

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 445

By: Paxton

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5
6 AS INTRODUCED

7 An Act relating to medical marijuana; amending 21
8 O.S. 2011, Section 1247, as last amended by Section
9 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp. 2020,
10 Section 1247), which relates to smoking in certain
11 public areas; designating certain property as smoke-
12 free; adding definition; amending Section 6, State
13 Question No. 788, Initiative Petition No. 412, as
14 last amended by Section 46, Chapter 161, O.S.L. 2020
15 (63 O.S. Supp. 2020, Section 425), which relates to
16 discrimination against licensed medical marijuana
17 patients; specifying method of certain measurement;
18 amending Section 6, Chapter 11, O.S.L. 2019, as
19 amended by Section 7, Chapter 477, O.S.L. 2019 (63
20 O.S. Supp. 2020, Section 427.6), which relates to
21 disciplinary actions; providing cumulative penalties;
22 specifying type of fine; clarifying language; and
23 providing an effective date.

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

25 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as
26 last amended by Section 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp.
27 2020, Section 1247), is amended to read as follows:

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

4 Commercial airport operators may prohibit the use of lighted tobacco
5 or lighted marijuana or the vaping of marijuana in any area that is
6 open to or used by the public whether located indoors or outdoors,
7 provided that the outdoor area is within one hundred seventy-five
8 (175) feet from an entrance.

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

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

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

19 D. All educational facilities or portions thereof as defined in
20 the Smoking in Public Places and Indoor Workplaces Act and all
21 educational facilities as defined in the 24/7 Tobacco-free Schools
22 Act shall be designated as nonsmoking as provided for in Section 1-
23 1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings
24 and grounds, or portions thereof, owned or operated by an

1 institution within The Oklahoma State System of Higher Education may
2 be designated as tobacco and marijuana free, including smoking or
3 smokeless tobacco or smokable or vaporable marijuana, by the
4 institution upon adoption of a policy stating the restrictions for
5 the institution and an intent to enforce the penalty for violations
6 as set forth in subsection M of this section.

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

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

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

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

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

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

1 4. Workplaces where only the owner or operator of the
2 workplace, or the immediate family of the owner or operator,
3 performs any work in the workplace, and the workplace has only
4 incidental public access. "Incidental public access" means that a
5 place of business has only an occasional person, who is not an
6 employee, present at the business to transact business or make a
7 delivery. It does not include businesses that depend on walk-in
8 customers for any part of their business;

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

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

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

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

22 9. A facility operated by a post or organization of past or
23 present members of the Armed Forces of the United States which is
24 exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or
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1 501(c) (19) of the Internal Revenue Code, 26 U.S.C., Section
2 501(c) (8), 501(c) (10) or 501(c) (19), when such facility is utilized
3 exclusively by its members and their families and for the conduct of
4 post or organization nonprofit operations except during an event or
5 activity which is open to the public; and

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

10 H. An employer not otherwise restricted from doing so may elect
11 to provide tobacco smoking rooms where no work is performed except
12 for cleaning and maintenance during the time the room is not in use
13 for tobacco smoking, provided each tobacco smoking room is fully
14 enclosed and exhausted directly to the outside in such a manner that
15 no tobacco smoke can drift or circulate into a nonsmoking area. No
16 exhaust from a tobacco smoking room shall be located within fifteen
17 (15) feet of any entrance, exit or air intake.

18 I. If tobacco smoking is to be permitted in any space exempted
19 in subsection F or G of this section or in a tobacco smoking room
20 pursuant to subsection H of this section, such tobacco smoking space
21 must either occupy the entire enclosed indoor space or, if it shares
22 the enclosed space with any nonsmoking areas, the tobacco smoking
23 space shall be fully enclosed, exhausted directly to the outside
24 with no air from the tobacco smoking space circulated to any

1 nonsmoking area, and under negative air pressure so that no tobacco
2 smoke can drift or circulate into a nonsmoking area when a door to
3 an adjacent nonsmoking area is opened. Air from a tobacco smoking
4 room shall not be exhausted within fifteen (15) feet of any
5 entrance, exit or air intake. Any employer may choose a more
6 restrictive tobacco smoking policy, including being totally tobacco
7 smoke free.

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

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

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

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

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

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

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

14 SECTION 2. AMENDATORY Section 6, State Question No. 788,
15 Initiative Petition No. 412, as last amended by Section 46, Chapter
16 161, O.S.L. 2020 (63 O.S. Supp. 2020, Section 425), is amended to
17 read as follows:

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

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

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

8 2. Employers may take action against a ~~holder of a~~ licensed
9 medical marijuana ~~license~~ patient if the ~~holder~~ licensed medical
10 marijuana patient uses or possesses marijuana while in his or her
11 place of employment or during the hours of employment. Employers
12 may not take action against the ~~holder of a~~ licensed medical
13 marijuana ~~license~~ patient solely based upon the status of an
14 employee as a licensed medical marijuana ~~license holder~~ patient or
15 the results of a drug test showing positive for marijuana or its
16 components.

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

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

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

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

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

1 3. For purposes of this section, ~~"retail marijuana~~
2 ~~establishment"~~ means ~~an entity licensed by the State Department of~~
3 ~~Health as a medical marijuana dispensary.~~ ~~Retail marijuana~~
4 ~~establishment~~ a medical marijuana dispensary does not include those
5 other entities licensed by the Department as marijuana-licensed
6 premises, medical marijuana businesses or other facilities or
7 locations where marijuana or any product containing marijuana or its
8 by-products are cultivated, grown, processed, stored or
9 manufactured.

10 G. The location of any ~~retail marijuana establishment~~ medical
11 marijuana dispensary is specifically prohibited within one thousand
12 (1,000) feet of any public or private school entrance. The distance
13 specified shall be measured from any entrance of the school to the
14 nearest property line point of the medical marijuana dispensary.

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

1 SECTION 3. AMENDATORY Section 6, Chapter 11, O.S.L.
2 2019, as amended by Section 7, Chapter 477, O.S.L. 2019 (63 O.S.
3 Supp. 2020, Section 427.6), is amended to read as follows:

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

8 B. 1. The Department or its designee may perform on-site
9 assessments of a licensee or applicant for any medical marijuana
10 business license issued pursuant to ~~this act~~ the Oklahoma Medical
11 Marijuana and Patient Protection Act to determine compliance with
12 this act or submissions made pursuant to this section. The
13 Department may enter the licensed premises of a medical marijuana
14 business licensee or applicant to assess or monitor compliance.

15 2. Inspections shall be limited to twice per calendar year and
16 twenty-four (24) hours of notice shall be provided to a medical
17 marijuana business applicant or licensee prior to an on-site
18 assessment. However, additional inspections may occur when the
19 Department shows that an additional inspection is necessary due to a
20 violation of ~~this act~~ the Oklahoma Medical Marijuana and Patient
21 Protection Act. Such inspection may be without notice if the
22 Department believes that such notice will result in the destruction
23 of evidence.

1 3. The Department may review relevant records of a licensed
2 medical marijuana business, licensed medical marijuana research
3 facility or licensed medical marijuana education facility, and may
4 require and conduct interviews with such persons or entities and
5 persons affiliated with such entities, for the purpose of
6 determining compliance with Department requirements and applicable
7 laws. However, prior to conducting any interviews with the medical
8 marijuana business, research facility or education facility, the
9 licensee shall be afforded sufficient time to secure legal
10 representation during such questioning if requested by the business
11 or facility or any of its agents or employees or contractors.

12 4. The Department shall refer complaints alleging criminal
13 activity that are made against a licensee to appropriate Oklahoma
14 state or local law enforcement authorities.

15 C. Disciplinary action may be taken against an applicant or
16 licensee under ~~this act~~ the Oklahoma Medical Marijuana and Patient
17 Protection Act for not adhering to the law pursuant to the terms,
18 conditions and guidelines set forth in this act.

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

22 E. Disciplinary actions may be imposed upon a medical marijuana
23 business licensee for:

- 1 1. Failure to comply with or satisfy any provision of this
2 section;
- 3 2. Falsification or misrepresentation of any material or
4 information submitted to the Department;
- 5 3. Failing to allow or impeding a monitoring visit by
6 authorized representatives of the Department;
- 7 4. Failure to adhere to any acknowledgement, verification or
8 other representation made to the Department;
- 9 5. Failure to submit or disclose information required by this
10 section or otherwise requested by the Department;
- 11 6. Failure to correct any violation of this section cited as a
12 result of a review or audit of financial records or other materials;
- 13 7. Failure to comply with requested access by the Department to
14 the licensed premises or materials;
- 15 8. Failure to pay a required monetary penalty;
- 16 9. Diversion of medical marijuana or any medical marijuana
17 product, as determined by the Department;
- 18 10. Threatening or harming a patient, a medical practitioner or
19 an employee of the Department; and
- 20 11. Any other basis indicating a violation of the applicable
21 laws and regulations as identified by the Department.
- 22 F. Disciplinary actions against a licensee may include the
23 imposition of monetary penalties, which may be assessed by the
24 Department.

1 G. ~~Penalties~~ In addition to any other penalties provided by
2 law, penalties for sales by a medical marijuana business to persons
3 other than those allowed by law occurring within any two-year time
4 period may include an initial administrative fine of One Thousand
5 Dollars (\$1,000.00) for a first violation and ~~a~~ an administrative
6 fine of Five Thousand Dollars (\$5,000.00) for any subsequent
7 violation. The medical marijuana business may be subject to a
8 revocation of any license granted pursuant to ~~this act~~ the Oklahoma
9 Medical Marijuana and Patient Protection Act upon a showing that the
10 violation was willful or grossly negligent.

11 H. 1. ~~First~~ In addition to any other penalties provided under
12 the Uniform Controlled Dangerous Substance Act, a first offense for
13 intentional and impermissible diversion of medical marijuana,
14 concentrate, or products by a patient or caregiver to an
15 unauthorized person ~~shall not be punished under a criminal statute~~
16 ~~but~~ may be subject to ~~a~~ an administrative fine of Two Hundred
17 Dollars (\$200.00).

18 2. ~~The~~ In addition to any other penalties provided under the
19 Uniform Controlled Dangerous Substance Act, the second offense for
20 impermissible diversion of medical marijuana, concentrate, or
21 products by a patient or caregiver to an unauthorized person ~~shall~~
22 ~~not be punished under a criminal statute but~~ may be subject to ~~a~~ an
23 administrative fine of not to exceed Five Hundred Dollars (\$500.00)
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1 and may result in revocation of the license upon a showing that the
2 violation was willful or grossly negligent.

3 I. The following persons or entities may request a hearing to
4 contest an action or proposed action of the Department:

5 1. A medical marijuana business, research facility or education
6 facility licensee whose license has been summarily suspended or who
7 has received a notice of contemplated action to suspend or revoke a
8 license or take other disciplinary action; and

9 2. A patient or caregiver licensee whose license has been
10 summarily suspended or who has received notice of contemplated
11 action to suspend or revoke a license or take other disciplinary
12 action.

13 J. All hearings held pursuant to this section shall be in
14 accordance with the Oklahoma Administrative Procedures Act, Section
15 250 et seq. of Title 75 of the Oklahoma Statutes.

16 SECTION 4. This act shall become effective November 1, 2021.

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