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TESTIMONY ON HOUSE BILL 477 HOUSE DRAFT 2 SENATE DRAFT 1
RELATING TO CANNABIS

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

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, April 6, 2021; 9:55 AM
State Capitol, Videoconference

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

VERTICAL INTEGRATION IS A FAILURE

The reason that large patient grow sites exist is because a vertically integrated dispensary system does not work for Hawaii. Law enforcement's reported insistence upon this model is destroying the ability of Hawaii's medical cannabis program to properly provide for our patients.

Instead of cutting off a legal means of access for patients, I propose that we leave patient cultivation provisions the way they are for another year and address an overhaul to the structure of the dispensary program next Session. In the meantime, a Dispensary Task Force that can explore current deficiencies in patient access and report back to the Legislature before next Session would be a welcomed addition to this measure.

PLANT DEFINITION FOR PATIENTS NEEDED

In addition, patients are in desperate need of a plant definition that will facilitate compliance with state law. The following amendments are necessary to clarify what constitutes the ten plants that patients are currently allowed to grow.

At Page 8, Line 3:

SECTION 5. Section 329D-2, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

"(f) Up to [~~two~~] _____ production centers shall be allowed under each dispensary license; provided that, except as otherwise specified in subsection (k), each production center shall be limited to no more than three thousand cannabis plants. For purposes of this subsection, "plant" means a cannabis plant that is greater than twelve vertical inches in height from where the base of the stalk emerges from the growth medium to the tallest point of the plant, or greater than twelve horizontal inches in width from the end of one branch to the end of another branch; provided that multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant; and provided that this definition shall also apply to registered patients.

And by adding the following statutory amendment:

§329-121 Definitions. As used in this part:

"Plant" means a cannabis plant that is greater than twelve vertical inches in height from where the base of the stalk emerges from the growth medium to the tallest point of the plant, or greater than twelve horizontal inches in width from the end of one branch to the end of another branch; provided that multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

INTERISLAND TRANSPORT DOES NOT VIOLATE FEDERAL LAW

It is completely unnecessary for dispensaries to be subjected to a restriction on the interisland transport of cannabis material. The interisland transport of cannabis samples by dispensaries is clearly [authorized](#) under Hawaii's medical cannabis dispensary law, and there is an existing [exemption](#) from federal restrictions on the carriage of cannabis aboard aircraft if authorized under state law.

The problem seems to be that the agencies that control interisland transport (DOT, TSA, PSD, Aloha Air Cargo) have not been brought into compliance with this legal pathway.

One way to address this problem is to require that DOT adopt a formal protocol for the interisland transport of cannabis, which would remove any doubt about the legality of such transport.

Please keep in mind that TSA does not regulate the transport of drugs aboard aircraft. Their job is to protect the safety of pilots, crew, and passengers by preventing weapons and explosives from being transported on planes. Any questions about the transport of cannabis at Hawaii's airports is directed to local airport law enforcement, who could follow a DOT cannabis transportation protocol to determine if specific cases of cannabis transport are allowed.

Therefore, I suggest that the language "so long as federal law prohibits transportation of medical cannabis over a body of water" be stricken wherever it occurs in this measure, and the following amendment be included:

SECTION 2. Section 329-122, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) For the purposes of this section, "transport" means the transportation of cannabis, usable cannabis, or any manufactured cannabis product between:

- (1) A qualifying patient and the qualifying patient's primary caregiver;
- (2) A qualifying out-of-state patient under eighteen years of age and the caregiver of a qualifying out-of-state patient;
- (3) The production centers and the retail dispensing locations under a dispensary licensee's license;

(4) Dispensaries as permitted by section 329D-6(r); provided that the department of transportation shall adopt rules pursuant to Chapter 91 administrative procedures to allow for the interisland transport of cannabis in accordance with state law [~~so long as federal law prohibits transportation of medical cannabis over a body of water~~], a selling dispensary may only sell and transport up to three thousand grams of cannabis or manufactured cannabis products to a purchasing dispensary [~~located on the same island as the selling dispensary~~];

Also at Page 18, Line 15, the following deletion:

subsection (j), [~~if no certified laboratory is located in the county or on the island where the dispensary is located~~];

Also at Page 20, Line 13, the following deletion:

(2) The selling dispensary may only transport up to three thousand grams of cannabis or manufactured cannabis products to a purchasing dispensary [~~located on the same island as the selling dispensary~~]; and

And finally, many of the problems currently facing our medical cannabis program are because of the ongoing conflict with the federal regulation of marijuana, which the state has an obligation to help resolve because it created this conflict nearly twenty-one years ago when it authorized the medical use of cannabis within the state.

Therefore, I ask that the committee add the following amendment to this bill, which provides a viable means to end this unnecessary conflict.

SECTION 9b. The following section is added to read as follows:

"§329-5 Harmonizing the state and federal regulation 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 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

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the state authorized use of cannabis. The petition 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."

Thank you for considering this written testimony in your decision making today.

Aloha.