

## CBD Laws Relevant to Local Law Enforcement

SB28 Effective July 1, 2019 [The Bill](#) [The Legislative Research Summary](#)  
New Statutes are attached.

Definition of terms [Section 1 creating new law KSA 65-6235 effective July 1, 2019]:

“Cannabidiol treatment preparation”— an oil containing cannabidiol and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than 5% relative to the cannabidiol concentration in the preparation, verified through testing by a third-party, independent laboratory.

"Debilitating medical Condition a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.

Prohibition to remove children from home based on use of CBD authorized in the Act

It is prohibited to initiate of proceedings to remove a child from the home of the child's parent or guardian or initiate any child protection action or proceeding based solely upon the parent's or the child's possession or use of cannabidiol treatment preparation in accordance with the provisions of K.S.A. 2018 Supp. 21-5706(d), and amendments thereto. [Section 1, subsection (c)]

Clarification the act does not authorize other forms of cannabis

The new statute clarifies the new law does not allow the possession, sale, production, redistribution or use of any other form of cannabis. [Section 1, subsection (e)]

Creates an affirmative defense to prosecution of a violation in KSA 21-5706, Unlawful Possession of a Controlled Substance [Section 2, subsection (d)]

Affirmative defense provides the defendant an opportunity to prove the facts necessary to defeat the prosecutions claims. In this case, the facts necessary are established in the statute and require showing:

1. The person or their minor child has a debilitating medical condition, as defined in KSA 65-6235
2. The product in question is a cannabidiol treatment preparation, as defined in KSA 65-6235 and is being used to treat such debilitating medical condition; and
3. The person has a letter
  - a. dated within the preceding 15 months
  - b. signed by a physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;
  - c. on such physician's letterhead; and
  - d. Identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.

## State of CBD Laws in Kansas

### Prior to July 1, 2019

CBD is only legal under two scenarios: 1) It is a pharmaceutical prescription prescribed by a physician as allowed in Kansas law; or 2) it does not contain any THC.

### After July 1, 2019

CBD is only legal under two scenarios: 1) It is a pharmaceutical prescription prescribed by a physician as allowed in Kansas law; 2) it does not contain any THC;

Under the new law in KSA 65-6235, it is technically illegal, but a person cannot be convicted if they demonstrate they meet the requirements of KSA 65-6235 and KSA 21-5706, subsection (d).

## The Amended Statutes

### **65-6235. CBD With THC For Certain Medical Purposes.**

- (a) This section shall be known and may be cited as Claire and Lola's law.
- (b) As used in this section and K.S.A. 2018 Supp. 21-5706, and amendments thereto:
  - (1) "Cannabidiol treatment preparation" means an oil containing cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than 5% relative to the cannabidiol concentration in the preparation, verified through testing by a third-party, independent laboratory.
  - (2) "Debilitating medical condition" means a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.
  - (3) "Tetrahydrocannabinol concentration" means the combined percentage of tetrahydrocannabinol and its optical isomers, their salts and acids and salts of their acids, reported as free tetrahydrocannabinol on a percent by weight basis.
  - (4) "Third-party, independent laboratory" means an organization:
    - (A) That is accredited to ISO/IEC 17025 of the international organization for standardization and the international electrotechnical commission by an accreditation body that is a signatory of a multilateral recognition arrangement with the international accreditation forum, international laboratory accreditation cooperation or other similar body;
    - (B) whose scope of accreditation includes testing for cannabinoid potency; and

- (C) that is not affiliated with the producer of the item being tested.
- (c) No agency of this state or political subdivision thereof shall initiate proceedings to remove a child from the home of the child's parent or guardian or initiate any child protection action or proceeding based solely upon the parent's or the child's possession or use of cannabidiol treatment preparation in accordance with the provisions of K.S.A. 2018 Supp. 21-5706(d), and amendments thereto.
  - (d) Nothing in this section shall be construed to require the Kansas medical assistance program or any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical corporation contract, fraternal benefit society or health maintenance organization that provides coverage for accident and health services and that is delivered, issued for delivery, amended or renewed on or after July 1, 2019, to provide payment or reimbursement for any cannabidiol treatment preparation.
  - (e) Nothing in this section shall be construed to allow the possession, sale, production, redistribution or use of any other form of cannabis.

*History: L. 2019, Ch. 67, § 1; July 1*

**21-5706. Unlawful possession of controlled substances.**

- (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.
- (b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:
  - (1) Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;
  - (2) any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4) (d)(5) or (f)(2), or K.S.A. 65-4109(e), and amendments thereto;
  - (3) any hallucinogenic drug designated K.S.A. 65-4105(d), K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;
  - (4) any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f) or (g), and amendments thereto; or
  - (5) any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;
  - (6) any substance designated in K.S.A. 65-4113, and amendments thereto;
  - (7) any substance designated in subsection (h) of K.S.A. 65-4105(h), and amendments thereto.
- (c)
  - (1) Violation of subsection (a) is a drug severity level 5 felony.
  - (2) Except as provided in subsection (c)(3):
    - (A) violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subsection (c)(2)(B); and
    - (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a

substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof.

- (3) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, violation of subsection (b) is a:
  - (A) Class B nonperson misdemeanor, except as provided in (c)(3)(B) and (c)(3)(C);
  - (B) class A nonperson misdemeanor if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and
  - (C) drug severity level 5 felony if that person has two or more prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.
- (d) It shall be an affirmative defense to prosecution under this section arising out of a person's possession of any cannabidiol treatment preparation if the person:
  - (1) Has a debilitating medical condition, as defined in section 1, and amendments thereto, or is the parent or guardian of a minor child who has such debilitating medical condition;
  - (2) is possessing a cannabidiol treatment preparation, as defined in section 1, and amendments thereto, that is being used to treat such debilitating medical condition; and
  - (3) has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:
    - (A) Shall be shown to a law enforcement officer on such officer's request;
    - (B) is dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;
    - (C) is on such physician's letterhead; and
    - (D) identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.
- (e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

*History: L. 2009, ch. 32, § 6; L. 2010, ch. 74, § 3; L. 2011, ch. 83, § 2; L. 2012, ch. 150, § 10; L. 2016, ch. 90, § 1; L. 2018, ch. 112, § 6; L. 2019, ch. 67, § 2; July 1.*