



TOPEKA

HOUSE OF
REPRESENTATIVESCAPITOL BUILDING
300 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612
(785) 296-7665
randy.garber@house.ks.govRANDY GARBER
REPRESENTATIVE, 62ND DISTRICT
2424 TIMBERLANE TERRACE
SABETHA, KANSAS 66534
(785) 285-1238

Explanatory Outline of Rep. Garber's Comprehensive Amendments to HB 2184

1. **The bill as introduced is based on former Ohio law which is one of the most restrictively regulated models among 35 states that are currently allowing medical cannabis.**
 - a. Some of Ohio's regulations have been eased since this bill (previously as 2020 HB 2740) was introduced last year.
 - b. The Kansas Cannabis Coalition proposed a comprehensive package of changes – some that may appear very minor and could be overlooked if considered in isolation – to give the medical cannabis market in Kansas a reasonable chance for success at meeting the needs of Kansas patients.
 - c. This coalition is diverse, representing patients, healthcare providers and market suppliers, and all of its members are unanimously supporting all of the changes proposed in this balloon package. A list of the coalition members is attached.

2. **The balloon changes fall into two general categories: those amendments directly addressing patient needs, and those to ensure a healthy competitive medical cannabis market.**
 - a. Some amendments could arguably belong to either category because a noncompetitive market will cause prices to rise, or fail to provide good geographical access, and therefore drive patients to the black market or illegal importation from other states.
 - b. Patients will be extremely price sensitive because no medical cannabis in the foreseeable future will be covered by health insurance.
 - c. A few technical amendments are contained in the competitive market category only because they don't really relate directly to patient needs.

3. **Changes to directly address patient needs**
 - a. **Limit the Ban on Vaporization**

□ p3, §2, line 14, modifies the definition of "vaporization". This phrasing will serve to prohibit most forms of vaping pens, but would allow some types of nebulizer/vaporizing devices for use when a physician determines that inhalation is the best means for a patient to ingest. Deleting subsection 34(c) on p23, lines 22-24, will allow a person to petition regulators for an exception to the banned delivery modes in proper circumstances. However, this balloon amendment package retains the bill's general ban on smoking, combustion and vaporization in §33.

Rationale: Many scientific journals site the medical utility for children and others to consume the cannabis via inhalation in order to achieve the desired and timely benefit. Smoking or burning is rarely advocated for medical purposes so long as a nebulized vapor mode is available. Oral ingestion is slow acting, more difficult to properly dose, may require purchase of much more cannabis product, or may fail to deliver all of the therapeutic benefits of inhalation. Topical or suppository absorption is appropriate for only a limited range of conditions.

b. Qualifying Conditions

□ pp2-3, §2, delete subsections (q)(13) and (q)(22), insert new amendment text for (q)(22)-(24).

Rationale: Rather than propose a non-exhaustive list that can be repeatedly lengthened by administrative regulations, a finite list of conditions with sufficient scope will provide a more stable planning environment for patients and the businesses that cater to them.

□ p10, §14, delete lines 27-29. **Rationale:** If the broadened list per other amendments is in statute and is finite, there's no need for regulatory authority for additional qualifying conditions.

□ pp13-14, delete §19 (all) for same rationale that additions to regulated conditions is unnecessary in light of a broadened finite list in statute.

c. Physician Relationship Tenure

□ p11, §17, delete lines 38-42, replace with reasonable professional examination. **Rationale:** The requirement of a 12-month preexisting relationship with the recommending physician ignores the possibility of unprofessional bias against cannabis that may occur. Such bias by a patient's traditional physician would require the patient to wait a full year under a different physician before relief is possible. Also, veterans cannot obtain medical cannabis through their traditional providers at the Veterans Administration and would similarly need to postpone treatment for an additional year.

□ p12, §17, line 15, insert supplementary new amendment text for same rationale.

d. Minimum Dispensable Supply

□ p10, §14, insert new amendment as subsection (b). **Rationale:** Because these amendments do not change the bill's regulatory authority to define a maximum 90-day supply, this new subsection is to prevent regulators from defining that supply so restrictively that it effectively negates all useful availability to patients. This amendment does not prohibit any physician from recommending less than three ounces per month, does not prohibit dispensaries from filling any lesser recommended amount, but rather, respects the physicians' medical judgment without any artificial 30-day maximum.

e. Clearly Exclude THC Caps from Production Processes

□ p23, §33, supplement lines 1-4 to ensure that final products have a sufficiently broad range of THC levels. **Rationale:** Recommending physicians are the best deciders of THC potency that any given patient may need. The bill's testing and labeling requirements ensure the information needed to accurately fulfill the recommended product. Quality and purity of the medicine may suffer if these caps apply at different stages of the production process when the THC levels may be higher. The THC caps for final dispensed products may require some industry processing adjustments, but do allow for sufficient range of potency to provide relief for the qualifying patient conditions. There is no correlation between THC levels in a person's system and any given degree of impairment, which is why the physicians' personalized medical judgment is so important.

f. Accessories and Paraphernalia

□ p8, §10, delete identified parts of lines 26, 27, 40 and 41, to omit regulator pre-approval standard while retaining the regulators' responsive authority. **Rationale:** There is no patient-centered justification for requiring pre-approval of simple equipment that's been broadly available for years in many states to administer medical cannabis. Sections 14(a) and 39(a) give broad authority to KDHE and KDOR to enforce the terms of this bill with rules and regulations, allowing them to adequately respond to any emerging compliance problems.

□ p10, §14, delete lines 18-19. **Rationale:** Same paraphernalia rationale as with §10.

g. Delete Redundant New Crime

□ p29, §47 (all), is deleted. **Rationale:** Creating a new crime for a type of child endangerment is unnecessary given existing legal recourse, both civil and criminal, for such negligence. Just as with existing prescription medicines that pose similar or worse risks with children, negligent exposure of medical cannabis will be similarly culpable under existing law. Plus, packaging regulations in the bill already anticipate and attempt to prevent such risk.

h. Protect Nurses as Caregivers

pp70, §66, lines 21-34, supplement the safe harbor amendment to also cover RNs and LPNs.

Rationale: As originally drafted, the bill precludes the Board of Nursing from disciplining APRNs for assisting people with medical marijuana. Our addition to this amendment would expand licensure protection as well to RNs and LPNs who, although they cannot recommend cannabis or prescribe anything, are exceptionally likely to be named as licensed caregivers under this bill.

4. Changes to ensure a healthy and competitive market

a. Delete Role by Department of Agriculture

Numerous sections throughout the bill delete reference to Dept. Agriculture and substitute in the Dept. Revenue Division of Alcoholic Beverage Control to perform that function. Dept. Agriculture has stated it wants no role in this regulation responsibility.

b. Eliminate Caps on Number and Size of Licenses

p15, §21, substitute subsection (a) in lines 14-19 with new amendment text;

p15, §21, delete lines 34-43 and p16, line 1;

p16, §23, delete lines 17-22, insert new amendment text that replaces cultivation "levels" with simplified per-plant basis for license fees;

p18, §27, delete lines 15-16;

p19, §29, delete lines 40-43;

p20, §30, delete lines 12-14;

p21, §31, delete lines 36-42;

p25, §39, delete lines 31-32;

p27, §42, line 13, insert supplementary amendment text.

Rationale: Restricting the number or general facility location of licensees (as contrasted to the specific location restrictions of §42) will arbitrarily stifle economic growth, job creation, revenue, and patient access and relief. The caps will inhibit (or preclude) price competition, will drive patients to illegal sources of cannabis, and will spawn a large volume of litigation by those denied licenses. Regarding cultivators, the bill's original system of size levels is arbitrary and will cause applicants who exceed any level's threshold size by even a trivial amount to pay a disproportionately higher fee. Every cultivator applicant should be able to size their operation according to what their market justifies and to what they can afford to build without regard to any arbitrary fee thresholds. The provision in §42 of minimum distances to certain public places is reasonable, but the added language provides for some exceptions if both regulatory agencies approve.

c. Omit Preferences for Licensees

p15, §20, delete lines 3-10;

p19, §28, delete lines 13-20;

p21, §31, delete lines 4-11;

Rationale: The licensing system should not include any rules for comparing the relative merit of applicants, but rather, should apply the same minimum standards to each in order to achieve optimum competition. Reserving a percent of licenses for certain categories of people will effectively create a cap on the number of licenses issued, will slow the pace of market entry by competitors, and will spawn litigation by those denied (or delayed) any license by virtue of the quotas. Instead, substantially reducing fees and other barriers such as general geographical (not §42) facility locations will best assure diversity through impartiality.

d. Require Minimum In-State Ownership

p16, §23, line 42, insert new subsection requiring 50% ownership of each licensee business by Kansans.

Rationale: State tax revenue and new job creation is increased by having the owners domiciled here. Such ownership is also likely to increase commitment to the communities and local workforces where the facilities are sited, as well as boosting civic engagement by licensees. This amendment, along with others in this balloon package, is intended to give existing Kansas farmers the best opportunity for diversifying their operations with a profitable new crop. While there are no racial or ethnic preferences in this amendment package, those groups, too, will experience greater ownership opportunity in a domestic cannabis market that keeps at least half of the new business interests in our residents' hands.

e. Reduce License Fees

□ p23, §35, amend various lines as indicated for processors, distributors and dispensaries.

Rationale: Revenue potential and job growth are optimized by setting much lower financial barriers to entry into the market, increasing competition, diversifying the supply chain, and curbing the potential for price gouging. No rational basis is evident for imposing different fees for these three license types or making renewal fees higher than initial fees.

f. Ensure Flexible Marketing Chains

□ p16, §22, line 10, insert new subsections to specify laboratory testing criteria. **Rationale:** The bill as introduced leaves virtually all laboratory duties unspecified until future regulations should materialize. The basic standards of this amendment are too important to omit from statutory direction and are crucial services for the various licensees to have available as they each develop their niche in the newly emerging Kansas market. Due to deletion of the Dept. Agriculture's role in this bill, this particular regulatory authority is shifted over to Dir. ABC at KDOR as is amended on p25, §39.

□ p19, §27, line 32, substitute text clarifying final retail packaging. **Rationale:** A given processor may or may not perform final packaging for retail. One processor may perform only initial processing, then deliver the product to another processor who does the retail packaging.

□ p20, §30, line 3, insert "and/or cultivators" so that distributors may buy from cultivators as well as from processors. **Rationale:** To maximize rural economic development and allow cultivators and distributors a reasonable profit, safeguarding against market dominance and price gouging by processors, this change would allow farmers to bypass processors and sell directly to distributors (either the farmer or the distributor can obtain processor license to perform needed functions). Even if few cultivators and distributors resort to this bypass, the existence of the option may be sufficient to prevent abuses of market power.

□ p20, §30, line 6, insert "package for final sale". **Rationale:** Again, to guard against possible abuses of market power by processors, this amendment would allow distributors to perform packaging (when they buy plant material directly from cultivators per other amendments) to get the product ready for sale to dispensaries. Few distributors may resort to this, but it's still an option worth creating to discourage price gouging by processors.

□ p22, §32, line 1: insert "cultivators" so that dispensaries can buy from cultivators as well as from processors and distributors. **Rationale:** To maximize rural economic development and allow cultivators a reasonable profit, safeguarding against market dominance and price gouging by either processors or distributors, this change would allow farmers to bypass those licensees and sell directly to dispensaries (either the farmer or the dispensary can obtain processor license to perform needed functions). Even if few cultivators resort to this bypass, the existence of the option may be sufficient to prevent abuses of market power.

□ p22, §32, delete lines 10-11. K-TRACS should not be mandated upon dispensaries. **Rationale:** It is an unnecessary expense for which non-pharmacist dispensary employees are poorly suited to perform, and such reporting will already be done by Board of Healing Arts licensees.

□ p22, §32, lines 12-13, re-phrase the labeling duty so that not all of it needs to be performed by dispensaries. **Rationale:** Although, with this amendment, dispensaries must check to ensure that all required labeling has been affixed, they need not be solely responsible for doing it all.

g. Provide Interstate Reciprocity

□ pp10-11, §16 (all), replace with new amendment text. **Rationale:** To prevent unjust arrest or detention of visitors to Kansas, or even those merely driving through nonstop, the original bill's good faith promise to *attempt* interstate reciprocity agreements is far from sufficient. Thirty-five states have legalized medical marijuana, so the prospect of unwarranted harassment by Kansas law enforcement officers is already excessive.