

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3728

By: West (Josh)

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5
6 AS INTRODUCED

7 An Act relating to medical marijuana; amending 63
8 O.S. 2021, Section 427.6, which relates to the
9 Oklahoma Medical Marijuana and Patient Protection
10 Act; deleting certain unlawful acts and related
penalties; removing construing provision regarding
criminal prosecutions; and providing an effective
date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2021, Section 427.6, is
15 amended to read as follows:

16 Section 427.6 A. The State Department of Health shall address
17 issues related to the medical marijuana program in Oklahoma
18 including, but not limited to, monitoring and disciplinary actions
19 as they relate to the medical marijuana program.

20 B. 1. The Department or its designee may perform on-site
21 inspections or investigations of a licensee or applicant for any
22 medical marijuana business license, research facility, education
23 facility or waste disposal facility to determine compliance with
24 applicable laws, rules and regulations or submissions made pursuant

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

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

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

22 4. The Department may refer complaints alleging criminal
23 activity that are made against a licensee to appropriate Oklahoma
24 state or local law enforcement authorities.

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

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

8 E. Disciplinary actions may be imposed upon a medical marijuana
9 business licensee for:

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

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

14 3. Failing to allow or impeding entry by authorized
15 representatives of the Department;

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

18 5. Failure to submit or disclose information required by
19 applicable laws, rules or regulations or otherwise requested by the
20 Department;

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

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

1 8. Failure to pay a required monetary penalty;

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

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

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

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

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

19 Penalties for grossly inaccurate or fraudulent reporting occurring
20 within any two-year time period may include an initial fine of Five
21 Thousand Dollars (\$5,000.00) for a first violation and a fine of Ten
22 Thousand Dollars (\$10,000.00) for any subsequent violation. The
23 medical marijuana business may be subject to a revocation of any
24 license granted pursuant to the Oklahoma Medical Marijuana and

1 Patient Protection Act upon a showing that the violation was willful
2 or grossly negligent.

3 H. ~~1. First offense for intentional and impermissible~~
4 ~~diversion of medical marijuana, concentrate, or products by a~~
5 ~~patient or caregiver to an unauthorized person shall not be punished~~
6 ~~under a criminal statute but may be subject to a fine of Two Hundred~~
7 ~~Dollars (\$200.00).~~

8 ~~2. The second offense for impermissible diversion of medical~~
9 ~~marijuana, concentrate, or products by a patient or caregiver to an~~
10 ~~unauthorized person shall not be punished under a criminal statute~~
11 ~~but may be subject to a fine of not to exceed Five Hundred Dollars~~
12 ~~(\$500.00) and may result in revocation of the license upon a showing~~
13 ~~that the violation was willful or grossly negligent.~~

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

1 ~~marijuana business or employee of a medical marijuana business shall~~
2 ~~be subject to a cite and release citation and, upon a finding of~~
3 ~~guilt or a plea of no contest, a fine of Five Thousand Dollars~~
4 ~~(\$5,000.00) and automatic termination of the medical marijuana~~
5 ~~license.~~

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

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

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

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

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

1 application to the Department, the licensee shall be offered a
2 hearing within ten (10) days of the issuance of the order.

3 M. J. All hearings held pursuant to this section shall be in
4 accordance with the Oklahoma Administrative Procedures Act.

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

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