STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1030

By: Paxton

COMMITTEE SUBSTITUTE

An Act relating to marijuana; amending 63 O.S. 2011, Section 2-402, as last amended by Section 3, State Question No. 780, Initiative Petition No. 404 (63 O.S. Supp. 2018, Section 2-402), which relates to prohibited acts; modifying certain penalty; amending Provision No. 1, State Question No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2018, Section 420), which relates to medical marijuana license; modifying persons to whom law is applicable; modifying information retained by the State Department of Health; allowing municipalities to pass certain ordinances; clarifying language; amending Provision No. 6, State Question No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2018, Section 425), which relates to discrimination against a medical marijuana license holder; broadening conditions for certain 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.
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

3. It shall be unlawful for any person or business to sell, market, advertise or label any product containing ephedrine, its salts, optical isomers, or salts of optical isomers, for the indication of stimulation, mental alertness, weight loss, appetite control, muscle development, energy or other indication which is not approved by the pertinent federal OTC Final Monograph, Tentative Final Monograph, or FDA-approved new drug application or its legal
equivalent. In determining compliance with this requirement, the following factors shall be considered:

a. the packaging of the product,

b. the name of the product, and

c. the distribution and promotion of the product, including verbal representations made at the point of sale.

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

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

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

Section 420. A. A person in possession of a state issued medical marijuana license shall be able to:
1. Consume marijuana legally;
2. Legally possess up to three (3) ounces of marijuana on their person;
3. Legally possess six (6) mature marijuana plants;
4. Legally possess six (6) seedling plants;
5. Legally possess one (1) ounce of concentrated marijuana;
6. Legally possess seventy-two (72) ounces of edible marijuana; and
7. Legally possess up to eight (8) ounces of marijuana in their residence.

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

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

D. The Oklahoma State Department of Health shall, within thirty (30) days of passage of this initiative, make available, on their website, in an easy to find location, an application for a medical marijuana license. The license shall be valid
for two (2) years, and the application fee will shall be One Hundred Dollars ($100.00), or Twenty Dollars ($20.00) for individuals on Medicaid, Medicare, or SoonerCare. The methods of payment will shall be provided on the Department's website.

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

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

G. The Oklahoma State Department of Health shall review the medical marijuana application, approve/reject approve or reject the application, and mail the applicant's approval or rejection letter (stating reasons for rejection), stating any reasons for rejection, to the applicant within fourteen (14) days of receipt of the
application. Approved applicants will shall be issued a medical
marijuana license which will shall act as proof of their approved
status. Applications may only be rejected based on the applicant
not meeting stated criteria or improper completion of the
application.

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

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

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

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

K. A caregiver license will shall be made available for
qualified caregivers of a medical marijuana license holder who is
homebound. The caregiver license will shall give the caregiver the
same rights as the medical marijuana license holder. Applicants for
a caregiver license will shall submit proof of the medical marijuana
license holder's license status and homebound status, proof that they are the designee of the medical marijuana license holder, must submit proof that the caregiver is age eighteen (18) or older, and must submit proof the caregiver is an Oklahoma resident. This will shall be the only criteria for a caregiver license.

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

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

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

2. Municipalities may pass ordinances to restrict or prohibit the smoking or vaping of marijuana in any or all public places
within city limits. For the purposes of this paragraph, "public place" means any location which is not private residential premises.

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

Section 425. A. No school or landlord may refuse to enroll or lease to, as appropriate, and may not otherwise penalize a person solely for his or her status as a medical marijuana license holder, unless failing to do so would imminently 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 imminently 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 person's status as a medical marijuana license holder; or, unless the person is employed in a safety-sensitive position.

2. Employers may take action against a holder of a medical marijuana license holder if the holder uses or possesses marijuana while in the holder's place of employment or during the hours of employment. Employers may not take action against the holder of a
medical marijuana license solely based upon the status of an employee as a medical marijuana license holder or the results of a drug test showing positive for marijuana or its components, unless the person is employed in a safety-sensitive position.

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

a. The handling, packaging, processing, storage, disposal or transport of hazardous materials,

b. The operation of a motor vehicle, other vehicle, equipment, machinery or power tools,

c. Repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage,

d. Performing duties in the residential or commercial premises of a customer, supplier or vendor,

e. The operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas and water utilities, power generation or distribution,

f. The extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile,
flammable, combustible materials, elements, chemicals
or any other highly regulated component,
g. preparing or handling food or medicine,
h. law or code enforcement,
i. employees required to carry a firearm,
j. fire response or prevention,
k. emergency medical services, or
l. direct patient care or direct child care.

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

C. For the purposes of medical care, including organ
transplants, a medical marijuana license holder's authorized use of
marijuana must 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 medical marijuana license holder may be denied custody of
or visitation or parenting time with a minor, and there is no
presumption of neglect or child endangerment for conduct allowed
under this law, unless the person's behavior creates an unreasonable
danger to the safety of the minor.
E. No person holding a medical marijuana license may unduly be withheld from holding a state issued license by virtue of their being a medical marijuana license holder. This would include such things as 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.

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

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 does not include those entities licensed by the Department as a grower or processor, or other facilities or locations where marijuana or any product containing marijuana or its byproducts is cultivated, grown, processed or manufactured.

G. The location of any retail marijuana establishment dispensary is specifically prohibited within one thousand (1,000) feet from any public or private school entrance.
H. Research will shall be provided for under this law. A researcher may apply to the Oklahoma State Department of Health for a special research license. That license will The license shall be granted, provided the applicant meets the criteria listed under Section 421.B subsection B of Section 421 of this title. Research license holders will shall be required to file monthly consumption reports to the Oklahoma State Department of Health with amounts of marijuana used for research.

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

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

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

C. If proceeds from the levy authorized by subsection A of this section exceed the budgeted amount for running the regulatory office, any surplus shall be apportioned with seventy-five percent (75%) going to the General Revenue Fund and may only be expended for common education. Twenty-five percent (25%) shall be apportioned to
the Oklahoma State Department of Health and earmarked for drug and alcohol rehabilitation.

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

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

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

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

C. The State Department of Health shall make available all information displayed on medical marijuana licenses, as well as whether or not the license is valid, to law enforcement
electronically through the Oklahoma Law Enforcement Telecommunications System.

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

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

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

SECTION 6. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby
declared to exist, by reason whereof this act shall take effect and
be in full force from and after its passage and approval.

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