

February 20, 2020

The Honorable Dan Kerschen, Chairperson
Senate Committee on Agriculture and Natural Resources
Statehouse, Room 225-E
Topeka, Kansas 66612

Dear Senator Kerschen:

SUBJECT: Fiscal Note for SB 449 by Senate Committee on Agriculture and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 449 is respectfully submitted to your committee.

SB 449 would amend existing law to remove cannabis products that contain up to 0.3 percent tetrahydrocannabinol (THC) from the list of controlled substances contained in the Kansas Uniform Controlled Substances Act by modifying the definitions of marijuana to exclude all parts of the plant that contain less than 0.3 percent THC. This definition would also replace the current statutory definition of industrial hemp in the Act.

Estimated State Fiscal Effect				
	FY 2020 SGF	FY 2020 All Funds	FY 2021 SGF	FY 2021 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$682,852	\$682,852
FTE Pos.	--	--	--	5.00

The Board of Pharmacy does not expect enactment of SB 449 to have a fiscal effect on agency operations. The Board does indicate, however, that similar bills in the past have created confusion for consumers and facilities and could cause an influx of practice and compliance inquiries for Board staff with the potential for increased complaints and investigations. These complaints and investigations would be handled with existing staff and funds, but it is impossible for the agency to determine if those costs would occur and if so, what they would amount to.

The Kansas Bureau of Investigation (KBI) states that enactment of SB 449 would make all cannabis and cannabis products containing less than 0.3 percent THC legal and all those containing more than 0.3 percent THC illegal. The KBI Forensic Science Laboratory would be required to perform THC quantitation analysis on all evidentiary samples suspected to be cannabis or cannabis derived products for purposes of law enforcement officers and prosecutors in establishing probable cause of a criminal violations.

On average, the KBI Forensic Science Laboratory analyzes 5,000 vegetation samples per year as evidence. For fiscal effect statements on cannabis related legislation in previous years, KBI assumptions were based on consultation with other labs that perform this type of analysis, and used the average of 5,000 vegetation samples per year for total estimated costs ranging from \$357,860 to \$1.1 million. The associated operational and fiscal effect at that time included the addition of 7.50 FTE forensic scientists and additional equipment. Specifically, personnel costs were approximately \$494,477 in the first year and \$551,276 in subsequent years; capital costs were \$357,870 in the first year; and consumable costs were \$69,441 in the first year.

In the past several months, pursuant to the passage of the 2018 Federal Farm Bill, the Drug Enforcement Agency (DEA) has developed and validated a streamlined testing protocol that allows approximate concentration values to be more quickly determined in vegetative samples. The high-concentration samples that are clearly above the 1.0 percent THC threshold are reported as marijuana. Samples that are near the threshold of 1.0 percent THC are then subjected to a more precise and time-consuming method of analysis that allows for the specific quantitation to be reported. If SB 449 were to pass, the KBI Forensic Science Laboratory would adopt the same approach, thereby reducing the overall operational and fiscal effect reported in previous years. Because SB 449 effectively legalizes edible and beverage products that contain psychoactive amounts of THC that will produce the same psychoactive effects as marijuana, the agency anticipates the need to develop a wide variety of testing methodologies and specialized extraction processes in order to perform the required quantitative analysis. Each sample matrix is expected to take several weeks to develop and validate. The Laboratory currently analyzes approximately 4,000 cannabis derived products annually. Unfortunately, the agency lacks the data and information necessary to make any informed assumptions regarding testing cannabis derived products for this fiscal effect assessment.

Passage of SB 449 is expected to increase agency expenditures by \$682,852 in FY 2021 and \$487,909 in out-years, all to be paid for from the State General Fund. To respond to the provisions of the bill, the agency would require the addition of a minimum of 5.00 FTE forensic scientists and additional equipment. Specifically, personnel costs are expected to be \$341,929 in the first year and \$404,117 in subsequent years. Contractual costs are expected to be \$46,605 in the first year and \$26,236 in subsequent years; consumable costs are expected to be \$69,441 in the first year and \$57,556 in subsequent years; and capital costs are expected to be \$224,877 in the first year. The 2019 Legislature allocated \$176,000 in SGF funding for FY 2020 for the KBI to purchase some equipment necessary to perform quantitation analysis pursuant to passage of the Industrial Hemp Act. The estimate of capital costs associated with SB 449 has been reduced by the cost of this equipment. The agency indicates that the assumptions used in developing these fiscal effects are based on the number of evidence submissions the KBI currently receives and do not account for any increase that may be seen if the two county-funded forensic laboratories decide to send additional samples to the KBI in lieu of developing in-house capabilities. The agency's

estimate also does not include costs associated with upgrades to facilities to accommodate the additional personnel and equipment.

The Office of Judicial Administration indicates that because the provisions of SB 449 would decriminalize actions that could be charged as crimes under current law, it is possible that fewer criminal cases would be filed. However, it is not possible to estimate the reduction in the number of court cases that would result from enactment of the bill, and therefore, a fiscal effect cannot be determined.

The Kansas Highway Patrol indicates that enactment of SB 449 would have an effect on enforcement issues, training, and how current officers evaluate the controlled substance, but would have no fiscal effect on agency operations. The Attorney General reports that the agency prosecutes very few violations of the Kansas Uniform Controlled Substances Act for violations that would be legal if this bill were passed; therefore, the agency does not expect that enactment of the bill would result in any fiscal effect on agency operations. According to the Kansas Department of Agriculture, enactment of SB 449 would have no fiscal effect on agency operations. Any fiscal effect associated with SB 449 is not reflected in *The FY 2021 Governor's Budget Report*.

The League of Kansas Municipalities states that enactment of the bill would have a fiscal effect on local governments as law enforcement may face increased costs for testing cannabis-based products to determine the level of THC. However, the League is unable to predict what those costs might amount to. The Kansas Association of Counties assumes that enactment of SB 449 would allow for more products in the "CBD" category to be sold legally; thus, the fiscal effect on Kansas counties would depend on whether the revenue generated from sales of these products is greater than the current cost of prosecution for illegal possession or sale of the products.

Sincerely,



Larry L. Campbell
Division of the Budget

cc: Alexandra Blasi, Board of Pharmacy
Paul Weisgerber, KBI
Sherry Macke, Highway Patrol
Trey Cocking, League of Municipalities
Jay Hall, Association of Counties
Willie Prescott, Office of the Attorney General
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Kellen Liebsch, Agriculture