

Alcoholic Beverage Control
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MEMORANDUM

TO: Rep. John Barker, Chairman, House Committee on Federal and State Affairs

FROM: Debbi Beavers, Director, Alcoholic Beverage Control (ABC) Division

DATE: February 25, 2021

SUBJECT: Neutral Testimony on House Bill 2184

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify neutral on this bill, which creates the Medical Marijuana Regulation Act. The ABC would regulate processors, distributors, dispensaries and employees, issuing licenses for each. Processor and distributor licenses would be issued for one-year periods, while dispensary and employee licenses would be issued for two-year periods.

The ABC has a few concerns about the bill as written for your consideration:

- Requiring 15% of processor, distributor and dispensary licenses to be issued to economically disadvantaged groups specified, be citizens of the United States and a resident of Kansas. A recent Supreme Court of the United States, *Tennessee Wine & Spirits Retailers Assn. v. Russell F. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission* deemed residency requirements to hold a liquor license to be a violation of the dormant commerce clause. Similar to HB 2212, the ABC would recommend removing the residency requirement.
- Processor, Distributor and Dispensary licenses would have a cap of the number of licenses of each type that could be issued. The ABC Director would set the number of licenses in rules and regulations by considering the Kansas population and the number of patients seeking medical marijuana. If the demand is higher than anticipated, the ABC would be required to promulgate new regulations. In speaking with other states who have a restricted

number of licenses, they have a high number of lawsuits regarding denial of their license application. This would require additional resources.

- Processors are authorized to sell directly to dispensaries or to a distributor. If the intent of the distributor is to have a three-tier system mirroring alcoholic liquor regulation, this would be viewed as vertical integration.
- Transportation of medical marijuana is not addressed.
- Minimum age of employees is not addressed.
- Maximum license fees are in the bill but it requires the ABC to set license fees in rules and regulations. The ABC would request that the legislature set the fees in statute and that the application fee be non-refundable.
- Only certain employees must be licensed. The ABC would recommend that all employees are licensed.
- New Section 33 refers to “plant material” but there is no definition for such.
- The seed to sale system includes cultivators and laboratories, which are regulated by the Department of Agriculture and should be funded accordingly.
- The bill does not address acting as an agent of another (hidden ownership), which is a licensure and operational problem ABC often sees with liquor licenses.
- The bill authorizes the ABC director to impose fines, suspend or revoke a license, subject to the Kansas Administrative Procedure Act. ABC would request clarification on who the presiding officer is in the event such a proceeding involves a hearing.
- Rules and regulations must be adopted on or before July 1, 2022. This deadline would be very difficult to meet, due to the lengthy process involved in drafting administrative regulations and getting them approved.

The ABC appreciates the opportunity to provide comments about HB 2184.

Thank you, Mr. Chairman.