

1 **SENATE FLOOR VERSION**

2 February 14, 2022

3 SENATE BILL NO. 1367

By: Paxton

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6 An Act relating to the Oklahoma Medical Marijuana and
7 Patient Protection Act; amending 63 O.S. 2021,
8 Section 427.6, as last amended by Section 11, Chapter
9 553, O.S.L. 2021, which relates to disciplinary
10 actions, penalties, and disciplinary hearings;
11 requiring certain penalties; authorizing certain
12 discretion and enforcement; requiring certain license
13 revocation; clarifying language; removing construing
14 provision; and providing an effective date.

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

16 SECTION 1. AMENDATORY 63 O.S. 2021, Section 427.6, as
17 last amended by Section 11, Chapter 553, O.S.L. 2021, is amended to
18 read as follows:

19 Section 427.6. A. The State Department of Health shall address
20 issues related to the medical marijuana program in ~~Oklahoma~~ this
21 state including, but not limited to, monitoring and disciplinary
22 actions as they relate to the medical marijuana program.

23 B. 1. The Department or its designee may perform on-site
24 inspections or investigations of a licensee or applicant for any
25 medical marijuana business license, research facility, education
26 facility or waste disposal facility to determine compliance with

1 applicable laws, rules and regulations or submissions made pursuant
2 to this section. The Department may enter the licensed premises of
3 a medical marijuana business, research facility, education facility
4 or waste disposal facility licensee or applicant to assess or
5 monitor compliance or ensure qualifications for licensure.

6 2. Post-licensure inspections shall be limited to twice per
7 calendar year. However, investigations and additional inspections
8 may occur when the Department believes an investigation or
9 additional inspection is necessary due to a possible violation of
10 applicable laws, rules or regulations. The State Commissioner of
11 Health may adopt rules imposing penalties including, but not limited
12 to, monetary fines and suspension or revocation of licensure for
13 failure to allow the Authority reasonable access to the licensed
14 premises for purposes of conducting an inspection.

15 3. The Department may review relevant records of a licensed
16 medical marijuana business, licensed medical marijuana research
17 facility, licensed medical marijuana education facility or licensed
18 medical marijuana waste disposal facility, and may require and
19 conduct interviews with such persons or entities and persons
20 affiliated with such entities, for the purpose of determining
21 compliance with Department requirements and applicable laws, rules
22 and regulations.

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1 4. The Department may refer complaints alleging criminal
2 activity that are made against a licensee to appropriate ~~Oklahoma~~
3 state or local law enforcement authorities.

4 C. Disciplinary action may be taken against an applicant or
5 licensee for not adhering to applicable laws pursuant to the terms,
6 conditions and guidelines set forth in the Oklahoma Medical
7 Marijuana and Patient Protection Act.

8 D. Disciplinary actions may include revocation, suspension or
9 denial of an application, license or final authorization and other
10 action deemed appropriate by the Department.

11 E. Disciplinary actions may be imposed upon a medical marijuana
12 business licensee for:

13 1. Failure to comply with or satisfy any provision of
14 applicable laws, rules or regulations;

15 2. Falsification or misrepresentation of any material or
16 information submitted to the Department or other licensees;

17 3. Failing to allow or impeding entry by authorized
18 representatives of the Department;

19 4. Failure to adhere to any acknowledgement, verification or
20 other representation made to the Department;

21 5. Failure to submit or disclose information required by
22 applicable laws, rules or regulations or otherwise requested by the
23 Department;

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1 6. Failure to correct any violation of this section cited as a
2 result of a review or audit of financial records or other materials;

3 7. Failure to comply with requested access by the Department to
4 the licensed premises or materials;

5 8. Failure to pay a required monetary penalty;

6 9. Diversion of medical marijuana or any medical marijuana
7 product, as determined by the Department;

8 10. Threatening or harming a medical marijuana patient
9 licensee, caregiver licensee, a medical practitioner or an employee
10 of the Department; and

11 11. Any other basis indicating a violation of the applicable
12 laws and regulations as identified by the Department.

13 F. Disciplinary actions against a licensee may include the
14 imposition of monetary penalties, which may be assessed by the
15 Department. The Department may suspend or revoke a license for
16 failure to pay any monetary penalty lawfully assessed by the
17 Department against a licensee.

18 G. Penalties for sales or purchases by a medical marijuana
19 business to persons other than those allowed by law occurring within
20 any two-year time period may include an initial fine of One Thousand
21 Dollars (\$1,000.00) for a first violation and a fine of Five
22 Thousand Dollars (\$5,000.00) for any subsequent violation.

23 Penalties for grossly inaccurate or fraudulent reporting occurring
24 within any two-year time period may include an initial fine of Five

1 Thousand Dollars (\$5,000.00) for a first violation and a fine of Ten
2 Thousand Dollars (\$10,000.00) for any subsequent violation. The
3 medical marijuana business may be subject to a revocation of any
4 license granted pursuant to the Oklahoma Medical Marijuana and
5 Patient Protection Act upon a showing that the violation was willful
6 or grossly negligent.

7 H. 1. ~~First~~ In addition to any other penalties prescribed by
8 law, a first offense for intentional and impermissible diversion of
9 medical marijuana, concentrate, or products by a patient ~~or~~
10 ~~caregiver~~ to an unauthorized person shall ~~not be punished under a~~
11 ~~criminal statute but may~~ be subject to ~~a~~ an administrative fine of
12 ~~Two Hundred Dollars (\$200.00)~~ not less than Four Hundred Dollars
13 (\$400.00), or a higher amount as determined by the administrative
14 rules of the Oklahoma Medical Marijuana Authority designed to deter
15 unlawful diversion. The Oklahoma Medical Marijuana Authority shall
16 have authority to enforce the provisions of this subsection.

17 2. ~~The~~ In addition to any other penalties prescribed by law, a
18 second offense for impermissible diversion of medical marijuana,
19 concentrate, or products by a patient ~~or caregiver~~ to an
20 unauthorized person shall ~~not be punished under a criminal statute~~
21 ~~but may~~ be subject to ~~a~~ an administrative fine of ~~not to exceed Five~~
22 ~~Hundred Dollars (\$500.00)~~ not less than One Thousand Dollars
23 (\$1,000.00), or a higher amount as determined by the administrative
24 rules of the Oklahoma Medical Marijuana Authority designed to deter

1 unlawful diversion and ~~may~~ shall result in revocation of the license
2 or licenses of the person or any other person or entity for whom the
3 diverting person serves as an agent. Additionally, the revoked
4 person or entity, and any owner or other person or entity with an
5 interest of any kind affiliated with an entity whose agent made an
6 impermissible diversion pursuant to this subsection, shall have any
7 license issued by the Oklahoma Medical Marijuana Authority revoked
8 and shall be prohibited from obtaining a new license ~~upon a showing~~
9 ~~that the violation was willful or grossly negligent.~~

10 I. The intentional diversion of medical marijuana, medical
11 marijuana concentrate or medical marijuana products by a licensed
12 medical marijuana patient or caregiver, medical marijuana business
13 or employee of a medical marijuana business to an unauthorized minor
14 person who the licensed medical marijuana patient or caregiver,
15 medical marijuana business or employee of a medical marijuana
16 business knew or reasonably should have known to be a minor person
17 shall be subject to ~~a cite and release citation and, upon a finding~~
18 ~~of guilt or a plea of no contest, a~~ an administrative fine of Two
19 Thousand Five Hundred Dollars (\$2,500.00). For a second or
20 subsequent offense, the licensed medical marijuana patient or
21 caregiver, medical marijuana business or employee of a medical
22 marijuana business shall be subject to a cite and release citation
23 and, upon a finding of guilt or a plea of no contest, a fine of Five
24 Thousand Dollars (\$5,000.00) and automatic ~~termination~~ revocation of

1 the medical marijuana license. Additionally, the revoked person or
2 entity, and any owner or other person or entity with an interest of
3 any kind affiliated with an entity whose agent made an impermissible
4 diversion pursuant to this subsection, shall have any license issued
5 by the Oklahoma Medical Marijuana Authority revoked and shall be
6 prohibited from obtaining a new license.

7 J. ~~Nothing in this section shall be construed to prevent the~~
8 ~~criminal prosecution, after the presentation of evidence and a~~
9 ~~finding beyond a reasonable doubt, of a licensed medical marijuana~~
10 ~~patient or caregiver, medical marijuana business or employee of a~~
11 ~~medical marijuana business who has diverted medical marijuana,~~
12 ~~medical marijuana concentrate or medical marijuana products to an~~
13 ~~unauthorized person with the intent or knowledge that the~~
14 ~~unauthorized person was to engage in the distribution or trafficking~~
15 ~~of medical marijuana, medical marijuana concentrate or medical~~
16 ~~marijuana products.~~

17 ~~K.~~ In addition to any other remedies provided for by law, the
18 Department, pursuant to its rules and regulations, may issue a
19 written order to any licensee the Department has reason to believe
20 has violated Sections 420 through 426.1 of this title, the Oklahoma
21 Medical Marijuana and Patient Protection Act, the Oklahoma Medical
22 Marijuana Waste Management Act, or any rules promulgated by the
23 State Commissioner of Health and to whom the Department has served,
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1 not less than thirty (30) days previously, a written notice of
2 violation of such statutes or rules.

3 1. The written order shall state with specificity the nature of
4 the violation. The Department may impose any disciplinary action
5 authorized under the provisions of this section including, but not
6 limited to, the assessment of monetary penalties.

7 2. Any order issued pursuant to the provisions of this section
8 shall become a final order unless, not more than thirty (30) days
9 after the order is served to the licensee, the licensee requests an
10 administrative hearing in accordance with the rules and regulations
11 of the Department. Upon such request, the Department shall promptly
12 initiate administrative proceedings.

13 ~~H.~~ K. Whenever the Department finds that an emergency exists
14 requiring immediate action in order to protect the health or welfare
15 of the public, the Department may issue an order, without providing
16 notice or hearing, stating the existence of said emergency and
17 requiring that action be taken as the Department deems necessary to
18 meet the emergency. Such action may include, but is not limited to,
19 ordering the licensee to immediately cease and desist operations by
20 the licensee. The order shall be effective immediately upon
21 issuance. Any person to whom the order is directed shall comply
22 immediately with the provisions of the order. The Department may
23 assess a penalty not to exceed Ten Thousand Dollars (\$10,000.00) per
24 day of noncompliance with the order. In assessing such a penalty,

1 the Department shall consider the seriousness of the violation and
2 any efforts to comply with applicable requirements. Upon
3 application to the Department, the licensee shall be offered a
4 hearing within ten (10) days of the issuance of the order.

5 ~~M.~~ L. All hearings held pursuant to this section shall be in
6 accordance with the Oklahoma Administrative Procedures Act.

7 SECTION 2. This act shall become effective November 1, 2022.

8 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
9 February 14, 2022 - DO PASS
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