

1 STATE OF OKLAHOMA

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

3 SENATE BILL 862

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 clarifying language; and providing an effective date.

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

20 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as  
21 last amended by Section 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp.  
22 2020, Section 1247), is amended to read as follows:

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

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

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

21 B. All buildings and other properties, or portions thereof,  
22 owned or operated by this state shall be designated as nonsmoking.  
23 The tobacco smoking provisions of this subsection shall not apply to  
24 veterans centers operated by this state pursuant to the provisions

1 of Section 221 et seq. of Title 72 of the Oklahoma Statutes, which  
2 shall be designated nonsmoking effective January 1, 2015, at which  
3 time veterans centers may establish outdoor designated smoking areas  
4 for resident veterans only. Smoking tobacco shall only be allowed  
5 in designated outdoor smoking areas.

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

15 D. All educational facilities or portions thereof as defined in  
16 the Smoking in Public Places and Indoor Workplaces Act and all  
17 educational facilities as defined in the 24/7 Tobacco-free Schools  
18 Act shall be designated as nonsmoking as provided for in Section 1-  
19 1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings  
20 and grounds, or portions thereof, owned or operated by an  
21 institution within The Oklahoma State System of Higher Education may  
22 be designated as tobacco and marijuana free, including smoking or  
23 smokeless tobacco or smokable or vaporable marijuana, by the  
24 institution upon adoption of a policy stating the restrictions for

1 the institution and an intent to enforce the penalty for violations  
2 as set forth in subsection M of this section.

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

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

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

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

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

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

21 4. Workplaces where only the owner or operator of the  
22 workplace, or the immediate family of the owner or operator,  
23 performs any work in the workplace, and the workplace has only  
24 incidental public access. "Incidental public access" means that a

1 place of business has only an occasional person, who is not an  
2 employee, present at the business to transact business or make a  
3 delivery. It does not include businesses that depend on walk-in  
4 customers for any part of their business;

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

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

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

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

18 9. A facility operated by a post or organization of past or  
19 present members of the Armed Forces of the United States which is  
20 exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or  
21 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section  
22 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized  
23 exclusively by its members and their families and for the conduct of  
24

1 post or organization nonprofit operations except during an event or  
2 activity which is open to the public; and

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

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

15 I. If tobacco smoking is to be permitted in any space exempted  
16 in subsection F or G of this section or in a tobacco smoking room  
17 pursuant to subsection H of this section, such tobacco smoking space  
18 must either occupy the entire enclosed indoor space or, if it shares  
19 the enclosed space with any nonsmoking areas, the tobacco smoking  
20 space shall be fully enclosed, exhausted directly to the outside  
21 with no air from the tobacco smoking space circulated to any  
22 nonsmoking area, and under negative air pressure so that no tobacco  
23 smoke can drift or circulate into a nonsmoking area when a door to  
24 an adjacent nonsmoking area is opened. Air from a tobacco smoking

1 room shall not be exhausted within fifteen (15) feet of any  
2 entrance, exit or air intake. Any employer may choose a more  
3 restrictive tobacco smoking policy, including being totally tobacco  
4 smoke free.

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

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

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

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

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

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

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

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

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

22 B. 1. Unless a failure to do so would cause an employer the  
23 potential to lose a monetary or licensing-related benefit under  
24 federal law or regulations, an employer may not discriminate against

1 a person in hiring, termination or imposing any term or condition of  
2 employment or otherwise penalize a person based upon ~~either:~~

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

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

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

21 D. No licensed medical marijuana ~~license holder~~ patient may be  
22 denied custody of or visitation or parenting time with a minor  
23 child, and there is no presumption of neglect or child endangerment  
24 for conduct allowed under this law, unless the behavior of the

1 person creates an unreasonable danger to the safety of the minor  
2 child.

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

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

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

20 3. For purposes of this section, "~~retail marijuana~~  
21 ~~establishment~~" means ~~an entity licensed by the State Department of~~  
22 ~~Health as a medical marijuana dispensary. Retail marijuana~~  
23 ~~establishment~~ a medical marijuana dispensary does not include those  
24 other entities licensed by the Department as marijuana-licensed

1 premises, medical marijuana businesses or other facilities or  
2 locations where marijuana or any product containing marijuana or its  
3 by-products are cultivated, grown, processed, stored or  
4 manufactured.

5 G. The location of any ~~retail marijuana establishment~~ medical  
6 marijuana dispensary is specifically prohibited within one thousand  
7 (1,000) feet of any public or private school entrance. The distance  
8 specified shall be measured from any entrance of the school to the  
9 nearest property line point of the medical marijuana dispensary.

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

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

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