

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 2116

By: Johnson (Constance)

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5
6 AS INTRODUCED

7 An Act relating to marihuana legalization, taxation
8 and regulation; providing definitions; legalizing
9 possession, consumption, cultivation, acquisition,
10 and transportation of marihuana under certain
11 circumstances; prohibiting cultivation by persons
12 under certain age; prohibiting cultivation in public
13 view; requiring reasonable precautions for
14 cultivation; restricting cultivation to certain
15 properties; prohibiting purchases of marihuana by
16 certain persons; permitting retail distribution of
17 marihuana; permitting commercial cultivation and
18 distribution of marihuana; permitting State Board of
19 Health to impose penalties for certain violations;
20 directing State Board of Health to adopt certain
21 rules; providing standards for rules; prohibiting
22 provision of certain information by consumers;
23 providing certain registration; requiring annual
24 renewal of registrations; directing State Department
of Health to process applications within certain time
period; requiring Department to distribute
applications to municipalities; providing standards
for denial of applications; permitting State
Department of Health to inspect certain facilities
and records; permitting employers to restrict use of
marihuana by employees; prohibiting driving under
influence of marihuana; prohibiting certain
transfers; permitting certain entities to restrict
use and possession of marihuana in certain areas;
permitting use of marihuana for scientific research;
creating Marihuana Legalization Revolving Fund;
directing distribution of certain revenues; providing
punishments for violations by certain persons;
establishing excise tax on marihuana; permitting
Oklahoma Tax Commission to adjust certain rate;
requiring certain facilities to pay excise tax on

1 certain date; providing for severability; providing
2 for codification; and providing an effective date.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-112 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 As used in this act:

9 1. "Consumer" means a person twenty-one (21) years of age or
10 older who purchases marihuana or marihuana products for personal use
11 by persons twenty-one (21) years of age or older, but not for resale
12 to others;

13 2. "Department" means the State Department of Health;

14 3. "Industrial hemp" means the plant of the genus cannabis and
15 any part of such plant, whether growing or not, with a delta-9
16 tetrahydrocannabinol concentration that does not exceed three-tenths
17 of one percent (0.30%) on a dry weight basis;

18 4. "Locality" means a municipality or, in reference to a
19 location outside the boundaries of a municipality, a county;

20 5. "Local regulatory authority" means the office or entity
21 designated to process marihuana establishment applications by a
22 municipality or, in reference to a location outside the boundaries
23 of a municipality, a county;

1 6. "Marihuana" means all parts of the plant of the genus
2 cannabis, the seeds thereof, the resin extracted from any part of
3 the plant, and every compound, manufacture, salt, derivative,
4 mixture, or preparation of the plant, its seeds, or its resin,
5 including marihuana concentrate. "Marihuana" does not include
6 industrial hemp, nor does it include fiber produced from the stalks,
7 oil, or cake made from the seeds of the plant, sterilized seed of
8 the plant which is incapable of germination, or the weight of any
9 other ingredient combined with marihuana to prepare topical or oral
10 administrations, food, drink, or other product;

11 7. "Marihuana accessories" means any equipment, products, or
12 materials of any kind which are used, intended for use, or designed
13 for use in planting, propagating, cultivating, growing, harvesting,
14 composting, manufacturing, compounding, converting, producing,
15 processing, preparing, testing, analyzing, packaging, repackaging,
16 storing, vaporizing, or containing marihuana, or for ingesting,
17 inhaling, or otherwise introducing marihuana into the human body;

18 8. "Marihuana cultivation facility" means an entity registered
19 to cultivate, prepare, and package marihuana and sell marihuana to
20 retail marihuana stores, to marihuana product manufacturing
21 facilities, and to other marihuana cultivation facilities, but not
22 to consumers. A marihuana cultivation facility may not produce
23 marihuana concentrates, tinctures, extracts, or other marihuana
24 products;

1 9. "Marihuana establishment" means a marihuana cultivation
2 facility, a marihuana testing facility, a marihuana product
3 manufacturing facility, or a retail marihuana store;

4 10. "Marihuana product manufacturing facility" means an entity
5 registered to purchase marihuana; manufacture, prepare, and package
6 marihuana products; and sell marihuana and marihuana products to
7 other marihuana product manufacturing facilities and to retail
8 marihuana stores, but not to consumers;

9 11. "Marihuana products" means concentrated marihuana products
10 and marihuana products that are comprised of marihuana and other
11 ingredients and are intended for use or consumption, such as, but
12 not limited to, edible products, ointments, and tinctures;

13 12. "Marihuana testing facility" means an entity registered to
14 analyze and certify the safety and potency of marihuana;

15 13. "Public place" means any place to which the general public
16 has access;

17 14. "Retail marihuana store" means an entity registered to
18 purchase marihuana from marihuana cultivation facilities and
19 marihuana and marihuana products from marihuana product
20 manufacturing facilities and to sell marihuana and marihuana
21 products to consumers; and

22 15. "Unreasonably impracticable" means that the measures
23 necessary to comply with the regulations require such a high
24 investment of risk, money, time, or any other resource or asset that

1 the operation of a marihuana establishment is not worthy of being
2 carried out in practice by a reasonably prudent businessperson.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-113 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 Notwithstanding any other provision of law, except as otherwise
7 provided in this chapter, the following acts are not unlawful and
8 shall not be a criminal or civil offense under Oklahoma law or the
9 law of any political subdivision of Oklahoma or be a basis for
10 seizure or forfeiture of assets under Oklahoma law for persons
11 twenty-one (21) years of age or older:

12 1. Possessing, consuming, using, displaying, purchasing, or
13 transporting marihuana accessories or one ounce or less of
14 marihuana;

15 2. Possessing, growing, processing, or transporting no more
16 than five marihuana plants and possession of the marihuana produced
17 by the plants on the premises where the plants were grown;

18 3. Transferring one ounce or less of marihuana and up to six
19 immature marihuana plants to a person who is twenty-one (21) years
20 of age or older without remuneration; and

21 4. Assisting another person who is twenty-one (21) years of age
22 or older in any of the acts described in subsections 1 through 3 of
23 this section.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-114 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. It is unlawful for a person who is twenty-one (21) years of
5 age or older to cultivate marihuana plants in a manner that is
6 contrary to this section.

7 B. Marihuana plants may not be cultivated in a location where
8 the plants are subject to public view without the use of binoculars,
9 aircraft, or other optical aids.

10 C. A person who cultivates marihuana must take reasonable
11 precautions to ensure the plants are secure from unauthorized access
12 and access by a person less than twenty-one (21) years of age. For
13 purposes of illustration and not limitation, cultivating marihuana
14 in an enclosed, locked space that persons under twenty-one (21)
15 years of age do not possess a key to constitutes reasonable
16 precautions.

17 D. Marihuana cultivation may only occur on property lawfully in
18 possession of the cultivator or with the consent of the person in
19 lawful possession of the property.

20 E. A person who violates this section is guilty of a civil
21 violation punishable by a fine of up to Seven Hundred Fifty Dollars
22 (\$750.00).

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-115 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A person who is under twenty-one (21) years of age may not
5 present or offer to a marihuana establishment or the marihuana
6 establishment's agent or employee any written or oral evidence of
7 age that is false, fraudulent, or not actually the minor's own, for
8 the purpose of:

9 1. Purchasing, attempting to purchase, or otherwise procuring
10 or attempting to procure marihuana; or

11 2. Gaining access to a marihuana establishment.

12 B. A person who violates this section is guilty of a civil
13 violation punishable by a fine not less than Two Hundred Dollars
14 (\$200.00) and not more than Four Hundred Dollars (\$400.00).

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-116 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Notwithstanding any other provision of law, it is not
19 unlawful and shall not be an offense under Oklahoma law or the law
20 of any political subdivision of Oklahoma or be a basis for seizure
21 or forfeiture of assets under Oklahoma law for persons twenty-one
22 (21) years of age or older to manufacture, possess, or purchase
23 marihuana accessories, or to distribute or sell marihuana
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1 accessories to a person who is twenty-one (21) years of age or
2 older.

3 B. A person who is twenty-one (21) years of age or older is
4 authorized to manufacture, possess, and purchase marihuana
5 accessories, and to distribute or sell marihuana accessories to a
6 person who is twenty-one (21) years of age or older.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-117 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Notwithstanding any other provision of law, the following
11 acts, when performed by a retail marihuana store with a current,
12 valid registration, or a person twenty-one (21) years of age or
13 older who is acting in his or her capacity as an owner, employee, or
14 agent of a retail marihuana store, are not unlawful and shall not be
15 an offense under Oklahoma law or be a basis for seizure or
16 forfeiture of assets under Oklahoma law:

17 1. Possessing, displaying, storing, or transporting marihuana
18 or marihuana products, provided that marihuana and marihuana
19 products may not be displayed in a manner that is visible to the
20 general public from a public right-of-way;

21 2. Purchasing marihuana from a marihuana cultivation facility;

22 3. Purchasing marihuana or marihuana products from a marihuana
23 product manufacturing facility; and

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1 4. Delivering, distributing, or selling marihuana or marihuana
2 products to consumers.

3 B. Notwithstanding any other provision of law, the following
4 acts, when performed by a marihuana cultivation facility with a
5 current, valid registration, or a person twenty-one (21) years of
6 age or older who is acting in his or her capacity as an owner,
7 employee, or agent of a marihuana cultivation facility, are not
8 unlawful and shall not be an offense under Oklahoma law or be a
9 basis for seizure or forfeiture of assets under Oklahoma law:

10 1. Cultivating, harvesting, processing, packaging,
11 transporting, displaying, storing, or possessing marihuana;

12 2. Delivering or transferring marihuana to a marihuana testing
13 facility;

14 3. Delivering, distributing, or selling marihuana to a
15 marihuana cultivation facility, a marihuana product manufacturing
16 facility, or a retail marihuana store;

17 4. Receiving or purchasing marihuana from a marihuana
18 cultivation facility; and

19 5. Receiving marihuana seeds or immature marihuana plants from
20 a person twenty-one (21) years of age or older.

21 C. Notwithstanding any other provision of law, the following
22 acts, when performed by a product manufacturing facility with a
23 current, valid registration, or a person twenty-one (21) years of
24 age or older who is acting in his or her capacity as an owner,

1 employee, or agent of a product manufacturing facility, are not
2 unlawful and shall not be an offense under Oklahoma law or be a
3 basis for seizure or forfeiture of assets under Oklahoma law:

4 1. Packaging, processing, transporting, manufacturing,
5 displaying, or possessing marihuana or marihuana products;

6 2. Delivering or transferring marihuana or marihuana products
7 to a marihuana testing facility;

8 3. Delivering or selling marihuana or marihuana products to a
9 retail marihuana store or a marihuana product manufacturing
10 facility;

11 4. Purchasing marihuana from a marihuana cultivation facility;

12 5. Purchasing marihuana or marihuana products from a marihuana
13 product manufacturing facility; and

14 6. Leasing or otherwise allowing the use of property owned,
15 occupied, or controlled by any person, corporation, or other entity
16 for any of the activities conducted lawfully in accordance with
17 subsections A through C of this section.

18 D. Notwithstanding any other provision of law, the following
19 acts, when performed by a marihuana testing facility with a current,
20 valid registration, or a person twenty-one (21) years of age or
21 older who is acting in his or her capacity as an owner, employee, or
22 agent of a marihuana testing facility, are not unlawful and shall
23 not be an offense under Oklahoma law or be a basis for seizure or
24 forfeiture of assets under Oklahoma law:

1 1. Possessing, cultivating, processing, repackaging, storing,
2 transporting, or displaying marihuana;

3 2. Receiving marihuana from a marihuana cultivation facility, a
4 marihuana retail store, a marihuana products manufacturer, or a
5 person twenty-one (21) years of age or older;

6 3. Returning marihuana to a marihuana cultivation facility,
7 marihuana retail store, marihuana products manufacturer, or a person
8 twenty-one (21) years of age or older; and

9 4. Leasing or otherwise allowing the use of property owned,
10 occupied, or controlled by any person, corporation, or other entity
11 for any of the activities conducted lawfully in accordance with
12 subsections A through C of this section.

13 E. Nothing in this section prevents the imposition of penalties
14 for violating this section or administrative rules or ordinances
15 adopted by the State Board of Health or municipalities pursuant to
16 this act.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-118 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Not later than one hundred eighty (180) days after the
21 effective date of this act, the State Board of Health shall adopt
22 rules necessary for implementation of this act. Such rules shall
23 not prohibit the operation of marihuana establishments, either

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1 expressly or through rules that make their operation unreasonably
2 impracticable. Such rules shall specify:

3 1. Procedures for the issuance, renewal, suspension, and
4 revocation of a registration to operate a marihuana establishment,
5 with such procedures subject to all requirements of the
6 Administrative Procedures Act;

7 2. A schedule of application, registration, and renewal fees,
8 provided, application fees shall not exceed Five Thousand Dollars
9 (\$5,000.00), with this upper limit adjusted annually for inflation,
10 unless the State Department of Health determines a greater fee is
11 necessary to carry out its responsibilities under this chapter;

12 3. Qualifications for registration that are directly and
13 demonstrably related to the operation of a marihuana establishment;

14 4. Security requirements for marihuana establishments,
15 including for the transportation of marihuana by marihuana
16 establishments;

17 5. Requirements to prevent the sale or diversion of marihuana
18 and marihuana products to persons under the age of twenty-one (21);

19 6. Labeling requirements for marihuana and marihuana products
20 sold or distributed by a marihuana establishment;

21 7. Health and safety regulations and standards for the
22 manufacture of marihuana products and both the indoor and outdoor
23 cultivation of marihuana by marihuana establishments;

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1 8. Restrictions on the advertising and display of marihuana and
2 marihuana products;

3 9. Civil penalties for the failure to comply with regulations
4 made pursuant to this chapter; and

5 10. Procedures for collecting taxes levied on marihuana
6 cultivation facilities.

7 B. In order to ensure that individual privacy is protected, the
8 Department shall not require a consumer to provide a retail
9 marihuana store with personal information other than government-
10 issued identification to determine the consumer's age, and a retail
11 marihuana store shall not be required to acquire and record personal
12 information about consumers.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 2-119 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Each application or renewal application for an annual
17 registration to operate a marihuana establishment shall be submitted
18 to the State Department of Health. A renewal application may be
19 submitted up to 90 days prior to the expiration of the marihuana
20 establishment's registration.

21 B. The Department shall begin accepting and processing
22 applications to operate marihuana establishments one (1) year after
23 the effective date of this act.

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1 C. Upon receiving an application or renewal application for a
2 marihuana establishment, the Department shall immediately forward a
3 copy of each application and half of the registration application
4 fee to the local regulatory authority for the locality in which the
5 applicant desires to operate the marihuana establishment, unless the
6 locality has not designated a local regulatory authority.

7 D. Within forty-five (45) to ninety (90) days after receiving
8 an application or renewal application, the Department shall issue an
9 annual registration to the applicant, unless the Department finds
10 the applicant is not in compliance with rules enacted pursuant to
11 this act or the Department is notified by the relevant locality that
12 the applicant is not in compliance with municipal ordinances and
13 administrative rules made pursuant to this act in effect at the time
14 of application.

15 E. If a locality has enacted a numerical limit on the number of
16 marihuana establishments and a greater number of applicants seek
17 registrations, the Department shall solicit and consider input from
18 the local regulatory authority as to the locality's preference or
19 preferences for registration.

20 F. Upon denial of an application, the Department shall notify
21 the applicant in writing of the specific reason for its denial.

22 G. Every marihuana establishment registration shall specify the
23 location where the marihuana establishment will operate. A separate
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1 registration shall be required for each location at which a
2 marihuana establishment operates.

3 H. Marihuana establishments and the financial records
4 maintained and created by marihuana establishments are subject to
5 inspection by the Department.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-120 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Nothing in this chapter is intended to require an employer
10 to permit or accommodate the use, consumption, possession, transfer,
11 display, transportation, sale, or growing of marihuana in the
12 workplace or to affect the ability of employers to have policies
13 restricting the use of marihuana by employees or discipline
14 employees who are under the influence of marihuana in the workplace.

15 B. Nothing in this chapter shall be construed to allow driving
16 under the influence of marihuana or driving while impaired by
17 marihuana or to supersede laws related to driving under the
18 influence of marihuana or driving while impaired by marihuana.

19 C. Nothing in this act shall be construed to permit the
20 transfer of marihuana, with or without remuneration, to a person
21 under the age of twenty-one (21) or to allow a person under the age
22 of twenty-one (21) to purchase, possess, use, transport, grow, or
23 consume marihuana.

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1 D. Nothing in this act shall prohibit a person, employer,
2 school, hospital, detention facility, corporation, or any other
3 entity who occupies, owns, or controls a property from prohibiting
4 or otherwise regulating the possession, consumption, use, display,
5 transfer, distribution, sale, transportation, or growing of
6 marihuana on or in that property.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-121 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 Scientific and medical researchers who have previously published
11 may purchase, possess, and securely store marihuana for purposes of
12 conducting research. Scientific and medical researchers may
13 administer and distribute marihuana to participants in research who
14 are 21 years of age or older after receiving informed consent from
15 the subjects.

16 SECTION 11. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-122 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 There is hereby created in the State Treasury a revolving fund
20 for the State Department of Health, to be designated the "Marihuana
21 Legalization Revolving Fund". The fund shall be a continuing fund,
22 not subject to fiscal year limitations, and shall consist of all
23 monies deposited to the credit of the fund by law. All monies
24 accruing to the credit of the fund are hereby appropriated and may

1 be budgeted and expended by the State Department of Health for
2 purposes of this act. Expenditures from the fund shall be made upon
3 warrants issued by the State Treasurer against claims filed as
4 prescribed by law with the Director of the Office of Management and
5 Enterprise Services for approval and payment.

6 SECTION 12. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2-123 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Revenues generated in excess of the amount needed to
10 implement and enforce this act by the marihuana excise tax shall be
11 distributed every three (3) months as follows:

12 1. Thirty percent (30%) shall be distributed to the State
13 Department of Education;

14 2. Ten percent (10%) shall be distributed to the State
15 Department of Health for use in voluntary programs for the treatment
16 of alcohol, tobacco, and marihuana abuse;

17 3. Ten percent (10%) shall be distributed to the State
18 Department of Health for a scientifically and medically accurate
19 public education campaign educating youth and adults about the
20 health and safety risks of alcohol, tobacco, and marihuana; and

21 4. Fifty percent (50%) shall be distributed to the General
22 Revenue Fund.

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1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-124 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Possession of one (1) ounce or less of marihuana by a person
5 under the age of twenty-one (21) is a civil offense punishable by
6 forfeiture of the marihuana and completion of up to four (4) hours
7 of instruction in a drug awareness program. The parents or legal
8 guardian of any offender under the age of eighteen (18) shall be
9 notified of the offense and of available drug awareness programs,
10 which shall be established by the State Department of Health. The
11 State Department of Health shall set fees for the program sufficient
12 to cover all costs of administering the program, which shall not
13 exceed Three Hundred Dollars (\$300.00). If an offender fails within
14 one year of such notice of the offense and available programs to
15 complete a drug awareness program, a civil penalty of up to Three
16 Hundred Dollars (\$300.00), up to forty (40) hours of community
17 service, or both may be imposed.

18 B. The possession, cultivation, harvest, display, distribution,
19 packaging, processing, purchase, transportation, transfer, delivery,
20 sale, storage, and consumption of marihuana as provided for in this
21 act shall not constitute a violation of any existing statutes which
22 may be in conflict with the provisions of this act. All provisions
23 of this act are severable and shall supersede conflicting statutes,
24 municipal ordinances, or other state and local laws, rules,

1 ordinances, or any other restriction on the possession, cultivation,
2 harvest, display, distribution, packaging, processing, purchase,
3 transportation, transfer, delivery, sale, storage, and consumption
4 of marihuana as provided in this act.

5 SECTION 14. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 55005 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 A. An excise tax is hereby imposed on the sale or transfer of
9 marihuana from a marihuana cultivation facility to a retail
10 marihuana store or marihuana product manufacturing facility. Each
11 marihuana cultivation facility shall pay an excise tax at the rate
12 of Fifty Dollars (\$50.00) per ounce, or proportionate part thereof,
13 on marihuana that is sold or transferred from a marihuana
14 cultivation facility to a retail marihuana store or marihuana
15 product manufacturing facility.

16 B. The Oklahoma Tax Commission may adjust the rate annually to
17 account for inflation or deflation based on the Consumer Price
18 Index.

19 C. On the fifteenth day of each month, every marihuana
20 cultivation facility shall pay the excise taxes due on the marihuana
21 that the marihuana cultivation facility transferred or sold in the
22 prior calendar month.

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1 SECTION 15. This act shall become effective November 1, 2014.

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