

STATE OF KANSAS

---

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **House Substitute for SB 158**, as amended by House Committee, on page 1, by striking all in lines 22 through 36;

By striking all on pages 2 through 121 and inserting:

"New Section 1. (a) False representation of medical marijuana information is knowingly providing false information or documentation to a law enforcement officer:

(1) With the intent to cause such law enforcement officer to believe the person qualifies for the affirmative defense to possession of marijuana described in K.S.A. 2020 Supp. 21-5706, and amendments thereto; and

(2) that causes such law enforcement officer to take any action related to the person that the law enforcement officer otherwise would not have taken if the false information or documentation was not provided to the law enforcement officer.

(b) False representation of medical marijuana information is a severity level 8, nonperson felony.

(c) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 2020 Supp. 21-5706 is hereby amended to read as follows: 21-5706. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.

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

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

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

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

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

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

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

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

(c) (1) Violation of subsection (a) is a drug severity level 5 felony.

(2) Except as provided in subsection (c)(3):

(A) Violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subparagraph (B); and

(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof.

(3) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and

amendments thereto, violation of subsection (b) is a:

(A) Class B nonperson misdemeanor, except as provided in subparagraphs (B) and (C);

(B) class A nonperson misdemeanor if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and

(C) drug severity level 5 felony if that person has two or more prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

(d) It shall be an affirmative defense to prosecution under this section arising out of a person's possession of any ~~cannabidiol treatment preparation~~ medical marijuana, as defined in K.S.A. 2020 Supp. 65-6235, and amendments thereto, if the person:

(1) Has a debilitating medical condition, as defined in K.S.A. 2020 Supp. 65-6235, and amendments thereto, is a caregiver, as defined in K.S.A. 2020 Supp. 65-6235, and amendments thereto, for a person who has such debilitating medical condition or is the parent or guardian of a minor child who has such debilitating medical condition;

(2) is possessing a ~~cannabidiol treatment preparation, as defined in K.S.A. 2020 Supp. 65-6235, and amendments thereto~~, medical marijuana that is being used to treat such debilitating medical condition; and

(3) has possession of ~~a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:~~

(A) ~~Shall be shown to a law enforcement officer on such officer's request;~~

(B) ~~is dated within the preceding 15 months and signed by the physician licensed to~~

~~practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;~~

~~(C) is on such physician's letterhead; and~~

~~(D) identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition not more than 14 grams of medical marijuana or a day's supply for one person unless:~~

~~(A) Such person is in transit to the place of residence of such person with such debilitating medical condition; or~~

~~(B) such marijuana is in a secure location within the residence of such person with such debilitating medical condition or the caregiver for such person.~~

~~(e) If a law enforcement officer has reason to believe a person asserting an affirmative defense pursuant to subsection (d) has committed a misdemeanor violation of this section, such officer may issue such person a notice to appear, as defined in K.S.A. 22-2202, and amendments thereto.~~

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

Sec. 3. K.S.A. 2020 Supp. 22-2202 is hereby amended to read as follows: 22-2202. (a) "Appellate court" means the supreme court or court of appeals, depending on the context in which the term is used and the respective jurisdiction of those courts over appeals in criminal cases, as provided in K.S.A. 22-3601, and amendments thereto.

(b) "Appearance bond" means an agreement, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement.

(c) "Arraignment" means the formal act of calling the defendant before a court having

jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty.

(d) "Arrest" means the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of a notice to appear is not an arrest.

(e) "Bail" means the security given for the purpose of insuring compliance with the terms of an appearance bond.

(f) "Bind over" means require a defendant to appear and answer before a district judge having jurisdiction to try the defendant for the felony with which the defendant is charged.

(g) "Charge" means a written statement presented to a court accusing a person of the commission of a crime and includes a complaint, information or indictment.

(h) "Complaint" means a written statement under oath of the essential facts constituting a crime, except that the following shall be deemed a valid complaint if it is signed by the law enforcement officer:

(1) A citation or notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106, and amendments thereto, ~~or;~~

(2) a citation or notice to appear issued pursuant to and in compliance with K.S.A. 32-1049, and amendments thereto, ~~shall be deemed a valid complaint if it is signed by the law enforcement officer;~~ or

(3) a notice to appear issued by a law enforcement officer pursuant to K.S.A. 22-2408, and amendments thereto, for a violation of K.S.A. 2020 Supp. 21-5706, and amendments thereto, when the substance involved is marijuana.

(i) "Custody" means the restraint of a person pursuant to an arrest or the order of a court

or magistrate.

(j) "Detention" means the temporary restraint of a person by a law enforcement officer.

(k) "Indictment" means a written statement, presented by a grand jury to a court, ~~which~~ that charges the commission of a crime.

(l) "Information" means a verified written statement signed by a county attorney or other authorized representative of the state of Kansas presented to a court, ~~which~~ that charges the commission of a crime. An information verified upon information and belief by the county attorney or other authorized representative of the state of Kansas shall be sufficient.

(m) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, community corrections officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.

(n) "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes justices of the supreme court, judges of the court of appeals and judges of district courts.

(o) "Notice to appear" means a written request, issued by a law enforcement officer, that a person appear before a designated court at a stated time and place.

(p) "Preliminary examination" means a hearing before a magistrate on a complaint or information to determine if a felony has been committed and if there is probable cause to believe that the person charged committed it.

(q) "Prosecuting attorney" means any attorney who is authorized by law to appear for and on behalf of the state of Kansas in a criminal case, and includes the attorney general, an assistant attorney general, the county or district attorney, an assistant county or district attorney and any special prosecutor whose appearance is approved by the court. In the case of prosecution for violation of a city ordinance, also, "prosecuting attorney" means the city attorney or any assistant city attorney.

(r) "Search warrant" means a written order made by a magistrate directed to a law enforcement officer commanding the officer to search the premises described in the search warrant and to seize property described or identified in the search warrant.

(s) "Summons" means a written order issued by a magistrate directing that a person appear before a designated court at a stated time and place and answer to a charge pending against the person.

(t) "Warrant" means a written order made by a magistrate directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

Sec. 4. K.S.A. 2020 Supp. 65-6235 is hereby amended to read as follows: 65-6235. (a) This section shall be known and may be cited as Claire and Lola's law.

(b) As used in this section and K.S.A. 2020 Supp. 21-5706, and amendments thereto:

(1) ~~"Cannabidiol treatment preparation" means an oil containing cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than 5% relative to the cannabidiol concentration in the preparation, verified through testing by a third-party, independent laboratory~~  
"Caregiver" means a person who assists a person with a debilitating medical condition in

administering medical marijuana because of physical or mental challenges associated with such condition that impair the person with such condition from caring for oneself.

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

(A) A disease that has been diagnosed by a physician as likely to cause death within three years;

(B) multiple sclerosis or other severe neurologic disease that impairs motor or cognitive function;

(C) amyotrophic lateral sclerosis;

(D) progressive dementia, including Alzheimer's disease;

(E) Parkinson's disease;

(F) acquired immune deficiency syndrome;

(G) severe epilepsy, including childhood epilepsy; or

(H) a condition for which the patient is receiving medical treatment within the immediately preceding two months that negatively damages appetite and causes severe weight loss, including, but not limited to, chemotherapy and severe gastric disease.

(3) ~~"Tetrahydrocannabinol concentration" means the combined percentage of tetrahydrocannabinol and its optical isomers, their salts and acids and salts of their acids, reported as free tetrahydrocannabinol on a percent by weight basis.~~

~~(4) "Third-party, independent laboratory" means an organization:~~

~~(A) That is accredited to ISO/IEC 17025 of the international organization for standardization and the international electrotechnical commission by an accreditation body that~~



~~is a signatory of a multilateral recognition arrangement with the international accreditation forum, international laboratory accreditation cooperation or other similar body;~~

~~(B) whose scope of accreditation includes testing for cannabinoid potency; and~~

~~(C) that is not affiliated with the producer of the item being tested "Medical marijuana" means marijuana that is cultivated, processed, tested, dispensed, possessed or used for a medical purpose.~~

(4) "Physician" means an individual licensed to practice medicine and surgery in this state and who is certified by the board of healing arts to recommend treatment with medical marijuana.

(c) No agency of this state or political subdivision thereof shall initiate proceedings to remove a child from the home of the child's parent or guardian or initiate any child protection action or proceeding based solely upon the parent's or the child's possession or use of cannabidiol treatment preparation in accordance with the provisions of K.S.A. 2020 Supp. 21-5706(d), and amendments thereto.

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

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

Sec. 5. K.S.A. 2020 Supp. 21-5706, 22-2202 and 65-6235 are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; by striking all in lines 2 through 19 and inserting "medical marijuana; creating an affirmative defense to the crime of possession of a controlled substance for medical marijuana in certain circumstances; creating the crime of false representation of medical marijuana information; amending K.S.A. 2020 Supp. 21-5706, 22-2202 and 65-6235 and repealing the existing section."

---

\_\_\_\_\_ District.