

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2244

By Committee on Judiciary

2-12

1 AN ACT concerning ~~health and healthcare~~ **medical treatments**; relating to  
2 the use of cannabidiol with 5% tetrahydrocannabinol to treat certain  
3 medical conditions; protection from prosecution for authorized use;  
4 amending K.S.A. 2018 Supp. 21-5706 and repealing the existing  
5 section.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) This section shall be known and may be cited as  
9 Claire and Lola's law.

10 (b) As used in this section:

11 (1) "Cannabidiol treatment preparation" means an oil including  
12 cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-  
13 cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as  
14 described in K.S.A. 65-4105, and amendments thereto, and having a delta-  
15 9-tetrahydrocannabinol concentration of no more than 5% that has been  
16 tested by a third-party, independent laboratory.

17 (2) "~~Debilitating medical condition~~" means ~~a chronic or debilitating~~  
18 ~~disease or medical condition, including one that produces seizures, for~~  
19 ~~which the patient is under treatment by a licensed physician~~ **medically**  
20 **diagnosed chronic disease or medical condition causing a serious**  
21 **impairment of strength or ability to function, including one that**  
22 **produces seizures, for which the patient is under current and active**  
23 **treatment by a physician licensed to practice medicine and surgery.**

24 (3) "Delta-9-tetrahydrocannabinol concentration" means the  
25 combined percentage of delta-9-tetrahydrocannabinol and its optical  
26 isomers, their salts and acids and salts of their acids, of any part of the  
27 plant cannabis sativa L., reported as free tetrahydrocannabinol on a dry  
28 weight basis.

29 (4) "Third-party, independent laboratory" means an organization or  
30 company that tests products according to ~~agreed requirements~~  
31 **international standards organization 17025 or national environmental**  
32 **laboratory accreditation program standards** and that is not affiliated  
33 with the producer of the item being tested.

34 (c) ~~It shall be an affirmative defense to any prosecution under K.S.A.~~  
35 ~~2018 Supp. 21-5706, and amendments thereto, arising out of a person's~~  
36 ~~possession of any cannabidiol treatment preparation that:~~

1       ~~(1) The defendant has a debilitating medical condition and the~~  
2 ~~cannabidiol treatment preparation is being used by the defendant to treat~~  
3 ~~such debilitating medical condition; or~~

4       ~~(2) the defendant is the parent or guardian of a minor child who has a~~  
5 ~~debilitating medical condition, and the cannabidiol treatment preparation is~~  
6 ~~being used to treat such debilitating medical condition.~~

7       ~~(d)~~ No agency of this state or political subdivision thereof shall  
8 initiate proceedings to remove a child from the home of the child's parent  
9 or guardian or initiate any child protection action or proceeding based  
10 solely upon the parent's or the child's possession or use of cannabidiol  
11 treatment preparation pursuant to this section.

12       ~~(e)~~**(d)** Nothing in this section shall be construed to require the Kansas  
13 medical assistance program or any individual or group health insurance  
14 policy, medical service plan, contract, hospital service corporation  
15 contract, hospital and medical corporation contract, fraternal benefit  
16 society or health maintenance organization that provides coverage for  
17 accident and health services and that is delivered, issued for delivery,  
18 amended or renewed on or after July 1, 2019, to provide payment or  
19 reimbursement for any cannabidiol treatment preparation.

20       ~~(f)~~**(e)** Nothing in this section shall be construed to allow the  
21 possession, sale, production, redistribution or use of any other form of  
22 cannabis other than as expressly allowed in this section.

23       Sec. 2. K.S.A. 2018 Supp. 21-5706 is hereby amended to read as  
24 follows: 21-5706. (a) It shall be unlawful for any person to possess any  
25 opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-  
26 4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled  
27 substance analog thereof.

28       (b) It shall be unlawful for any person to possess any of the following  
29 controlled substances or controlled substance analogs thereof:

30       (1) Any depressant designated in K.S.A. 65-4105(e), ~~K.S.A. 65-~~  
31 ~~4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments~~  
32 ~~thereto;~~

33       (2) any stimulant designated in K.S.A. 65-4105(f), ~~K.S.A. 65-4107(d)~~  
34 ~~(2), (d)(4), (d)(5) or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;~~

35       (3) any hallucinogenic drug designated in K.S.A. 65-4105(d), ~~K.S.A.~~  
36 ~~65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;~~

37       (4) any substance designated in K.S.A. 65-4105(g) and ~~K.S.A. 65-~~  
38 ~~4111(c), (d), (e), (f) or (g), and amendments thereto;~~

39       (5) any anabolic steroids as defined in K.S.A. 65-4109(f), and  
40 amendments thereto;

41       (6) any substance designated in K.S.A. 65-4113, and amendments  
42 ~~thereto; or~~

43       (7) any substance designated in K.S.A. 65-4105(h), and amendments

1 thereto.

2 (c) (1) Violation of subsection (a) is a drug severity level 5 felony.

3 (2) Except as provided in subsection (c)(3):

4 (A) Violation of subsection (b) is a class A nonperson misdemeanor,  
5 except as provided in subsection (c)(2)(B); and

6 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug  
7 severity level 5 felony if that person has a prior conviction under such  
8 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially  
9 similar offense from another jurisdiction, or under any city ordinance or  
10 county resolution for a substantially similar offense if the substance  
11 involved was 3, 4-methylenedioxyamphetamine (MDMA), marijuana  
12 as designated in K.S.A. 65-4105(d), and amendments thereto, or any  
13 substance designated in K.S.A. 65-4105(h), and amendments thereto, or an  
14 analog thereof.

15 (3) If the substance involved is marijuana, as designated in K.S.A.  
16 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as  
17 designated in K.S.A. 65-4105(h), and amendments thereto, violation of  
18 subsection (b) is a:

19 (A) Class B nonperson misdemeanor, except as provided in  
20 *subparagraphs (e)(3)(B) and (e)(3)(C)*;

21 (B) class A nonperson misdemeanor if that person has a prior  
22 conviction under such subsection, under K.S.A. 65-4162, prior to its  
23 repeal, under a substantially similar offense from another jurisdiction, or  
24 under any city ordinance or county resolution for a substantially similar  
25 offense; and

26 (C) drug severity level 5 felony if that person has two or more prior  
27 convictions under such subsection, under K.S.A. 65-4162, prior to its  
28 repeal, under a substantially similar offense from another jurisdiction, or  
29 under any city ordinance or county resolution for a substantially similar  
30 offense.

31 (d) *It shall be an affirmative defense to any prosecution under K.S.A.*  
32 *2018 Supp. 21-5706, and amendments thereto, this section arising out of*  
33 *a person's possession of any cannabidiol treatment preparation that if the*  
34 **person:**

35 (1) *The defendant has a debilitating medical condition and the*  
36 *cannabidiol treatment preparation is being used by the defendant to treat*  
37 *such debilitating medical condition; or*

38 (2) *the defendant is the parent or guardian of a minor child who has*  
39 *a debilitating medical condition, and the cannabidiol treatment*  
40 *preparation is being used to treat the minor child's debilitating medical*  
41 *condition* **Has a debilitating medical condition, as defined in section 1,**  
42 **and amendments thereto, or is the parent or guardian of a minor child**  
43 **who has such debilitating medical condition;**

1       **(2) is possessing a cannabidiol treatment preparation, as defined**  
2 **in section 1, and amendments thereto, that is being used to treat such**  
3 **debilitating medical condition; and**

4       **(3) has possession of a letter dated within the preceding 15**  
5 **months and signed by the physician licensed to practice medicine and**  
6 **surgery who diagnosed the debilitating medical condition that**  
7 **identifies the person or the person's minor child as a patient and**  
8 **identifies the patient's debilitating medical condition.**

9       ~~(d)~~(e) It shall not be a defense to charges arising under this section  
10 that the defendant was acting in an agency relationship on behalf of any  
11 other party in a transaction involving a controlled substance or controlled  
12 substance analog.

13       Sec. 3. K.S.A. 2018 Supp. 21-5706 is hereby repealed.

14       Sec. 4. This act shall take effect and be in force from and after its  
15 publication in the statute book.