

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2540**

As Agreed to April 28, 2022

**Brief\***

HB 2540, as amended, would amend the Uniform Controlled Substances Act (Act) and the definition of “marijuana” in the Act and the Kansas Criminal Code (Code). The amended definition of marijuana would exempt U.S. Food and Drug Administration (FDA)-approved drug products containing an active ingredient derived from marijuana. The bill would also make technical changes.

The bill would be in effect upon publication in the *Kansas Register*.

***Definitions***

The bill would amend the definition of “marijuana” to exempt FDA-approved drug products in the Act and in the definition sections of the Code pertaining to crimes involving controlled substances. In response to this definition change, the bill would remove from the Kansas Schedule IV the FDA-approved drug Epidiolex to mirror the federal de-scheduling of this drug.

***Uniform Controlled Substances Act***

***Schedule I***

The bill would add two opiates, one opioid derivative, and one compound containing hallucinogenic substances to the schedule. The bill would also make spelling and substance number updates, change “ring” to “group” in certain cannabinoid classes, add a “syncan” class, and make technical changes.

***Schedule II***

The bill would add one opioid metabolite of oxymorphone and oxycodone, one intravenous opioid medication for severe acute pain, and one opioid analgesic to the schedule.

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\*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>

#### *Schedule IV*

The bill would add one short-acting sedation medication, an insomnia medication, an antidepressant used to treat depression and postpartum depression, and a medication for treatment of sleepiness due to narcolepsy or sleep apnea to the schedule.

#### *Schedule V*

The bill would add a medication for treatment of adult seizures and a drug used to treat migraines without aura to the schedule.

### **Conference Committee Action**

The first Conference Committee agreed to delete the provisions of HB 2540, as amended by the Senate Committee of the Whole, and insert the contents of Senate Sub. for HB 2262, as amended by the Senate Committee on Public Health and Welfare, with an additional amendment specifically excluding fentanyl testing strips from the definition of “drug paraphernalia” in the Code.

The second Conference Committee agreed to remove the provision that would have excluded fentanyl testing strips from the definition of “drug paraphernalia” and retain all other provisions agreed to by the first Conference Committee.

### **Background**

HB 2540, as amended by the second Conference Committee, contains the provisions of Senate Sub. for HB 2262, as amended by the Senate Committee on Public Health and Welfare. Senate Sub. for HB 2262 contains provisions of SB 298, as amended by the Senate Committee.

HB 2540, as introduced, concerned a permanent memorial honoring Kansas Gold Star families on the Statehouse grounds. [*Note:* The mirror bill to HB 2540 (SB 330) was enrolled and presented to the Governor on March 28, 2022.]

HB 2262, as introduced, concerned permits for cremation. On March 26, 2021, the Senate Committee on Public Health and Welfare recommended a substitute bill and inserted the provisions of SB 298, as amended by the Committee. [*Note:* The Senate Committee inserted the provisions of HB 2262, as introduced, into HB 2254 (law, effective July 1, 2021).]

### **SB 298**

The bill was introduced by the Senate Committee on Federal and State Affairs.

#### *Senate Committee on Public Health and Welfare*

In the Senate Committee hearing, a representative of the State Board of Pharmacy (Board) provided **proponent** testimony. The proponent stated the Board works with the Kansas Bureau

of Investigation to review changes made by the U.S. Drug Enforcement Administration to the federal Controlled Substances Act and works to make necessary changes in the state Uniform Controlled Substances Act to reflect the federal updates.

A private citizen provided **opponent** testimony stating opposition to including cannabis and marijuana-related drugs as a controlled substance. No other testimony was provided.

The Senate Committee amended SB 298 to make a technical change, removed the contents from HB 2262, as introduced, and inserted the language of SB 298, as amended, to create a substitute bill. [Note: The Conference Committee retained the amendment.]

The Committee report was read into the Senate on March 30, 2021. On January 18, 2022, the substitute bill was withdrawn from Calendar and re-referred to the Senate Committee.

On February 1, 2022, the Senate Committee amended Senate Sub. for HB 2262, at the request of the Board, in partnership with the Kansas Bureau of Investigation, to exempt FDA-approved drug products containing an active ingredient derived from marijuana from the definition of marijuana. [Note: The Conference Committee retained the amendment.]

A representative of the Board explained precedent for this process was established in 2017 when the drug Epidiolex, a proprietary oral solution of pure plant derived cannabidiol, was enacted prospectively as a Schedule V drug before its approval by the FDA in 2018. Including the drug in statute made it available to Kansans by prescription as soon as it was FDA-approved. The representative of the Board explained that at least one drug containing an active ingredient derived from marijuana is likely to be approved between the 2022 and 2023 Legislative Sessions. It was noted the amendment does not specify any particular product and would allow any FDA-approved drug product containing an active ingredient derived from marijuana to be available with a prescription.

The Senate Committee also made a technical amendment to update the effective date. [Note: The Conference Committee retained the amendment.]

## **Fiscal Information**

According to the March 2021 fiscal note prepared by the Division of the Budget on SB 298, as introduced, the Board, Board of Examiners in Optometry, Department of Corrections, Department of Health and Environment, Kansas Bureau of Investigation, Kansas Dental Board, and State Board of Healing Arts indicate enactment of the bill would have no fiscal effect on the agencies. The Office of Judicial Administration indicates the bill would not have a significant fiscal effect on the courts. The Board of Nursing indicates the bill would increase expenditures for communication costs by approximately \$2,000 from the Board of Nursing Fee Fund for FY 2022. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Uniform Controlled Substances Act; controlled substances; schedule; drugs; substances; U.S. Drug Enforcement Administration; U.S. Food and Drug Administration; Kansas Criminal Code

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