

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony COMMENTING on SB465 SD1
RELATING TO MEDICAL CANNABIS.**

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: Fri., Feb. 24, 2023

Room Number: 016

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.

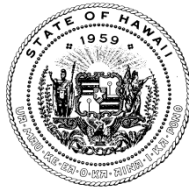
5 The department defers to the Department of Transportation regarding interisland transport.

6 Thank you for the opportunity to testify.

7 **Offered Amendments:**

8

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 24, 2023
9:30 A.M.
State Capitol, Teleconference

S.B. 465 SD1
RELATING TO MEDICAL CANNABIS

Senate Committee on Judiciary

The Department of Transportation (DOT) offers **comments** on S.B. 465 SD1 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.



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

TESTIMONY IN SUPPORT OF SB 465, SD 1

TO: Chair Rhoads, Vice Chair Gabbard, & Judiciary Committee Members

FROM: Nikos Leverenz
DPFH Board President

DATE: February 24, 2023 (9:30 AM)

Drug Policy Forum of Hawai'i (DPFH) **supports** SB 465, SD 1, 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.



Akamai Cannabis Consulting

3615 Harding Ave, Suite 304

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TESTIMONY ON SENATE BILL 465 SD1
RELATING TO MEDICAL CANNABIS

By

Clifton Otto, MD

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 24, 2023; 9:30 AM
State Capitol, Room 016 & Videoconference

Thank you for the opportunity to offer testimony in SUPPORT of this measure, with suggestions for amendments:

“Provided that no individual or entity shall be required to violate federal law” is too vague and will lead to confusion about what constitutes violation of federal law. Since the issue is the illegal transport of cannabis through those corridors of “interstate” air and sea that fall under federal jurisdiction, clarifying language would be helpful.

Also, the jurisdictional limits of the State need to be clearly recognized so that patients don’t assume they are protected under state law to freely travel with medical cannabis.

§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), provided that no individual or entity shall be required to violate federal law with regard to the interstate transport of cannabis, and with the understanding that state law and its protections ~~[do not apply outside of]~~ apply only 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; and provided further that the Department of Transportation shall adopt rules to implement this section and utilize 14 CFR 91.19 to claim federal exemption for interisland transport by air that falls within the jurisdictional limits of the State.

Clarifying the jurisdictional limits of the State could also expand the potential for intrastate commerce between Oahu, Maui, Molokai, and Lanai:

§329D-1 Definitions. As used in this chapter:
“Intrastate commerce” means any and all commerce within the state of Hawaii and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

To satisfy the requirement that “no individual or entity shall be required to violate federal law”, there needs to be access to laboratory testing that falls within the jurisdictional limits of the State.

§329D-7 Medical cannabis dispensary rules. The department shall establish standards with respect to:

(11) Laboratory standards related to testing cannabis and manufactured cannabis products for content, contamination, and consistency; provided that there shall be a certified testing laboratory on each island where there is a dispensary that is not connected by the jurisdictional limits of the State to an island with an existing lab.

There is already a provision under federal law that exempts the transport of cannabis aboard aircraft if authorized by state law. This needs to be claimed by the State:

§ 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.



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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):

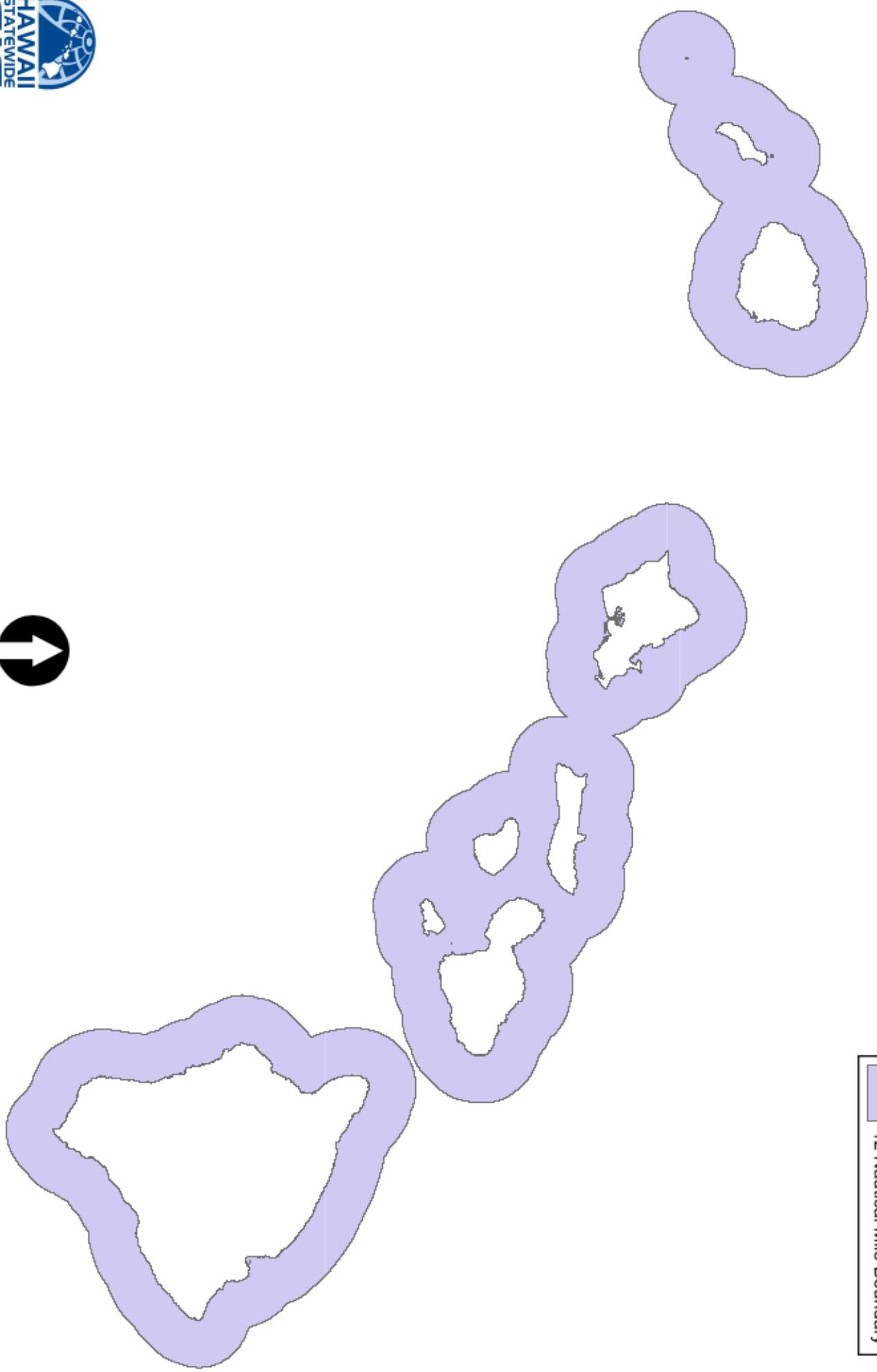
The purpose of this bill is to define the boundaries of the state marine waters as extending twelve nautical miles seaward from the upper reaches of the wash of the waves on shore and the archipelagic waters. It also defines the [territorial sea](#) as the waters and seabed extending seaward to twelve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



SB-465-SD-1

Submitted on: 2/21/2023 2:42:22 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marion Poirier, M.A., R.N.	Individual	Support	Written Testimony Only

Comments:

Aloha Chair and Committee Members:

My name is Marion Poirier, and this testimony is in SUPPORT of SB465 SD1 Relating to Medical Cannabis. As a career nurse and healthcare administrator, I am aware that patients need to travel inter island with their medical cannabis to get treatment for cancer and other maladies. Since Hawaii's intent is for patients to be able to avail themselves of medical cannabis, it only seems fitting and proper that travel between islands of our state be allowed.

Kindly pass this measure, and thank you for hearing it.

Marion Poirier, M.A., R.N.

SB-465-SD-1

Submitted on: 2/21/2023 5:27:15 PM

Testimony for JDC on 2/24/2023 9:30:00 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-1

Submitted on: 2/21/2023 9:08:54 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

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

Comments:

Please support SB465 SD1.

SB-465-SD-1

Submitted on: 2/22/2023 5:51:51 AM

Testimony for JDC on 2/24/2023 9:30:00 AM

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

Comments:

Oppose SD1

SB-465-SD-1

Submitted on: 2/22/2023 1:30:16 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

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

Comments:

Thank you for the opportunity to testify in support!

SB-465-SD-1

Submitted on: 2/23/2023 4:58:06 PM

Testimony for JDC on 2/24/2023 9:30:00 AM

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

Comments:

cannabis is a medicine so why prohibit people from taking their medicine with them?