



Senate Bill 669: Analysis and Recommended Changes

Prepared for:

Chairman Jarrett Keohokalole
Hawaii Senate Committee on Commerce and Consumer Protection

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Chairman Donovan Dela Cruz
Hawaii Senate Committee on Ways and Means

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Senate Bill 669 Imposes Excessive Restrictions on Cannabis Licensing

Dear Chairmen Keohokalole and Dela Cruz and Members of the Committees:

On behalf of the Reason Foundation, I thank you for accepting these comments and making them part of the public record. Among other things, the Reason Foundation is committed to ensuring that state-regulated cannabis markets are designed in such a way that they remain dynamic and offer genuine economic opportunity to individuals from a range of backgrounds. We are concerned that key provisions in Senate Bill 669 impose unnecessary restrictions on licensing that will raise barriers to entry, limit entrepreneurial opportunities, and inhibit the transition of legacy cannabis suppliers into the regulated marketplace.

Specifically, Section A-8(a)(8) requires the proposed cannabis regulatory authority to place “restrictions on the number of licenses that may be issued.” Similarly, Section A-5 (11) charges the agency to determine a maximum number of cannabis licenses that may be issued. This determination is not subject to further legislative review. The proposed agency is supposed to make this determination based on a review of market data to ensure the supply of regulated cannabis inventory does not exceed demand. The agency is instructed to make this determination prior to issuing rules that would implement the cannabis program. In other words, the agency would make calculations based on unreported transactions that occur in an illicit market. This is an impossible task given the illusiveness of illicit market data.

Moreover, this state-directed planning of supply would be misguided even if the information were readily available. Sponsors are concerned that an excess of supply relative to demand could result in the unauthorized distribution of regulated cannabis inventory. However, Sec. A-8(a)(5) already instructs the agency to adopt rules “to prevent the sale or diversion of cannabis and cannabis products” to unauthorized persons. To the extent this provision requires implementation of a statewide track-and-trace system granting regulators visibility into the location of all units of regulated inventory, then license limits serve no additional function in protecting the integrity of the regulated marketplace. To the contrary, these limits raise barriers to entry that will impede the orderly transition of legacy

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cannabis suppliers into the regulated marketplace. Jurisdictions that have imposed limits on licenses have witnessed numerous instances of public corruption as officials have demanded or accepted bribes from aspiring licensees.¹ Lack of availability of licenses has led to vibrant activity among unlicensed sellers from California to New York.

Exclusivity in licensing is only the first barrier to entry into the regulated marketplace that limits entrepreneurial opportunities and impedes transition of legacy suppliers into the regulated marketplace. High licensing fees are a second barrier. Sec. A-5(13) places no limit on the licensing fees that can be charged by the proposed cannabis regulatory authority. Section A-8(a)(2) nominally limits application fees to \$10,000, but allows the agency to go above this figure at its discretion. By comparison, application fees for most license types are \$1,000 or less in Alaska, California, Colorado, Maine, Massachusetts, Oregon and Washington.²

Finally, key provisions that should be included within a cannabis legalization measure appear to be missing from Senate Bill 669. There is no provision expressly stating that contracts between cannabis licensees are enforceable under Hawaiian law. Without this provision, parties may break contractual commitments on the basis of illegality. There is no provision protecting holders of occupational licenses from censure by regulatory authorities on the basis of providing services to a cannabis licensee. There is no provision protecting the parental rights of lawful, adult users of cannabis. Finally, the bill is silent on the role that local governments will play in regulating cannabis licensees.

There are many promising aspects of Senate Bill 669, including a competitive tax rate assessed on retail transactions only. We hope lawmakers resolve the problematic provisions so that Hawaii can launch a successful and dynamic adult-use program that avoids complications seen in other jurisdictions. We are happy to provide further recommendations toward this objective.

¹ See, e.g., Geoffrey Lawrence, "Nevada's Flawed Marijuana Legalization Process Leads to Corruption and Lawsuits," Reason Foundation, October 22, 2019, <https://reason.org/commentary/nevadas-flawed-marijuana-legalization-process-leads-to-corruption-and-lawsuits/>; Adam Elmahrek et al. "New Details Show Sprawling Web of Corruption in Southern California Cannabis Licensing," Los Angeles Times, October 15, 2022, <https://www.latimes.com/california/story/2022-10-15/southern-california-weed-licensing-corruption>; Diane Goldstein, "Cannabis, Crime and Corruption," Sacramento News & Review, January 30, 2020, <https://www.newsreview.com/sacramento/content/cannabis-crime-and-corruption/29674980/>.

² Marijuana Policy Project, "Breakdown of Application, Licensing and Renewal Fees in Adult-Use States," <https://www.newsreview.com/sacramento/content/cannabis-crime-and-corruption/29674980/>.

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