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Federal and State Affairs

D-3 Legalization of Medical and Recreational Marijuana

Although the use of medical or recreational marijuana is not legal in Kansas, several bills have been introduced to change the law. Medical marijuana use is legal in 33 states and the District of Columbia, and recreational use of marijuana is legal in 10 states and the District of Columbia. This article summarizes the bills that have been introduced in Kansas and provides an overview on the legalization and decriminalization that has occurred in other states.

Medical Use of Marijuana

History of Legislation in Kansas

In the last 14 years, 15 bills were introduced in the Kansas Legislature addressing the topic of medical marijuana or cannabidiol. The only bill to be enacted was 2018 SB 282, which amended the definition of marijuana to exempt cannabidiol.

Sub. for SB 155 (2017) would have amended law concerning nonintoxicating cannabinoid medicine (NICM). Under the bill, no person could have been arrested, prosecuted, or penalized in any manner for possessing, utilizing, dispensing, or distributing any NICM or any apparatus or paraphernalia used to administer the medicine. The bill would have specified the physicians issuing recommendation orders for NICM and pharmacists dispensing or distributing NICM could not have been subject to arrest, prosecution, or any penalty, including professional discipline. The bill was recommended for passage by the Senate Committee on Federal and State Affairs. At the beginning of the 2018 Session, the bill was rereferred to the Senate Committee and died in Committee.

During the 2015 Legislative Session, HB 2282 advanced out of its original committee and its contents passed the House Committee of the Whole as an amendment to HB 2049. HB 2282, as amended, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures, including those characteristic of epilepsy. The bill was withdrawn from General Orders in the House of Representatives and referred to the House Committee on Appropriations, where it died. (*Note: See additional information about HB 2049 under the heading "Penalties and Decriminalization" on the following page.*)

In 2010, HB 2610 would have allowed for the creation of not-for-profit Compassionate Care Centers and for these facilities to issue registration certificates, registry identification cards, and marijuana to patients. The bill would have allowed patients and caregivers to possess certain amounts of marijuana plants, usable marijuana, and seedlings of unusable marijuana. Also, the bill would have provided patients and caregivers with certain levels of immunity from arrest, prosecution, or other civil penalties. Finally, the bill would have prohibited discrimination against patients from schools, landlords, employers, and other entities.

Slight variations of 2010 HB 2610 were introduced in 2011 (HB 2330), 2012 (SB 354), 2013 (HB 2198 and SB 9), 2015 (HB 2011 and SB 9), and 2017 (SB 155, SB 187, and HB 2348).

Other States

The District of Columbia and 33 states have laws legalizing medical marijuana and cannabis programs. The laws in these states meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains; and allowance of either smoking or vaporization of marijuana products, plant material, or extract.

Another 19 states allow use of low THC, high cannabidiol products for specific medical conditions or as a legal defense. Both Missouri and Iowa enacted laws in 2014 to allow cannabidiol oil to be prescribed to individuals who suffer from intractable epilepsy, a seizure disorder in which a patient's seizures fail to come under control with treatment.

Recreational Use of Marijuana

Other States

The District of Columbia and ten states (Alaska, California, Colorado, Maine, Massachusetts,

Michigan, Nevada, Oregon, Vermont, and Washington) have legalized the recreational use of marijuana as of November 2018.

In 2018, Vermont became the first state to legalize recreational marijuana through the legislative process. The other nine states used a ballot initiative. Twenty-one states had bills before legislatures in 2017 to advance or allow the use of recreational marijuana for adults.

Penalties and Decriminalization

Kansas

SB 112 (2017) reduced the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body. This provision became effective July 1, 2017.

HB 2049 was introduced during the 2015 Legislative Session. As introduced, the bill would have decreased the penalty for possession of marijuana in certain circumstances. The bill, as amended by the House Committee of the Whole, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures and would have created the Alternative Crop Research Act that would have allowed the Kansas Department of Agriculture (KDA) to cultivate and promote the research and development of industrial hemp. In 2016, the contents of the bill decreasing the criminal penalty in certain circumstances were inserted into HB 2462, which was approved by the Governor on May 13, 2016. The remainder of the contents from HB 2049, as amended by the House Committee of the Whole, were not included and did not become law.

In 2018, SB 263 enacted the Alternative Crop Research Act (Act), which allows the KDA, either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and

development of industrial hemp, in accordance with federal law. The bill allows individuals to participate in the research program under the authority of the KDA. The bill amends KSA 2018 Supp. 21-5701, dealing with criminal law, and KSA 65-4101, dealing with controlled substances, excluding “industrial hemp” from the definition of “marijuana,” when cultivated, possessed, or used for activities authorized by the Act.

Wichita City Ordinance

In April 2015, Wichita passed an ordinance during the general election that lessened the penalty for first-time marijuana possession. The new ordinance would impose up to a \$50 fine for first-time possession of a small amount of marijuana. After the election, the Kansas Attorney General filed a lawsuit against the City of Wichita seeking to have the ordinance declared null and void.

On May 13, 2015, the Kansas Supreme Court ordered the City of Wichita not to enforce the marijuana ordinance until the Court could issue a ruling on its validity. The ordinance conflicts with state law, where marijuana possession is a misdemeanor punishable by up to a year in jail and a \$2,500 fine.

The Kansas Supreme Court heard oral arguments on September 17, 2015. In its January 2016 ruling, the Court struck down the ordinance, citing the proponents’ failure to comply with statutory procedures in filing its proposal with the city clerk. Therefore, the Court declined to rule on the merits of the case.

On June 6, 2017, the Wichita City Council voted to preliminarily approve the reduction of the penalty for first-time marijuana offenses. The Council will take another vote at a later date to finalize the reduction.

Other States

The District of Columbia and 22 states have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 16 states in 2018.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 14 state legislatures in 2018.

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