

May 8, 2023

The Honorable Will Carpenter, Chairperson
House Committee on Federal and State Affairs
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Representative Carpenter:

SUBJECT: Fiscal Note for HB 2417 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2417 is respectfully submitted to your committee.

HB 2417 would create the Medical Cannabis Regulation Act and would provide for the regulation of the cultivation, processing, distribution, sale, and use of medical cannabis. The bill would make related definitions and would include a list of qualifying medical conditions allowing a patient to use medical cannabis as detailed in the bill. Various provisions of the Act would include sunsets to expire specific sections if not renewed by the Legislature. The bill would establish the Medical Cannabis Regulation Program, which would include different areas to be administered by various agencies in accordance with provisions of the Act. The bill would also create the 15-person Medical Cannabis Advisory Committee to develop recommendations on the Program and implementation and enforcement of the Act. The bill would allow for the petition to the Advisory Committee to request that a disease or condition be added as a qualifying medical condition for the purposes of the Act, and the bill would include requirements for the petition and consideration of the petition. Prior to July 1, 2027, and every three years thereafter, the Committee would be required to review all diseases or conditions to determine if removal of any disease or condition is appropriate.

The bill would rename the Division of Alcoholic Beverage Control within the Department of Revenue the Division of Alcohol and Cannabis Control. The Division would be under the direction of the Director of Alcohol and Cannabis Control. All duties, powers, and actions of the prior Division and Director would transfer to the newly created Division and Director and would be in effect until revised, amended, revoked, or nullified pursuant to law.

The bill would include provisions related to the acceptance of gifts, gratuities, emolument, or employment for certain individuals, would allow affected agencies to adopt rules and regulations on the acceptance of official hospitality, and would provide for violations of the provisions. The bill would require actions taken by the Board of Healing Arts, the State Board of Pharmacy, the Secretary

of Health and Environment, or the Director under the Act be in accordance with the Kansas Administrative Procedure Act and reviewable in accordance with the Kansas Judicial Review Act.

Patients or caregivers seeking to use or administer medical cannabis would be required to apply to the Kansas Department of Health and Environment (KDHE) for registration. The treating physician would submit the application on behalf of the patient or caregiver in such form and manner as prescribed by the Secretary of Health and Environment. The bill would outline the process and requirements for the application for registration and issuance of the identification card and would detail the authorized use of medical cannabis, administration by caregivers and the purchase and possession for both registered patients and caregivers. The fee for registration or renewal would be set by rules and regulations set by the Secretary in an amount not to exceed \$50 for a patient registration; \$25 for a patient registration if the patient is indigent or is a veteran; and \$25 for a caregiver registration. The bill would outline requirements for verification of registration for various purposes, provide for penalties for violations of the provisions related to registration, and would allow reciprocity from other states on a limited basis. On or before January 1, 2024, KDHE would be required to make a website available for public to access information regarding registration under the Act.

HB 2417 would create the Medical Cannabis Registration Fund to be administered by the Secretary of Health and Environment. All fees and fines collected by the Secretary pursuant to the Act would be credited to the fund and be used for costs related to the regulation and enforcement of the possession and use of medical cannabis by the Secretary. On or before January 1, 2024, after consultation with the Advisory Committee, the Secretary would be required to adopt rules and regulations to administer the Medical Cannabis Regulation Program and implement and enforce the provisions of the Act. The bill would outline items to be included in those rules and regulations.

A physician seeking to recommend treatment with medical cannabis would be required to apply to the Kansas State Board of Healing Arts for a certificate authorizing the physician to do so. The Board would prescribe the form and manner for the application and the bill would outline the requirements for the application and certificate. The annual fee for such certificate could not exceed \$175. On or before September 1, 2024, the Board would be required to adopt rules and regulations related to the certificate and the bill would detail items to be include in the rules and regulations.

Any person seeking to cultivate, conduct laboratory testing of, process, distribute, or sell at retail medical cannabis, concentrate, or other products would be required to submit an application for the appropriate license to the Director. The Director would prescribe the form and manner for the application and a separate application would be required for each location to be operated by the licensee. The types of licenses would include cultivator license, laboratory license, processor license, distributor license, and retail dispensary license. The bill would include requirements related to the application and licensure, as well as requirements for each of the licensees and employees of licensees to adhere to once a license was obtained. This would include requirements and limitations related to advertisements and location of licensed premises, security requirements for licensed premises, as well as the process and penalties for violations of the Act.

HB 2417 would only allow for specific forms of medical cannabis as listed in the Act to be dispensed, although a petition could be submitted to the Director for additional forms of methods to be approved as detailed in the Act. The maximum allowed fees for the initial or renewal licenses and

applications would be as follows: \$2,500 for a cultivator license application and between \$5,000 and \$50,000 dependent on the size of the canopy for a cultivator license; \$2,500 for a processor license application and between \$2,500 and \$20,000 dependent on the total pounds of biomass, or production or use of liters of cannabis concentrate for a processor license; \$2,500 for a distributor license application; \$20,000 for a distributor license; \$2,500 for a retail dispensary license application and an amount equal to 10.0 percent of the aggregate amount of retail sales tax levied on sales of medical cannabis for a retail dispensary license (not to be less than \$2,500 or more than \$10,000); \$2,500 for a laboratory license application and \$20,000 for a laboratory license; and \$50 for an employee license. The fees would be non-refundable. The bill would establish the Medical Cannabis Business Regulation Fund to be administered by the Director. Collections from licensure fees and fines for violations would be credited to the fund to be used for costs related to the regulation and enforcement of the cultivation, testing, distributing, possession, processing, and sale of medical cannabis by the Division of Alcohol and Cannabis Control. The Director would be required to propose rules and regulations as detailed in the bill to administer the Medical Cannabis Regulation Program and implement and enforce provisions of the Act. The Secretary of Revenue would be required to adopt such rules after consulting with the Advisory Committee. The Director would also be required to establish and maintain an electronic database as detailed in the Act to monitor medical cannabis from its seed source through cultivation, testing, processing, distribution, and dispensing.

The Kansas Board of Pharmacy would be required to adopt rules and regulations on or before January 1, 2024, to establish the requirements for the registration of consultants, including the fee for such registration or renewal. Any pharmacist seeking to operate as a pharmacist consultant for a retail dispensary would be required to register with the Board in accordance with rules and regulations adopted by the board and as outlined in the bill. The bill would also include requirements related to registration and requirements of registered pharmacists and there would be a maximum allowed fee of \$100 for the registration. The bill would establish the Retail Dispensary Consultant Registration Fee Fund to be administered by the Board and the collection of the registration fees would be credited to the fund to be used for costs related to the regulation and registration of consultants by the Board.

The bill would provide an exemption from criminal law of the state for financial institutions providing financial services to any cultivator, laboratory, processor, distributor, or retail dispensary in compliance with the Act and all applicable tax laws. The bill would also detail what information the Director would be required to be shared with financial institutions. The bill would specify that nothing in the Act would authorize the Director to oversee or limit research conducted at a postsecondary educational institution, academic medical center, or private research and development organization that is related to cannabis and approved by the federal government. The bill would also make clarifications and limitations of the Act in relation to employers, property owners, and government assistance. The bill would allow intergovernmental agreements with certain Native American Tribes to provide for a free market exchange between entities engaged in the business of medical cannabis licensed by tribal government and those licensed under the Act.

HB 2417 would specify that it would be unlawful to store or otherwise leave medical cannabis or a medical cannabis product where it is readily accessible to a child under 18 years of age. The transport of medical cannabis or medical cannabis products would only be allowed as specified in the bill. Exceptions, definitions, and penalties for violation of these provisions would be detailed in the bill. The bill would prohibit law enforcement officers from enforcing federal law provisions if the substance involved in a violation was medical cannabis and possession was authorized by the Act.

The bill would amend current statutes to protect patients using medical cannabis consistent with the Act in a variety of settings, including housing practices, certain rental agreements, anatomical gifts or organ transplants, child welfare cases, and certain types of licensures and professional actions. In addition, the bill would amend various statutes to be consistent with provisions of the Act.

The bill would set taxes on retail dispensaries for the sale of medical cannabis at the rate of 10.0 percent on the gross receipts. The total remittance would be split with 20.0 percent credited to the Local Medical Cannabis Enforcement Fund; 10.0 percent to the State Medical Cannabis Enforcement Fund with a limit of \$2.5 million per fiscal year; and the remaining amount to the State General Fund. The bill would establish the two new funds for the tax collections, as well as the Local Medical Cannabis Enforcement Refund Fund and would detail qualifications and use of the new funds.

Several agencies were unable to estimate a total fiscal effect for the enactment of HB 2417. From the estimates available, additional expenditures related to passage of the bill are estimated to be at least \$11.6 million, including \$10.0 million from the State General Fund for FY 2024. Revenue generated from the bill is not anticipated until FY 2025. The estimates for each affected agency are described below.

According to the Kansas Department of Health and Environment, enactment of HB 2417 would increase expenditures by \$2.5 million, all from the State General Fund, in FY 2024 and would require an additional 18.00 FTE positions. The agency estimates \$1.5 million for their share of a cloud-based system that would interface with all other agencies necessary to implement provisions of the bill; \$302,893 for administrative costs such as background checks for employees, costs for the Advisory Committee, and general overhead related to the new program; and \$744,951 for salaries and wages for 18.00 FTE additional positions to fully staff the program as required by the bill. The agency estimates the need for staff would slightly increase as the program continues, with a total of 20.50 FTE positions in FY 2025. The cost for the computer system would continue but would decrease after start-up. While some revenue would start to be seen in FY 2025, it would take some time for the funding to build up. Based on other states' experience, the agency estimates the revenue would cover costs by FY 2027.

The Kansas Department of Revenue estimates passage of the bill would require additional expenditures of \$7.5 million in FY 2024. While the bill would eventually generate enough revenue to cover costs, the revenue would not be seen until FY 2025 and a State General Fund appropriation would likely be necessary for the first year of implementation. The agency estimates an additional 34.00 FTE positions would be needed to fully implement the provisions of HB 2417, with a majority in the newly established work unit, but notes the positions would be phased in as the program gets established. The agency would be required to set up the new work unit for licensure and to meet other requirements within the bill, including the expansion of enforcement agents for regulation. The agency estimates that of the total, \$3.0 million would be for the initial cost of the seed to sale tracking system, and \$2.0 million would be the initial cost for the licensing, enforcement, and legal system that would be required. The agency anticipates after the initial start-up costs, approximately \$3.6 million would be needed annually. Assuming the maximum fees allowed, the agency estimates revenue from licensure fees to be \$1.6 million in FY 2025, \$2.9 million in FY 2026, FY 2027, and FY 2028. The sales tax revenue is estimated to be \$730,000 in FY 2025, \$2.9 million in FY 2026,

and \$5.9 million in FY 2027. Of the sales tax totals, 82.0 percent would be deposited in the State General Fund and 18.0 percent would go to the State Highway Fund.

The Kansas Highway Patrol estimates the passage of HB 2417 would require additional fee fund expenditures of \$875,100 beginning in FY 2024. The agency estimates \$120,000 for Troop S, Special Response Team to retrain eight canines but notes there is a high probability the canines would need to be replaced as retraining has not been successful in other states. The agency believes the need for Drug Recognition Experts would be doubled to 180 in the Breath Alcohol Unit if the bill were passed. The cost for certification of the additional experts is estimated at \$600,000 and the agency notes the process would take approximately two years. The bill would also require additional training in the Breath Alcohol Unit in Advanced Roadside Impaired Driving Enforcement. While some officers have obtained this training, the agency estimates 3,000 of the approximately 6,900 sworn law enforcement officers in Kansas would need the training. The estimated cost for the training would be \$155,100, and does not include costs for any salaries, overtime accrued, time to prepare materials for the classes, or additional instructors due to the class volume. The agency notes several items within General Operations and Field Troops, as well as Troops N and I where a fiscal effect could not be estimated, including the potential loss of federal funding due to non-compliance with rules and regulations, delayed or loss of resources, additional specialized training, extended investigations and additional functions, IT supported tracking systems, impact on personnel if they were prescribed medical cannabis, and the potential for an increase in calls for service and collisions.

According to the Kansas Board of Pharmacy, passage of the bill would require an additional 0.50 FTE position and would increase fee fund expenditures by at least \$42,750 in FY 2024. Additional costs to the Board would be in the form of staff time and resources for registering and regulating consultants. While the Board has current processes and staff to support these functions, each added element of licensing and registration takes additional staff time and the Board states this would require additional resources. The Board anticipates total associated staff time could accumulate to 0.50 FTE per year to accommodate these responsibilities, this would include salaries and wages, plus the cost of administrative overhead. In addition, the Board would incur costs associated with publication of regulations, notices of hearing, and adoption in the *Kansas Register*, published by the Kansas Secretary of State, which range from \$500-\$1,500 per publication depending on the length of the regulation(s). The bill authorizes the Board to charge a fee for retail dispensary consultants and sets up a requisite fee fund, that amount is capped at \$100 per annual registration. The bill includes regulatory oversight of consultants, which includes both pharmacists and mid-level practitioners in the definition. The Board does not regulate mid-level practitioners and it is unclear how the Board would monitor compliance for this subset of individuals. A total fiscal effect could not be estimated.

The Kansas Board of Healing Arts estimates that enactment of HB 2417 would require fee fund expenditures of \$246,796 and 3.00 additional FTE positions. The agency states the bill would increase the workload, including the promulgation of multiple rules and regulations related to a variety of topics. The agency would need to coordinate with the Kansas Department of Health and Environment and the Kansas Department of Revenue to ensure a physician applying for a medical marijuana certificate has no interest in a facility licensed by either agency. The agency will also need to be prepared to accept, review, and process reports received by physicians with a certificate outlining their opinions of the effectiveness of medical marijuana. In order to issue the certificates with the physician's annual renewals as stipulated in the bill, the agency would be required to undergo

significant system re-tooling and programming. The agency can reasonably assume the creation of a new certificate would generate an increase in complaints received, investigations of alleged violations, and enforcement in litigation prosecuted by the agency. Estimated expenditures are \$64,741 for salaries and wages for one paralegal in the General Counsel Department; \$53,980 for salaries and wages for one Licensing Analyst in the Licensing Department; \$103,475 for salaries and wages for one Assistant General Counsel in the General Counsel Department; and \$24,600 for start-up costs for all three positions including office furniture, phone lines, computer equipment, and needed software. The agency notes there may be other expenditures required that cannot be reliably calculated at this time. The bill would allow for the agency to collect a set amount for initial and renewal applications. The agency was unable to estimate the exact amount of revenue the bill would generate. The agency would need to hire staff and begin working on the requirements upon passage of the bill, but it is likely that the revenue stream would not be seen for several years, however, the agency does anticipate that in the future, the revenues may offset the expenditures. The agency anticipates handling any additional workload within existing resources until revenue covers expenditures but notes the strain this would have on the agency's fee fund balance.

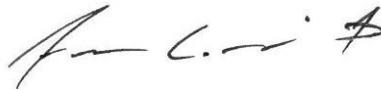
The Office of the Attorney General estimates total fee fund expenditures of \$258,770 and 2.00 additional FTE positions beginning in FY 2024. The bill would require the Office to appoint two assistance attorneys general to serve in the Division of Alcohol and Cannabis Control. The total for each position is estimated at \$129,385 for salaries and benefits with a \$95,000 base salary. The Kansas Human Rights Commission notes that HB 2417 would amend housing portions of the Kansas Act Against Discrimination. This would result in an increase in complaints and investigations. The amendments would also require updates to the agency database, posters, and other communications. The agency estimates increased expenditures of \$73,503, all from the State General Fund in FY 2024 and beyond to cover the updates to the database and communications, as well as the salary and overhead for 1.00 Special Investigator FTE position (currently vacant) to handle the additional workload. The Kansas Commission on Peace Officer Standards and Training estimates passage of the bill would require \$75,000 in fee fund expenditures, in FY 2024 and beyond, for salary and benefits to add 1.00 FTE position for the purpose of tracking training and qualifications of new law enforcement officers under the Director of Alcohol and Cannabis Control. The new position would also provide investigative assistance to ensure that licensed peace officers are not in violation of any of the bill's provisions.

The State Treasurer's Office reports the agency would account for receipts and disbursements in connection with the bill using existing systems and procedures, with minor modifications. Any additional workload would be handled within existing resources. The Office of Judicial Administration states that passage of the bill could affect expenditures as some actions are decriminalized, which could result in fewer criminal cases being filed or provisions of the bill asserted as a defense. The bill would also create new crimes that carry misdemeanor penalties which could lead to more supervision of offenders required to be performed by Court Services Officers. There could also be a fiscal effect on revenues to the Judicial Branch and the State General Fund. The Office could not provide an estimate for the total fiscal effect. The Kansas Bureau of Investigation was unable to estimate a full fiscal effect for HB 2417 but notes that the bill would affect laboratory operations and would require an integration to the Kansas Criminal Justice Information System from the Kansas Prescription Drug Monitoring Program. There would be additional revenue received for criminal history record checks to offset expenditures related to passage of the bill, however the total revenue could not be estimated.

According to the Kansas Department of Agriculture, the Kansas Department of Corrections, and the Secretary of State, enactment of the bill would not result in a fiscal effect on the operations of any of the respective agencies. Any fiscal effect associated with HB 2417 is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties reports that enactment of HB 2417 could have a fiscal effect on counties that choose to allow for medical cannabis dispensaries in their localities. The local receipts could offset the local cost of regulation, but the total fiscal effect could not be estimated. The League of Kansas Municipalities states passage of the bill could have a fiscal effect on cities as law enforcement agencies would experience increased costs associated with enforcement of the act and training made necessary by the change in law. As employers, cities could also experience increased costs associated with educating human resource officials in the city on the effects of the Act on employment decisions. Some costs to cities could be offset due to collection of taxes, but the total fiscal effect could not be estimated.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Amy Penrod, Department of Health & Environment
Susan Gile, Board of Healing Arts
Alexandra Blasi, Board of Pharmacy
Lynn Robinson, Department of Revenue
Vicki Jacobsen, Judiciary
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Sandy Tompkins, Office of the Secretary of State
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Sherry Macke, Highway Patrol
Randy Bowman, Department of Corrections
Doug Schroeder, Peace Officers Standards & Training
Jay Hall, Kansas Association of Counties
Wendi Stark, League of Kansas Municipalities
Ruth Glover, Human Rights Commission