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Senate Bill 261 Proponent Testimony
Ohio Senate Small Business and Economic Opportunity Committee
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Chairman Rulli, Vice Chairman Lang, Ranking Member Sykes and members of the Senate Small Business and Economic Opportunity Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 261 (S.B. 261). My name is Andy Rayburn, I am a born and raised Ohioan and the owner of Buckeye Relief, an Eastlake -Ohio Level 1 Cultivator, Processor and Dispensary business licensed under the current Medical Marijuana Control Program. I am also here representing the Ohio Medical Cannabis Industry Association (OMCIA), Ohio's trade association for the medical marijuana industry for which I have served as President since 2019. I also have the honor of being asked to represent twenty (20) of my fellow Level 1 Cultivators in support of S.B. 261.

Ohio's medical marijuana industry is young but off to a strong beginning. As business owners, we have invested hundreds of millions of dollars in infrastructure, created over 5,000 new jobs and generated \$585 million dollars in sales. Almost 132,000 patients are currently registered to purchase medical marijuana.

As with any new industry it is prudent to review the current law and identify areas where improvement can be made. It has been five years since House Bill 523 went into effect, bringing medical marijuana to the patients of Ohio. In that time the unintended consequences of a well-intentioned bill have come to light and we appreciate the efforts of Senators Huffman and Yuko to make corrections to the program through S.B. 261. There are multiple issues that have universally plagued the industry since licenses were first awarded in 2017. While my colleagues and I are still working to assess the full scope of S.B. 261, it is clear this bill intends to tackle many of those issues in a manner that benefits the patients we serve and the industry as a whole.

The most important component of the bill is the consolidation of the program under the Department of Commerce. Today the businesses report to three different regulatory agencies: the Board of Pharmacy, the State Medical Board and the Department of Commerce. And when those governing bodies disagree on the interpretation of a rule it is the business that becomes a ping-pong ball bouncing between state agencies trying to get an answer. We can't run our businesses effectively without clear and consistent guidance. The Department of Commerce is the agency best suited to manage the regulation and enforcement of medical marijuana program rules and we wholeheartedly support this regulatory consolidation.

The bill also tackles one of the most common complaints we hear from patients - that the price of medical marijuana is too high. It does so by first establishing a metric of 1000 patients per dispensary and calls on the Department to issue new dispensary licenses more frequently. Today 132,000 patients are actively registered with the program, but we only have 57 dispensaries open. The Board of Pharmacy is finally accepting applications for 73 new dispensaries this week – two years too late. Their original plan to license 60 dispensaries in Ohio was based on an expected patient population of 25,000 after two years of operation. We have more than five (5) times that number of patients today and not a single new license has been issued. Cultivators and processors don't determine the price of medicine for patients.

Dispensaries determine the price and retail competition is the best and fastest way to reduce the price of medicine.

The bill also tackles unnecessary and duplicate testing requirements that further add to the cost of medicine. The average Level 1 cultivator spends over \$1 million annually on testing. This number is shocking when you consider testing labs throw away almost \$325¹ worth of medical marijuana every time they run tests on plant material because the samples labs are required to take are more than four (4) times the amount they need. The bill limits the sample size to twice the necessary amount – a correction that will result in lower prices for patients.

S.B. 261 honors the sanctity of the patient/physician relationship by putting the power to treat the individual back in the hands of the physician. Today, a board decides who can benefit from medical marijuana - not based on the patient's personal medical history – but based on a generic analysis of limited scientific research. Ohio's patients deserve the right to explore alternative treatment options under the care of their physician without input from the government.

Senators Huffman and Yuko also work to address the issue of social equity in this bill by calling on the Department and the Board of Pharmacy to complete a study that evaluates the level of participation of minorities and women in the medical marijuana industry. Such a study is necessary to reinforce the need for social equity business provisions and will provide the Department of Commerce with a sound pathway to make Medical Marijuana business licenses more accessible to disadvantaged groups.

The bill also adds new products that are common in other medical marijuana programs and in traditional medicine (pills, pouches, inhalers, etc.). There is no good reason these products aren't available to patients in a medical program. The Board of Pharmacy recently approved the first new form in four years – sublingual administration (under the tongue). The process took them more than ten months to complete.

There are a number of other significant corrections in this bill that we support including the extension of telemedicine, transfers of product between license types, temporary employee badges, improved advertising regulations and a reduction in the amount of filler we are required to use in extracts. The bill is a comprehensive and thorough correction of the program and the issues the patients and industry have been struggling with over the last four years.

I've used one word many times in my testimony today – correction. Our hope for this bill, affectionately called "the Corrections Bill" by the industry, was that it would be used to fix a set of problems universally experienced by every business operating in the medical marijuana program. Unfortunately, a provision has been included which benefits only a few businesses to the detriment of others.

It is our belief that the Cultivator square footage provision should not be defined in statute, and we would respectfully request that more deliberation take place on this important issue. Square footage should remain in rule where it has been effectively managed by the Department of Commerce based on real-time industry data. The Department recently approved the first of two expansions of the program by allowing both Level 1 and Level 2 cultivators to double their square footage.

Square footage was clearly defined in rule when we all applied for licenses in 2017. The maximum square footage for a Level 1 Cultivator is 75,000 sf and for a Level 2 Cultivator is 9,000 sf. The Level 1 cultivators risked applying for a highly competitive Level 1 license instead of the significantly less competitive Level

¹ Based on an Ohio max 15 pound batch and a sample that equals ½ of 1% the sample size is 1.2 ounces (34 grams). A lab only needs 8 ounces of plant material to conduct their tests. Value of unused test sample product is based on retail pricing.

2 license. We committed to pay an annual licensing fee of \$200,000, ten times the licensing fee paid by a Level 2 Cultivator and we invested hundreds of millions of dollars to build the infrastructure necessary to support this new industry. We made these investments based on the expansion commitment and license structure outlined in rule at the time of application.

Please note, there is a concerning provision in this bill that seeks to change the game, granting Level 2 cultivators 20,000 square feet, more than double the 9,000 maximum square feet authorized in rule. Other states refer to smaller licenses as “craft cultivation licenses” because they are typically intended to preserve a place in the industry for small business owners. Unfortunately, many publicly traded national operators applied for or have acquired these smaller Ohio licenses. Today, they are advocating for a disproportionate expansion that essentially cuts Ohio-based small businesses out of the industry while undercutting the businesses that have taken the most risk. This carve-out for one license class over all others takes a bill that was originally envisioned to equally improve the entire industry and starts to pick winners and losers.

Mr. Chairman and members of the committee, that section of the bill also gives future preference to Level 2 Cultivators when the Department issues additional Level 1 licenses. Such preference would eliminate competition in the program from new businesses and social equity applicants. To date we have very much appreciated the discussion and attention to this issue with the sponsors and look forward to continued dialogue on this important topic.

Conclusion:

After five years it is time to make changes to Ohio’s Medical Marijuana Control Program that will streamline our business operations and reduce prices for patients. On behalf of Buckeye Relief, the OMCIA and the Level 1 Cultivators, I want to again express our appreciation to Senators Huffman and Yuko for their thoughtful development of S.B. 261, a bill that truly corrects the medical marijuana program and to the Committee for allowing me to provide proponent testimony today.

Thank you for your time. I am available to answer questions.

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