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MEMORANDUM

TO: Sen. Rob Olson, Chairman, Senate Federal and State Affairs Committee

FROM: Debbi Beavers, Director, Alcoholic Beverage Control Division. Email: debbi.beavers@ks.gov; Desk Phone 785-368-6290; Cell 785-260-1008.

DATE: March 16, 2022

SUBJECT: Neutral Oral In Person Testimony on SB 560

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify. While the ABC is neutral on this bill, we do have a few concerns to call to your attention.

The effective date of this bill is 7/1/23 causes concern for the ABC. If the provisions of the entire bill do not take effect until that date, that means ABC would not be authorized to adopt its rules and regulations until then, since there would be no authorizing statute until 7/1/23. This effective date also brings into question if the ABC would be allowed to hire any staff before this date. The overall result would be to significantly hamper ABC's ability to adopt and publish the rules and regulations it is required to adopt by 1/1/24. Given the volume of regulations that will be necessary under this bill, six months is simply not enough time to get them through the regulation process.

New Section 2 – ABC respectfully requests adding definitions of: cannabinoid, cultivate, dispense, employee, medical marijuana waste, plant and plant materials.

New Section 20(d) - Request changing the license effective date from the date issued to the date specified on the license.

New Section 21 – Talks about ownership change and transferring licenses. The ABC requests the following:

- language clarifying that a license is not transferrable (similar language exists in K.S.A. 41-326 if needed for reference)
- a fee set to process ownership changes and license transfers if they are authorized

New Section 21 – Requires an individual or 75% of the ownership of a business applying for licensure to be Kansas residents for at least two years prior to application for a license. ABC wants you to be aware of the recent U.S. Supreme Court decision in *Tennessee Wine & Spirits Retailers Assn. v. Russell F. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission*, which deemed residency requirements to hold a liquor license to be a violation of the dormant commerce clause.

This section also refers to “forfeiting” the license if they cease to be a Kansas resident. ABC does not see any language regarding what would happen if the applicant doesn't forfeit the license, and the term “forfeit” is vague and unclear. The ABC would request language be added allowing the revocation of a license in this instance.

New Section 22 – authorizes a cultivator to sell directly to a retail dispensary. New Section 28 authorizes a retail dispensary to purchase from a cultivator. Neither section authorizes packaging. Shouldn't the final packaged product be sold to the retail dispensary? Generally speaking, “deliver or sell” should be changed to “deliver and sell”.

New Section 22(b) authorizes cultivator expansion only at renewal, limiting expansion for two years. There is no provision for mid license term expansion. When a license is renewed, it is for the existing premises. If expanding, that would be a separate process; and, the ABC would request a fee to process proposed expansion plans.

New Section 23 does not include dispensaries for testing by the quality assurance lab. Should they be included?

New Section 25(c) – specifies lab records be retained for two years. The ABC requests a three year record retention for all records to parallel similar record retention provisions currently used by ABC for liquor licensees.

New Section 26 – states a processor may “obtain” medical marijuana from one or more licensed cultivators or processors. The ABC requests clarification as the bill does not say they may transfer from their own licensed cultivator or purchase medical marijuana from a licensed cultivator or processor.

New Section 28(b)(1) – states that a retail dispensary may dispense or sell. The ABC requests this be changed to dispense and sell.

New Section 30 – “Plant material” is currently not defined. ABC would request clarification of “plant material” being a form of medical marijuana that can be dispensed with smoking and vaping prohibited. Plant materials have a THC limit of 35% but no other THC limit is found in the bill.

New Section 32 – fees

- the bill states that all fees shall be set in rules and regulations and “not to exceed” the amount. The ABC respectfully requests fees to be set in statute for transparency.
- cultivator fees are assessed at \$4,000 per 100 square foot (SF) where medical marijuana is cultivated. ABC requests clarification if this is floor SF or all SF of growth space.
- Authorizes a refund if the “full amount of the license fee” is paid and the licensee is prevented from operating in the second year of the license term. There is no language that authorizes payment of one-half of the license fee that exists in liquor law. If the licensee chooses to pay one-half the license fee at the time of application, the second one-half of the license fee is due by the end of the first year with a 10% surcharge. Similar language can be found in K.S.A. 41-317(c) for reference.

New Sections 33 and 34 – the ABC requests adding language authorizing additional penalties to be imposed for violating a lawful order of the Director. Similar language can be found in K.S.A. 41-320a(a)(2) for reference.

New Section 42 – ABC requests security record retention be changed from one year to three years. ABC also requests video recording storage be changed from 60 to 90 days; and the ability for ABC to monitor video remotely.

Nothing in this bill addresses how medical marijuana seeds or plants come into the State of Kansas. Will cultivators be required to start from seeds, or will cuttings be allowed to be imported? The ABC believes this should be addressed.

The ABC respectfully asks for your consideration of our concerns.

Thank you, Mr. Chairman.