



Testimony in Support of SB 669 - Relating to Cannabis

February 14, 2023

Chair, Sen. Karl Rhoads
Vice Chair, Sen. Mike Gabbard
Senate Judiciary Committee

TESTIMONY IN SUPPORT OF SB 669 - RELATING TO CANNABIS

Dear Chair Rhoads, Vice Chair Gabbard, and members of the Judiciary Committee:

Aloha, my name is DeVaughn Ward and I am the senior legislative counsel at the Marijuana Policy Project ("MPP") — the largest marijuana policy reform organization in the United States. As you may know, MPP has been working to improve marijuana policy for more than 25 years.

I am here today to testify in support of **SB 669 - Relating to Cannabis**. However, MPP has significant concerns on SB 669 which is why we're urging you to amend and then pass it.

I. Cannabis legalization and regulation is far better approach than prohibition

More than eight decades of marijuana prohibition has not worked. Instead, it has derailed lives, torn families apart, wasted vast sums of taxpayer dollars, and put consumers and those selling cannabis at risk of arrest and violence.

Only legalization allows for regulation and control. Potency testing and labeling, child-resistant packaging, consumer education, and rules to prohibit hazardous pesticides and contaminants are only possible in a legal, regulated market. Environmental and worker protections are only possible in a legal, regulated industry.

II. MPP has several recommendations for amendments to SB 669

While MPP supports the core purpose of SB 669, we have several recommendations — including to prioritize patients during the transition, to create an equitable industry, to include reparative justice such as expungement and release, and to clarify several provisions.

First, the definition of "personal use" does not include an equivalency for cannabis concentrates and cannabis-infused products. Without specific possession limits for these cannabis preparations in SB 669, adults and law enforcement will not know how much cannabis products are legal to possess. We suggest amending the language to use a defined term for possession and purchase limits and to define it as: "*Personal use amount*" means: (1) one ounce of cannabis plant material; (A) 10 grams of cannabis concentrate; and (B) any other cannabis products with up to eight hundred milligrams of THC."

P.12, L15-20 of the bill prohibits cannabis related advertising "near" youth-centered areas. The word

near is vague and subjective. We strongly suggest amending this language to add a specific distance so cannabis companies and regulatory enforcement officials will have clear guidelines on permissible and impermissible advertising. We suggest amending the language to state: "*Cannabis advertising shall be prohibited within one thousand feet of a youth-centered area...*"

P.18, L7-18 of the bill does not allow for cultivation licensees to transport cannabis products. We suggest giving cultivation licensees the ability to transport their products to other cannabis businesses.

The bill allows regulators to create additional license types but does not start with a separate license for product manufacturers, unlike most cannabis legalization states. As is the case in most industries, those who grow cannabis will often not want to also make infused products or extractions — which require expensive equipment — and vice versa. There is also no strong policy reason to limit the number of product manufacturers. Having a single license for both types of cannabis businesses may require costly regulatory requirements of farmers who only want to grow. Separating these two businesses — but allowing dual licenses— will allow for more success in different aspects this new industry.

P.20, L1-6 of the bill prohibits an individual from having an interest in more than one license type. We believe this limit is overly restrictive. Moreover, this restriction is not required of the current medical cannabis licensees in Hawaii's medical cannabis or if the current medical licensees converted to dual use cannabis dispensaries as envisioned in SB 669. Some of Hawaii medical cannabis licenses have up to three cannabis cultivation/production centers and as many as three cannabis retail dispensaries under one license. We suggest amending this language to state: "*No person shall be granted or have any interest in a license as a cannabis testing facility license that also has a license as another type of cannabis business.*" *It could also cap the number of retailers any one facility could have a controlling interest in, to prevent excessive market concentration.*

Section A-7 of the bill would allow Hawaii's eight current medical cannabis businesses to sell cannabis products to adults 21 and over when the bill takes effect. Missing are proper safeguards to ensure medical cannabis patients will have adequate access when the eight medical businesses convert to also sell to adults over 21. In New Jersey and Connecticut, medical licensees were required to inform regulators of medical patient preservation plans or meet production thresholds to ensure the licensees had adequate supply before they could start adult use sales. We strongly recommend adding the following language to ensure medical cannabis patients' access is not adversely affected by a dual use cannabis model. For example, it could provide, "*The license conversion application shall, at minimum, require a medical cannabis dispensary to submit to, and obtain approval from the department for a detailed medical preservation plan for how it will prioritize sales and access to medical marijuana products for qualifying patients, and to avoid price increases, including, but not limited to, managing customer traffic flow, preventing supply shortages and price increases on patients, and ensuring appropriate staffing levels.*"

Notably, Section A-7 of the bill does not include a licensing fee for the eight current medical licenses to exclusively serve the adult-use market access for least two years, perhaps more depending on when final rules are adopted. There should be a significant licensing fee that would be used to set up regulatory infrastructure and to support training and technical assistance for new market entrants — including those hardest hit by prohibition.

Several other states, including Connecticut and Illinois, take this approach to foster equitable

licensing. In Connecticut, medical licensees paid fees between \$750,000 and \$1 million dollars for the ability to convert to hybrid or dual use cannabis establishments and service consumers over the age of 21. In Illinois, medical cannabis businesses paid a fee of approximately \$750,000 to convert to dual use or hybrid cannabis businesses. We strongly recommend amending the language as follows: "(a) *The license conversion fee for a medical cannabis dispensary to become a dual use cannabis dispensary shall be two hundred fifty thousand dollars for medical cannabis dispensaries that owns and operates three or more retail dispensing locations. (b) The license conversion fee for a medical cannabis dispensary to become a dual use cannabis dispensary shall be one hundred fifty thousand dollars for a medical cannabis dispensary that owns and operates two or fewer retail dispensing location.*"

Additionally, SB 669 lacks restorative justice for individuals most impacted by cannabis prohibition in Hawaii. Restorative justice is concept that has been supported by the Judiciary Committee this session in its recent approval of SB 903. It is sound cannabis policy to adopt restorative justice measures in legalization models. Illinois' 2019 legalization law resulted in the expungement of over 800,000 cannabis convictions. Connecticut's 2021 legalization law automatically expunged over 40,000 cannabis convictions. As Hawaii considers cannabis legalization it's important that we use this opportunity not just for economic development, but also to remove the scarlet letter of cannabis convictions that for decades have denied many Hawaii residents chances for upward mobility.

We suggest adopting automatic release and expungement provisions similar to SB 1043, such as: "*Each person arrested or convicted for an offense under chapter 329, Hawaii Revised Statutes, or under part IV of chapter 712, Hawaii Revised Statutes, for possession or cultivation of marijuana, shall be entitled to: (1) Release from the custody of law enforcement or incarceration no later than 90 days after the effective date of this Act, unless the person is also in custody or incarcerated for an offense that is not permitted by the new chapter of the Hawaii Revised Statutes; and 2) An expungement order, issued within days after the effective date of this Act, from the court in which the person was arraigned or convicted, that annuls, cancels, and rescinds the record of arrest and record of conviction, as applicable, for the relevant offense; provided that an expungement order shall not be issued for a person if the State, the department of the attorney general, or the applicable prosecuting attorney demonstrates good cause against the issuance of the order for that person.*" And: "*Any person convicted or arrested for distribution of marijuana may petition at any time for: (1) Release from the custody of law enforcement or incarceration; and 2) an expungement order; and relief shall be granted unless the prosecutor objects within 14 days and proves that relief would not be in the interests of justice.*"

Furthermore, we recommend including a provision that requires the state's lead actor in the record clearing process to issue a report on a regular basis (yearly, quarterly, etc.) on key metrics related to the fulfillment of automatic expungement for qualifying cannabis offenses. In shifting the process of record clearance away from the individual to the agencies that hold the criminal record, Hawaii should establish transparency requirements that allow lawmakers and citizens to monitor the state's progress towards implementation.

Lastly, SB 669 lacks explicit market opportunities for individuals most harmed by cannabis prohibition. Most of the recent legalized states — Illinois, New Jersey, New York, Connecticut, and Rhode Island — have adopted social equity measures to center individuals from communities hard hit by the war on drugs and with cannabis convictions by prioritizing these individuals in issuing new cannabis businesses licenses. Indeed, the Dual Use Cannabis Taskforce that convened this summer stated in their final report "The history of cannabis enforcement in Hawaii has engendered a diverse

set of inequities across racial, economic, and geographic spectrums, and as the rest of the country is discovering as well, explicit policies must be put in place to redress these harms. Without integrated social equity policies, the experience of other states, as well as a variety of scholarly research sources, have shown that these inequities only increase in emerging cannabis industries."

With that in mind, we urge the committee to adopt the social equity language like those included in SB 375 as follows:

"(1) Disproportionately impacted area" means a census tract or comparable geographic area that has a poverty rate of at least twenty per cent according to the latest federal decennial census. (2) Social equity applicant" means an applicant that is a resident of the State that meets one or more of the following criteria: (a) An applicant with at least fifty—one per cent ownership and control by one or more individuals who have resided for at least five of the preceding ten years in a disproportionately impacted area; (b) An applicant with at least fifty—one per cent ownership and control by one or more individuals who: Have been convicted of, or adjudicated delinquent for any marijuana related offense under Hawaii Revised Statutes; (c) An applicant with at least fifty—one per cent ownership and control by one or more individuals who are "Native Hawaiian" as defined in section 10H-3 of the Hawaii Revised Statutes.

(3) The authority and department shall establish grant and loan programs for the purposes of providing financial assistance, loans, grants, and technical assistance to social equity applicants.

(4) For social equity applicants, the authority shall waive fifty per cent of any nonrefundable license application fees; any nonrefundable fees associated with purchasing a license to operate a business licensed under this chapter; and any surety bond or other financial requirements for the first five years of the applicant's operations; provided that the social equity applicant meets the following qualifications at the time the payment is due: (a) The applicant, including all individuals and entities with ten per cent or greater ownership and all parent companies, subsidiaries, and affiliates, has less than a total of \$750,000 of income in the previous calendar year; and (b) The applicant, including all individuals and entities with ten per cent or greater ownership and all parent companies, subsidiaries, and affiliates, has no more than two other licenses under this chapter.

(5) For a social equity applicant, the authority shall designate at least fifty per cent of the maximum number of applications that shall be for each license type exclusively for social equity applicants.

In conclusion, we strongly support the legalization of cannabis possession and cultivation rights for adults over 21. However, SB 669 can be strengthened to meet cannabis policy best practices. We urge you to amend SB 669 to include a significant fee for medical operators to convert to adult use, patient protections, expungement and restorative justice provisions, and prioritization of social equity licensing and then pass it.

Mahalo for the opportunity to comment. I can be reached at the contact below and I'm happy to answer any questions you may.

Sincerely,

DeVaughn Ward, Esq.

Senior Legislative Counsel
Marijuana Policy Project

Honolulu, HI
dward@mpp.org