

HCS SCS SB 6 -- CONTROLLED SUBSTANCES

SPONSOR: Sater

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 15 to 0. Voted "To Return To Committee Of Origin" by the Standing Committee on Rules-Administrative Oversight by a vote of 8 to 0.

This bill prohibits any state agency from disclosing to the federal government the statewide list of people who have obtained a medical marijuana card (Section 191.255, RSMo).

The bill removes medical marijuana from the definition of a "controlled substance" and from Schedule I of the controlled substances. Marijuana grown lawfully for medical use shall not be classified as a "noxious weed" and shall not be required to be destroyed. Trafficking offenses involving marijuana shall not include medical marijuana.

Additionally, this bill prohibits the sale of edible marijuana-infused products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including, candies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Each increment of an edible marijuana-infused product containing 10 or more milligrams of tetrahydrocannabinols (THC) shall be stamped with a diamond containing the letters "THC" and the number of milligrams of THC in that increment. Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services (DHSS) found to have violated this bill shall be subject to department sanctions, including an administrative penalty (Sections 195.010, 195.017, 195.805, 263.250, 579.065, and 579.068).

Under this bill, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, DHSS shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the department objects to such change. When the department promulgates emergency rules under this bill, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this bill updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002 (Sections 195.015 and 195.017).

Currently, a practitioner cannot issue an initial prescription for more than a seven-day supply of any opioid controlled substance. This bill gives an exception to this limitation for a prescription

for an opioid for a patient who is currently undergoing treatment for sickle cell disease.

This bill prohibits a dentist from writing a prescription for long-acting or extended-release opioids for the treatment of acute dental pain, unless, in the professional judgment of the dentist, the use of said opioid is necessary to treat the patient's acute pain. If the dentist prescribes a long-acting or extended-release opioid, the dentist must document in the patient's record the reason for the necessity of the type of opioid used.

This bill requires a dentist to avoid prescribing an opioid dose of greater than 50 morphine milligram equivalent (MME) per day for the treatment of acute dental pain, unless, in the professional judgment of the dentist, the use of said dosage is necessary to treat the patient's acute pain. If the dentist prescribes a greater dose, the dentist must document in the patient's record the reason for the particular dose. The Missouri Dental Board must maintain an MME conversion chart and instructions for calculating MME on its website (Sections 195.080 and 332.361).

This bill modifies the requirements relating to the production of industrial hemp. In its main provisions, the bill:

- (1) Modifies the permit requirements to include anyone who sells or distributes industrial hemp seed or propagules and requires a producer of industrial hemp to obtain a registration from the Department of Agriculture;
- (2) Specifies that each individual parcel of ground or indoor cultivation facility with a separate legal description must obtain a separate registration unless the parcels are contiguous and owned by the same person;
- (3) Prohibits the department from issuing a registration or permit to a person who has been found guilty of or pled guilty to a felony in the last 10 years;
- (4) Modifies the fines for any person violating the requirements of an industrial hemp registration or industrial hemp propagule or seed permit;
- (5) Removes any acreage requirements for the growth of industrial hemp. Currently, under the Industrial Hemp Pilot Program, the Department of Agriculture can only issue a permit to a single registrant or permittee for a plot of no less than 10 acres and no more than 40 acres and a total of 2,000 acres statewide. The department can only issue a permit to an institute of higher education for a plot of less than 10 acres and a total of 20 acres

statewide.

(6) Specifies that if a crop of industrial hemp exceeds the allowed THC concentration during the required testing, the crop must be retested. If when retested, the crop exceeds the allowed THC concentration, the department may order the producer to destroy the crop;

(7) Prohibits the department from regulating certain activities related to industrial hemp unless required by federal law; and

(8) Specifies that an institution of higher education based in Missouri or any research centers directed by the institution of higher education may engage in the research and study of industrial hemp as authorized under the Agricultural Act of 2014 or any successor law without being required to obtain a registration (Sections 195.740, 195.743, 195.746, 195.749, 195.752, 195.756, 195.758, 195.764, and 195.767).

Under current law, the distribution of heroin is not distinguished from the distribution of most other controlled substances and is a class C felony. This bill provides that the distribution of any substance containing a detectable amount of heroin is a class B felony.

Additionally, this bill provides that the distribution of heroin is a "dangerous felony," as defined by statute. Any offender who has been found guilty of a dangerous felony and is committed to the Department of Corrections shall be required to serve a minimum prison term of 85% of the sentence imposed by the court or until the offender attains 70 years of age, and has served at least 40% of the sentence imposed, whichever occurs first (Sections 556.061 and 579.020).

This bill modifies the crime of murder in the second degree by adding language making a person who knowingly and unlawfully manufactures, delivers, or distributes a Schedule I or II controlled substance, excluding marijuana for medical use, and thereafter the controlled substance is the proximate cause of the death of another person who uses or consumes it. It shall not be a defense that the defendant did not directly deliver or distribute the controlled substance to the decedent (Section 565.021).

Currently, unlawful possession of a controlled substance, except 35 grams or less of marijuana or any synthetic cannabinoid, is a class D felony. This bill adds an enhanced penalty if the defendant is an emergency care provider, a home health care employee, a hospice employee, an in-home care employee, a personal care assistant, or any other individual providing home health or personal care

assistance services to patients. If such defendant knowingly and unlawfully possesses a controlled substance belonging to the patient or another member of the patient's household, the offense shall be a class C felony (Section 579.015).

The bill adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, producing, or attempting to do so more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a class B felony and a class A felony when the amount is 50 milligrams or more.

Additionally, this bill adds to the offense of trafficking drugs in the second degree knowingly possessing, purchasing, or attempting to possess or purchase more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a class C felony and a class B felony when the amount is 50 milligrams or more (Sections 579.065 and 579.068).

This bill contains an emergency clause for the section relating to the ability for institutions of higher education.

**PROPOSERS:** Supporters say that this updates the controlled substances list. It considers drug-induced homicides and increases penalties. Additionally, it excludes marijuana for medical use. The penalties for trafficking fentanyl are increased because now it is being trafficked on its own, rather than being mixed into other drugs. They support the need to have rules in effect immediately rather than having to wait for legislation to pass. Fentanyl and Carfentanil are killing people at alarming rates, so the individuals who are distributing these drugs need to be punished. It is not a new idea to charge someone who distributed drugs to someone who died as a result with murder. It is similar to felony murder.

Testifying for the bill were Senator Sater; Missouri Association of Prosecuting Attorneys; and Missouri Office of Prosecution Services.

**OPPOSERS:** Those who oppose the bill say that this affects everyone but it would affect students more than anyone because of how it is worded. It muddles the Good Samaritan law because people would be worried about getting charged with murder if their friends overdose. There is significant concern because of certain pediatric access. There are many parents who have children who would benefit from marijuana-infused candies.

Testifying against the bill were Great State Strategies; and

Natarajan "Bharani" Kamar, Students For Sensible Drug Policy.