

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **HB 2049**, on page 1, following line 5, by inserting:

"Section 1. The provisions of sections 1 through 11, and amendments thereto, shall be known and may be cited as Otis's law.

Sec. 2. As used in sections 1 through 11, and amendments thereto, unless the context requires otherwise:

(a) "Cannabis" means all parts of all varieties of the plant *cannabis sativa* L. not exceeding 3% tetrahydrocannabinol by weight.

(b) "Cardholder" means a patient or a designated caregiver to whom the department has issued a hemp preparation registration card or who has documentation that is deemed to be a hemp preparation registration card.

(c) "Designated caregiver" means a person who:

(1) Is either at least 21 years of age or a parent of a patient;

(2) has significant responsibility for managing the well-being of a patient; and

(3) has been approved by the department to assist a patient in obtaining hemp preparations.

(d) "Department" means the department of health and environment.

(e) "Hemp preparation" means:

(1) Cannabis plant material that is no more than 3% tetrahydrocannabinol by weight; or

(2) an extract, mixture or preparation containing cannabis plant material that is no more than 3% tetrahydrocannabinol by weight.

(f) "Hemp preparation center agent" means an owner, officer, board member, employee,

volunteer, contractor, property owner or landlord of a registered hemp preparation center.

(g) "Medical hemp establishment" means a registered hemp preparation center or a registered hemp testing laboratory.

(h) "Medical use" includes the acquisition, administration, delivery, possession, purchase, transfer, transportation or use of hemp preparations and paraphernalia relating to the administration of hemp preparations to treat or alleviate a patient cardholder's qualifying medical condition.

(i) "Parent" means a parent or legal guardian responsible for the medical care of a patient under the age of 18.

(j) "Patient" means an individual who has been diagnosed with a qualifying medical condition.

(k) "Physician" means a person who is licensed by the state board of healing arts to practice medicine and surgery.

(l) "Qualifying medical condition" means a condition causing seizures, including those characteristic of epilepsy.

(m) "Registered hemp preparation center" means an entity registered pursuant to section 9, and amendments thereto, that acquires, possesses, cultivates, transports and manufactures cannabis, hemp preparations and related paraphernalia and transfers, transports, sells, supplies or dispenses hemp preparations, paraphernalia related to hemp preparations and related supplies and educational materials to cardholders, visiting cardholders and other registered hemp preparation centers.

(n) "Registered testing laboratory" means an entity registered pursuant to section 9, and amendments thereto, to analyze the safety and potency of hemp.

(o) "Registration card" means a card issued by the department pursuant to section 3, and amendments thereto.

(p) "Testing laboratory agent" means an owner, officer, board member, employee, volunteer,

contractor, property owner or landlord of a registered testing laboratory.

(q) "Written certification" means a document signed and dated by a physician stating that, in the physician's professional opinion, the patient may receive therapeutic or palliative benefit from the medical use of hemp preparations to treat or alleviate the patient's qualifying medical condition or symptoms associated with such patient's qualifying medical condition.

(r) "Visiting cardholder" means a person who:

(1) Has been diagnosed with a qualifying medical condition or is the parent, child, sibling, spouse, domestic partner, grandparent, grandchild or personal aide of an individual who has been diagnosed with a qualifying medical condition;

(2) possesses a valid registration card, its equivalent or other documentation that allows the person to possess hemp preparations in another jurisdiction pursuant to the laws of the other state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States;

(3) is not a resident of Kansas or has been a resident of Kansas for less than 30 days; and

(4) has submitted any required documentation with the department, if the department has required registration.

Sec. 3. (a) The department shall issue a hemp preparation registration card to each individual who is over the age of 18 who:

(1) Provides the department with a written certification signed by a physician that was issued within 90 days immediately preceding the date of an application;

(2) pays the department a fee in an amount established by the department pursuant to section 5, and amendments thereto; and

(3) submits an application or renewal to the department on a form created by the department that contains:

- (A) The individual's name and address;
- (B) a copy of the individual's valid photo identification; and
- (C) any other information the department reasonably considers necessary to implement the

provisions of this section.

(b) The department shall issue a hemp preparation registration card to each individual who is under the age of 18 whose parent:

(1) Submits the information required of patients over the age of 18 according to subsection (a); and

(2) agrees to serve as a designated caregiver for the patient.

(c) Except as provided in subsection (d), the department shall issue a hemp preparation registration card to each designated caregiver applicant who:

(1) Is designated in a patient's application; and

(2) submits an application to the department on a form created by the department that contains:

(A) The applicant's name and address;

(B) the patient's name;

(C) a copy of the designated caregiver's valid photo identification; and

(D) any other information the department reasonably considers necessary to implement the provisions of this section.

(d) A patient may designate only one caregiver at any given time unless the patient or such patient's parent submits documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition.

(e) The department shall, not later than 30 calendar days after the date of the receipt of the completed application materials, approve the application and issue to the applicant a registration card

with a unique, random identification number.

(f) Until the department issues, renews or denies a registration card, a copy of the individual's application, a copy of the patient's written certification and proof that the application was submitted to the department shall be deemed a registration card.

(g) Until the department makes applications available, a valid, written certification issued within the previous year shall be deemed a registration card for a patient.

(h) Until the department makes applications available, the following shall be deemed a designated caregiver registration card:

(1) A copy of a patient's valid written certification issued within the previous year; and

(2) a signed affidavit attesting that the person has significant responsibility for managing the well-being of the patient and that the person has been chosen to assist a patient in obtaining hemp preparations.

(i) Except as provided in this subsection, the expiration date of a registration card shall be one year after the date of issuance. If a physician states in the written certification that a patient would benefit from hemp preparations until a specified earlier date, then the registration card shall expire on that date.

Sec. 4. (a) The department shall maintain a confidential list of all cardholders and each cardholder's address and registry identification number. This confidential list shall not be combined or linked in any manner with any other list or database, nor shall it be used for any purpose not provided for in sections 1 through 11, and amendments thereto.

(b) The department shall treat written certifications, applications, renewals, supporting information, the names of applicants, cardholders, visiting cardholders and physicians and related records as protected health information under the health insurance portability and accountability act of 1996 (public law 104-191), exempt from disclosure under the Kansas open records act, K.S.A. 45-215

et seq., and amendments thereto, and not subject to disclosure to any individual or public or private entity, except as provided in this section.

(c) Nothing in this section shall preclude the following:

(1) Authorized employees of the department accessing the information to perform official duties pursuant to this act;

(2) department employees notifying state or local law enforcement about falsified or fraudulent information submitted to the department or of other apparent criminal violations of this act;

(3) department employees notifying the state board of healing arts if the department has reasonable suspicion to believe a physician violated the standard of care or for other suspected violations of this act by a physician;

(4) the department verifying registration cards pursuant to subsection (d);

(5) at a cardholder's request, the department confirming such cardholder's status as a cardholder to a third party, such as a landlord, school, medical professional or court; and

(6) provided that no identifying information pertaining to cardholders, visiting cardholders, or physicians is disclosed:

(A) The department may release data that was voluntarily submitted by cardholders and visiting cardholders on the effectiveness and any side effects of medical hemp preparations to researchers at institutions of higher education; and

(B) the department may release information on the number of patients and designated caregivers approved, the number of registry identification cards revoked and aggregate information from voluntary reports on the effectiveness of medical hemp preparations and any side effects patients have experienced.

(d) Within 120 days of the effective date of this act, the department shall establish a secure phone or web-based verification system. Such verification system must allow law enforcement

personnel, medical hemp establishments and medical hemp establishment agents to enter a registry identification number and determine whether or not the number corresponds with a current, valid registration card. The system may disclose only whether the registration card is valid, the name of the cardholder and whether the cardholder is a registered patient or a designated caregiver. The department may also include visiting cardholders in the database.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules and regulations:

(1) Establishing the form and content of registration and renewal applications submitted under this act;

(2) establishing the form and content of registration cards;

(3) determining the number of testing laboratories that will be allowed in the state, which may not be fewer than two;

(4) determining the number of hemp preparation centers that will be allowed in the state, which shall be:

(A) No fewer than is reasonably necessary to ensure safe, steady access to hemp preparations to cardholders located throughout the state; and

(B) no fewer than a total of three;

(5) establishing a system to numerically score competing medical hemp establishment applicants that must include analysis of:

(A) in the case of hemp preparation centers, the suitability of the proposed location and its accessibility for patients;

(B) the character, veracity, background and relevant experience of principal officers and board members; and

(C) the business plan proposed by the applicant, which in the case of hemp preparation

centers shall include the ability to maintain an adequate supply of hemp preparations, plans to ensure safety and security of patrons and the community and procedures to be used to prevent diversion;

(6) governing the manner in which it shall consider applications for and renewals of registration cards, which may include creating a standardized written certification form;

(7) governing medical hemp establishments to prevent diversion and theft without imposing an undue burden or compromising the confidentiality of cardholders, including:

(A) Oversight requirements;

(B) recordkeeping requirements;

(C) security requirements, including at a minimum, lighting, physical security, transportation, waste destruction, video, and alarm requirements;

(D) health and safety requirements, including prohibiting the use of harmful pesticides;

(E) restrictions on advertising and signage;

(F) requirements and procedures for the safe and accurate packaging and labeling of medical hemp including requiring:

(i) Disclosure of whether the hemp preparation is organic or non-organic;

(ii) specifying the length of time it typically takes for a product to take effect;

(iii) listing ingredients and possible allergens in edible and potable preparations;

(iv) a nutritional fact panel on all edible and potable products; and

(v) a unique serial number that will match the product with a hemp preparation center batch and lot number so as to facilitate any warnings or recalls;

(G) rules for random sample testing to ensure that hemp preparations available to cardholders and visiting cardholders are accurately labeled for content and potency in accordance with standards established by the department to ensure the health and safety of patient cardholders;

(H) procedures for mandatory and voluntary recalls of hemp preparations; and

(I) reporting requirements for changes, alterations or modifications of the premises;

(8) establishing procedures for suspending or terminating the registration certificates or registration cards of cardholders and medical hemp establishments that commit multiple or serious violations of the provisions of this act or any rules and regulations promulgated pursuant to this section; and

(9) establishing reasonable application and renewal fees for registration cards, hemp preparation center registration certificates, testing laboratory registration certificates and such other fees that the department deems reasonably necessary to administer this act, according to the following:

(A) The fees shall be no greater than the amount reasonably necessary to cover the cost the department incurs to implement the provisions of this act;

(B) the fees for registration cards shall be no greater than the amount reasonably necessary to cover the cost the department incurs processing the identification cards;

(C) the fee structure established by the department must incorporate a sliding scale for cardholders who receive medicaid, supplemental security income or social security disability insurance; and

(D) the following fees shall not exceed:

Hemp preparation center registration certificate application.....	\$5,000
Hemp preparation center registration certificate.....	\$20,000
Testing laboratory registration certificate.....	\$2,000
Individual hemp preparation registration card.....	\$75
Visiting cardholder.....	\$80

(b) The department may promulgate rules and regulations:

(1) Establishing a presumptive maximum quantity of hemp preparations that a cardholder or a visiting cardholder may possess, provided that:

(A) The amount should be no less than a reasonable 60-day supply; and

(B) a patient may apply for a waiver if a physician provides a substantial medical basis in a signed, written statement asserting that, based on the patient's medical history, in the physician's professional judgment, the amount established by the department is an insufficient amount to properly alleviate the patient's medical condition or symptoms associated with such medical condition;

(2) requiring visiting cardholders to submit a medical practitioner's statement confirming that the patient has a qualifying medical condition and documentation demonstrating that the visiting cardholder is allowed to possess cannabis or hemp preparations in the jurisdiction where such person resides, provided that:

(A) Any fee required of visiting cardholders must be no greater than the amount reasonably necessary to cover the cost the department incurs in processing their documentation and issuing any confirmation; and

(B) if the department requires visiting cardholders to submit documentation to the department, a confirmation must be issued electronically to the individual no later than seven calendar days after such documentation is submitted.

Sec. 6. (a) A cardholder or visiting cardholder shall not be subject to arrest, prosecution under state or municipal law or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of hemp preparations pursuant to sections 1 through 11, and amendments thereto.

(b) No person may be subject to arrest, prosecution under state or municipal law or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(1) Selling hemp paraphernalia to a registered medical hemp establishment, a cardholder or a visiting cardholder;

(2) being in the presence or vicinity of the medical use of hemp preparations as allowed by sections 1 through 11, and amendments thereto; or

(3) assisting a patient with a registration card in the act of using or administering hemp.

(c) A hemp preparation center or hemp preparation center agent shall not be subject to prosecution under state or municipal law, search or inspection, except by the department pursuant to section 10(a), and amendments thereto, seizure or penalty in any manner or be denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to sections 1 through 11, and amendments thereto, and department rules and regulations to:

(1) Sell cannabis seeds to similar entities that are registered to dispense cannabis for medical use in other jurisdictions;

(2) acquire, cultivate, grow, harvest, manufacture, plant, possess, prepare, propagate, transport or store cannabis, hemp paraphernalia and hemp preparations;

(3) deliver, dispense, supply, sell, transfer or transport hemp preparations, paraphernalia for use with hemp preparations or related supplies and educational materials to cardholders and visiting cardholders;

(4) deliver, dispense, transfer, transport, sell or supply cannabis seeds, cannabis seedlings, cannabis plants, cannabis, hemp preparations or related supplies and educational materials to other hemp preparation centers; or

(5) deliver, transfer or transport cannabis or hemp preparations to registered testing laboratories.

(d) A registered testing laboratory and testing laboratory agents acting on behalf of a testing laboratory shall not be subject to prosecution under state or municipal law, search, except by the department pursuant to section 10(a), and amendments thereto, seizure or penalty in any manner, or be

denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or business licensing board or entity, solely for acting in accordance with this act and department rules and regulations to provide the following services:

(1) Acquiring, possessing, storing, analyzing, testing or transporting cannabis obtained from hemp preparation centers and hemp preparations obtained from cardholders, visiting cardholders or hemp preparation centers;

(2) possessing, storing or transporting hemp paraphernalia;

(3) returning the hemp preparations to cardholders or hemp preparation centers; or

(4) receiving compensation for actions allowed under this section.

(e) Mere possession of, or application for, a registration card or medical hemp establishment registration shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person, property or home of the person possessing or applying for the registration card. The possession of, or application for, a registration card or registration certificate shall not preclude the existence of probable cause if probable cause exists on other grounds.

(f) For the purposes of state law, the medical use of hemp preparations by a cardholder or visiting cardholder and activities a registered medical hemp establishment are registered to engage in shall be considered lawful as long as they are undertaken in accordance with sections 1 through 11, and amendments thereto.

Sec. 7. (a) For the purposes of medical care, including organ and tissue transplants, a patient's medical use of hemp preparations in accordance with sections 1 through 11, and amendments thereto, is the equivalent of the authorized use of any other medication in accordance with a prescription issued by a physician and does not constitute the use of an illicit substance or otherwise disqualify a patient cardholder from needed medical care.

(b) A person otherwise entitled to custody of or visitation or parenting time with a minor shall

not be denied such a right, and there shall be no presumption of neglect or child endangerment, for conduct allowed by sections 1 through 11, and amendments thereto, unless the person's actions in relation to hemp preparations were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Sec. 8. (a) Sections 1 through 11, and amendments thereto, do not authorize any person to engage in, and do not prevent the imposition of any civil, criminal or other penalties for engaging in the following conduct:

(1) Undertaking any task under the influence of hemp preparations when doing so would constitute negligence or professional malpractice; or

(2) operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while impaired by hemp preparations.

(b) Nothing in this act requires a government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of hemp preparations.

Sec. 9. (a) Any person who operates a medical hemp establishment must first submit an application form to the department and receive approval. Each application must be for a single type of a medical hemp establishment.

(b) No later than 120 days after the effective date of this act, the department shall begin accepting applications for hemp preparation centers and testing laboratories.

(c) Except as otherwise provided in this act, not later than 90 calendar days after receiving an application to operate a medical hemp establishment, the department shall register the medical hemp establishment and issue a registration certificate and a random identification number if:

(1) The person or persons who wish to operate the proposed medical hemp establishment have submitted to the department all of the following:

(A) The application fee, as established by the department; and

(B) an application, which must include:

(i) The legal name of the proposed medical cannabis establishment;

(ii) the physical address where the proposed medical hemp establishment will be located and the physical address of any co-owned additional or otherwise associated medical hemp establishments, so long as the location of the proposed medical hemp establishment is not within 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 which existed on the date on which the application for the proposed medical hemp establishment was submitted to the department;

(C) evidence that the applicant controls not less than \$250,000 in liquid assets;

(D) evidence that the applicant owns the property on which the proposed medical hemp establishment will be located or has the written permission of the property owner to operate the proposed medical hemp establishment on that property;

(E) the name, address and date of birth of each person who is proposed to be an owner, officer or board member of the proposed medical hemp establishment;

(F) operating procedures consistent with rules and regulations of the department for oversight of the proposed medical hemp establishment, including procedures to ensure the use of adequate security measures;

(G) if the city, town or, in the case of a location in an unincorporated area, county in which the proposed medical hemp establishment will be located has enacted zoning restrictions or licensing requirements, proof of licensure with the applicable local governmental authority or an affirmation signed by the applicant that the proposed medical hemp establishment will be in compliance with those restrictions and satisfies all applicable zoning requirements; and

(H) such other information as the department may reasonably require by rules and regulations;

(2) none of the persons who are proposed to be owners, officers or board members of the

proposed medical hemp establishment have served as an owner, officer or board member for a medical hemp establishment that has had its medical hemp establishment registration certificate revoked; and

(3) none of the persons who are proposed to be owners, officers or board members of the proposed medical hemp establishment are under 21 years of age.

(b) When more qualifying applications are submitted for a proposed hemp preparation center or testing laboratory than the department will approve, the department shall use an impartial and numerically scored merit-based selection process to determine which application or applications to approve. The department may approve the highest scoring application or applications in specific geographic regions of the state. The department may conduct a background check of the principal officers and board members of any prospective hemp preparation center to carry out the provisions of this subsection.

(c) Except as otherwise provided in this act, if an application for registration as a medical hemp establishment satisfies the requirements of this section and the establishment is not disqualified from being registered as a medical hemp establishment pursuant to this act or other applicable law, the department shall issue to the establishment a medical hemp establishment registration certificate. A medical hemp establishment registration certificate expires two years after the date of issuance and may be renewed upon:

- (1) Submission of a renewal application; and
- (2) payment of the renewal fee established by the department.

Sec. 10. (a) Medical hemp establishments are subject to reasonable inspection by the department.

(b) A medical hemp establishment may not employ or accept as a volunteer any person who is under 21 years of age.

(c) The operating documents of a medical hemp establishment must include procedures for

the oversight of the medical hemp establishment and procedures to ensure accurate recordkeeping.

(d) A medical hemp establishment shall implement appropriate security measures designed to deter and prevent:

- (1) The theft of cannabis and hemp preparations; and
- (2) unauthorized entrance into areas containing cannabis or hemp preparations.

(e) Before hemp preparations may be dispensed to a cardholder or visiting cardholder, a hemp preparation center agent must:

(1) Make a diligent effort to verify that the registration card or other documentation presented to the hemp preparation center is valid; and

(2) make a diligent effort to verify that the person presenting the card is the person identified on the registration card presented to the hemp preparation center agent.

(f) A hemp preparation center must dispense hemp preparations in a sealed container with a label that conforms to department regulations and that indicates the hemp preparation's ingredients and its percentages of tetrahydrocannabinol and cannabidiol by weight.

(g) Hemp preparation centers shall collect and submit to the department data on strains used, methods of delivery, any side effects experienced and the therapeutic effectiveness of hemp preparations for each patient who is willing to provide the information. Such data collection shall be done under the patient's registry identification number to protect the patient's confidentiality.

Sec. 11. If any provision of sections 1 through 11, and amendments thereto, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the application of any other provision of this act that can be given full effect without the invalid section or application.";

On page 2, in line 8, by striking "marihuana" and inserting "marijuana"; in line 11, by striking "marihuana" and inserting "marijuana";

And by renumbering sections accordingly;

Also on page 1, in the title, in line 1, by striking "crimes, punishment and criminal procedure" and inserting "controlled substances"; in line 2, after the semicolon by inserting "authorizing hemp preparation treatments for seizure disorders; establishing registration of patients and preparation centers; protection from arrest, prosecution and discrimination for authorized use; reducing criminal penalties for possession of marijuana;"

_____ District.