

SESSION OF 2019

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 28**

As Agreed to May 2, 2019

Brief*

SB 28 would create and amend law related to possession of certain cannabidiol treatment preparations. The bill also would grandfather in Doctors of Podiatric Medicine (DPMs) who completed a two-year post-doctoral surgical residency program prior to July 1, 2007, in reconstructive rearfoot/ankle surgery, who were inadvertently excluded in a 2014 statutory revision, and who meet certain conditions, to the podiatrists who may perform surgery on the ankle, and delete a statutory reference to the Podiatry Interdisciplinary Advisory Committee, which no longer exists.

Cannabidiol Treatment Preparations

Claire and Lola's Law

The bill would create "Claire and Lola's Law," which would prohibit state agencies and political subdivisions from initiating child removal proceedings or child protection actions or proceedings based solely upon the parent's or child's possession or use of cannabidiol treatment preparation in accordance with the affirmative defense established by the second section of the bill. "Cannabidiol treatment preparation" would be defined to mean an oil containing cannabidiol and tetrahydrocannabinol and having a tetrahydrocannabinol

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

concentration of no more than 5 percent relative to the cannabidiol concentration in the preparation verified through testing by a third-party, independent laboratory.

The bill would prohibit construing its provisions to:

- Require the Kansas Medical Assistance Program or various other policies, plans, contracts, or organizations that provide coverage for accident and health services and that are delivered, issued for delivery, amended, or renewed on or after July 1, 2019, to provide payment or reimbursement for any cannabidiol treatment preparation; or
- Allow the possession, sale, production, redistribution, or use of any other form of cannabis.

The bill would define “debilitating medical condition” as a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.

The bill also would define “tetrahydrocannabinol concentration” and “third-party, independent laboratory.”

Amendments to Criminal Law

The bill also would amend the crime of unlawful possession of controlled substances to provide an affirmative defense to a prosecution of such crime arising out of a person’s possession of any cannabidiol treatment preparation (as defined in the new section) if the person has a debilitating medical condition (as defined in the new section) or is the parent or guardian of a minor child with such condition; is possessing a cannabidiol treatment preparation that is being used to treat such condition; and has simultaneous possession of a letter 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 Kansas licensed physician who diagnosed the qualifying condition, (c) is on such physician's letterhead, and (d) identifies the person or minor child as a patient and identifies the patient's qualifying condition.

Grandfathering of Certain Podiatrists and Removal of Expired Committee

The bill would add DPMs who completed a two-year post-doctoral surgical residency program prior to July 1, 2007, in reconstructive rearfoot/ankle surgery to the podiatrists who may perform surgery on the ankle, provided such grandfathered podiatrists are also either board-certified or board qualified progressing to board certification in reconstructive rearfoot/ankle surgery by a nationally recognized certifying organization acceptable to the State Board of Healing Arts. The bill also would remove statutory language referencing the Podiatry Interdisciplinary Advisory Committee that expired on July 1, 2018, and make technical amendments.

Conference Committee Action

As it entered conference, SB 28 would have amended provisions governing fraudulent insurance acts and associated criminal penalty provisions.

The Second Conference Committee agreed to replace the contents of SB 28, as it entered conference, with the contents of HB 2244, as passed by the House, regarding possession of cannabidiol treatment preparations, with the following changes:

- Modifications to the definitions of "cannabidiol treatment preparation," "debilitating medical

condition,” “tetrahydrocannabinol concentration,” and “third-party, independent laboratory”;

- Modifications to the requirements of the letter a person is required to possess to qualify for the affirmative defense; and
- Technical amendments to references in light of amendments made to the bill.

The Second Conference Committee also agreed to add the contents of SB 61, as passed by the Senate, regarding podiatry.

Background

The Second Conference Committee removed the contents of SB 28 and inserted the contents of HB 2244, as amended by the House Committee on Judiciary and further modified by the Conference Committee, and SB 61, as amended by the Senate Committee on Public Health and Welfare and passed by the Senate. [Note: The original contents of SB 28 previously addressed amending provisions governing fraudulent insurance acts and associated criminal penalty provisions. A Conference Committee report for HB 2177, which included the provisions of SB 28, was adopted by the Senate and House, and HB 2177 was approved by the Governor.]

HB 2244 (Possession of Cannabidiol Treatment Preparations)

HB 2244 was introduced by the House Committee on Judiciary at the request of Representative Schreiber. In the House Committee hearing, Representative Schreiber, a retired Georgia state representative, the parents of Claire and Lola Hartley, a registered nurse, and parent and citizen advocates testified in support of the bill. An Alabama state

representative; Claire and Lola Hartley's primary care physician; a representative of a testing and research laboratory; and Alabama, Georgia, Kansas, and Virginia citizens provided written-only testimony supporting the bill.

A Topeka physician and representative of the Institute on Global Drug Policy; a representative of the Kansas Bureau of Investigation (KBI); and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in opposition to the bill. Representatives of Currus Independent Pharmacies of Kansas and the Kansas Medical Society provided written-only opponent testimony.

A representative of the League of Kansas Municipalities testified as a neutral conferee.

The House Committee amended the definitions of "debilitating medical condition" and "third-party, independent laboratory," removed affirmative defense language from the new section, modified the affirmative defense language in the criminal statute, and amended the bill title. [*Note:* These amendments were further modified by the Second Conference Committee.]

According to the fiscal note prepared by the Division of the Budget on HB 2244, as introduced, the Office of Judicial Administration states enactment of the bill could result in fewer criminal cases being filed, but a fiscal effect cannot be estimated until the Judicial Branch has operated under the bill's provisions. The Kansas Sentencing Commission estimates enactment of the bill could affect prison admission or bed space, but there is insufficient information to estimate an effect. The Board of Pharmacy indicates enactment of the bill could increase complaints and investigations, requiring additional expenditures and staff, but there is not enough information to estimate a fiscal effect. The Kansas Department of Health and Environment indicates enactment of the bill would have no fiscal effect on agency operations.

In a revised fiscal note dated April 3, 2019 (following House Committee action), the Division of the Budget indicates the KBI was not contacted for a fiscal effect statement for the original fiscal note, but stated enactment of the bill, as amended by the House Committee, would require the KBI to develop a basic capacity to perform tetrahydrocannabinol quantitation analysis on cannabidiol oil preparations. Enactment of HB 2244, as amended, would require additional expenditures by the KBI of \$254,002 from the State General Fund (SGF) in FY 2020, including 1.00 FTE Forensic Scientist I position (\$67,946), a nitrogen generator (\$170,000), and other operating expenditures (\$16,056). The KBI estimates expenditures of \$82,828 from the SGF in FY 2021 and future fiscal years for salaries and wages and other operating expenditures.

Any fiscal effect associated with enactment of HB 2244 is not reflected in *The FY 2020 Governor's Budget Report*.

SB 61 (Grandfathering of Certain Podiatrists and Removal of Expired Committee)

SB 61 was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Podiatric Medical Association (KPMA). In the Senate Committee hearing, a representative of the KPMA testifying in favor of the bill stated, prior to 2007, some U.S. post medical school podiatric medical residency programs required only two years of post graduate training. The KPMA representative stated, as a result of 2014 amendments to KSA 65-2002(d), DPMS who had completed a 24-month residency and were board certified or progressing toward board certification could no longer perform rearfoot/ankle procedures in Kansas. The KPMA representative stated the bill would grandfather in those DPMS who were inadvertently excluded by the 2014 amendments, allowing them to once again perform rearfoot/ankle medical procedures.

Neutral testimony was provided by a representative of the Kansas Medical Society, who stated because three-year residencies are the standard, the statutory amendment in 2014 included that specification and unintentionally blocked a limited number of podiatrists who began practice before the implementation of the three-year residencies.

No other testimony was provided.

The Senate Committee amended the bill by removing sections two and three, which would have amended statutes to add the practice of podiatry as a branch of the healing arts and removed podiatrists from the list of professions not included in the practice of healing arts, and amended the title. [Note: The Second Conference Committee retained these amendments.]

The House Committee on Health and Human Services held a hearing on the bill and recommended it for the Consent Calendar.

According to the fiscal note prepared by the Division of the Budget on SB 61, as introduced, the State Board of Healing Arts states enactment of the bill would have no fiscal effect on the agency or the public.

cannabidiol treatment preparations; child removal; child protection; unlawful possession of controlled substances; affirmative defense; Claire and Lola's Law; podiatry; surgical residency program; Healing Arts Act

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