HOUSE BILL No. 2244

By Committee on Judiciary

AN ACT concerning health and healthcare medical treatments; relating to the use of cannabidiol with 5% tetrahydrocannabinol to treat certain medical conditions; protection from prosecution for authorized use; amending K.S.A. 2018 Supp. 21-5706 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) This section shall be known and may be cited as Claire and Lola's law.

(b) As used in this section:

(1) "Cannabidiol treatment preparation" means an oil including cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a delta-9-tetrahydrocannabinol concentration of no more than 5% that has been tested by a third-party, independent laboratory.

(2) "Debilitating medical condition" means a chronic or debilitating disease or medical condition, including one that produces seizures, for which the patient is under treatment by a licensed physician medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery.

(3) "Delta-9-tetrahydrocannabinol concentration" means the combined percentage of delta-9-tetrahydrocannabinol and its optical isomers, their salts and acids and salts of their acids, of any part of the plant cannabis sativa L., reported as free tetrahydrocannabinol on a dry weight basis.

(4) "Third-party, independent laboratory" means an organization or company that tests products according to agreed requirements of international standards organization 17025 or national environmental laboratory accreditation program standards and that is not affiliated with the producer of the item being tested.

(c) It shall be an affirmative defense to any prosecution under K.S.A. 2018 Supp. 21-5706, and amendments thereto, arising out of a person's possession of any cannabidiol treatment preparation that:
(1) The defendant has a debilitating medical condition and the cannabidiol treatment preparation is being used by the defendant to treat such debilitating medical condition; or

(2) the defendant is the parent or guardian of a minor child who has a debilitating medical condition, and the cannabidiol treatment preparation is being used to treat such debilitating medical condition.

(d) No agency of this state or political subdivision thereof shall initiate proceedings to remove a child from the home of the child's parent or guardian or initiate any child protection action or proceeding based solely upon the parent's or the child's possession or use of cannabidiol treatment preparation pursuant to this section.

(e) Nothing in this section shall be construed to require the Kansas medical assistance program or any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical corporation contract, fraternal benefit society or health maintenance organization that provides coverage for accident and health services and that is delivered, issued for delivery, amended or renewed on or after July 1, 2019, to provide payment or reimbursement for any cannabidiol treatment preparation.

(f) Nothing in this section shall be construed to allow the possession, sale, production, redistribution or use of any other form of cannabis other than as expressly allowed in this section.

Sec. 2. K.S.A. 2018 Supp. 21-5706 is hereby amended to read as follows: 21-5706. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;

(2) any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d) (2), (d)(4), (d)(5) or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;

(3) any hallucinogenic drug designated in K.S.A. 65-4105(d), K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;

(4) any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f) or (g), and amendments thereto;

(5) any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; or

(7) any substance designated in K.S.A. 65-4105(h), and amendments
thereto.

(c) (1) Violation of subsection (a) is a drug severity level 5 felony.
(2) Except as provided in subsection (c)(3):
(A) Violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subsection (c)(2)(B); and
(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof.
(3) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, violation of subsection (b) is a:
(A) Class B nonperson misdemeanor, except as provided in subparagraphs (e)(2)(B) and (e)(3)(C);
(B) class A nonperson misdemeanor if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and
(C) drug severity level 5 felony if that person has two or more prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.
(d) It shall be an affirmative defense to any prosecution under K.S.A. 2018 Supp. 21-5706, and amendments thereto, this section arising out of a person’s possession of any cannabidiol treatment preparation that if the person:
(1) The defendant has a debilitating medical condition and the cannabidiol treatment preparation is being used by the defendant to treat such debilitating medical condition; or
(2) the defendant is the parent or guardian of a minor child who has a debilitating medical condition, and the cannabidiol treatment preparation is being used to treat the minor child’s debilitating medical condition. Has a debilitating medical condition, as defined in section 1, and amendments thereto, or is the parent or guardian of a minor child who has such debilitating medical condition;
(2) is possessing a cannabidiol treatment preparation, as defined in section 1, and amendments thereto, that is being used to treat such debilitating medical condition; and

(3) has possession of a letter dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery who diagnosed the debilitating medical condition that identifies the person or the person's minor child as a patient and identifies the patient's debilitating medical condition.

(d)(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

Sec. 3. K.S.A. 2018 Supp. 21-5706 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.