STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2660 By: Echols

COMMITTEE SUBSTITUTE

An Act relating to medical marijuana; amending Section 4, State Question No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2020, Section 423), which relates to medical marijuana processor licensing requirements; providing for the issuance of volatile and nonvolatile processor licenses; updating language; amending Section 17, Chapter 11, O.S.L. 2019, as amended by Section 4, Chapter 312, O.S.L. 2019 (63 O.S. Supp. 2020, Section 427.17), which relates to the Oklahoma Medical Marijuana and Patient Protection Act; modifying test batch requirements for licensed medical marijuana commercial growers and processors; defining certain term; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, State Question No. 788, Initiative Petition No. 412 (63 O.S. Supp. 2020, Section 423), is amended to read as follows:

Section 423. A. The ~~Oklahoma~~ State Department of Health shall within thirty (30) days of passage of this initiative, make available, on ~~their~~ its website, in an easy-to-find location, an application for a medical marijuana ~~processing~~ processor license.

The Department shall be authorized to issue two types of medical marijuana processor licenses:

1. Nonvolatile, which involves using any solvent in the extraction process that is not a volatile solvent, including carbon dioxide; and

2. Volatile, which involves using any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures and may also include extraction using nonvolatile solvents or no solvents.

The application fee for a nonvolatile or volatile medical marijuana processor license shall be Two Thousand Five Hundred Dollars ($2,500.00) ~~and methods~~. Methods of payment ~~will~~ shall be provided on the website. The ~~Oklahoma State~~ Department ~~of Health~~ shall have two (2) weeks to review the application, approve or reject the application, and mail the approval/rejection letter (if rejected, stating reasons for rejection) to the applicant.

B. The ~~Oklahoma State~~ Department ~~of Health must~~ shall approve all applications which meet the following criteria:

1. Applicant must be age twenty-five (25) or older;

2. Any applicant, applying as an individual, must show residency in the State of Oklahoma;

3. All applying entities must show that all members, managers, and board members are Oklahoma residents;

4. An applying entity may show ownership of non-Oklahoma residents, but that percentage ownership may not exceed twenty-five percent (25%);

5. All applying individuals or entities must be registered to conduct business in the State of Oklahoma; and

6. All applicants must disclose all ownership~~;~~.

~~7. Applicant(s)~~ An applicant with ~~only~~ a nonviolent felony conviction~~(s)~~ in the last two (2) years~~,~~ or any other felony conviction in five (5) years, inmates, or any person currently incarcerated may not qualify for a medical marijuana ~~processing~~ processor license.

C. A licensed medical marijuana processor may take marijuana plants and distill or process these plants into concentrates, edibles, and other forms for consumption. As required by subsection D of this section, the ~~Oklahoma State~~ Department ~~of Health will~~ shall, within sixty (60) days of passage of this initiative, make available a set of standards which will be used by licensed medical marijuana processors in the preparation of edible marijuana products. This should be in line with current food preparation guidelines and no excessive or punitive rules may be established by the ~~Oklahoma State~~ Department ~~of Health~~. Once a year, the ~~Oklahoma State~~ Department ~~of Health~~ may inspect a processing operation and determine its compliance with the preparation standards. If deficiencies are found, a written report of ~~deficiency will~~ the

deficiencies shall be issued to the licensed medical marijuana processor. The licensed medical marijuana processor ~~will~~ shall have one (1) month to correct the deficiency or be subject to a fine of Five Hundred Dollars ($500.00) for each deficiency. A licensed medical marijuana processor may sell marijuana products it creates to a licensed retailer, or any other licensed medical marijuana processor. Further, these sales ~~will~~ shall be considered wholesale sales and not subject to taxation. Under no circumstances may a licensed medical marijuana processor sell marijuana, or any marijuana product, directly to a medical marijuana ~~license holder~~ patient licensee or caregiver licensee. However, a licensed medical marijuana processor may process cannabis into a concentrated form~~,~~ for a medical ~~license holder,~~ marijuana patient licensee for a fee. ~~Processors will~~ Licensed medical marijuana processors shall be required to complete a monthly yield and sales report to the ~~Oklahoma State~~ Department ~~of Health~~. This report will be due on the ~~15th~~ fifteenth of each month and provide reporting on the previous month. This report ~~will~~ shall detail the amount of marijuana purchased in pounds, the amount of marijuana cooked or processed in pounds, and the amount of waste in pounds. Additionally, this report ~~will~~ shall show total wholesale sales in dollars. The ~~Oklahoma State~~ Department ~~of Health will~~ shall have oversight and auditing responsibilities to ensure that all marijuana being grown is accounted for. A licensed medical marijuana processor ~~will~~ shall

only be subject to a penalty if a gross discrepancy exists and cannot be explained. Penalties for fraudulent reporting occurring within any ~~2 year~~ two-year time period ~~will~~ shall be an initial fine of Five Thousand Dollars ($5,000.00) ~~(first)~~ for a first offense and revocation of ~~licensing (second)~~ the medial marijuana processor license for a second offense.

D. The Department shall oversee inspection and compliance of licensed medical marijuana processors producing products with marijuana as an additive. The ~~Oklahoma State~~ Department ~~of Health will~~ shall be compelled to, within thirty (30) days of passage of this initiative, appoint a board of twelve (12) Oklahoma residents, who are marijuana industry experts, to create a list of food safety standards for processing and handling medical marijuana in Oklahoma. These standards ~~will~~ shall be adopted by the ~~agency~~ Department and the ~~agency~~ Department can enforce these standards for licensed medical marijuana processors. The ~~agency will~~ Department shall develop a standards review procedure and these standards ~~can~~ may be altered by calling another board of twelve (12) Oklahoma marijuana industry experts. A signed letter of twenty (20) operating licensed medical marijuana processors would constitute a need for a new board and ~~standard~~ standards review.

E. If it becomes permissible~~,~~ under federal law, marijuana may be moved across state lines.

F. Any device used for the consumption of medical marijuana shall be considered legal to be sold, manufactured, distributed, and possessed. No merchant, wholesaler, manufacturer, or individual may unduly be harassed or prosecuted for selling, manufacturing, or possession of medical marijuana paraphernalia.

SECTION 2. AMENDATORY Section 17, Chapter 11, O.S.L. 2019, as amended by Section 4, Chapter 312, O.S.L. 2019 (63 O.S. Supp. 2020, Section 427.17), is amended to read as follows:

Section 427.17 A. There is hereby created a medical marijuana testing laboratory license as a category of the medical marijuana business license. The Authority is hereby enabled to monitor, inspect and audit a licensed testing laboratory under this act.

B. The Authority is hereby authorized to contract with a private laboratory for the purpose of conducting compliance testing of medical marijuana testing laboratories licensed in this state. Any such laboratory under contract for compliance testing shall be prohibited from conducting any other commercial medical marijuana testing in this state.

C. The Authority shall have the authority to develop acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, and chemical identification and substances used in bona fide research methods so long as it complies with this act.

D. A person who is a direct beneficial owner or an indirect beneficial owner of a medical marijuana dispensary, medical marijuana commercial grower, or medical marijuana processor shall not be an owner of a laboratory.

E. A laboratory and a laboratory applicant shall comply with all applicable local ordinances, including but not limited to zoning, occupancy, licensing and building codes.

F. A separate license shall be required for each specific laboratory.

G. A medical marijuana testing laboratory license may be issued to a person who performs testing and research on medical marijuana and medical marijuana products for medical marijuana businesses, medical marijuana research facilities, medical marijuana education facilities, and testing and research on marijuana and marijuana products grown or produced by a patient or caregiver on behalf of a patient, upon verification of registration. No state-approved medical marijuana testing facility shall operate unless a medical laboratory director is on site during operational hours.

H. A laboratory applicant shall comply with the application requirements of this section and shall submit such other information as required for a medical marijuana business applicant, in addition to any information the Authority may request for initial approval and periodic evaluations during the approval period.

I. A medical marijuana testing laboratory may accept samples of medical marijuana, medical marijuana concentrate or medical marijuana product from a medical marijuana business for testing and research purposes only, which purposes may include the provision of testing services for samples submitted by a medical marijuana business for product development. The Department may require a medical marijuana business to submit a sample of medical marijuana, medical marijuana concentrate or medical marijuana product to a medical marijuana testing laboratory upon demand.

J. A medical marijuana testing laboratory may accept samples of medical marijuana, medical marijuana concentrate or medical marijuana product from an individual person for testing only under the following conditions:

1. The individual person is a patient or caregiver pursuant to this act or is a participant in an approved clinical or observational study conducted by a research facility; and

2. The medical marijuana testing laboratory shall require the patient or caregiver to produce a valid patient license and current and valid photo identification.

K. A medical marijuana testing laboratory may transfer samples to another medical marijuana testing laboratory for testing. All laboratory reports provided to or by a medical marijuana business or to a patient or caregiver shall identify the medical marijuana testing laboratory that actually conducted the test.

L. A medical marijuana testing laboratory may utilize a licensed medical marijuana transporter to transport samples of medical marijuana, medical marijuana concentrate and medical marijuana product for testing, in accordance with this act and the rules adopted pursuant thereto, between the originating medical marijuana business requesting testing services and the destination laboratory performing testing services.

M. The medical marijuana testing laboratory shall establish policies to prevent the existence of or appearance of undue commercial, financial or other influences that may diminish the competency, impartiality and integrity of the testing processes or results of the laboratory, or that may diminish public confidence in the competency, impartiality and integrity of the testing processes or results of the laboratory. At a minimum, employees, owners or agents of a medical marijuana testing laboratory who participate in any aspect of the analysis and results of a sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any ongoing financial, employment, personal or business relationship with the medical marijuana business that provided the sample.

N. The Department, pursuant to rules promulgated by the State Commissioner of Health, shall develop standards, policies and procedures as necessary for:

1. The cleanliness and orderliness of a laboratory premises and the location of the laboratory in a secure location, and inspection, cleaning and maintenance of any equipment or utensils used for the analysis of test samples;

2. Testing procedures, testing standards for cannabinoid and terpenoid potency and safe levels of contaminants, and remediation procedures;

3. Controlled access areas for storage of medical marijuana and medical marijuana product test samples, waste and reference standards;

4. Records to be retained and computer systems to be utilized by the laboratory;

5. The possession, storage and use by the laboratory of reagents, solutions and reference standards;

6. A certificate of analysis (COA) for each lot of reference standard;

7. The transport and disposal of unused marijuana, marijuana products and waste;

8. The mandatory use by a laboratory of an inventory tracking system to ensure all test batches or samples containing medical marijuana, medical marijuana concentrate or medical marijuana products are identified and tracked from the point they are transferred from a medical marijuana business, a patient or a caregiver through the point of transfer, destruction or disposal.

The inventory tracking system reporting shall include the results of any tests that are conducted on medical marijuana, medical marijuana concentrate or medical marijuana product;

9. Standards of performance;

10. The employment of laboratory personnel;

11. A written standard operating procedure manual to be maintained and updated by the laboratory;

12. The successful participation in a Department-approved proficiency testing program for each testing category listed in this section, in order to obtain and maintain certification;

13. The establishment of and adherence to a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported;

14. The establishment by the laboratory of a system to document the complete chain of custody for samples from receipt through disposal;

15. The establishment by the laboratory of a system to retain and maintain all required records, including business records, and processes to ensure results are reported in a timely and accurate manner; and

16. Any other aspect of laboratory testing of medical marijuana or medical marijuana product deemed necessary by the Department.

O. A medical marijuana testing laboratory shall promptly provide the Department or designee of the Department access to a

report of a test and any underlying data that is conducted on a sample at the request of a medical marijuana business or qualified patient. A medical marijuana testing laboratory shall also provide access to the Department or designee of the Department to laboratory premises and to any material or information requested by the Department to determine compliance with the requirements of this section.

P. A medical marijuana testing laboratory shall retain all results of laboratory tests conducted on marijuana or products for a period of at least two (2) years and shall make them available to the Department upon request.

Q. A medical marijuana testing laboratory shall test samples from each harvest batch or product batch, as appropriate, of medical marijuana, medical marijuana concentrate and medical marijuana product for each of the following categories of testing, consistent with standards developed by the Commissioner:

1. Microbials;

2. Mycotoxins;

3. Residual solvents;

4. Pesticides;

5. Tetrahydrocannabinol (THC) and other cannabinoid potency;

6. Terpenoid potency; and

7. Heavy metals.

R. A test batch shall not exceed ten (10) pounds of usable marijuana or medical marijuana product, as appropriate. A grower shall separate each harvest lot of usable marijuana into harvest batches containing no more than ~~ten (10)~~ twenty-five (25) pounds. A processor shall separate each medical marijuana production lot into production batches containing no more than ~~ten (10) pounds~~ four (4) liters of distillate and for final products, the Oklahoma Medical Marijuana Authority shall be authorized to promulgate rules on final products as necessary. Provided, however, the Authority shall not require testing of final products more often than every two hundred (200) grams of THC, unless the batch size processed is less than two hundred (200) grams of THC. As used in this subsection, "final products" shall include, but not be limited to, cookies, brownies, candies, gummies and chocolates.

S. Medical marijuana testing laboratory licensure shall be contingent upon successful on-site inspection, successful participation in proficiency testing and ongoing compliance with the applicable requirements in this section.

T. A medical marijuana testing laboratory shall be inspected prior to initial licensure and annually thereafter by an inspector approved by the Authority.

U. Beginning on a date determined by the Commissioner, not later than January 1, 2020, medical marijuana testing laboratory licensure shall be contingent upon accreditation by the NELAC

Institute (TNI), ANSI/ASQ National Accreditation Board or another accrediting body approved by the Commissioner, and any applicable standards as determined by the Department.

V. A commercial grower shall not transfer or sell medical marijuana and a processor shall not transfer, sell or process into a concentrate or product any medical marijuana, medical marijuana concentrate or medical marijuana product unless samples from each harvest batch or production batch from which that medical marijuana, medical marijuana concentrate or medical marijuana product was derived has been tested by a medical marijuana testing facility for contaminants and passed all contaminant tests required by this act.

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

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