure would amend section 329-122, Hawaii Revised Statutes (HRS), to allow interisland transport of cannabis, usable cannabis, or any manufactured cannabis product by a qualifying patient or qualifying out-of-state patient for the patient's personal medical use (page 3, lines 10-12).

The measure's wording with respect to the interisland transport of cannabis, usable cannabis, or any manufactured cannabis product by a qualifying patient or a qualifying out-of-state patient for the patient's personal medical use (page 3, lines 8-12) raises a concern because it involves the transport of cannabis outside of state jurisdiction and in federal jurisdiction, i.e., within the jurisdiction of the Federal Aviation Administration or within navigable waters of the United States. There is no exception for medical cannabis under federal law. It is a violation of federal law to possess, grow, distribute or use marijuana. Certain protections and defenses may be available on land and within the boundaries of Hawaiian waters. However, chapters 261 and 329, HRS, do not provide protection from federal laws within exclusive federal jurisdiction.

Thank you for the opportunity to provide comments.



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

TESTIMONY IN SUPPORT OF SB 241

TO: Chair Rhoads, Vice Chair Keohokalole & Members of the Judiciary Committee

FROM: Nikos Leverenz
DPFH Board President

DATE: February 24, 2020 (9:45 AM)

Drug Policy Forum of Hawai'i (DPFH) **supports** SB 241, which would authorize qualifying patients to transport cannabis between islands for personal medical use.

The Transportation Security Administration (TSA) [notes on its website](#) that its screening procedures are “focused on security and are designed to detect potential threats to aviation and passengers. Accordingly, TSA security officers do not search for marijuana or other illegal drugs.” However, it also declares that if “any illegal substance is discovered during security screening, TSA will refer the matter to a law enforcement officer.”

As a practical matter TSA is likely to refer the person to state law enforcement even though airports are within the purview of federal law. ***This bill could be strengthened with language providing that state airport police do not interfere with the possession of cannabis by qualified patients.*** The state Department of Transportation should also offer a statement on relevant airport webpages [providing explicit protection to persons complying with state law](#) like Los Angeles International Airport. Patients should be given some level of formal assurance that they are able to transport medical cannabis between islands.

Cannabis may soon be removed from the federal Controlled Substance Act, [a position that this Legislature endorsed with HCR 89 in 2019](#), under the federal [MORE Act](#). Until federal law remedies its own erroneous posture, Hawai'i law and policy should proactively carve out protections for resident patients and travelers who register with the state Department of Health and are visiting multiple islands.

Thank you for the opportunity to provide testimony.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Wednesday, February 24, 2021

9:45 a.m.

STRONG SUPPORT FOR SB 241 - Interisland Transport of Cannabis

Aloha Chair Rhoads, Vice Chair Kaohokalole and Members of the Committee:

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,100 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that 1,000 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of this public health equity measure that protects the rights of qualifying patients to use medical cannabis by specifically authorizing the interisland transportation of cannabis for personal medical use.

Currently, the licensed dispensaries are on Oahu, Hawai`i Island, Maui, and Kaua`i leaving patients on Moloka`i, Lana`i, and Ni`ihau with no access to legal medical cannabis where there are no licenses dispensaries.

We respectfully ask that the committees support Hawai`i patients struggling with a myriad of illness by passing this public health and equity measure.

Mahalo for this opportunity to testify.



To: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Members of the Committee on Judiciary

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

TESTIMONY IN SUPPORT OF SB241

RELATING TO MEDICAL CANNABIS.

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on Judiciary;

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 SB241** which authorizes qualifying patients and qualifying out of state patients to transport cannabis between islands of the State for personal use.

Big Island Grown Dispensaries has provided, and continues to provide cannabis medicine to Big Island patients as well as patients that reside on other islands. Patients that choose to fly to Big Island to purchase clean, lab tested, high quality cannabis medicine from our dispensaries should be able to freely travel, as they would with any other medicine, within the State without fear of confiscation or committing a crime. Furthermore, some of our Big Island patients actively seek treatment on Oahu for various health conditions. The inability to legally travel inter-island with their cannabis medicine while receiving medical care on other islands can be disruptive to their treatment, and progress.

Inter-island transport of cannabis for personal use should be a basic right of a qualifying patient.

Thank you for the opportunity to testify on this measure.

Jaclyn L. Moore, Pharm.D.

CEO Big Island Grown Dispensaries



To: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair
Member of the Senate Judiciary Committee

Fr: Blake Oshiro, Esq. on behalf of the HICIA Hawai'i Cannabis Industry Association

Re: Testimony in **Support of Senate Bill (SB) 241**
RELATING TO MEDICAL CANNABIS
Authorizes qualifying patients and qualifying out-of-state patients to transport cannabis between islands of the State for personal medical use.

Dear Chair Rhoads, Vice-Chair Keohokalole 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 **supports** SB241 which would authorize interisland transport of medical cannabis by patients and out-of-state patients.

We recognize that most such transport would be regulated under federal law and so to the extent that this governs, we understand that this bill would have limited effect.

However, our research has indicated that the federal law on whether transport can occur **INTRA**-state 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/WDMRa9NnyyIZ5Z301Oc0AK/story.html>

We believe that there remains a legal basis that MAY permit transport and there is also some indication that a state law authorizing such transport is necessary in order for this permitted transportation to occur. 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.

Therefore, we support this bill.

(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.

Hawai'i Cannabis Industry Association (HICIA)
220 S King St #1600, Honolulu, HI 96813
www.808hcia.com



Hawaii Patients Union | 18-1350 Volcano Rd, Mountain View, HI 96771

**TESTIMONY ON SENATE BILL 241
RELATING TO CONTROLLED SUBSTANCES**

Senate Judiciary Committee
Senator Senator Karl Rhoads, Chair
Senator Senator Jarrett Keohokalole, Vice Chair
Tuesday, February 24, 2021 9:45am

On Behalf of Patients Who Rely on Medical Cannabis and Members of the Hawaii Patients Union We Are Calling For Support Of Senate Bill 241

Aloha Chair Rhoads, Vice Chair Keohokalole and members of the committee. Thank you for accepting our testimony in support of Senate Bill 241.

This bill would “authorize qualifying patients and qualifying out-of-state patients to transport cannabis between islands of the State for personal medical use.”

We are hearing from the patients we serve through our organization that this bill;

1. Would allow them to travel with their medicine.
2. Would allow patients and caregivers without access to medicine to purchase and bring home medicine from an island where there is access to medicine.

We strongly support equal access to medicine without fear of prosecution by Federal agents on our islands. It remains unclear if a patient can travel between their home and a caregiver or dispensary on roads that require crossing Federal Parks or Military installations.

A possible solution can be found in SB147 and HB867 requiring the DOH to submit an application to the DEA for a federal exemption for our medical Cannabis program. Resolving the perceived federal conflict between state and federal laws would be helpful on many levels.

On behalf of patients across Hawaii we deeply appreciate the ability to submit their testimony to your Committee.

SB-241

Submitted on: 2/19/2021 10:23:18 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments:

Aloha JDC Committee,

As a public health professional and concerned community member, I am in strong support of this public health equity measure, which will protect the rights of qualifying patients to use medical cannabis by specifically authorizing the interisland transportation of cannabis for personal medical use.

Currently, the licensed dispensaries are on Oahu, Hawai`i Island, Maui, and Kaua`i leaving patients on Moloka`i, Lana`i, and Ni`ihau with no access to legal medical cannabis where there are no licensed dispensaries.

As has been made very clear during the COVID-19 pandemic, equitable and timely access to health services is essential to not only protect our community health but also our local economy.

Mahalo,

Thaddeus Pham (he/him)

SB-241

Submitted on: 2/20/2021 9:55:50 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Arbeit	Individual	Oppose	No

Comments:

All our islands are in the same state, movements among them shouldn't be restricted.

SB-241

Submitted on: 2/20/2021 11:59:26 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support SB241 because this is a public health equity measure that protects the rights of all qualifying patients to use medical cannabis by specifically authorizing the interisland transportation of cannabis for personal medical use. Patients on Moloka`i, Lana`i, and Ni`ihau have no licensed dispensaries and therefore no access to legal medical cannabis. Please pass this bill to support all of Hawaii's people struggling with illnesses that medical cannabis is prescribed to treat. Thank you.

SB-241

Submitted on: 2/22/2021 5:17:24 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong support.

SB-241

Submitted on: 2/22/2021 6:59:43 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
donn viviani	Individual	Support	No

Comments:

I support SB241. There is no reason not to pass this bill. The use of medical cannabis is legal. It benefits Hawaii's citizens in many ways. This bill removes obstacles to realizing those benefits. If something is useful, and in some cases necessary, it's irrational to have artificial barriers placed on it's use.

Donn Viviani, Kailua

TO: The COMMITTEE ON JUDICIARY
From: Wendy Gibson-Viviani RN/BSN

RE: **SB241 (In Support)** Interisland Transport of Medical Cannabis
Hearing: Wednesday, February 24, 2021 at 0945 via Videoconference

Dear Senator Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice Chair and Members of the Committee:

My name is Wendy Gibson-Viviani, R.N. and I have been a medical cannabis patient advocate in Hawaii for 15 years. I would like to urge you to **support SB241**, to allow State-authorized medical cannabis users to travel with their medicines.

Patients who live on outer islands frequently have to travel to Oahu for medical care. They need to be able to take their scheduled doses of medicine when they travel. Currently, patients are not allowed to bring dispensary-purchased or home-grown medicines on an airplane—because that puts them into Federal territory.

That means that a patient who travels to Oahu from another island must purchase the medicine they need for the day at an Oahu dispensary. There is no guarantee that the dispensary will have the product that the patient needs. If they buy too much, they will have to dispose of it rather than take it home when they return. That can be very expensive. And, this is an expense that no other patient population has to deal with when taking other approved medicines.

This also means that a patient living on an island without a dispensary, such as Moloka'i, Lana'i, and Ni'ihau, cannot travel to another island to purchase medicines from a dispensary. If patients on these islands cannot grow their own medicines, they are out of luck. They also do not have access to labs to have their home grown products tested for purity and strength.

I understand that traveling OUT of State will likely always be forbidden, but air travel WITHIN a State's territory is being practiced in at least five other States. It is likely that they are using this exclusion found within the Code of Federal Regulations (CFR) Title 14 SECTION 91.19 Volume 2 › Chapter I › Subchapter F › Part 91 › Subpart A <https://ecfr.io/Title-14/Section-91.19>

§ 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.

Medical Cannabis Use was authorized for use by qualifying patients in the State of Hawai'i back in 2000. More than 30,000 patients are now in legal possession of cannabis and can travel in a car with it. Why not expand that to air travel between islands within the State?

According to the TSA website: TSA's screening procedures are focused on security and are designed to detect potential threats to aviation and passengers. Accordingly, TSA security **officers do not search for marijuana** or other illegal drugs, but if any illegal substance is discovered during security screening, TSA will refer the matter to **a law enforcement officer**.

This is how intrastate transport is being handled in California:

<https://www.flylax.com/en/lax-marijuana-policy>

In Los Angeles, LAX has a Marijuana Policy-- As of January 1, 2018, California law allows for individuals 21 years of age or older to possess up to 28.5 grams of marijuana and 8 grams of concentrated marijuana for personal consumption.

With the change in state law, the policy and procedures of the **Los Angeles Airport Police Division (APD)** regarding marijuana were updated to reflect this change. APD officers, who are California Peace Officers, **have no jurisdiction to arrest individuals** if they are **complying with state law**.

In San Francisco (SFO) International Airport: Public information officer Doug Yakel told SF Weekly that law enforcement at SFO won't confiscate or prosecute anyone possessing the legal **amount of one ounce**. "As a rule of thumb, our law enforcement personnel would not confiscate a personal use amount (i.e., one ounce) from someone heading to a location where it's legal, but they would warn the person that they might have issues at their destination, where possession is still illegal".

In Washington (State) at the Seattle-Tacoma International Airport: Once it's confirmed that you're not carrying more than you're legally allowed to (and that you're over 21), marijuana possessors leaving Seattle are allowed to go about their day with their cannabis.

I view this as a medical health issue. Depriving patients of their medicines even if it's for one or two days can be detrimental to the patient's health. I urge you to pass this bill so that patients can have uninterrupted access to their chosen medicine. For some patients, this is the only medicine that is both safe and effective.

Thank you for the opportunity to share my views,

Wendy Gibson-Viviani RN/BSN

American Cannabis Nurses Association and Cannabis Nurse Network Member

Kailua



Akamai Cannabis Clinic
3615 Harding Ave, Suite 304
Honolulu, HI 96816

TESTIMONY ON SENATE BILL 241
RELATING TO MEDICAL CANNABIS

By
Clifton Otto, MD

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Wednesday, February 24, 2021; 9:45 AM
State Capitol, Videoconference

Thank you for the opportunity to provide testimony in SUPPORT of this measure.

[SB241](#) addresses the right of patients to travel between islands with their state authorized cannabis medicine, which is in desperate need of protection.

However, it would be a mistake to address the interisland transport of cannabis without addressing the federal conflict with marijuana at the same time.

Without a way to resolve the current conflict with the federal regulation of marijuana, the agencies that control interisland transport, namely local airport law enforcement, TSA, and DOT will continue to deny such transport even if authorized under state law.

Therefore, I respectfully request that the following amendment be made to this bill:

SECTION 2b. Hawaii Revised Statutes, part IX. Medical Use of Cannabis, Chapter 329, is amended by adding the section to read as follows:

“§329-132 Regarding the State Authorized Use of Cannabis.

The department of health shall submit to the administrator of the United States Department of Justice, Drug Enforcement Administration, Diversion Control Division:

(1) An application for immediate relief pursuant to title 21 Code of Federal Regulations section 1307.03 to the Office of Diversion Control. This application shall state that part IX of chapter 329, Hawaii Revised Statutes, and chapter 329D, Hawaii Revised Statutes, create an exemption from federal drug laws and do not create any positive conflict pursuant to title 21 United States Code Annotated section 903; and that the federal scheduling of marijuana does not apply to the state authorized use of cannabis. The application shall also include a proposed rule containing the following: "The listing of marijuana as a controlled substance does not apply to the state authorized use of marijuana, and persons using marijuana in compliance with state law are exempt from registration"; and

(2) A petition for permanent relief pursuant to title 21 Code of Federal Regulations section 1308.43. This petition shall state that the state authorized use of cannabis creates an exemption from federal drug laws and does not create any positive conflict pursuant to title 21 United States Code Annotated section 903; and that the federal scheduling of marijuana does not apply to the state authorized use of cannabis. The petition shall also include a proposed rule containing the following:

Testimony on SB241
February 24, 2021
Page 3

"The listing of marijuana as a controlled substance does not apply to the state authorized use of marijuana, and persons using marijuana in compliance with state law are exempt from registration."

Aloha.

SB-241

Submitted on: 2/23/2021 9:12:17 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

I am writing in strong support of SB241 which would allow the interisland transport of cannabis for personal medical use by qualified in-state as well as out-of-state patients.

SB241 will allow patients who live on islands without a cannabis dispensary to get the medical relief they need. This is a humanitarian health issue. Please pass SB241.

Mahalo for your consideration.

Diana Bethel, Honolulu

LATE

SB-241

Submitted on: 2/23/2021 1:15:36 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Russell Ruderman	Individual	Support	No

Comments:

Aloha Chair, Vice Chair, and Senators!

I support this bill and urge you to pass it.

It is important to provide legitimate ways for patients to access cannabis legally, and accommodating it while traveling is an important part of this.

We must also decriminalize medical cannabis for our visitors, and inter island transport, to support our visitor industry.

Our state says that cannabis has legitimate medical uses, and we must have policies that support this. Please help further legitimize medical cannabis by passing this bill.

Thank you Senator San Buenaventura for bringing this bill forth, as it is so important to so many of your (formerly our) constituents.

If you have read this far you get a gold star for testimony diligence. I commend you and send my aloha!

Russell Ruderman

Private Citizen