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DEPARTMENT OF HEALTH
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**Testimony COMMENTING on SB465 SD2
RELATING TO MEDICAL CANNABIS.**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date: Wed., 3/15/2023

Room Number: 329

- 1 **Fiscal Implications:** N/A.
- 2 **Department Testimony:** The Department of Health (DOH) offers comments on S.B. 465 which
- 3 seeks to protect the rights of qualifying patients by specifically authorizing the interisland
- 4 transportation of cannabis for personal medical use.
- 5 The department defers to the Department of Transportation regarding interisland transport.
- 6 Thank you for the opportunity to testify.
- 7 **Offered Amendments:** N/A

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
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ROBIN K. SHISHIDO
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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HONOLULU, HAWAII 96813-5097

March 15, 2023
10:30 A.M.
State Capitol, Teleconference

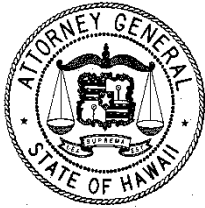
S.B. 465 SD2
RELATING TO MEDICAL CANNABIS

House Committee on Health & Homelessness

The Department of Transportation (DOT) offers **comments** on S.B. 465 SD2 which authorizes qualifying patients and qualifying out-of-state patients to transport cannabis between islands of the State for personal medical use.

The Transportation Security Administration (TSA) screens passengers and their baggage at the five major Hawaii Airports. The TSA follows Federal rules and regulations, including prohibition of transporting marijuana. In a recent inquiry to TSA, their position remains the same.

Thank you for the opportunity to provide testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 465, S.D. 2, RELATING TO MEDICAL CANNABIS.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Wednesday, March 15, 2023 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Andrew Goff, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

This bill allows the interisland transportation of cannabis under state law for personal medical use. Senate Draft 2 of this bill amended the prior versions to (1) specify that no individual or entity will be required to violate federal law with respect to interisland transport of cannabis (page 3, lines 19-21), and (2) specify that the jurisdictional limits of the state law "extend twelve nautical miles from the perimeter of each island and connect Oahu, Maui, Molokai, Lanai, and Kahoolawe" (page 4, lines 2-4).

The Department is concerned that these amendments could (1) be misconstrued as permitting transportation of cannabis interisland under federal law and (2) cause confusion over the limits of state law.

All interisland travel and flights are subject to federal jurisdiction. There is currently no exception for medical cannabis under federal law. A state law allowing interisland transportation will not permit or excuse a violation of federal law. There is a concern that the proposed amendment may cause a medical cannabis patient to believe, to the patient's detriment, that interisland transportation of cannabis is federally legal.

The current federal law enforcement policy of both the Transportation Security Administration (TSA) and the Federal Aviation Administration (FAA) prohibit transportation of cannabis. A medical cannabis patient that transports cannabis interisland for any purpose risks having the patient's cannabis confiscated and possible federal prosecution. While section 329-122(f), Hawaii Revised Statutes, contains a disclaimer that interisland travel is made "with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State[,]" that does not prevent potential federal prosecution for marijuana offenses within the State.

We note further that the Senate Draft 2 amendment on page 3, lines 20-21, provides that "no individual or entity shall be required to violate federal law with regard to the interstate transport of cannabis." However, the purpose of this bill is to allow interisland or intrastate transportation of cannabis and not interstate transport between the states. We recommend reverting to the wording in Senate Draft 1—"provided that no individual or entity shall be required to violate federal law"—so it is clear that the statute does not forcibly require an individual or entity to violate federal law.

Additionally, specifying that the jurisdictional limits of the state law "extend twelve nautical miles from the perimeter of each island and connect Oahu, Maui, Molokai, Lanai, and Kahoolawe" (page 4, lines 2-4), causes confusion over what is legal under federal law. Federal law applies to all flights, whether within twelve nautical miles of an island or not. Also, there is no law that states federal jurisdiction does not apply between the islands of Oahu, Maui, Molokai, Lanai, and Kahoolawe. Defining the limits of state law in this manner would be improper and cause a medical cannabis patient to incorrectly believe that federal law does not apply. The State does not define the limits of federal jurisdiction.

If the intention is to allow interisland transportation of cannabis by patients under state law, but not require an individual or entity to violate federal law, we recommend amending page 3, line 10, through page 4, line 4, to read:

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 the patient's personal medical use, between dispensaries to the extent

authorized by section 329D-6(r) [~~and~~], 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), provided that no individual or entity shall be required to violate federal law, and with the understanding that state law and its protections [~~do not apply outside of the jurisdictional limits of the State.~~] do not affect federal law.

Thank you for the opportunity to provide comments.



Akamai Cannabis Consulting

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TESTIMONY ON SENATE BILL 465 SD2
RELATING TO MEDICAL CANNABIS

By

Clifton Otto, MD

House Committee on Health & Homelessness
Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

Wednesday, March 15, 2023; 10:30 AM
State Capitol, Room 329 & Videoconference

Thank you for the opportunity to offer testimony in SUPPORT of this measure. An amendment is needed to ensure Hawaii Department of Transportation (DOT) participation:

§26-19 Department of transportation. The department of transportation shall be headed by a single executive to be known as the director of transportation. The department shall establish, maintain, and operate transportation facilities of the State, including highways, airports, harbors, and such other transportation facilities and activities as may be authorized by law.

The department shall plan, develop, promote, and coordinate various transportation systems management programs that shall include, but not be limited to, alternate work and school hours programs, bicycling programs, and ridesharing programs.

The department shall develop and promote ridesharing programs which shall include but not be limited to, carpool and vanpool programs, and may assist organizations interested in promoting similar programs, arrange for contracts with private organizations to manage and operate these programs, and assist in the formulation of ridesharing arrangements. Ridesharing programs include informal arrangements in which two or more persons ride together in a motor vehicle.

The functions and authority heretofore exercised by the department of public works with respect to highways are transferred to the department of transportation established by this chapter.

On July 1, 1961, the Hawaii aeronautics commission, the board of harbor commissioners and the highway commission shall be abolished and their remaining functions, duties, and powers shall be transferred to the department of transportation.

The department shall adopt rules under chapter 91 for the interisland transport of controlled substances within the jurisdictional limits of the State which extend twelve nautical miles from the perimeter of each island and connect Oahu, Maui, Molokai, Lanai, and Kahoolawe.

AIRPORT POLICE SERVICES POLICY AND PROCEDURE	NUMBER: 5.03	PAGES: 1 of 3
	RELATED ORDERS: General Order 16.12	
	ISSUED DATE: December 11, 2007	
	REVIEW DATE:	
REVISION DATE:		
CHAPTER: Law Enforcement Operations		SUBJECT: Medical Marijuana at the Oakland International Airport Checkpoints

- I. **PURPOSE:** To establish uniform procedures as it applies to individuals found to be in possession of or transporting marijuana into the Oakland International Airport or onto an aircraft, with or without the “medical marijuana” exception as defined in H&S Code sections 11362.5 and 11362.7 et seq.
- II. **POLICY:** It is the policy of the Airport Police Services to recognize the provisions allowed under California Health and Safety Code sections 11362.5 and 11362.7 et seq as well as to uniformly enforce California State Law-Health and Safety Code 11357(b), 11357(c), 11359 and 11360.
- III. **DEFINITIONS:**
- A. California Health and Safety Code 11362.5 is defined as the Compassionate Use Act of 1996. The purposes include:
1. To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a **physician** who has determined that the person’s health would benefit from the use of marijuana in the treatment of a serious medical condition such as cancer, AIDS, anorexia, chronic pain, etc. or any other illness for which marijuana provides relief.
 2. To ensure that **patients** and their **primary caregivers** who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution. Less than eight (8) ounces in the possession of a qualified patient or primary caregiver who has **received an oral or written recommendation or approval from a physician for the marijuana, regardless of whether or not they have or are carrying a “medical marijuana card,”** is allowed under the Compassionate Use Act and may be legally used and transported in California.
- B. **Attending Physician**-an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate. H&S 11362.7(a)

- C. **Qualified Patient**-a person who is entitled to the protections of H&S Section 11362.5, who does not necessarily possess a medical marijuana card but who possesses no more than eight ounces of dried marijuana or has a doctor's recommendation for an amount consistent with the patient's needs. H&S 11362.7(f); H&S 11362.71(f), H&S 11362.77
- D. **Identification Card**-An official document issued by a California county health department that identifies a person authorized to engage in the medical use of marijuana and the identity of that person's designated primary caregiver, if any. H&S 11362.71
- E. **Person with an identification card**-an individual who is a qualified patient who has applied for and received a valid identification card.
- F. **Primary Caregiver**-the individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person. A primary caregiver must be at least 18 years of age. H&S 11362.5(e) and 11362.7(d)(e)
- G. **Serious Medical Condition**-AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraines, muscle spasms, seizures or any other chronic or persistent medical symptom. H&S 11362.5(b)(A); H&S 11362.7(h)
- H. **California Health and Safety Code 11357(b)**-Possession of less than an ounce of marijuana.
- I. **California Health and Safety Code 11357(c)**-Possession of more than an ounce of marijuana.
- J. **California Health and Safety Code 11359**-Possession of marijuana for sale.
- K. **California Health and Safety code 11360**-Transportation of marijuana for sale.

IV. PROCEDURE:

- A. Deputies will respond to all requests by Transportation Security Administration employees who have identified passengers found to be in possession of suspected marijuana at the checkpoints located inside of Terminals 1 & 2.
 - 1. Deputies will investigate and determine if the passenger found in possession of the suspected marijuana is a qualified patient or a primary caregiver as defined in H&S Code 11362.5 and 11362.7. If the passenger is deemed to be a qualified patient or primary caregiver and there are no other extenuating circumstances such as evidence of sales, the suspected marijuana will then be recognized as medical marijuana. If the medical marijuana is found to be eight (8) ounces or less, the passenger will be allowed to keep their medical marijuana and continue through the screening process and board their respective aircraft.
 - 2. If it is determined through the Deputy's investigation the passenger found in possession of suspected marijuana is not a qualified patient or primary caregiver as

defined in H&S Code sections 11362.5 and 11362.7, the person will be detained for a criminal investigation.

3. If the criminal investigation reveals violations of H&S 11357(b), 11357(c), 11359 or 11360, the passenger will be issued the appropriate citation and/or arrested.
4. The suspected marijuana will be processed according to General Order 16.12: Property/Evidence for Agency Use.



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February 7, 2023

Jurisdictional Limits of Hawaii

In re Island Airlines, Inc., 47 Haw. 1, 384 P.2d 536 ([1963](#))

CAB v. Island Airlines, Inc., 235 F. Supp. 990 ([D. Haw. 1964](#))

Island Airlines, Inc. v. C. A. B., 352 F.2d 735 ([9th Cir. 1965](#))

If the flights are intrastate, then of course, the federal courts should not permit the C.A.B. to require a certificate, but conversely, if the "channels" are high seas, then flight over them should and must be subject to the C.A.B.'s authority.

Chun v. BLNR, 151 Haw. 374, 514 P.3d 981 ([2022](#))

Hawai'i's statutes now apparently claim a [twelve nautical mile](#) wide territorial sea. [Act 126, SLH 1990](#), amended several sections of the Hawai'i Revised Statutes by adding a definition of "state marine waters", including one section currently codified as HRS §189-1.5.

The state's marine waters are defined by [HRS § 189-1.5](#) (2011) as "extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary." The legislative history of HRS § 189-1.5 states ([HB2233](#) – Added for reference):

The purpose of this bill is to define the boundaries of the state marine waters as extending twelve nautical miles seaward from the upper reaches of the wash of the waves on shore and the archipelagic waters. It also defines the [territorial sea](#) as the waters and seabed extending seaward to twelve nautical miles from the baseline of the United States as determined in accordance with international law and as established by [Presidential Proclamation 5928](#), dated December 27, 1988.

Conclusion

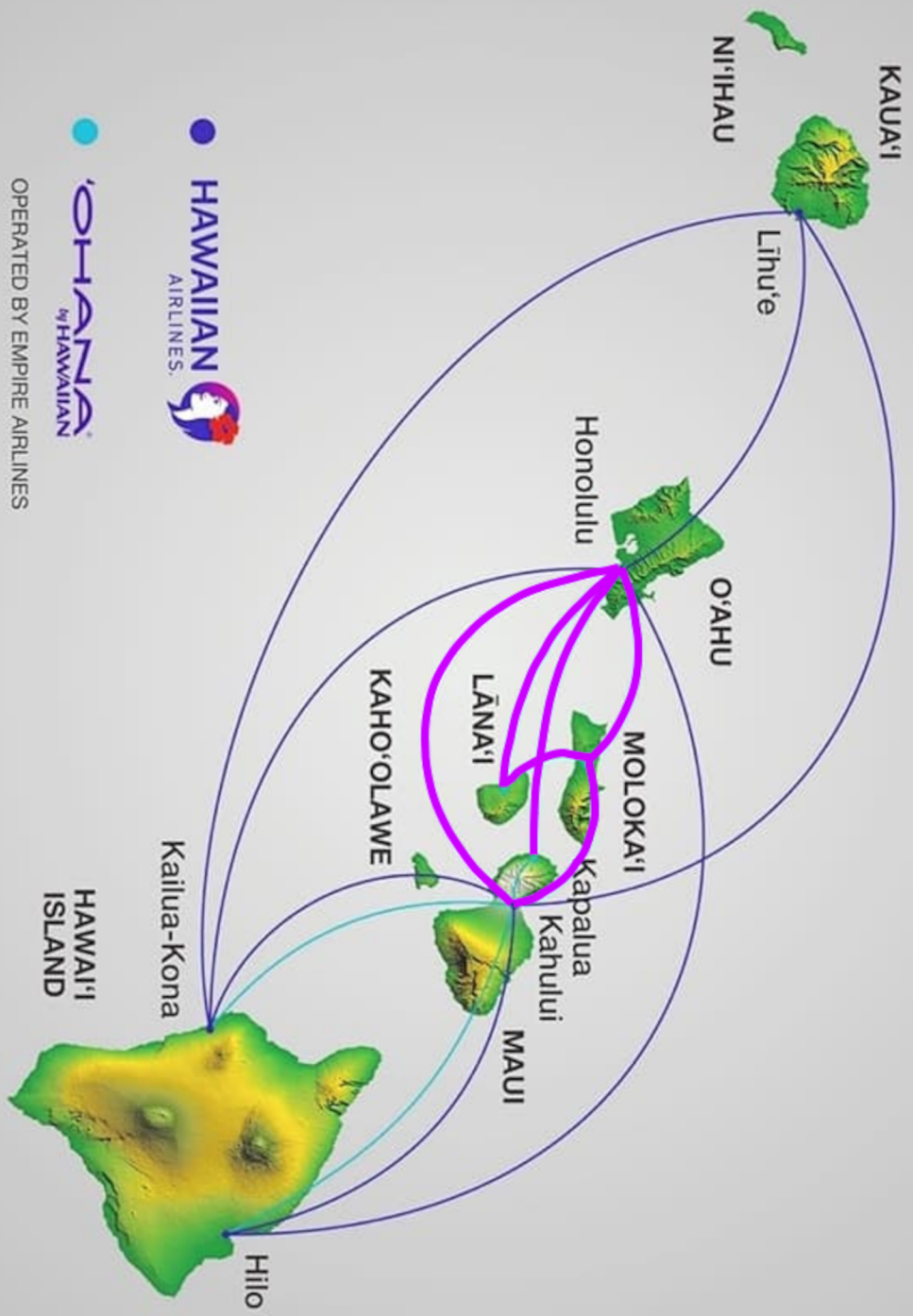
If the State claims a 12 nautical mile boundary around each island, then Kauai and the Big Island may still be surrounded by intervening "interstate" federal airspace and sea. Conversely, Oahu, Molokai, Maui, Lanai, and Kahoolawe would be interconnected.

Disclaimer: This information is for educational purposes only. Please consult with a lawyer with expertise in state and federal law for professional legal advice on this matter.

State of Hawaii
12 Nautical Mile Boundary



HAWAIIAN AIRLINES INTERISLAND ROUTES



OPERATED BY EMPIRE AIRLINES

● INTERISLAND INTRASTATE

SB-465-SD-2

Submitted on: 3/13/2023 6:31:04 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
dain retzlaff	Individual	Support	Written Testimony Only

Comments:

Please pass. Thank you!

SB-465-SD-2

Submitted on: 3/14/2023 5:54:26 AM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Oppose	Written Testimony Only

Comments:

In opposition to SD2. Thank you.

SB-465-SD-2

Submitted on: 3/14/2023 4:13:07 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark Gordon	Individual	Support	Written Testimony Only

Comments:

Prescription drugs are allowed to be transported between the Islands. As cannabis is also prescribed for medical use, this same criteria should be allowed for transport. In addition, we believe that State dispensaries also be allowed to transport cannabis to other State dispensaries on other Islands.

SB-465-SD-2

Submitted on: 3/14/2023 8:18:19 PM

Testimony for HLT on 3/15/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ben L.	Individual	Support	Written Testimony Only

Comments:

Allow prescription medication on flights? then allow medical cannabis on flights.