HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3019

By: Fetgatter and **Davis** of the House

and

Leewright of the Senate

COMMITTEE SUBSTITUTE

An Act relating to medical marijuana; amending 63 O.S. 2021, Sections 427.2 and 427.18, which relate to the Oklahoma Medical Marijuana and Patient Protection Act; modifying and adding definitions; requiring certain warnings on container labels; allowing for the use of clear containers; directing dispensaries to use exit package at point of sale and transfer; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 427.2, is amended to read as follows:

Section 427.2 As used in the Oklahoma Medical Marijuana and Patient Protection Act:

1. "Advertising" means the act of providing consideration for the publication, dissemination, solicitation, or circulation, of

visual, oral, or written communication to induce directly or indirectly any person to patronize a particular medical marijuana business, or to purchase particular medical marijuana or a medical marijuana product. Advertising includes marketing, but does not include packaging and labeling;

2. "Authority" means the Oklahoma Medical Marijuana Authority;

3. "Batch number" means a unique numeric or alphanumeric identifier assigned prior to testing to allow for inventory tracking and traceability;

4. "Cannabinoid" means any of the chemical compounds that are active principles of marijuana;

5. "Caregiver" means a family member or assistant who regularly looks after a medical marijuana patient license holder whom a physician attests needs assistance;

6. "Child-resistant" means special packaging that is:

a. designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), and

b. ~~opaque so that the outermost packaging does not allow the product to be seen without opening the packaging material, and~~

~~c.~~ resealable to maintain its child-resistant effectiveness for multiple openings for any product intended for more than a single use or containing multiple servings;

7. "Clone" means a nonflowering plant cut from a mother plant that is capable of developing into a new plant and has shown no signs of flowering;

8. "Commissioner" means the State Commissioner of Health;

9. "Complete application" means a document prepared in accordance with the provisions set forth in the Oklahoma Medical Marijuana and Patient Protection Act, rules promulgated pursuant thereto, and the forms and instructions provided by the Department, including any supporting documentation required and the applicable license application fee;

10. "Department" means the State Department of Health;

11. "Director" means the Executive Director of the Oklahoma Medical Marijuana Authority;

12. "Dispense" means the selling of medical marijuana or a medical marijuana product to a qualified patient or the designated caregiver of the patient that is packaged in a suitable container appropriately labeled for subsequent administration to or use by a qualifying patient;

13. "Dispensary" means a medical marijuana dispensary, an entity that has been licensed by the Department pursuant to the

Oklahoma Medical Marijuana and Patient Protection Act to purchase medical marijuana or medical marijuana products from a licensed medical marijuana commercial grower or licensed medical marijuana processor, to prepare and package noninfused pre-rolled medical marijuana, and to sell medical marijuana or medical marijuana products to licensed patients and caregivers as defined in this section, or sell or transfer products to another licensed dispensary;

14. "Edible medical marijuana product" means any medical-marijuana-infused product for which the intended use is oral consumption including, but not limited to, any type of food, drink or pill;

15. "Entity" means an individual, general partnership, limited partnership, limited liability company, trust, estate, association, corporation, cooperative or any other legal or commercial entity;

16. "Exit package" means an opaque bag that is provided at the point of sale in which pre-packaged medical marijuana is placed;

17. "Flower" means the reproductive organs of the marijuana or cannabis plant referred to as the bud or parts of the plant that are harvested and used for consumption in a variety of medical marijuana products;

~~17.~~ 18. "Flowering" means the reproductive state of the marijuana or cannabis plant in which there are physical signs of flower or budding out of the nodes of the stem;

~~18.~~ 19. "Food-based medical marijuana concentrate" means a medical marijuana concentrate that was produced by extracting cannabinoids from medical marijuana through the use of propylene glycol, glycerin, butter, olive oil, coconut oil or other typical food-safe cooking fats;

~~19.~~ 20. "Harvest batch" means a specifically identified quantity of medical marijuana that is uniform in strain, cultivated utilizing the same cultivation practices, harvested at the same time from the same location and cured under uniform conditions;

~~20.~~ 21. "Harvested marijuana" means postflowering medical marijuana not including trim, concentrate or waste;

~~21.~~ 22. "Heat- or pressure-based medical marijuana concentrate" means a medical marijuana concentrate that was produced by extracting cannabinoids from medical marijuana through the use of heat or pressure;

~~22.~~ 23. "Immature plant" means a nonflowering marijuana plant that has not demonstrated signs of flowering;

~~23.~~ 24. "Inventory tracking system" means the required tracking system that accounts for the entire life span of medical marijuana and medical marijuana products, including any testing samples thereof and medical marijuana waste;

~~24.~~ 25. "Licensed patient" or "patient" means a person who has been issued a medical marijuana patient license by the State Department of Health or Oklahoma Medical Marijuana Authority;

~~25.~~ 26. "Licensed premises" means the premises specified in an application for a medical marijuana business license, medical marijuana research facility license or medical marijuana education facility license pursuant to the Oklahoma Medical Marijuana and Patient Protection Act that are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, test or research medical marijuana or medical marijuana products in accordance with the provisions of the Oklahoma Medical Marijuana and Patient Protection Act and rules promulgated pursuant thereto;

~~26.~~ 27. "Manufacture" means the production, propagation, compounding or processing of a medical marijuana product, excluding marijuana plants, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis;

~~27.~~ 28. "Marijuana" shall have the same meaning as such term is defined in Section 2-101 of this title;

~~28.~~ 29. "Material change" means any change that would affect the qualifications for licensure of an applicant or licensee;

~~29.~~ 30. "Mature plant" means a harvestable female marijuana plant that is flowering;

~~30.~~ 31. "Medical marijuana business (MMB)" means a licensed medical marijuana dispensary, medical marijuana processor, medical

marijuana commercial grower, medical marijuana laboratory, medical marijuana business operator or a medical marijuana transporter;

~~31.~~ 32. "Medical marijuana concentrate" or "concentrate" means a specific subset of medical marijuana that was produced by extracting cannabinoids from medical marijuana. Categories of medical marijuana concentrate include water-based medical marijuana concentrate, food-based medical marijuana concentrate, solvent-based medical marijuana concentrate, and heat- or pressure-based medical marijuana concentrate;

~~32.~~ 33. "Medical marijuana commercial grower" or "commercial grower" means an entity licensed to cultivate, prepare and package medical marijuana or package medical marijuana as pre-rolls, and transfer or contract for transfer medical marijuana and medical marijuana pre-rolls to a medical marijuana dispensary, medical marijuana processor, any other medical marijuana commercial grower, medical marijuana research facility or medical marijuana education facility. A commercial grower may sell seeds, flower or clones to commercial growers pursuant to the Oklahoma Medical Marijuana and Patient Protection Act;

~~33.~~ 34. "Medical marijuana education facility" or "education facility" means a person or entity approved pursuant to the Oklahoma Medical Marijuana and Patient Protection Act to operate a facility providing training and education to individuals involving the cultivation, growing, harvesting, curing, preparing, packaging or

testing of medical marijuana, or the production, manufacture, extraction, processing, packaging or creation of medical-marijuana-infused products or medical marijuana products as described in the Oklahoma Medical Marijuana and Patient Protection Act;

~~34.~~ 35. "Medical-marijuana-infused product" means a product infused with medical marijuana including, but not limited to, edible products, ointments and tinctures;

~~35.~~ 36. "Medical marijuana product" or "product" means a product that contains cannabinoids that have been extracted from plant material or the resin therefrom by physical or chemical means and is intended for administration to a qualified patient including, but not limited to, oils, tinctures, edibles, pills, topical forms, gels, creams, vapors, patches, liquids, and forms administered by a nebulizer, excluding live plant forms which are considered medical marijuana;

~~36.~~ 37. "Medical marijuana processor" means a person or entity licensed pursuant to the Oklahoma Medical Marijuana and Patient Protection Act to operate a business including the production, manufacture, extraction, processing, packaging or creation of concentrate, medical-marijuana-infused products or medical marijuana products as described in the Oklahoma Medical Marijuana and Patient Protection Act;

~~37.~~ 38. "Medical marijuana research facility" or "research facility" means a person or entity approved pursuant to the Oklahoma

Medical Marijuana and Patient Protection Act to conduct medical marijuana research. A medical marijuana research facility is not a medical marijuana business;

~~38.~~ 39. "Medical marijuana testing laboratory" or "laboratory" means a public or private laboratory licensed pursuant to the Oklahoma Medical Marijuana and Patient Protection Act to conduct testing and research on medical marijuana and medical marijuana products;

~~39.~~ 40. "Medical marijuana transporter" or "transporter" means a person or entity that is licensed pursuant to the Oklahoma Medical Marijuana and Patient Protection Act. A medical marijuana transporter does not include a medical marijuana business that transports its own medical marijuana, medical marijuana concentrate or medical marijuana products to a property or facility adjacent to or connected to the licensed premises if the property is another licensed premises of the same medical marijuana business;

~~40.~~ 41. "Medical marijuana waste" or "waste" means unused, surplus, returned or out-of-date marijuana, plant debris of the plant of the genus Cannabis including dead plants and all unused plant parts and roots, except the term shall not include roots, stems, stalks and fan leaves;

~~41.~~ 42. "Medical use" means the acquisition, possession, use, delivery, transfer or transportation of medical marijuana, medical marijuana products, medical marijuana devices or paraphernalia

relating to the administration of medical marijuana to treat a licensed patient;

~~42.~~ 43. "Mother plant" means a marijuana plant that is grown or maintained for the purpose of generating clones, and that will not be used to produce plant material for sale to a medical marijuana processor or medical marijuana dispensary;

~~43.~~ 44. "Oklahoma physician" or "physician" means a physician licensed by and in good standing with the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners or the Board of Podiatric Medical Examiners;

~~44.~~ 45. "Oklahoma resident" means an individual who can provide proof of residency as required by the Oklahoma Medical Marijuana and Patient Protection Act;

~~45.~~ 46. "Owner" means, except where the context otherwise requires, a direct beneficial owner including, but not limited to, all persons or entities as follows:

a. all shareholders owning an interest of a corporate entity and all officers of a corporate entity,

b. all partners of a general partnership,

c. all general partners and all limited partners that own an interest in a limited partnership,

d. all members that own an interest in a limited liability company,

e. all beneficiaries that hold a beneficial interest in a trust and all trustees of a trust,

f. all persons or entities that own interest in a joint venture,

g. all persons or entities that own an interest in an association,

h. the owners of any other type of legal entity, and

i. any other person holding an interest or convertible note in any entity which owns, operates or manages a licensed facility;

~~46.~~ 47. "Package" or "packaging" means any container or wrapper that may be used by a medical marijuana business to enclose or contain medical marijuana;

~~47.~~ 48. "Person" means a natural person, partnership, association, business trust, company, corporation, estate, limited liability company, trust or any other legal entity or organization, or a manager, agent, owner, director, servant, officer or employee thereof, except that "person" does not include any governmental organization;

~~48.~~ 49. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant, except that the term "pesticide" shall not include any article that

is a "new animal drug" as designated by the United States Food and Drug Administration;

~~49.~~ 50. "Production batch" means:

a. any amount of medical marijuana concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of harvest batch of medical marijuana, or

b. any amount of medical marijuana product of the same exact type, produced using the same ingredients, standard operating procedures and the same production batch of medical marijuana concentrate;

~~50.~~ 51. "Public institution" means any entity established or controlled by the federal government, state government, or a local government or municipality including, but not limited to, institutions of higher education or related research institutions;

~~51.~~ 52. "Public money" means any funds or money obtained by the holder from any governmental entity including, but not limited to, research grants;

~~52.~~ 53. "Recommendation" means a document that is signed or electronically submitted by a physician on behalf of a patient for the use of medical marijuana pursuant to the Oklahoma Medical Marijuana and Patient Protection Act;

~~53.~~ 54. "Registered to conduct business" means a person that has provided proof that the business applicant or licensee is in good standing with the Oklahoma Secretary of State;

~~54.~~ 55. "Remediation" means the process by which a harvest batch or production batch that fails testing undergoes a procedure to remedy the harvest batch or production batch and is retested in accordance with Oklahoma laws, rules and regulations;

~~55.~~ 56. "Research project" means a discrete scientific endeavor to answer a research question or a set of research questions related to medical marijuana and is required for a medical marijuana research license. A research project shall include a description of a defined protocol, clearly articulated goals, defined methods and outputs, and a defined start and end date. The description shall demonstrate that the research project will comply with all requirements in the Oklahoma Medical Marijuana and Patient Protection Act and rules promulgated pursuant thereto. All research and development conducted by a medical marijuana research facility shall be conducted in furtherance of an approved research project;

~~56.~~ 57. "Revocation" means the final decision by the Department that any license issued pursuant to the Oklahoma Medical Marijuana and Patient Protection Act is rescinded because the individual or entity does not comply with the applicable requirements set forth in the Oklahoma Medical Marijuana and Patient Protection Act or rules promulgated pursuant thereto;

~~57.~~ 58. "School" means a public or private elementary, middle or high school used for school classes and instruction. A homeschool, daycare or ~~child-care~~ child care facility shall not be considered a "school" as used in the Oklahoma Medical Marijuana and Patient Protection Act;

~~58.~~ 59. "Shipping container" means a hard-sided container with a lid or other enclosure that can be secured in place. A shipping container is used solely for the transport of medical marijuana, medical marijuana concentrate, or medical marijuana products between medical marijuana businesses, a medical marijuana research facility, or a medical marijuana education facility;

~~59.~~ 60. "Solvent-based medical marijuana concentrate" means a medical marijuana concentrate that was produced by extracting cannabinoids from medical marijuana through the use of a solvent approved by the Department;

~~60.~~ 61. "State Question" means Oklahoma State Question No. 788, Initiative Petition No. 412, approved by a majority vote of the citizens of Oklahoma on June 26, 2018;

~~61.~~ 62. "Strain" means the name given to a particular variety of medical marijuana that is based on a combination of factors which may include, but is not limited to, botanical lineage, appearance, chemical profile and accompanying effects. An example of a "strain" would be "OG Kush" or "Pineapple Express";

~~62.~~ 63. "THC" means tetrahydrocannabinol, which is the primary psychotropic cannabinoid in marijuana formed by decarboxylation of naturally tetrahydrocannabinolic acid, which generally occurs by exposure to heat;

~~63.~~ 64. "Transporter agent" means a person who transports medical marijuana or medical marijuana products as an employee of a licensed medical marijuana business and holds a transporter agent license specific to that business pursuant to the Oklahoma Medical Marijuana and Patient Protection Act;

~~64.~~ 65. "Universal symbol" means the image established by the State Department of Health or Oklahoma Medical Marijuana Authority and made available to licensees through its website indicating that the medical marijuana or the medical marijuana product contains THC;

~~65.~~ 66. "Usable marijuana" means the dried leaves, flowers, oils, vapors, waxes and other portions of the marijuana plant and any mixture or preparation thereof, excluding seeds, roots, stems, stalks and fan leaves; and

~~66.~~ 67. "Water-based medical marijuana concentrate" means a concentrate that was produced by extracting cannabinoids from medical marijuana through the use of only water, ice or dry ice.

SECTION 2. AMENDATORY 63 O.S. 2021, Section 427.18, is amended to read as follows:

Section 427.18 A. An Oklahoma medical marijuana business shall not sell, transfer or otherwise distribute medical marijuana or

medical marijuana product that has not been packaged and labeled in accordance with this section and rules promulgated by the State Commissioner of Health.

B. A medical marijuana dispensary shall return medical marijuana and medical marijuana product that does not meet packaging or labeling requirements in this section or rules promulgated pursuant thereto to the entity who transferred it to the dispensary. The medical marijuana dispensary shall document to whom the item was returned, what was returned and the date of the return or dispose of any usable marijuana that does not meet these requirements in accordance with the Oklahoma Medical Marijuana and Patient Protection Act.

C. 1. Medical marijuana packaging shall be packaged to minimize its appeal to children and shall not depict images other than the business name logo of the medical marijuana producer and image of the product.

2. A medical marijuana business shall not place any content on a container in a manner that reasonably appears to target individuals under the age of twenty-one (21) including, but not limited to, cartoon characters or similar images.

3. Labels on a container shall not include any false or misleading statements.

4. No container shall be intentionally or knowingly labeled so as to cause a reasonable patient confusion as to whether the medical

marijuana, medical marijuana concentrate or medical marijuana product is a trademarked product or labeled in a manner that violates any federal trademark law or regulation. The label on the container shall include a warning that states the following:

a. "For use by licensed medical marijuana patients only", and

b. "Keep out of reach of children".

5. The label on the container shall not make any claims regarding health or physical benefits to the patient.

6. ~~All~~ The container itself may be clear in order to allow licensed medical marijuana patients and licensed medical marijuana caregivers the ability to view the product inside the container but shall be child-resistant, as defined in Section 427.2 of this title.

7. At the point of sale and transfer of any medical marijuana, medical marijuana concentrate ~~and~~, or medical marijuana products to a licensed medical marijuana patient or licensed medical marijuana caregiver, the dispensary shall ~~be in a child-resistant container at the point of transfer to the patient or caregiver~~ place the medical marijuana, medical marijuana concentrate, or medical marijuana products in an exit package, as such term is defined in Section 427.2 of this title.

D. The State Department of Health shall develop minimum standards for packaging and labeling of medical marijuana, medical marijuana concentrate, and medical marijuana products. Such

standards shall include, but not be limited to, the required contents of labels to be affixed to all medical marijuana, medical marijuana concentrate, and medical marijuana products prior to transfer to a licensed patient or caregiver, which shall include, at a minimum:

1. THC and other cannabinoid potency, and terpenoid potency;

2. A statement indicating that the product has been tested for contaminants;

3. One or more product warnings to be determined by the Department; and

4. Any other information the Department deems necessary.

SECTION 3. This act shall become effective November 1, 2022.

COMMITTEE REPORT BY: COMMITTEE ON ALCOHOL, TOBACCO AND CONTROLLED SUBSTANCES, dated 03/03/2022 - DO PASS, As Amended and Coauthored.