



KANSAS HEALTH INSTITUTE

MARIJUANA AND THE WORKPLACE

February 28, 2023

Kansas Health Institute



Who We Are



- Nonprofit, nonpartisan educational organization based in Topeka.
- Established in 1995 with a multi-year grant by the Kansas Health Foundation.
- Committed to convening meaningful conversations around tough topics related to health.



Hello!

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Acknowledgments



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2021 Medical Marijuana Bills

- **House Substitute for Senate Bill 158** – Kansas Medical Marijuana Regulation Act
 - Passed by the House on May 6, 2021
- **Senate Bill 315** – Kansas Medical Marijuana Regulation Act
 - Introduced on May 7, but no action taken
- Summary of Medical Marijuana Legislation (khi.org)
 - <https://bit.ly/3m36phy>
- States with Comprehensive Medical Marijuana Laws (khi.org)
 - <https://bit.ly/3EJJ3nO>



2021 Medical Marijuana Legislation



Figure 1: 2021 Medical Marijuana Legislation in Kansas

Kansas is one of three states, including Nebraska and Idaho, with no public marijuana access program according to the National Conference of State Legislatures (NCSL). On May 6, the Kansas House passed House Substitute for Senate Bill 158 (H. Sub. for SB 158), which would create the Kansas Medical Marijuana Regulation Act and the Kansas Medical Marijuana Regulation Program; define terms related to the bill; amend laws concerning crimes, child welfare, employment and discipline of certain medical professionals; create provisions to address federal re-scheduling of marijuana; and rename the Division of Alcoholic Beverage Control, Kansas Department of Revenue, as the Division of Alcohol and Cannabis Control. After the House passed the bill, Senate President Ty Masterson stated he did not anticipate the Senate taking

up the bill this session but noted the bill would be available for consideration during the 2022 session and suggested that a joint committee may consider it during the interim period. On May 7, the Senate ruled the bill as "materially changed" and referred it to the Senate Federal and State Affairs Committee. SB 315, which would create the Kansas Medical Marijuana Regulation Act, also was introduced by the Senate on May 7 and was referred to the Senate Public Health and Welfare Committee.

KHI staff reviewed both bills and have prepared this summary comparing select provisions in [H. Sub. for SB 158](#) (124 pages) and [SB 315](#) (84 pages). (Text in **bold** indicates differences between the bills.)

	House Substitute for Senate Bill 158	Senate Bill 315
Brief Summary	Would create the Kansas Medical Marijuana Regulation Act (Act), the Kansas Medical Marijuana Regulation Program (Program), and related funds for the Act; define terms related to the bill; amend law concerning crimes, child welfare, employment and discipline of certain medical professionals; create provisions to address federal re-scheduling of marijuana; and rename the Division of Alcoholic Beverage Control (ABC), Kansas Department of Revenue (KDOR), as the Division of Alcohol and Cannabis Control (ACC).	Would create the Kansas Medical Marijuana Regulation Act; provide for licensure and regulation of the cultivation, distribution, sale and possession of medical marijuana; delegate administrative duties and functions to the Secretary of the Kansas Department of Health and Environment (KDHE), Secretary of KDOR, the Board of Healing Arts, Board of Pharmacy and the Director of ABC; impose fines and penalties for violations of the Act; establish the medical marijuana registration fund and the medical marijuana business regulation fund; create the crime of unlawful transport of medical marijuana; make exceptions to the crimes of unlawful manufacture and possession of controlled substances.
Qualifying Health Conditions	Acquired immune deficiency syndrome (AIDS), Alzheimer's disease, amyotrophic lateral sclerosis, cancer, chronic traumatic encephalopathy, Crohn's disease, epilepsy or another seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, lupus, multiple sclerosis, Parkinson's disease, positive status for human immunodeficiency virus (HIV), post-traumatic stress disorder, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury, ulcerative colitis, pain that is either chronic and severe or intractable, and any other disease or condition adopted by the Secretary of KDHE upon petition recommended for approval by the Medical Marijuana Advisory Committee. Any "person" may submit a petition to the Medical Marijuana Advisory Committee requesting that a disease or condition be added to this list.	AIDS, Alzheimer's disease, amyotrophic lateral sclerosis, cancer, chronic traumatic encephalopathy, Crohn's disease, epilepsy or another seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis, Parkinson's disease, positive status for HIV, post-traumatic stress disorder, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury, ulcerative colitis, pain that is either chronic and severe or intractable, debilitating psychiatric disorder that is diagnosed by a physician who is board-certified in the practice of psychiatry, any other chronic, debilitating or terminal condition that in the professional judgment of a physician licensed in the state would be a detriment to the patient's mental or physical health if left untreated , or any other disease or condition approved by the Secretary of KDHE. Any "person" may submit a petition to the Medical Marijuana Advisory Committee requesting that a disease or condition be added to this list.
Regulatory Authority	<p>Would establish the Kansas Medical Marijuana Regulation Program, which would be administered by the Secretary of KDHE.</p> <p>The Secretary of KDHE would provide for the registration of patients and caregivers, including the issuance of identification cards to registered patients and caregivers.</p> <p>The Board of Healing Arts would provide for the certification of physicians to authorize them to recommend medical marijuana as a treatment for patients.</p> <p>The Board of Pharmacy would provide for registration of pharmacists as pharmacist consultants and the requirements for reporting to the Prescription Monitoring Program database.</p> <p>The Director of ABC would provide for the licensure of cultivators, laboratories that test medical marijuana, processors, distributors and retail dispensaries.</p>	<p>Would establish the Kansas Medical Marijuana Regulation Program, which would be administered by the Secretary of KDHE.</p> <p>The Secretary of KDHE would provide for the registration of patients and caregivers, including the issuance of identification cards to registered patients and caregivers.</p> <p>The Board of Healing Arts would provide for certification of physicians to authorize them to recommend medical marijuana as a treatment for patients.</p> <p>The Board of Pharmacy would provide for the registration of pharmacists as pharmacist consultants and the requirements for reporting to the Prescription Monitoring Program database.</p> <p>The Director of ABC would provide for the licensure of cultivators, laboratories that test medical marijuana, processors, distributors and retail dispensaries.</p>



2022 Medical Marijuana Bills

- Senate Bill 560 – Kansas Medical Marijuana Regulation Act
 - <https://bit.ly/3Z47Pae>
- Introduced on March 11, 2022
 - Three days of hearings, March 16-18, in Senate Federal and State Affairs but died in committee



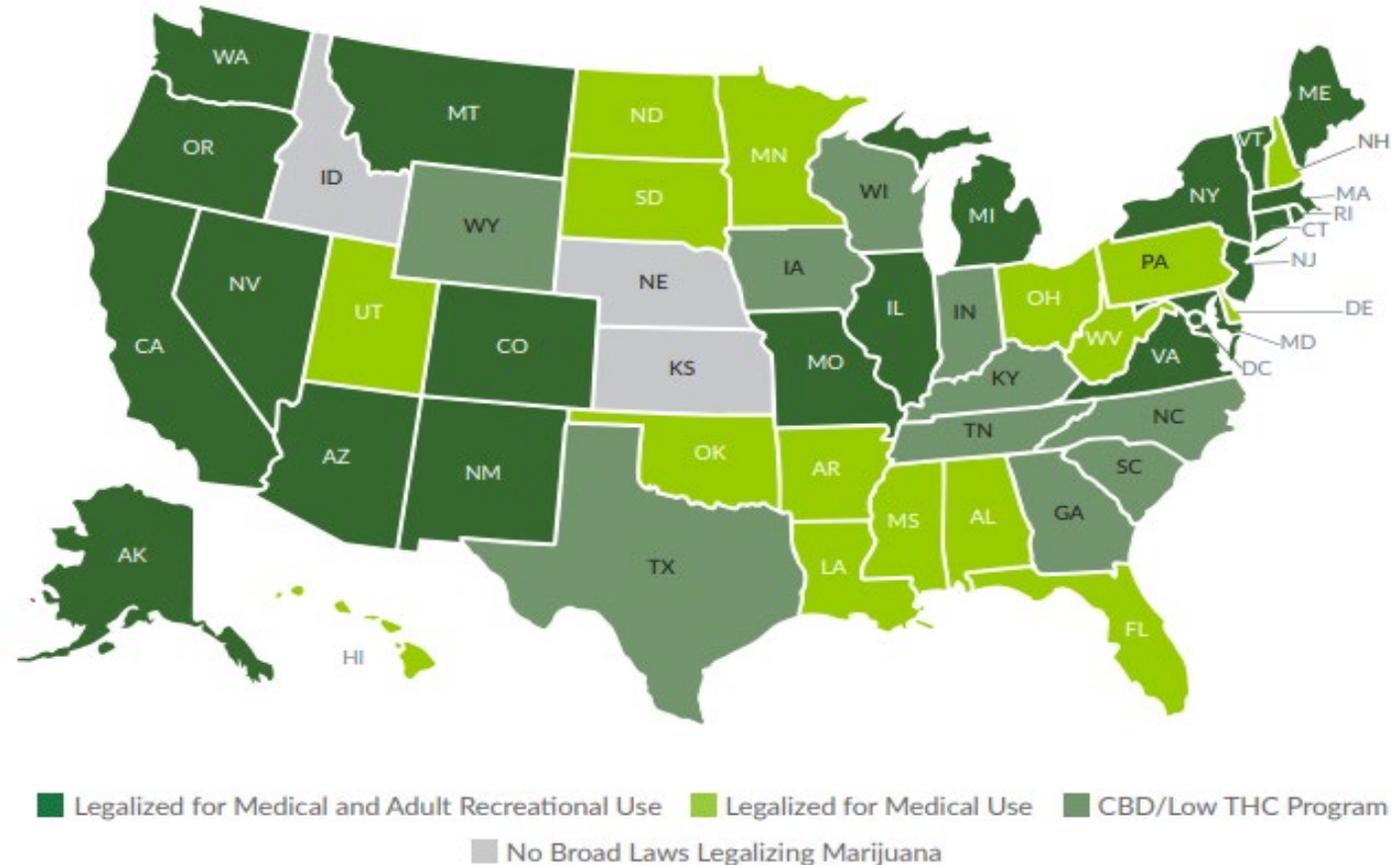


Federal and State Status

- The federal Controlled Substances Act, administered by the U.S. Drug Enforcement Administration, currently classifies marijuana as a Schedule I substance, meaning it has no accepted medical use and has a high potential for abuse.
- Substances that are classified as Schedule I have significant regulatory restrictions and there are strict limitations on researchers' access to study marijuana, including its public health and safety impacts.
- 37 states and D.C. have legalized medical marijuana.
- 21 states and D.C. have legalized adult-use marijuana (recreational).



Status of State Marijuana Legalization Decisions



Source: National Conference of State Legislatures, [State Medical Cannabis Laws](#), accessed December 12, 2022.



Special Committee on Workforce Development

- The 2022 Special Committee on Workforce Development included a recommendation in their report that the Legislature “proceed with caution” with medical marijuana legislation.
- Concerns were expressed about employers who are unable to hire employees who cannot pass drug screening tests, specifically those individuals applying for jobs requiring the use of heavy machinery.



2023 Cannabis Regulation Bills

Four bills introduced this session

- Senate Bill (SB) 135 – Medical Cannabis Regulation Act
 - <https://bit.ly/3SFdqkT>
- SB 171 – Veterans First Medical Cannabis Act
 - <https://bit.ly/3Y9QdZo>
- House Bill (HB) 2367 – Adult Use Cannabis Regulation Act
 - <https://bit.ly/3kxtMzp>
- HB 2417 – Medical Cannabis Regulation Act
 - <https://bit.ly/3kxXRyO>



Senate Bill 135

- Creating the Medical Cannabis Regulation Act.
- New Section 48 of the bill states that no provisions of the act shall be construed to:
 - (a) Require an employer to permit or accommodate the use, consumption, possession . . . or any conduct otherwise allowed by this act in any workplace or on the employer's property;
 - (d) Affect the ability of an employer to implement policies to promote workplace health and safety by restricting the use of cannabis by employees;



Senate Bill 135

(e) Prohibit an employer from:

- (1) Establishing and enforcing a drug testing policy, drug-free workplace policy or zero-tolerance drug policy;
- (2) Disciplining an employee for a violation of a workplace drug policy or for working while under the influence of cannabis; or
- (3) Including a provision in any contract that prohibits the use of cannabis.



Senate Bill 135

(f) Prevent an employer from, because of a person's violation of a workplace drug policy or because that person was working while under the influence of cannabis:

- (1) Refusing to hire a person;
 - (2) Discharging a person;
 - (3) Disciplining a person; or
 - (4) Otherwise taking an adverse employment action against a person with respect to hiring decisions, tenure, terms, conditions, or privileges of employment
- ...



Senate Bill 135

- Section 78 of the bill (amending K.S.A. 44-501 — workers compensation law) states, in part:
 - (B)(ii) In the case of cannabis, . . . [workers] compensation shall not be denied if the employee is registered as a patient pursuant to section 8, . . . such cannabis . . . was used in accordance with the medical cannabis regulation act . . . and there has been no prior incidence of the employee's impairment on the job as a result of the use of such cannabis . . . within the immediately preceding 24 months.





NIDA Cannabis Research and Data

National Institute on Drug Abuse, Cannabis (Marijuana) Research Report:
<https://bit.ly/3EJ9WYW>

- How many people use cannabis?
 - In 2020, among people aged 12 and older, 17.9 percent (or about 49.6 million people) reported using cannabis in the past 12 months.
 - In 2021, an estimated 7.1 percent of 8th graders, 17.3 percent of 10th graders, and 30.5 percent of 12th graders reported using cannabis/hashish in the past 12 months.
- Main psychoactive (mind-altering) chemical in marijuana is delta-9-tetrahydrocannabinol (THC)



NIDA Cannabis Research and Data

National Institute on Drug Abuse, Cannabis (Marijuana) Research Report:
<https://bit.ly/3EJ9WYW>

- What are marijuana's effects?
 - Pleasant euphoria.
 - Sense of relaxation.
 - Heightened sensory perception (e.g., brighter colors).
 - Laughter.
 - Altered perception of time.
 - Increased appetite.
 - However, some people experience unpleasant effects – anxiety, fear, distrust, or panic.



NIDA Cannabis Research and Data

National Institute on Drug Abuse, Cannabis (Marijuana)
Research Report: <https://bit.ly/3EJ9WYW>

- Noticeable effects of smoked marijuana generally last 1 to 3 hours.
- Effects of marijuana consumed in food or drink may last for many hours.
- Detectable amounts of THC may remain in the body for days or even weeks after use.





Impairment

- Detecting impairment from cannabis is challenging.
- Impairment varies based on the concentration of THC, how it's used, and users' experience with, or tolerance to, the drug.
- Cannabis can be detected through drug testing several days or weeks after an individual has stopped experiencing any physiological effects and impaired functioning.
- The levels of THC that create impairment are not well understood and how THC is metabolized by frequent users versus infrequent users, makes interpretation of a positive urine drug test a challenge.

- Source: *Cannabis and Work: Implications, Impairment, and the Need for Further Research*, June 15, 2020, John Howard, M.D.; L. Casey Chosewood, M.D.; Lore Jackson-Lee, M.P.H.; and Jamie Osborne, M.P.H., C.H.E.S., Centers for Disease Control and Prevention, NIOSH Science Blog, National Institute for Occupational Safety and Health.



Cannabis Use and the Workplace



Cannabis Use and the Workplace

- Adverse consequences of marijuana use (during intoxication) include:
 - Impaired short-term memory;
 - Impaired attention, judgment, and other cognitive functions;
 - Impaired coordination and balance;
 - Increased heart rate; and
 - Anxiety, paranoia.
- A review of the current body of research does not provide sufficient evidence that marijuana users are at increased or decreased risk for occupational injury.
- Study results are mixed concerning whether medical marijuana legalization leads to an increase in motor vehicle accidents and fatalities.

Source: *Cannabis and Work: Implications, Impairment, and the Need for Further Research*, June 15, 2020, John Howard, M.D.; L. Casey Chosewood, M.D.; Lore Jackson-Lee, M.P.H.; and Jamie Osborne, M.P.H., C.H.E.S., Centers for Disease Control and Prevention, NIOSH Science Blog, National Institute for Occupational Safety and Health; National Academies of Sciences, Engineering, and Medicine, 2017, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington DC: The National Academies Press.





Cannabis Use and the Workplace

- Some research suggests that medical marijuana can have a *positive* impact on worker safety and health as it may allow workers to better manage pain and other symptoms associated with workplace injuries and illnesses, thereby reducing worker's compensation claims.
- Under Arkansas law enacted in 2017, employers are prohibited from discriminating against any applicant or employee in hiring or firing due to their status as a qualifying patient.



Cannabis Use and the Workplace

- However, the Arkansas law allows employers to prohibit employees in a “safety sensitive” position from being under the influence of marijuana.
- What is a safety sensitive position? One that requires:
 - Carrying a firearm;
 - Performing life-threatening procedures;
 - Working with confidential information or documents pertaining to criminal investigations;
 - Working with hazardous or flammable materials, controlled substances, food, or medicine; or
 - Operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties.



What Can Employers Do?

- Employers:
 - Can implement drug policies to maximize safety and productivity;
 - Can set an expectation that employees will report to work fit for duty and free from being under the influence of any controlled substance, including marijuana;
 - Should verify employees' medical marijuana registrations in states where medical marijuana is legal; and
 - Should also implement a policy for employees who request accommodation of medical marijuana use for a disability in compliance with state law.



What Can Employers Do?

- Employers:
 - Can implement drug testing
 - Oral fluid testing
 - Urine testing
 - But no test currently available can assess the level of impairment
 - Should ensure that managers/supervisors are trained to identify marijuana impairment and to know what to do when an employee is suspected of impairment on the job.
 - Should clearly define rules for the use and possession of marijuana at work.



What Can Employers Do?

- Employers:
 - Can establish specific policies to prohibit any marijuana use for employees in “safety-sensitive” positions.
 - Should establish policies that are specific and supported by workplace procedures to reduce chance of litigation.
 - Should have their policies reviewed by an attorney to ensure they comply with state laws.
 - Should frequently review and update their policies to keep up with changing laws and attitudes.





THANK YOU!

Any Questions?

For additional information, contact Linda Sheppard, lsheppard@khi.org



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