

Substitute for SENATE BILL No. 147

By Committee on Corrections and Juvenile Justice

1-27

1 AN ACT concerning hemp preparation treatments for seizure disorders;
2 establishing registration of patients and preparation centers; protecting
3 from arrest, prosecution or discrimination for authorized use.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. The provisions of sections 1 through 11, and amendments
7 thereto, shall be known and may be cited as Otis's law.

8 Sec. 2. As used in sections 1 through 11, and amendments thereto,
9 unless the context requires otherwise:

10 (a) "Cannabis" means all parts of all varieties of the plant *cannabis*
11 *sativa* L. not exceeding 3% tetrahydrocannabinol by weight.

12 (b) "Cardholder" means a patient or a designated caregiver to whom
13 the department has issued a hemp preparation registration card or who has
14 documentation that is deemed to be a hemp preparation registration card.

15 (c) "Designated caregiver" means a person who:

16 (1) Is either at least 21 years of age or a parent of a patient;

17 (2) has significant responsibility for managing the well-being of a
18 patient; and

19 (3) has been approved by the department to assist a patient in
20 obtaining hemp preparations.

21 (d) "Department" means the department of health and environment.

22 (e) "Hemp preparation" means:

23 (1) Cannabis plant material that is no more than 3%
24 tetrahydrocannabinol by weight; or

25 (2) an extract, mixture or preparation containing cannabis plant
26 material that is no more than 3% tetrahydrocannabinol by weight.

27 (f) "Hemp preparation center agent" means an owner, officer, board
28 member, employee, volunteer, contractor, property owner or landlord of a
29 registered hemp preparation center.

30 (g) "Medical hemp establishment" means a registered hemp
31 preparation center or a registered hemp testing laboratory.

32 (h) "Medical use" includes the acquisition, administration, delivery,
33 possession, purchase, transfer, transportation or use of hemp preparations
34 and paraphernalia relating to the administration of hemp preparations to
35 treat or alleviate a patient cardholder's qualifying medical condition.

36 (i) "Parent" means a parent or legal guardian responsible for the

1 medical care of a patient under the age of 18.

2 (j) "Patient" means an individual who has been diagnosed with a
3 qualifying medical condition.

4 (k) "Physician" means a person who is licensed by the state board of
5 healing arts to practice medicine and surgery.

6 (l) "Qualifying medical condition" means a condition causing
7 seizures, including those characteristic of epilepsy.

8 (m) "Registered hemp preparation center" means an entity registered
9 pursuant to section 9, and amendments thereto, that acquires, possesses,
10 cultivates, transports and manufactures cannabis, hemp preparations and
11 related paraphernalia and transfers, transports, sells, supplies or dispenses
12 hemp preparations, paraphernalia related to hemp preparations and related
13 supplies and educational materials to cardholders, visiting cardholders and
14 other registered hemp preparation centers.

15 (n) "Registered testing laboratory" means an entity registered
16 pursuant to section 9, and amendments thereto, to analyze the safety and
17 potency of hemp.

18 (o) "Registration card" means a card issued by the department
19 pursuant to section 3, and amendments thereto.

20 (p) "Testing laboratory agent" means an owner, officer, board
21 member, employee, volunteer, contractor, property owner or landlord of a
22 registered testing laboratory.

23 (q) "Written certification" means a document signed and dated by a
24 physician stating that, in the physician's professional opinion, the patient
25 may receive therapeutic or palliative benefit from the medical use of hemp
26 preparations to treat or alleviate the patient's qualifying medical condition
27 or symptoms associated with such patient's qualifying medical condition.

28 (r) "Visiting cardholder" means a person who:

29 (1) Has been diagnosed with a qualifying medical condition or is the
30 parent, child, sibling, spouse, domestic partner, grandparent, grandchild or
31 personal aide of an individual who has been diagnosed with a qualifying
32 medical condition;

33 (2) possesses a valid registration card, its equivalent or other
34 documentation that allows the person to possess hemp preparations in
35 another jurisdiction pursuant to the laws of the other state, district,
36 territory, commonwealth, insular possession of the United States or
37 country recognized by the United States;

38 (3) is not a resident of Kansas or has been a resident of Kansas for
39 less than 30 days; and

40 (4) has submitted any required documentation with the department, if
41 the department has required registration.

42 Sec. 3. (a) The department shall issue a hemp preparation registration
43 card to each individual who is over the age of 18 who:

- 1 (1) Provides the department with a written certification signed by a
2 physician that was issued within 90 days immediately preceding the date
3 of an application;
- 4 (2) pays the department a fee in an amount established by the
5 department pursuant to section 5, and amendments thereto; and
- 6 (3) submits an application or renewal to the department on a form
7 created by the department that contains:
- 8 (A) The individual's name and address;
- 9 (B) a copy of the individual's valid photo identification; and
- 10 (C) any other information the department reasonably considers
11 necessary to implement the provisions of this section.
- 12 (b) The department shall issue a hemp preparation registration card to
13 each individual who is under the age of 18 whose parent:
- 14 (1) Submits the information required of patients over the age of 18
15 according to subsection (a); and
- 16 (2) agrees to serve as a designated caregiver for the patient.
- 17 (c) Except as provided in subsection (d), the department shall issue a
18 hemp preparation registration card to each designated caregiver applicant
19 who:
- 20 (1) Is designated in a patient's application; and
- 21 (2) submits an application to the department on a form created by the
22 department that contains:
- 23 (A) The applicant's name and address;
- 24 (B) the patient's name;
- 25 (C) a copy of the designated caregiver's valid photo identification;
26 and
- 27 (D) any other information the department reasonably considers
28 necessary to implement the provisions of this section.
- 29 (d) A patient may designate only one caregiver at any given time
30 unless the patient or such patient's parent submits documentation
31 demonstrating that a greater number of designated caregivers are needed
32 due to the patient's age or medical condition.
- 33 (e) The department shall, not later than 30 calendar days after the date
34 of the receipt of the completed application materials, approve the
35 application and issue to the applicant a registration card with a unique,
36 random identification number.
- 37 (f) Until the department issues, renews or denies a registration card, a
38 copy of the individual's application, a copy of the patient's written
39 certification and proof that the application was submitted to the
40 department shall be deemed a registration card.
- 41 (g) Until the department makes applications available, a valid, written
42 certification issued within the previous year shall be deemed a registration
43 card for a patient.

1 (h) Until the department makes applications available, the following
2 shall be deemed a designated caregiver registration card:

3 (1) A copy of a patient's valid written certification issued within the
4 previous year; and

5 (2) a signed affidavit attesting that the person has significant
6 responsibility for managing the well-being of the patient and that the
7 person has been chosen to assist a patient in obtaining hemp preparations.

8 (i) Except as provided in this subsection, the expiration date of a
9 registration card shall be one year after the date of issuance. If a physician
10 states in the written certification that a patient would benefit from hemp
11 preparations until a specified earlier date, then the registration card shall
12 expire on that date.

13 Sec. 4. (a) The department shall maintain a confidential list of all
14 cardholders and each cardholder's address and registry identification
15 number. This confidential list shall not be combined or linked in any
16 manner with any other list or database, nor shall it be used for any purpose
17 not provided for in sections 1 through 11, and amendments thereto.

18 (b) The department shall treat written certifications, applications,
19 renewals, supporting information, the names of applicants, cardholders,
20 visiting cardholders and physicians and related records as protected health
21 information under the health insurance portability and accountability act of
22 1996 (public law 104-191), exempt from disclosure under the Kansas open
23 records act, K.S.A. 45-215 et seq., and amendments thereto, and not
24 subject to disclosure to any individual or public or private entity, except as
25 provided in this section.

26 (c) Nothing in this section shall preclude the following:

27 (1) Authorized employees of the department accessing the
28 information to perform official duties pursuant to this act;

29 (2) department employees notifying state or local law enforcement
30 about falsified or fraudulent information submitted to the department or of
31 other apparent criminal violations of this act;

32 (3) department employees notifying the state board of healing arts if
33 the department has reasonable suspicion to believe a physician violated the
34 standard of care or for other suspected violations of this act by a physician;

35 (4) the department verifying registration cards pursuant to subsection
36 (d);

37 (5) at a cardholder's request, the department confirming such
38 cardholder's status as a cardholder to a third party, such as a landlord,
39 school, medical professional or court; and

40 (6) provided that no identifying information pertaining to
41 cardholders, visiting cardholders, or physicians is disclosed:

42 (A) The department may release data that was voluntarily submitted
43 by cardholders and visiting cardholders on the effectiveness and any side

1 effects of medical hemp preparations to researchers at institutions of
2 higher education; and

3 (B) the department may release information on the number of patients
4 and designated caregivers approved, the number of registry identification
5 cards revoked and aggregate information from voluntary reports on the
6 effectiveness of medical hemp preparations and any side effects patients
7 have experienced.

8 (d) Within 120 days of the effective date of this act, the department
9 shall establish a secure phone or web-based verification system. Such
10 verification system must allow law enforcement personnel, medical hemp
11 establishments and medical hemp establishment agents to enter a registry
12 identification number and determine whether or not the number
13 corresponds with a current, valid registration card. The system may
14 disclose only whether the registration card is valid, the name of the
15 cardholder and whether the cardholder is a registered patient or a
16 designated caregiver. The department may also include visiting
17 cardholders in the database.

18 Sec. 5. (a) Not later than 120 days after the effective date of this act,
19 the department shall promulgate rules and regulations:

20 (1) Establishing the form and content of registration and renewal
21 applications submitted under this act;

22 (2) establishing the form and content of registration cards;

23 (3) determining the number of testing laboratories that will be
24 allowed in the state, which may not be fewer than two;

25 (4) determining the number of hemp preparation centers that will be
26 allowed in the state, which shall be:

27 (A) No fewer than is reasonably necessary to ensure safe, steady
28 access to hemp preparations to cardholders located throughout the state;
29 and

30 (B) no fewer than a total of three;

31 (5) establishing a system to numerically score competing medical
32 hemp establishment applicants that must include analysis of:

33 (A) in the case of hemp preparation centers, the suitability of the
34 proposed location and its accessibility for patients;

35 (B) the character, veracity, background and relevant experience of
36 principal officers and board members; and

37 (C) the business plan proposed by the applicant, which in the case of
38 hemp preparation centers shall include the ability to maintain an adequate
39 supply of hemp preparations, plans to ensure safety and security of patrons
40 and the community and procedures to be used to prevent diversion;

41 (6) governing the manner in which it shall consider applications for
42 and renewals of registration cards, which may include creating a
43 standardized written certification form;

- 1 (7) governing medical hemp establishments to prevent diversion and
2 theft without imposing an undue burden or compromising the
3 confidentiality of cardholders, including:
- 4 (A) Oversight requirements;
 - 5 (B) recordkeeping requirements;
 - 6 (C) security requirements, including at a minimum, lighting, physical
7 security, transportation, waste destruction, video, and alarm requirements;
 - 8 (D) health and safety requirements, including prohibiting the use of
9 harmful pesticides;
 - 10 (E) restrictions on advertising and signage;
 - 11 (F) requirements and procedures for the safe and accurate packaging
12 and labeling of medical hemp including requiring:
 - 13 (i) Disclosure of whether the hemp preparation is organic or non-
14 organic;
 - 15 (ii) specifying the length of time it typically takes for a product to
16 take effect;
 - 17 (iii) listing ingredients and possible allergens in edible and potable
18 preparations;
 - 19 (iv) a nutritional fact panel on all edible and potable products; and
 - 20 (v) a unique serial number that will match the product with a hemp
21 preparation center batch and lot number so as to facilitate any warnings or
22 recalls;
 - 23 (G) rules for random sample testing to ensure that hemp preparations
24 available to cardholders and visiting cardholders are accurately labeled for
25 content and potency in accordance with standards established by the
26 department to ensure the health and safety of patient cardholders;
 - 27 (H) procedures for mandatory and voluntary recalls of hemp
28 preparations; and
 - 29 (I) reporting requirements for changes, alterations or modifications of
30 the premises;
- 31 (8) establishing procedures for suspending or terminating the
32 registration certificates or registration cards of cardholders and medical
33 hemp establishments that commit multiple or serious violations of the
34 provisions of this act or any rules and regulations promulgated pursuant to
35 this section; and
- 36 (9) establishing reasonable application and renewal fees for
37 registration cards, hemp preparation center registration certificates, testing
38 laboratory registration certificates and such other fees that the department
39 deems reasonably necessary to administer this act, according to the
40 following:
- 41 (A) The fees shall be no greater than the amount reasonably
42 necessary to cover the cost the department incurs to implement the
43 provisions of this act;

1 (B) the fees for registration cards shall be no greater than the amount
2 reasonably necessary to cover the cost the department incurs processing
3 the identification cards;

4 (C) the fee structure established by the department must incorporate a
5 sliding scale for cardholders who receive medicaid, supplemental security
6 income or social security disability insurance; and

7 (D) the following fees shall not exceed:

8 Hemp preparation center registration certificate application.....	\$5,000
9 Hemp preparation center registration certificate.....	\$20,000
10 Testing laboratory registration certificate.....	\$2,000
11 Individual hemp preparation registration card.....	\$75
12 Visiting cardholder.....	\$80

13 (b) The department may promulgate rules and regulations:

14 (1) Establishing a presumptive maximum quantity of hemp
15 preparations that a cardholder or a visiting cardholder may possess,
16 provided that:

17 (A) The amount should be no less than a reasonable 60-day supply;
18 and

19 (B) a patient may apply for a waiver if a physician provides a
20 substantial medical basis in a signed, written statement asserting that,
21 based on the patient's medical history, in the physician's professional
22 judgment, the amount established by the department is an insufficient
23 amount to properly alleviate the patient's medical condition or symptoms
24 associated with such medical condition;

25 (2) requiring visiting cardholders to submit a medical practitioner's
26 statement confirming that the patient has a qualifying medical condition
27 and documentation demonstrating that the visiting cardholder is allowed to
28 possess cannabis or hemp preparations in the jurisdiction where such
29 person resides, provided that:

30 (A) Any fee required of visiting cardholders must be no greater than
31 the amount reasonably necessary to cover the cost the department incurs in
32 processing their documentation and issuing any confirmation; and

33 (B) if the department requires visiting cardholders to submit
34 documentation to the department, a confirmation must be issued
35 electronically to the individual no later than seven calendar days after such
36 documentation is submitted.

37 Sec. 6. (a) A cardholder or visiting cardholder shall not be subject to
38 arrest, prosecution under state or municipal law or denial of any right or
39 privilege, including, but not limited to, civil penalty or disciplinary action
40 by a court or occupational or professional licensing board or bureau, for
41 the medical use of hemp preparations pursuant to sections 1 through 11,
42 and amendments thereto.

43 (b) No person may be subject to arrest, prosecution under state or

1 municipal law or denial of any right or privilege, including, but not limited
2 to, civil penalty or disciplinary action by a court or occupational or
3 professional licensing board or bureau, for:

4 (1) Selling hemp paraphernalia to a registered medical hemp
5 establishment, a cardholder or a visiting cardholder;

6 (2) being in the presence or vicinity of the medical use of hemp
7 preparations as allowed by sections 1 through 11, and amendments thereto;
8 or

9 (3) assisting a patient with a registration card in the act of using or
10 administering hemp.

11 (c) A hemp preparation center or hemp preparation center agent shall
12 not be subject to prosecution under state or municipal law, search or
13 inspection, except by the department pursuant to section 10(a), and
14 amendments thereto, seizure or penalty in any manner or be denied any
15 right or privilege, including, but not limited to, civil penalty or disciplinary
16 action by a court or business licensing board or entity, for acting pursuant
17 to sections 1 through 11, and amendments thereto, and department rules
18 and regulations to:

19 (1) Sell cannabis seeds to similar entities that are registered to
20 dispense cannabis for medical use in other jurisdictions;

21 (2) acquire, cultivate, grow, harvest, manufacture, plant, possess,
22 prepare, propagate, transport or store cannabis, hemp paraphernalia and
23 hemp preparations;

24 (3) deliver, dispense, supply, sell, transfer or transport hemp
25 preparations, paraphernalia for use with hemp preparations or related
26 supplies and educational materials to cardholders and visiting cardholders;

27 (4) deliver, dispense, transfer, transport, sell or supply cannabis seeds,
28 cannabis seedlings, cannabis plants, cannabis, hemp preparations or related
29 supplies and educational materials to other hemp preparation centers; or

30 (5) deliver, transfer or transport cannabis or hemp preparations to
31 registered testing laboratories.

32 (d) A registered testing laboratory and testing laboratory agents acting
33 on behalf of a testing laboratory shall not be subject to prosecution under
34 state or municipal law, search, except by the department pursuant to
35 section 10(a), and amendments thereto, seizure or penalty in any manner,
36 or be denied any right or privilege, including, but not limited to, civil
37 penalty or disciplinary action by a court or business licensing board or
38 entity, solely for acting in accordance with this act and department rules
39 and regulations to provide the following services:

40 (1) Acquiring, possessing, storing, analyzing, testing or transporting
41 cannabis obtained from hemp preparation centers and hemp preparations
42 obtained from cardholders, visiting cardholders or hemp preparation
43 centers;

1 (2) possessing, storing or transporting hemp paraphernalia;
2 (3) returning the hemp preparations to cardholders or hemp
3 preparation centers; or

4 (4) receiving compensation for actions allowed under this section.

5 (e) Mere possession of, or application for, a registration card or
6 medical hemp establishment registration shall not constitute probable
7 cause or reasonable suspicion, nor shall it be used to support the search of
8 the person, property or home of the person possessing or applying for the
9 registration card. The possession of, or application for, a registration card
10 or registration certificate shall not preclude the existence of probable cause
11 if probable cause exists on other grounds.

12 (f) For the purposes of state law, the medical use of hemp
13 preparations by a cardholder or visiting cardholder and activities a
14 registered medical hemp establishment are registered to engage in shall be
15 considered lawful as long as they are undertaken in accordance with
16 sections 1 through 11, and amendments thereto.

17 Sec. 7. (a) For the purposes of medical care, including organ and
18 tissue transplants, a patient's medical use of hemp preparations in
19 accordance with sections 1 through 11, and amendments thereto, is the
20 equivalent of the authorized use of any other medication in accordance
21 with a prescription issued by a physician and does not constitute the use of
22 an illicit substance or otherwise disqualify a patient cardholder from
23 needed medical care.

24 (b) A person otherwise entitled to custody of or visitation or parenting
25 time with a minor shall not be denied such a right, and there shall be no
26 presumption of neglect or child endangerment, for conduct allowed by
27 sections 1 through 11, and amendments thereto, unless the person's actions
28 in relation to hemp preparations were such that they created an
29 unreasonable danger to the safety of the minor as established by clear and
30 convincing evidence.

31 Sec. 8. (a) Sections 1 through 11, and amendments thereto, do not
32 authorize any person to engage in, and do not prevent the imposition of
33 any civil, criminal or other penalties for engaging in the following
34 conduct:

35 (1) Undertaking any task under the influence of hemp preparations
36 when doing so would constitute negligence or professional malpractice; or

37 (2) operating, navigating or being in actual physical control of any
38 motor vehicle, aircraft or motorboat while impaired by hemp preparations.

39 (b) Nothing in this act requires a government medical assistance
40 program or private insurer to reimburse a person for costs associated with
41 the medical use of hemp preparations.

42 Sec. 9. (a) Any person who operates a medical hemp establishment
43 must first submit an application form to the department and receive

1 approval. Each application must be for a single type of a medical hemp
2 establishment.

3 (b) No later than 120 days after the effective date of this act, the
4 department shall begin accepting applications for hemp preparation centers
5 and testing laboratories.

6 (c) Except as otherwise provided in this act, not later than 90 calendar
7 days after receiving an application to operate a medical hemp
8 establishment, the department shall register the medical hemp
9 establishment and issue a registration certificate and a random
10 identification number if:

11 (1) The person or persons who wish to operate the proposed medical
12 hemp establishment have submitted to the department all of the following:

13 (A) The application fee, as established by the department; and

14 (B) an application, which must include:

15 (i) The legal name of the proposed medical cannabis establishment;

16 (ii) the physical address where the proposed medical hemp
17 establishment will be located and the physical address of any co-owned
18 additional or otherwise associated medical hemp establishments, so long
19 as the location of the proposed medical hemp establishment is not within
20 1,000 feet of a public or private school that provides formal education
21 traditionally associated with preschool or kindergarten through grade 12
22 which existed on the date on which the application for the proposed
23 medical hemp establishment was submitted to the department;

24 (C) evidence that the applicant controls not less than \$250,000 in
25 liquid assets;

26 (D) evidence that the applicant owns the property on which the
27 proposed medical hemp establishment will be located or has the written
28 permission of the property owner to operate the proposed medical hemp
29 establishment on that property;

30 (E) the name, address and date of birth of each person who is
31 proposed to be an owner, officer or board member of the proposed medical
32 hemp establishment;

33 (F) operating procedures consistent with rules and regulations of the
34 department for oversight of the proposed medical hemp establishment,
35 including procedures to ensure the use of adequate security measures;

36 (G) if the city, town or, in the case of a location in an unincorporated
37 area, county in which the proposed medical hemp establishment will be
38 located has enacted zoning restrictions or licensing requirements, proof of
39 licensure with the applicable local governmental authority or an
40 affirmation signed by the applicant that the proposed medical hemp
41 establishment will be in compliance with those restrictions and satisfies all
42 applicable zoning requirements; and

43 (H) such other information as the department may reasonably require

1 by rules and regulations;

2 (2) none of the persons who are proposed to be owners, officers or
3 board members of the proposed medical hemp establishment have served
4 as an owner, officer or board member for a medical hemp establishment
5 that has had its medical hemp establishment registration certificate
6 revoked; and

7 (3) none of the persons who are proposed to be owners, officers or
8 board members of the proposed medical hemp establishment are under 21
9 years of age.

10 (b) When more qualifying applications are submitted for a proposed
11 hemp preparation center or testing laboratory than the department will
12 approve, the department shall use an impartial and numerically scored
13 merit-based selection process to determine which application or
14 applications to approve. The department may approve the highest scoring
15 application or applications in specific geographic regions of the state. The
16 department may conduct a background check of the principal officers and
17 board members of any prospective hemp preparation center to carry out
18 the provisions of this subsection.

19 (c) Except as otherwise provided in this act, if an application for
20 registration as a medical hemp establishment satisfies the requirements of
21 this section and the establishment is not disqualified from being registered
22 as a medical hemp establishment pursuant to this act or other applicable
23 law, the department shall issue to the establishment a medical hemp
24 establishment registration certificate. A medical hemp establishment
25 registration certificate expires two years after the date of issuance and may
26 be renewed upon:

27 (1) Submission of a renewal application; and

28 (2) payment of the renewal fee established by the department.

29 Sec. 10. (a) Medical hemp establishments are subject to reasonable
30 inspection by the department.

31 (b) A medical hemp establishment may not employ or accept as a
32 volunteer any person who is under 21 years of age.

33 (c) The operating documents of a medical hemp establishment must
34 include procedures for the oversight of the medical hemp establishment
35 and procedures to ensure accurate recordkeeping.

36 (d) A medical hemp establishment shall implement appropriate
37 security measures designed to deter and prevent:

38 (1) The theft of cannabis and hemp preparations; and

39 (2) unauthorized entrance into areas containing cannabis or hemp
40 preparations.

41 (e) Before hemp preparations may be dispensed to a cardholder or
42 visiting cardholder, a hemp preparation center agent must:

43 (1) Make a diligent effort to verify that the registration card or other

1 documentation presented to the hemp preparation center is valid; and

2 (2) make a diligent effort to verify that the person presenting the card
3 is the person identified on the registration card presented to the hemp
4 preparation center agent.

5 (f) A hemp preparation center must dispense hemp preparations in a
6 sealed container with a label that conforms to department regulations and
7 that indicates the hemp preparation's ingredients and its percentages of
8 tetrahydrocannabinol and cannabidiol by weight.

9 (g) Hemp preparation centers shall collect and submit to the
10 department data on strains used, methods of delivery, any side effects
11 experienced and the therapeutic effectiveness of hemp preparations for
12 each patient who is willing to provide the information. Such data
13 collection shall be done under the patient's registry identification number
14 to protect the patient's confidentiality.

15 Sec. 11. If any provision of sections 1 through 11, and amendments
16 thereto, or the application thereof to any person or circumstance is held
17 invalid, such invalidity shall not affect the application of any other
18 provision of this act that can be given full effect without the invalid section
19 or application.

20 Sec. 12. This act shall take effect and be in force from and after its
21 publication in the statute book.