

An Act

ENROLLED SENATE
BILL NO. 862

By: Paxton of the Senate

and

Bush of the House

An Act relating to medical marijuana; amending 21 O.S. 2011, Section 1247, as last amended by Section 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp. 2020, Section 1247), which relates to smoking in certain public areas; designating certain property as smoke-free; adding definition; amending Section 6, State Question No. 788, Initiative Petition No. 412, as last amended by Section 46, Chapter 161, O.S.L. 2020 (63 O.S. Supp. 2020, Section 425), which relates to discrimination against licensed medical marijuana patients; specifying method of certain measurement; clarifying language; and providing an effective date.

SUBJECT: Medical marijuana

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as last amended by Section 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp. 2020, Section 1247), is amended to read as follows:

Section 1247. A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, all parts of a zoo to which the public may be admitted, whether indoors or outdoors, public transportation, or any indoor workplace, except where specifically allowed by law. Commercial airport operators may prohibit the use of lighted tobacco

or lighted marijuana or the vaping of marijuana in any area that is open to or used by the public whether located indoors or outdoors, provided that the outdoor area is within one hundred seventy-five (175) feet from an entrance.

As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

B. All buildings and other properties, or portions thereof, owned or operated by this state shall be designated as nonsmoking. The tobacco smoking provisions of this subsection shall not apply to veterans centers operated by this state pursuant to the provisions of Section 221 et seq. of Title 72 of the Oklahoma Statutes, which shall be designated nonsmoking effective January 1, 2015, at which time veterans centers may establish outdoor designated smoking areas for resident veterans only. Smoking tobacco shall only be allowed in designated outdoor smoking areas.

C. ~~All buildings and other properties, or portions thereof, Any building, property or portion of any building or property owned or operated by a county or municipal government, or any trust or authority with a county or municipal government as the beneficiary,~~ at the discretion of the county or municipal governing body, may be designated as ~~entirely nonsmoking~~ a smoke-free location. For the purposes of this subsection, "smoke-free location" means a location where the use of tobacco, nicotine, marijuana or other lawful products consumed in a smoked or vaporized manner are prohibited.

D. All educational facilities or portions thereof as defined in the Smoking in Public Places and Indoor Workplaces Act and all educational facilities as defined in the 24/7 Tobacco-free Schools Act shall be designated as nonsmoking as provided for in Section 1-1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings and grounds, or portions thereof, owned or operated by an institution within The Oklahoma State System of Higher Education may be designated as tobacco and marijuana free, including smoking or smokeless tobacco or smokable or vaporable marijuana, by the institution upon adoption of a policy stating the restrictions for the institution and an intent to enforce the penalty for violations as set forth in subsection M of this section.

E. No tobacco or marijuana smoking or marijuana vaping shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection B, C or D of this section.

F. The restrictions on tobacco smoking provided in this section shall not apply to stand-alone bars, stand-alone taverns and cigar bars as defined in Section 1-1522 of Title 63 of the Oklahoma Statutes.

G. The restrictions on tobacco smoking provided in this section shall not apply to the following:

1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

2. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;

3. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;

4. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an

employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

5. Workplaces occupied exclusively by one or more tobacco smokers, if the workplace has only incidental public access;

6. Private offices occupied exclusively by one or more smokers;

7. Workplaces within private residences, except that smoking tobacco or marijuana or vaping marijuana shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;

8. Medical research or treatment centers, if tobacco smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping is integral to the research or treatment;

9. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and

10. Any outdoor seating area of a restaurant; provided, smoking tobacco or smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

H. An employer not otherwise restricted from doing so may elect to provide tobacco smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for tobacco smoking, provided each tobacco smoking room is fully enclosed and exhausted directly to the outside in such a manner that no tobacco smoke can drift or circulate into a nonsmoking area. No

exhaust from a tobacco smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

I. If tobacco smoking is to be permitted in any space exempted in subsection F or G of this section or in a tobacco smoking room pursuant to subsection H of this section, such tobacco smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the tobacco smoking space shall be fully enclosed, exhausted directly to the outside with no air from the tobacco smoking space circulated to any nonsmoking area, and under negative air pressure so that no tobacco smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a tobacco smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive tobacco smoking policy, including being totally tobacco smoke free.

J. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated tobacco smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated tobacco smoking rooms. Food and beverage may be served in such designated tobacco smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so tobacco smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

K. The person who owns or operates a place where tobacco smoking or use is prohibited by law shall be responsible for posting a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

L. Responsibility for posting signs or decals shall be as follows:

1. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;

2. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and

3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

M. Any person who knowingly violates the provisions of this section shall be punished by a citation and fine of not more than One Hundred Dollars (\$100.00).

SECTION 2. AMENDATORY Section 6, State Question No. 788, Initiative Petition No. 412, as last amended by Section 46, Chapter 161, O.S.L. 2020 (63 O.S. Supp. 2020, Section 425), is amended to read as follows:

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

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

~~1. The the status of the person as a licensed medical marijuana license holder; or patient.~~

2. Employers may take action against ~~a holder of a licensed medical marijuana license patient~~ if the ~~holder~~ licensed medical marijuana patient uses or possesses marijuana while in his or her place of employment or during the hours of employment. Employers may not take action against the ~~holder of a licensed medical marijuana license patient~~ solely based upon the status of an employee as a licensed medical marijuana license holder patient or

the results of a drug test showing positive for marijuana or its components.

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

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

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

F. 1. No city or local municipality may unduly change or restrict zoning laws to prevent the opening of a ~~retail marijuana establishment~~ medical marijuana dispensary.

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

3. For purposes of this section, "~~retail marijuana establishment~~" means an entity licensed by the State Department of Health as a medical marijuana dispensary. ~~Retail marijuana establishment~~ a medical marijuana dispensary does not include those

other entities licensed by the Department as marijuana-licensed premises, medical marijuana businesses or other facilities or locations where marijuana or any product containing marijuana or its by-products are cultivated, grown, processed, stored or manufactured.

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

H. Research shall be provided for under this law. A researcher may apply to the State Department of Health for a special research license. The license shall be granted, provided the applicant meets the criteria listed under subsection B of Section 421 of this title. Research ~~license holders~~ licensees shall be required to file monthly consumption reports to the State Department of Health with amounts of marijuana used for research. Biomedical and clinical research which is subject to federal regulations and institutional oversight shall not be subject to State Department of Health oversight.

SECTION 3. This act shall become effective November 1, 2021.

Passed the Senate the 4th day of May, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____