

HB 1659 -- REGULATION OF MARIJUANA

SPONSOR: Kelly (45)

This bill changes the laws regarding the regulation of marijuana and synthetic marijuana. In its main provisions, the bill:

(1) Specifies that a citizen 21 years and older must have the right to engage in the production, sale, distribution, and consumption of marijuana and the manufacture of goods from hemp subject to reasonable regulations adopted by the state government;

(2) Adds the crime of driving under the influence of marijuana or synthetic marijuana to state motor vehicular laws;

(3) Specifies that no state law may:

(a) Prohibit the possession or use of marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia by anyone 21 years of age or older;

(b) Prohibit the transportation or delivery of marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia by a person 21 years of age or older to a person 21 years of age or older;

(c) Prohibit the purchase, sale, manufacturing, production, and processing of marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia by a person 21 years of age or older;

(d) Prohibit the purchase, sale, manufacturing, production, processing, transportation, or delivery of industrial hemp; or

(e) Provide for the seizure or forfeiture of any property used in connection with any purchase, sale, manufacturing, production, processing, transportation, delivery, possession, or use of marijuana, marijuana products, marijuana paraphernalia, or industrial hemp if the manufacture, production, delivery, possession, or use is lawful under state law;

(4) Specifies that a state law may:

(a) Prohibit the importation and exportation of marijuana, marijuana products, and marijuana extracts into and from this state;

(b) Prohibit the purchase, sale, manufacturing, production, processing, or delivery of marijuana, marijuana products, and marijuana extracts in or on or within 1,000 feet of real property

comprising a public or private elementary or secondary school, public vocational school, or a public or private community college, college, or university attended primarily by individuals under 21 years of age;

(c) Prohibit the operation of a vehicle, watercraft, aircraft, railroad train, or any similar device while using or under the influence of marijuana;

(d) Prohibit the use of marijuana, marijuana products, and marijuana extracts in a public place, provided however that the penalty for violation of the law may not exceed that for an infraction;

(e) Prohibit the purchase, sale, manufacturing, production, processing, transportation, delivery, or possession of marijuana, marijuana products, and marijuana extracts by any person that does not comply with specified rules, regulations, and laws;

(f) Classify the penalties for violations of the laws; and

(g) Impose an excise tax on the first fair market sale of all marijuana produced in this state at a rate of 25% of the purchase price;

(5) Requires the Division of Alcohol and Tobacco Control within the Department of Public Safety to promulgate, on or before June 1, 2015, rules and regulations that control and regulate the purchase, sale, manufacturing, production, processing, transportation, delivery, possession, and use of marijuana, marijuana products, marijuana extracts, and marijuana paraphernalia including, but not limited to, rules, regulations, and laws that:

(a) Require a person to obtain a marijuana license to purchase, sell, manufacture, produce, process, transport, or deliver marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia;

(b) Provide for the collection of an excise tax;

(c) Provide for the enforcement of these laws and for the examination and inspection of the books, records, and premises of licensees;

(d) Regulate the advertising of marijuana, marijuana products, marijuana extracts, and marijuana paraphernalia;

(e) Provide for the receipt and transfer of all funds received by the state from the excise taxes and license and other fees

collected under the laws and specify the order of the distribution of the funds; and

(f) Limits the amount of marijuana, marijuana products, or marijuana extracts that a person other than a licensee may possess at any given time so long as the penalty for a violation does not exceed an infraction for a first offense and a misdemeanor for any second or subsequent violation;

(6) Prohibits a state law from imposing any taxes on marijuana, marijuana products, marijuana extracts, or transactions involving marijuana, marijuana products, or marijuana extracts except for the tax provided in the bill;

(7) Prohibits a state law from limiting the amounts of marijuana, its products, or extracts that a person other than a licensee may possess at any given time to amounts less than:

(a) Eight marijuana plants and 16 ounces of usable marijuana;

(b) Sixteen ounces of marijuana products in solid form;

(c) Seventy-two ounces of marijuana products in liquid form; and

(d) One ounce of marijuana extracts;

(8) Prohibits a state law from limiting the aggregate number of licensees that may hold marijuana licenses or the aggregate number of marijuana licenses that may be granted, provided however that the number of licensed marijuana retailers in a county may be limited to no fewer than one marijuana retailer per 2,500 inhabitants in the county, according to the most recent census of the United States;

(9) Prohibits a state law from limiting the number of marijuana licenses that may be granted to or held by the same person;

(10) Prohibits a state law from prohibiting the same person from being granted or holding one or more different types of marijuana licenses or from being granted or holding a marijuana license because the person or any individual who owns a direct or indirect interest in the person is not organized in or a resident of this state;

(11) Prohibits a state law from prohibiting a person from being granted or holding a marijuana license because the person or any individual who owns a direct or indirect interest in the person has been convicted of violating:

(a) Any specified non-discretionary expungeable marijuana offense;
or

(b) Any marijuana-related offense that has been expunged;

(12) Prohibits a state law from requiring a consumer 21 years of age or older to obtain any license to possess, use, or purchase marijuana, its products, its extracts, or marijuana paraphernalia;

(13) Prohibits a state law from requiring an individual 21 years of age or older to obtain any license to deliver marijuana, its products, its extracts, or marijuana paraphernalia for no consideration to an individual 21 years of age or older if:

(a) The marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia was purchased from a licensed marijuana retailer; or

(b) The marijuana or marijuana products were manufactured or processed by a person without a license in accordance with specified provisions of the bill;

(14) Prohibits a state law from requiring any marijuana retailer to record the name or other personally identifiable information of any consumer 21 years of age or older;

(15) Prohibits a state law from requiring any person 21 years of age or older to obtain any license or pay any tax to manufacture or process marijuana or marijuana products at a household for noncommercial personal use if the aggregate amounts of the marijuana and marijuana products at the household do not exceed the household exemption limits;

(16) Prohibits a state law from providing that the penalty for manufacturing more than the number of marijuana plants that may be manufactured without a license may not exceed that for:

(a) An infraction, if the violation is a first violation and the number of marijuana plants is not more than double the number of marijuana plants that may be manufactured without a license;

(b) A misdemeanor if the violation is a first violation and the number of marijuana plants is more than double but not more than quadruple the number of marijuana plants that may be manufactured without a license; or

(c) A misdemeanor if the violation is a second violation, the first violation was not for a number of marijuana plants exceeding double the amount allowed, and the second violation is not more

than double the number of marijuana plants that may be manufactured without a license;

(17) Prohibits a state law from making the ownership or operation of a licensed business that manufactures, produces, or delivers, marijuana, marijuana products, marijuana extracts, or marijuana paraphernalia in Missouri so burdensome that it would be impracticable for a prudent business person to organize or conduct the business;

(18) Requires, on or before June 1, 2015, the Department of Health and Senior Services to promulgate rules and regulations and allows the General Assembly to enact laws that:

(a) Permit an individual with a medical condition who may benefit from the medical use of marijuana, marijuana products, and marijuana extracts to be able to discuss freely with his or her doctors the possible risks and benefits of medical marijuana use and to have the benefit of his or her doctor's professional advice;

(b) Permit an individual suffering from a medical condition to be allowed to use marijuana, its products, or its extracts without being subject to civil or criminal penalties when his or her doctors advise that the use may provide a medical benefit and when other reasonable restrictions are met regarding the use; and

(c) Provide that an individual under 18 years of age cannot be allowed to use marijuana, its products, or its extracts for medical purposes unless the individual's custodial parent or legal guardian with responsibility for the individual's health care decisions consents;

(19) Prohibits a licensed doctor from being subjected to any criminal or civil penalty or to any discipline by any state licensing division, board, or commission for:

(a) Advising a person about the risks and benefits of medical marijuana if the doctor or another doctor has diagnosed the individual with a medical condition and the advising doctor is basing his or her advice on his or her personal assessment of the persons' medical history and current medical condition; or

(b) Providing any written documentation that evidences or confirms the advice or assessment;

(20) Allows the General Assembly to enact laws that control, regulate, and tax the manufacture, production, and delivery of industrial hemp;

(21) Specifies that convictions of marijuana offenses must be expungeable as follows:

(a) An individual who has plead guilty to or has been convicted of violating any expungeable marijuana offense and who was 21 years of age or older at the time of the offense may apply to the court in which he or she was sentenced for an order to expunge all official records of his or her arrest, plea, trial, and conviction. The court must enter an order of expungement if it determines, upon review, that the individual has plead guilty to or has been convicted of an expungeable marijuana offense. An individual must be entitled to one or more expungements;

(b) After a period of not less than one year, an individual who has plead guilty to or has been convicted of violating any expungeable marijuana offense for the first time, and who was under 21 years of age at the time of the offense, and who since the conviction has not been convicted of any other marijuana-related offense, may apply to the court in which he or she was sentenced for an order to expunge all official records of his or her arrest, plea, trial, and conviction. The court must enter an order of expungement if it determines, upon review, that the individual has not been convicted of any other marijuana-related offense at the time of the application for expungement;

(c) An individual who has plead guilty to or has been convicted of violating any expungeable marijuana offense that is not expungeable under these provisions may apply to the court in which he or she was sentenced for an order to expunge all official records of his or her arrest, plea, trial, and conviction. If the court determines, upon review, that an expungement is in the interests of justice, the court may enter an order of expungement. An individual may be entitled to one or more expungements; and

(d) The effect of an order of expungement must be to restore the applicable individual to the status he or she occupied prior to the arrest, plea, or conviction as if the event had never happened. A person imprisoned solely as a result of one or more expungeable marijuana offenses that are expunged must be released from prison immediately upon the issuance of the applicable order or orders of expungement. An individual to whom an expungement order has been entered cannot be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge the arrest, plea, trial, conviction, or expungement in response to any inquiry made of him or her for any purpose whatsoever;

(22) Specifies that no contract will be unenforceable on the basis that manufacturing, producing, delivering, possessing, or using

marijuana, marijuana products, marijuana extracts, marijuana paraphernalia, or industrial hemp is prohibited by federal law;

(23) Specifies that nothing in the bill can be construed:

(a) To amend or affect in any way any state or federal law pertaining to employment matters;

(b) To amend or affect in any way any state or federal law pertaining to landlord-tenant matters;

(c) To amend or affect in any way any state or federal law that permits an owner, lessor, or lessee of real property or any other person who has a legal estate in real property from prohibiting the manufacture, production, delivery, possession, or use of marijuana on the real property;

(d) To amend or affect in any way any state law pertaining to the operation of a vehicle, watercraft, aircraft, railroad train, or any similar device while using or under the influence of marijuana;

(e) To require a person to violate a federal law; or

(f) To exempt a person from a federal law or obstruct the enforcement of a federal law; and

(24) Repeals the provisions that declare marijuana as a noxious weed and requires all owners and occupiers of land to destroy all marijuana plants growing upon their land.

These provisions contain a nonseverability clause and if any section or words of the provisions are held to be unconstitutional, void, or illegal, either on their face or as applied, the applicability, constitutionality, and legality of any and all other portions of the provisions cannot be affected.