Nebraska State Legislature

SENATOR JOHN CAVANAUGH JR.

District 9
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2723
jcavanaugh@leg.ne.gov

COMMITTEES

Vice Chairperson – General Affairs
Government, Military, and Veterans Affairs
Urban Affairs
Committee on Committees
Justice Reinvestment Oversight
Midwest Higher Education Commission

October 2, 2025

Senator Ben Hansen
Chairperson, Executive Board
State Capitol
PO Box 94604
Lincoln, NE 68509

Sen. Hansen:

Pursuant to Neb. Rev. Stat. 84-907.10, I am submitting a complaint regarding the emergency regulations recently adopted by the Nebraska Medical Cannabis Commission and signed by Gov. Jim Pillen. This section of statute provides that if any member of the Legislature feels aggrieved by a proposed or adopted rule or regulation, or "believes that [...] a rule or regulation or the adoption, amendment, or repeal of a rule or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, is inconsistent with the legislative intent of the authorizing statute, or creates an undue burden in a manner that significantly outweighs its benefit to the public" the member may file a complaint with the Chairperson of the Executive Board, who shall refer the complaint to the chairperson of the appropriate standing committee.

In September, the Nebraska Medical Cannabis Commission adopted and the Governor approved emergency regulations that limit the availability of medical cannabis to a narrow list of forms found nowhere in statute, limits the accepted written recommendations from medical practitioners to in-state in clear contradiction of the language approved by voters, and prohibits by regulation the sale of cannabis delivery mechanisms that are expressly permitted under statute. All without the benefit of a public hearing or public scrutiny, the Commission and the Governor have chosen to override the clearly expressed will of Nebraska voters.

The Nebraska Medical Cannabis Commission has exceeded its statutory authority in adopting emergency regulations which conflict with both the voters' intent and the plain language of the Nebraska Medical Cannabis Regulation Act and the Nebraska Medical Cannabis Patient Protection Act, while failing to meet statutory deadlines, and in response I am filing this formal complaint with you in your capacity as chairperson of the Executive Board.

I. Background and Definitions

In November 2024, the people of the State of Nebraska enacted Initiative 437, the Nebraska Medical Cannabis Patient Protection Act (Neb. Rev. Stat. 71-24,103 to 71-24,105), and Initiative 438, the Nebraska Medical Cannabis Regulation Act (Neb. Rev. Stat. 71-24,106 to 71-24,111). Both ballot initiatives passed with the support of an overwhelming majority of Nebraska voters.

The Nebraska Medical Cannabis Patient Protection Act allows for a qualified patient or caregiver with a written recommendation from a health care practitioner to possess an allowable amount (up to five ounces) of cannabis and cannabis accessories for alleviation of a medical condition.

Cannabis is defined as "all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin," and cannabis accessories as "any equipment, products, or materials of any kind that are used, intended for use, or designed for use in storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body."

Health care practitioner is defined as "a physician, an osteopathic physician, a physician assistant, or a nurse practitioner licensed under the Uniform Credentialing Act or who is licensed ***in any state*** and practicing in compliance with the Uniform Credentialing Act." (emphasis added).

The Nebraska Medical Cannabis Regulation Act created the Nebraska Medical Cannabis Commission, consisting of the three members of the Nebraska Liquor Control Commission and two additional members appointed by the Governor. The Act provides that "the power to regulate all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes ***by registered cannabis establishments*** in the state pursuant to the Nebraska Medical Cannabis Regulation Act is vested exclusively in the commission." (emphasis added). The primary purpose of the Regulation Act is to allow registered cannabis establishments, their employees and agents the legal ability to possess, manufacture, distribute, deliver, and dispense medical cannabis.[1] The commission is given the power to adopt and promulgate reasonable rules and regulations for this purpose.

The definitions of cannabis and cannabis accessories are the same in the Nebraska Medical Cannabis Regulation Act as in the Nebraska Medical Cannabis Patient Protection Act, and cannabis for medical purposes is defined by reference to "any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act," meaning the Patient Protection Act.

[1] Neb. Rev. Stat. 71-24,108

The Commission adopted emergency regulations on September 8, 2025, which Gov. Pillen then approved the next day.[2] Gov. Pillen insisted on the inclusion of cultivation limits before he would approve the emergency regulations.[3] The Act requires the commission to begin granting registrations to establishments that meet the eligibility requirements the commission has set by October 1.

II. Scope of Commission's Authority

The People of the State of Nebraska, through Article III, Section 2 of the Nebraska State Constitution, have reserved the power of initiative. A citizen initiative approved by a vote of the people is the law of the state. A statute enacted by the people can only be amended by a two-thirds vote of the Nebraska Legislature.

A regulation is invalid "if it violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with the statutory procedures."[4] The Commission was given the authority to regulate registered cannabis establishments under the Regulation Act. It was not given any authority to regulate individuals or medical providers, or authority of any kind under the Patient Protection Act. Commissioners themselves have admitted that the body has no authority to collect and keep fees under the Act, and no authority to regulate patients and caregivers.[5] While the Commission is given broad authority to adopt necessary regulations, those regulations and the criteria for granting or denying licenses must be reasonable,[6] and cannot conflict with statute.

Nevertheless, the Commission has adopted rules and regulations that purport to regulate practitioners, restrict the legal means of obtaining medical cannabis to a far more narrow definition than that contained in either the Regulation Act which gives the Commission its authority, or the Patient Protection Act which the Commission has no authority to regulate, and has written the regulations not in compliance with the intent of voters, but to the Governor's specifications.[7]

---

[2] https://lcc.nebraska.gov/sites/default/files/doc/238%20NAC%201%20DRAFT%20EMERGENCY%20REGULATION%209.9.25.pdf

[3] https://nebraskaexaminer.com/2025/09/08/commission-sets-medical-cannabis-plant-limits-at-nebraska-governors-request/

[4] Neb. Rev. Stat. 84-911

[5] https://nebraskaexaminer.com/2025/08/06/medical-cannabis-liquor-control-commissions-seek-to-combine-resources-as-frustrations-flare/

[6] Neb. Rev. Stat. 71-24,111

[7] https://nebraskaexaminer.com/2025/09/08/commission-sets-medical-cannabis-plant-limits-at-nebraska-governors-request/

III. Restrictions on Forms of Medical Cannabis

The Nebraska Medical Cannabis Regulation Act provides that "Subject to the requirements of the Nebraska Medical Cannabis Regulation Act, it shall not be an offense under state law for a registered cannabis establishment, its employees, and its agents to possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes, provided such conduct complies with applicable rules and regulations adopted and promulgated by the commission pursuant to the Nebraska Medical Cannabis Regulation Act."

Cannabis for medical purposes, as defined in the Act, "means cannabis, cannabis products, and cannabis accessories intended for qualified patients pursuant to any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act or at any time thereafter and which makes penalties inapplicable to the use of cannabis by qualified patients for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment;"

The law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act, is the Nebraska Medical Cannabis Patient Protection Act. The Legislature has made only minor, technical changes to both acts since they were adopted by the voters.[8] In any case, the definitions of cannabis and cannabis accessories are identical under the Regulation Act and the Patient Protection Act.

The definition in both acts is inclusive of all forms of cannabis. The regulatory authority given to the commission over registered cannabis establishments was never intended to restrict delivery of forms clearly allowed by statute. The Commission is not free to adopt its own definition of cannabis that is more restrictive than the definition contained in statute. The Legislature had the ability to, with the approval of a two-thirds majority vote, adopt a more restrictive approach but chose not to. But given the opportunity, in concert with and at the direction of the Governor, the Commission has chosen to enact unreasonable restrictions on licensed facilities, limiting the allowable forms of cannabis to the following: "(i) Oral tablets, with or without flavored coating, capsules, or tinctures; (ii) Gels, oils, creams, or other topical preparation; (iii) Suppositories; (iv) Transdermal patches; or (v) Liquids or oils for administration using a nebulizer or inhaler."

These regulations make it illegal to distribute something which is clearly legal under the law passed by voters in November of 2024. It is a transparent attempt to restrict access to medical cannabis and make it as difficult as possible for patients and caregivers to obtain it.

IV. Restrictions On Written Recommendations

The Nebraska Medical Cannabis Patient Protection Act makes it very clear that a written recommendation from a health care practitioner ***in any state*** is sufficient for a patient or caregiver to legally possess medical cannabis. Despite this, and despite having no authority to regulate patients or practitioners under the Regulation Act, the Commission has created a

[8] LB1, 2025

directory of practitioners, and stated that only those practitioners included in the directory will be accepted. Among the restrictions for inclusion in this directory are a requirement that the practitioner primarily practice medicine in Nebraska, and additional continuing education requirements which the Medical Cannabis Commission has no statutory authority to require of any health care practitioner. It may make sense to require continuing education in some form, but that is a policy choice for the Legislature, and not one that the Commission is empowered to make. When I contacted the Board of Medicine in May regarding any guidance they had given to practitioners about medical cannabis, they responded that they had not had any communications regarding the issue.

In addition, the regulations contain a limitation of five grams of cannabis within a ninety-day period. This ninety-day restriction or the limitation of five grams is contained nowhere in the statute, which defines an allowable amount of cannabis as up to five ounces. 5 grams is 0.17637 ounces. 5 ounces is 141.748 grams. Under this limitation, a patient would not even be able to obtain an ounce of cannabis over the course of an entire calendar year. It would take ***seven years*** for a patient to obtain the maximum allowable amount of cannabis by statute under these restrictions.

V. Use Of Emergency Regulations

The Nebraska Medical Cannabis Commission consists of the membership of the Nebraska Liquor Control Commission and two additional members that may be appointed by the Governor. The commission had three members from the moment the initiatives were certified as law. Despite this, the commission did not even meet until after the Governor appointed two additional members and the Legislature approved those appointments. The commission had a statutory duty to adopt regulations by July 1. It did not even adopt the emergency regulations until September. Because the commission used the emergency regulations process, they circumvented the ordinary rules and regulations process which requires a public hearing and notice and comment period. Taken together with the Governor's staff writing the draft regulations, the Governor dictating provisions that must be included before he would approve the regulations, and the Commission's frequent use of executive sessions, it is clear that the process could have benefited from greater public scrutiny. The final form of these emergency regulations was published with little notice and included the last-minute demand which the Governor insisted on including.

At the commission's meeting on September 30, the commissioners made clear that they would not begin issuance of licenses by the statutory deadline of October 1. This is a clear breach of the Commission's duty, and the use of emergency regulations does not absolve them of the responsibility to follow the law. Lack of adequate planning does not constitute an emergency. The failure to follow these clear deadlines in statute create a legal risk that the commission's actions will be nullified by the courts.

VI. Effect on Availability of Medical Cannabis

At each step in the process more limitations will limit the availability to patients and caregivers at the dispensary level. This is by design. The restrictions are meant to make seeking a license, issuing a written recommendation, or engaging in the business of providing cannabis for medical use impracticable for any person or business in Nebraska. And a regulation that makes operating a cannabis establishment impracticable cannot be reasonable under the statute.

But beyond that, it has no effect on the *legality* of possessing medical cannabis in Nebraska. The Commission cannot regulate, nor does it make any attempt to, the possession of cannabis for medical use by individuals who obtain cannabis from something other than a registered cannabis establishment. As long as the patient or caregiver has a written recommendation from a health care practitioner in compliance with the Patient Protection Act, they are legally allowed to possess cannabis in any form, up to five ounces. Whether this is cannabis obtained from out of state or on sovereign tribal lands within the State of Nebraska,[9] these individuals have not committed a crime under Nebraska law.

The Legislature could have, with a two-thirds majority vote, made both acts more restrictive. It did not. The Commission's regulations only serve to make it more difficult to obtain medical cannabis in an environment where the state has some control and oversight, driving those who do need care out of Nebraska despite the fact that this state voted overwhelmingly in favor of medical cannabis. If the Commission, the Governor, and some state senators fear recreational marijuana is the next step, I can only say that the surest way to guarantee the voters take that next step is by frustrating their clearly expressed will in favor of medical cannabis.

I am asking that the General Affairs Committee hold a hearing on this complaint, which can easily be done in conjunction with the hearing on my interim study resolution LR226 on October 31.

Thank you for your time and consideration.

Senator John Cavanaugh
District 9, Omaha

---

9 https://nebraskapublicmedia.org/es/news/news-articles/omaha-tribe-legalizes-medical-and-recreational-marijuana-on-reservation-lands/