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MEMORANDUM

To: Chairman Olson
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: March 16, 2022

Subject: SB 560 – Medical Marijuana Regulation Act.

Senate Bill No. 560 (SB 560) would enact the Medical Marijuana Regulation Act (Act) to regulate the cultivation, testing, processing, distributing, sale, possession, and use of medical marijuana. No person would be permitted to do engage in any commercial activity with respect to medical marijuana or purchase, possess, or use medical marijuana except as allowed by the Act. The Act would be administered by four existing regulatory bodies:

- The Kansas Department of Health and Environment (KDHE) would regulate patients and caregivers purchasing and using medical marijuana.
- The State Board of Healing Arts (SBHA) would regulate doctors recommending treatment with medical marijuana.
- The State Board of Pharmacy (SBP) would regulate pharmacists consultants employed by retail dispensaries and the KTRACS prescription monitoring program.
- The Division of Alcoholic Beverage Control would be renamed the Division of Alcohol and Cannabis Control (ACC) and would regulate the business licensees.

SB 560 establishes a 15-member Medical Marijuana Advisory Committee to advise KDHE, ACC, and the Legislature on medical marijuana issues. The Committee would review and advise KDHE on petitions to add qualifying medical conditions to the approved list. It would also review and advise ACC on petitions to add new forms or methods of medical marijuana for purchase by patients and caregivers. The Committee sunsets after five years.

A patient or caregiver must have the patient's doctor submit an application for registration on behalf of the patient or caregiver. The doctor would confirm there is an ongoing doctor-

patient relationship, which can be established during the initial office visit and that the patient has a qualifying medical condition. A minor patient must have parent or legal guardian consent. A caregiver must be at least 21, or if the patient is the caregiver's child, then the caregiver must be at least 18. A patient may designate up to two caregivers and a caregiver may assist up to two patients. The fee for a patient registration is \$50 per year unless the patient is indigent or a veteran, then the fee is \$25. The fee for a caregiver registration is \$25 per year.

Registered patients and caregivers are provided a unique 24-character identification number that retail dispensaries can check against KDHE's registry to verify the patient or caregiver has a valid registration. A valid registration allows the patient or caregiver to purchase up to a recommended 30-day supply of medical marijuana in the approved forms for dispensing. Medical marijuana cannot be dispensed in a form that can be smoked or vaporized. It cannot be dispensed via electronic commerce.

SB 560 provides that medical marijuana identification cards issued to nonresidents by another jurisdiction will be recognized in Kansas and the nonresident will be allowed to purchase and possess medical marijuana to the same extent as patients and caregivers registered in Kansas.

Doctors wishing to recommend treatment with medical marijuana must obtain an annual certification to do so from the SBHA. The fee for the certification is \$175 and the doctor will be required to annually complete two hours of continuing medical education in the treatment with medical marijuana. A doctor cannot recommend treatment for themselves or family members. A written recommendation is valid for 90 days and can be renewed for three additional periods of 90 days each. This requires an annual physical exam by the doctor before a new recommendation can be written.

Sections 19 through 36 provide for the licensure and regulation of business entities. Any person wanting to grow, test, process, distribute, or sell medical marijuana must apply to the ACC for the appropriate license. A separate license must be issued for each premises. An applicant must clear the required state and national criminal history records check, submit a tax clearance certificate, demonstrate that the licensed premises complies with the location restrictions and security requirements of the Act, and the applicant does not have a ownership interest in any licensed laboratory, unless the applicant is applying for a laboratory license.

Additionally, if the applicant is an individual then the applicant must be at least 18 years old, a U.S. citizen, and a Kansas resident for the preceding two years. Business entities must be formed and registered in Kansas and not be a publicly traded company. At least 75% of the

ownership interest of the business entity applicant must be held by individuals who have been Kansas residents for the preceding two years.

SB 560 directs ACC to contract with a private laboratory to conduct all testing of medical marijuana requested by state agencies. The contractor laboratory will also consult with ACC on developing standards for licensed laboratories testing medical marijuana on behalf of business licensees.

A laboratory license will be contingent on a successful on-site inspection of the premises and ongoing compliance with the laboratory standards required by rules and regulations. Additionally, licensed laboratories must be accredited by a national accrediting agency. A licensed laboratory may test samples for any business licensee, research institution, registered patient or caregiver, or any participant in a clinical study conducted by a research institution.

A cultivator license will allow the licensee to cultivate medical marijuana and sell the product to cultivators, processors, distributors, and retail dispensaries. A cultivator must maintain the minimum square footage of cultivation area required by rules and regulations, but cannot cultivate more than 50,000 square feet total. A cultivator cannot grow marijuana for personal or family use or on any public land.

A processor license will allow the licensee to obtain medical marijuana from cultivators and processors and to process and sell medical marijuana and medical marijuana products to processors, distributors, and retail dispensaries. Processors must comply with all packaging and labeling requirements established by rules and regulations.

A distributor license will allow the licensee to obtain medical marijuana from cultivators and processors and store and sell such products to retail dispensaries. Distributors must comply with all packaging and labeling requirements established by rules and regulations.

A retail dispensary license will allow the licensee to sell and dispense medical marijuana and medical marijuana products to registered patients and caregivers. A licensee must comply with all packaging and labeling requirements, including providing information specific to the patient on each product sold. A licensee must also employ a pharmacist consultant.

All business licensee employees must hold a valid employee license issued by ACC. An employee license applicant must clear the required state and national criminal history records check and pay the \$100 license fee. An employee license is valid for two years and is not associated with a particular business licensee, so the employee may change employment within the industry without needing to apply for a new license.

Each business license requires payment of an application fee and a license fee. License fees for each license are as follows:

- Cultivator license: \$4,000 per 100 square feet of cultivation area.
- Laboratory license: \$36,000.
- Processor license: \$180,000.
- Distributor license: \$80,000.
- Retail dispensary license: \$80,000.

The SBP is directed to adopt rules and regulations for the registration of pharmacist consultants. A pharmacist consultant for a retail dispensary must be registered and cannot receive compensation that exceeds 1% of the gross annual receipts of the retail dispensary. A pharmacist consultant will be required to audit each written recommendation to verify the medical marijuana was dispensed in accordance with the recommendation and reported to the KTRACS program. The consultant will also be responsible for training employees, disseminating information to patients and caregivers, and being available for consultations with the retail dispensary and patients during operating hours.

SB 560 directs ACC to establish a seed-to-sale tracking system for all medical marijuana grown in the State. Preference is to be given to systems that begin tracking plants with the plant's in vitro genetic origination data.

SB 560 contains several restrictions on business advertising. Cooperative advertising between cultivators, retail dispensaries, and doctors that has the purpose of influencing patients and caregivers to choose a particular medical marijuana product are prohibited. False or misleading advertisements are prohibited. The Director may require certain disclosures in advertisements or make recommendations on changes to cure any potentially false or misleading advertisements. Retail dispensaries cannot use any brand names or graphics on the exterior of the building or display marijuana or paraphernalia so that it is clearly visible from the exterior of the building. Cultivators, processors, and distributors are prohibited from advertising, but may provide price lists to the entities they sell to.

A licensed premises cannot be located within 1,000 feet of any school, church, library, or park. Licensed premises that were in operation prior to the establishment of a school, church, library, or park will be allowed to remain at their location. An applicant can apply for a waiver of the 1,000 feet restriction if the licensed premises is located in an area zoned for industrial business and is located at least 500 feet from any school, church, library, or park. Additionally,

the board of county commissioners of a county can adopt a resolution prohibiting the operation of retail dispensaries in such county. Any retail dispensary in operation at the time the resolution becomes effective will be allowed to continue operations.

SB 560 requires all business licensed premises to have the required security equipment and measures. These include:

- Exterior lighting.
- Video monitoring equipment.
- Controlled access to restricted areas.
- Alarm systems.

The bill provides specifics for how the video monitoring should be operated and maintained, including notifying ACC of any equipment malfunctions and providing alternative adequate security until the equipment can be repaired. Each licensee is also required to adopt security policies and procedures in accordance with the Act and to employ a security manager who will provide employee training and oversee the security of the premises.

SB 560 does not impose any excise tax on the sale of medical marijuana. All sales of medical marijuana by a retail dispensary would be subject to state and local sales taxes. The revenue from these taxes would be collected and distributed in the same manner as all other sales tax revenues. The bill also excludes medical marijuana from the controlled substances tax statutes, so the possession and sale of medical marijuana would not be subject to those provisions.

The Act also contains the following business-related provisions:

- Financial institutions providing financial services to business licensees will be exempted from criminal liability for providing such services to persons possessing, delivering, and manufacturing medical marijuana.
- Research institutions conducting research on marijuana are exempted from regulation under the Act.
- Employers may continue to impose and enforce drug testing policies and zero tolerance workplace policies.
- The Secretary of Revenue may contract with the tribal governments of the four Native American Tribes to allow the exchange of medical marijuana with entities licensed by the tribal government as long as the tribal government's regulations are at least as stringent as the Act.

SB 560 creates two new crimes. First, the bill creates the crime of unlawful storage of medical marijuana. This occurs if an individual fails to safely store medical marijuana so that it is inaccessible to minors unless the minor is a registered patient. The criminal penalty is a Class A misdemeanor. Second, the bill creates the crime of unlawful transport of medical marijuana. This occurs if the individual transporting medical marijuana fails to secure the product so that it is inaccessible to the driver. The criminal penalty is a Class C misdemeanor.

The bill also amends several criminal statutes to exempt registered patients and caregivers and business licensees from crimes involving manufacturing, possession, distribution, and sale of medical marijuana and paraphernalia in accordance with the Act.

SB 560 contains several provisions to prohibit discrimination against registered patients. These provisions include the following:

- No law enforcement officer may enforce violations of federal firearms laws for possession of a controlled substance if that substance is medical marijuana.
- No registered patient can be discriminated against with respect to housing.
- No registered patient can be discriminated against for approval of an organ transplant.
- No child-in-need-of care order can be solely based on the child residing with a person who is a registered patient.
- Child custody orders cannot consider the fact that a parent or child is a registered patient when determining custody.
- Workers' compensation benefits cannot be denied if employee is a registered patient and was using medical marijuana in accordance with the Act.
- Misconduct and gross misconduct are redefined to not include use of medical marijuana as a registered patient for purposes of denying unemployment benefits.
- Although an employer may impose drug testing policies and zero tolerance policies, an employer cannot discriminate against an employee on the basis of the person being a registered patient and using medical marijuana in accordance with the Act.
- Medical professionals cannot be disciplined or subject to adverse regulatory actions for advising the use of medical marijuana or being a registered patient or caregiver. This includes doctors, physician assistants, nurses, and nurse-midwives.

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SB 560 has a delayed effective date of July 1, 2023. The SBHA rules and regulations for treating doctors must be adopted by September 1, 2023. All other rules and regulations must be adopted by January 1, 2024. The patient/caregiver website that KDHE is required to maintain must be functional by January 1, 2024, and applications for all licenses and registrations under the Act may begin on January 1, 2024.