

In Opposition to Sub-bill HB86

Rescuing Sensible Cannabis Policy
for All Ohioans

By James “Ted” Bibart

Introduction

- ▶ James “Ted” Bibart - Ohio Licensed Attorney
- ▶ Participated deeply with both Caucuses and both Chambers in the drafting of Ohio HB 523 in 2016
 - ▶ Was asked to testify before the Medical Marijuana Task Force, twice before the House, and once before the Senate in 2016
- ▶ Was appointed by the Ohio Speaker of the House as the original Patient Advocate to Ohio’s Medical Marijuana Advisory Committee
- ▶ Testified before the Senate Small Business and Economic Opportunity Committee on SB 261 in November 2021
- ▶ Testified multiple times before the General Government Committee on SB 261 and SB9
- ▶ Have served as legal counsel for numerous Ohio Level I and Level II cultivators, processors, and dispensaries and consulted in commercial cannabis jurisdictions across the country
- ▶ My wife is a social equity, stand-alone adult-use & medical cannabis processor in Maryland

Testimony Outline

▶ Testimony Summary

- We need to respect the will of the people – there is already a thriving adult use market in Ohio
 - Access to adult use cannabis must not be ceremonial but a superior alternative to the illicit market or neighboring states
- Issue 2 requires remediation
 - Don't throw the baby out with the bathwater
- Sensible cannabis policy must include a significant erosion, if not effective eradication, of the illicit market
 - THC caps and over taxation will further drive the consumer to the illicit market or neighboring states
- A thriving medical program is the foundation of appropriate adult use access
 - Most adult use consumers are utilizing cannabis as an alternative to sleep aides, alcohol, and muscle relaxers – this is the fundamental difference between cannabis and other illicit substances

Testimony Outline

▶ Testimony Conclusions

- The citizens are expecting:
 - Access to highest quality, tested, innovative products at competitive pricing;
 - A reasonable regulatory framework to provide for a modest garden for homegrown cannabis (2 plants per person – 4 total per household?);
 - Appropriate implementation of social equity considerations for communities that have been disproportionately impacted by cannabis prohibition; and
 - Use of tax revenue to best benefit local communities and those who keep us safe (law enforcement training and the local police and fire pension funds?).
- THC caps are not the answer, but rather THC dosing limitations
 - THC caps require adulteration to the pure extract and lead to negative consequences (see the vitamin e-acetate debacle) and encourage consumption of cannabis flower by smoking
 - Limit high dose edibles to the medical program
 - Consider increased retail excise tax for the highest potency products

Testimony Outline

▶ Testimony Conclusions

- The 15% wholesale gross receipts tax on cultivators is unworkable
 - Even if it is intended only on adult use flower, the practical application will be for cultivators to cover their risk by applying the increase price to all flower which then gets passed on to the consumer.
 - All wholesale cannabis products are doubled for retail cost (a \$15 edible wholesale is priced \$30 retail to the consumer) and therefore a 15% wholesale tax becomes 30% to the consumer.
 - In addition to the lack of vertical integration for stand-alone processors, a wholesale flower tax makes the biomass exceedingly expensive which will eliminate any profit margin for processors and thereby dramatically reduce the type of non-smokable products the legislature has always sought to encourage.

Testimony Outline

▶ Testimony Conclusions

- Encourage expanded participation in the medical program by:
 - Remove the sales tax on medical marijuana as it already fails statutory authorization
 - Eliminate the patient and caregiver medical card fee and extend registration to 3 years.
 - Add the additional conditions and vertical integration contemplated in SB 9.
 - Add State 280E tax relief.
 - Require intoxicating hemp products to be sold under the regulatory oversight of Ohio dispensaries.
 - Allow processors to manufacture products produced from Ohio grown hemp biomass that will generate more medically focused products alternative to smoking with lower THC

Testimony Outline

▶ Testimony Conclusions

- “This is not your grandfather’s marijuana.”
- Respectfully, the Sub-bill HB86 was a valiant effort over an unreasonably short amount of time
- The people deserve a thoughtful approach to ensuring effective cannabis policy.
- We need to have concurrence in both Chambers on a comprehensive package drafted by the guiding hand of the legislature with the assistance of cannabis policy expertise.
- Whatever we do, we can’t denigrate the medical program, which while in need of remediation, has proven the sky will not fall with well-regulated access to cannabis.
- PLEASE DO NOT RUSH THIS PROCESS - THE EFFECTIVE DATE OF ISSUE 2 CAN BE DLEAYED TO MAKE THE TIME TO GET THIS RIGHT!

Testimony Outline

▶ Sub-bill HB86

- Over-correction to the ills of Issue 2
- Has a detrimental impact on Ohio's medical marijuana program
- Inadvertently contributes to the market domination of the illicit trade

Testimony Outline

▶ Issue 2

- Perceived as having been drafted by the “Big Pot” lobby
- What it got right:
 - The citizens of Ohio overwhelmingly support the libertarian position of appropriately regulated adult access to cannabis.
 - A right-sized excise tax at the retail level to generate tax revenue for the needs of Ohio.
 - Possession limits in line with the other 23 states with adult use programs.
 - Recognition of THC percentages for both flower and concentrates
 - Important social equity program elements for communities disproportionately impacted by cannabis prohibition.
 - Allowance for citizens of Ohio to grow a limited number of plants

Testimony Outline

▶ Issue 2

- What it got wrong:
 - Too many licenses being directly issued to the drafters/financiers of the ballot initiative.
 - Not enough emphasis on creating a healthy regulated industry that ensured the necessary cohesion in overcoming the illicit market by producing the highest quality, tested, innovative products at competitive pricing.
 - The public consumption language was too opaque and failed to make clear the supremacy of Ohio clean air statues and other existing mechanisms to avoid the appropriate concerns of “smelling weed everywhere”.

Testimony Outline

▶ Issue 2

- What it got wrong:
 - Failed to enact policy that would protect the medical market from being subsumed by adult-use thereby stifling research and development of the medical applications of the plant.
 - Failed to clarify the THC limits as a ceiling.
 - Failed to make clear the necessary regulation and need for rule making regarding home grow.

Testimony Outline

▶ Sub-bill HB86

- What it got right:
 - Seeks to harmonize the adult-use and medical programs.
 - Attempts to create additional impetus for patients to remain in the medical program.

Testimony Outline

▶ Sub-bill HB86

- **What it got wrong – there already exists a thriving adult use market in Ohio – the illicit trade:**
 - Reduces the THC limits for the current medical program by statutorily eliminating the existing 10% tolerance.
 - At 25% THC limit for flower and 50% for concentrates, ensures that no adult use consumer will find competitive products in an Ohio dispensary as products with no THC limitations are easily found in Michigan, Illinois, and on the illicit market.
 - No states employ these type of THC limits and any that do create restrictions do so my dosing limitations.
 - Increases the retail excise tax by 50% - goes from 10% to 15% which further increases the market supremacy in pricing of the illicit market which isn't tested or taxed.

Testimony Outline

▶ Sub-bill HB86

- **What it got wrong – there already exists a thriving adult use market in Ohio – the illicit trade:**
 - Implements an unworkable framework for a wholesale excise tax of 15% on gross receipts of a cultivator
 - Attempts to differentiate on the basis of flower for adult use versus medical.
 - The issue being that this will be impossible to track on wholesale transactions from a cultivator to a processor as a processor cannot differentiate on the front end for biomass meant for adult use versus one that will produce manufactured products for medical sale.
 - This will result in a further stifling of the availability of biomass for stand-alone processors who are already on the verge of being run out of business.

Testimony Outline

▶ Sub-bill HB86

- **What it got wrong – there already exists a thriving adult use market in Ohio – the illicit trade:**
 - Medical marijuana continues to be subject to sales tax as it already fails statutory authorization under existing ORC sections 5739.02, 4729.01, 928.01, 3796.01, 3719.01, 47311.30 and OAC 4731-32-02.
 - Fails to promote vertical integration which is the primary contributor to the perception of a Big Pot lobby as too few control the production of biomass and the retail distribution.
 - Completely eliminates all social equity considerations and home grow which clearly fails to respect the will of the people. The ballot question summary in the voter's booth was exceedingly clear on both of these issues.

Testimony Outline

▶ Senate Bill 9 - Remediations

- ▶ SB 9 simply fixes what is broken with HB 523
- ▶ Centralizes regulation of the MMCP under the Department of Commerce
 - ▶ Creates the Division of Marijuana Control
 - ▶ Physician participation still regulated by the Ohio State Medical Board
- ▶ Respects the doctor-patient relationship
- ▶ Adds more patient access by authorizing more dispensaries
- ▶ Mandates an impartial merit-based licensure process
- ▶ Sets cultivation area allotments by statute rather than rule

Testimony Outline

▶ Senate Bill 9 - Remediations

- ▶ Ensures access to quality biomass for qualifying stand-alone processors
- ▶ Ensures viability of Level II cultivators by increasing their economy of scale
- ▶ Protects Level I market investment by allowing for greater future expansion
- ▶ Increases patient education by eliminating unnecessary restrictions on commercial speech
- ▶ Provides for the proper constitutional mechanisms for Ohio to fulfill its promise of minority inclusion in licensure

Testimony Outline

▶ Senate Bill 9 - Remediations

- ▶ Rectifies the unsuccessful attempt to provide medical marijuana patients access to medicine when traveling to Ohio
- ▶ Officially approves cultivators access to genetics
- ▶ Provides pathways to employment and licensure for those who have served their sentence for past crimes
- ▶ Increases cannabinoid limit for extracted products ensuring undisturbed cannabinoid profiles and higher quality medicine

Closing

- ▶ DO NOT RUSH THIS PROCESS - THE EFFECTIVE DATE OF ISSUE 2 CAN BE DLEAYED TO MAKE THE TIME TO GET THIS RIGHT!
- ▶ “This is not your grandfather’s marijuana.”
- ▶ SB 9 is not about expanding the MMCP but rather remediating it
- ▶ We cannot continue to institute medical cannabis policy that results in higher quality and less expensive product on the illicit market
- ▶ We need to ensure proper regulation and the health of the program through common sense free market principles
- ▶ Cannabis policy is best instituted by legislative process which is more reflexive - SB 9 is the embodiment of that truth
- ▶ Ohio medical marijuana patients deserve a highly functioning program that respects their relationship with their physician and provides access to the highest quality, tested and tracked medicine at a fair price
- ▶ **Thank you for your time and I am happy to answer any questions.**