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Proponent Testimony for Medical Marijuana

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Special Committee on Medical Marijuana
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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 Special Committee Chair and Vice Chair for your commitment to learning from other states and diverse organizations as you craft legislation that will serve all Kansans.

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.¹ 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.²

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.

Prioritize Access for Small Business Owners

Structure. One of the biggest debates among medical marijuana advocates in Kansas right now is over licensure fees. 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

¹ 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

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

delivery licenses will create accessible opportunities for small business owners to grow into the industry.

Felony Limitations and Prohibitions. 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.³

Additionally, we request the removal of any language that limits an individual's ability to obtain a license based on their spouse's criminal record. 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.⁴

Local Policy. Despite medical research on the benefits of medical marijuana 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.⁵ Similarly, local taxation authority on cannabis business and products should be capped at a rate that is similar to other consumer products.

Prioritize Access for Patients

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 Employment. Kansans whose medical providers have recommended medical marijuana should not be kept out of the workplace due to their medically valid need. Language should be included stating there can be no discrimination of applicants or employees for their legal use of medical marijuana unless explicitly stated by federal law. 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.

Patients in Public Housing. 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

³ SB 560 Section 21 (a) (2) , Section 43, SB 158, New Section 20 (1) (B), Section 42

⁴ SB 560 Section 21 (a) (11) (B), SB 158, New Section 20 (1)(M)

⁵ https://minoritycannabis.org/wp-content/uploads/2021/10/MCBA-BillSummary_2017.pdf

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.”⁶ 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.

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.”⁷ 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 to reinvest in communities that have been disproportionately impacted by marijuana criminalization.

We recommend the creation of a grant program for community education and reinvestment, funded by a 5% tax on marijuana products. 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.

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. (Source: Minority Cannabis Business Association model legislation)

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

⁶ https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/tortsource/2022/spring/no-roof-your-reefer-medical-cannabis-tenants/

⁷ 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

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. (Source: Marijuana Policy Project)

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. (Source: Marijuana Policy Project)

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. (Source: Marijuana Policy Project)

Mississippi License Tier Graphic

<https://bit.ly/3SYz3w7>