

As Amended by House Committee

Session of 2022

HOUSE BILL No. 2708

By Committee on Federal and State Affairs

2-15

1 AN ACT concerning medical marijuana; relating to laboratory testing and
2 licensure of persons; **licensure authority; fees; licensee**
3 **requirements; quality assurance;** establishing standards for
4 laboratory licenses that test medical marijuana.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. As used in this act:**

8 (a) "Act" means section 1 et seq., and amendments thereto.

9 (b) "Cannabinoid" means any of the diverse chemical
10 compounds that can act on cannabinoid receptors in cells and alter
11 neurotransmitter release in the brain, including phytocannabinoids
12 that are produced naturally by marijuana and some other plants.

13 (c) "Marijuana" means the same as defined in K.S.A. 65-4101,
14 and amendments thereto.

15 (d) "Medical marijuana" means marijuana that is cultivated,
16 processed, tested, dispensed, possessed or used for a medical purpose.

17 (e) "Medical marijuana product" means a product that contains
18 cannabinoids that have been extracted from plant material or the
19 resin therefrom by physical or chemical means and is intended for
20 administration to a registered patient.

21 (f) "Medical marijuana waste" means:

22 (1) Unused, surplus, returned or out-of-date marijuana;

23 (2) recalled marijuana;

24 (3) plant debris of the plant of the genus cannabis, including dead
25 plants and all unused plant parts and roots; and

26 (4) any wastewater generated during growing and processing.

27 (g) "Person" means any natural person, corporation,
28 partnership, trust or association.

29 (h) "Tetrahydrocannabinol" means the primary psychoactive
30 cannabinoid in marijuana formed by decarboxylation of naturally
31 occurring tetrahydrocannabinolic acid that generally takes place by
32 heating.

33 (i) "Tetrahydrocannabinolic acid" means the dominant
34 cannabinoid that occurs naturally in most varieties of marijuana.

35 **Sec. 2. (a)** The director of alcoholic beverage control shall provide
36 for the licensure of laboratories under this act.

1 **(b) (1) An application for a laboratory license shall be submitted**
2 **to the director of alcoholic beverage control in such form and manner**
3 **as prescribed by the director by any person or entity that seeks to**
4 **conduct laboratory testing of medical marijuana.**

5 **(2) A separate license application shall be submitted for each**
6 **location to be operated by the licensee.**

7 **(c) The director shall issue a license to an applicant if:**

8 **(1) The criminal history record check conducted pursuant to**
9 **section 5, and amendments thereto, with respect to the applicant,**
10 **demonstrates that the applicant is not disqualified from holding a**
11 **license pursuant to section 3, and amendments thereto;**

12 **(2) the applicant demonstrates that it will not violate the**
13 **provisions of section 4, and amendments thereto;**

14 **(3) the applicant has submitted a tax clearance certificate issued**
15 **by the department of revenue;**

16 **(4) the applicant seeking licensure has submitted an attestation to**
17 **the director under penalty of perjury, in a form and manner**
18 **prescribed by the director, that confirms or denies the existence of any**
19 **foreign financial interests associated with the entity applying for such**
20 **license and discloses the identity of such ownership, if applicable; and**

21 **(5) the applicant meets all other licensure eligibility conditions**
22 **established in rules and regulations adopted by the secretary of**
23 **revenue and has paid all required fees.**

24 **(d) (1) A license shall be valid for a period of one year from the**
25 **date such license is issued to a laboratory.**

26 **(2) A license may be renewed by submitting a license renewal**
27 **application and paying the required fee.**

28 **(e) The fees for a laboratory license shall be:**

29 **(1) \$2,000 for the nonrefundable laboratory license application;**

30 **(2) \$18,000 for a laboratory license; and**

31 **(3) \$20,000 for a renewal of a laboratory license.**

32 **Sec. 3. All licenses issued pursuant to this act shall:**

33 **(a) Not be issued to a person:**

34 **(1) Who is not a citizen of the United States;**

35 **(2) who has been convicted of a felony under the laws of this state,**
36 **any other state or the United States;**

37 **(3) who has had a license revoked for cause under the provisions**
38 **of this act or who has had any license issued under the medical**
39 **marijuana laws of any state revoked for cause, except that a license**
40 **may be issued to a person whose license was revoked for the**
41 **conviction of a misdemeanor at any time after the lapse of 10 years**
42 **following the date of the revocation;**

43 **(4) who has been convicted of being the keeper of or is keeping**

1 any property, whether real or personal, where sexual relations are
2 being sold or offered for sale by a person who is 18 years of age or
3 older or has forfeited bond to appear in court to answer charges of
4 being a keeper of any property, whether real or personal, where sexual
5 relations are being sold or offered for sale by a person who is 18 years
6 of age or older;

7 (5) who has been convicted of being a proprietor of a gambling
8 house, pandering or any other crime opposed to decency and morality
9 or has forfeited bond to appear in court to answer charges for any of
10 those crimes;

11 (6) who is not at least 18 years of age;

12 (7) who, other than as a member of the governing body of a city
13 or county, appoints or supervises any law enforcement officer, who is a
14 law enforcement officer or who is an employee of the director of
15 alcoholic beverage control;

16 (8) who intends to carry on the business authorized by the license
17 as an agent of another;

18 (9) who, at the time of application for renewal of any license
19 issued under this act, would not be eligible for the license upon a first
20 application, except as provided by paragraph (12);

21 (10) who is the holder of a valid and existing license issued under
22 this act unless the person agrees to and does surrender the license to
23 the officer issuing such license;

24 (11) who does not own the premises for which a license is sought
25 or does not, at the time of application, have a written lease thereon;

26 (12) whose spouse would be ineligible to receive a license under
27 this act for any reason other than citizenship, residence requirements
28 or age, except that this paragraph shall not apply in determining
29 eligibility for a renewal license;

30 (13) whose spouse has been convicted of a felony or other crime
31 that would disqualify a person from licensure under this section if
32 such felony or other crime was committed during the time that the
33 spouse held a license under this act;

34 (14) who has not been a resident of this state for at least four
35 years immediately preceding the date of application. A license shall be
36 forfeited if an individual licensee ceases to be a resident of this state at
37 any time after the license is granted;

38 (15) who does not provide any data or information required by
39 the director under this act; or

40 (16) who, after a hearing before the director, has been found to
41 have held an undisclosed beneficial interest in any license issued
42 pursuant to this act that was obtained by means of fraud or any false
43 statement made on the application for such license;

1 **(b) not be issued to a corporation, limited liability company,**
2 **limited partnership or limited liability partnership if less than 75% of**
3 **the total equity or similar ownership interest in such entity is owned**
4 **by individuals who have been residents of this state for at least four**
5 **years immediately preceding the date of the application. A license shall**
6 **be forfeited if, for more than 90 consecutive days, less than 75% of the**
7 **total equity or similar ownership interest in such entity is owned by**
8 **individuals who are residents of this state at any time after the license**
9 **is granted; and**

10 **(c) require that any:**

11 **(1) Transfer of a license shall be reported to and approved by the**
12 **director. The director shall not approve any transfer of a license to any**
13 **individual or entity that does not satisfy the requirements of this**
14 **section at the time of the transfer;**

15 **(2) change in ownership of a corporation, limited liability**
16 **company, limited partnership or limited liability partnership shall be**
17 **reported to the director within 30 days after such change occurs. If**
18 **such change would result in less than 75% of the total equity or**
19 **similar ownership interest in such entity being owned by individuals**
20 **who have been residents of this state for at least four years, then such**
21 **entity shall have 90 days to ensure that 75% or greater of such equity**
22 **or ownership interest is held by individuals who are residents in**
23 **Kansas or the license of such entity shall be forfeited to the director;**

24 **(3) compensation, fee, expense or similarly characterized**
25 **nonequity payment that is contingent on or otherwise determined in a**
26 **manner that factors in profits, sales, revenue or cash flow of any kind**
27 **relating to a licensee's operation, including, but not limited to, profit-**
28 **based consulting fees and percentage rent payments be prohibited.**
29 **Any licensee that enters into an agreement for any prohibited**
30 **compensation, fee, expense or payment shall forfeit such entity's**
31 **license to the director. Such prohibited compensation, fee, expense or**
32 **payment:**

33 **(A) Includes any distribution that is made by individuals or other**
34 **entities to one or more out-of-state individuals holding an equity or**
35 **similar ownership interest in the entity if such distribution is greater**
36 **than 25% of the total distributed amount; and**

37 **(B) does not include payments of fixed amounts that are**
38 **determined prior to the commencement of applicable services or**
39 **payments of variable amounts based on verifiable quantities**
40 **multiplied by a predetermined and reasonably fixed rate.**

41 **Sec. 4. (a) Except as provided in subsections (b) and (c), no**
42 **licensed laboratory shall be located within 1,000 feet of the boundaries**
43 **of a parcel of real estate having situated on it a school, religious**

1 organization, public library or public park. If the relocation of a
2 licensed laboratory results in such licensee being located within 1,000
3 feet of the boundaries of a parcel of real estate having situated on it a
4 school, religious organization, public library or public park, the
5 director shall revoke the license that such agency previously issued to
6 such laboratory.

7 (b) The director may, in the director's discretion, not revoke the
8 license of a laboratory if such licensee existed at a location prior to the
9 establishment of a school, religious organization, public library or
10 public park that is within 1,000 feet of such licensee.

11 (c) This section shall not apply to research related to marijuana
12 conducted at a postsecondary educational institution, academic
13 medical center or private research and development organization as
14 part of a research protocol approved by an institutional review board
15 or equivalent entity.

16 (d) As used in this section:

17 (1) "Public library" means any library established pursuant to
18 article 12 of chapter 12 of the Kansas Statutes Annotated, and
19 amendments thereto, and any other library that serves the general
20 public and is funded in whole or in part from moneys derived from tax
21 levies;

22 (2) "public park" means any park or other outdoor recreational
23 area or facility, including, but not limited to, parks, open spaces, trails,
24 swimming pools, playgrounds and playing courts and fields,
25 established by the state or any political subdivision thereof;

26 (3) "religious organization" means any organization, church,
27 body of communicants or group, gathered in common membership for
28 mutual support and edification in piety, worship and religious
29 observances, or a society of individuals united for religious purposes at
30 a definite place and such religious organization maintains an
31 established place of worship within this state and has a regular
32 schedule of services or meetings at least on a weekly basis and has
33 been determined to be organized and created as a bona fide religious
34 organization; and

35 (4) "school" means any public or private educational institution,
36 including, but not limited to, any college, university, community
37 college, technical college, high school, middle school, elementary
38 school, trade school, vocational school or other professional school
39 providing training or education.

40 Sec. 5. Each applicant for a laboratory license shall require any
41 owner, director, officer and any employee or agent of such applicant to
42 be fingerprinted and to submit to a state and national criminal history
43 record check. The director of alcoholic beverage control is authorized

1 to submit the fingerprints to the Kansas bureau of investigation and
2 the federal bureau of investigation for a state and national criminal
3 history record check. The director shall use the information obtained
4 from fingerprinting and the state and national criminal history record
5 check for purposes of verifying the identification of the applicant and
6 for making a determination of the qualifications of the applicant for
7 licensure. The Kansas bureau of investigation may charge a
8 reasonable fee to the applicant for fingerprinting and conducting a
9 criminal history record check.

10 **Sec. 6. (a) Prior to January 1, 2023, the director of alcoholic**
11 **beverage control shall contract with an operational private laboratory**
12 **for the purpose of conducting compliance and quality assurance**
13 **testing of medical marijuana laboratories licensed in this state in an**
14 **effort to provide public safety and ensure that quality medical**
15 **marijuana product is available to registered patients.**

16 **(b) Any laboratory under contract with the director for**
17 **compliance and quality assurance testing shall:**

18 **(1) Be prohibited from conducting any other commercial medical**
19 **marijuana testing in this state;**

20 **(2) have a minimum of one year of medical marijuana testing**
21 **licensure in another state and have contracted for quality assurance**
22 **testing with another state;**

23 **(3) not employ, or be owned by any individual:**

24 **(A) That has a direct or indirect financial interest in any licensee**
25 **in this state;**

26 **(B) whose spouse, parent, child, spouse of a child, sibling or**
27 **spouse of a sibling has an active application for a license from the**
28 **director; or**

29 **(C) that is a member of the board of directors of a licensee.**

30 **(c) The laboratory under contract with the director for**
31 **compliance and quality assurance shall be accessible and utilized for**
32 **any medical marijuana testing needs by any regulatory agency within**
33 **the state, including, but not limited to, the department of health and**
34 **environment, the Kansas bureau of investigation and the state fire**
35 **marshal.**

36 ~~Section 1.~~ **Sec. 7. (a) A laboratory licensee for medical marijuana**
37 **testing shall:**

38 **(1) Not be owned by a person who is a direct or indirect beneficial**
39 **owner of a retail dispensary, cultivator, processor or distributor;**

40 **(2) comply with all applicable local ordinances, including but not**
41 **limited to zoning, occupancy, licensing and building codes;**

42 **(3) obtain a separate license for each laboratory;**

43 **(4) comply with the application requirements of this section and**

- 1 submit any information required by the director of alcoholic beverage
2 control;
- 3 (5) establish policies to prevent the existence of or appearance of
4 undue commercial, financial or other influences that diminish, or have the
5 effect of diminishing the public confidence in, the competency,
6 impartiality and integrity of the testing processes or results of such
7 laboratory. Such policies shall prohibit employees, owners or agents of a
8 laboratory who participate in any aspect of the analysis and results of a
9 sample from improperly influencing the testing process, manipulating data
10 or benefiting from any ongoing financial, employment, personal or
11 business relationship with the licensee that submitted the sample for
12 testing;
- 13 (6) not test samples for any licensee in which an owner, employee or
14 agent of the laboratory has any form of ownership or financial interest in
15 the licensee that submitted the sample for testing;
- 16 (7) promptly provide the director access to:
- 17 (A) A report of a test and any underlying data that is conducted on a
18 sample at the request of a licensee or registered patient; and
- 19 (B) laboratory premises and to any material or information requested
20 by the director to determine compliance with the requirements of this
21 section;
- 22 (8) retain all results of laboratory tests conducted on medical
23 marijuana or medical marijuana products for a period of at least two years
24 and shall make them available to the director upon request;
- 25 (9) establish standards, policies and procedures for laboratory testing
26 procedures;
- 27 (10) (A) test samples from each harvest batch or product batch, as
28 appropriate, of medical marijuana, medical marijuana concentrate and
29 medical marijuana product for each of the following categories of testing,
30 consistent with standards developed by the director:
- 31 (i) Microbials;
- 32 (ii) mycotoxins;
- 33 (iii) residual solvents;
- 34 (iv) pesticides;
- 35 (v) tetrahydrocannabinol and other cannabinoid potency;
- 36 (vi) terpenoid potency type and concentration;
- 37 (vii) moisture content;
- 38 (viii) homogeneity; and
- 39 (ix) heavy metals; and
- 40 (B) only accept a test batch of usable medical marijuana or medical
41 marijuana product for testing purposes from a:
- 42 (i) Cultivator that has separated each harvest lot of usable marijuana
43 into harvest batches containing no more than 10 pounds, except harvest

1 batches of fresh, uncured medical marijuana or fresh or frozen medical
2 marijuana to be sold to a processor in order to make a concentrate may be
3 separated into batches containing no more than 20 pounds; and

4 (ii) processor that has separated each medical marijuana production
5 lot into production batches containing no more than 10 pounds.

6 (b) A laboratory licensee may:

7 (1) Accept samples of medical marijuana, medical marijuana
8 concentrate or medical marijuana product from:

9 (A) A licensee or any entity authorized for testing and research
10 purposes only, including the provision of testing services for samples
11 submitted by a licensee for product development. A laboratory shall not be
12 prohibited from obtaining a license under this section due to such
13 laboratory performing testing and research on medical marijuana and
14 medical marijuana products; or

15 (B) an individual person for testing if such person is a:

16 (i) Registered patient or caregiver under this act and such person
17 provides the laboratory with the individual's registration identification and
18 a valid photo identification; or

19 (ii) participant in an approved clinical or observational study
20 conducted by a research facility;

21 (2) transfer samples to another licensed laboratory for testing. All
22 laboratory reports provided to or by a licensee or to a patient or caregiver
23 shall identify the laboratory that performed the testing of the sample that is
24 submitted; and

25 (3) utilize a licensed distributor to transport samples of medical
26 marijuana, medical marijuana concentrates and medical marijuana product
27 for testing, in accordance with this act, between the original licensee
28 requesting testing services and the destination licensed laboratory
29 performing testing services.

30 ~~Sec. 2.~~ **8.** (a) The director of alcoholic beverage control shall propose
31 rules and regulations as necessary to develop acceptable testing and
32 research practices in consultation with the contracted compliance and
33 quality assurance testing laboratory, including, but not limited to, testing,
34 standards, quality control analysis, equipment certification and calibration
35 and chemical identification and substances used in bona fide research
36 methods. After the hearing on a proposed rule and regulation has been held
37 as required by law, the director shall submit any such proposed rule and
38 regulation to the secretary of revenue who, if the secretary approves it,
39 shall adopt the rule and regulation.

40 (b) The director shall recommend rules and regulations for laboratory
41 testing performed under this act concerning:

42 (1) The cleanliness and orderliness of the premises of a licensed
43 laboratory and the establishing of licensed laboratories in secured

1 locations;

2 (2) the inspection, cleaning and maintenance of any equipment or
3 utensils used for the analysis of test samples;

4 (3) testing procedures and standards for cannabinoid and terpenoid
5 potency and safe levels of contaminants and appropriate remediation and
6 validation procedures;

7 (4) controlled access areas for storage of medical marijuana and
8 medical marijuana product test samples, medical marijuana waste and
9 reference standards;

10 (5) records to be retained and computer systems to be utilized by the
11 laboratory;

12 (6) the possession, storage and use by the laboratory of reagents,
13 solutions and reference standards;

14 (7) a certificate of analysis for each lot of reference standard;

15 (8) the transport and disposal of unused medical marijuana, medical
16 marijuana products and medical marijuana waste;

17 (9) the mandatory use by a laboratory of an inventory tracking system
18 to ensure all test harvest and production batches or samples containing
19 medical marijuana, medical marijuana concentrate or medical marijuana
20 products are identified and tracked from the point they are transferred from
21 a licensee or a registered patient or caregiver through the point of transfer,
22 destruction or disposal. The inventory tracking system reporting shall
23 include the results of any tests that are conducted;

24 (10) the employment of laboratory personnel;

25 (11) a written standard operating procedure manual to be maintained
26 and updated by the laboratory;

27 (12) the successful participation in a proficiency testing program
28 approved by the director for conducting testing in order to obtain and
29 maintain certification;

30 (13) the establishment of and adherence to a quality assurance and
31 quality control program to ensure sufficient monitoring of laboratory
32 processes and the quality of results reported;

33 (14) the immediate recall of medical marijuana or medical marijuana
34 products that test above allowable thresholds or are otherwise determined
35 to be unsafe;

36 (15) the establishment by the laboratory of a system to document the
37 complete chain of custody for samples from receipt through disposal;

38 (16) the establishment by the laboratory of a system to retain and
39 maintain all required records, including business records, and processes to
40 ensure results are reported in a timely and accurate manner; and

41 (17) any other aspect of laboratory testing of medical marijuana or
42 medical marijuana product deemed necessary by the director.

43 ~~Sec. 3.~~ 9. (a) A laboratory licensee may:

1 (1) Obtain medical marijuana from one or more licensed cultivators,
2 processors or retail dispensaries; and

3 (2) conduct medical marijuana testing as permitted by rules and
4 regulations adopted by the secretary of revenue.

5 (b) (1) Licensure of laboratories shall be contingent upon the
6 successful onsite inspection, participation in proficiency testing and
7 ongoing compliance with the requirements of this act.

8 (2) A laboratory shall be inspected prior to initial licensure and up to
9 six times annually by an inspector approved by the director of alcoholic
10 beverage control. The director may enter the licensed premises of a
11 laboratory to conduct investigations and additional inspections when the
12 director believes an investigation or additional inspection is necessary due
13 to a possible violation of this act.

14 (3) After January 1, 2022, accreditation by the national environmental
15 laboratory accreditation program, ANSI/ASQ national accreditation board
16 or another accrediting body approved by the director shall be required for
17 licensure and renewal of licensure of laboratories.

18 ~~Sec. 4.~~ **10.** This act shall take effect and be in force from and after its
19 publication in the statute book.