



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony COMMENTING on S.B. 1332**  
**RELATING TO CANNABIS.**

SENATOR JARRETT KEOHOKALOOLE, CHAIR  
SENATE COMMITTEE ON HEALTH

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: Tuesday, February 16, 2021

Room Number: Video Conf.

- 1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
- 2 Executive Budget Request for the Department of Health's appropriations and personnel
- 3 priorities. Permitting licensees to purchase cannabis and manufactured cannabis products from
- 4 each other and increasing the number of licensed facilities will require two (2) additional
- 5 Surveyors and one (1) additional Office Assistant, and supplemental mileage and interisland
- 6 travel at an estimated cost of \$295,000, to implement this measure and maintain adequate
- 7 regulatory oversight to ensure patient, product, and public safety.
- 8 **Department Testimony:** The Department of Health (DOH) appreciates the intent of S.B. 1332
- 9 to improve patient access by: (1) increasing the allowable number of production centers and
- 10 retail dispensing locations per dispensary license; and (2) authorizing DOH to allow licensed
- 11 dispensaries to purchase cannabis or manufactured cannabis products from another licensed
- 12 dispensary. Additional personnel and operational costs will be required to implement these
- 13 measures. DOH provides the following COMMENTS:

- 1    **(1) Increasing the allowable number of production centers and retail dispensing**  
2    **locations per licensee is not needed at this time and will increase DOH’s regulatory**  
3    **burden, posing potential risks to patients and the public.** Only three (3) of the current  
4    eight (8) licensees have used their current allotment of production centers or retail  
5    dispensing locations. Also, only an average of 36% of registered patients made  
6    purchases from dispensaries in 2020. Should additional patient access be needed, DOH  
7    suggests soliciting for additional licensees instead, which DOH already has the authority  
8    to do based on patient need. Additional licensees could help to create added competition  
9    which could help lower product costs to patients. In either case, DOH will require  
10   additional personnel and operational funds to provide adequate regulatory oversight of  
11   any additional licensees and facilities. DOH inspects each facility at least once every  
12   eight (8) weeks. The existing two (2) Surveyor positions are already inadequate for the  
13   current 26 facilities statewide. Additional operational costs are also needed for travel to  
14   the neighbor islands to conduct onsite inspections as over half of the facilities the  
15   licensees could currently operationalize would be located on the neighbor islands.
- 16   **(2) Allowing licensed dispensaries to purchase cannabis or manufactured cannabis**  
17   **products from another licensed dispensary will increase DOH’s regulatory burden**  
18   **and pose potential risks to patients and the public.** Although this request would  
19   support patient access in the event that a licensee suffers an unexpected catastrophe  
20   which impacted their supply, DOH is seriously concerned about: (a) the increased  
21   regulatory burden that will result from the need to monitor additional transports; (b) the  
22   potential for impact on product quality and safety; (c) the challenges presented by

1 interisland transport; and (d) the potential risks of product loss and diversion to the illegal  
2 cannabis market.

3 (a) **Monitoring additional transports.** The licensees currently average about 10  
4 transports a week between their production centers and retail locations. For each  
5 transport, licensees are required to: create a manifest documenting the transport  
6 personnel, vehicle used, route taken, and estimated duration; conduct the packing,  
7 loading, unloading, and unpacking of the transport containers under video camera  
8 surveillance; verify receipt of all items; and immediately report any discrepancies,  
9 including delayed transport time, to DOH. DOH surveyors review transport  
10 documents and video surveillance during inspections and conduct investigations  
11 each time a discrepancy is reported. DOH will require additional surveyor  
12 personnel for this increased regulatory activity.

13 (b) **Potential impact on product quality and safety.** Transporting four thousand  
14 (4,000) grams of cannabis or manufactured cannabis products is a substantially  
15 larger volume than the current transports between a licensee's production center  
16 and retail location. Since there is no current requirement for licensees to perform  
17 stability studies on their cannabis and manufactured cannabis products, shelf-life  
18 as well as tolerance for conditions during transport is unknown. Some licensees  
19 store their cannabis flower and certain manufactured products under refrigeration.  
20 DOH respectfully requests authority to require licensees to conduct stability  
21 studies of their cannabis and manufactured cannabis products to determine

1 appropriate storage and transport conditions and to require labeling with these  
2 requirements.

3 (c) **Interisland transport concerns.** As with interisland patient transport, DOH's  
4 primary concern is that interisland transport involves the transport of cannabis  
5 outside of state jurisdiction and in federal jurisdiction, and there is no exception  
6 for medical cannabis under federal law. The proposed language of S.B.1332  
7 would explicitly permit licensees to transport almost nine (9) pounds of cannabis  
8 to another county or another island. DOH respectfully requests that until such  
9 time as clear federal guidance is available, any authorized transport be limited to  
10 licensees on the same island.

11 (d) **Licensee risk of product loss due to theft and resulting diversion to illegal**  
12 **market.** Four thousand (4,000) grams of cannabis or manufactured cannabis  
13 products represents substantial monetary value. For example, at \$30 per eighth  
14 (3.5 grams), the market value of 4,000 grams of cannabis flower would be  
15 approximately \$34,000. At \$52 per half-gram cartridges, the market value of  
16 8,000 half-gram cartridges would be \$416,000. While DOH understands that  
17 assuming the risk for any loss is a licensee's prerogative, the high value of these  
18 products tempts theft and diversion to the illegal cannabis market.

19 **Offered Amendments:**

20 Should this measure move forward, **DOH offers the following alternate language (underlined)**  
21 **for the proposed amendment under SECTION 5 (page 17, lines 1-4) amending section**  
22 **329D-6, HRS to address inter-island and inter-county transport concerns:**

1 (r) The department may permit a dispensary to purchase cannabis and manufactured  
2 cannabis products from another dispensary located on the same island in a manner  
3 prescribed by the department by rules adopted pursuant to this chapter and chapter 91;  
4 provided that:

5 Should this measure move forward, **DOH requests the following amendments to address**  
6 **product quality and safety concerns:**

7 **Section 329D-7(5), HRS:**

8 (5) Procedures for announced and unannounced inspections by the department of its  
9 agents of production centers and dispensaries licensed pursuant to this chapter, including  
10 the collection of samples of cannabis and manufactured cannabis products for laboratory  
11 testing; provided that inspections for license renewals shall be unannounced;

12 **Section 329D-9(b), HRS:**

13 (b) The department shall establish health, safety, [~~and sanitation~~] manufacturing, and  
14 product stability standards regarding the manufacture of manufactured cannabis products.

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



To: Senator Roz Baker, Chair of the Committee on Commerce and Consumer Protection and Vice-Chair of the Committee on Health

Senator Jarrett Keohokalole, Chair of the Committee on Health

Senator Stanley Chang, Vice-Chair on the Committee on Commerce and Consumer Protection.

Members of the Senate Committee on Health and Commerce and Consumer Protection

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

Re: **Testimony in SUPPORT of Senate Bill (SB) 1332**

RELATING TO MEDICAL 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 Chairs Baker and Keohokalole and Vice-Chair Chang, 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. Our medical cannabis operation currently employs 60+ Big Island residents. We submit testimony today in **support of SB1332. SB1332 is an important bill for the legal cannabis industry in order to reinforce the medical cannabis dispensary program and legal infrastructure with additional facilities to strengthen patient access to clean, tested, safe cannabis medicine through regulated channels.**

There is a need to fortify and reinforce patient access to regulated, lab tested cannabis. It is a consumer safety issue first, and foremost. The reality is that recreational cannabis is already in Hawaii, and has been for a long time. It is the illicit market. There are no licenses required. It is completely unregulated, and untaxed with an unlimited number of grow sites, and dispensing locations. There are no annual fees, taxes, or audits, no product testing requirements, and absolutely no accountability or oversight from any State agency. **The demand for cannabis will be filled in one of two ways, and I implore you to help strengthen the option that provides the legal, lab tested, regulated supply.**

**SB1332 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 and gray cannabis market.** Using information from New Frontier Data and monthly MedCan Dispensary Sales Data, the dispensaries provided only 5.2% of the total cannabis consumed in Hawaii in 2020. Another data platform, BDSA Analytics, estimated the illicit market in Hawaii to be approximately 10x the size of the legal medical market. 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 the provisions in this bill provide a reasonable increase to the existing footprint which supports our ability to provide clean, tested, safe, high quality, regulated (and taxed) cannabis medicine to our island community.

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



## **PRODUCTION**

### **One size does not fit all.**

County restrictions and ordinances may not permit a build out of a facility to accommodate the maximum allowable plant count of 5,000. 11-850 strictly requires "if two production centers are located on the same property at the same address, they shall be in physically separated and individually identifiable structures with no shared exterior walls..." The combination of these creates a situation where some licensees with County restrictions are not able to satisfy the demand of their retail location(s) even with 2 production facilities operational.

**While there are some licensees not able to meet demand with the current allowable production, there are others able to scale up to assist within the current system.** For example, Big Island Grown currently supplies greater than 20% of total cannabis weight in the State across all product categories sold in the dispensary system using only 25% of our allotted production capability (50% of one production facility in operations). This means we are able to scale up to a 4x minimum to meet wholesale needs of other licenses.

## **RETAIL**

### **Slower growth on one island should not hold back the program and hinder legal access for patients on another island.**

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.

Delivery was a proposed solution last session, but met with resistance, so we respectfully request your support with this measure.

## **WHOLESALE**

### **The foundation for a thriving medical program stimulated and fed by a diverse pipeline of products available to patients across the State.**

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 and manufactured products that are 100% manufactured in 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 until this program expands to allow for the issuance of cultivation and manufacturing licenses. **Until lawmakers, regulators, and others are ready for program expansion wholesale can bridge this gap and provide regulated, tested, taxed products to patients across the State.**



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. Please refer to 14 CFR 91.19(b) below to support this provision in this bill.

14 CFR § 91.19 - Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

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

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

If there remain issues with the legality of inter-county 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 flower 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 100 lb 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





To: Senator Roz Baker, Chair of the Committee on Commerce and Consumer Protection and Vice-Chair of the Committee on Health

Senator Jarrett Keohokalole, Chair of the Committee on Health

Senator Stanley Chang, Vice-Chair on the Committee on Commerce and Consumer Protection.

Members of the Senate Committee on Health and Commerce and Consumer Protection

Fr: Casey Rothstein, Green Aloha Ltd, President, COO

Re: Testimony in **Strong Support of Senate Bill (SB) 1332**

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 Chairs Baker and Keohokalole and Vice-Chair Chang, and Members of the Committee:

Green Aloha is one of the 8 State Licensed Medical Cannabis operations. Our company currently employs 18 Kauai residents. We submit testimony today in support of SB 1332. SB 1332 is an important bill for the legal cannabis industry in order to enhance the medical cannabis dispensary program and legal infrastructure with additional facilities to strengthen patient access to clean, tested, safe cannabis medicine through regulated channels.

There is a need to fortify, and enhance patient access to regulated cannabis. This is a consumer safety issue first and foremost. It is an undeniable fact that recreational cannabis is already in Hawaii, and has been for a long time. It is called the illicit market and it is flourishing. No license is required. It is completely unregulated, and untaxed with an unlimited number of grow sites and dispensing locations. There are no annual fees or audits, **no product testing requirements**, and absolutely no accountability or oversight from any State agency. SB1332 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 and gray cannabis market.

According to information from New Frontier Data and monthly MedCan Dispensary Sales Data, the dispensaries provided only 5.2% of the total cannabis consumed in Hawaii in 2020. Another data platform, BDSA Analytics, estimated the illicit market in Hawaii to be approximately 10x the size of the legal medical market. 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. Green Aloha believes that the provisions in this bill provide 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.

## PRODUCTION

One size does not fit all. County restrictions and ordinances, on Kauai for example, make it extremely difficult to get the permits needed to build a facility large enough to accommodate the maximum allowable plant count of 5,000. Our Production Center #1 can only hold approximately 2500 plants and due to current regulations that limit a Production Center to one physical building, our small processing and manufacturing building located less than 10 ft from the entrance to our Production Center #1 was determined by the Department of Health to count as our Production Center #2. Therefore, we have reached the maximum number of production centers and are not able to produce enough product to open the second Dispensary location that we currently have under lease. The combination of these creates a situation where our license is not able to satisfy the demand needed to reach our maximum number of retail locations, with the 2 production facilities operational. Additional Production Centers or a rule change to allow multiple buildings within one secured property, to count as one Production Center. This combined with an increased plant count would allow us the flexibility to more quickly build the necessary infrastructure to increase production and meet the demand needed to expand patient access and open additional dispensary locations.

## WHOLESALE

The ability to wholesale amongst licenses would be a primary building block for a thriving medical program allowing it to be stimulated and fed by a diverse pipeline of products available to patients across the State. Allowing wholesale between licensees would promote a diversity of products and enable patients in every County to access specialized formulations that may not otherwise be available as different licensees have specialized in different products across the current medical program. This is an important component that is needed 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 and manufactured products that are 100% made in house only. This essentially requires a licensee to be a jack of all trades in cultivation, and in product development formulations as well as manufacturing, AND have the physical infrastructure and specialized equipment needed to produce the wide array of cannabis medical products. The ability to purchase wholesale products from other licenses would allow Green Aloha on Kauai to open more stores and expand patient access, bringing more patients into the MedCann program and away from the unregulated, untested, untaxed and unsafe, illicit black market. Wholesale would allow us to make available products made by



other licensees who have the resources to make the types of cannabis medicine that we can not yet provide to our patients. 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). The bill, as reflected in current language above, has a limit on transport from a dispensary to a dispensary of 4,000 grams (reduced to 3,000 grams in HD1) 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.

## RETAIL

As explained above, on Kauai, it is the limitations on production that has held back our ability to open the full amount of retail locations. We believe that with expanded production centers and the ability to buy wholesale from another license, we would quickly be able to open the maximum number of 3 dispensaries allowed under the current laws and regulations. When these locations are open, we would still only be able to service a small amount of the geographic communities on Kauai. It should be noted that Kauai is almost as physically large as Oahu yet it only has  $\frac{1}{3}$  the allowed dispensary locations. We believe that an increase of the number of Dispensaries permitted under the license to 5 locations would allow us to service all the communities of Kauai. 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 as stated above.

We understand that this industry can be controversial and the conversation around cannabis in Hawaii is one that holds varying different opinions. But if there is one thing everyone can agree on with this topic it is: the cannabis illicit market in Hawaii is thriving in every community. Unregulated, untaxed, and untested products are being sold. What we are proposing and asking here today, is a reasonable expansion of the current LEGAL program that is providing the highest standard of quality and clean medicine to registered medical patients. The State of Hawaii was a leader in the entire nation agreeing 20 years ago that cannabis has very real and



tangible medicinal purposes. They solidified this by implementing our law in the year 2000 allowing medical cannabis in our state. We are now here in 2021 still trying to find ways to ensure that the ones who need this medicine receive the best medicine they can get in our state.

It is incumbent on the decision makers of our state to address the large illicit market which dominates the cannabis landscape and expand the accessibility to the legal industry in which the state has spent a lot of resources ensuring it produces the highest quality of medicine. Not making progress in this area strengthens Hawaii's illicit market and essentially signals that decision makers will continue to turn their head and ignore the fact that an illegal underground market continues to flourish. We believe that the provisions in this bill would help the dispensary program build out the necessary infrastructure to provide the safe access footprint needed to turn patients away from the illicit black market and bring them into the safe, regulated, tested and taxed Medical Cannabis system. The founding goal of the Dispensary Program was to provide safe tested cannabis medicine to as many patients in Hawaii as possible. The provisions in this bill are needed to allow us to meet this goal.

Thank you for the opportunity to testify.

Warmest Aloha,

Casey Rothstein, President, Chief Operating Officer, Green Aloha Ltd.



To: Senator Roz Baker, Chair of the Committee on Commerce and Consumer Protection and Vice-Chair of the Committee on Health

Senator Jarrett Keohokalole, Chair of the Committee on Health

Senator Stanley Chang, Vice-Chair on the Committee on Commerce and Consumer Protection.

Members of the Senate Committee on Health and Commerce and Consumer Protection

Fr: Randy Gonce, Executive Director of Hawai'i Cannabis Industry Association

Re: Testimony in **Strong Support of Senate Bill (SB) 1332**

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 Chairs Baker and Keohokalole and Vice-Chair Chang, 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 SB 1332** 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 three 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; and **THIRD**, allow dispensaries to sell propagules and cuttings to qualified patients.

This bill has provided a great opportunity for HICIA and the Department of Health to work together to find collaborative solutions to increase access to patients and strengthen the MedCan program. HICIA understands the resource constraints the



department is currently facing and we are actively engaged in discussions with the Department of Health to address these concerns.

### **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.<sup>1</sup>

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. Using information from New Frontier Data and monthly MedCan Dispensary Sales Data, the dispensaries provided only 5.2% of the total cannabis consumed in Hawaii in 2020. Another data platform, BDSA Analytics, estimated the illicit market in Hawaii to be approximately 10x the size of the legal medical market. All data collected on this issue shows the illicit market providing 10-20x the cannabis supply than the amount provided within the legal cannabis. We are requesting a reasonable increase in the industry 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 slower growth on one island should not hold back the program and hinder legal access for patients on another island.

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

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<sup>1</sup> 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).



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.

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.



As initially introduced, the bill also proposed to authorize intrastate transport for this purpose. However, this provision was taken out in the prior committee because of concerns for inter-island transport and conflict with federal law.

However, we would respectfully request that this language be put back into the bill with a provision instead that it is only prohibited as long as continuing to be prohibited by federal law.

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/WDMRa9NnyylZ5Z301Oc0AK/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 . . . marihuana, . . . authorized by or under any Federal or State statute or by any Federal or State agency.”<sup>2</sup>

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 3, lines 15-18

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<sup>2</sup> 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.

(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.





(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 5, lines 8-10:

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.

The bill, as reflected in current language above, has a limit on transport from a dispensary to a dispensary of 4,000 grams (reduced to 3,000 grams in HD1) 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.



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TESTIMONY ON SENATE BILL 1332  
RELATING TO CANNABIS

By  
Clifton Otto, MD

Senate Committee on Health  
Senator Jarrett Keohokalole, Chair  
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Tuesday, February 16, 2021; 9:00 AM  
State Capitol, Room 229 & Videoconference

Thank you for the opportunity to provide COMMENTS on this measure.

While I support measures that would improve patient access to reasonably priced safe cannabis medicine, I am opposed to changes to Hawaii's Medical Cannabis Program that will serve to expand criminal activity across the state, which is exactly what this bill will do if it does not address the current conflict with the federal regulation of marijuana at the same time, especially with the involvement of interisland transport.

Therefore, I respectfully recommend the following amendment be made at Page 17, Line 20 of this measure to recognize that the state authorized use of cannabis in Hawaii is exempt from the federal regulation of marijuana:

**"§329D-6 Dispensary operations.**

(r) (3) The selling dispensary is permitted by the department to transport up to four thousand grams of cannabis or manufactured cannabis products to another county or another island, for the limited purpose of completing its sale to the purchasing dispensary pursuant to this subsection, in a manner prescribed

by the department by rules adopted pursuant to this chapter and chapter 91 and with the understanding 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 [~~state law and its protections do not apply outside of the jurisdictional limits of the State~~] ; and

Secondly, the changes that would be created by this measure will require chapter 91 administrative procedures to be in effect so that stakeholders can provide public input on administrative rules that will implement these changes. The Department of Health (DOH) has had over five years to adopt final dispensary rules and has done little with its authority under interim rules, so the reasoning that interim rules are necessary to respond quickly to a changing regulatory landscape just does not hold up.

Therefore, the following statutory amendment needs to be made to ensure that final dispensary rules are adopted in a timely fashion:

"§329D-27 Administrative rules. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(b) No later than January 4, 2016, the department shall adopt interim rules, which shall be exempt from chapter 91 and chapter 201M, to effectuate the purposes of this chapter; provided that the interim rules shall remain in effect until

September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

(c) The department may amend the interim rules, and the amendments shall be exempt from chapters 91 and 201M, to effectuate the purposes of this chapter; provided that any amended interim rules shall remain in effect until September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner.”

And finally, the Health Resources Administration (HRA) has proven over the past two years that it is incapable of providing proper regulatory oversight for the dispensary program. This has been demonstrated by HRA’s willingness to allow dispensaries to convert moldy cannabis flowers into “remediated” manufactured products that were sold to patients without their knowledge and without any statutory authority or administrative rules, its refusal to adopt testing standards for isopropyl alcohol and ethanol despite evidence that these harmful contaminants were introduced into products during the unregulated “remediation” process and sold to patients, and its refusal to create a medical cannabis advisory board or similar means of obtaining scientific and medical advice from local experts to assist with dispensary regulation.

Therefore, the following statutory amendment needs to be adopted to transfer regulatory oversight of the patient registry and dispensary programs to a division within DOH that already has the necessary regulatory experience and capabilities:

“§329D-2.5 Office of medical cannabis control and regulation; established; duties. (a) There is established within the

department the office of medical cannabis control and regulation, which shall report to the deputy director of environmental health administration effective September 1, 2021 [~~health resources administration~~].

(b) The office of medical cannabis control and regulation shall administer medical cannabis dispensary licensure and regulation, pursuant to this chapter, and the registration of qualifying patients and primary caregivers, pursuant to part IX of chapter 329."

Thank you for considering these important changes.

Aloha.

**SB-1332**

Submitted on: 2/11/2021 12:03:16 PM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Goljuch, Sr.	Individual	Support	No

Comments:

Please pass SB1332.