

SESSION OF 2019

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2244**

As Amended by House Committee on Judiciary

**Brief\***

HB 2244, as amended, would create and amend law related to possession of cannabidiol treatment preparations, as follows.

***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, which would be defined to mean an oil including cannabidiol and tetrahydrocannabinol and having a delta-9-tetrahydrocannabinol concentration of no more than 5 percent that has been tested 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.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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.

The bill also would define “delta-9-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 possession of a letter dated within the preceding 15 months that (a) is signed by the licensed physician who diagnosed the condition, (b) identifies the person or minor child as a patient, and (c) identifies the patient’s condition.

### **Background**

The bill 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, 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.

According to the fiscal note prepared by the Division of the Budget on the bill, 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. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.