

Ohio House Government Oversight Committee
Interested Party Testimony of Pete Nischt for Senate Bill 261
March 24, 2022

Good afternoon. Chairman Wilkin, Vice-Chair White, Ranking Member Brown and honorable members of this committee, thank you for the opportunity to allow me to testify regarding Senate Bill 261 today. My name is Pete Nischt, and I am the Vice President of Compliance and Communications for Klutch Cannabis. We are a 100% Ohio-owned and operated Level 1 Cultivation and Processing Facility located in Akron where we employ over 140 Ohioans.

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 others in the industry for the past three years on global changes that benefit all license holders and the patients we serve, that improve Program access, and that reduce the costs patients pay. I am intimately acquainted with the contents of S.B. 261, and while I was initially supportive, I am here to provide comments as a technical expert on areas I find deeply concerning.

Before I get to those, I wanted to address two questions that are lingering from your last hearing.

Firstly, as you know, S.B. 261 provides for a potency cap increase on marijuana concentrates from 70% to 90%. This change does not affect flower or edibles. This provision stems from patient complaints and manufacturing issues. Many of these products are naturally more potent, coming in around 75% to 85% after extraction. The presence of the potency cap forces us to have to dilute these products with another substance, and our choices here are limited. Most of the options available to us are synthetic chemicals like propylene glycol, which is commonly used in nicotine vapes. Simply put, patients do not want to ingest these substances. The only option deemed acceptable is the use of hemp-derived CBD, which is safe but is also an active ingredient that can change the effect of THC. I can think of no other context where a pharmaceutical manufacturer is forced to dilute one active ingredient with another to meet a potency cap. Additionally, recent studies have shown that a potency increase from 70% to 90% does not have a measurable effect on patient impairment.¹ Concerns about the potency increase are also mitigated by the fact that these products are sold in metered doses and are subject to the day supply limit for this product type, which is 590 mg of THC. So, patients won't be able to purchase more THC due to a potency cap increase, but the medicine will cost less due to reduced manufacturing difficulties and will be unaffected by dilutants. Ohio and Mississippi are the only two of the 38 medical states that have a potency cap.

Secondly, this Committee has heard a lot about product pricing, and I would like to correct the record. During initial testimony, pricing was reported to be around \$310 per ounce. However, 3 weeks prior, the Department of Commerce issued a market report pegging pricing at around \$269 per ounce.² A month later, Commerce reported that pricing had decreased to around \$260 per ounce.² Additionally, there were premium ounces of cannabis on sale later in the month of February for as low as \$156. Ohio prices are lower than all other similarly situated East Coast and Midwest states except for Michigan, which has an oversupply issue as well as a caregiver model, meaning home grown cannabis can be sold to patients through dispensaries. What's more striking to me is that Ohio prices have fallen further and faster than prices in states that have been operating for longer with more patients and more dispensaries. All of this has happened against the backdrop of an ongoing trade war with China, rampant inflation, a global pandemic, and increasing gas prices. A pricing table with citations to state data from multiple state programs is included at the end of my testimony. The bottom line here is that the discrepancy between actual market data and what has been reported to this Committee underscores the importance of relying on actual market data when making decisions affecting product supply.

¹ <https://www.sciencedaily.com/releases/2020/06/200610135016.htm>

² <https://medicalmarijuana.ohio.gov/Documents/ProgramUpdate/program%20update.pdf>

I would now like to discuss my primary concerns with S.B. 261, which involve the handing out of free cultivation licenses and cultivation space to a select group of licensees, as well as the gifting of permanent preferential treatment for those licenses in all future application processes for Level 1 Cultivation licenses.

Our main concern about the arbitrary issuance of new cultivation space is that oversupplying the market with biomass can have destabilizing 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.

What we have seen is that the only entities complaining about biomass shortages are those that stand to benefit from handouts of free licenses and additional cultivation space. We do not know why three standalone processors were hand-selected for free cultivation licenses. However, while patient numbers have remained relatively steady, Commerce has already agreed to allow all cultivation facilities to double in size over the next twelve months per the expansion levels we each applied to be eligible for at the beginning of the Program. There are currently hundreds of products available on dispensary menus, and just recently, the CEO of a major MSO operating a standalone processor in Ohio was quoted as saying that "biomass was plentiful" here when defending his company's place in the market without cultivation.³

Those standing to benefit from these handouts have tried to frame this as a "David vs Goliath" fight, where large conglomerates are crowding out the little guys. Commerce created the Level II license class to allow Ohioans a place in the market, but almost 55% of Level Is and 62% of Level IIs are Ohio-owned. At the same time, one of the most ardent supporters of the Level II expansion is a publicly traded MSO with a three-billion-dollar market cap operating 93 dispensaries, over one million square feet of production area, and employing over four thousand people nationwide. There is nothing wrong with this enviable position, but as a 100% Ohio-owned Level I cultivator, we categorically reject being characterized as a "Walmart" while companies like this are slated to receive massive windfalls if S.B. 261 is passed in its current form.

My point here is simple: The Legislature gave Commerce complete visibility of the supply chain at the outset of the Program. They know how much product is being produced and consumed. They know how much is sitting in vaults and on dispensary shelves. They know why certain standalone processors were denied cultivation licenses. And, they know whether claims about biomass shortages are valid or if these provisions even address a real problem. Commerce has the data. You don't have to take my word for it.

The main thing we all seem to agree on is that Commerce has done such a good job regulating their portion of the supply chain that we want them to be responsible for the rest. Why, then, would we seek to grant Commerce that power while knee-capping its ability to regulate supply based upon real-time market data?

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,

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³ <https://www.newcannabisventures.com/tilt-holdings-brings-western-cannabis-brands-to-eastern-markets-with-proven-b2b-model/>

PRICING TABLE

Claims about pricing are not reflected by actual market data.

State	Price Per Ounce Plant Material	Active Patients	First Dispensary Opened
Pennsylvania	\$397.62 ⁴	384,254	January 18, 2018 (4 years)
Illinois	\$352.61 ⁵ - \$537.70 ⁶	65,041	November 2015 (6 years)
Maryland	\$298.00 ⁷	139,593	December 1, 2017 (4 years)
Ohio	\$260.40⁸	129,740	January 16, 2019 (3 years)
OH Black Market	\$200.00 - \$430.00 ⁹	N/A	N/A
Michigan	\$119.64 ¹⁰ - \$265.00 ¹¹	235,788	2008 (Patient/Caregiver Model)

OWNERSHIP TABLE

Claims about ownership are not reflected by actual market data. Even considering that Level II licenses were created by the Department of Commerce to allow local companies to have an easy way to enter the market, the current breakdown is as follows:

OPERATIONAL		
Level 1 Local	9	52.94%
Level 1 MSO	8	47.06%
Level 2 Local	7	63.64%
Level 2 MSO	4	36.36%

ALL LICENSED		
Level 1 Local	12	54.55%
Level 1 MSO	10	45.45%
Level 2 Local	8	61.54%
Level 2 MSO	5	38.46%

⁴ <https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/MMAB%20Presentation%20-%20November%202016,%202021.pdf>

⁵ https://www2.illinois.gov/sites/mcpp/Pages/update02072022_mcpp.aspx

⁶ <https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-2021-review-20220101-6ltav5lghfba3awognltyrzs4m-story.html>

⁷ https://mmcc.maryland.gov/Documents/Legislative%20Reports/2021_Legislative_Report.pdf

⁸ <https://medicalmarijuana.ohio.gov/Documents/ProgramUpdate/program%20update.pdf>

⁹ <https://www.ohiomarijuanacard.com/post/medical-marijuana-is-a-bargain-compared-to-black-market-marijuana-in-ohio#:~:text=The%20figures%20provided%20by%20PriceofWeed,for%20between%20%24190%20and%20%24390>

¹⁰ <https://www.michigan.gov/mra/-/media/Project/Websites/mra/MRA-Reports/MRA-Statistical-Reports/monthly-report/January-2022-Monthly-Report.pdf?rev=ef29da80eb324b8392bcb3890df7bd2c&hash=CC6D6EFB5756B4699AF22F9D492B399D>

¹¹ <https://www.nbcnews.com/news/us-news/ridiculous-price-medical-marijuana-leaves-patients-scrambling-n1274085>