

May 10, 2024

The Honorable Mike Thompson, Chairperson
Senate Committee on Federal and State Affairs
300 SW 10th Avenue, Room 144-S
Topeka, Kansas 66612

Dear Senator Thompson:

SUBJECT: Fiscal Note for SB 558 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 558 is respectfully submitted to your committee.

SB 558 would enact the Kansas Medical Cannabis Act and would declare the Act was enacted pursuant to the police power of the state under the 10th Amendment of the United States Constitution to protect the health of its citizens. The use of medical cannabis would be allowed as specified and outlined for certain qualifying medical conditions, which would be listed in the bill. The bill would also make definitions for all terms used throughout the Act and would specify that the Secretary of Health and Environment (KDHE), the Board of Healing Arts, the Board of Nursing, and the Director of the Division of Alcoholic Beverage Control (ABC) would be required to administer the provisions of the bill. Actions taken under provisions of the bill would be required to be in accordance with the Kansas Administrative Procedure Act and the Kansas Judicial Review Act.

The bill would create the Kansas Medical Cannabis Advisory Board, which would consist of 24 members as outlined in the bill. The Board would meet as required in the Act, carry out responsibilities as detailed, and would advise the agencies charged with administration of the Act on the adoption of rules and regulations. The Board would be required to prepare and submit a report to the Legislature each year, beginning in 2025. KDHE would be required to develop a website for the Board and applications for identification cards would be accepted beginning January 1, 2025. Medical cannabis patients and caregivers would be required to apply to KDHE for an identification card and pay all required fees, which could be waived if certain criteria were met. These provisions would include a sunset of July 1, 2029, unless reenacted by the Legislature. Physicians or physician assistants seeking to recommend treatment with medical cannabis would be required to obtain a certificate from the Board of Healing Arts to authorize such treatment. The bill would detail exceptions to this requirement. Advance practice registered nurses seeking to

recommend treatment would apply to the Board of Nursing for a certificate to authorize the treatment.

Those seeking to cultivate or process medical cannabis or to operate a laboratory, retail store, disposal facility, or educational research facility would be required to meet all requirements outlined in the bill and pay the fees for the applicable licensure. Applications would be made to the Director of the Division of ABC. The bill would set limits on the number of each type of licenses per congressional district and would detail all requirements and prohibitions for each type of facility. There would be a lottery system established if there were more applicants than what was allowed in each district.

The bill would create several related funds. All fees and fines imposed by KDHE under the Act, which would be those related to patient and caregiver registration, would be deposited to the Medical Cannabis Registration Fund to be used for costs related to the regulation and enforcement of the possession and use of medical cannabis by KDHE. All fees and fines imposed by the Director, which would be those related to facility licensure, would be deposited to the Medical Cannabis Regulation Fund to be used for costs related to the regulation and enforcement of the cultivation, possession, processing, and sale of medical cannabis by the Kansas Medical Cannabis Agency. The bill would require a retail tax of 4.0 percent on the gross receipts received from the sale of medical cannabis which would be deposited to the Medical Cannabis Revenues Fund. Expenditures from the fund would be limited to purposes of medical cannabis research, public health programs, mental health programs, telemedicine programs, drug and alcohol abuse and prevention programs, elementary and secondary school health programs, broadband or high-speed internet connectivity initiatives, and expenditures from the State Water Plan Fund. The bill would require each year that the first \$4.0 million from the fund be transferred to the Department of Commerce for the expansion of broadband internet connectivity, the next \$4.0 million be transferred to the Kansas Department for Aging and Disability Services for Community Crisis Stabilization Centers, and the next \$4.0 million be transferred to the State Water Plan Fund. There would also be a Medical Cannabis Refund Fund to be held by the State Treasurer to refund overpayments of the tax levied and collected pursuant to the Act.

The bill would also enact the Kansas Cannabidiol Regulation Act for the regulation of the retail sale of cannabidiol products. The Director of the Division of ABC would issue licenses. The bill would detail the requirements of applicants for licensure, including application and license fees. Requirements related to the sale and packaging of cannabidiol would be detailed and the bill would specify penalties for violations. All fees and fines related to the sale of cannabidiol would be deposited to the State General Fund.

The bill would detail all other requirements, restrictions, exceptions, and prohibitions related to all aspects of medical cannabis and cannabidiol not otherwise detailed above and would specify the penalties for violations of provisions of the Act. In addition, the bill would amend and update related statutes and would include reciprocity, severability, and immunity provisions.

According to the Kansas Department of Revenue, enactment of SB 558 would require administrative expenditures totaling approximately \$8.9 million in FY 2025 and \$3.9 million in FY 2026 and ongoing. FY 2025 would include \$8.1 million for the Division of ABC for an

additional 30.00 FTE positions to fulfill requirements in the bill for the regulation of medical cannabis. Implementation would require a new tax type to be installed and a formal project would need to be entered with the Kansas Information Security Office. Other administrative costs related to quality assurance, other agency support staff, IT tax applications, and other IT systems would total \$721,966. For FY 2026 after the initial system was developed and fully operating, ABC estimates costs would be approximately \$3.6 million. Other administrative support would total \$249,842 as most initial IT costs would not be ongoing.

The agency estimates total revenue from the excise tax to be \$270,000 for three months in FY 2025 and \$1.1 million for FY 2026. This estimate is based on the assumption that each patient would spend an average of \$1,800 per year. The agency notes that revenue from the tax would be deposited in the Medical Cannabis Revenues Fund with up to \$12.0 million annually transferred out to other programs as required in the bill. Utilizing the maximum allowed fees and considering the caps on certain types of facilities, the agency anticipates revenue totaling \$315,000 for both FY 2025 and FY 2026 to be deposited into the newly created Medical Cannabis Business Regulation Fund for fees related to licensing of cultivators, laboratories, processors, disposal facilities, and retail dispensaries. State General Fund revenue related to licensure of cannabidiol retailers is estimated at \$3,750 in both fiscal years.

KDHE estimates that enactment of SB 558 would increase expenditures by \$2.5 million in FY 2025 and \$2.7 million in FY 2026 and ongoing. For FY 2025 the estimate includes \$520,220 for salaries and wages for an additional 20.00 FTE positions, including a Program Manager, six processors and a supervisor, six customer service representatives and a supervisor, two trainers, and several additional support staff. Most of these positions would not be anticipated for the full fiscal year. A total of \$1.5 million is estimated for the development of a new system for issuance of the identification cards and \$150,000 is estimated for website costs. Costs related to the Advisory Board are estimated to be \$4,800 and the agency estimates other administrative costs for the program at \$303,146. Similar costs are estimated for FY 2026, although additional staffing is anticipated as the program grows and fully operates for the entire fiscal year. Salary and wages are estimated at \$1.6 million for 24.5 FTE positions. The ongoing costs for the identification card system are estimated at \$750,000 per year and ongoing maintenance for the website is \$48,000. Estimated Advisory Board costs remain at \$4,800 and other administrative costs are estimated at \$321,001. The agency does anticipate revenue totaling \$345,277 from the identification card fees beginning in FY 2026. This is a 0.5 percent participation rate and is based on rates seen in other states and would increase in outyears as program participation grew.

The Kansas Board of Healing Arts estimates that enactment of SB 558 would create additional expenditures totaling \$141,018, all from the Healing Arts Fee Fund. The agency would be required to draft rules and regulations related to the applications for the certificate to recommend medical cannabis, issuance and renewal of the certificate, the period of time the certificate is valid, and suspension and revocation of the certificate to recommend medical cannabis. Additionally, agency staff would need to be trained on how to implement the program, resulting in an increased workload for the licensing department. The agency anticipates that once the program is up and running, implementation would likely result in additional actionable complaints for the agency. The agency estimates an additional 2.00 FTE positions would be necessary to implement the program, including one paralegal in the General Counsel Department

for a total of \$79,142 and one Licensing Analyst in the Licensing Department for a total of \$55,876. Start-up costs related to the positions are estimated at \$6,000 and would include, computers, office equipment and software. While additional revenue related to the new certificate is anticipated, the agency states the amount of the certificate fee is unknown at this time as it is to be set by the Advisory Board. Additionally, the agency states there is no mechanism to estimate how many physicians and physician assistants would seek to have a certificate issued.

The State Treasurer's Office states that enactment of the bill would require the agency to modify accounting procedures with respect to the Medical Cannabis Registration Fund, the Medical Cannabis Regulation Fund, the Medical Cannabis Revenues Fund, and the Medical Cannabis Refund Fund created in the Act, but any related additional workload could be accommodated within existing agency resources. The Kansas Department of Commerce, Kansas Department for Aging and Disability Services, and the Kansas Water Office would each receive transfers of \$4.0 million annually if funds were available for each transfer from the tax on the sale of medical cannabis.

The Kansas Highway Patrol (KHP) estimates that enactment of SB 558 would increase expenditures by at least \$8.5 million in FY 2025 and \$645,056 in FY 2026, continuing in future years with market adjustments. The agency states it is unlikely it would receive additional revenue related to the enactment of SB 558. The agency notes that an accurate total fiscal effect could not be estimated based on the information provided and the limited amount of time for research. Based on information from Oklahoma after implementing medicinal marijuana in 2018, the agency states there would be an anticipation of delayed or total loss of available resources (specifically canines) to conduct business, increased time spent roadside determining lawfulness of possession of marijuana, increased staffing to address the influx of black-market seized marijuana, and additional costs in evidence supplies and storage facility charges. For Troop S, Special Response Team, enactment of the bill would require canines to be retrained. To retrain eight canines, a total of \$120,000 is estimated for FY 2025. However, the agency notes there is a high probability that canines would need to be replaced as retraining has not been successful with other states.

KHP also estimates a total of \$600,000 would be needed in FY 2025 for the Breath Alcohol Unit to certify additional Drug Recognition Experts (DREs). Kansas currently has 91.00 certified DRE FTE positions, and the agency estimates twice that number (180.00 FTE) would be needed with the enactment of SB 558 as the call load would increase. In addition to the cost, this effort would be time consuming as only 20 students can be accommodated per class. At this rate, it would take approximately two years to train 180 DREs. In addition, \$155,100 would be needed in FY 2025 for Advanced Roadside Impaired Driving Enforcement training. This training was created to address the gap in training between the Standardized Field Sobriety Testing and the Drug Evaluation and Classification Program. It is intended to provide officers with the general knowledge related to drug impairment through observation, identification, and signs of impairment related to drugs, alcohol, or a combination of both. In 2020 there were approximately 6,900 sworn Law Enforcement Officers (LEOs) in Kansas. The agency believes it's reasonable to assume there are still 3,000 LEOs in need of this training. The estimate is based off the cost of \$1,034 to train 20 officers. The agency notes this does not include any salaries, over-time accrued, or the time to prepare materials for class or additional instructors due to the class volume. For Troop I, Commercial Vehicles, additional Critical Highway Accident Response Team members and

specialized training for collision investigations would be needed. If collisions increase, manpower efforts would increase in time and investigative capacities. The agency estimates an additional 3.00 FTE positions would be needed with total salary and wages estimated at \$320,384 and equipment/vehicles estimated at \$324,672. This would begin in FY 2025 and would be ongoing. In addition, should the bill fail to exempt commercial motor vehicles, the fiscal effect to the agency's Federal Motor Carrier Safety Administration (FMCSA) federal funding would be affected. KHP currently receives funding as a grantee from the Motor Carrier Safety Assistance Program (MCSAP). The agency has identified compatibility issues and believes the ability for the agency to apply for FMCSA grants could be at risk and/or MCSAP could simply reduce funding to KHP. Federal grants received from the FMCSA currently total \$7.0 million. Pending the future of the funding and the role KHP plays in administering the program, expenditures may need to be drawn from other funding sources, which has been included in the FY 2025 estimate. The number of FTEs would also need to be reviewed for any modifications. In addition, FMCSA could also withhold funds up to 8.0 percent for the second and subsequent year(s) of noncompliance. A total for this was not included in the FY 2026 estimate.

The Kansas Bureau of Investigation reports that enactment of the bill could require the current tetrahydrocannabinol (THC) quantitation method for vegetation to be modified taking out THC acid determination. The agency would also need to establish new validation models from the new modified method and potentially develop methods for all THC-containing products could be required which would make validation extremely difficult given the vast number of edibles. The agency states a total fiscal effect for enactment of SB 558 cannot be estimated at this time and a potential impact to the laboratory cannot be accurately calculated, due to the complexity and uncertainty of language within the bill. The Kansas Sentencing Commission reports that enactment of the bill could reduce prison admissions and beds, but a total fiscal effect could not be estimated. The Department of Corrections noted a potential reduction in admissions as well and stated there would be no costs to the agency associated with enactment of the bill. The Kansas Department of Labor stated that enactment of the bill would not result in any additional administrative costs but would change certain benefit provisions for programs under the jurisdiction of the agency. A total fiscal effect on benefits paid could not be estimated.

The Office of Judicial Administration states enactment of SB 558 could increase the number of cases filed in district courts because it creates new crimes and allows all actions taken to be reviewed under the Kansas Judicial Review Act. This could result in more time spent by judicial and nonjudicial personnel processing, researching, and hearing these cases. The Office estimates enactment of the bill could result in the collection of supervision fees in those cases filed under the provisions of the bill, which would be deposited in the State General Fund. The bill would not affect other revenues to the Judicial Branch. However, a fiscal effect cannot be estimated.

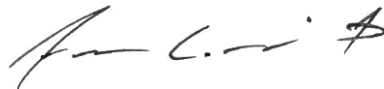
The Office of the Kansas Attorney General states that enactment of the bill would require the Attorney General to provide guidance to the Director of the Division of ABC regarding licensure under the Act. The Office indicates an additional 1.00 FTE Assistant Attorney General position estimated at \$123,500 would be necessary in the Legal Oversight and Government Counsel Unit to provide these services. To provide legal support for the new attorney position, an additional 1.00 FTE Legal Assistant position estimated at \$79,500 would also be necessary. The

Office estimates they would also need approximately \$100,000 for additional resources required to process other investigatory and legal matters resulting from the enactment of SB 558. The Office states that given the nature of the legislation, litigation would be expected to occur. The Office cannot accurately assess the amount of resources required to defend this bill, if enacted, in court. According to the Kansas Department of Agriculture, enactment of the bill would have a fiscal effect, but a total effect could not be estimated. The agency would still license hemp producers but states that the hemp grown would not be compliant with the USDA final rule and could result in interstate commerce and the local market becoming further depressed.

The Kansas Secretary of State's Office and the Kansas State Board of Nursing report enactment of the bill would have a minimal fiscal effect on the agencies and any additional costs would be handled within existing resources. The Kansas Commission on Peace Officers' Standards and Training indicates that enactment of the bill would not result in a fiscal effect for the agency. A request for a fiscal effect estimate was submitted to the Kansas Board of Pharmacy, but a response was not provided. Any fiscal effect associated with enactment SB 558 is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties notes that local governments could have additional costs related to law enforcement, court appearances, and other regulatory matters. The League of Kansas Municipalities was not able to estimate a fiscal effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt". The signature is fluid and cursive, with a distinct flourish at the end.

Adam C. Proffitt
Director of the Budget