



INTERESTED PARTY TESTIMONY ON SENATE BILL 9

Senate General Government Committee

Senator Michael Rulli, Chairman

Presented by Dave Sahr, Chief Financial Officer

Verdant Creations Dispensaries and PurposeLeaf Processor

March 7, 2023

Chairman Rulli, Vice-Chairman Schuring, Ranking Member DeMora, and members of the Senate General Government Committee:

My name is Dave Sahr and I currently serve as the operator of one dispensary and one stand-alone processor in Ohio. We are a small, compliant, women-owned Ohio business that has wholly financed our investment in the medical marijuana industry. We were recently successful in obtaining a second dispensary through the RFA II lottery, but the location that was selected by the lottery was a piece of land rather than another submission we made which would have been a building that was move-in ready nearby, so we are building as quickly as we can to meet the guidelines of the program.

I want to take a moment to thank Senator Huffman, Senator Schuring, and this committee for the time and attention you have given to help build and improve upon the Ohio Medical Marijuana Control Program. Thank you for the opportunity to provide feedback on Senate Bill 9 (SB9).

First, we believe in a strong medical program to meet the needs of patients in our state. The Ohio General Assembly chose to enact a *medical* marijuana program and not a recreational marijuana program, and we would like to thank you for maintaining that limitation.

The key to improving the program is implementing policies that encourage access for patients that can benefit. For that reason, we appreciate the expansion of qualifying medical conditions contained in SB9, as well as the language giving greater discretion to physicians to make medical decisions for their patients. We believe the focus of SB9 should be on patient access, and not on license expansion. We further recommend the following amendments to enhance patient access:

1. Additionally, implementing the following additional items would strengthen the bill by improving patient access: **Allow a 3-year recommendation renewal cycle** only if a patient utilizes a dispensary at least once per year. And give an automatic extension now for any past or current license holder that has used the program if less than 3 years old.
2. **Reduce state patient registration and renewal fees** for those that use the program. If more patients use the program, sales tax to the state would increase to make up for any potential revenue loss.
3. **Authorize other medical prescribers to recommend medical marijuana such as Advanced Practice Registered Nurses and Physician Assistants.**

4. The biggest fee for a new patient is the cost of the doctor recommendation. That cost typically ranges from \$165 to \$250 for the doctor visit and recommendation, a visit that lasts less than 15 minutes. Unlike most medical visits with a physician, insurance does not provide coverage of these appointments. Therefore, **we request your consideration of dedicated funding to cover these costs for new patients utilizing the fees collected from the medical marijuana program.**

We are supportive of robust oversight of the program. For this reason, **we have concerns about a 13-member Commission under the Department of Commerce overseeing a Schedule I or II drug**, as opposed to the Board of Pharmacy. We are not aware of any other medicine that is treated that way. Let me reiterate this important point: No other Schedule I or II drug in the State of Ohio is overseen by a state agency other than the Board of Pharmacy. No other agency, even the Department of Commerce, oversees any type of drug. We ask you to reconsider the delegation this responsibility to members of the public. We would also suggest an amendment to implement term limits for the commissioners, or at a minimum, clarifying language stating that these appointees serve at the pleasure of the appointing authority.

Dispensaries

SB9 contemplates greatly expanding the number of dispensaries in the state, just as more than 70 dispensaries have or are getting ready to enter the market through the recent lottery.

We support language included in SB 9 requiring the new Division of Marijuana Control (DMC) to **use a merit-based system to add future dispensaries**. Contrary to that measure, however, the legislation contemplates handing over one or two dispensaries to every cultivator, regardless of merit. This is being proposed at a time when the number of dispensaries is in the process of doubling.

Also, SB9 aims to reach 1,000 “registered” patients per one dispensary rather than “active” patients. The latest patient numbers released by the Board of Pharmacy in January of 2023 indicate that there are 338,049 registered patients, but only 160,121 patients with an active registration and an active recommendation. Even if SB9 meant 1,000 active patients, those numbers will not even allow us to recoup our initial investment and is not sustainable. **We recommend one dispensary for every 2,000+ active patients** to better meet the needs of small business. Also, to require only 1 mile between dispensaries will lead to crowding in certain areas, especially when many local governments have a moratorium on allowing medical marijuana businesses. **We further recommend at least 5 miles between dispensaries** to achieve the goal of spreading out access to all patients across the state. We should not be surprised with RFA II that the footprint of dispensaries in the state is very similar to the original RFA 1 footprint because of local moratoriums restricting the location of marijuana businesses. We experienced this firsthand in RFA II. We did not want to apply for a location right next to another current dispensary, so we went out to the several communities and attended township meetings to educate the townships. In all these meetings, these townships were not equipped with correct information and mistakenly understood it to mean recreational marijuana. Fortunately, we were able to provide them with the real facts and the location we were awarded was a direct result of a township changing its with regard to a moratorium. We firmly believe that if you gave current dispensary owners in good standing with the state more time to properly educate communities, we could achieve the goal of properly spreading out locations. If we do not do this, we will continue to add dispensaries right next to each other or in buildings or small facilities that cannot support a larger patient population. Just like SB9 proposes to allow cultivators and processors to expand, dispensary owners should be afforded the same opportunity.

We are concerned with the bill's proposal to hand out dispensary licenses to cultivators or processors. Furthermore, after this next wave of RFA II licenses are fully built over the next several months, we will be well oversaturated with dispensaries compared to active patient counts. **We would recommend adding no new licenses until after we see the impact of RFA II.**

The negative impact of the dispensary license handouts will be significant to current dispensary license holders. Dispensaries bear the main responsibility of 280e tax laws in the medical marijuana industry. 280e does not allow you to deduct General, Administrative or Sales expenses related to medical marijuana and only allows you to deduct Cost of Goods Sold expenses. Since most of the cultivator's and processors' expenses are Cost of Goods Sold, their impact from 280e is limited. Since most dispensary expenses are related to Sales, dispensaries are significantly impacted. In fact, dispensaries end up paying a 60%+ tax rate compared to 21% typical corporate tax rate.

Like all facilities in the Medical Marijuana Program, dispensaries have had to spend a significant amount of money on security for our facilities compared to what other state requirements. We have spent over \$300,000 on security to get the buildings constructed and operational with 60-80 cameras, months of video data storage, rooms dedicated to security, etc. In addition, we have an ongoing spend rate of \$200,000 a year on security guards, daily and off hour monitoring, and rent for our security space. We appreciate the additional security requirements, but use them to demonstrate the significant funds that current company owners must invest to get our businesses up and running compliantly.

Handing out dispensary licenses to cultivators and processors could cut the value of all licenses by at least half and further jeopardize industry leading dispensary license holders' ability to recover initial investments. If and when new dispensary licenses are needed, we believe the state should consider rewarding current dispensary owners that took the risk, and have proven commitment, compliance and knowledge. According to the Ohio Medical Cannabis Industry Association, Ohio would need 450,000 patients for a dispensary to support the type of expansion that is proposed in this legislation. Lastly, we are committed to protecting the youth of our state and believe **the Tobacco Master Settlement Agreement contained important requirements that the state should consider mirroring in regards to education and advertising.** Before loosening the existing advertising standards, we ask you to carefully consider the impacts on our youth.

Processors

As I mentioned earlier, we also operate a stand-alone processor, so I wanted to take just a moment to mention a few provisions in that regard.

Another proposed change in SB 9 would allow a stand-alone processor to have a level II cultivation space, but only if a failed cultivation application was submitted when the program began and if they can fit it in their current location (both of which would exclude my company). **We recommend deleting the stand-alone processor grow licenses all together.** Although we would not mind having a grow, we have seen the price of biomass drop dramatically over the last several months and the availability of biomass has increased dramatically with the new growers coming online and the existing growers expanding their square feet. What used to cost us \$1,500 per pound to buy, we are now getting for less than \$300 per pound. . However, if you do not want to delete this entirely, then **language should be deleted that sets limited criteria for processors to cultivate only if they submitted a failed cultivation application (Lines 1382-1385),** in addition to language that requires it to be at the same location. This will ensure fairness to all 6 stand-alone processors, rather than just one or two.

Thank you for taking the time to listen to our concerns. We could support this bill with the aforementioned changes and look forward to the opportunity to work with this committee and the bill sponsors to integrate into the bill. I am happy to answer any questions you may have at this time.