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**Testimony to the Senate Federal and State Affairs Committee
In Opposition to SB135
March 16, 2023**

Chairman Thompson and Committee Members:

Our associations are opposed to the passage of SB135. The opposition of our associations to the legalization of marijuana remain unchanged. We continue to be concerned with the unintended consequences of this legislation on public safety in Kansas and implications of a lack of clarity and control in regulatory areas impacting law enforcement and public safety. It is clear that no other state going down this path has found the right balance needed to create taxes to properly fund enforcement and programs. There is either inadequate taxation to properly regulate leading to an industry without adequate controls to protect the public or taxation at a level so high it enhances the illicit market sales of marijuana. This creates operational and logistical obstacles to effectively enforce the act and effective enforcement of illegal drug violations outside the scope of the “medical” marijuana laws.

During the interim, we provided testimony to the Special Committee on “Medical” Marijuana. In that testimony we outlined a significant number of things a “medical” marijuana bill would have to include to make law enforcement’s role in the regulation feasible. SB135 attempt to address some of those issues, but some of those attempts are inadequate and several of those things are absent from the bill.

Real-time law enforcement access to the database of registered “medical” marijuana users and caregivers is critical. We must be able to verify 1) a person’s registration status if they tell us they are registered but don’t have their card with them; 2) the status and validity of a card presented to us by name or by number; and 3) the allowable 30-day supply. This can be accomplished in a secure and controlled manner via the Kansas Criminal Justice Information System, the same way we obtain driver’s license records and criminal records. There is a provision to allow law enforcement access to the Prescription Monitoring Program. However, the Board of Pharmacy has expressed concern with that access in the past. It is also unclear if the Prescription Monitoring data will include some of the information the bill proposes it to share with law enforcement, such as the name, birth date, and unique ID card number, or even the designated 30-day supply for each patient. We are particularly concerned with the real-time registration information on users and caregivers since that originates from the Department of Health and Environment. We requested this in our interim testimony. We believe the user and caregiver registration is best provided with a connection between the Department of Health and Environment database of registrations and the Kansas Criminal Justice Information System.

We do not find anything requiring a person to possess their user or caregiver registration card while possessing marijuana. We believe the law must require any registration document to be in the persons possession when possessing cannabis and require it to be presented to law enforcement on request. A provision needs to be inserted into the bill to mirror the driver's license laws providing it is a violation not to have the license in their possession, and further providing the charge will be dismissed if a person who is cited presents the registration to the court showing it was in effect at the time of the violation. We requested this in our interim testimony.

We believe an exemption for county jails is essential, so they are not required to allow prisoners to have "medical" marijuana while incarcerated. This is an example of the hazards of calling a federally prohibited drug "medicine." At some point, a court will surely rule the state has declared this "medicine" and we will have to not only allow them to have access to it while in jail, but the counties will have to provide it for them because the state has deemed it to be "medicine." This needs to be a clear prohibition stating "medical" marijuana cannot be taken into a jail for any reason. We requested this in our interim testimony.

Section 17 of the bill requires honoring out-of-state "medical" marijuana user identification cards for both possession and purchasing of "medical" marijuana. There is no national registry of registered "medical" marijuana users. We doubt the proponents would support such a national registry. This means there is no way we can know if the card is a valid card or not. Nor would we be able to know what a 30-day supply of marijuana is authorized. It will be nearly impossible to control the abuse from this provision. Perhaps if it just allowed them to possess medical marijuana but not buy it and to have a maximum amount of marijuana product they can possess established by statute it would be less problematic. But the purchasing part is a definite problem. This section is clearly over-simplified.

The DUI on drugs issue is not addressed in this bill. This is a significant problem other states have seen increase when "medical" marijuana has been legalized. This is an entirely different and complicated discussion. But passage of this bill is going to make the problem worse than it is today. Roadside testing devices are being developed, but not yet fully deployed. And even if they were, there is no established standard of THC levels to create a presumed intoxication or impairment from THC.

There are many red flags in this bill the committee should focus on and take heed. For example, this industry designed bill:

- Proposes not only allowing the marketing of edibles that have been sources of accidental ingestion of THC in other states, but also proposes an excessively high THC level. It proposes an allowable limit of 3.5 grams of THC in an edible with no reference to a percentage of total product. See page 26, line 24. It could be an edible of 3.5 grams of pure THC or it could be a one pound chocolate bar containing 3.5 grams of THC. And concentrates of up to 60% THC would be allowed. See page 26, line 23.
- An amendment in the 78 pages of text in this bill is a decriminalization provision for anyone not possessing a "medical" marijuana card. See page 59, lines 34-39. This has nothing to do with "medical" marijuana and is a separate topic. Incidentally, a topic we provided opposing testimony to in an informational hearing in the House Corrections and Juvenile Justice Committee last week.
- A provision is in the bill to require a cultivator, laboratory, processor, distributor or retail dispensary licensee to be a resident of the state for at least two years immediately preceding the application date. Then the authors slip in a provision this requirement will

go away on December 31, 2025, allowing expansion of the licensee base to out of state residents. Why is this sunset provision not stated in the section where it is implemented instead of separating it out to a place two pages later? Is it so proponents can say the restriction is there and hoping it isn't noticed it is just a temporary provision?

These are just a few examples of indications authorship that don't smell right and should cause a great deal of concern about what other surprises are in the bill. It is also a sign this bill needs significant review and is not ready for prime time.

Here are some other things we did not find in the bill:

1. Clear and accessible individual "medical" marijuana user's established 30-day supply is an enforcement necessity. Without it we cannot enforce the limitations of purchase and possession provided in Section 10 subsection (b) on page 10, lines 9 and 10; in Section 11 subsection (b) on page 10, lines 23-27; in Section 14 subsection (a)(4) lines 40-42.

It appears there is an attempt to define a 30-day supply in Section 14, subsection (b) on page 12 lines 4-10, but that attempt falls short except for "dried, unprocessed "medical" cannabis." While it includes "or its equivalent to a 30-day supply" it is very unclear what that means. Since it doesn't include a THC content, it will vary from one plant material to another. What is "dried?" Does that mean completely absent of any moisture? Or is some level of dryness. The 30-day supply for non-vegetation "medical" marijuana seems to be absent in the bill. Section 38 subsection (c)(4) on page 31, lines 31-33 requires sharing of information that includes the physician's recommendation of a 30-day supply. We recognize there is a provision in section 14 subsection (a)(4) for KDHE regulations to include "a 30-day maximum supply," but other provisions provide a physician may establish what a 30-day supply is for each patient. See Section 14 subsection (b) and Section 28 subsection (b)(1) It is this per patient designation by a physician that is critical to proper regulation and enforcement.

2. We cannot find any restriction on how often a person may purchase a 30-day supply. See Section 10 subsection (b) and Section 11 subsection (b). Both restrict possession and purchase to a 30-day supply, but nothing appears to prohibit the purchase of a 30-day supply more than once in a 30-day period. Nor do we find anything to prohibit a "medical" marijuana user from using their 30-day supply in 15-days then possessing a new 30-day supply within a 30-day period. The absence of this provision allows unlimited purchases and use.
3. The bill does not appear to have a requirement for dispensaries to check the Prescription Monitoring Program prior to a sale, nor do we find a requirement to stop a sale if the 30-day supply has already been dispensed according to the Prescription monitoring data. It only requires them to report all sales. See Section 28 on pages 24-25 and Section 38 on page 31.
4. We believe the provision in Section 12 subsection (c) on penalties for submitting a fraudulent application to register as a user of caregiver are inadequate. They provide the Department may suspend a registration but not until the second or subsequent offense. We believe suspension or revocation should be mandatory for a fraudulent application on first offense and certainly if they do it twice. The term "fraudulent" requires a "deliberate deception" and would not include an error without intent to deceive.

Sheriff Jeffery Easter, Sedgwick County
Legislative Committee Chair, Kansas Sheriffs Association