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CURRENT KANSAS LAW REGARDING THE POSSESSION AND USE OF PRODUCTS CONTAINING TETRAHYDROCANNABINOL (THC)

To: Chairperson Fagg
Members of the Special Committee on Medical Marijuana

From: Jason B. Long, Senior Assistant Revisor

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This is a summary of current state statutes governing the possession and use of products that contain tetrahydrocannabinol (THC). Currently, there are four acts that regulate such possession and use: The Commercial Industrial Hemp Act (K.S.A. 2-3901 et seq.); the statutes establishing crimes involving controlled substances (K.S.A. 21-5701 et seq.); the Uniform Controlled Substances Act (K.S.A. 65-4101 et seq.); and Claire and Lola's Law (K.S.A. 65-6235). Each act will be summarized separately.

Commercial Industrial Hemp Act (K.S.A. 2-3901 et seq.)

After passage of the federal 2018 Farm Bill that authorized hemp production, Kansas enacted the Commercial Industrial Hemp Act (CIHA). The CIHA authorizes the cultivation or production of industrial hemp by a licensed hemp producer and the processing and manufacturing of hemp products by a licensed hemp processor. Hemp producers are licensed and regulated by the Kansas Department of Agriculture. Hemp processors are licensed by the State Fire Marshal. The CIHA generally provides for the regulation of industrial hemp by establishing license or registration fees, production requirements, and restrictions on the type of hemp products that can be produced.

The CIHA defines "industrial hemp" to mean any part of the plant cannabis sativa L. that contains a delta-9 THC concentration of not more than 0.3% on a dry weight basis. The term "delta-9 THC concentration" is further defined to mean the combined percentage of delta-9 THC including optical isomers, their salts and acids, and salts of their acids, reported as free THC. The term "THC concentration" has the same meaning as used in Claire and Lola's Law (see below).

In addition to limits on the THC concentration in industrial hemp products, the CIHA also prohibits the production of certain products. K.S.A. 2-3908 specifically prohibits cigarettes, cigars, chew, dip, or other smokeless material, and teas that contain industrial hemp. The statute also prohibits any materials containing industrial hemp that may be used in vaporizing devices and any product intended for human or animal consumption that contains an ingredient derived from industrial hemp that is prohibited in such products.

Crimes Involving Controlled Substances (K.S.A. 21-5701 et seq.)

Article 57 of Chapter 21 of the Kansas Statutes Annotated establishes crimes involving controlled substances. The term "controlled substances" is defined for criminal code purposes by reference to the schedules for such substances under the Uniform Controlled Substances Act. Specifically, the schedule in K.S.A. 65-4105 includes THC as a controlled substance under subsection (h).

The following are current crimes involving THC:

- K.S.A. 21-5703 makes it unlawful to manufacture a controlled substance.
- K.S.A. 21-5705 makes it unlawful to cultivate THC or possess THC with the intent to distribute.
- K.S.A. 21-5706 makes it unlawful to possess THC.
- K.S.A. 21-5709 makes it unlawful to possess drug paraphernalia, which is defined to include items used to clean or refine marijuana or to burn marijuana.
- K.S.A. 21-5710 makes it unlawful to distribute drug paraphernalia.

The severity of the crimes and the potential penalties depend on various factors, including the amount of THC the person is found to possess.

K.S.A. 21-5702 exempts conduct that is authorized under the Pharmacy Act, the Uniform Controlled Substances Act, the CIHA, or conduct that is otherwise authorized by law. K.S.A. 21-5706(d) also provides an affirmative defense for possession of THC if the person has a debilitating medical condition and is being treated with THC in accordance with Claire and Lola's Law.

Uniform Controlled Substances Act (K.S.A. 65-4101 et seq.)

The Uniform Controlled Substances Act (UCSA) governs the production, distribution, and sale of drugs and other substances that are listed on the schedules contained in the UCSA.

The schedules generally follow the federal schedules for controlled substances. The USCA is administered by the Board of Pharmacy, which regulates pharmacists and the distribution and sale of such drugs and substances. THC is listed under K.S.A. 65-4105(h) as a schedule I drug. Schedule I lists the most restricted controlled substances.

Claire and Lola's Law (K.S.A. 65-6235)

Claire and Lola's Law provides that if a child has been diagnosed with a debilitating medical condition, as defined by the act, and is receiving treatment with a cannabidiol treatment preparation, then no child protection action may be taken against the child's parent or legal guardian solely on the basis of using the cannabidiol treatment preparation. A cannabidiol treatment preparation is defined as an oil containing cannabidiol and THC with a THC concentration of not more than 5% relative to the cannabidiol concentration. The provisions of Claire and Lola's Law correspond with the affirmative defense provisions under K.S.A. 21-5706(d) (see above).