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Federal and State Affairs

E-2 Legalization of Medical and Recreational Marijuana and Industrial Hemp

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. Recreational use of marijuana is legal in 14 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 15 years, 19 bills have been introduced in the Kansas Legislature addressing the topic of medical marijuana or cannabidiol; two of these bills have been enacted. The 2019 Legislature passed SB 28, also known as “Claire and Lola’s Law,” which prohibits state agencies and political subdivisions from initiating child removal proceedings or child protection actions based solely upon the parent’s or child’s possession or use of cannabidiol treatment preparation in accordance with the affirmative defense established by the bill. Additionally, the 2018 Legislature amended the definition of marijuana to exempt cannabidiol in SB 282. Three bills which would have legalized the use of medical cannabis were introduced in the 2019 Legislative Session (SB 113, HB 2163, and HB 2413). The Senate Committee on Public Health and Welfare held a hearing on SB 113 but failed to take any further action on the bill.

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.

Slight variations of a bill that would allow for the creation of not-for-profit centers and for these facilities to issue registration certificates, registry identification cards, and marijuana to patients have been introduced every year since 2010 with the exceptions of 2014 and 2016. This bill would have allowed patients and caregivers to possess certain amounts of marijuana plants, usable marijuana, and seedlings of unusable marijuana. Also, the legislation 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.

Other States

Thirty-three states and the District of Columbia 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 13 states allow use of low tetrahydrocannabinol (THC), high cannabidiol products for specific medical conditions or as a legal defense. Four states, including Missouri and Oklahoma, enacted comprehensive medical marijuana laws in 2019 after previously legalizing low THC products.

Recreational Use of Marijuana

Other States

Eleven states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington) and the District of Columbia have legalized the recreational use of marijuana as of September 2019.

Illinois and Vermont legalized recreational marijuana through the legislative process, while the remaining states used a ballot initiative. Nine states had bills before their legislatures in 2019 to advance or allow the use of recreational marijuana for adults.

Commercial and Industrial Use—Hemp

In 2018, SB 263 enacted the Alternative Crop Research Act (Act), which allows the Kansas Department of Agriculture (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.

In 2019, Senate Sub. for HB 2167 created the Commercial Industrial Hemp Act (Act), which requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The bill includes “industrial hemp” as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances. The bill also excludes from the Schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;
- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

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.

Local Ordinances

On June 13, 2017, the Wichita City Council voted to approve an ordinance passed by Wichita voters in April 2015 that would reduce the penalty for first-time marijuana possession. The ordinance would impose up to a \$50 fine for first-time

offenders 21 years of age and older who possess less than 32 grams of marijuana.

On March 19, 2019, the Lawrence City Commission voted to decrease the penalty for first- and second-time offenders 18 years of age or older who possess less than 32 grams of marijuana to \$1.00.

Other States

Twenty-six states and the District of Columbia have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 19 states in 2019.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 17 state legislatures in 2019.

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