

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 1030

6 By: Paxton

7 COMMITTEE SUBSTITUTE

8 An Act relating to marijuana; amending 63 O.S. 2011,  
9 Section 2-402, as last amended by Section 3, State  
10 Question No. 780, Initiative Petition No. 404 (63  
11 O.S. Supp. 2018, Section 2-402), which relates to  
12 prohibited acts; modifying certain penalty; amending  
13 Provision No. 1, State Question No. 788, Initiative  
14 Petition No. 412 (63 O.S. Supp. 2018, Section 420),  
15 which relates to medical marijuana license; modifying  
16 persons to whom law is applicable; modifying  
17 information retained by the State Department of  
18 Health; allowing municipalities to pass certain  
19 ordinances; clarifying language; amending Provision  
20 No. 6, State Question No. 788, Initiative Petition  
21 No. 412 (63 O.S. Supp. 2018, Section 425), which  
22 relates to discrimination against a medical marijuana  
23 license holder; broadening conditions for certain  
24 refusals; allowing employers to take certain actions  
against employees in safety-sensitive positions;  
defining term; construing section; clarifying certain  
powers of municipalities; amending Provision No. 7,  
State Question No. 788, Initiative Petition No. 412  
(63 O.S. Supp. 2018, Section 426), which relates to  
tax on retail medical marijuana; providing that sales  
are subject to certain tax; construing section;  
setting forth certain provisions related to hearings;  
requiring the Department to assist law enforcement  
and make certain information available to law  
enforcement and local governments; requiring  
certificate of compliance; allowing certain adoption  
of regulations; providing for codification; and  
declaring an emergency.

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

2 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-402, as  
3 last amended by Section 3, State Question No. 780, Initiative  
4 Petition No. 404 (63 O.S. Supp. 2018, Section 2-402), is amended to  
5 read as follows:

6 Section 2-402. A. 1. It shall be unlawful for any person  
7 knowingly or intentionally to possess a controlled dangerous  
8 substance unless such substance was obtained directly, or pursuant  
9 to a valid prescription or order from a practitioner, while acting  
10 in the course of his or her professional practice, or except as  
11 otherwise authorized by this act.

12 2. It shall be unlawful for any person to purchase any  
13 preparation excepted from the provisions of the Uniform Controlled  
14 Dangerous Substances Act pursuant to Section 2-313 of this title in  
15 an amount or within a time interval other than that permitted by  
16 Section 2-313 of this title.

17 3. It shall be unlawful for any person or business to sell,  
18 market, advertise or label any product containing ephedrine, its  
19 salts, optical isomers, or salts of optical isomers, for the  
20 indication of stimulation, mental alertness, weight loss, appetite  
21 control, muscle development, energy or other indication which is not  
22 approved by the pertinent federal OTC Final Monograph, Tentative  
23 Final Monograph, or FDA-approved new drug application or its legal  
24

1 equivalent. In determining compliance with this requirement, the  
2 following factors shall be considered:

- 3 a. the packaging of the product,
- 4 b. the name of the product, and
- 5 c. the distribution and promotion of the product,  
6 including verbal representations made at the point of  
7 sale.

8 B. Any person who ~~violates~~ is convicted of a violation of this  
9 section is shall be guilty of a misdemeanor punishable by  
10 ~~confinement for imprisonment of~~ not more than one (1) year and by a  
11 fine not ~~exceeding~~ to exceed One Thousand Dollars (\$1,000.00);  
12 provided, however, a person who is convicted of possession of one  
13 and a half (1 1/2) ounces of marijuana or less shall be punishable  
14 by a fine only not to exceed Four Hundred Dollars (\$400.00).

15 C. Any person convicted of any offense described in this  
16 section shall, in addition to any fine imposed, pay a special  
17 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be  
18 deposited into the Trauma Care Assistance Revolving Fund created in  
19 Section 1-2530.9 of this title.

20 SECTION 2. AMENDATORY Provision No. 1, State Question  
21 No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2018, Section  
22 420), is amended to read as follows:

23 Section 420. A. A person in possession of a state issued  
24 medical marijuana license shall be able to:

- 1 1. Consume marijuana legally;
- 2 2. Legally possess up to three (3) ounces of marijuana on their
- 3 person;
- 4 3. Legally possess six (6) mature marijuana plants;
- 5 4. Legally possess six (6) seedling plants;
- 6 5. Legally possess one (1) ounce of concentrated marijuana;
- 7 6. Legally possess seventy-two (72) ounces of edible marijuana;
- 8 and
- 9 7. Legally possess up to eight (8) ounces of marijuana in their
- 10 residence.

11 B. Possession of up to one and one-half (1.5) ounces of  
12 marijuana by persons who ~~can state a medical condition~~ have been  
13 issued a state issued medical marijuana license, but are not in  
14 possession of ~~a state issued medical marijuana license~~ such license  
15 at the time, shall constitute a misdemeanor offense with a fine not  
16 to exceed Four Hundred Dollars (\$400.00).

17 C. A regulatory office shall be established under the ~~Oklahoma~~  
18 State Department of Health which ~~will~~ shall receive applications for  
19 medical license recipients, dispensaries, growers, and packagers  
20 within sixty (60) days of the passage of this initiative.

21 D. The ~~Oklahoma~~ State Department of Health shall, within thirty  
22 (30) days of passage of this initiative, make available, ~~on their~~  
23 its website, in an easy to find location, an application for a  
24 medical marijuana license. The license ~~will be good~~ shall be valid

1 for two (2) years, and the application fee ~~will~~ shall be One Hundred  
2 Dollars (\$100.00), or Twenty Dollars (\$20.00) for individuals on  
3 Medicaid, Medicare, or SoonerCare. The methods of payment ~~will~~  
4 shall be provided on the Department's website.

5 E. A temporary license application ~~will~~ shall also be made  
6 available on the ~~Oklahoma~~ State Department of Health website. A  
7 temporary medical marijuana license ~~will~~ shall be granted to any  
8 medical marijuana license holder from other states, provided that  
9 the state has a state regulated medical marijuana program, and the  
10 applicant can prove they are a member of such program. Temporary  
11 licenses ~~will~~ shall be issued for thirty (30) days. The cost for a  
12 temporary license shall be One Hundred Dollars (\$100.00). Renewal  
13 ~~will~~ shall be granted with resubmission of a new application. No  
14 additional criteria ~~will~~ shall be required.

15 F. Medical marijuana license applicants ~~will~~ shall submit their  
16 application to the ~~Oklahoma~~ State Department of Health for approval  
17 ~~and that the applicant must.~~ The applicant shall be an Oklahoma  
18 state resident and shall prove residency by a valid driver's  
19 license, utility bills, or other accepted methods.

20 G. The ~~Oklahoma~~ State Department of Health shall review the  
21 medical marijuana application, ~~approve/reject~~ approve or reject the  
22 application, and mail the applicant's approval or rejection letter  
23 ~~(stating reasons for rejection),~~ stating any reasons for rejection,  
24 to the applicant within fourteen (14) days of receipt of the

1 application. Approved applicants ~~will~~ shall be issued a medical  
2 marijuana license which ~~will~~ shall act as proof of their approved  
3 status. Applications may only be rejected based on the applicant  
4 not meeting stated criteria or improper completion of the  
5 application.

6 H. The ~~Oklahoma~~ State Department of Health ~~will only keep the~~  
7 ~~following records for each approved medical license:~~

- 8 ~~1. A digital photograph of the license holder;~~
- 9 ~~2. The expiration date of the license;~~
- 10 ~~3. The county where the card was issued; and~~
- 11 ~~4. A unique 24 character identification number assigned to the~~  
12 license shall retain all information obtained from the application.

13 I. The State Department of Health ~~will~~ shall make available,  
14 both on its website, and through a telephone verification system, an  
15 easy method to validate a medical marijuana license ~~holders~~ holder's  
16 authenticity by the unique ~~24-character~~ 24-character identifier.

17 J. The State Department of Health ~~will~~ shall ensure that all  
18 application records and information are sealed to protect the  
19 privacy of medical marijuana license applicants.

20 K. A caregiver license ~~will~~ shall be made available for  
21 qualified caregivers of a medical marijuana license holder who is  
22 homebound. The caregiver license ~~will~~ shall give the caregiver the  
23 same rights as the medical marijuana license holder. Applicants for  
24 a caregiver license ~~will~~ shall submit proof of the medical marijuana

1 license holder's license status and homebound status, proof that  
2 they are the designee of the medical marijuana license holder, ~~must~~  
3 ~~submit~~ proof that the caregiver is age eighteen (18) or older, and  
4 ~~must submit~~ proof the caregiver is an Oklahoma resident. This ~~will~~  
5 shall be the only criteria for a caregiver license.

6 L. All applicants ~~must~~ shall be eighteen (18) years or older.  
7 A special exception ~~will~~ shall be granted to an applicant under the  
8 age of eighteen (18), however these applications ~~must~~ shall be  
9 signed by two (2) physicians and the applicant's parent or legal  
10 guardian.

11 M. All applications for a medical marijuana license ~~must~~ shall  
12 be signed by an Oklahoma Board certified physician. There are no  
13 qualifying conditions. A medical marijuana license ~~must~~ shall be  
14 recommended according to the accepted standards a reasonable and  
15 prudent physician would follow when recommending or approving any  
16 medication. No physician may be unduly stigmatized or harassed for  
17 signing a medical marijuana license application.

18 N. 1. Counties and cities may enact medical marijuana  
19 guidelines allowing medical marijuana license holders or caregivers  
20 to exceed the state limits set forth in subsection A of this  
21 section.

22 2. Municipalities may pass ordinances to restrict or prohibit  
23 the smoking or vaping of marijuana in any or all public places  
24

1 within city limits. For the purposes of this paragraph, "public  
2 place" means any location which is not private residential premises.

3 SECTION 3. AMENDATORY Provision No. 6, State Question  
4 No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2018, Section  
5 425), is amended to read as follows:

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

12 B. 1. Unless a failure to do so would cause an employer the  
13 potential to ~~imminently~~ lose a monetary or licensing related benefit  
14 under federal law or regulations, an employer may not discriminate  
15 against a person in hiring, termination or imposing any term or  
16 condition of employment or otherwise penalize a person based upon  
17 ~~either:~~

18 ~~1. The~~ the person's status as a medical marijuana license  
19 holder, ~~or,~~ unless the person is employed in a safety-sensitive  
20 position.

21 2. Employers may take action against a holder of a medical  
22 marijuana license holder if the holder uses or possesses marijuana  
23 while in the holder's place of employment or during the hours of  
24 employment. Employers may not take action against the holder of a



1 medical marijuana license solely based upon the status of an  
2 employee as a medical marijuana license holder or the results of a  
3 drug test showing positive for marijuana or its components, unless  
4 the person is employed in a safety-sensitive position.

5 3. For the purposes of this section, "safety-sensitive  
6 position" shall include, but not be limited to, the following types  
7 of tasks, duties or objectives:

- 8 a. the handling, packaging, processing, storage, disposal  
9 or transport of hazardous materials,
- 10 b. the operation of a motor vehicle, other vehicle,  
11 equipment, machinery or power tools,
- 12 c. repairing, maintaining or monitoring the performance  
13 or operation of any equipment, machinery or  
14 manufacturing process, the malfunction or disruption  
15 of which could result in injury or property damage,
- 16 d. performing duties in the residential or commercial  
17 premises of a customer, supplier or vendor,
- 18 e. the operation, maintenance or oversight of critical  
19 services and infrastructure including, but not limited  
20 to, electric, gas and water utilities, power  
21 generation or distribution,
- 22 f. the extraction, compression, processing,  
23 manufacturing, handling, packaging, storage, disposal,  
24 treatment or transport of potentially volatile,

1 flammable, combustible materials, elements, chemicals

2 or any other highly regulated component,

3 g. preparing or handling food or medicine,

4 h. law or code enforcement,

5 i. employees required to carry a firearm,

6 j. fire response or prevention,

7 k. emergency medical services, or

8 l. direct patient care or direct child care.

9 4. Nothing in this section shall prohibit any property or  
10 business owner from prohibiting the consumption, cultivation or  
11 possession of medical marijuana or medical marijuana products on the  
12 owner's property.

13 C. For the purposes of medical care, including organ  
14 transplants, a medical marijuana license holder's authorized use of  
15 marijuana ~~must~~ shall be considered the equivalent of the use of any  
16 other medication under the direction of a physician and does not  
17 constitute the use of an illicit substance or otherwise disqualify a  
18 registered qualifying patient from medical care.

19 D. No medical marijuana license holder may be denied custody of  
20 or visitation or parenting time with a minor, and there is no  
21 presumption of neglect or child endangerment for conduct allowed  
22 under this law, unless the person's behavior creates an unreasonable  
23 danger to the safety of the minor.

1 E. No person holding a medical marijuana license may unduly be  
2 withheld from holding a state issued license by virtue of their  
3 being a medical marijuana license holder. ~~This would include such~~  
4 ~~things as~~ including but not limited to a concealed carry permit.

5 F. 1. No city or local municipality may unduly change or  
6 restrict zoning laws to prevent the opening of a retail marijuana  
7 establishment.

8 2. For purposes of this subsection, an undue change or  
9 restriction of municipal zoning laws means an act which entirely  
10 prevents marijuana establishments from operating within municipal  
11 boundaries as a matter of law. Municipalities may follow their  
12 standard planning and zoning procedures to define which zones or  
13 districts would be appropriate for locating medical marijuana  
14 dispensaries, growers and processors.

15 3. For purposes of this section, "retail marijuana  
16 establishment" means an entity licensed by the State Department of  
17 Health as a medical marijuana dispensary. Retail marijuana  
18 establishment does not include those entities licensed by the  
19 Department as a grower or processor, or other facilities or  
20 locations where marijuana or any product containing marijuana or its  
21 byproducts is cultivated, grown, processed or manufactured.

22 G. The location of any ~~retail marijuana establishment~~  
23 dispensary is specifically prohibited within one thousand (1,000)  
24 feet ~~from~~ of any public or private school entrance.

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

9 SECTION 4. AMENDATORY Provision No. 7, State Question  
10 No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2018, Section  
11 426), is amended to read as follows:

12 Section 426. A. ~~The~~ A sales tax on retail medical marijuana  
13 sales ~~will be established at~~ is hereby levied at the rate of seven  
14 percent (7%) of the gross ~~amount received by the seller~~ purchase  
15 price including cash, credit or other monetary consideration.

16 B. ~~This tax will~~ The tax shall be collected at the point of  
17 sale. Tax proceeds ~~will~~ shall be applied primarily to finance the  
18 regulatory office.

19 C. If proceeds from the levy authorized by subsection A of this  
20 section exceed the budgeted amount for running the regulatory  
21 office, any surplus shall be apportioned with seventy-five percent  
22 (75%) going to the General Revenue Fund and may only be expended for  
23 common education. Twenty-five percent (25%) shall be apportioned to  
24

1 the ~~Oklahoma~~ State Department of Health and earmarked for drug and  
2 alcohol rehabilitation.

3 D. Nothing in this act shall prohibit local governments from  
4 adding additional local sales taxes to medical marijuana  
5 transactions.

6 SECTION 5. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 427 of Title 63, unless there is  
8 created a duplication in numbering, reads as follows:

9 A. All licensure revocation hearings conducted pursuant to the  
10 penalties set forth in Sections 421, 422 and 423 of Title 63 of the  
11 Oklahoma Statutes shall be recorded. A party may request a copy of  
12 the recording of the proceedings. Copies shall be provided to local  
13 law enforcement if the revocation was based on alleged criminal  
14 activity.

15 B. The State Department of Health shall assist any law  
16 enforcement officer in the performance of his or her duties upon  
17 such law enforcement officer's request or the request of other local  
18 officials having jurisdiction. The Department shall share  
19 information with law enforcement agencies upon request without a  
20 subpoena or search warrant.

21 C. The State Department of Health shall make available all  
22 information displayed on medical marijuana licenses, as well as  
23 whether or not the license is valid, to law enforcement  
24

1 electronically through the Oklahoma Law Enforcement  
2 Telecommunications System.

3 D. The Department shall make available a public list of medical  
4 marijuana retail, commercial cultivation, warehouse and processing  
5 locations to aid county and municipal governments to identify  
6 locations within their jurisdiction and ensure compliance with local  
7 regulations.

8 E. All applicants for a dispensary license, commercial grower  
9 license or processor license shall submit with their application,  
10 after notifying the political subdivision of their intent, a  
11 certificate of compliance from the political subdivision where the  
12 applicant's facility or use is to be located certifying compliance  
13 with zoning classifications, applicable municipal ordinances and all  
14 applicable safety, electrical, fire, plumbing, waste, construction  
15 and building specification codes.

16 F. In addition to all other standards applicable to the  
17 issuance of a license under this act, political subdivisions may  
18 adopt regulations to protect the public health, safety or welfare  
19 which are subject to inspections and enforcement through local  
20 ordinances.

21 SECTION 6. It being immediately necessary for the preservation  
22 of the public peace, health or safety, an emergency is hereby  
23  
24

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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