

May 3, 2022

REVISED

The Honorable Robert Olson, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 144-S
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Revised Fiscal Note for SB 560 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 560 is respectfully submitted to your committee.

SB 560 would establish the Medical Marijuana Regulation Act, which would make legal certain marijuana products for medical use. The bill would permit the cultivation, distribution, processing, dispensing, and the purchase and use of certain forms of marijuana and paraphernalia or accessories used to administer medical marijuana under specific qualifying medical conditions. Medical marijuana would include oils, tinctures, plant material, edibles, patches, or any other form approved by the Department of Revenue. The bill would prohibit the smoking or vaporization of medical marijuana. The bill would make definitions, provide guidelines and requirements under the Act, establish violations as well as fees and fines related to registrations, licensures, and violations of the Act. The bill would establish the Medical Marijuana Regulation Program and rename the Division of Alcoholic Beverage Control under the Department of Revenue to the Division of Alcohol and Cannabis Control. Under the Program, the Kansas Department of Health and Environment (KDHE) would provide for the registration of patients and caregivers; the Board of Healing Arts would certify physicians who recommend medical marijuana as a treatment for patients; the Board of Pharmacy would register pharmacist consultants and implement requirements for the prescription monitoring program; and the Division of Alcohol and Cannabis Control within the Department of Revenue would license cultivators, laboratories, processors, distributors and retail dispensaries and employees of such facilities.

The bill would create the Medical Marijuana Advisory Committee in KDHE, which would include the Secretary of Health and Environment and 14 members appointed by the Governor and Legislature. The provisions establishing the Medical Marijuana Advisory Committee would sunset on July 1, 2028. The Committee would be required to review petitions for approval of qualifying medical conditions. The bill would allow any person to submit a petition to the

Committee requesting that a disease or condition be added as a qualifying medical condition. Any person would be allowed to submit a petition to the Director of Alcohol and Cannabis Control requesting that a form or method of using medical marijuana be approved. The Director would be required to consult with the Committee regarding the petitions for approval of forms of medical marijuana not specifically listed in the bill.

The bill would include requirements and procedures for patients and caregivers to apply for registration through KDHE, which would be valid for one year. KDHE would be required to create a website for the public to access information regarding patient and caregiver registration. The maximum fees for initial registration or renewal would be \$50 for a patient registration, or \$25 if the patient is indigent or a veteran, and \$25 for a caregiver registration. Registered patients or caregivers would be limited to a maximum of a 30-day supply of medical marijuana. Medical marijuana registry identification cards, or an equivalent, issued in other states would be valid in Kansas if the nonresident patient has not been residing in Kansas for more than 180 days.

KDHE would be authorized to impose civil penalties or revoke registrations for violations of the Medical Marijuana Regulation Act. The bill would establish the Medical Marijuana Registration Fund, which would be financed from all fees and fines imposed and collected by KDHE and used for the payment or reimbursement of costs related to KDHE's regulation and enforcement of the possession and use of medical marijuana. KDHE would be required to adopt rules and regulations to administer the Medical Marijuana Regulation Act as detailed in the bill on or before January 1, 2024, after consulting with the Medical Marijuana Advisory Committee.

Physicians wishing to recommend treatment with medical marijuana would be required to apply to the Board of Healing Arts for certification. The bill lists the requirements of certification, requires the Board to adopt rules and regulations, and authorizes the Board to impose an annual fee of up to \$175. Pharmacists seeking to operate as a pharmacist consultant for a retail dispensary would be required to register with the Board of Pharmacy. The Board would be required to adopt rules and regulations. Quarterly expenditures of the Kansas Prescription Drug Monitoring Program attributable to the Medical Marijuana Regulation Act would be required to be certified.

Any individual seeking to cultivate, conduct laboratory testing of, process, distribute, or sell at retail medical marijuana, concentrate, or products would be required to apply for licensure with the Division of Alcohol and Cannabis Control. The bill would include all requirements for licensure and establish fees for such licenses. Monies collected from fees and fines would be deposited into the Medical Marijuana Business Regulation Fund, which would be a new fund created by the bill. Monies in the fund could be used for the payment or reimbursement of Division of Alcohol and Cannabis Control costs for the regulation and enforcement of the Medical Marijuana Regulation Act. The Division of Alcohol and Cannabis would be able to revoke or suspend a license or issue civil penalties for certain violations of the Act. The Department of Revenue would be required to consult with the Medical Marijuana Advisory Committee and adopt rules and regulations as detailed in the bill to administer the Program and implement the provisions of the Act on or before January 1, 2024. The Division of Alcohol and Cannabis Control would also be required to create a database to monitor medical marijuana products through the entire supply chain and each distribution channel.

Financial institutions that provide services to any licensed cultivator, laboratory, processor, distributor, or retail dispensary would be exempt from any criminal law of the state. Persons who consume medical marijuana could not be denied housing, employment, workers compensation benefits, or certain professional licenses and could not be considered ineligible for organ transplants or be considered an unfit parent solely because of the use of medical marijuana. SB 560 would take effect July 1, 2023.

The Department of Revenue estimates that SB 560 would increase sales tax revenues by \$0.48 million in FY 2024 and \$2.9 million in FY 2025. For the Department of Revenue, the bill establishes the Medical Marijuana Business Regulation Fund and creates a revenue stream to fund agency activities of the Medical Marijuana Regulation Program. Below is a profile of the Department of Revenue’s estimates for Medical Marijuana Business Regulation Fund revenues and agency expenditures, which would be incurred by the Division of Alcohol and Cannabis Control (currently the Division of Alcoholic Beverage Control). Estimated revenues assume the maximum amount of each fee allowed under the bill. Revenues to the fund would not be collected until January 1, 2024. As a result, expenditures would have to be funded from the State General Fund in FY 2023. Since the original fiscal effect statement was issued, the Department of Revenue has provided updated information on the fiscal effect related to estimated administrative costs.

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Medical Marijuana Business Reg. Fund-Revenues	\$ --	\$18,490,000	\$18,490,000
Expenditures	<u>4,901,450</u>	<u>4,017,137</u>	<u>3,502,000</u>
Ending Balance	(\$4,901,450)	\$14,472,863	\$14,988,000

The table below lists the estimated expenditures and FTE positions for the Department of Revenue and the funding sources:

	<u>FY 2023</u>		<u>FY 2024</u>		<u>FY 2025</u>	
Expenditures & FTE:						
Alcohol and Cannabis Control	\$4,901,450	31.00	\$4,017,137	31.00	\$3,502,000	31.00
Funds:						
State General Fund	\$4,901,450		\$ --		\$ --	
Med. Marijuana Business Reg. Fund	<u>--</u>		<u>4,017,137</u>		<u>3,502,000</u>	
Total Funds	\$4,901,450		\$4,017,137		\$3,502,000	

The Department of Revenue indicates that the bill would require the Division of Alcohol and Cannabis Control created by the bill, to stand up an entirely new work unit to license cultivators, laboratories, processors, distributors, and retail dispensaries. The Division would also need to increase the number of enforcement agents to regulate medical marijuana licenses. Significant changes would be necessary to the licensing system and a seed to sale tracking system would need to be created, with an estimated initial cost of \$3.0 million.

For KDHE, the bill would establish the Medical Marijuana Registration Fund and would create a revenue stream to fund agency activities of the Medical Marijuana Regulation Program. However, KDHE estimates that revenues to the fund would not be sufficient to fully fund program costs, particularly during program implementation. Below is a profile of KDHE’s estimates for Medical Marijuana Registration Fund revenues and agency expenditures:

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Medical Marijuana Registration Fund-Revenues	\$ --	\$ 719,719	\$ 1,447,643
Expenditures	<u>4,789,827</u>	<u>3,600,088</u>	<u>3,644,034</u>
Ending Balance	(\$4,789,827)	(\$2,880,369)	(\$2,196,391)

Any program costs above the amount of estimated revenues would require support from the State General Fund. The following table details the estimated expenditures and FTE positions for KDHE and the related funding sources:

	<u>FY 2023</u>		<u>FY 2024</u>		<u>FY 2025</u>	
Expenditures & FTE:						
Salaries & Wages	\$ 836,934	18.00	\$1,733,253	22.00	\$1,776,585	22.00
Information System	3,500,000		1,500,000		1,500,000	
Other Operating	290,293		309,035		310,449	
Website	150,000		48,000		48,000	
Advisory Committee	9,000		9,000		9,000	
Background Checks	<u>3,600</u>		<u>800</u>		<u>--</u>	
Total Expenditures	\$4,789,827		\$3,600,088		\$3,644,034	
Funds:						
State General Fund	\$4,789,827		\$2,880,369		\$2,196,391	
Medical Marijuana Registration Fund	<u>--</u>		<u>719,719</u>		<u>1,447,643</u>	
Total Funds	\$4,789,827		\$3,600,088		\$3,644,034	

The salaries and wages and FTE positions would be for program, administrative, legal, and information technology staff for startup and regular operations. An information system would be needed that interfaces with other state agencies included in the Act. Other operating expenditures would include office space, communications, supplies, and travel.

The Board of Healing Arts estimates that the bill would require additional expenditures of \$246,796 from the Healing Arts Fee Fund and 3.00 FTE positions in FY 2023. The amount would include ongoing salary and benefits totaling \$103,475 for an assistant general counsel, \$64,741 for a paralegal, and \$53,980 for a licensing analyst. There would also be one-time costs totaling \$24,600 for equipment and software for the new positions. The Board indicates the bill would result in additional workloads related to developing rules and regulations and certifying physicians. The bill allows the Board to set a certification fee of up to \$175. However, the amount of revenue that would be received from the fee is unknown because the Board is unable to estimate the number of physicians who would apply for certification and revenue would not be generated in FY 2022 or FY 2023.

The Board of Pharmacy indicates that enactment of SB 560 would require additional expenditures of approximately \$164,940 from the State Board of Pharmacy Fee Fund and 1.50 FTE position in FY 2023. The FY 2023 amount includes \$70,000 for salary and benefits for 1.00 FTE for a full-time administrative position to handle the new requirements in the bill related to K-TRACS reporting; \$35,700 for part time staff to register pharmacist consultants (equivalent of 0.5 FTE); \$50,000 for one-time programming costs for K-TRACS, as the system is not currently configured to accept anything except controlled substance prescription medication information; \$7,740 for office space, equipment, and other overhead for new staff; and \$1,500 for drafting and publishing new rules and regulations. Ongoing costs beyond FY 2023 would include the salaries and benefits plus overhead for the new positions and \$20,000 in annual programming costs for K-

TRACS. The Board notes that programming costs could be covered by allowable transfers from the Medical Marijuana Business Regulation Fund but there would be no revenue source under the bill to offset other costs.

The Board of Nursing estimates that the bill would require one-time expenditures from the Board of Nursing Fee Fund in FY 2023 to issue communications, update language in regulations, and provide education to its members regarding the bill. The agency estimates that expenditures would be under \$1,000.

The Kansas Human Rights Commission estimates enactment of the bill would result in additional State General Fund expenditures of \$72,214 in FY 2023. The agency estimates 75 new complaints related to discrimination based on an individual's status as a registered patient or caregiver under the Medical Marijuana Regulation Act or for using or possessing medical marijuana. Expenditures would include \$56,492 for salaries wages for an additional 1.00 FTE position for a new Special Investigator to handle new complaints; \$6,566 for new posters and publications reflecting changes in the bill, including supplies and postage costs related to the new publications, and other communication costs related to the new complaints; \$6,506 for professional fees to update the agency's database and other IT costs related to the new investigator; and \$2,650 in capital outlay for equipment for the new investigator.

The Kansas Highway Patrol (KHP) states that enactment of SB 560 could require expenditures of \$90,000 from the KHP Operations Fund for the agency to invest in new K-9s trained without the odor of marijuana. Replacing all narcotic dogs would total \$80,000 (eight dogs at \$10,000 each) and supplemental training for two K-9 supervisors would total \$10,000.

The Kansas Bureau of Investigation (KBI) anticipates the bill would result in increased requests for tetrahydrocannabinol (THC) testing at the KBI Forensic Laboratory. The agency currently has one piece of equipment with the ability to provide THC quantitation analysis but does not have validation methods to quantitate above 0.3 percent THC. The agency notes that any costs related to conducting state and national criminal history checks would be offset with revenue from the fees it charges for the criminal history checks. The agency was unable to estimate the fiscal effect.

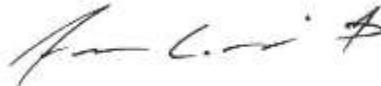
The State Fire Marshal estimates enactment of SB 560 would result in additional expenditures of \$359,264 and 4.00 FTE positions in FY 2023 and \$283,718 in FY 2024 to meet increased workload for plan reviews, safety inspections, and code enforcement on new indoor growing facilities, as well as existing facilities in the future. The FY 2023 total includes salary and benefits of \$256,634 for a fire protection specialist, a fire prevention inspector, an enforcement officer, and a senior administrative specialist, as well as ongoing contractual services related to the positions totaling \$14,320 for specialized fire and life safety training, fuel costs, and IT services. In addition, there would be one-time costs of \$88,310 for IT and other start-up equipment for the positions. The agency notes that the bill does not include a revenue source for implementation and current revenue sources could not fund the additional expenditures.

The Office of Judicial Administration indicates the bill could affect the number of cases that are filed in courts, but the Office is unable to estimate what the effect would be. The bill could decrease the number of cases filed in court because it decriminalizes actions that could be charged

as crimes under current law. However, the Office indicates it is possible that crimes that are charged under existing law, would still be charged and the provisions of SB 560 would be used as a defense and there are new crimes that could increase the supervision of offenders. Any change to the number of cases that are filed would affect Judiciary expenditures and revenues, however, a total fiscal effect could not be estimated.

Legislative Administrative Services reports that because the Medical Marijuana Advisory Committee would be created in KDHE, all expenditures for meetings would be paid from appropriations of KDHE and there would be no fiscal effect for the Legislature's budget. The Office of the State Bank Commissioner, Office of the Secretary of State, the State Treasurer, and the Department of Labor indicate the bill would not have any fiscal effect on agency operations. Any fiscal effect associated with SB 560 is not reflected in *The FY 2023 Governor's Budget Report*. The Kansas Association of Counties states that the bill could have a fiscal effect on local governments due to both regulatory costs and potential revenue, but the total effect could not be estimated.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Dan Thimmesch, Health & Environment
Alexandra Blasi, Board of Pharmacy
Susan Gile, Board of Healing Arts
Jill McCarthy, Office of the Fire Marshal
Lynn Robinson, Department of Revenue
Karen Clowers, Legislative Services
Vicki Jacobsen, Judiciary
Paul Weisgerber, KBI
Sandy Tompkins, Office of the Secretary of State
Barbara Albright, Office of the Banking Commissioner
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Jill Simons, Board of Nursing
Sherry Macke, Highway Patrol
Ruth Glover, Human Rights Commission
Dawn Palmberg, Department of Labor
Jay Hall, Association of Counties