

# Medical Marijuana Program Oh So Close in Mississippi After House Sends Cannabis Legislation to Governor

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The Mississippi Medical Cannabis Act now heads to Gov. Tate Reeves with super-majority support from the House and Senate. With a vote of 103-13, the House passed a version of the act that slightly modified the amended version the House sent back to the Senate on January 19, 2022. Gov. Reeves can either sign the act into law, allow the act to sit for five days (Sunday excluded), after which time the act will become law, or veto the act only to most assuredly have that veto be overridden by the supermajority support of the act in both chambers of the legislature. Absent a wild turn of events, medical cannabis is now a reality in Mississippi.

A full version of the act, passed in the form of a conference committee report, is [here](#). With some modification from the version [we previously summarized](#), the act, among other things, establishes a tiered medical marijuana program consisting of cultivators, processors, testing facilities, research facilities, transporters, dispensaries, and disposal entities, authorizes additional agency regulation by the Mississippi Department of Health (MDOH) and Department of Revenue (MDOR), prohibits outdoor growing, permits smoking of medical cannabis, allows counties and municipalities to opt out of the program, imposes state sales and excise taxes, and provides certain safe harbor protections to employers and financial institutions.

Highlights include:

## Section 2. Definitions

- “Cannabis cultivation facility” is an entity licensed and registered to cultivate and harvest cannabis **indoors**.
  - Outdoor growing is prohibited.
- “Cannabis products” include cannabis flower, concentrated cannabis, cannabis extracts and products infused with cannabis or an extract of cannabis intended for human use or consumption.

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- “Debilitating medical conditions” includes a broad list of diseases and an unspecified group of diseases or treatments that may cause certain symptoms or side effects.
  - “Chronic pain” means either the cause of pain or relief from the pain is impossible or unachievable after reasonable efforts by a practitioner.
  - “Mississippi Medical Cannabis Equivalency Unit” (MMCEU) is equal to (i) 3.5 grams of medical cannabis flower; (ii) 1 gram of concentrate; or (iii) 100 mg of THC.

### **Section 3. Authorization to Use Medical Cannabis**

- In order to use medical cannabis, an individual must be diagnosed by a physician as having a debilitating medical condition, receive written certification of such diagnosis from the practitioner, and have been issued an ID card from the DOH. Notably, continued usage requires six-month follow-up visits to evaluate treatment.
- Practitioners must be registered to issue written certifications qualifying patients, which includes continuing education components.
- Only physicians and doctors of osteopathic medicine can issue written certifications to minors.

### **Section 4. General Responsibilities of Departments**

- The MDOH has ultimate oversight authority of the medical cannabis program, but can contract with third parties, public or private, to assist.
- The MDOH will handle licensing, oversight and inspection of cannabis testing facilities and cannabis research facilities; licensing of cannabis cultivation facilities, cannabis processing facilities, cannabis transportation entities, and cannabis disposal entities; licensing for patients and caregivers; registration of practitioners; and selection, certification and oversight of seed-to-sale tracking system.
- The MDOR will handle licensing, inspection, and oversight of dispensaries.
- MDOH and MDOR will start accepting applications, registering and licensing registry identification cards and practitioners no later than 120 days after the effective date of the act.
- After 120 days from the effective date of the act, MDOH will start licensing and registering cannabis cultivation facilities, cannabis processing facilities, cannabis research facilities, cannabis testing facilities, cannabis disposal entities, and cannabis transportation entities. Licenses will be issued within 30 days after receiving an application or 30 days after the initial 120-day period, whichever is the later date.
- After 150 days from the effective date of the act, the MDOR will issue licenses for medical cannabis dispensaries, within 30 days after receipt of an application or within 30 days after the initial 150-day period, whichever is the later date.

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## Section 5. Protections for the Medical Use of Cannabis

- The provision, by a professional or occupational licensee, of advice or services related to medical cannabis activities allowed under the act is considered to be lawful.
- It is Mississippi public policy that contracts related to these activities are enforceable and will not be deemed unenforceable just because those activities may be prohibited by federal law.

## Section 6. Seed-to-Sale Tracking System

- This section establishes a statewide seed-to-sale tracking system and details the type of information to enter into the system and how to enter that information.
- This section provides that banks and financial institutions may access certain information from this tracking system for people and entities with whom they have a business relationship to comply with federal regulations.

## Section 7. Limitations

- The act **does not**:
  - Require any type of medical benefits/insurance to reimburse for expenses incurred by individuals or entities that participate in the program;
  - Require an employer to permit, accommodate, or allow medical use of cannabis, or modify working conditions due to such use;
  - Prohibit an employer from hiring, discharging, disciplining, or taking another employment action based on that individual's use of medical cannabis;
  - Prohibit or limit drug testing policies;
  - Interfere with any federal restrictions or requirements such as certain Department of Transportation regulations;
  - Allow adverse employment action against an employer by an employee based on an employment action tied to the employee's use of medical cannabis;
  - Impact an employer's workers' compensation premium discount due to having a drug-free workplace program;
  - Impact an employer's workers' compensation defense due to a positive drug test or a refusal to submit to a drug test; and
  - Impact a parolee's or probationer's conditions or obligations.
- Smoking cannabis in public is prohibited.

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## **Section 8. Discrimination Prohibited**

- Discrimination is prohibited in these ways:
  - No custody or visitation rights decisions based on cardholder status;
  - No school, landlord, or employer can be penalized or denied a benefit for enrolling, leasing to, or employing a cardholder;
  - No gun ownership restrictions, from a local or state perspective, based on being a patient or registered caregiver; and
  - Schools, childcare facilities, and temporary care providers can administer medical cannabis just like any medical prescription.
- The bill does not create a private right of action by an employee against an employer and does not affect any existing legal relationship between an employer and employee.

## **Section 9. Addition of Debilitating Medical Conditions**

- A Mississippi resident can petition the MDOH to to the list of debilitating medical conditions.

## **Section 10. Acts Not Required and Acts Not Prohibited**

- No government medical assistance program or private insurer must reimburse a person for costs associated with use of medical cannabis.
- Property owners can allow guests, clients, customers, or other visitors to use medical cannabis on or in their property.
- Landlords can allow, though are not required to allow, cultivation, processing, testing, research, sale or use of medical cannabis on a rental property.

## **Section 11. Facility restrictions**

- Provides acceptable restrictions that a nursing facility, hospital, hospice, assisted living facility, personal care home, adult day care facility, or adult foster care facility can adopt with respect to use of medical cannabis by persons receiving healthcare, residential, or day care services from the facility.
- Adoption of such restrictions are not mandatory.
- Such a facility cannot deny a qualifying patient or unreasonably limit a patient's access to or use of medical cannabis, unless failing to do so would cause the facility to lose a monetary or licensing-related benefit under federal law or regulations.

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## **Section 12. Issuance and Denial of Registry ID Cards**

- No later than 120 days after the effective date of the act, MDOH will begin issuing ID cards to qualified patients.
- Application for ID cards requires physician certification within 60 days, an application fee, personal information, and a designated caregiver, if any.
- MDOH will grant or deny applications within 30 days and issue an ID card within five days of approving the application.
- Qualifying patients younger than 18 years of age may receive an ID card with parental consent and parental service as a designated caregiver.
- Entities serving as designated caregivers to numerous qualified patients need only one ID card.

## **Section 13. Registry Identification Cards**

- ID cards will contain personal information, status as patient or caregiver, a verifiable number identification, photograph of cardholder, warnings about harm related to cannabis use, MMCEU limits, and expiration date.

## **Section 14. Annual Reports**

- The program will be reviewed annually by the governor and Legislature, based on annual reports submitted by the MDOH and MDOR.

## **Section 15. Verification System**

- MDOH will maintain a confidential list of all persons to whom registry ID cards have been issued.

## **Section 16. Notifications to Department and Responses**

- Cardholders must update agencies of personal information/status changes.
- There is a process to receive a new ID card if lost or stolen.

## **Section 17. Reporting Requirements for Dispensaries**

- Dispensaries will be required to report certain information every 24 hours to the Prescription Monitoring Program set forth in MS Code Ann. § 73-21-127.

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## Section 18. Licensing of Medical Cannabis Establishments

- Cannabis cultivation facility license application fees are as follows:
  - Micro cultivators:
    - Tier 1: canopy of 1,000 sf or less subject to one-time, non-refundable license application fee of \$1,500 and annual license fee of \$2,000
    - Tier 2: canopy of over 1,000 sf but not more than 2,000 sf subject to one-time, non-refundable license application fee of \$2,500 and annual license fee of \$3,500
  - Cultivators:
    - Tier 1: canopy of 2,000 sf – not more than 5,000 sf or less subject to one-time, non-refundable license application fee of \$5,000 and annual license fee of \$15,000
    - Tier 2: canopy of 5,000 sf – not more than 15,000 sf subject to one-time, non-refundable license application fee of \$10,000 and annual license fee of \$25,000
    - Tier 3: canopy of 15,000 sf – not more than 30,000 sf subject to one-time, non-refundable license application fee of \$20,000 and annual license fee of \$50,000
    - Tier 4: canopy of 30,000 sf – not more than 60,000 sf subject to one-time, non-refundable license application fee of \$30,000 and annual license fee of \$75,000
    - Tier 5: canopy of 60,000 sf – not more than 100,000 sf subject to one-time, non-refundable license application fee of \$40,000 and annual license fee of \$100,000
    - Tier 6: canopy of 100,000 sf or more subject to one-time, non-refundable fee of \$60,000 and annual license fee of \$150,000
  - Micro-processors:
    - Tier 1: facility annually processing less than 2,000 lbs. of dried biomass cannabis material subject to a one-time, non-refundable application fee of \$2,000 and annual license fee of \$3,500
    - Tier 2: facility annually processing 2,000 lbs. – less than 3,000 lbs. of dried biomass cannabis material subject to a one-time, non-refundable application fee of \$2,500 and annual license fee of \$5,000.
  - Processors: facility annually processing more than 3,000 lbs. of dried biomass

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cannabis material subject to a one-time, non-refundable application fee of \$15,000 and annual license fee of \$20,000

- Dispensaries: subject to a one-time, non-refundable application fee of \$15,000 and annual license fee of \$25,000
  - Transportation entities: subject to a one-time, non-refundable application fee of \$5,000 and annual license fee of \$7,500
  - Disposal entities: subject to a one-time, non-refundable application fee of \$5,000 and annual license fee of \$7,500
  - Testing facilities: subject to a one-time, non-refundable application fee of \$10,000 and annual license fee of \$15,000
    - Facilities cannot employ an individual also employed or who has ownership at any other medical cannabis establishment.
  - Research facilities: subject to a one-time, non-refundable application fee of \$10,000 and annual license fee of \$15,000
- No individual or entity can have direct or indirect ownership or economic interest of greater than 10% in:
    - More than one cultivation facility license;
    - More than one processing facility license; or
    - More than five dispensary licenses.
  - The act does not cap the total amount of licenses available in Mississippi at large. In other words, there is no limit on the number of cultivation or processing facilities or dispensaries in the state.
  - There are residency requirements for cultivation facility and processing facility licenses.
    - If natural person, person must have been a Mississippi resident for at least three consecutive years prior to application date.
    - If business entity, at least 35% of entity's equity ownership interests must be held by individuals who have been Mississippi residents for at least three consecutive years preceding the application date.
  - Micro-cultivators and micro-processors residency requirements:
    - If natural person, person must have been a Mississippi resident for at least three consecutive years prior to the application date.
    - If business entity, 100% of entity's equity ownership interests must be held by individuals who have been Mississippi residents for at least three consecutive years

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preceding the application date.

- Owning a license under the act should not disqualify or negatively impact that owner in engaging in any other type of licensed business under state law.
- Requirements for applying for a medical cannabis establishment license include:
  - Entity's legal name;
  - Physical address, which cannot be within 1,000 ft of a school, childcare facility, or church;
    - This requirement is waivable by the school or church and licensing agency, but such facility must not have a main point of entry within 500 ft of a school, childcare facility, or church under any circumstance.
  - Names of officers/board members;
  - Operating and record-keeping procedures; and
  - Sworn statement certifying compliance with local ordinances.
- Licensee applicants will not be disqualified based on involvement or location on Mississippi Band of Choctaw Indian Reservation Lands.
- A processing facility that produces edible cannabis products must hold a permit as a food establishment and comply with applicable requirements for food establishments.

## **Section 19. Local Ordinances**

- Localities may regulate time, place, and manner of cannabis establishment operations.
- Localities cannot enact ordinances or regulations that make dispensary operations impracticable.
- Dispensaries cannot be located within a 1,500 ft radius from another medical cannabis dispensary.
- Zoning:
  - Dispensaries, research facilities, and testing facilities may be located in commercial-use zones.
  - Cultivation and processing facilities may be located in agricultural or industrial use zones.
    - May also be in commercial-use zones if municipality or a county grants variance allows cultivation or processing facility to operate in commercial-use zone.

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- Localities may require local licenses to operate and charge fees consistent with other fees charged to non-cannabis businesses.

## **Section 20. Requirements, Prohibitions, and Penalties**

- This section lists limitations and screening protocols for employees of cannabis establishments and sets forth record-keeping and physical and security requirements of the facilities.
- Medical cannabis establishments cannot share office space with or refer patients to a practitioner.
- A cardholder cannot get more than 6 MMCEUs of allowable cannabis per week, or more than 24 MMCEUs of cannabis in 30 days.
  - This equates to:
    - 21 grams of flower per week and 84 grams of flower per month;
    - 6 grams of concentrate per week and 24 grams of concentrate per month; and
    - 600 mg of THC in an infused product per week or 2,400 mg of THC in infused products per month.
- The possession limit for a resident cardholder is 28 MMCEUs (98 grams of flower, 28 grams of concentrate, and 1,280 mg of THC-infused consumables), except there is no possession limit on non-consumable medical cannabis, such as suppositories, ointments, soaps, and lotions or other topical agents.
- THC is defined as THCA multiplied by .877 plus THC Delta 9 and all other psychoactive forms or isomers of THC added together.
  - THC potency limits:
    - Flower or stem – 30%
    - Oils, tinctures, or concentrates – 60%
  - Products with over 30% THC must be labeled “extremely potent.”
  - Edibles must show TCH per single serving and per package.
- Cannabis products must contain label warnings, and edible products must be presented in certain forms, including in the form of geometric shapes.
- Non-resident cardholders have more limits on possession amounts and must apply for non-resident card before arriving.
- Cannabis establishments can only purchase, grow, cultivate and use cannabis grown and

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cultivated in Mississippi, and such cannabis cannot be transported outside of the state.

- All employees must obtain particular work permits to work in the industry.

## **Section 21. Agencies to Issue Rules and Regulations**

- Agencies may issue additional regulations regarding the program, including labeling and marketing regulations.
- This section sets the fee schedule for ID card applications and renewals:
  - Qualifying patient - \$25
  - Designated caregiver - \$25 plus \$37 criminal background fee
  - Renewal or replacement of ID card - \$25
  - Nonresident patient - \$75
  - Medicaid participant patient application and renewal - \$15
  - Disabled veterans and first responders – application fees waived

## **Section 22. Public Registry**

- MDOH and MDOR will create and maintain a public registry that includes:
  - Establishment names, owner information, contact information, and license information

## **Sections 23 and 24. Violations and Fines, Suspensions and Revocations**

- These sections impose steep civil and criminal penalties on cardholders and establishments for violating the act's rules/regulations.

## **Section 25. Confidentiality**

- This section provides confidentiality protections for data in all applications for qualifying patients and establishments and exempts such data from the Mississippi Public Records Act.

## **Section 26. Business Expenses, Deductions**

- This section expressly states that these businesses can deduct all the ordinary and necessary business expenses from state income tax, notwithstanding federal law to the contrary.

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## **Section 27. Banks to Be Held Harmless**

- This section contains bank safe harbor provisions for banks to provide services to individuals and entities dealing with medical cannabis businesses.

## **Section 28. Not Applicable to CBD Solution**

- The act does not apply to or supersede the provisions of Section 49-29-136.

## **Section 29. Medical Cannabis Taxes**

- This section imposes an excise tax on cultivation facilities based on the sales price of the cannabis and cannabis trim to another cannabis establishment, or 5% of such sales price.
- If there is common ownership of other interests between the cultivation facility and the other cannabis establishment to which the cannabis or trim is being sold, the excise tax is 5% of the fair market value of the flower or trim.
- This section imposes a sales tax on dispensaries as specified under Miss. Code Ann. 27-65-17(1)(a), currently 7%.

## **Section 30. Local Government Option**

- Local government (county or municipality) may opt out of the act by a vote from the governing authorities within 90 days after the act is effective. They must comply with open meeting requirements.
  - Local governments may later decide to opt in.
- Qualified electors of the county/municipality can petition to have a local election on allowing these operations in the locality, despite local authorities electing to opt out.

## **Section 31. Judicial Review**

- This section permits judicial review of any action by an agency under the act.

## **Section 32. Fees, Fines, and Tax Allocation**

- All fees, fines, and excise taxes collected go into the State General Fund.

## **Section 33. Medical Cannabis Advisory Committee**

- This section creates a Medical Cannabis Advisory Committee of nine members.
- The committee will accept public comments in writing and in person at least once a year.

### **Section 34. Amendment to Miss. Code Ann. Section 25-53-5**

- This section authorizes the Mississippi Department of Information Technology Services to contract out for IT equipment and services to help run the program.
- This section outlines procurement requirements.

### **The Rest of the Bill**

- The rest of the bill shows where other related statutes do not apply to the Medical Cannabis Act, including:
  - Miss. Code Ann. 27-104-203, which prohibits one state agency from charging another state agency a fee;
  - Miss. Code Ann. 41-29-125, which authorizes the State Board of Pharmacy to promulgate rules and regulations relating to controlled substances; and
  - Miss. Code Ann. 41-29-139, which makes it unlawful for someone to create, possess, or distribute a controlled substance.

However, use of medical cannabis in accordance with the program can foreclose workers' compensation recovery under Miss Code Ann. 71-3-7 if such use was the proximate cause of the injury.

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