

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2049

As Amended by House Committee of the Whole

Brief*

HB 2049 would amend and create law related to criminal penalties for possession of marijuana, industrial hemp, and medical hemp preparations.

Criminal Penalties for Possession of Marijuana

The bill would amend the penalties for possession of marijuana so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony. Under current law, a first offense is a class A nonperson misdemeanor and any subsequent offense is a drug severity level 5 felony.

The bill also makes technical amendments to statutory references.

Alternative Crop Research Act

The bill also would create the Alternative Crop Research Act (Act). The Act would allow the Kansas Department of Agriculture (KDA), alone or in coordination with a state educational institution (defined by the bill to be the six Regents' institutions), to cultivate industrial hemp grown from certified seed and promote the research and development of industrial hemp. Research conducted on industrial hemp under the Act could include:

*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>

- Oversight and analysis of growth to conduct research of required soils, growing conditions, and harvest methods;
- Seed research, including seed availability, creation of hybrid types, in-the-ground variety trials, and seed production;
- Economic feasibility analysis;
- Analysis of estimated value-added benefits, including environment benefits;
- Study of world-wide agronomy research on industrial hemp varieties, production, and utilization; and
- Study of feasibility of attracting federal and private funding for research.

The Secretary of Agriculture would be authorized to promulgate rules and regulations to carry out the provisions of the Act.

The bill also would define the following key terms related to the Act:

- “Certified seed” would mean industrial hemp seed that has been certified as having no more tetrahydrocannabinol (THC) concentration than allowed in the Federal Controlled Substances Act;
- “Industrial hemp” would mean all parts and varieties of the plant *cannabis sativa*, cultivated or possessed by a state educational institution or KDA, whether growing or not, that contain a THC concentration no more than the amount allowed under the Federal Controlled Substances Act;and

- “THC” would mean the natural or synthetic equivalents of the substances contained in the plant or in the resinous extracts of cannabis or any synthetic substances, compounds, salts, or derivatives of the plant or chemical and their isomers with similar chemical structure and pharmacological activity.

Finally, the bill would amend the state Controlled Substances Act to specify the penalties in that law would not apply to actions authorized by the bill. Language in the bill also would specify that nothing in the bill could be construed to authorize a violation of federal law.

Medical Hemp Preparations

Additionally, the bill would enact “Otis’s Law,” which would allow use of medical hemp preparations to treat or alleviate a patient’s condition causing seizures, including those characteristic of epilepsy. The details of Otis’s Law are as follows.

Definitions

Several terms would be defined in the bill, including “department,” “parent,” “patient,” and “physician.” The additional terms that would be defined are the following:

- “Cannabis” would mean all parts of all varieties of the plant *cannabis sativa L.*, not exceeding 3 percent tetrahydrocannabinol (THC) by weight;
- “Cardholder” would mean a patient or designated caregiver to whom the Kansas Department of Health and Environment (KDHE) has issued a hemp preparation registration card;

- “Designated caregiver” would mean a person who is at least 21 years old or a parent of the patient; has responsibility for managing the well-being of a patient; and has been approved by KDHE to assist a patient in obtaining hemp preparations;
- “Hemp preparation” would mean cannabis plant material that is no more than 3 percent THC by weight or an extract, mixture, or preparation containing cannabis plant material that is no more than 3 percent THC by weight;
- “Hemp preparation center agent” would mean a representative of a hemp preparation center including those either in an employment or volunteer capacity;
- “Medical hemp establishment” would mean a registered hemp preparation center or testing laboratory;
- “Medical use” would include the acquisition, administration, delivery, possession, purchase, transfer, transportation, or use of hemp preparations and related paraphernalia to treat or alleviate a patient cardholder’s condition causing seizures;
- “Qualifying medical condition” would mean a condition causing seizures;
- “Registered hemp preparation center” would mean a registered entity that acquires, possesses, cultivates, transports, and manufactures cannabis, hemp preparation, and related paraphernalia and transfers, transports, sells supplies, or dispenses hemp preparations, related paraphernalia and related supplies, and educational materials to cardholders, visiting cardholders, and other registered hemp preparations centers;

- “Registered testing laboratory” would mean an entity registered to analyze the safety and potency of hemp;
- “Registration card” would mean a hemp preparations registration card issued by KDHE;
- “Testing laboratory agent” would mean a representative of a laboratory including those either in an employment or volunteer capacity;
- “Written certification” would mean a document signed and dated by a physician stating the patient may receive therapeutic or palliative benefit from the medical use of hemp preparations to treat a condition causing seizures; and
- “Visiting cardholder” would mean a person who meets the qualifications of a cardholder except that the person is not a resident of Kansas but does possess a valid registration card, or the equivalent, that allows the person to lawfully possess hemp preparations in another jurisdiction.

Hemp Preparation Registration Card

The KDHE would be required to issue a hemp preparation registration card to an individual who is over the age of 18 who:

- Provides KDHE with a written certification signed by a physician;
- Pays the fee required by KDHE; and
- Submits the required application form created by KDHE.

The KDHE would be required to issue a registration card to each individual under the age of 18 whose parent:

- Submits the information required of patients over the age of 18; and
- Agrees to serve as a designated caregiver for the patient.

The KDHE would be required to issue a registration card to each designated care giver applicant who is designated in a patient's application and submits an application to KDHE on the required form. A patient would be allowed to designate only one caregiver unless it could be demonstrated a greater number would be needed due to age or medical condition.

The KDHE would have not more than 30 days from receipt of the completed application to issue a registration card with a unique random identification number. Until KDHE issues a decision about an application, a copy of the application, a copy of the certification, and proof the application was submitted would be deemed a registration card. The bill would make provisions for designated registration cards and designated caregiver registration cards until the KDHE applications were made available.

Registration cards would expire one year after date of issuance unless a physician would certify in writing the care should expire at an earlier date.

KDHE Requirements and Responsibilities

The KDHE would be required to maintain cardholder information in accordance with the Health Insurance Portability and Accountability Act of 1996, exempt from Kansas Open Records Act. The KDHE also would be prohibited from utilizing cardholder information for any purpose not set forth in the bill. The following activities would not be precluded:

- Authorized employees of KDHE accessing the information to perform official duties;
- KDHE employees notifying law enforcement about falsified or fraudulent information submitted to KDHE;
- KDHE employees notifying the Board of Healing Arts if KDHE has reasonable suspicion to believe a physician violated the standard of care or committed other violations of this Act;
- KDHE verifying registration cards as it relates to the secure phone or web-based verification system KDHE would be required to establish; and
- At a cardholder's request, KDHE confirming the cardholder's status to a third party.

The KDHE would be allowed to release data to researchers at institutions of higher education and to release aggregate data, provided no identifying information pertaining to cardholders, visiting cardholders, or physicians would be disclosed.

Rules and Regulations

The KDHE would be required to promulgate rules and regulations within 120 days of the effective date of the Act as follows:

- Establishing the application form;
- Establishing the form and content of registration cards;
- Determining the number of testing laboratories, not fewer than two;

- Determining the number of hemp preparation centers, not fewer than three;
- Establishing a system to numerically score competing medical hemp establishment applicants;
- Governing the manner in which it shall consider applications for and renewals of registration cards;
- Governing medical hemp establishments to prevent diversion and theft without imposing an undue burden or compromising the confidentiality of cardholders;
- Establishing procedures for suspending or terminating registration certificates or registration cards of cardholders and medical hemp establishments that commit multiple or serious violations of the Act; and
- Establishing reasonable application and renewal fees and other such fees KDHE deems reasonably necessary to administer this law and setting forth statutory caps as follows:
 - 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; and
 - Visiting cardholder – \$80.

The KDHE would be allowed to promulgate rules and regulations as follows:

- Establishing a presumptive maximum quantity of hemp preparations that a cardholder or a visiting cardholder may possess; and
- Requiring visiting cardholders to submit a medical practitioner's statement confirming the patient has a qualifying medical condition and documentation demonstrating the visiting cardholder is allowed to possess cannabis or hemp preparations in the jurisdiction where such person resides.

Criminal Provisions

A cardholder or visiting cardholder would not be subject to arrest, prosecution, or denial of any right or privilege for the medical use of hemp preparations; selling hemp paraphernalia to a registered medical hemp establishment, a cardholder or a visiting cardholder; being in the presence or vicinity of the medical use of hemp preparations; or assisting a patient with a registration card in the act of using or administering hemp.

A hemp preparation center would not be subject to prosecution, search or inspection, seizure or penalty, or be denied any right or privilege for acting in accordance with the Act or corresponding rules and regulations to:

- Sell cannabis seeds to similar entities that are registered to dispense cannabis for medical use in other jurisdictions;
- Acquire, cultivate, grow, harvest, manufacture, plant, possess, prepare, propagate, transport, or store cannabis, hemp paraphernalia, and hemp preparations;
- Deliver, dispense, supply, sell, transfer, or transport hemp preparations, paraphernalia, or related supplies to cardholders and visiting cardholders;

- Deliver, dispense, transfer, transport, sell, or supply cannabis seeds, cannabis seedlings, cannabis plants, cannabis, hemp preparations, or related supplies to hemp preparation centers; or
- Deliver, transfer, or transport cannabis or hemp preparations to registered testing laboratories.

A registered testing laboratory would not be subject to prosecution or search, except by reasonable inspection by KDHE, or seizure or penalty solely for acting in accordance with the Act or the corresponding rules and regulations.

Mere possession of, or application for, a registration card or medical hemp establishment registration would not constitute probable cause or reasonable suspicion.

Medical Care and Parenting

For the purposes of medical care, including organ and tissue transplants, a patient's medical use of hemp preparations would be the equivalent of the authorized use of any other medication prescribed by a physician and would not constitute the use of an illicit substance.

A person otherwise entitled to custody of or visitation or parenting time with a minor would not be denied such a right unless the person's actions in relation to hemp preparations were such that they created an unreasonable danger to the safety of a minor as established by clear and convincing evidence.

Penalties and Insurance Costs

Nothing in the Act would authorize a person to engage in the following conduct:

- Undertaking a task under the influence of hemp preparations when doing so would constitute negligence or professional malpractice; or
- Operating, navigating, or being in actual physical control of a motor vehicle, aircraft, or motorboat while impaired by hemp preparations.

Nothing in this Act would require a government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of hemp preparations.

Medical Hemp Establishment Registration

Any person who operates a medical hemp establishment would be required to first submit an application to KDHE and receive approval. Each application would be required to be for a single type of medical hemp establishment.

The KDHE would be required to begin accepting applications no later than 120 days after the effective date of the Act.

The KDHE also would be required to register a medical hemp establishment and issue a registration certificate and a random identification number within 90 days of receiving an application if all the application requirements were met regarding fees, location, and compliance with the Act and corresponding rules and regulations.

Medical Hemp Establishment Requirements

Medical hemp establishments would be required to comply with the following:

- Be subject to reasonable inspection by the KDHE;

- Not employ or accept as a volunteer any person under 21 years of age;
- Maintain an operating document of a medical hemp establishment including procedures for oversight of the medical hemp establishment and procedures to ensure accurate record keeping;
- Implement appropriate security measures;
- Before dispensing any hemp preparation, make a diligent effort to verify the registration card and that the person presenting the card is the person identified on the card;
- Dispense hemp preparations in a sealed container with a label conforming to the KDHE regulations and indicating the ingredients and percentages of THC and cannabidiol by weight; and
- Collect and submit to KDHE data on strains used, methods of delivery, side effects experienced, and therapeutic effectiveness of hemp preparations for each patient who is willing to provide the information.

Severability

If any section of the bill were found to be invalid, the bill would state such invalidity would not affect the other sections.

Background

HB 2049 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. As introduced, the bill contained the provisions lowering the criminal penalties for first and second convictions of possession of marijuana.

In the House Committee, the executive director of the Kansas Sentencing Commission and a representative of the Kansas Association of Criminal Defense Lawyers testified in support of the bill. The Kiowa County Attorney submitted written neutral testimony with a proposed amendment. No other testimony was presented.

The House Committee of the Whole amended the bill to add the provisions of HB 2282, regarding medical hemp preparations, as amended by the House Committee on Health and Human Services. The House Committee of the Whole also added the provisions of HB 2329, regarding industrial hemp, as recommended by the House Committee on Agriculture and Natural Resources. Further background information for HB 2282 and HB 2329 is provided below.

According to the fiscal note prepared by the Division of the Budget, the Kansas Sentencing Commission estimates HB 2049, as introduced, would reduce adult prison bed needs by 46 beds in FY 2016 and by 75 beds by FY 2017. The Sentencing Commission also estimates the bill could help avoid 2003 SB 123 drug treatment programming costs by \$788,986 in FY 2016, and the Commission's journal entry workload would be reduced by 448 entries in FY 2016.

As of January 12, 2015, available prison bed capacity is 9,636. Based upon the Sentencing Commission's most recent 10-year projection, the year-end population will exceed available male capacity by 85 inmates in FY 2015, 109 inmates in FY 2016, and 162 inmates in FY 2017. The bill could create contract bed savings of \$671,600 in FY 2016 and \$1,095,000 in FY 2017.

The Office of Judicial Administration estimates 367 misdemeanor offenders could be added to court services officer caseloads, requiring an additional 6.0 FTE court services officer positions at an annual cost of \$356,586. The amount needed for these positions in FY 2016 would be \$237,670 due to the time needed to hire and train the officers.

The bill also could have a fiscal effect on Judicial Branch revenues, due to the lower correctional supervision fee paid by misdemeanor offenders. However, the precise fiscal effect on these revenues is difficult to determine.

Any fiscal effect associated with HB 2049 is not reflected in *The FY 2016 Governor's Budget Report*. Fiscal information regarding HB 2282 and HB 2329 is provided below.

Background of HB 2282

HB 2282 was introduced in the House Committee on Health and Human Services at the request of Representative Wilson, who testified in support of the bill. Three private citizens also testified in support of the bill, stating legalization of hemp preparation would provide an alternative treatment to those who have not been helped by traditional medical treatments. Written-only proponent testimony was provided by representatives from the Epilepsy Foundation of Missouri and Kansas, the Marijuana Policy Project, Bleeding Kansas, and three private citizens.

Opponent testimony was provided by representatives from the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, Kansas Peace Officers Association, and the Kansas Association of Addiction Professionals. Written-only opponent testimony was provided by the Director of the Kansas Bureau of Investigation and a representative of the Institute on Global Drug Policy. Opponents testified the language was too broad and could open the door to other forms of cannabis being legalized.

Neutral testimony was provided by a representative of the Kansas Health Institute and by a private citizen.

The House Committee amended the bill by adding a definition of "cannabis," and deleting the option for petitions to be filed to request additional illnesses to be added to the "qualifying medical condition" definition and additional strains

of cannabis to be added to the “hemp preparation” definition. The House Committee also amended the bill by decreasing the number of required hemp preparation centers from five to three, removing sections related to the creation of an advisory council, and inserting a statutory cap fee structure for licenses, applications, and registrations.

A fiscal note was not available at the time of the hearing. A fiscal note by the Division of the Budget was provided on May 4, 2015. The Kansas State Board of Healing Arts (KSBHA) indicates the agency would require 8.00 additional FTE positions for additional investigations and disciplinary cases, totaling \$412,784 in additional salary expenditures in FY 2016. KSBHA estimates other operating expenditures would increase by \$157,680 and a one-time office equipment expenditure of \$64,000 would be required in FY 2016, for a total fiscal impact of \$634,464 in FY 2016. KDHE indicates a precise fiscal effect cannot be determined. Any fiscal effect associated with HB 2282 is not reflected in *The FY 2016 Governor’s Budget Report*.

Background of HB 2329

At the hearing in the House Agriculture and Natural Resources Committee, Representatives Johnson and Dove, as well as a representative from the KDA and a private citizen testified in favor of HB 2329. The proponents testified federal law had been changed to allow research on industrial hemp by state departments of agriculture and institutions of higher education, but such research was still illegal under Kansas law. The proponents urged that research was needed to see what the potential benefits might be for the State.

There was no neutral or opponent testimony presented.

According to the fiscal note prepared by the Division of the Budget, HB 2329 would increase KDA’s State General Fund expenditures by \$1,988 in FY 2016. These increased expenditures would be for administrative staff time, travel and

inspection time, and lab analysis costs associated with the bill. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.