



SMALL BUSINESS AND
ECONOMIC OPPURTUNITY
COMMITTEE

Witness Form

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Testifying on Bill Number: Senate Bill 261

Testimony: Verbal Written Both

Testifying As: Proponent Opponent Interested Party

Are you a Registered Lobbyist? Yes No

Special Requests: _____

Ohio Senate Small Business and Economic Opportunity Committee
Interested Party Testimony of Pete Nischt for Senate Bill 261
December 8, 2021

Chairman Rulli, Vice-Chair Lanking, Ranking Member Sykes and honorable members of this committee, thank you for the opportunity to allow me to testify regarding Senate Bill 261. My name is Pete Nischt, and I am the Chief Compliance and Communications Director for Klutch Cannabis, a 100% Ohio-owned and operated Level 1 Cultivation and Processing Facility located in Akron, where I have served in this capacity since January 2019.

As a bit of background, I am an Ohio-licensed attorney and received my bachelor's degree, MBA, and law degree each from the University of Akron before finishing my education in 2013. I am a proud husband and father of two beautiful little children. I also suffer from what my doctors have designated as a severe case of Crohn's Disease and have been a medical marijuana patient in the Program since its inception. The positive impact the Program has had on my life is the main reason I left my former position as an Assistant Prosecutor in Summit County to join Klutch three years ago. I was a patient first.

On top of my role at Klutch, I also serve as co-chair of the Ohio Medical Cannabis Industry Association's Policy Committee. In that role, I have worked with several others in the industry for almost three years on global changes that benefit all license holders and the patients we serve, that improve access to medical marijuana, and that reduce the costs patients pay for these products. I am intimately acquainted with the contents of S.B. 261, and while I am generally supportive of the bill due to the numerous positive impacts it will have, I wanted to provide the following comments on areas of the bill we find deeply concerning.

1. Expanding Market Capacity Without Market Data is Dangerous - One of our main concerns about the arbitrary issuance of new cultivation space via statute is that oversupplying the market with biomass can have destabilizing and deleterious effects on the supply chain. We see this in states like Michigan, Oregon, and California, where prices have plummeted to the point that legal products flood the black market. When this happens, it's infinitely harder to keep these products out of the wrong hands.

The Department of Commerce has access to real time supply and demand data across the entire supply chain through the state mandated inventory tracking system. We have heard a lot of anecdotes from "interested parties" who stand to benefit from being gifted free cultivation space that there is an undersupply in the market. However, these anecdotes are not supported by data, and there are more products on menus today than ever before. Only the Department has access to this data, and I do not believe the claims about product or biomass shortages are accurate. The answer to the supply issue is not as black and white as it has been portrayed before this committee.

The main thing all cultivators and the bill sponsor seem to agree on is that the Department of Commerce has done such a good job regulating their portion of the supply chain that we want Commerce to be responsible for regulating the whole thing. Why, then, would we seek to simultaneously grant Commerce this power while knee-capping its ability to regulate supply based upon real-time market data and then supplant that evidence-based approach with anecdotal reports?

Commerce already has the ability to grant additional cultivation space, to expand licenses, and to issue new RFAs. Indeed, the Department has already agreed to double market capacity over the next year by approving 100% expansions for all cultivators operating in good standing and not hoarding biomass from processors. Adding further cultivation space via statute and forcing new cultivation licenses into the program kneecaps Commerce's ability to nimbly adjust market supply and caps the size of existing licenses. It also moves the goal posts for those who have invested the most to bring this program online.

2. New Cultivation Space and Licenses Should Only be Issued Via Competitive RFAs - Even assuming more cultivation space *is* needed after Commerce has doubled cultivation space in 2022, why would we choose to grant that cultivation space to one subclass of existing license holders over another or issue it to entities that filed failed applications 5 years ago? Instead, any new cultivation space beyond what is already provisioned for in Rule should be issued by the Department via a competitive RFA. The Department's ability to issue new cultivation space based on real-time supply and demand data is at the core of the collaboration established between the legislature and Commerce at the Program's outset. Ohio Patients are best served when RFAs are used to ensure that only the best operators get the licenses they've applied for.

A handout of free cultivation space to disappointed bidders and people with buyer's remorse devalues all other cultivation licenses, detracts from the viability of any future cultivation licenses that may be warranted, and favors existing businesses over future applicants. Instead of using S.B. 261 to provide special treatment to one type of license over another, any additional cultivation space should be open and available to all Ohioans. If a Level 2 cultivator now wishes they had applied for the more expensive and competitive Level 1 license, they should get the opportunity to apply again in a competitive RFA if the need for that space is borne out by market data.

3. S.B. 261's Special Treatment is a Breach of the Social Contract - The Department of Commerce originally developed the dual-level license structure to afford entrepreneurs the ability to enter the market at different levels. As such, Level 1 licenses were larger than Level 2 licenses, but were also much more expensive to apply for, much more competitive to win, and much more expensive to stand up and operate. As applicants, we all had the same decision to make at the outset of the program: which license do we apply for based on available resources and the amount of risk we were willing to take. These calculated business decisions were made based upon the license structure that the Department laid out at the beginning. S.B. 261's proposed changes have now created a situation where multistate operators who recently purchased Level 2 cultivators could possibly see massive windfalls on these purchases. Passing S.B. 261 in its current form would show market participants that it was much more profitable applying for the smaller, less risky license and asking for free cultivation space later than investing more in the Program at the outset.

In conclusion, we believe there are much needed reforms to Ohio's medical marijuana program contained in S.B. 261, but there are also provisions that unfairly punish business owners who took the most risk and have invested the most resources. And, more critically, those changes are not supported by actual market data. We have an existing regulatory framework to make timely decisions on biomass supply as well licenses. We support many of the updates in S.B. 261 but ask that we not attempt to fix what isn't broken.

Respectfully submitted,

Pete Nischt
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