

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 14, 2023
3:10 PM
State Capitol, Teleconference

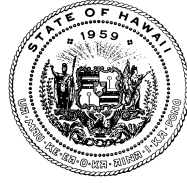
S.B. 465
RELATING TO MEDICAL CANNABIS

Senate Committees on Health and Human Services &
Transportation and Culture and the Arts

The Department of Transportation (DOT) offers **comments** on S.B. 465 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.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
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Testimony COMMENTING on SB465
RELATING TO MEDICAL CANNABIS.

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATOR CHRIS LEE, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

Hearing Date: Tues., Feb. 14, 2023

Room Number: 224

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:**

8



**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, RELATING TO MEDICAL CANNABIS.

BEFORE THE:

SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES AND ON
TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Tuesday, February 14, 2023 **TIME:** 3:10 p.m.

LOCATION: State Capitol, Room 224

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

Chairs San Buenaventura and Lee and Members of the Committees:

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

This bill allows the interisland transportation of cannabis for personal medical use. The Department is concerned that the bill could: (1) be misconstrued as permitting transportation of cannabis interisland under federal law, and (2) mandate airlines and transportation entities to risk significant penalties for violating federal law enforcement policy.

Currently, the authorization for medical use of cannabis does not apply to cannabis use at any place open to the public, pursuant to section 329-122(e)(2)(E), Hawaii Revised Statutes (HRS). However, there is a limited exception for the transportation of cannabis if it is in a sealed container, not visible to the public. *Id.* Pursuant to section 329-122(f), HRS, interisland transportation is limited to between a dispensary and another dispensary, and by a dispensary for lab testing. Patients, caregivers, out-of-state patients, and out-of-state caregivers are expressly prohibited from transporting cannabis interisland. *Id.* This bill removes the express prohibition in section 329-122(f), HRS, and allows interisland transportation of cannabis, by any means, "by a qualifying patient or qualifying out-of-state patient for the patient's personal medical use" (page 3, lines 12-14).

The Department notes that interisland travel is 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 user to believe, to the user's detriment, that interisland transportation of cannabis is federally legal. While section 329-122(f), HRS, 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 drug possession-type offenses.

The Department is also concerned that the proposed amendment could be read as requiring an airline or pilot to allow the interisland transportation of cannabis. The current federal law enforcement policy of both the Transportation Security Administration (TSA) and the Federal Aviation Administration (FAA) prohibit transportation of cannabis. The FAA's enforcement policy is to permanently revoke the certificate of pilots who knowingly transport cannabis in an amount more than simple possession. See *Marijuana Can't Fly*, https://www.faa.gov/pilots/transporting_marijuana. An airline that knowingly allows the transportation of that amount of cannabis can have its aircraft's registration revoked, and lose the use of that plane, for five years. *Id.*

If the intention is to allow interisland transportation of cannabis by patients, but not require an airline or transportation entity to violate federal policy, we recommend further amending section 329-122(f), HRS, as set forth on page 3, lines 10-21, to insert "provided that no individual or entity shall be required to violate federal law" and 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.

Thank you for the opportunity to provide comments.



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

TESTIMONY IN SUPPORT OF SB 465

TO: Chair San Buenaventura, Vice-Chair Aquino, and HHS Committee Members
Chair Lee, Vice-Chair Inouye, and TCA Committee Members

FROM: Nikos Leverenz
DPFH Board President

DATE: February 14, 2023 (3:10 PM)

Drug Policy Forum of Hawai'i (DPFH) **supports** SB 465, which would authorize qualifying patients and qualifying out-of-state 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.

Until federal law remedies its own erroneous posture regarding the continued scheduling of cannabis under the federal Controlled Substances Act, 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.

SB-465

Submitted on: 2/13/2023 7:38:54 AM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
TY Cheng	Testifying for Aloha Green Holdings Inc.	Support	Remotely Via Zoom

Comments:

To: Senator Joy A. Buenaventura, Chair HHS

Senator Chris Lee, Chair TCA

Senator Henry J.C. Aquino, Vice-Chair, HHS

Senator Lorraine R. Inouye, Vice-Chair TCA

Members of the Joint Committee on Health and Human Services, and Transportation and Culture and the Arts

Fr: TY Cheng, President of Aloha Green Holdings Inc.

RE: Testimony in SUPPORT of Senate Bill (SB) 465

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 Chairs, Vice-Chairs and Members of the Joint Committee:

Aloha Green Apothecary is a state licensed medical cannabis dispensary licensee operating since 2016 on Oahu.

Aloha Green Apothecary SUPPORTS the intent of this bill. In 2022, the Hawaii Legislature passed the right for medical cannabis dispensaries to wholesale among licensees located throughout our island chain. Patients should also be provided the right for interisland transport of personal medical use amounts as needed to ensure safe access to medicine.

Thank you for the opportunity to testify.



Akamai Cannabis Consulting

3615 Harding Ave, Suite 304

Honolulu, HI 96816

TESTIMONY ON SENATE BILL 465
RELATING TO MEDICAL CANNABIS

By

Clifton Otto, MD

Senate Committee on Health and Human Services
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Senate Committee on Transportation and Culture and the Arts
Senator Chris Lee, Chair
Senator Lorraine R. Inouye, Vice Chair

Tuesday, February 14, 2023; 3:10 PM
State Capitol, Room 224 & Videoconference

Thank you for the opportunity to offer testimony in SUPPORT of this measure:

What are the jurisdictional limits of the State? Please see attached findings.

[§329-122 Medical use of cannabis; conditions of use.](#)

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), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State which extend twelve nautical miles from the perimeter of each island. The Department of Transportation, in collaboration with the FAA and County Law Enforcement, shall adopt rules to implement this section.

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

(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.



Akamai Cannabis Consulting

3615 Harding Ave, Suite 304
Honolulu, HI 96816

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):

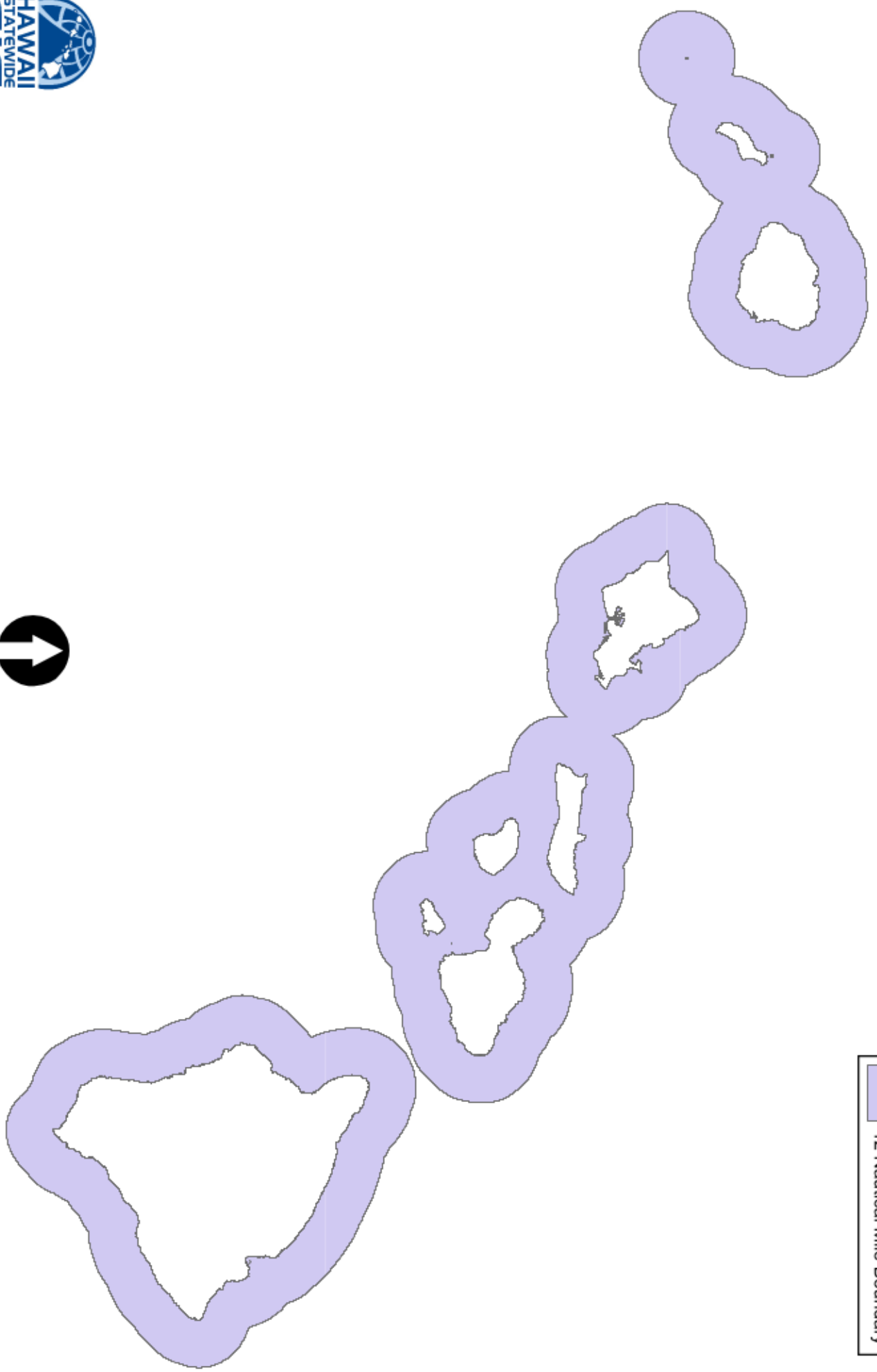
The purpose of this bill is to define the boundaries of the state marine waters as extending twelve nautical miles seaward from the upper reaches of the wash of the waves on shore and the archipelagic waters. It also defines the [territorial sea](#) as the waters and seabed extending seaward to twelve 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



SB-465

Submitted on: 2/9/2023 5:21:34 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

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

Comments:

This bill allows patients to have state legal medicine available when visiting ohana on islands that do not have a dispensary.

SB-465

Submitted on: 2/12/2023 1:33:01 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
shayne pung	Individual	Support	Written Testimony Only

Comments:

Hi. I support Bill sb465 however I do not support out of state people to come in and cultivate. The list of things that is terrible for us Native Hawaiians and our land if foreign people get to own land to farm cannabis.

SB-465

Submitted on: 2/12/2023 7:46:36 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
adam siehr	Individual	Support	Written Testimony Only

Comments:

Traveling with your medical cannabis is a necessity. Please pass

SB-465

Submitted on: 2/12/2023 2:12:11 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support this bill. Medical cannabis patients should be able to access their perscriptions in every county of Hawaii without having to buy new cannabis products every time they enter a different county. This is not only expensive, but also often wasteful, as the length of stay in a county may be far too short a time-frame to use the full supply. There's no good reason to prohibit inter-county transportation of properly-packaged medical cannabis products, which can and should be regulated in the same way as properly-packaged tobacco products.

SB-465

Submitted on: 2/13/2023 9:04:42 AM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Loretta Black	Individual	Support	Written Testimony Only

Comments:

I support this bill, but do not agree with out-of-state patients having cultivation rights

THANKYOU

SB-465

Submitted on: 2/13/2023 10:03:24 AM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Leilani Nevarez	Individual	Support	Written Testimony Only

Comments:

Support SB465 But I'm against out of state patients the availability to cultivate in Hawaii. I do agree with out of state patients being able to use their medical card to use to get medicine here in Hawaii. Mahalo Leilani Nevarez 329 card holder

SB-465

Submitted on: 2/13/2023 7:50:53 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Debbie Silk	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE ALL BILLS SB375 / SB465 / SB669 - that are attempting to give "preferential treatment" to "established" dispensaries who are already in possession of licenses to dispense cannabis!

How can you get away with passing laws to penalize small farmers and/or growers when there is clearly much hypocrisy and may tether on a fine line of all anti-trust laws? (Acres of cannabis growing on LEASED LANDS since 2015 that YOU ALL KNOW ABOUT) I believe the Attorney General should be involved in any and all "BILLS" going forward that ARE attempting to silence any and all small businesses and/or farmers!

Jenner.com a mainland law firm states: "Though cannabis companies may not be recognized as legal enterprises by the federal government, that doesn't mean they are not subject to the federal antitrust laws. Antitrust is an area of the law where a company can quickly find itself in trouble with law enforcement and regulators at both the federal and state level, as well as facing substantial civil liability." - Andrew Bail, Partner - JENNER & BLOCK LLP

Decriminalize cannabis and tax cannabis as any other commodity, BUT to leave OUT and SHUT DOWN small businesses and farmers by trying to CRIMINALIZE them, but allow dispensaries to have their way is another of your latest incidents of deceptive practices! Example: Holding hearings while the Cannabis Expo and Cannabis Cup were holding their respective events! I remain, Debbie Silk

LATE

SB-465

Submitted on: 2/13/2023 10:37:52 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Simmons	Individual	Support	Written Testimony Only

Comments:

Strong support for the language here. Thanks for your time, Andrew Simmons

LATE

SB-465

Submitted on: 2/13/2023 10:55:04 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Fehren Jones	Individual	Support	Written Testimony Only

Comments:

Aloha.

I am in support of SB 465 in regards to being able to transport medical cannabis from island to island. Many reasons such as: Big Island Grown may have better medical cannabis vs Aloha Green and I just so happen reside on O'ahu.

Mahalo

I support SB 465 in regards to being able to transport medical cannabis from island to island.
One of the Big Ivs Aloha sland Grown has better medicine many expossamples

LATE

SB-465

Submitted on: 2/14/2023 8:27:19 AM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Karen Thomas	Individual	Support	Written Testimony Only

Comments:

I support this bill with exception of allowing out of state persons to operate grows in Hawaii.

SB-465

Submitted on: 2/14/2023 9:02:32 AM
Testimony for HHS on 2/14/2023 3:10:00 PM

LATE

Submitted By	Organization	Testifier Position	Testify
Michael karlovich	Individual	Support	Written Testimony Only

Comments:

Bringing medical cannabis between islands just makes sense. People need to be able to travel with their prescriptions, thank you.

To: omccr@doh.hawaii.gov

LATE

02-14-23

Regarding : SB465

Stance : Testimony in Support

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Kai Luke, a representative of Cannabis Society of Hawai'i a diverse group of Community members made up of Native Hawaiians, People of Hawai'i, 329 Patients, Health Care Professionals, Dispensary workers, Previous Dispensary workers, Industry Professionals, Concerned Citizens, and Advocates in Health and Wellness.

We are writing in support to SB465.

329 Patients appreciate San Buenavista, Keith-Agaran, McKelvey, and Dela Cruz creating this bill to help the people of Hawai'i and out of state patients have access to medicine while traveling.

Travelling can be very strenuous and ensuring access to medicine is vital.

We would like to see an Amendment made to take out language that supports for the ability for out of state patients to cultivate and take over more and more land and displace more and more of our people.

Please accept our current stance in support with suggested amendment.

Please consider a YES vote.

Mahalo,
Kai Luke, Cannabis Society of Hawai'i
cannabissocietyofhawaii@gmail.com