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## SB 135 – Neutral Testimony

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**Senate Federal and State Affairs Committee**  
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Committee Chair and members of the committee,

Thank you for the opportunity to present testimony today and thank you to the Chair for continuing the conversation about medical cannabis after a fruitful interim committee. The interim committee was committed to learning from other states and diverse organizations as they crafted legislation that will serve all Kansans. We hope that this committee will do the same.

The ACLU of Kansas is a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state. While we strongly support the creation of a medical cannabis program in Kansas, SB 135 needs significant work to meet the needs of our community effectively and equitably. Because of this, the ACLU of Kansas is neutral on SB 135. Below we have outlined specific changes that should be made to this bill to ensure that patients have access to needed care, Kansans are able to participate in the new industry, and communities of color are prioritized for reinvestment. With these changes, our organization would change our position from neutral to supportive.

Our recommendations today promote full participation in the regulated medical marijuana industry by communities that have been disproportionately harmed by marijuana prohibition and enforcement. Data from across the country and in our own state show that Black people are disproportionately represented as defendants in our criminal legal system.<sup>1</sup> In our state's largest city, Black residents make up just 10% of the population but are 45% of the city's marijuana prosecutions—despite no evidence showing higher use of marijuana compared to whites or other racial groups.<sup>2</sup>

As the legalization of medical marijuana emerges amidst this troubling backdrop, it is critical that we make every attempt to counter discrimination and promote equitable engagement in our medical marijuana program. To that end, our testimony recommends provisions that impact businesses, patients, and communities. The list is not exhaustive but represents a starting place and is reflective of immediate concerns raised by impacted communities and SB 135 specifically.

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<sup>1</sup> A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, American Civil Liberties Union, 2020, [https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf)

<sup>2</sup> Wichita City Council Votes to Decriminalize Marijuana Possession, Fentanyl Test Strips, Wichita Eagle, September 14, 2022, <https://www.kansas.com/article265726396.html>

## **Prioritize Access for Small Business Owners**

**Structure and Fees.** Overall, the fees outlined in Section 32 are grossly inflated and will block small to mid-sized operators from participating in the new industry. Charging such high prices for application fees and licenses would pave the way for large multi-state operations (MSOs) to coordinate with big in-state businesses to create a monopoly, easily circumventing the residency requirements outlined in Section 21. With only a few, large out-of-state interests with the capital to participate, MSOs and a handful of wealthy Kansans will gain control of the majority of licenses and set the standard for prices for years to come.

In addition to creating significant barriers for local business owners, including business owners of color, charging such high fees would make it cost prohibitive to establish medical cannabis businesses in western Kansas. Just by value of population, western Kansas will have fewer medical cannabis patients, i.e., fewer consumers to buy the product. Requiring \$100,000 for a retail dispensary application and license could very well mean that western Kansas patients will have to travel hours to the closest metro area to get their medical treatment. The western half of the state deserves to have accessible medical cannabis, and inflated licensure fees will create an economic environment that makes that impossible.

We suggest a compromise in the form of a tiered licensing system, with application fees and licenses based on the size of the business. Tiered licensure will allow Kansans from diverse backgrounds and means to participate in the industry, whereas a single high cost, static fee would close doors for everyday Kansans and allow for a monopoly on the medical marijuana business by organized, out-of-state interests. Additionally, including micro-tiers for cultivation, processing (including creation of infused products), and standalone home delivery licenses will create accessible opportunities for small business owners to grow into the industry. Mississippi's licensure tiers are a great example, and a link can be found at the end of this testimony.

**Felony Limitations and Prohibitions.** Section 21 of the bill states that any person convicted of a felony will be ineligible for business licenses unless that felony has been expunged at least 10 years prior to the date of the license application. This is excessively restrictive. Our criminal legal system should be based on rehabilitation, not lifelong punishment. After their sentence is complete, individuals with felony records should have access to the same opportunities for success as people without felony records. With that in mind, we request the removal of any language prohibiting or limiting people with criminal records from participating in the medical marijuana business.

We applaud the drafters of the bill for including language explicitly prohibiting the exclusion of an individual from eligibility due to their spouse's felony record or ineligibility. Banning an individual from participation in a legitimate business enterprise because their spouse has a criminal record serves no purpose other than barring otherwise eligible people from receiving licenses. Doing so simply penalizes an entire family for the actions of an individual.

**Local Policy.** Despite medical research on the benefits of medical cannabis and the mainstreaming of these issues across the country, bias against marijuana use still exists. To

preempt discrimination against cannabis-related businesses, language should be added stating that the burden for compliance with zoning or land use regulations and the requirements for seeking a variance should be no greater for a cannabis-related business than for any other similar business.<sup>3</sup> Similarly, local taxation authority on cannabis businesses and products should be capped at a rate similar to other consumer products.

### **Prioritize Access for Patients**

**Patient Costs.** Section 61 creates a 10% tax on the sale of medical cannabis, paid by the patient or caregiver. Our state sales tax currently sits at 6.50%.<sup>4</sup> There is no reason for such an inflated tax rate. Medical cannabis should be taxed just like any other legal treatment for medical conditions. Requiring patients to pay a 10% sales tax on their completely legal treatment is discriminatory and defeats the purpose of legalizing medical cannabis to begin with. Patients who are using medical cannabis to treat their pain or other chronic condition should not be forced to pay more in taxes on their treatment than someone who uses dangerous, addictive prescription medications.

Additionally, a 10% tax would make utilizing medical cannabis more expensive for patients. We understand that taxes on the product are necessary to create a fund to run the medical cannabis program and for community reinvestment. However, an excessive tax of 10% will price patients out of utilizing the medical treatment they need to manage their conditions and may force them toward more cost-effective options—like opioids.

**Patients on Parole or Probation.** People who have criminal records or are involved with the criminal legal system should have access to the same medicine available to everyone else. Language should be included in the bill stating that probation and parole cannot be revoked, and extensions or penalties cannot be assessed, if an individual tests positive for marijuana and is in possession of a valid medical marijuana card, unless there is an individualized finding that medical marijuana use would be a danger. Similarly, language should be included to state that being on probation or parole cannot be used as a reason for denying someone a medical marijuana card.

**Patients and Employee Protections.** Kansans whose medical providers have recommended medical cannabis should not be kept out of the workplace or discriminated against due to their medically valid need. Section 48 should be thoroughly edited to remove language allowing discrimination against patients and include language stating there can be no discrimination of applicants or employees for their legal use of medical marijuana unless explicitly stated by federal law or for safety purposes. In cases where federal law preempts state legalization, as in the case of Department of Transportation regulations disallowing marijuana use for CDL license holders, the legislative language should be explicit.

Section 78, which prohibits denial of workers compensation if a patient tests positive for cannabis and is a registered patient, is a small, but good start to protecting patients.

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<sup>3</sup> [https://minoritycannabis.org/wp-content/uploads/2021/10/MCBA-BillSummary\\_2017.pdf](https://minoritycannabis.org/wp-content/uploads/2021/10/MCBA-BillSummary_2017.pdf)

<sup>4</sup> <https://ksrevenue.gov/faqs-taxsales.html>

**Patients in Public Housing.** Section 55 creates housing protections for medical cannabis patients. These protections are critical to ensure that patients cannot be discriminated against for utilizing legal, medical treatment. Although this section could potentially be interpreted to include individuals who require subsidized housing, it is equally important that we include explicit language to ensure that this is the case.

People who live in federally subsidized housing should have access to the same medicine available to people of means. But while people of means do not need to access federal assistance for housing, “the poor face severe penalties for using the same medicine, creating a new world of illegality that only applies to certain people.”<sup>5</sup> Because there is no settled law on the issue, we ask that the bill include language stating that agencies administering public housing cannot discriminate against potential or existing tenants unless explicitly required by federal law.

**Other Patient Protections.** Section 56 creates necessary protections for medical cannabis users who need organ transplants. We fully support this section that prohibits deeming a patient ineligible for an anatomical gift or organ transplant based solely on medical cannabis use; denying medical or other services related to transplants; refusing to place a patient on a waiting list; or placing an individual lower on the waiting list than they would be if their medical cannabis use was not taken into consideration.

In addition, we support the provisions laid out in Section 57, prohibiting the issuing of a custody order based solely on an individual’s use of medical cannabis. Section 75 similarly amends statute to require courts not to consider medical cannabis use when determining custody, residency, or parenting time.

### **Reinvestment in Communities**

The criminalization of marijuana has caused untold damage to communities of color. “On average, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person, even though Black and white people use marijuana at similar rates.”<sup>6</sup> We cannot undo the mistakes created by this unjust system. But we can and should not only take pre-emptive measures to ensure equitable participation for Black patients and business owners but must also reinvest in communities that have been disproportionately impacted by the criminalization of marijuana.

We recommend the creation of a grant program for community education and reinvestment, funded by a 2% tax on marijuana products. This would create a total tax burden of 8.5% for consumers if medical cannabis products are taxed similarly to other consumer products in Kansas. These funds could be administered in a manner similar to the Kansas Fights Addiction Act Grant Review Board and be used to benefit programs that offer job training, education, and support to at-risk populations.

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<sup>5</sup> [https://www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/publications/tortsource/2022/spring/no-roof-your-reefer-medical-cannabis-tenants/](https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/tortsource/2022/spring/no-roof-your-reefer-medical-cannabis-tenants/)

<sup>6</sup> <sup>6</sup> A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, American Civil Liberties Union, 2020, [https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf)

Thank you for the opportunity to speak with you today. We hope you will consider our recommendations as a starting point for an equitable medical marijuana program.

### **Sample Language and Resources**

#### **Diversification of Zoning and Land Use**

(a) No public or private body entrusted with zoning or the regulation of land use shall establish any ordinance, regulation or policy that has the effect of substantially prohibiting the reasonable operation of cannabis-related businesses as a class of entities.

(b) No public or private entity entrusted with zoning or the regulation of land shall place any burden on a cannabis-related business with regard to zoning or land use compliance, requirements, or variances that is substantially greater than any burden placed on a similar lawful non-cannabis business. Jurisdictions that have banned the cultivation or retail sale of marijuana or marijuana products shall not be entitled to any local government grants issued through marijuana tax revenue.

#### **Access for Patients on Probation or Parole**

Notwithstanding any other provision of law, unless the court or the [xx parole commission] makes a specific finding that an individual defendant's, parolee's, or probationer's use of cannabis could create a danger to the individual or other persons, it is not a violation of conditions of pretrial release, parole, or probation to:

- (1) register as a medical cannabis patient;
- (2) use medical cannabis if the individual is a registered patient;
- (3) serve as a designated caregiver for an immediate family member; or
- (4) test positive for cannabis, tetrahydrocannabinol, or any other cannabinoid, if the person is a registered patient.

#### **Patient Rights in Employment**

Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:

- (1) The person's status as a cardholder; or
- (2) A registered qualifying patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by cannabis on the premises of the place of employment or during the hours of employment.

#### **Access for Patients in Federally Subsidized Housing**

(1) Except as provided in this section, a landlord or property manager may not prohibit a registered patient from possessing or administering medical cannabis [by non-smoked means] in a residential dwelling, and may not refuse to lease to, evict, or otherwise penalize an individual for their status as a registered patient.

(2) This section does not apply if failing to prohibit cannabis possession or consumption would violate federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

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