

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 158**

As Amended by House Committee of the Whole

**Brief\***

House Sub. for SB 158 as amended, would create the Kansas Medical Marijuana Regulation Act (Act), the Kansas Medical Marijuana Regulation Program (Program), and related funds for the Act; define terms related to the bill; amend law concerning crimes, child welfare, employment, and discipline of certain medical professionals; create provisions to address federal re-scheduling of marijuana; and rename the Division of Alcoholic Beverage Control, Kansas Department of Revenue (KDOR), as the Division of Alcohol and Cannabis Control (ACC). [Note: The bill also contains references to the Division of Alcoholic Beverage Control. This supplemental note uses ACC throughout.]

***General Provisions of the Medical Marijuana Regulation  
Act (New Sections 1, 2, 3, and 35)***

The bill would prohibit any person from growing, harvesting, processing, selling, bartering, transporting, delivering, furnishing, or otherwise possessing any form of marijuana except as specifically provided in the Act or the Commercial Industrial Hemp Act.

The bill would further specify nothing in the Act shall be construed to:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Require a physician to recommend a patient use medical marijuana to treat a qualifying medical condition;
- Permit the use, possession, or administration of medical marijuana other than as authorized by the Act or on federal land;
- Require any public place to accommodate a registered patient's use of medical marijuana;
- Prohibit any public place from accommodating a registered patient's use of medical marijuana;
- Authorize any limitation on the number of any licenses awarded under the Act to otherwise qualified applicants or authorize any state agency through rules and regulations to effectively limit the number of licenses available to otherwise qualified applicants; or
- Restrict research related to marijuana at certain educational institutions or private research organizations as part of an approved research protocol.

*Qualifying Medical Conditions (New Section 2)*

The bill would define "qualifying medical condition" to mean:

- Acquired immune deficiency syndrome (AIDS);
- Alzheimer's disease;
- Amyotrophic lateral sclerosis (ALS);
- Cancer;
- Chronic traumatic encephalopathy (CTE);
- Crohn's disease;
- Epilepsy or another seizure disorder;
- Fibromyalgia;

- Glaucoma;
- Hepatitis C;
- Inflammatory bowel disease;
- Lupus;
- Multiple sclerosis (MS);
- Parkinson's disease;
- Positive status for human immunodeficiency virus (HIV);
- Post-traumatic stress disorder (PTSD);
- Sickle cell anemia;
- Spinal cord disease or injury;
- Tourette's syndrome;
- Traumatic brain injury (TBI);
- Ulcerative colitis;
- Pain that is either chronic and severe or intractable; and
- Any other disease or condition adopted by the Secretary of Health and Environment (KDHE Secretary) upon petition recommended for approval by the Medical Marijuana Advisory Committee (Advisory Committee).

*Allowed Forms and Uses of Medical Marijuana  
(New Section 30)*

The bill would specify only the following forms of medical marijuana may be dispensed pursuant to the Act:

- Oils;
- Tinctures;
- Plant material;
- Edibles;
- Patches; or

- Any other form approved by the Secretary of Revenue.

The bill would prohibit the smoking, combustion, or vaporization of medical marijuana; any forms or methods of using medical marijuana that are considered attractive to children; and the dispensing of medical marijuana from a vending machine or through electronic commerce.

The bill would define “vaporization” to mean the use of an electronic cigarette for the purpose of consuming medical marijuana in which such medical marijuana comes into direct contact with a heating element.

The bill would further specify plant material could not have a tetrahydrocannabinol (THC) content of more than 35 percent in its final dispensed form and extracts could not have a THC content of more than 70 percent in their final dispensed form.

***Medical Marijuana Regulation Program (New Sections 4 and 6-7)***

The bill would create the Program, administered by the following persons and their respective agencies (administering agencies):

- The KDHE Secretary would provide for the registration of patients and caregivers, including issuance of identification cards to registered patients and caregivers;
- The State Board of Healing Arts (BOHA) would provide for the certification authorizing physicians to recommend medical marijuana;
- The State Board of Pharmacy would provide for the registration of pharmacist consultants and the

reporting to the prescription monitoring program database (K-TRACS); and

- The Director of Alcohol and Cannabis Control, Kansas Department of Revenue (ACC Director) would provide for the licensure of cultivators, laboratories that test medical marijuana, processors, distributors, and retail dispensaries.

The bill would specify actions taken by administering agencies under the Act shall be in accordance with the Kansas Administrative Procedure Act (KAPA) and reviewable in accordance with the Kansas Judicial Review Act (KJRA).

### ***Licensure Disqualifications (New Section 20)***

The bill would specify any license issued pursuant to the Act could not be issued to a person:

- Who is not a citizen of the United States;
- Who has been convicted of a felony under the laws of Kansas, any other state, or the United States;
- Who has had a license revoked for cause under the Act or who has had any license issued under the medical marijuana laws of another state revoked for cause except that a license could be issued to a person whose license was revoked for conviction of a misdemeanor at any time after ten years following the date of revocation;
- Who has been convicted of being the keeper of or is keeping any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is at least 18 years of age or who has forfeited bond to appear in court to answer charges of being a keeper of any such property;

- Who has been convicted of being a proprietor of a gambling house, pandering, or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;
- Who is not at least 18 years of age;
- Who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer;
- Who is a law enforcement official;
- Who is an employee of the ACC Director;
- Who intends to carry on the business authorized by the license as an agent of another;
- Who, at the time of application for renewal of a license, would not be eligible for such license upon a first application;
- Who is the holder of a valid and existing license issued under the Act, unless the person agrees to, and does, surrender the license to the administering officer issuing the same;
- Who does not own the premises for which a license is sought, or does not, at the time of application, have a written lease for such premises;
- Whose spouse would be ineligible to receive a license under the Act for any reason other than citizenship, residence requirements, or age, except the provisions would not apply when renewing a license;
- Whose spouse has been convicted of a felony or other crime that would disqualify a person from licensure and such felony or other crime was

committed during the time that the spouse held a license;

- Who has not been a resident of the state for at least four years immediately preceding the date of application;
  - A license would be forfeited if an individual licensee ceases to be a resident at any time after the license is granted;
- Who does not provide any data or information required under the Act; or
- Who, after a hearing, has been found to have held an undisclosed beneficial interest in any license issued pursuant to the Act that was obtained by means of fraud or any false statement on the application for such license.

The bill would specify a license could not be issued to a corporation, limited liability company, limited partnership, or limited liability partnership if less than 75 percent of the total equity or similar ownership interest in such entity is owned by individuals who have been residents of Kansas for at least four years immediately preceding the application date. A license would be forfeited if, for more than 90 consecutive days, less than 75 percent of the total equity or similar ownership interest in such entity is owned by individuals who are residents of the state, at any time after the license is granted.

The bill would require that any:

- Transfer of a license be reported to and approved by the ACC Director, who could not approve any transfer to any individual or entity that does not satisfy the licensing requirements at the time of transfer;

- Change in ownership of a corporation, limited liability company, limited partnership, or limited liability partnership be reported to the ACC Director within 30 days after such change occurs. If the change would result in less than 75 percent of the total equity or similar ownership interest in such entity to be owned by individuals who have been residents of Kansas for at least four years, then such entity would have 90 days to ensure 75 percent or greater equity of such ownership interest is held by Kansas residents, or such license would be forfeited;
- Compensation, fee, expense, or similarly characterized nonequity or ownership-based payment that is contingent on or otherwise determined in a manner that factors in profits, sales, revenue, or cash flow of any kind relating to a licensee's operation, including, but not limited to profit-based consulting fees and percentage rent payments be prohibited. The bill would require any licensee that enters into an agreement for any prohibited compensation, fee, expense, or payment to forfeit such entity's license to the ACC Director. Such prohibited compensation fee, expense, or payment would:
  - Include any distribution that is made by an entity to one or more out-of-state individuals holding an equity or similar ownership interest in the entity if such distribution is greater than 25 percent of the total distributed amount; and
  - Not include payments of fixed amounts that are determined prior to the commencement of applicable services or payments of variable amounts based on verifiable quantities multiplied by a predetermined and reasonably fixed rate.

## ***Kansas Department of Health and Environment Oversight***

### *Advisory Committee (New Section 5)*

The bill would create a 15-member Advisory Committee in the Kansas Department of Health and Environment (KDHE), including the KDHE Secretary, who would serve as chairperson. Initial appointments, as follows, would be required to be made on or before July 31, 2021:

- Eight members to be appointed by the Governor:
  - Two members who are practicing pharmacists, at least one of whom supports the use of medical marijuana and at least one of whom is a member of the State Board of Pharmacy;
  - Two members who are practicing physicians, at least one of whom supports the use of medical marijuana and at least one of whom is a member of the BOHA;
  - One employer representative;
  - One agriculture representative;
  - One representative of persons involved in the treatment of alcohol and drug addiction; and
  - One member who engages in academic research on the use or regulation of medical marijuana;
- Two members appointed by the President of the Senate:
  - One law enforcement representative; and
  - One caregiver representative;
- One member, who is a nurse, appointed by the Minority Leader of the Senate;

- Two members appointed by the Speaker of the House of Representatives:
  - One mental health treatment representative; and
  - One patient representative; and
- One employee representative, appointed by the Minority Leader of the House of Representatives.

Except for the KDHE Secretary, each member would serve for a period of two years from the date of appointment, except that members would serve at the pleasure of the appointing authority. The bill would require a vacancy to be filled within 21 days of such vacancy. Each Advisory Committee member would be paid compensation, subsistence allowances, mileage, and other expenses as provided by continuing law.

The Advisory Committee would be required to hold its initial meeting no later than 30 days after the last member is appointed. The Advisory Committee would be allowed to develop and submit to the KDHE Secretary and ACC Director any recommendations related to the Program and implementation and enforcement of the Act.

The Advisory Committee would be required to make recommendations to the KDHE Secretary and ACC Director regarding offenses that would disqualify an applicant from registration or licensure. The Advisory Committee would be required to annually review such offenses and make any subsequent recommendations as deemed necessary.

The bill would require the Advisory Committee to provide a report to the Legislature prior to January 31 of each year detailing any concerns or recommended changes to the Act.

Provisions related to the Advisory Committee would sunset on July 1, 2026.

*Committee Approval of a Qualifying Condition (New Section 5)*

The bill would allow any person to submit a petition to the Advisory Committee requesting:

- A disease or condition to be added as a qualifying medical condition for purposes of the Act; or
- A disease or condition previously recommended for approval by the Committee and adopted by the KDHE Secretary through rules and regulations be removed as a qualifying condition for purposes of the Act.

The bill would require the petition to be in a form and manner as prescribed by the KDHE Secretary and limited to one described disease or condition and could not seek to add or remove a broad category of diseases or conditions, and would be limited to one disease or condition and a description of such disease or condition.

Upon receipt of the petition, the Advisory Committee would be directed to review the petition to determine whether to recommend approve or deny the addition to or removal of the disease or condition from the list of qualifying conditions. The Advisory Committee would be authorized to consolidate the review of petitions for the same or similar diseases or conditions. When making its determination, the Advisory Committee would be required to:

- Consult with one or more experts who specialize in the study of the disease or condition;
- Review any relevant medical or scientific evidence pertaining to the disease or condition;
- Consider whether conventional medical therapies are insufficient to treat or alleviate the disease or condition;

- Review evidence supporting the use of medical marijuana to treat or alleviate the disease or condition; and
- Review any letters of support provided by physicians with knowledge of the disease or condition, including any letter provided by a physician treating the petitioner.

Upon completion of its review, the Advisory Committee would be required to recommend to the KDHE Secretary whether to approve or deny the addition to or removal of the disease or condition from the list of qualifying medical conditions. The bill would require the KDHE Secretary to adopt rules and regulations in accordance with the recommendation.

The bill also would require the Committee, prior to July 1, 2024, and every three years thereafter, to review the list of qualifying medical conditions that have been recommended for approval by the Committee and adopted by the KDHE Secretary through rules and regulations to determine whether the inclusion of each is supported by scientific evidence. If the Committee determines the inclusion of any such disease or condition is no longer supported by such evidence, the bill would require it to recommend the KDHE Secretary remove such disease or condition from the list of qualifying medical conditions.

#### *Application for Patients and Caregivers (New Section 8)*

The bill would require patients seeking to use medical marijuana or caregivers seeking to assist a patient in the use or administration of medical marijuana to apply to KDHE for registration. The bill would require the treating physician or such physician's designee to submit an application on the patient's or caregiver's behalf in a form and manner prescribed by the KDHE Secretary.

The bill would require the application include a statement from the physician certifying that:

- A *bona fide* physician-patient relationship exists between the physician and patient;
- The patient has been diagnosed with a qualifying medical condition;
- The physician or designee has requested from K-TRACS a report of information related to the patient covering at least the preceding 12 months;
- The physician has informed the patient of the risks and benefits of medical marijuana as it pertains to the patient's qualifying medical condition and medical history; and
- The physician has informed the patient that it is the physician's opinion the benefits of medical marijuana outweigh its risks.

The bill would also require the application to include the name or names of the patient and caregiver the application would cover if assistance is sought and the name of a parent or legal guardian who has consented to treatment and will be the patient's caregiver if the patient is a minor.

The bill would require a registered caregiver to be at least 21 years of age, unless the registered caregiver is a parent or legal guardian of a minor patient, in which case the bill would require the caregiver to be at least 18 years of age.

The bill would specify a registered patient may designate one or two registered caregivers, and if the patient is a minor, then a parent or legal guardian would be designated as the caregiver. The bill would limit assistance by caregivers to two patients, unless the KDHE Secretary approves a greater number of registered patients. The bill would further specify a physician who submits an application

on behalf of a patient may not also serve as the patient's registered caregiver.

The bill would require the KDHE Secretary to register and issue an identification card to the patient or caregiver if the application is complete and the required fee has been paid.

*Application Information Confidentiality (New Sections 2 and 8-9)*

The bill would provide that any application information collected by KDHE is confidential and not a public record. The bill would allow KDHE to share information identifying a specific patient with a licensed retail dispensary or any law enforcement agency for the purpose of confirming registration of the patient. The bill would further specify that information that does not identify a person may be released in summary, statistical, or aggregate form. The bill would set a sunset date of July 1, 2026, for the application information confidentiality provisions, unless the Legislature takes action pursuant to continuing law prior to such date.

*Application Fees and Identification Card Requirements (New Sections 8-9)*

The bill would require fees for patient or caregiver registration and renewal to be set by the KDHE Secretary through rules and regulations, in an amount not to exceed:

- \$50 for patient registration;
- \$25 for indigent or veteran patient registration; and
- \$25 for caregiver registration.

The bill would specify registration is valid for a period of one year from the date of issuance and may be renewed by submitting a renewal application and paying the required fee.

The bill would require KDHE to assign a unique 24-character identification number to each registered patient and caregiver when issuing an electronically scannable identification card. Upon scanning such identification card or entering such identification number, the bill would require licensed retail dispensaries to obtain verification by KDHE that the registration is valid.

The bill would define “veteran” to mean a person who:

- Has served in the Army, Navy, Marine Corps, Air Force, Coast Guard, Space Force, any state Air or Army National Guard, or any branch of the U.S. military reserves; and
- Has been separated from the branch of service and the person was honorably discharged or received a general discharge under honorable conditions.

*Patient or Caregiver Violation-Penalty (New Section 12)*

The bill would allow the KDHE Secretary, in addition to other civil or criminal penalties provided by law, to impose a civil penalty or suspend or revoke registration upon a finding the patient or caregiver committed a violation of the Act.

Additionally, the KDHE Secretary would be allowed to impose a civil fine upon a finding that a patient or caregiver submitted fraudulent information or otherwise falsified or misrepresented application information. The bill would allow a fine of up to \$500 for a first offense and could suspend or revoke registration for a second or subsequent offense. The KDHE Secretary would have discretion whether to enforce minor violations and could issue a warning or notice in lieu of other penalties.

The bill would further provide if the KDHE Secretary imposes a penalty and determines there is clear and convincing evidence of a danger of immediate and serious

harm to any person, the KDHE Secretary could place all medical marijuana owned, possessed, or in the custody or control of the registrant under seal. The KDHE Secretary would not be allowed to dispose of the sealed medical marijuana until a final order is issued authorizing such disposition. The bill would specify that during the pendency of an appeal from an order issued by the KDHE Secretary, a court may order the KDHE Secretary to sell the marijuana that is perishable, and any proceeds from such sale would be deposited with the court.

*Recognition of Nonresident Identification Cards  
(New Section 16)*

The bill would provide that a medical marijuana registry identification card, or its equivalent, issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that is verifiable by the jurisdiction of issuance and allows a nonresident patient to possess medical marijuana for medical purposes shall have the same force and effect as an identification card issued pursuant to the Act, if the nonresident patient has not resided in Kansas for more than 180 days.

*Use and Possession of Medical Marijuana by Registrants  
(New Sections 10-11)*

The bill would allow a registered patient who obtains medical marijuana from a licensed retail dispensary to use medical marijuana, possess up to a 30-day supply, and possess any paraphernalia or accessories used to administer medical marijuana. The bill would specify that registered patients may not operate certain vehicles while under the influence of medical marijuana.

The bill would allow a registered caregiver who obtains medical marijuana from a licensed retail dispensary to possess up to a 30-day supply of medical marijuana on behalf of a registered patient under the caregiver's care,

assist a registered patient under the caregiver's care in the use or administration of medical marijuana, and to possess any paraphernalia or accessories used to administer medical marijuana. The bill would require the caregiver to maintain separate inventories if providing care to more than one patient and prohibit a registered caregiver from personally using medical marijuana unless the person is also a registered patient.

*Medical Marijuana Registration Fund (New Section 13)*

The bill would create the Medical Marijuana Registration Fund (Registration Fund) in the State Treasury. The KDHE Secretary would be required to administer the Registration Fund and remit all moneys collected from the payment of all fees and fines imposed by the KDHE Secretary pursuant to the Act, and all other moneys received pursuant to the Act, to the State Treasurer.

The bill would direct the State Treasurer to deposit the entire amount of each remittance in the State Treasury to the credit of the Registration Fund. The bill would allow moneys credited to the Registration Fund to be expended or transferred only in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the KDHE Secretary or the KDHE Secretary's designee.

The bill would specify expenditures from the Registration Fund would be used for the payment or reimbursement of costs related to the regulation and enforcement of the possession and use of medical marijuana by the KDHE Secretary.

*Rules and Regulations (New Section 14)*

The bill would require the KDHE Secretary to adopt rules and regulations to administer the Program and to implement and enforce the Act, after consulting with the Advisory Committee, on or before July 1, 2023.

The bill would list certain topics to be addressed by rules and regulations, including registration, procedures, and eligibility requirements; identification card issuance; renewal schedule, procedures, and fees; maximum possession quantities; forms or use methods of medical marijuana that are attractive to children; and programs to assist indigent or veteran patients.

The bill would specify any maximum supply of medical marijuana that may be purchased or possessed by a patient or caregiver must allow at least 3 ounces of dried, unprocessed medical marijuana or its equivalent as a 30-day supply and allow for exceptions from any such limitation upon submission of a written certification from 2 independent physicians that there are compelling reasons for the patient or caregiver to purchase and possess greater quantities of medical marijuana.

The bill would direct the KDHE Secretary to consider best practices standards and procedures relative to the use and regulation of medical marijuana from other states when adopting rules and regulations.

*Patient and Caregiver Registration Website (New Section 15)*

The bill would require KDHE, on or before July 1, 2023, to make a website available for the public to access information regarding patient and caregiver registration under the Act.

## ***State Board of Healing Arts Oversight***

### *Physician Certification and Renewal (New Section 17)*

The bill would require physicians who seek to recommend treatment with medical marijuana to apply to the BOHA for a certificate authorizing the physician to recommend such treatment. The bill would require the application to be in a form and manner prescribed by the BOHA through rules and regulations. The bill would require the BOHA to grant such certificate if:

- The application is complete and meets the requirements established by the BOHA; and
- The applicant demonstrates they do not have an ownership or investment interest in, or compensation arrangement with, an entity licensed by KDHE or the ACC Director under the provisions of this bill or with an applicant for licensure.

The bill would provide that, pursuant to rules and regulations adopted by the BOHA, certification shall:

- Expire annually unless renewed in the manner prescribed by the BOHA; and
- Be accompanied by an annual fee of up to \$175.

For license renewal, the license holder would be required to certify they continue to meet the certification requirements and have completed at least two hours of continuing medical education (CME) in medical marijuana annually. The bill would specify the required CME must concern treatment with and use of medical marijuana and be approved by the BOHA.

### *Certification Exemption (New Section 17)*

The bill would exempt from the certification requirements physicians who recommend treatment with marijuana, or a derivative, approved through any of the following methods:

- A research protocol;
- A clinical trial;
- An investigational new drug application; or
- An expanded access submission.

Approved treatments would require approval of one of the following entities:

- An institutional review board or equivalent entity;
- The U.S. Food and Drug Administration; or
- The National Institutes of Health or one of its cooperative groups or centers under the U.S. Department of Health and Human Services.

### *Physician Recommendation (New Sections 2 and 17)*

The bill would allow a state-licensed physician who holds a certificate to recommend medical marijuana to recommend such treatment to a patient if:

- The patient has been diagnosed with a qualifying medical condition;
- An ongoing physician-patient relationship has existed for a minimum of six months, or as specified by rules and regulations, unless the patient:
  - Has recently moved from out-of-state, and previously had medical marijuana

recommended by a physician in another state, and the patient's previous physician contacts the new physician to share the patient's medical history and verify the patient has a qualifying medical condition;

- Currently has a recommendation for medical marijuana pursuant to the Act and the patient no longer has a relationship with the recommending physician and the patient's previous physician contacts the new physician to share the patient's medical history and verify the patient has a qualifying medical condition; or the recommending physician is deceased; or
- Is a veteran and has not previously received a recommendation for medical marijuana;
- A review of all past medical records, particularly relating to the medical indication for the THC recommendation, and a physical exam have been performed;
- The recommending physician has a certification to recommend pursuant to the Act; and
- The recommending physician, or physician's designee, reports all medical marijuana recommendations for all patients to K-TRACS in accordance with continuing law.

Additionally, patients who previously had medical marijuana recommended for use by another physician must:

- Have maintained a physician-patient relationship with the new recommending physician for at least six months with inpatient visits or *via* telephonic or electronic means; or

- No longer have the previous physician-patient relationship on account of death or discontinuance of care by the physician.

The bill would specify if a patient is a minor, the physician may recommend such treatment only after obtaining the consent of the patient's parent or other person responsible for providing consent to treatment.

Physicians would not be able to issue a recommendation for themselves or their family members or personally furnish or otherwise dispense medical marijuana.

The bill would require written recommendations to specify any information required by rules and regulations adopted by the BOHA, and such recommendations would be valid for up to 90 days. The bill would allow a physician to renew the recommendation for up to 3 additional periods of 90 days each and would require a physical examination before another recommendation could be issued.

Physicians certified to recommend medical marijuana would also be required to submit an annual report to the BOHA that describes the physician's observations regarding the effectiveness of medical marijuana in treating the physician's patients during the year covered by the report. The reports could not include any information that identifies or would tend to identify a specific patient.

#### *Physician Liability (New Section 17)*

The bill would state a physician who holds a certificate would be immune from civil liability and professional disciplinary action by the BOHA and would not be subject to criminal prosecution for the following:

- Advising a patient, patient representative, or caregiver about the benefits and risks of medical marijuana to treat a qualifying medical condition;

- Recommending a patient use medical marijuana to treat or alleviate a qualifying medical condition; and
- Monitoring a patient's treatment with medical marijuana.

*Rules and Regulations (New Section 18)*

The bill would require the BOHA to adopt rules and regulations to implement and enforce the physician certification and recommendation provisions by July 1, 2022. The bill would require rules and regulations on topics to include:

- The procedures and fees for applying for a certificate to recommend treatment with medical marijuana;
- The conditions for eligibility for such certificate;
- The schedule, fees, and procedures for renewing such certificate;
- The reasons for which a certificate may be suspended or revoked;
- The standards under which a certificate suspension may be lifted;
- The minimum standards of care when recommending treatment with medical marijuana; and
- Signage requirements for retail dispensaries to properly warn pregnant women and anyone with psychiatric or emotional disorders of the adverse effects of marijuana.

The bill would also require the BOHA to approve one or more CME courses that assist physicians holding certificates

to diagnose and treat qualifying medical conditions with marijuana.

### ***Division of Alcohol and Cannabis Control Oversight***

#### *Division Name (New Section 49)*

The bill would rename the Division of Alcoholic Beverage Control to be the Division of Alcohol and Cannabis Control (ACC).

#### *Medical Marijuana Pilot Program (New Section 22)*

The bill would require the ACC Director within 45 days of the effective date of the Act to establish a medical marijuana pilot program (Pilot Program) and select a company for the purpose of cultivating, testing, processing, distributing, and researching medical marijuana.

The bill would require the company to operate the Pilot Program by entering into a public-private partnership with the University of Kansas, Kansas State University, and Pittsburg State University. The bill would require the partnership to develop and provide the ACC Director with recommended best practices for all aspects of the cultivation, processing, dispensing, and research and development of medical marijuana.

The bill would require the ACC Director to issue such company one cultivator license, one laboratory license, one processor license, one distributor license, and three retail dispensary licenses valid for the duration of the partnership.

#### *Compliance and Quality Assurance Testing (New Section 22)*

The bill would require the ACC Director, prior to January 1, 2023, to contract with an operational private laboratory for the purposes of conducting compliance and quality assurance

testing of medical marijuana laboratories, processors, and cultivators licensed in the state in an effort to provide public safety and ensure quality medical marijuana product is available to registered patients.

Any laboratory under contract with the ACC Director for compliance and quality assurance testing would be required to:

- Not conduct any other commercial medical marijuana testing in the state;
- Have a minimum of one year of medical marijuana testing licensure in another state and have contracted for quality assurance testing with another state;
- Not employ, or be owned by any individual:
  - Who has a direct or indirect interest in any licensee in the state;
  - Whose spouse, parent, child, spouse of a child, sibling, or spouse of a sibling has an active application for a license from the ACC Director;
  - Who is a member of the board of directors of a licensee; or
  - Who has a financial interest in any licensee in the state.

The bill would require the contracting laboratory to be accessible and utilized for any medical marijuana testing needs by any regulatory agency within the state, including, but not limited to, KDHE, the Kansas Bureau of Investigation, and the State Fire Marshal.

*Licensee Applications (New Section 26)*

The bill would specify an application for the appropriate license shall be submitted to the ACC Director in such form and manner as prescribed by the ACC Director by any person or entity that seeks to:

- Cultivate medical marijuana;
- Conduct laboratory testing of medical marijuana;
- Process or distribute medical marijuana;
- Dispense medical marijuana at retail; or
- Be an associated employee, key employee, or support employee.

The bill would require a separate license application to be submitted for each location to be operated by the licensee.

The ACC Director would be required to issue a license to an applicant if:

- The required criminal history check demonstrates the applicant is not disqualified from holding a license pursuant to the Act;
- The applicant is not applying for a laboratory license and demonstrates that it does not have an ownership or investment interest in or compensation arrangement with a licensed laboratory or license applicant;
- The applicant is not applying for a laboratory license and demonstrates it does not share any corporate officers or employees with a licensed laboratory or license applicant;

- The applicant demonstrates it will not violate the location restriction provisions of the Act;
- The applicant has submitted a tax clearance certificate issued by KDOR;
- The applicant is applying for a cultivator license and demonstrates the ability to grow medical marijuana in a secure indoor facility and maintain adequate control against the diversion, theft, and loss of all medical marijuana to be grown by the applicant;
- The applicant has submitted an attestation, in a form and manner specified by the ACC Director, that confirms or denies the existence of any foreign financial interests associated with the entity applying for such license, and disclose the identity of such ownership, if applicable; and
- The applicant meets all other licensure eligibility conditions established in rules and regulations and has paid all required fees.

The bill would authorize a board of county commissioners of any county to prohibit a licensee from establishing a facility in the county licensed pursuant to the Act by adoption of a resolution. Any lawfully operating licensee in operation when the resolution is adopted would be permitted to continue operating in such county and would not be denied renewal of licensure based upon the adoption of such a resolution.

The bill would specify at least 15 percent of processor, cultivator, laboratory, distributor, and retail dispensary licenses must be issued to entities that are owned and controlled by U.S. citizens who are Kansas residents and are members of one or more of the the following economically disadvantaged groups:

- Black people or African Americans;
- American Indians;
- Hispanics or Latinos; and
- Asians.

The bill would provide that if no applications or an insufficient number of applications are submitted by entities meeting the Act's license qualifications, licenses shall be issued in accordance with the other provisions of the Act.

*License Disqualifications (New Section 20)*

The bill would prohibit a dispensary license from being issued to:

- A person who:
  - Has not been a resident of Kansas for at least four years immediately preceding the date of application; or
  - Has a beneficial interest in any other dispensary licensed under the Act, except the spouse of a licensee may own and hold a license for another dispensary;
- A copartnership, unless all of the copartners are otherwise qualified to obtain a license;
- A corporation, limited liability company, limited partnership, or limited liability partnership; or
- A trust, if any grantor, beneficiary, or trustee would be ineligible to receive a license under the Act for any reason.

The bill would prohibit a cultivator license from being issued to:

- A corporation, limited liability company, limited partnership, or limited liability partnership, if any officer or director, or any stockholder owning more than 25 percent of the stock of the corporation in the aggregate would be ineligible to receive a cultivator's license;
- A copartnership, unless all copartners have been residents of the state for at least four years preceding the application date and all the members of the copartnership would be eligible to receive a cultivator's license under the Act;
- A trust, if any grantor, beneficiary, or trustee would be ineligible to receive such license under the Act for any reason; or
- An individual who has not been a resident of the state for at least five years immediately preceding the application date.

The bill would provide a distributor license could not be issued to a corporation, limited liability company, limited partnership, or limited liability partnership, if any officer, director, or stockholder of such entity would be ineligible to receive such license for any reason. It would be unlawful for any stockholder of an entity licensed as a distributor to transfer any stock in such entity to any person who would be ineligible as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive such license for any reason, and such transfer would be null and void.

The bill would provide an exception to the transfer nullification conditions if any stockholder owning stock in the entity dies and an heir or devisee to whom stock of the entity descends by descent and distribution or by will is ineligible to receive a distributor's license; the legal representatives of the deceased's estate and the ineligible heir or devisee would have 14 months from the date of the death of the stockholder

to sell the stock to a person eligible to receive a distributor's license. The bill would require any such sale by a legal representative to be made in accordance with the provisions of the probate code.

The bill would provide a further exemption if the stock in any such entity is the subject of any trust and any trustee or beneficiary of the trust who is 18 years of age or older is ineligible to receive a distributor's license; the trustee, within 14 months after the effective date of the trust, would be required to sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees, or trustees fail, refuse, or neglect to sell any stock as required by the Act, the stock would revert to and become the property of the corporation, and the corporation would pay to the legal representatives, heirs, devisees, or trustees the book value of the stock. During the period of 14 months prescribed by the Act, the entity would not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license.

The bill would further prohibit a distributor's license from being issued to:

- A copartnership, unless all of the copartners are otherwise qualified to obtain a license; or
- A trust, if any grantor, beneficiary, or trustee would be ineligible to receive a license under the Act for any reason.

The bill would prohibit a processor license from being issued to a:

- Copartnership, unless all of the copartners are qualified to obtain a license;

- Corporation, limited liability company, limited partnership, or limited liability partnership, unless stockholders owning in the aggregate 75 percent or more of the stock of the entity would be eligible to receive such license and all other stockholders would be eligible to receive such license, except for reason of citizenship or residency; or
- Trust, if any grantor, beneficiary, or trustee would be ineligible to receive a license under the Act for any reason.

#### *License Term (New Section 26)*

Licenses would be valid for a period of:

- One year from the date of issuance to a cultivator, laboratory, processor, and distributor; and
- Two years from the date of issuance to a retail dispensary or any associated employee, key employee, or support employee.

Any license could be renewed if the licensee submits a renewal application and pays the required fee.

#### *License Fees (New Section 32)*

The bill would specify cultivator license fees of:

- \$5,000 for the nonrefundable license application;
- \$20 per plant, for a minimum of 1,000 flowering plants, to be assessed at the time of licensing and each subsequent renewal for the maximum number of flowering medical marijuana plants, based upon a declaration by the applicant, that are cultivated by the licensee in the facility at any given time.

The bill would specify laboratory license fees of:

- \$2,000 for the nonrefundable license application;
- \$18,000 for a laboratory license; and
- \$20,000 for a renewal of a laboratory license.

The bill would specify processor license fees of:

- \$5,000 for the nonrefundable license application; and
- \$40,000 for a processor license and renewal of such license.

The bill would specify distributor license fees of:

- \$5,000 for the nonrefundable license application; and
- \$40,000 for a distributor license and renewal of such license.

The bill would specify dispensary license fees of:

- \$5,000 for the nonrefundable license application; and
- \$40,000 for a dispensary license and renewal of such license.

The bill would specify employee license fees of:

- \$500 for an associated employee license application;
- \$250 for a key employee license application; and
- \$100 for each support employee license application.

### *Licensee Location (New Section 41)*

The bill would specify no licensed cultivator, laboratory, processor, distributor, or dispensary could be located within 1,000 feet of a:

- School;
- Religious organization;
- Public library; or
- Public park.

If a licensee relocates and the new location is within 1,000 feet of a location listed above, the bill would require the ACC Director to revoke the licensee's license.

The bill would allow the ACC Director the discretion not to revoke the license of a licensee which existed at a location prior to the establishment of a listed entity within 1,000 feet of the licensee.

The bill would specify the location restrictions would not apply to research related to marijuana conducted at a postsecondary educational institution, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.

The bill would define the following terms: "public library," "public park," "religious organization," and "school."

### *Criminal History Check (New Section 42)*

The bill would require each applicant for a cultivator, laboratory, processor, distributor, or retail dispensary license to require any owner, director, officer, and any employee or agent of such applicant to be fingerprinted and submit to a state and national criminal history record check.

The ACC Director would be authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and Federal Bureau of Investigation (FBI) for a state and national criminal history record check. The ACC Director would be directed to use the information obtained from fingerprinting and criminal history record checks for purposes of verifying the identification of the applicant and for making a determination of the qualifications of the applicant for licensure. The KBI would be allowed to charge a reasonable fee to the applicant for the fingerprinting and conducting a criminal history record check.

*Failure to Comply (New Section 33)*

The bill would give the ACC Director discretion to refuse to issue or renew a license, or to revoke or suspend a license, if the applicant has:

- Failed to comply with any provision of the Act or any related rules and regulations;
- Falsified or misrepresented any information submitted to the ACC Director in order to obtain a license;
- Failed to adhere to any acknowledgment, verification, or other representation made to the ACC Director when applying for a license; or
- Failed to submit or disclose information requested by the ACC Director.

*Civil Penalty; Relinquishment of Product (New Section 34)*

In addition to or in lieu of any other civil or criminal penalty, the bill would authorize the ACC Director to impose a civil penalty up to \$5,000 for a first offense, or suspend or revoke a licensee's license for a second or subsequent offense, upon a finding the licensee:

- Submitted fraudulent information or otherwise falsified or misrepresented information required to be submitted by the licensee; or
- Cultivated, tested, processed, sold, transferred, or otherwise distributed medical marijuana in violation of the Act.

Upon a finding that a dispensary licensee has knowingly disclosed patient information to any individual, the ACC Director would be required to impose a civil fine of \$5,000 and revoke such licensee's license.

The bill would also allow the ACC Director to require any licensee to submit a sample of medical marijuana, concentrate, or product to a laboratory upon demand.

If the ACC Director suspends, revokes, or refuses to renew any license and determines there is clear and convincing evidence of a danger of immediate and serious harm to any person, the ACC Director could place under seal all medical marijuana owned by or in the possession, custody, or control of the affected license holder.

The bill would not allow the ACC Director to dispose of the sealed medical marijuana until a final order is issued authorizing such disposition. During the pendency of an appeal from any order by the ACC Director, a court would be able to order the sale of the sealed marijuana that is perishable, and the proceeds of such sale would be deposited with the court.

*Medical Marijuana Business Entity Regulation Fund (New Section 35)*

The bill would establish the Medical Marijuana Business Entity Regulation Fund (Business Fund) and would require its administration by the ACC Director. The bill would require remittance of all moneys collected from the payment by

licensed cultivators, laboratories, processors, distributors, retail dispensaries, associated employees, key employees, and support employees of all fees and fines imposed and any other moneys received by or on behalf of the ACC Director to the State Treasurer pursuant to the Act. Upon receipt of each remittance, the State Treasurer would be required to deposit the entire amount in the State Treasury to the credit of the Business Fund. Moneys credited to the Business Fund could be expended or transferred only as provided in the Act. The bill would require expenditures from the Business Fund to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the ACC Director or the ACC Director's designee.

The bill would allow moneys in the Business Fund to be used for the payment or reimbursement of costs related to the regulation and enforcement of the cultivation, testing, distributing, possession, processing, and sale of medical marijuana by the ACC.

#### *Cultivator Licensees (New Section 21)*

The bill would require cultivator licensees to cultivate medical marijuana in a building that is designated by the licensee. A licensee could deliver or sell medical marijuana to one or more licensed processors, distributors, or dispensaries.

A licensee could submit an application to the ACC Director for approval of an expansion of such licensee's cultivation area. The bill would require such application to be submitted in a form and manner prescribed by the ACC Director and to include an expansion plan that includes the following:

- Specifications for the expansion or alteration that demonstrate compliance with all applicable zoning

ordinances, building codes, and any other state and local laws and rules and regulations;

- A proposed timeline for completion of expansion that, if approved, would become a mandatory condition; and
- A history of compliance with the Act and all rules and regulations adopted pursuant to the Act, including a history of enforcement actions and sanctions issued by KDOR or any law enforcement agency against the licensee.

Unless authorized by the Act, a cultivator could not transfer or sell medical marijuana, and a processor could not transfer, sell, or process medical marijuana into a concentrate or product unless samples from each harvest batch or production batch from which that medical marijuana, concentrate, or product was derived have been tested by a laboratory for contaminants and have passed all such tests required by the Act.

The bill would specify a licensed cultivator could transfer medical marijuana that has failed testing for quality control to a licensed processor only for the purposes of decontamination or remediation in accordance with the Act.

The bill would prohibit cultivator licensees from cultivating medical marijuana for personal, family, or household use on any public land.

*Laboratory Licensees (New Sections 23 and 25)*

- The bill would specify a laboratory licensee may:
- Obtain medical marijuana from one or more licensed cultivators, processors, or retail dispensaries; and

- Conduct medical marijuana testing in accordance with rules and regulations adopted by the Secretary of Revenue.

The bill would provide licensure of laboratories would be contingent upon the successful onsite inspection, participation in proficiency testing, and ongoing compliance with the Act.

The bill would require a laboratory to be inspected prior to initial licensure and up to six times annually by an inspector approved by the ACC Director. The ACC Director could enter the licensed premises of a laboratory to conduct investigations and additional inspections when deemed necessary due to a possible violation of the Act.

The bill would require a laboratory licensee to obtain accreditation after January 1, 2022, by a national environmental laboratory accreditation program, the American National Standards Institute-American Society for Quality National Accreditation Board, or another accrediting body.

The bill would require all laboratories in the state to:

- Not be owned by a person who is a direct or indirect beneficial owner of a dispensary, cultivator, processor, or distributor;
- Comply with all applicable local ordinances, including, but not limited to, zoning, occupancy, licensing, and building codes;
- Obtain a separate license for each laboratory; and
- Comply with application requirements of this section and submit any information required by the ACC Director.

The bill would also provide no laboratory in the state could establish policies to prevent the existence of or

appearance of undue commercial, financial, or other influences that diminish, or have the effect of diminishing, the public confidence in, the competency, impartiality, and integrity of the testing processes or results of such laboratory. Such policies would be required to prohibit employees, owners, or agents of a laboratory who participate in any aspect of the analysis and results of a sample from improperly influencing the testing process, manipulating data, or benefiting from any ongoing financial, employment, personal, or business relationship with the licensee that submitted the sample for testing.

The bill would prohibit a laboratory in the state from testing samples for any licensee in which an owner, employee, or agent of the laboratory has any form of ownership or financial interest in the licensee that submitted the sample for testing.

The bill would require a laboratory in the state to promptly provide the ACC Director access to:

- A report of a test and any underlying data that is conducted on a sample at the request of a licensee or registered patient; and
- Laboratory premises and to any material or information requested by the ACC Director to determine compliance with the laboratory provisions of the Act.

The bill would require laboratories in the state to retain all results of laboratory tests conducted on medical marijuana or medical marijuana products for a period of at least two years and to make such results available to the ACC Director upon request.

The bill would require a laboratory licensee to test samples from each harvest batch or product batch, as appropriate, of medical marijuana, concentrate, and product

for each of the following categories of testing, consistent with standards developed by the ACC Director:

- Microbials;
- Mycotoxins;
- Residual solvents;
- Pesticides;
- THC and other cannabinoid potency;
- Terpenoid potency type and concentration;
- Moisture content;
- Homogeneity; and
- Heavy metals.

The bill would specify a laboratory could not accept a test batch that exceeds ten pounds of usable medical marijuana or medical marijuana product except as provided by the bill. For testing purposes, the bill would require:

- A grower to separate each harvest lot of usable marijuana into harvest batches containing no more than 10 pounds, except harvest batches of fresh, uncured medical marijuana or fresh or frozen medical marijuana to be sold to a processor in order to make a concentrate could be separated into batches containing no more than 20 pounds; and
- A processor to separate each medical marijuana production lot into production batches containing no more than ten pounds.

The bill would provide a laboratory may accept samples of medical marijuana, concentrate, or product from a licensee or any entity designated by the Act for testing and research purposes only, including the provision of testing services for samples submitted by a licensee for product development. A laboratory would not be prohibited from obtaining a license under the Act due to such laboratory performing testing and

research on medical marijuana and products for any entity designated under the Act.

The bill would allow a laboratory to accept a sample from an individual person for testing if such person is a:

- Registered patient or caregiver and such person provides the laboratory with the individual's registration identification and a valid photo identification; or
- Participant in an approved clinical or observational study conducted by a research facility.

The bill would allow a laboratory to transfer samples to another laboratory for testing. The bill would require all laboratory reports provided to or by a licensee or to a patient or caregiver to identify the laboratory that actually performed the testing of the sample that is submitted.

The bill would also allow a laboratory to utilize a licensed medical marijuana transporter to transport samples of medical marijuana, concentrates, and product for testing, in accordance with the Act, between the original licensee requesting testing services and the destination laboratory performing testing services.

Further, the bill would allow a laboratory to establish standards, policies, and procedures for laboratory testing procedures pursuant to rules and regulations adopted under the Act.

*Distributor Licensee (New Section 28)*

- The bill would specify a distributor licensee may:
- Purchase medical marijuana wholesale from licensed processors and cultivators;

- Store medical marijuana obtained from such processors as specified in the Act; and
- Deliver, package for final sale, or sell processed medical marijuana to licensed retail dispensaries.

The bill would require distributors to ensure the packaging and labeling requirements established by rules and regulations are met when storing or selling medical marijuana.

#### *Processor Licensees (New Section 27)*

The bill would authorize a processor licensee to:

- Obtain medical marijuana from one or more licensed cultivators;
- Process medical marijuana obtained from a licensed cultivator into a form authorized by the Act; and
- Deliver or sell processed medical marijuana to one or more licensed processors, distributors, or retail dispensaries.

#### *Packaging Requirements (New Section 31)*

When packaging medical marijuana for final retail sale, the bill would require a processor to:

- Package the medical marijuana in accordance with federal child-resistant standards in effect on July 1, 2021;
- Label the medical marijuana packaging with the product's THC and cannabidiol content; and

- Comply with any packaging or labeling requirement established by rules and regulations adopted by the Secretary of Revenue.

*Distributor Licensees (New Section 32)*

The bill would authorize a distributor licensee to:

- Purchase medical marijuana wholesale from licensed processors and cultivators;
- Store medical marijuana obtained from such processors as specified in the Act; and
- Deliver, package for final sale, or sell processed medical marijuana to licensed retail dispensaries.

The bill would require distributors to ensure the packaging and labeling requirement established by rules and regulations are met when storing or selling medical marijuana.

*Retail Dispensary Licensees (New Section 29)*

The bill would allow a dispensary licensee to:

- Obtain medical marijuana from a licensed processor, cultivator, or distributor; and
- Dispense or sell medical marijuana in accordance with the Act;

When dispensing or selling medical marijuana, the bill would require a dispensary licensee to:

- Dispense or sell medical marijuana only to a person who provides the dispensary with a current, valid identification card and only in accordance with a written recommendation issued by a physician;

- Report information required under continuing law and rules and regulations adopted by the State Board of Pharmacy to K-TRACS;
- Ensure the package containing medical marijuana is labeled with the following information:
  - The name and address of the processor that produced the product and the retail dispensary;
  - The name of the patient and caregiver, if any;
  - The name of the physician who recommended such treatment;
  - The directions for use, if any, as recommended by the physician;
  - A health warning as specified by the KDHE Secretary in rules and regulations;
  - The date on which the medical marijuana was dispensed; and
  - The quantity, strength, kind, or form of medical marijuana contained in the package;
- Package the medical marijuana in accordance with federal child-resistant effectiveness standards in effect on July 1, 2021; and
- Dispense or sell medical marijuana in an official tamper-proof Kansas-specific package that is clearly marked and approved by the ACC Director.

The bill would require a dispensary to employ only persons who hold current, valid employee licenses and who have completed the training requirements recommended by the ACC Director and specified in rules and regulations.

The bill would require a dispensary to appoint a pharmacist consultant who is a Kansas-licensed pharmacist and registered pursuant to the Act.

A dispensary would be prohibited from making public any information it collects that identifies, or would tend to identify, any specific patient.

The bill would also require a dispensary to maintain a 9-inch by 18-inch sign that is prominently displayed near the check-out counter and the primary door of entry and exit that includes a warning in accordance with rules and regulations adopted by the BOHA that warns pregnant women and anyone with psychiatric or emotional disorders that marijuana of any type can be dangerous to the user's health.

#### *Dispensary Employee License (New Section 29)*

The bill would require each associated, key, and support employee of a licensed retail dispensary to submit an application for an employee license. A separate application, in such form and manner as prescribed by the ACC Director, would have to be submitted for each such employee.

The ACC Director would be required to issue a license to an applicant if:

- The required criminal history check demonstrates the applicant is not disqualified from holding a license pursuant to the Act; and
- The applicant meets all other licensure eligibility conditions established in rules and regulations and has paid all required fees.

A dispensary employee license would be valid for a period of two years from the date of issuance and could be renewed if the licensee submits a renewal application and pays the required fee.

*Approval of Form or Method of Using Medical Marijuana  
(New Section 31)*

The bill would allow any person to submit a petition to the ACC Director requesting that a form or method of using medical marijuana be approved. The bill would require the petition would be required to be in such form and manner as prescribed by the ACC Director.

Upon receipt of a petition, the ACC Director would be required to review the petition to determine whether to recommend approval of the form or method described in the petition. The ACC Director could consolidate the review of petitions for the same or similar forms or methods and could consult with the Advisory Committee and review any relevant scientific evidence. The ACC Director would be required to recommend to the Secretary of Revenue whether to approve or deny the proposed form or method. The Secretary of Revenue would either approve or deny the proposed form or method, and the decision would be final.

The bill would specify any petition that is denied by the Secretary of Revenue could not be resubmitted until 12 months have elapsed since denial of the petition.

*Seed to Sale Database (New Section 39)*

The ACC Director would be required to establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, testing, processing, distribution, and dispensing. The bill would authorize the ACC Director to contract with a separate entity to establish and maintain all or any portion of the electronic database on behalf of ACC.

The bill would require the database to allow for information regarding medical marijuana to be updated instantaneously. Any licensed cultivator, laboratory, processor, distributor, or retail dispensary would be required

to submit the information to the ACC Director as is determined necessary for maintaining the database.

The ACC Director, any employee of ACC, any entity under contract with the ACC Director, and any employee or agent thereof would be prohibited from making public any information reported to or collected by the ACC Director that identifies, or tends to identify, any specific patient. The bill would require such information to be kept confidential to protect the privacy of the patient, and such confidentiality provisions would expire on July 1, 2026, unless the Legislature reviews and reenacts such provisions prior to July 1, 2026.

*Payment Processing System (New Section 40)*

The bill would allow the ACC Director to establish a payment processing system in cooperation with the State Treasurer. If such system were established, the State Treasurer would be required to create accounts to be used only by registered patients and caregivers at licensed retail dispensaries and by all licensed cultivators, laboratories, processors, and distributors. The system could include record-keeping and accounting functions that identify all parties in transactions involving the purchase and sale of medical marijuana. If established, the bill would require the system to be designed to prevent:

- Revenue from the sale of marijuana going to criminal enterprises, gangs, and cartels;
- The diversion of marijuana from a state where it is legal in some form under that state's law to another state;
- The distribution of marijuana to minors; and
- The use of state-authorized marijuana activity as a cover or pretext for the trafficking of other illegal drugs or for other illegal activity.

The bill would require the information recorded by the system to be fully accessible by KDHE, the ACC Director, and all state and federal law enforcement agencies, including the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN).

*Rules and Regulations (New Section 36)*

The bill would require the ACC Director to propose rules and regulations to administer the Act, and the Secretary of Revenue, after consulting with the Advisory Committee, to adopt rules and regulations to administer the Program and implement and enforce the provisions of the Act by July 1, 2023. The Secretary of Revenue would be required to consider standards and procedures that have been found to be best practices relative to the use and regulation of medical marijuana.

The bill would require the rules and regulations to:

- Establish application procedures and fees for medical marijuana licenses issued by ACC;
- Specify the conditions for eligibility for licensure;
- Establish a license renewal schedule, and renewal procedures;
- Establish standards and procedures for the testing of medical marijuana by a licensed laboratory;
- Establish official packaging requirements that designate the package as Kansas medical marijuana and ensure the packaging is tamper proof;
- Establish requirements for a cultivator to grow medical marijuana in a secure, indoor facility and maintain adequate control against the diversion,

theft, and loss of all medical marijuana to be grown by the applicant; and

- Establish training requirements for employees of retail dispensaries.

The bill would require the ACC Director to propose such rules and regulations as necessary to carry out the intent and purposes of the Act. After the hearing on a proposed rule and regulation has been held, as required by continuing law, the ACC Director would be required to submit the proposed rule and regulation to the Secretary of Revenue. The bill would require the Secretary of Revenue to adopt a rule and regulation the Secretary approves.

#### *Laboratory Rules and Regulations (New Section 24)*

The bill would require the ACC Director to propose rules and regulations, in consultation with the compliance and quality assurance testing laboratory contracted with pursuant to the Act, as necessary to develop acceptable testing and research practices, including, but not limited to, testing, standards, quality control analysis, equipment certification and calibration, and chemical identification and substances used in *bona fide* research methods. After the hearing on a proposed rule and regulation has been held, as required by continuing law, the ACC Director would be required to submit any such proposed rule and regulation to the Secretary of Revenue. If the Secretary of Revenue approves, the rule and regulation would be adopted.

The ACC Director would be required to recommend rules and regulations for laboratory testing performed under the Act concerning:

- The cleanliness and orderliness of a laboratory premises and the location of the laboratory in a secure location;

- The inspection, cleaning, and maintenance of any equipment or utensils used for the analysis of test samples;
- Testing procedures and standards for cannabinoid and terpenoid potency and safe levels of contaminants and appropriate remediation and validation procedures;
- Controlled access areas for storage of medical marijuana and product test samples, waste, and reference standards;
- Records to be retained and computer systems to be utilized by the laboratory;
- The possession, storage, and use by the laboratory of reagents, solutions, and reference standards;
- A certificate of analysis for each lot of reference standard;
- The transport and disposal of unused medical marijuana, medical marijuana products, and waste;
- The mandatory use by a laboratory of an inventory tracking system to ensure all test harvest and production batches or samples containing medical marijuana, concentrate, or products are identified and tracked from the point they are transferred from a licensee or a registered patient or caregiver through the point of transfer, destruction, or disposal. The bill would require the inventory tracking system reporting to include the results of any tests that are conducted;
- The employment of laboratory personnel;
- A written standard operating procedure manual to be maintained and updated by the laboratory;

- The successful participation in a proficiency testing program approved by the ACC Director for each testing required by the bill, in order to obtain and maintain certification;
- The establishment and adherence to a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and the quality of results reported;
- The immediate recall of medical marijuana or products that test above allowable thresholds or are otherwise determined to be unsafe;
- The establishment by the laboratory of a system to document the complete chain of custody for samples from receipt through disposal;
- The establishment by the laboratory of a system to retain and maintain all required records, including business records, and processes to ensure results are reported in a timely and accurate manner; and
- Any other aspect of laboratory testing of medical marijuana or product deemed necessary by the ACC Director.

*State Board of Pharmacy (New Section 37)*

The bill would require the State Board of Pharmacy to adopt rules and regulations on or before July 1, 2022, establishing the requirements for a:

- Dispensary to report to K-TRACS, including but not limited to, the:
  - Methods of transmission;
  - Nationally recognized telecommunications format to be used;
  - Frequency of such reports; and

- Procedures for the maintenance of information submitted to or received from K-TRACS to ensure such information is treated as confidential and is subject to the requirements of continuing law; and
- Pharmacist to register as a pharmacist consultant for a dispensary.

Every September 15, December 15, March 15, and June 15, the State Board of Pharmacy would be required to certify to the Director of Accounts and Reports the amount of moneys expended for operation and maintenance of K-TRACS that is attributable to the Act. Upon receipt of each such certification, or as soon thereafter as moneys are available, the Director of Accounts and Reports would be required to transfer the amount certified from the Business Fund to the State Board of Pharmacy Fee Fund.

*Pharmacist Consultants (New Section 38)*

The bill would require any pharmacist who seeks to operate as a pharmacist consultant for a dispensary to register with the State Board of Pharmacy in accordance with rules and regulations adopted by the Board.

In operating as a pharmacist consultant for a dispensary, the bill would require such pharmacist to:

- Not charge a fee for the consultant services that exceeds one percent of the gross receipts of the dispensary;
- Audit each recommendation for use of medical marijuana and ensure each recommendation is reported to K-TRACS in accordance with continuing law and rules and regulations;
- Develop and provide training to other dispensary employees at least once per year that:

- Establishes guidelines for providing information to registered patients related to risks, benefits, and side effects associated with medical marijuana;
- Explains how to identify the signs and symptoms of substance abuse;
- Establishes guidelines for refusing to provide medical marijuana to an individual who appears to be impaired from abusing medical marijuana; and
- Assists in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;
- Provide oversight for the development and dissemination of:
  - Education materials for qualifying patients and designated caregivers that include information about possible side effects and contraindications of medical marijuana; guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur; a description of the potential effects of differing strengths of medical marijuana strains and products; information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements; techniques for the use of medical marijuana and paraphernalia; and information about different methods, forms, and routes of medical marijuana administration;
  - Systems for documentation by a registered patient or designated caregiver of the symptoms of a registered patient that includes a logbook, rating scale for pain and

- symptoms, and guidelines for a patient's self-assessment; and
- Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
- Be accessible by the dispensary or dispensary agent through:
  - Telephonic means at all times during operating hours; and
  - Telephone or video conference for a patient consultation during operating hours.

### ***Medical Marijuana Advertisements (New Section 19)***

The bill would prohibit direct or indirect cooperative advertising between or among two or more of the following: a cultivator, dispensary, or physician, where such advertising has the purpose or effect of steering or influencing patient or caregiver choice with regard to their selection of a physician, dispensary, or medical marijuana.

The bill would prohibit an advertisement from being disseminated if the submitter of the advertisement has received information that has not been widely publicized in medical literature that the use of the product may cause fatalities or serious harm.

All advertisements for marijuana or marijuana products that make a statement relating to side effects, contraindications, and effectiveness would be required to present a true statement of such information. When applicable, advertisements broadcast through media such as radio, television, other electronic media, or displayed in print or on any sign or billboard, would be required to include such information in the audio or audio and visual parts of the presentation. False or misleading information in any part of

the advertisement could not be corrected by the inclusion of a true statement in another distinct part of the advertisement.

The bill would provide an advertisement is false or otherwise misleading if such advertisement:

- Contains a representation or suggestion that a medical marijuana brand or product is better, more effective, useful in a broader range of conditions or patients, or safer than other drugs or treatments including other medical marijuana products, unless such claim has been demonstrated by substantial evidence or substantial clinical experience;
- Contains favorable information or opinions about a medical marijuana product previously regarded as valid but that have been rendered invalid by contrary and more credible recent information;
- Uses a quote or paraphrase out of context or without citing conflicting information from the same source, to convey a false or misleading idea;
- Uses a study on individuals without a qualifying medical condition without disclosing the subjects were not suffering from a qualifying medical condition;
- Uses data favorable to a medical marijuana product derived from patients treated with a product or dosages different from those approved in Kansas;
- Contains favorable information or conclusions from a study that is inadequate in design, scope, or conduct, to furnish significant support for such information or conclusions; or
- Fails to provide adequate emphasis for the fact that two or more facing pages are part of the same

advertisement when only one page contains information relating to side effects, consequences, and contraindications.

The bill would specify an advertisement shall not contain:

- Any statement that is false or misleading in any material particular or that is otherwise in violation of the Kansas Consumer Protection Act;
- Any statement that falsely disparages a competitor's products;
- Any statement, design, representation, picture, or illustration that:
  - Is obscene or indecent;
  - Encourages or represents the recreational use of marijuana or the use of medical marijuana for a condition other than a qualifying medical condition;
  - Relates to the safety or efficacy of medical marijuana unless supported by substantial evidence or substantial clinical data; or
  - Portrays anyone under the age of 18 or contains the use of a figure, symbol, or language that is customarily associated with anyone under the age of 18;
- Any offer of a prize or award to a registered patient, caregiver, or physician related to the purchase of medical marijuana; or
- Any statement that indicates or implies the product or entity in the advertisement has been approved or endorsed by the KDHE Secretary, ACC Director, the State, or any person or entity associated with the State.

The bill would require any advertisement for medical marijuana to be submitted to the KDHE Secretary at the same time as, or prior to, the dissemination of the advertisement and to include the following additional information:

- A cover letter that provides:
  - A subject line stating “Medical marijuana advertisement review package for a proposed advertisement for [brand name]”;
  - A brief description of the format and expected distribution of the proposed advertisement; and
  - The submitter’s name, title, address, telephone number, fax number, and email address;
- An annotated summary of the proposed advertisement showing every claim being made in the advertisement and the references that support each claim which includes disease or epidemiology information;
- Verification that a person identified in the advertisement as a registered patient or health care practitioner is an actual registered patient or health care practitioner and not a model or actor;
- Verification that an official translation of a foreign language advertisement is accurate; and
- A final copy of the advertisement, including a video where applicable, in an acceptable format.

Any incomplete advertising packages, or packages that fail to follow the submission requirements, would be considered incomplete. If the KDHE Secretary receives an incomplete package, the Secretary would be required to notify the submitter.

The bill would require the KDHE Secretary, within 21 days of receipt, to either approve such advertisement package or notify the submitter of any necessary disclosures or changes. If the KDHE Secretary does not take any action on the package within 21 days, the package would be deemed approved.

The bill would allow the KDHE Secretary to:

- Require a specific disclosure to be made in the advertisement in a clear and conspicuous manner if the KDHE Secretary determines the advertisement would be false or misleading without such a disclosure; or
- Make recommendations with respect to changes to the advertising that are:
  - Necessary to protect the public health, safety, and welfare; or
  - Consistent with dispensing information for the product under review.

The bill would prohibit a dispensary from:

- Advertising medical marijuana brand names or utilizing graphics related to marijuana or paraphernalia on the exterior of the dispensary or the building in which the dispensary is located; and
- Displaying any medical marijuana or paraphernalia so as to be clearly visible from the exterior of the dispensary.

The bill would prohibit the price of medical marijuana from being advertised:

- By a cultivator, processor, or distributor, except that such entities could make a price list available to a dispensary; and

- On any billboard that is located along any interstate highway, federal highway, or state highway.

The bill would prohibit medical marijuana from being advertised on a billboard or similar advertising device that is located on any interstate highway, federal highway, or state highway that crosses the Kansas border within 10 miles of where such highway crosses the state line.

### ***Financial Institutions (New Section 43)***

The bill would provide that a financial institution that provides financial services to any licensed cultivator, laboratory, processor, distributor, or retail dispensary would be exempt from any state criminal law pertaining to persons who provide financial services to a person who possesses, delivers, or manufactures medical marijuana, or medical marijuana-derived products, and would specifically reference certain controlled-substances crimes found in the Kansas Criminal Code, or the attempt, conspiracy, or criminal solicitation of such crime, if such licensee is in compliance with the provisions of the Act and tax laws of the State.

Upon the request of a financial institution, the ACC Director would be required to provide to the financial institution the following information:

- Whether a person with whom the financial institution is seeking to do business is a licensed cultivator, laboratory processor, distributor, or retail dispensary;
- The name of any other business or individual affiliated with the person;
- An unredacted copy of such person's application for a license, and any supporting documentation, that was submitted by the person;

- If applicable, information relating to sales and volume of product sold by the person;
- Whether the person is in compliance with the provisions of this Act; and
- Any past or pending violations of the Act or any rules and regulations adopted pursuant to the Act, and any penalty imposed on the person for such violation.

The bill would allow the ACC Director to charge a financial institution a reasonable fee to cover the administrative cost of providing requested information. The bill would specify information received by a financial institution is confidential. A financial institution would be prohibited from making such information available to any person other than the customer to whom the information applies and any trustee, conservator, guardian, personal representative, or agent of that customer, except as otherwise permitted by state or federal law.

The bill would provide definitions for the terms “financial institution” and “financial services.”

#### ***Marijuana Research (New Section 44)***

The bill would provide that nothing in the Act authorizes the ACC Director to oversee or limit research conducted at a postsecondary educational institution, academic medical center, or private research and development organization that is related to marijuana and is approved by an agency, board, center, department, or institute of the U.S. government, including certain listed federal entities.

## **Crimes**

### *Prohibition on Gifts, Gratuity, Emolument, or Employment (New Section 6)*

The bill would prohibit certain listed individuals, including the secretary of an administering agency, or an officer, employee, or agency of such agencies from soliciting or accepting, directly or indirectly, any gift, gratuity, emolument, or employment (compensation) from any applicant for any license or licensee under the Act, including the applicant or licensee's officers, agents, or employees. The bill would further prohibit applicants or licensees from offering such compensation.

The bill would prohibit such listed individuals from soliciting requests from or recommending, directly or indirectly, to any other such person, the appointment of any individual to any place or position.

The bill would also allow agencies administering the Act to adopt rules and regulations to allow the acceptance of official hospitality, subject to any limits prescribed by such rules and regulations.

The bill would specify violation of the compensation provisions would result in either removal from office or employment. The bill would provide that violation of the compensation provisions is a misdemeanor punishable by a fine of up to \$500, imprisonment of between 60 days and 6 months, or both. The bill would further clarify the Act would not limit a cause of action for bribery, as defined in continuing law.

### *Transportation of Medical Marijuana (New Section 47)*

The bill would create provisions in the Kansas Criminal Code that would prohibit any person from transporting medical marijuana in any vehicle upon a highway or street unless such medical marijuana is in the:

- Original, sealed packaging required by the Act, with an unbroken seal, and any other means of closure has not been removed;
- Locked rear trunk or rear compartment or any locked outside compartment that is not accessible to any person in the vehicle while it is in motion. If any motor vehicle is not equipped with a trunk, then the medical marijuana could be behind the last upright seat or in an area not normally occupied by the driver or a passenger; or
- Exclusive possession of a passenger in a vehicle that is a recreational vehicle, as defined in continuing law, or a bus, as defined in continuing law, who is not in the driving compartment of such vehicle or is in a portion of the vehicle from which the driver is not directly accessible.

Violation of the transportation provisions would be a class C misdemeanor.

### *Storage of Medical Marijuana (New Section 48)*

The bill would create provisions in the Kansas Criminal Code that would make it unlawful to store or otherwise leave medical marijuana where it is readily accessible to a child under the age of 18. Such conduct would be unlawful with no requirement of a culpable mental state.

The bill would specify violation would be a class A person misdemeanor.

The bill would provide a defense to such conduct if:

- Such child is a registered patient pursuant to the Act; and
- Such medical marijuana is not readily accessible to any child under age 18 other than a child who is a registered patient.

The bill would define “readily accessible” to mean the medical marijuana is not stored in a locked container that restricts entry to such container solely to individuals who are over the age of 18 or who are registered patients pursuant to the Act.

#### *Manufacture of a Controlled Substance (Section 64)*

The bill would amend law concerning the crime of manufacture of a controlled substance to specify such provisions would not apply to a cultivator or processor licensed by the ACC Director pursuant to the Act, if such licensee is producing medical marijuana, which is used as authorized by the Act.

#### *Distribution of a Controlled Substance (Section 65)*

The bill would amend law concerning the crime of distribution or possession with intent to distribute a controlled substance to specify such provisions would not apply for medical marijuana if the following persons are otherwise in compliance with the Act:

- A cultivator licensed by the ACC Director pursuant to the Act, or an employee or agent that is growing medical marijuana for the purpose of sale to a licensed processor;
- A processor licensed by the ACC Director pursuant to the Act, or an employee or agent that is

processing medical marijuana for the purpose of sale or distribution to a licensed processor, distributor, or retail dispensary;

- Any distributor licensed by the ACC Director, or any employee or agent, that is storing or distributing medical marijuana for the purpose of wholesale or distribution to a licensed retail dispensary; or
- Any retail dispensary licensed by the ACC Director, or any employee or agent, that is engaging in the sale of medical marijuana.

*Possession of a Controlled Substance (Section 66)*

The bill would amend law concerning possession of a controlled substance to make the crime a nonperson misdemeanor, with a fine of up to \$400, if the person is not a registered patient or caregiver under the Act, is found in possession of up to 1.5 ounces of marijuana, and the person provides a physician recommendation for medical marijuana to treat such person's symptoms.

The bill would specify if a person is found in possession of medical marijuana and is registered or licensed pursuant to the Act, and is authorized to possess such medical marijuana under the Act, the criminal provisions would not apply.

The bill would also remove an affirmative defense relating to possession of a cannabidiol (CBD) treatment preparation by certain persons.

*Possession of Drug Paraphernalia (Section 69)*

The bill would amend law concerning the crime of possession of drug paraphernalia to specify the provisions would not apply to persons who are registered or licensed pursuant to the Act, whose possession of such equipment or material is used solely to produce or for the administration of medical marijuana, pursuant to the Act.

*Distribution or Manufacture of Drug Paraphernalia  
(Section 70)*

The bill would amend law concerning the crime of distribution, possession with intent to distribute, or manufacture of drug paraphernalia to specify the provisions would not apply to persons whose distribution or manufacture is used solely to distribute or produce medical marijuana pursuant to the Act.

*Use of a Communication Facility—Controlled Substances  
(Section 68)*

The bill would amend law concerning the use of a communication facility in relation to certain drug crimes by specifying such provisions would not apply to any person using communication facilities for activities authorized under the Act.

*Possession of Firearm or Ammunition (New Section 50)*

The bill would prohibit a law enforcement officer from enforcing federal criminal law concerning the shipping, transportation, receiving, or possession of a firearm or ammunition that has traveled in foreign or interstate commerce by persons who use a controlled substance, if the controlled substance involved in the violation is medical marijuana, and the person is a registered patient pursuant to the Act.

*Federal Re-Schedule of Marijuana (Sections 56-62, 67, 77-78, and 82)*

If marijuana is re-scheduled from Schedule I of the Federal Controlled Substances Act, the bill would require the KDHE Secretary to certify to the Secretary of State the rescheduling has occurred. Upon receipt of the certification, the Secretary of State would be required to publish notice of the certification in the *Kansas Register*. The bill would provide that after the effective date of the Act, and publication of the notice, certain sections of the Act would be repealed and the following provisions would take effect:

- All references to a physician recommendation would be replaced with terms related to a prescription for medical marijuana; and
- The Kansas Uniform Controlled Substances Act would be amended to move marijuana and tetrahydrocannabinols from Schedule I to Schedule II.

***Non-Discrimination***

*Anatomical Gifts and Organ Transplants (New Section 51)*

The bill would specify a covered entity, solely on the basis that an individual consumes medical marijuana in accordance with the Act, could not:

- Consider such individual ineligible to receive an anatomical gift or organ transplant;
- Deny medical and other services related to organ transplantation, including evaluation, surgery, counseling, and post-transplantation treatment and services;

- Refuse to refer the individual to a transplant center or a related specialist for the purpose of evaluation or receipt of an organ transplant;
- Refuse to place such individual on an organ transplant waiting list; or
- Place such individual at a lower-priority position on an organ transplant waiting list than the position at which such individual would have been placed if not for such individual's consumption of medical marijuana.

The bill would allow a covered entity to consider an individual's consumption of medical marijuana when making treatment or coverage recommendations or decisions, solely to the extent the consumption has been found by a physician, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift. The bill would specify a covered entity would not be required to make a referral or recommendation for or perform a medically inappropriate organ transplant.

The bill would specify the terms "anatomical gift," "covered entity," and "organ transplant" have the same meanings as found in continuing law.

*Child Welfare Proceedings (New Section 52 and Sections 71-72)*

The bill would create a provision in the Revised Kansas Code for the Care of Children that would prohibit the issuance of certain child protection orders if the sole basis for the threat to the child's safety or welfare is that the child resides with an individual who consumes medical marijuana in accordance with the Act, or the child consumes medical marijuana in accordance with the Act.

The bill would amend law concerning proceedings to determine the legal custody, residency, and parenting time of

a child to specify the court could not consider the fact that a parent or child consumes medical marijuana as a patient in accordance with the Act.

The bill would amend law concerning children in need of care (CINC) and the termination of parental rights or appointment of a permanent custodian. The bill would amend a provision that requires a court to consider the use of liquor or certain drugs when determining parental fitness to exclude the use of medical marijuana in accordance with the Act. The bill would further provide the use could not be considered to render the parent unable to care for the ongoing physical, mental, or emotional needs of the child.

### ***Discipline of Medical Professionals***

#### ***Physician Discipline (New Section 53)***

The bill would prohibit the BOHA from revoking, suspending, or limiting a physician's license; publicly censuring a physician; or placing a physician's license under probation due to:

- The physician having:
  - Advised a patient about the possible benefits and risks of using medical marijuana;
  - Advised a patient that using medical marijuana may mitigate the patient's symptoms; or
  - Submitted an application on behalf of a patient or caregiver for registration as a patient or caregiver under the Act; or
- The physician being a registered patient or caregiver pursuant to the Act, possessing or having possessed, or using or having used medical marijuana in accordance with the Act.

*Physician Assistant Discipline (New Section 54)*

The bill would prohibit the BOHA from revoking, suspending, or limiting a physician assistant (PA) license; publicly or privately censuring a PA; or deny an application for a license or for reinstatement of a license upon the grounds:

- The PA has:
  - Advised a patient about the possible benefits and risks of using medical marijuana;
  - Advised a patient that using medical marijuana may mitigate the patient's symptoms; or
- The PA is a registered patient or caregiver pursuant to the Act, possesses or has possessed, or uses or has used medical marijuana in accordance with the Act.

*Advanced Practice Registered Nurse Discipline (Section 75)*

The bill would prohibit the Board of Nursing from denying, revoking, limiting, or suspending the license of any licensee; or publicly or privately censuring any licensee for any actions as a registered patient or caregiver pursuant to the Act, including whether the licensee possesses or has possessed, or uses or has used medical marijuana in accordance with the Act.

The bill would state the Board of Nursing could not deny, revoke, limit, or suspend an advanced practice registered nurse (APRN) license or publicly or privately censure an APRN upon the grounds:

- The APRN has:
  - Advised a patient about the possible benefits and risks of using medical marijuana; or

- Advised a patient that using medical marijuana may mitigate the patient's symptoms; or
- The APRN is a registered patient or caregiver pursuant to the Act, possesses or has possessed, or uses or has used medical marijuana in accordance with the Act.

*Certified Nurse-Midwife Discipline (Section 76)*

The bill would prohibit the BOHA from denying, revoking, limiting, or suspending any license or authorization issued to a certified nurse-midwife, or publicly censuring a certified nurse-midwife, upon the grounds:

- The certified nurse-midwife has:
  - Advised a patient about the possible benefits and risks of using medical marijuana; or
  - Advised a patient that using medical marijuana may mitigate the patient's symptoms; or
- The certified nurse-midwife is a registered patient or caregiver pursuant to the Act, possesses or has possessed, or uses or has used medical marijuana in accordance with the Act.

The bill would also remove an outdated reference to a prior effective date of January 1, 2017, for certain provisions related to certified nurse-midwife licensees.

### ***Licensing Boards (New Section 55)***

The bill would specify any person, board, commission, or similar body that determines the qualifications of individuals for licensure, certification, or registration, could not:

- Require an individual who is a registered patient, pursuant to the Act, to disclose the fact the person is a registered patient; or
- Disqualify an individual for such credentials solely because the individual consumes medical marijuana in accordance with the Act.

The bill would specify such provisions would not apply to the:

- Kansas Commission on Peace Officers' Standards and Training (CPOST);
- Kansas Highway Patrol;
- KDHE;
- BOHA;
- State Board of Pharmacy; or
- ACC.

### ***Employer/Employee Protections***

#### ***Workers' Compensation (Section 73)***

The bill would amend law concerning employer liability for compensation for an injury, disability, or death, when such was contributed to by the employee's use or consumption of marijuana or other substances. The bill would specify in the

case of marijuana or any other form of cannabis, including derivatives, compensation would not be denied if the employee is a registered patient under the Act, the substance was used in accordance with the Act, and there had been no prior incidence of the employee's impairment on the job as a result of the use of such substance within the previous 24 months.

#### *Unemployment Benefits (Section 74)*

The bill would amend law concerning unemployment benefits, which provides that persons who are discharged or suspended due to misconduct, including gross misconduct connected with such person's work, are disqualified from receiving unemployment benefits.

The bill would amend the definition of "misconduct" to specify the term does not include any violation of a duty, obligation, or company rule if:

- The individual is a registered patient pursuant to the Act; and
- The basis for the violation is the possession of an identification card issued pursuant to the Act, or the possession or use of medical marijuana in accordance with the Act.

The bill would specify misconduct includes a violation of a duty, obligation, or company rule, if the individual ingested marijuana in the workplace, worked while under the influence of marijuana, or tested positive for a controlled substance.

The bill would amend the definition of "gross misconduct" to specify the term does not include any conduct of an individual if:

- The individual is a registered patient pursuant to the Act; and

- The basis for the violation is the possession of an identification card issued pursuant to the Act, or the possession or use of medical marijuana in accordance with the Act.

The bill would specify gross misconduct would include any conduct of an individual if the individual ingested marijuana in the workplace, worked while under the influence of marijuana, or tested positive for a controlled substance.

The bill would also amend law that requires applicants and recipients of unemployment benefits who test positive for use of a controlled substance or analog to complete a substance abuse treatment program and a job skills program, to clarify such provisions would not apply to any patient registered pursuant to the Act, for activities authorized by the Act.

*Employer Accommodations and Drug Policies  
(New Section 45)*

The bill would specify the Act would not require an employer to permit or accommodate the use, consumption, possession, transfer, display, distribution, transportation, sale, or growing of marijuana or any conduct otherwise allowed by the Act in any workplace or on the employer's property.

The bill would provide the Act would not prohibit a person, employer, corporation, or any other entity that occupies, owns, or controls a property from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, distribution, transportation, sale, or growing of marijuana on such property.

The bill would state the Act does not require any government medical assistance program, private health insurer, workers' compensation carrier, or self-insured employer providing workers' compensation benefits to

reimburse a person for costs associated with the use of medical marijuana.

Additionally, the bill would state the Act would not affect the ability of an employer to implement policies to promote workplace health and safety by restricting the use of marijuana by employees.

The bill would state the Act would not prohibit an employer from:

- Establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy; or
- Disciplining an employee for a violation of a workplace drug policy or for working while under the influence of marijuana.

The Act would not prevent an employer from, due to a person's violation of a workplace drug policy or because that person was working while under the influence of marijuana, refusing to:

- Hire;
- Discharge;
- Discipline; or
- Otherwise take an adverse employment action against a person with respect to hiring decisions, tenure, terms, conditions, or privileges of employment.

The bill would also state the Act does not prohibit an employer from including in any contract a provision that prohibits the use of marijuana.

***Drug Taxes (Sections 79-80)***

The bill would amend law related to the taxation of marijuana and controlled substances to specify persons in lawful possession of medical marijuana would not be required to pay a drug tax, as is required under continuing law for persons who unlawfully possess marijuana and certain controlled substances.

***County Home Rule (Section 63)***

The bill would amend law concerning county home rule to specify counties may not exempt from or effect changes in the Act, except to restrict the establishment of new dispensary locations in the county by ordinance.

***Severability of the Act (New Section 46)***

The bill would declare the provisions of the Act to be severable. If any part or provision of the Act would be held to be void, invalid, or unconstitutional, the bill would provide that the part or provision would not affect or impair any of the remaining parts or provisions of the Act, and state any such remaining provisions would continue in full force and effect.

***Conforming and Technical Amendments***

The bill would make conforming amendments to carry out the provisions of the bill and technical amendments to ensure consistency in statutory phrasing.

## **Background**

The House Committee on Federal and State Affairs amended HB 2184 (pertaining to medical marijuana). The House Committee then removed the contents of SB 158 and inserted the amended provisions of HB 2184 into SB 158 and recommended a substitute bill.

SB 158, as amended by the Senate Committee on Transportation, would have amended and created law prohibiting a person providing towing services from towing a vehicle to a location outside of Kansas without consent. These provisions were enacted in SB 36.

Background information for SB 158 is contained in the supplemental note for that version of the bill.

### ***HB 2184 (Medical Marijuana)***

HB 2184 was introduced by the House Committee on Federal and State Affairs at the request of Representative Miller.

#### *House Committee on Federal and State Affairs*

The House Committee held hearings on February 24 and 25, 2021. **Proponent** testimony was provided by former Representative Willie Dove; representatives of Doctors for Cannabis Regulation, Frontier Peace Advisors, Green Healthcare Solutions Kansas, Kansas Cannabis Business Association, Kansas Cannabis Industry Association, Kansas Cannabis Patients Advocates, Kansas Heritage Farms, the Kansas Chapter of the National Organization for the Reform of Marijuana Laws, and Bleeding Kansas Advocates; and six private citizens.

Written-only **proponent** testimony was provided by representatives of Americans for Safe Access, CMR Consulting, Doctors for Cannabis Regulation, Kansans for

Hemp, Kansas Cannabis Coalition, Kansas Cannabis Patient Association, Kansas Nurses for Medical Cannabis, Planted Association of Kansas, and Samson Medicinal LLC; and by 24 private citizens.

**Opponent** testimony was provided by Representative Eric Smith and by representatives of American Academy of Pediatrics Kansas Chapter, Kansas Association of Chiefs of Police, KBI, Kansas Medical Society, Kansas Peace Officers' Association, and Kansas Sheriffs Association. Written-only **opponent** testimony was provided by a representative of the Kansas Narcotics Officers Association and by a private citizen.

Neutral testimony was provided by representatives of BOHA, Division of Alcoholic Beverage Control (ABC), Kansas Chamber of Commerce, KDHE, League of Kansas Municipalities, and the State Board of Pharmacy. Written-only neutral testimony was provided by representatives of Kansas Department of Agriculture, Kansas Highway Patrol, Kansas Self-Insurers Association, and the Prairie Band Potawatomi Nation.

On March 25 and 29, 2021, the House Committee amended HB 2184 to:

- Modify the list of qualifying medical conditions;
- Change the regulatory authority for laboratory and cultivator licensees to be under the administration of the ABC Director;
- Amend the maximum supply of medical marijuana a patient or caregiver could possess;
- Clarify physician-patient relationships;
- Insert advertisement regulations;
- Clarify cultivation areas;

- Insert laboratory testing requirements;
- Amend licensing fees and background check provisions;
- Insert and clarify packaging and sealing requirements;
- Insert provisions concerning transportation of medical marijuana by patients;
- Insert provisions concerning pharmacist-consultants;
- Insert K-TRACS reporting requirements
- Insert provisions related to employer drug policies; and
- Insert provisions concerning who could obtain a license.

On March 29, 2021, the House Committee inserted the contents of HB 2184, as amended, into SB 158 and recommended a substitute bill, House Sub. for SB 158, be passed. [*Note:* The provisions of SB 158, as amended by the Senate Committee on Transportation, were not retained in the House substitute bill, but were enacted in SB 36.]

On April 6, 2021, House Sub. for SB 158 was withdrawn from the House Calendar and referred back to the House Committee. On May 4, 2021, the House Committee amended the bill to:

- Amend advisory committee appointment length and functions;
- Require patient identification be scannable;
- Amend provisions concerning the required patient-physician relationship;

- Modify advertisement regulations;
- Modify license fee structures;
- Insert provisions concerning disclosure of foreign financial interests;
- Amend provisions concerning submission of qualifying condition petitions;
- Clarify required cultivator security;
- Insert provisions concerning storage of medical marijuana products;
- Rename the ABC as the “Division of Alcohol and Cannabis Control”;
- Insert provisions concerning enforcement of federal firearms law;
- Insert provisions that would address future re-scheduling of marijuana by Congress;
- Clarify payment processing system provisions; and
- Insert additional definitions.

***House Committee of the Whole***

On May 6, 2021, the House Committee of the Whole amended the bill to:

- Add lupus to the list of qualifying conditions;
- Require establishment of a pilot program;
- Require dispensaries to display signs concerning potential health hazards for pregnant women and persons with certain psychiatric conditions;

- Allow counties to prohibit licensed facilities from being established within the county;
- Allow qualifying medical conditions to be removed by the Committee and require review of the listing of such conditions every three years;
- Allow civil penalties for patient or caregiver violations of the Act; and
- Make technical amendments.

### **Fiscal Information**

Information from the fiscal note prepared by the Division of the Budget on HB 2184, as introduced, is below. A fiscal note on the substitute bill was not available at the time the House Committee took action on House Sub. for SB 158.

### ***Kansas Department of Revenue***

KDOR indicates the Medical Marijuana Business Entity Regulation Fund would be administered by ABC. This fund would include moneys collected from all fees and fines paid by the processors, distributors, and retail dispensaries. To calculate the estimate, ABC used the maximum amount for fees stated in the bill. The bill provides that fees are allowed “up to” a certain maximum amount. ABC also notes it used processor, distributor, and retail dispensary counts that were in the upper range of its estimate. ABC estimates the license fees paid for FY 2023 would be \$8.1 million and for FY 2024 would be \$14.6 million based upon the count of each type of license.

KDOR also estimates the sales tax revenue would be \$1.4 million for FY 2023 and \$2.84 million for FY 2024. Of these amounts, \$1.2 million would be deposited into the State General Fund (SGF) and \$0.2 million in the State Highway Fund for FY 2023. For FY 2024, the deposit into the SGF

would be \$2.38 million and the deposit into the State Highway Fund would be \$0.5 million.

KDOR estimates the administrative fiscal effect on expenditures would be an increase of \$3.7 million from the Medical Marijuana Business Entity Regulation Fund. These expenditures would include \$10,500 for information technology and \$3.7 million for salary and wage expenditures for 17.0 new FTE positions, contractual services, and other costs.

### ***Kansas Department of Agriculture***

The Kansas Department of Agriculture indicates the Medical Marijuana Cultivation Regulation Fund would include moneys collected from the payment of all fees. For the estimate, the agency used the maximum amount for fees as stated in the bill. The estimated number of applications and licenses was projected based upon the current program in Missouri and converted based upon the population difference between the two states. According to the Missouri data, 22,706 individuals required medical marijuana in 2019. Applying a population conversion between the two states yielded an estimate of approximately 12,350 individuals in Kansas who would require medical marijuana.

At a rate of 0.5 pound per year per person and 0.6 pounds per square foot grown, a total space of a little over 65,000 square feet would be necessary to grow the required crop. It is assumed that some applications would be denied in order to meet the necessary square footage demand and, as a result, it is estimated that only five applicants in the Cultivator 2 category would be licensed, in addition to two in the Cultivator 1 category.

The agency states it is uncertain of the number of labs necessary to complete medical marijuana testing, but for seven total licenses, one lab should be sufficient. Based on estimates of each type of licensee and application fee paid

during the first year of the program, KDA's estimate for the Medical Marijuana Cultivation Regulation Fund would result in an increase in revenue of \$570,000 to be deposited in the Medical Marijuana Cultivation Regulation Fund. However, the revenue would be offset by the expenses incurred by KDA, which estimates that the fiscal effect on expenditures would be an increase of \$570,000 for FY 2022, which would include 1.0 FTE in the position in the lab and 1.0 FTE position in the program dealing with cultivation of medical marijuana (\$150,000); lab equipment (\$250,000); information technology costs (\$50,000); vehicle costs (\$41,000); administration costs (\$30,000); and other costs (\$49,000). The agency assumes the revenue would continue over time and expenses could be reduced after the first year for one-time expenditures.

***Kansas Department of Health and Environment***

KDHE indicates enactment of the bill would have no fiscal effect on revenue for FY 2022, but the bill would increase revenue by \$719,719 in FY 2023, \$1.4 million in FY 2024, and \$2.9 million in FY 2025, which would be deposited into the Medical Marijuana Registration Fund. However, the revenue would not be enough to fully fund program costs. As a result, KDHE estimates the bill would require additional expenditures from the SGF for 7.75 FTE positions, with a total cost of \$150,715 in FY 2021; 12.5 FTE positions with a total cost of \$5.0 million for FY 2022; and 20.0 FTE positions with a total cost of \$3.4 million for FY 2023.

***State Board of Healing Arts***

BOHA indicates enactment of the bill would require the agency to create a new type of certificate for medical professionals. The agency assumes many, if not all, medical professionals would apply for this certification. The agency would need \$46,610 for additional salary and fringe benefit

and other expenses for a part-time paralegal position for FY 2022.

### ***Office of State Treasurer***

The Office of State Treasurer indicates enactment of the bill would increase salary and fringe benefit expenditures by \$156,000 for 2.0 FTE programmer positions to support the functions of the closed-loop payment processing system and by \$114,750 for 1.0 FTE general counsel position for FY 2022. The Office is unable to estimate how many accounts would be utilized nor how many transactions may occur. However, previous research related to similar transactional accounts indicated each account would have a monthly maintenance fee estimated at \$4 per account per month. This amount could increase or decrease depending upon the total number of transactions that occur per account each month.

### ***Kansas Bureau of Investigation***

KBI indicates enactment of the bill would require the KBI Forensic Laboratory to develop additional capacity. KBI does not have validation methods to quantitate above 0.03 percent THC. New methods and procedures would need to be validated. KBI anticipates an increase in quantitative requests to the laboratory requiring additional specialized equipment and the need for operational redundancy. To gain this capacity, specialized analytical equipment and supplies would be required. The KBI estimates \$182,718 from the SGF would be needed in FY 2022, including \$15,547 for consumable costs and \$167,171 for capital costs. Any additional revenue received from the state and national criminal history record check requests sent to the KBI would be offset by expenditures related to staffing for and maintenance of required information technology systems and repositories necessary for the maintenance and dissemination of criminal history record information.

***Office of Judicial Administration, State Board of  
Pharmacy, and the League of Kansas Municipalities***

The Office of Judicial Administration, the State Board of Pharmacy, and the League of Kansas Municipalities indicate enactment of the bill would have a fiscal effect on expenditures for each entity; however, they are unable to determine the amount.

***Office of the Attorney General and Department of  
Corrections***

The Office of the Attorney General and the Department of Corrections indicate enactment of the bill would have no fiscal effect on the operations of their respective agencies.

***Fiscal Effect***

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Medical marijuana; Alcoholic Beverage Control; Department of Health and Environment; Board of Healing Arts; Board of Nursing; State Board of Pharmacy; Department of Revenue; dispensary; cultivator; processor; distributor; laboratory; patient; caregiver