

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3954

6 By: Fetgatter

7 COMMITTEE SUBSTITUTE

8
9 An Act relating to medical marijuana; amending
10 Section 6, State Question No. 788, Initiative
11 Petition No. 412, as amended by Section 3, Chapter
12 509, O.S.L. 2019 (63 O.S. Supp. 2019, Section 425),
13 which relates to license holder protections;
14 specifying manner by which distance between
15 properties shall be measured; amending Section 4,
16 Chapter 509, O.S.L. 2019 (63 O.S. Supp. 2019, Section
17 426.1), which relates to licensure revocation
18 hearings and licensee information; updating statutory
19 citations; requiring certain licensees within
20 municipalities to submit certificate of compliance
21 from municipal governments; providing certificate of
22 compliance is not required for license renewal,
23 absent certain changes of circumstances; amending
24 Sections 14, Chapter 11, O.S.L. 2019, as amended by
Section 9, Chapter 477, O.S.L. 2019 and 18, Chapter
11, O.S.L. 2019 (63 O.S. Supp. 2019, Sections 427.14
and 427.18), which relate to the Oklahoma Medical
Marijuana and Patient Protection Act; deleting
certain permit and certificate of compliance
requirements; deleting conditional licensing
provisions; authorizing certain persons to obtain a
medical marijuana business license; clarifying
certain medical marijuana packaging requirement;
providing for the recognition of out-of-state medical
marijuana certifications or licenses; authorizing
licensed dispensaries to dispense marijuana products
under certain circumstances; directing the Oklahoma
Medical Marijuana Authority to maintain and publish
certain list; directing Authority to make certain
information available to dispensaries; providing

1 penalties when dispensaries fail to verify status and
2 authenticity of certifications and licenses;
3 providing for codification; and declaring an
4 emergency.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY Section 6, State Question No. 788,
7 Initiative Petition No. 412, as amended by Section 3, Chapter 509,
8 O.S.L. 2019 (63 O.S. Supp. 2019, Section 425), is amended to read as
9 follows:

10 Section 425. A. No school or landlord may refuse to enroll or
11 lease to and may not otherwise penalize a person solely for his or
12 her status as a medical marijuana license holder, unless failing to
13 do so would cause the school or landlord the potential to lose a
14 monetary or licensing-related benefit under federal law or
15 regulations.

16 B. Unless a failure to do so would cause an employer the
17 potential to lose a monetary or licensing-related benefit under
18 federal law or regulations, an employer may not discriminate against
19 a person in hiring, termination or imposing any term or condition of
20 employment or otherwise penalize a person based upon either:

21 1. The status of the person as a medical marijuana license
22 holder; or

23 2. Employers may take action against a holder of a medical
24 marijuana license if the holder uses or possesses marijuana while in

1 his or her place of employment or during the hours of employment.
2 Employers may not take action against the holder of a medical
3 marijuana license solely based upon the status of an employee as a
4 medical marijuana license holder or the results of a drug test
5 showing positive for marijuana or its components.

6 C. For the purposes of medical care, including organ
7 transplants, the authorized use of marijuana by a medical marijuana
8 license holder shall be considered the equivalent of the use of any
9 other medication under the direction of a physician and does not
10 constitute the use of an illicit substance or otherwise disqualify a
11 registered qualifying patient from medical care.

12 D. No medical marijuana license holder may be denied custody of
13 or visitation or parenting time with a minor, and there is no
14 presumption of neglect or child endangerment for conduct allowed
15 under this law, unless the behavior of the person creates an
16 unreasonable danger to the safety of the minor.

17 E. No ~~person holding a~~ medical marijuana license holder may be
18 unduly ~~be~~ withheld from holding a state-issued license by virtue of
19 ~~their~~ being a medical marijuana license holder including, but not
20 limited to, a concealed carry permit.

21 F. 1. No city or local municipality may unduly change or
22 restrict zoning laws to prevent the opening of a retail marijuana
23 establishment.

24

1 2. For purposes of this subsection, an undue change or
2 restriction of municipal zoning laws means an act which entirely
3 prevents retail marijuana establishments from operating within
4 municipal boundaries as a matter of law. Municipalities may follow
5 their standard planning and zoning procedures to determine if
6 certain zones or districts would be appropriate for locating
7 marijuana-licensed premises, medical marijuana businesses or any
8 other premises where marijuana or its by-products are cultivated,
9 grown, processed, stored or manufactured.

10 3. For purposes of this section, "retail marijuana
11 establishment" means an entity licensed by the State Department of
12 Health as a medical marijuana dispensary. Retail marijuana
13 establishment does not include those ~~other~~ entities licensed by the
14 Department as marijuana-licensed premises, medical marijuana
15 businesses or other facilities or locations where marijuana or any
16 product containing marijuana or its by-products are cultivated,
17 grown, processed, stored or manufactured.

18 G. The location of any retail marijuana establishment is
19 specifically prohibited within one thousand (1,000) feet of any
20 public or private school entrance. Upon the effective date of this
21 act, the distance indicated in this subsection shall be measured
22 from the nearest property line of the public or private school to
23 the front entrance of the retail marijuana establishment.

1 H. Research shall be provided for under this law. A researcher
2 may apply to the State Department of Health for a special research
3 license. The license shall be granted, provided the applicant meets
4 the criteria listed under subsection B of Section 421 of this title.
5 Research license holders shall be required to file monthly
6 consumption reports to the State Department of Health with amounts
7 of marijuana used for research.

8 SECTION 2. AMENDATORY Section 4, Chapter 509, O.S.L.
9 2019 (63 O.S. Supp. 2019, Section 426.1), is amended to read as
10 follows:

11 Section 426.1 A. Except for revocation hearings concerning
12 licensed patients, as defined in Section ~~2 of Enrolled House Bill~~
13 ~~No. 2612 of the 1st Session of the 57th Oklahoma Legislature~~ 427.2
14 of this title, all licensure revocation hearings conducted pursuant
15 to marijuana licenses established in the Oklahoma Statutes shall be
16 recorded. A party may request a copy of the recording of the
17 proceedings. Copies shall be provided to local law enforcement if
18 the revocation was based on alleged criminal activity.

19 B. The State Department of Health shall assist any law
20 enforcement officer in the performance of his or her duties upon
21 such request by the law enforcement officer or the request of other
22 local officials having jurisdiction. Except for license information
23 concerning licensed patients, as defined in Section ~~2 of Enrolled~~
24 ~~House Bill No. 2612 of the 1st Session of the 57th Oklahoma~~

1 ~~Legislature~~ 427.2 of this title, the Department shall share
2 information with law enforcement agencies upon request without a
3 subpoena or search warrant.

4 C. The State Department of Health shall make available all
5 information displayed on medical marijuana licenses, as well as
6 whether or not the license is valid, to law enforcement
7 electronically through the Oklahoma Law Enforcement
8 Telecommunications System.

9 D. The Department shall make available to political
10 subdivisions a list of marijuana-licensed premises, medical
11 marijuana businesses or any other premises where marijuana or its
12 by-products are licensed to be cultivated, grown, processed, stored
13 or manufactured to aid county and municipal governments in
14 identifying locations within their jurisdiction and ensure
15 compliance with local regulations.

16 E. ~~All~~ If located within the incorporated boundaries of any
17 city or town, all marijuana-licensed premises, medical marijuana
18 businesses or any other premises where marijuana or its by-products
19 are licensed to be cultivated, grown, processed, stored or
20 manufactured shall submit with their application, after notifying
21 the ~~political subdivision~~ municipal government of their intent, a
22 certificate of compliance from the ~~political subdivision~~ municipal
23 government where the facility of the applicant or use is to be
24 located certifying compliance with zoning classifications,

1 applicable municipal ordinances and all applicable safety,
2 electrical, fire, plumbing, waste, construction and building
3 specification codes. Once a certificate of compliance has been
4 submitted to the Oklahoma Medical Marijuana Authority showing full
5 compliance as outlined in this section, no additional certificate of
6 compliance shall be required for license renewal unless a change of
7 use or occupancy occurs, or there is any change concerning the
8 facility or location that would by law require additional
9 inspection, licensure or permitting by the state or municipal
10 government.

11 SECTION 3. AMENDATORY Section 14, Chapter 11, O.S.L.
12 2019, as amended by Section 9, Chapter 477, O.S.L. 2019 (63 O.S.
13 Supp. 2019, Section 427.14), is amended to read as follows:

14 Section 427.14 A. There is hereby created the medical
15 marijuana business license, which shall include the following
16 categories:

- 17 1. Medical marijuana commercial grower;
- 18 2. Medical marijuana processor;
- 19 3. Medical marijuana dispensary;
- 20 4. Medical marijuana transporter; and
- 21 5. Medical marijuana testing laboratory.

22 B. The Oklahoma Medical Marijuana Authority, with the aid of
23 the Office of Management and Enterprise Services, shall develop a
24 website for medical marijuana business applications.

1 C. The Authority shall make available on its website in an
2 easy-to-find location, applications for a medical marijuana
3 business.

4 D. The nonrefundable application fee for a medical marijuana
5 business license shall be Two Thousand Five Hundred Dollars
6 (\$2,500.00).

7 E. All applicants seeking licensure as a medical marijuana
8 business shall comply with the following general requirements:

9 1. All applications for licenses and registrations authorized
10 pursuant to this section shall be made upon forms prescribed by the
11 Authority;

12 2. Each application shall identify the city or county in which
13 the applicant seeks to obtain licensure as a medical marijuana
14 business;

15 3. Applicants shall submit a complete application to the
16 Department before the application may be accepted or considered;

17 4. All applications shall be complete and accurate in every
18 detail;

19 5. All applications shall include all attachments or
20 supplemental information required by the forms supplied by the
21 Authority;

22 6. All applications shall be accompanied by a full remittance
23 for the whole amount of the application fees. Application fees are
24 nonrefundable;

1 7. All applicants shall be approved for licensing review that,
2 at a minimum, meets the following criteria:

3 a. all applicants shall be age twenty-five (25) or older,

4 b. any applicant applying as an individual shall show
5 proof that the applicant is an Oklahoma resident
6 pursuant to paragraph 11 of this subsection,

7 c. any applicant applying as an entity shall show that
8 seventy-five percent (75%) of all members, managers,
9 executive officers, partners, board members or any
10 other form of business ownership are Oklahoma
11 residents pursuant to paragraph 11 of this subsection,

12 d. all applying individuals or entities shall be
13 registered to conduct business in the State of
14 Oklahoma,

15 e. all applicants shall disclose all ownership interests
16 pursuant to this act, and

17 f. applicants shall not have been convicted of a
18 nonviolent felony in the last two (2) years, and any
19 other felony conviction within the last five (5)
20 years, shall not be current inmates, or currently
21 incarcerated in a jail or corrections facility;

22 8. There shall be no limit to the number of medical marijuana
23 business licenses or categories that an individual or entity can
24 apply for or receive, although each application and each category

1 shall require a separate application and application fee. A
2 commercial grower, processor and dispensary, or any combination
3 thereof, are authorized to share the same address or physical
4 location, subject to the restrictions set forth in ~~this act~~ the
5 Oklahoma Medical Marijuana and Patient Protection Act;

6 9. All applicants for a medical marijuana business license,
7 research facility license or education facility license authorized
8 by this act shall undergo an Oklahoma criminal history background
9 check conducted by the Oklahoma State Bureau of Investigation (OSBI)
10 within thirty (30) days prior to the application for the license,
11 including:

- 12 a. individual applicants applying on their own behalf,
- 13 b. individuals applying on behalf of an entity,
- 14 c. all principal officers of an entity, and
- 15 d. all owners of an entity as defined by this act;

16 10. All applicable fees charged by OSBI are the responsibility
17 of the applicant and shall not be higher than fees charged to any
18 other person or industry for such background checks;

19 11. In order to be considered an Oklahoma resident for purposes
20 of a medical marijuana business application, all applicants shall
21 provide proof of Oklahoma residency for at least two (2) years
22 immediately preceding the date of application or five (5) years of
23 continuous Oklahoma residency during the preceding twenty-five (25)
24 years immediately preceding the date of application. Sufficient

1 documentation of proof of residency shall include a combination of
2 the following:

- 3 a. an unexpired Oklahoma-issued driver license,
- 4 b. an Oklahoma voter identification card,
- 5 c. a utility bill preceding the date of application,
6 excluding cellular telephone and Internet bills,
- 7 d. a residential property deed to property in the State
8 of Oklahoma, and
- 9 e. a rental agreement preceding the date of application
10 for residential property located in the State of
11 Oklahoma.

12 Applicants that were issued a medical marijuana business license
13 prior to the enactment of the Oklahoma Medical Marijuana and Patient
14 Protection Act are hereby exempt from the two-year or five-year
15 Oklahoma residency requirement mentioned above;

16 12. All license applicants shall be required to submit a
17 registration with the Oklahoma State Bureau of Narcotics and
18 Dangerous Drugs Control as provided in Sections 2-302 through 2-304
19 of ~~Title 63 of the Oklahoma Statutes~~ this title;

20 13. All applicants shall establish their identity through
21 submission of a color copy or digital image of one of the following
22 unexpired documents:

- 23 a. front and back of an Oklahoma driver license,
- 24 b. front and back of an Oklahoma identification card,

- c. a United States passport or other photo identification issued by the United States government,
- d. certified copy of the applicant's birth certificate for minor applicants who do not possess a document listed in this section, or
- e. a tribal identification card approved for identification purposes by the Oklahoma Department of Public Safety; and

14. All applicants shall submit an applicant photograph.

F. The Authority shall review the medical marijuana business application, approve or reject the application and mail the approval, rejection or status-update letter to the applicant within ninety (90) business days of receipt of the application.

G. 1. The Authority shall review the medical marijuana business applications and conduct all investigations, inspections and interviews before approving the application.

2. Approved applicants shall be issued a medical marijuana business license for the specific category applied under which shall act as proof of their approved status. Rejection letters shall provide a reason for the rejection. Applications may only be rejected based on the applicant not meeting the standards set forth in the provisions of this section, improper completion of the application, or for a reason provided for in this act. If an application is rejected for failure to provide required information,

1 the applicant shall have thirty (30) days to submit the required
2 information for reconsideration. No additional application fee
3 shall be charged for such reconsideration.

4 3. Status-update letters shall provide a reason for delay in
5 either approval or rejection should a situation arise in which an
6 application was submitted properly, but a delay in processing the
7 application occurred.

8 4. Approval, rejection or status-update letters shall be sent
9 to the applicant in the same method the application was submitted to
10 the Department.

11 ~~H. A license provided by this act or by Section 421, 422, 423~~
12 ~~or 425 of Title 63 of the Oklahoma Statutes shall not be issued~~
13 ~~until all relevant local licenses and permits have been issued by~~
14 ~~the municipality, including but not limited to an occupancy permit~~
15 ~~or certificate of compliance.~~

16 ~~I. In the event that an applicant has not received the~~
17 ~~necessary permits, certificates or licenses from a municipality, but~~
18 ~~the applicant has fulfilled all other obligations required by this~~
19 ~~act, the Authority shall grant a conditional license. A conditional~~
20 ~~license shall remain valid for a period of one (1) year or until the~~
21 ~~applicant obtains the necessary local permits, certificates or~~
22 ~~licenses. An applicant shall not transfer any medical marijuana,~~
23 ~~concentrate or products to a medical marijuana business, patient or~~
24 ~~caregiver until approval is received from the Authority.~~

1 ~~+~~ A medical marijuana business license shall not be issued to
2 or held by:

3 1. A person until all required fees have been paid;

4 2. A person who has been convicted of a nonviolent felony
5 within two (2) years of the date of application, or within five (5)
6 years for any other felony;

7 3. A corporation, if the criminal history of any of its
8 officers, directors or stockholders indicates that the officer,
9 director or stockholder has been convicted of a nonviolent felony
10 within two (2) years of the date of application, or within five (5)
11 years for any other felony;

12 4. A person under twenty-five (25) years of age;

13 5. A person licensed pursuant to this section who, during a
14 period of licensure, or who, at the time of application, has failed
15 to:

16 a. file taxes, interest or penalties due related to a
17 medical marijuana business, or

18 b. pay taxes, interest or penalties due related to a
19 medical marijuana business;

20 6. A sheriff, deputy sheriff, police officer or prosecuting
21 officer, or an officer or employee of the Authority ~~or municipality~~;
22 or

23 7. A person whose authority to be a caregiver as defined in
24 this act has been revoked by the Department.

1 ~~K.~~ I. In investigating the qualifications of an applicant or a
2 licensee, the Department, Authority and municipalities may have
3 access to criminal history record information furnished by a
4 criminal justice agency subject to any restrictions imposed by such
5 an agency. In the event the Department considers the criminal
6 history record of the applicant, the Department shall also consider
7 any information provided by the applicant regarding such criminal
8 history record, including but not limited to evidence of
9 rehabilitation, character references and educational achievements,
10 especially those items pertaining to the period of time between the
11 last criminal conviction of the applicant and the consideration of
12 the application for a state license.

13 ~~H.~~ J. The failure of an applicant to provide the requested
14 information by the Authority deadline may be grounds for denial of
15 the application.

16 ~~M.~~ K. All applicants shall submit information to the Department
17 and Authority in a full, faithful, truthful and fair manner. The
18 Department and Authority may recommend denial of an application
19 where the applicant made misstatements, omissions,
20 misrepresentations or untruths in the application or in connection
21 with the background investigation of the applicant. This type of
22 conduct may be considered as the basis for additional administrative
23 action against the applicant. Typos and scrivener errors shall not
24 be grounds for denial.

1 ~~N.~~ L. A licensed medical marijuana business premises shall be
2 subject to and responsible for compliance with applicable provisions
3 for medical marijuana business facilities as described in the most
4 recent versions of the Oklahoma Uniform Building Code, the
5 International Building Code and the International Fire Code, unless
6 granted an exemption by the Authority or municipality.

7 ~~O.~~ M. All medical marijuana business licensees shall pay the
8 relevant licensure fees prior to receiving licensure to operate a
9 medical marijuana business, as defined in this act for each class of
10 license.

11 SECTION 4. AMENDATORY Section 18, Chapter 11, O.S.L.
12 2019 (63 O.S. Supp. 2019, Section 427.18), is amended to read as
13 follows:

14 Section 427.18 A. An Oklahoma medical marijuana business shall
15 not sell, transfer or otherwise distribute medical marijuana or
16 medical marijuana product that has not been packaged and labeled in
17 accordance with this section and rules promulgated by the State
18 Commissioner of Health.

19 B. A medical marijuana dispensary shall return medical
20 marijuana and medical marijuana product that does not meet packaging
21 or labeling requirements in this section or rules promulgated
22 pursuant thereto to the entity who transferred it to the dispensary.
23 The medical marijuana dispensary shall document to whom the item was
24 returned, what was returned and the date of the return or dispose of

1 any usable marijuana that does not meet these requirements in
2 accordance with this ~~act~~ section.

3 C. 1. Medical marijuana packaging shall be packaged to
4 minimize its appeal to children and shall not depict images other
5 than the business name logo of the medical marijuana producer and
6 image of the product.

7 2. A medical marijuana business shall not place any content on
8 a container in a manner that reasonably appears to target
9 individuals under the age of twenty-one (21), including but not
10 limited to cartoon characters or similar images.

11 3. Labels on a container shall not include any false or
12 misleading statements.

13 4. No container shall be intentionally or knowingly labeled so
14 as to cause a reasonable patient confusion as to whether the medical
15 marijuana, medical marijuana concentrate or medical marijuana
16 product is a trademarked product or labeled in a manner that
17 violates any federal trademark law or regulation.

18 5. The label on the container shall not make any claims
19 regarding health or physical benefits to the patient.

20 6. All medical marijuana, medical marijuana concentrate and
21 medical marijuana products ~~shall be in a~~ sold at medical marijuana
22 dispensaries may be packaged in any type of container that is
23 generally recognized as safe for use and protects the product
24 against foreseeable external factors that can cause deterioration or

1 contamination of the product; provided, however, the product shall
2 not be packaged in any type of plastic sandwich bag, one-use zipper
3 or slider storage bag or plastic or cling wrap and must be placed in
4 opaque packaging that is child-resistant container at the point of
5 transfer to, as such term is defined in Section 427.2 of this title,
6 at the point of final sale to the licensed patient or licensed
7 caregiver.

8 D. The State Department of Health shall develop minimum
9 standards for packaging and labeling of medical marijuana and
10 medical marijuana products. Such standards shall include, but not
11 be limited to, the required contents of labels to be affixed to all
12 medical marijuana and medical marijuana products prior to transfer
13 to a licensed patient or caregiver, which shall include, at a
14 minimum:

- 15 1. A universal symbol indicating that the product contains
16 tetrahydrocannabinol (THC);
 - 17 2. THC and other cannabinoid potency, and terpenoid potency;
 - 18 3. A statement indicating that the product has been tested for
19 contaminants;
 - 20 4. One or more product warnings to be determined by the
21 Department; and
 - 22 5. Any other information the Department deems necessary.
- 23
24

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 427.24 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A person who is not a resident of the State of Oklahoma, but
5 who is authorized to engage in the medical use of marijuana under
6 the laws of his or her state of residence, is deemed to hold a valid
7 medical marijuana license for the purpose of the exemption from
8 arrest, prosecution or penalty described in subsection F of Section
9 427.8 of Title 63 of the Oklahoma Statutes, if the person abides by
10 the legal limits on the possession of marijuana for medical purposes
11 in this state as set forth in Section 420 of Title 63 of the
12 Oklahoma Statutes.

13 B. A licensed medical marijuana dispensary may dispense
14 marijuana to a person described in subsection A of this section if
15 the person presents to the medical marijuana dispensary a valid
16 medical marijuana certification or license from his or her state of
17 residence.

18 C. The Oklahoma Medical Marijuana Authority shall maintain and
19 publish a list of other states that authorize the medical use of
20 marijuana and images of the medical marijuana certifications or
21 licenses from those states. The Authority shall make that
22 information available to licensed medical marijuana dispensaries for
23 purposes of verification.

24

1 D. A licensed medical marijuana dispensary that fails to verify
2 the authenticity and status of an out-of-state medical marijuana
3 certification or license prior to conducting a marijuana transaction
4 shall be subject to the following penalties:

5 1. A fine in the amount of Five Hundred Dollars (\$500.00) for a
6 first offense;

7 2. A fine in the amount of One Thousand Dollars (\$1,000.00) for
8 a second offense; and

9 3. Revocation or suspension of the medical marijuana dispensary
10 license for a third and subsequent offense.

11 SECTION 6. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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