

Report of the Special Committee on Medical Marijuana to the 2023 Kansas Legislature

CHAIRPERSON: Senator Robert Olson

VICE-CHAIRPERSON: Representative John Barker

OTHER MEMBERS: Senators Larry Alley, Cindy Holscher, Rick Kloos, and Jeff Longbine; and Representatives John Eplee, Christina Haswood, Dennis “Boog” Highberger, Nick Hoheisel, and Eric Smith

STUDY TOPIC

The Committee is directed to:

- Study medical marijuana legislation recently considered by the Legislature;
- Solicit testimony (based upon the provisions of 2021 House Sub. for SB 158 and 2022 SB 560) from potential licensees, state agencies, medical providers, and law enforcement; and
- Make recommendations to the 2023 Legislature for comprehensive medical marijuana legislation.

Special Committee on Medical Marijuana

REPORT

Conclusions and Recommendations

The Special Committee on Medical Marijuana (Committee) recommends the 2023 Legislature consider the information and perspectives provided to the Committee when it considers medical marijuana legislation. The Committee further agreed that the Legislature should especially consider the information and perspectives provided on:

- Expungement of marijuana-related convictions;
- Independent laboratory testing requirements;
- Licensing fees;
- Use of medical marijuana in jails and correctional facilities;
- Methods of administration;
- Physician education;
- Physician-patient relationships;
- Whether a pilot program is needed;
- Qualifying conditions;
- Seed-to-sale tracking systems;
- Taxes;
- Tiered licensing;
- Transferability of licenses; and
- Workers' compensation.

Proposed Legislation: None.

BACKGROUND

The study directive from the Legislative Coordinating Council (LCC) to the Special Committee on Medical Marijuana (Committee) was to study recent medical marijuana legislation, solicit testimony from stakeholders based on that legislation, and to make recommendations to the 2023 Legislature for comprehensive medical marijuana legislation.

COMMITTEE ACTIVITIES

The LCC authorized four meeting days for the Committee during the 2022 Interim. The

Committee met on the following days: October 12 and 19, and December 9 and 15.

October 12 Meeting

The Committee heard informational presentations from legislative staff and received testimony on the potential legalization of medical marijuana from state agencies, law enforcement, and local government stakeholders.

The Committee also heard testimony from a representative of Oklahoma's medical marijuana regulatory body.

Staff Presentations

A Senior Assistant Revisor, Office of Revisor of Statutes, provided an overview of medical marijuana legislation considered in the 2022 Legislative Session. He explained and compared the provisions of each bill.

Committee members asked questions concerning the bills and other topics, including the effect of marijuana being rescheduled in federal law, 30-day supply limits, expungement of marijuana convictions, and county opt-out provisions.

The Managing Research Analyst, Kansas Legislative Research Department (KLRD), provided an overview of medical marijuana taxation and fee structures. He compared and explained various policy provisions of medical marijuana regulatory systems.

The Committee requested more information regarding minority ownership considerations, tiered licensing systems, local taxes, THC (tetrahydrocannabinol) caps, seed-to-sale tracking, packaging requirements, and the use of medical marijuana in correctional facilities.

State Agency Testimony

A representative of the Kansas Bureau of Investigation summarized the agency's public safety concerns regarding medical marijuana. He discussed topics including federal drug schedules, review by the U.S. Food and Drug Administration (FDA), and concerns with illegal extraction.

The Director of Alcoholic Beverage Control (ABC), Department of Revenue, summarized the agency's concerns on topics related to the promulgation of rules and regulations, needed resources for implementation, and licensee oversight.

The Executive Secretary of the Kansas Board of Pharmacy discussed with the Committee how the state's prescription monitoring system (K-TRACS) would operate within the context of medical marijuana. She also discussed oversight of pharmacist consultants, packaging, and medical marijuana dosage.

Law Enforcement Testimony

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and the Kansas Sheriffs Association summarized concerns of these organizations related to public safety. He discussed topics including medical marijuana in local jails, concerns with illegal extraction, and 30-day supply limitations, and he raised additional concerns.

Local Government Testimony

A representative of the League of Kansas Municipalities requested that cities be a coordinating partner in implementation of medical marijuana laws. He further discussed topics including local taxes, city opt-in provisions, and zoning.

Presentation on the Oklahoma Medical Marijuana Regulatory System

The Executive Director of the Oklahoma Medical Marijuana Authority discussed the history of the medical marijuana system in Oklahoma and described regulatory issues the Authority has had to address since it has been in operation. She covered many aspects of regulation, including license quotas, a seed-to-sale system, and laboratory standards. Among her remarks, the Executive Director stated her hope that Kansas could avoid particular issues experienced by Oklahoma by attempting to address the issues ahead of time.

October 19 Meeting

Proponent Testimony

A representative of the Michigan Cannabis Manufacturers Association discussed the history of the Michigan medical marijuana program and noted particular challenges faced by the state due to lack of regulation. He further discussed the Michigan Legislature's work to regulate the industry and noted specific topics Kansas should consider including in its legislation.

A representative of Greenlight summarized a set of regulations that have worked well (local opt-out, limited licenses, and economic spread) and those that have not worked well (unlimited licenses, onerous and expensive barriers for

patients, and bans on smoking the substance) in other states. In response to questions, the representative discussed qualifying conditions and keys to avoiding illegal sales activity, including a sufficient number of participating physicians and an economically sustainable industry.

A representative of Kanha Technology Solutions recommended a seed-to-sale tracking system that provides tracking from seed or immature plant stage to a consumable product in the hands of the patient. He further discussed the benefits of such a system in the context of a regulatory system.

A representative of the Kansas Cannabis Chamber of Commerce summarized various policy aspects that he described as being supported by consensus among stakeholders, including limiting patients to possessing a 30-day supply, a licensing fee calculation, and packaging and advertising requirements.

A representative of the Kansas Cannabis Industry Association discussed the need for a balanced regulatory system that would clearly define what is allowed, while discouraging illegal sales activity. He further expressed a desire for a “safe harbor” for products legally produced and obtained out-of-state.

A representative of the Kansas Cannabis Coalition recommended changes to previously considered bill language from 2022 SB 560 on topics such as licensing fees, law enforcement access to data, usage when commuting or traveling, and expedited implementation of regulations.

A representative of the Scottsdale Research Institute discussed the organization’s work in marijuana research and the scientific basis for marijuana treatment of various conditions. She also stated her concern with the potential for out-of-state companies to make up a large portion of suppliers to the Kansas market.

An addiction psychiatrist stated his belief in the need for legal access to marijuana treatments, and he cautioned against making access to treatment too cumbersome and expensive.

A medical doctor discussed caregiver terminology, treatment for military veterans, and the safety of vaping, and concluded by noting that many adverse reactions to marijuana are due to illegal products.

A representative of the Kansas Silver Haired Legislature (KSHL) discussed potential benefits for seniors who use medical marijuana products and a resolution passed by the KSHL that urges the State to legalize the medical use of marijuana.

A representative of the American Cannabis Nurses Association stated the Committee has a responsibility to allow Kansans to benefit from the use of marijuana. She further shared her experiences related to the criminalization of marijuana.

A registered nurse shared information in response to points made at the prior meeting on adolescent suicides. She also addressed the various forms of medical marijuana that a patient may benefit from.

A private citizen discussed challenges faced by veterans. He encouraged more marijuana research to be conducted by universities and the U.S. Department of Veterans Affairs medical facilities.

A representative of Kansans for Hemp, Planted Association of Kansas, and the Kansas Cannabis Association discussed sustainability issues and made recommendations concerning operating protocols, canopy sizes, patient-to-caregiver ratios, and laboratory testing.

A private citizen urged the State to consider public-private partnerships for clinical trials and discussed U.S. Department of Defense track and trace technology.

A private citizen discussed his concerns that larger companies operating in multiple states may force smaller Kansas businesses out of the market.

A private citizen suggested compliance training be required of marijuana business licensees.

A representative of the American Civil Liberties Union of Kansas offered several recommendations and offered sample language to address those recommendations. She discussed topics such as participation by small businesses, allowing persons with prior felony convictions to use medical marijuana, and capping local taxes on sales.

A private citizen shared his experiences as a Kansas CBD business owner and asked that smoking and vaping of marijuana products be allowed.

A private citizen discussed her son's experiences using marijuana to alleviate symptoms of Crohn's disease.

A private citizen shared his experiences with chronic pain due to previous injury and his need to use medical marijuana to keep working.

A representative of Gatsby's Cannabis Company asked the Committee to be mindful of small businesses when setting license and application fees.

Committee members asked questions concerning license caps, the population differences between Kansas and Oklahoma, and whether rules and regulations should allow plants to be grown and processed before sales begin.

Opponent Testimony

A representative of the Kansas Medical Society asked that the Committee not recommend medical marijuana legislation. The representative discussed various points in opposition related to FDA approval, lack of clinical testing, and whether medical marijuana should be treated as medicine. The representative concluded by noting various areas of concern with the proposed legislation, including limitations on prescribing until other treatments have been tried, the percentage of allowable THC content, the makeup of the advisory committee, physician liability, and advertisements.

A medical doctor began his testimony with general comments before making more specific recommendations. He stated his belief that the end goal of the marijuana industry is to use medical

marijuana as a stepping stone to legalization for recreational use. He also discussed concerns with potential legislation being used to bypass federal regulations and stated dosage ranges and THC potency should be specified for each qualifying condition. The medical doctor concluded by making recommendations for legislation on topics such as required medical examinations and documentation, dosage and THC limitations, physician standards of care, product labeling, and required drug testing.

A representative of American Family Action of Kansas and Missouri asked the Committee to not recommend medical marijuana legislation due to issues in other states. He also noted concerns with language contained in bills considered in the 2022 Session on this topic.

A representative of the Johnson County Sheriff's Office stated his office's opposition to medical marijuana legislation. He further stated that his office would like to provide its input in drafting bill language to address concerns of local law enforcement. The representative discussed topics including marijuana in county jails, canine officer operations, auto accidents due to driving under the influence, and additional law enforcement resources needed for roadside testing.

A representative of the Culture Shield Network testified in opposition to medical marijuana legalization. She discussed marijuana-influenced automobile deaths and addiction.

Neutral Testimony

A representative of the Kansas Chamber of Commerce asked the Committee to adopt a position on drug testing of employees in the workplace to include clear guidance for both employers and employees.

A representative of the Kansas Self-Insurers Association asked the Committee to ensure provisions regarding workplace expectations and prohibitions are clear. He further stated that impaired workers who are injured on the job should not be eligible for workers' compensation.

A representative of Lamar Outdoor Advertising stated his concern with language in a previously considered bill that required advertisers

to obtain state-agency approval of advertisements. He stated requirements for advertising should be defined in statute.

A representative of DCCCA, Inc., expressed her desire that the marijuana industry be strictly regulated in the same manner as alcohol and tobacco. She asked that the Committee especially consider topics such as dispensary density regulations, employment restrictions, funding toward education and treatment of marijuana addiction, restrictions on advertising, and protections for minors.

A private citizen discussed constitutional protections, federal and state regulations, and other regulatory inconsistencies.

December 9 Meeting

Presentations on Research Topics

KLRD staff presented information on a variety of research topics based on Committee questions from the October 12 meeting.

A KLRD Principal Research Analyst presented information to the Committee concerning the use of medical marijuana in jails and correctional facilities. She stated that no state requires jails or correctional facilities to provide medical marijuana as a medicine to incarcerated persons. She further discussed state policies and litigation regarding marijuana use by incarcerated persons and persons on probation.

The KLRD Principal Research Analyst next presented information concerning seed-to-sale tracking systems. She discussed the technology used in such systems, noting that radio frequency identification (RFID) technology is the typical method for tracking information. She further discussed the stages at which seeds and plants are tracked, as well as the ways in which states use the information. Committee members discussed additional security measures such as cameras and keycode access at facilities and asked questions concerning current vendors for seed-to-sale tracking systems.

A KLRD Research Analyst presented information concerning packaging and labeling requirements in other states. She discussed common packaging requirements, including the

requirement in all medical marijuana states that packaging be child-resistant and tamper-evident. She further discussed package coloring, noting that nearly all medical marijuana states require packaging to be in either opaque or light-resistant packaging. Next, she covered label requirements, noting that most medical marijuana states require labels to include information on content and potency, lot and batch numbers, specific THC or marijuana symbols, warning statements, expiration dates, instructions, nutritional information, and manufacturing facility information. She reviewed additional label requirements of medical marijuana states.

The KLRD Research Analyst next presented information concerning medical marijuana possession limitations. She noted that some states allow specific amounts of medical marijuana to be purchased within a 14-day, 30-day, 60-day, or 90-day time period. The Research Analyst also discussed weight limitations set by states and noted Alabama is the only state that sets limitations by daily dose. The Research Analyst concluded by discussing plant and seedling limitations in states that allow home cultivation. A Committee member asked a question regarding limitations by types of product.

The KLRD Managing Research Analyst presented information concerning THC potency limits set by states. He began by discussing potency limits set by states that have legalized both recreational marijuana as well as medical marijuana, noting the potency allowed by product type. He stated four states with both regulatory systems do not have THC potency limits. He also discussed limits set in states with only medical marijuana and potency limits by product type.

The KLRD Managing Research Analyst next presented information on taxation of medical marijuana by local governments. He first noted that 15 of the 37 medical marijuana states do not have city, county, or state medical marijuana taxes. Next, he presented information on states without city or county medical marijuana taxes that levy a state tax. He also discussed states with city or county medical marijuana taxes, or both. Finally, he reviewed laws of states with taxes specific to medical marijuana, in which general sales tax is not levied on purchases.

A KLRD Research Analyst presented information on medical marijuana license tiers and social equity programs. She stated social equity programs are used by states to create pathways into the marijuana industry for persons who have been disproportionately impacted by the prohibition on marijuana, noting 15 states have social equity programs for medical use marijuana. The Research Analyst stated social equity programs offer various benefits to those impacted, including special loan programs, priority application processing, reserved licenses, and fee reductions.

The Research Analyst also discussed licensing tiers. She stated nine states use tiers to determine license fees. She summarized state provisions and tier definitions, including applicable fees and the limit on plant canopy or number of plants.

Review of Policy Issues Raised by Conferees

A Senior Assistant Revisor of Statutes discussed information in a memorandum summarizing policy issues raised by various conferees during the October 12 and October 19 meetings.

General Administration of Regulatory Act

The Senior Assistant Revisor discussed testimony on topics such as effective dates of rules and regulations, advisory committee composition, pilot programs, public education, and medical research.

Patient and Caregiver Regulation

The Senior Assistant Revisor summarized testimony concerning patient and caregiver registration, K-TRACS information and access, medical evaluation requirements, standards of care, physician regulatory requirements, qualifying medical conditions, prior relationship requirements, 30-day supply amount, THC limitations, forms of THC and products, prohibitions on smoking and vaporization, restrictions on use, transportation of product, and prohibition on home cultivation.

Business Entity Regulation

The Senior Assistant Revisor discussed testimony concerning enforcement attorneys; fines and penalties; orders of the Director of ABC;

regulatory funding; statutory definitions; license fees, restrictions, issuance, and effective dates; ownership restrictions and license transfers; regulatory compliance; laboratory and testing restrictions; seed and plant origination; licensure of cultivators; packaging and labeling requirements; advertising regulations; retail sales; transfer of product; retail dispensary training; record retention; security requirements; pharmacist consultants; income tax changes; and financial institution protections.

Taxation Issues

The Senior Assistant Revisor of Statutes summarized conferee recommendations related to taxation issues, including taxation of products, taxation to fund drug addiction prevention and education funding, community grant funds, and State Fire Marshal funding.

Law Enforcement Issues

The Senior Assistant Revisor described suggestions from conferees on law enforcement issues including prohibiting vegetative forms of marijuana, prohibiting unauthorized extraction, waste disposal procedures, criminal penalties for distribution to a minor or unauthorized patient, access to patient and caregiver information and recommendations, presentation of registration to law enforcement, reporting of violations, cooperation with investigations, use in local jails, statutory defense for the use of CBD, unlawful storage, law enforcement costs, and reevaluation of marijuana crime convictions.

Local Government Issues

The Senior Assistant Revisor discussed local government issues including municipality opt-outs, zoning regulations, and distribution of revenue to municipalities.

Other Legal Issues

The Senior Assistant Revisor concluded by discussing other legal issues including employee drug testing policies, workers' compensation benefits, professional practice discipline, and prevention of discriminatory practices.

Members asked questions and further discussed physician standard of care, public housing, and drug testing policies in other states.

Committee members requested research on physician liability, public housing, and tax revenue.

December 15 Meeting

Presentations on Research Topics

KLRD staff presented information on a variety of research topics based on Committee questions from the December 9 meeting.

The KLRD Managing Research Analyst presented information on physician liability. He noted that six states specify immunity from civil and criminal penalties when there is a *bona fide* physician-patient relationship. He stated eight other states allow disciplinary boards to sanction a physician for breaching the standard of care notwithstanding other immunity protections. Certain states do not allow physicians to hold a financial interest in a medical marijuana establishment.

The Managing Research Analyst next discussed medical marijuana use in public housing, noting federal laws treat current public housing tenants differently than public housing applicants. He also reviewed laws from other states that provide protections for tenants of public housing who use medical marijuana, but also allow for a smoking prohibition. The Managing Research Analyst also discussed recent litigation by tenants and prospective tenants.

The Managing Research Analyst also reviewed a memorandum concerning regional state medical marijuana revenues. He discussed figures from either calendar year 2021 or fiscal year 2021, depending on the state. He noted that the states in the region are at differing stages of implementation and that sales per patient and the number of patients per 100,000 of population vary among the states.

A KLRD Research Analyst discussed employer laws and workers' compensation in the context of medical marijuana. She noted employee and employer protections in each state with a medical marijuana program; those protections generally consist of anti-discrimination protections while also allowing employers to address the scenario of impaired employees.

Committee members asked questions concerning whether persons under the influence at work had any legal protections and whether employees are required to notify their employers of their status as medical marijuana patients.

The Research Analyst next discussed social equity litigation. She summarized cases from Connecticut, New York, Los Angeles, and Maricopa County, Arizona, in which plaintiffs sued medical marijuana regulatory bodies due to the conduct of license lotteries and certain residency requirements. The Research Analyst also discussed a federal 1st Circuit Court of Appeals case concerning residency in which the court's holding cited a U.S. Supreme Court case on liquor license residency requirements (holding such requirements to be unconstitutional). Members asked questions concerning residency and qualifications of the plaintiffs.

A KLRD Research Analyst presented information regarding how eight other states (Michigan, Mississippi, Missouri, Nevada, Oklahoma, Rhode Island, Virginia, and Washington) have established limitations on possession of usable medical marijuana.

Committee Discussion

Following the research presentations, Committee members discussed the following topics:

- Tiered licensing;
- Taxes;
- Transferability of liquor licenses;
- Physician-patient relationships;
- Physician education;
- Qualifying conditions;
- Expungement of marijuana-related convictions;
- Independent laboratory testing requirements;

- Licensing fees;
- Medical marijuana in jails and correctional facilities;
- Methods of administration;
- A possible pilot program;
- Seed-to-sale tracking systems; and
- Workers' compensation.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee agreed to recommend that the 2023 Legislature consider the information and perspectives provided to the Committee when it considers medical marijuana legislation. The Committee further agreed that the Legislature should especially consider the information and perspectives provided on:

- Expungement of marijuana-related convictions;
- Independent laboratory testing requirements;

- Licensing fees;
- Medical marijuana in jails and correctional facilities;
- Methods of administration;
- Physician education;
- Physician-patient relationships;
- Whether a pilot program is needed;
- Qualifying conditions;
- Seed-to-sale tracking systems;
- Taxes;
- Tiered licensing;
- Transferability of licenses; and
- Workers' compensation.