

FAILED

CB-57 -21

TO AMEND THE CHOCTAW NATION OF OKLAHOMA PUBLIC HEALTH AND SAFETY CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO AMEND the Choctaw Nation of Oklahoma Public Health and Safety Code.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS, Oklahoma State Question 780 was adopted by an election held on November 8, 2016 and amended Oklahoma law by making possession of controlled dangerous substances a misdemeanor offense punishable up to one year in confinement and up to a one thousand dollar fine. Okla. Stat. tit. 63, § 2-402;

WHEREAS, currently Section 2-402 B also makes the possession of marijuana a misdemeanor punishable by confinement up to a year and allows for certain subsequent convictions of possession of marijuana felonies punishable by imprisonment for up to three years;

WHEREAS, tribal members and non-tribal members located within the Choctaw Nation of Oklahoma do hold medical marijuana licenses issued by the state of Oklahoma and possess and sell medical marijuana within the Choctaw Nation;

WHEREAS, there is nothing in the Choctaw Nation of Oklahoma codes that provides exceptions for those holding valid medical marijuana licenses issued by the state of Oklahoma, other states, or tribal nations;

WHEREAS, tribal members, non-tribal members, and businesses face uncertainty as to whether they will be subject to criminal prosecution under Choctaw Nation of Oklahoma laws for possessing medical marijuana authorized under valid state or tribal medical marijuana licenses;

WHEREAS, the Public Health and Safety Code is hereby amended, making simple possession of controlled dangerous substances misdemeanor offenses, with punishments of up to a \$1,000 fine and/or up to one year in jail;

WHEREAS, the Council expresses serious concerns over the cultivation, distribution, and use of marijuana and controlled dangerous substances and the impact on those within the Choctaw Nation of Oklahoma reservation. The Council seeks to enact more stringent and proactive regulations over marijuana in the future and seeks to engage other local, state, and tribal lawmakers to assist in developing more consistent laws and regulations over marijuana cultivation, distribution, and use to further protect the health and safety of all within the reservation; and

WHEREAS, the Council finds it is in the best interest of the Nation to adopt the amendments to the Choctaw Nation of Oklahoma Public Health and Safety Code as attached and marked as Exhibit B.

THEREFORE BE IT ENACTED, Section 2-601 of the Public Health and Safety Code is hereby amended to allow a person in possession of a valid medical marijuana license issued by a tribal or state government to consume marijuana legally, legally possess up to three (3) ounces of marijuana on their person, legally possess six mature marijuana plants; legally possess six seedling plants, legally possess one (1) ounce of concentrated marijuana, legally possess seventy-two (72) ounces of edible marijuana; and legally possess up to eight (8) ounces of marijuana in their residence;

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma that the Public Health and Safety Code is hereby amended, making simple possession of controlled dangerous substances misdemeanor offenses, with punishments of up to a \$1,000 fine and/or up to one year in jail;

FAILED

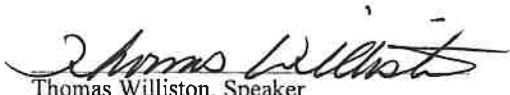
CB-57 -21


TO AMEND THE CHOCTAW NATION OF OKLAHOMA PUBLIC HEALTH AND SAFETY CODE

BE IT FURTHER ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this bill be cited as approval to amend the Choctaw Nation of Oklahoma Public Health and Safety Code and incorporate and adopt all proposed changes, as attached in Exhibit B, and enact and publish the amended sections of the Public Health and Safety Code, pursuant to Exhibit A, effective immediately.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that eleven (11) members answered roll call and that a quorum was present at the Special Session of the Tribal Council in Durant, Oklahoma and by phone and video conference on April 16, 2021. I further certify that the foregoing Council Bill CB- 57 -21 was adopted ^{not} at such meeting by the affirmative vote of four (4) members, four (4) negative votes, and three (3) abstaining.


Thomas Williston, Speaker
Choctaw Nation Tribal Council


Ronald Perry, Secretary
Choctaw Nation Tribal Council

Gary Batton, Chief
Choctaw Nation of Oklahoma

Date _____

TO AMEND THE CHOCTAW NATION OF OKLAHOMA PUBLIC HEALTH AND SAFETY CODE

Purpose/Need of Council Bill: This bill amends the Choctaw Nation of Oklahoma Public Health and Safety Code by deleting certain language that makes possession of controlled dangerous substances felony offenses and inserts language making simple possession of controlled dangerous substances misdemeanor offenses, with punishments of up to a \$1,000 fine and/or up to one year in jail. The amendment also inserts language under Section 2-601 called Medical marijuana Exception; Application and Limitations. The amendment allows: A person in possession of a valid medical marijuana license issued by any Tribal or State government, shall be able to: Consume marijuana legally, Legally possess up to three (3) ounces of marijuana on their person, Legally possess six mature marijuana plants; Legally possess six seedling plants; Legally possess one (1) ounce of concentrated marijuana; Legally possess seventy-two (72) ounces of edible marijuana; and Legally possess up to eight (8) ounces of marijuana in their residence. This amendment will be effective immediately after passage.

Title of Council Bill: **TO AMEND THE CHOCTAW NATION OF OKLAHOMA PUBLIC HEALTH AND SAFETY CODE**

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Kara Bacon, Lead Prosecutor; Brad Mallett, SEO, Legal & Compliance

EXHIBIT A

Section 2-402. Prohibited Acts B—Penalties

- A. It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice, or except as otherwise authorized by this act.
1. It shall be unlawful for any person to purchase any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to Section 2-313 of this title in an amount or within a time interval other than that permitted by Section 2-313 of this title.
 2. It shall be unlawful for any person or business to sell, market, advertise or label any product containing ephedrine, its salts, optical isomers, or salts of optical isomers, for the indication of stimulation, mental alertness, weight loss, appetite control, muscle development, energy or other indication which is not approved by the pertinent federal OTC Final Monograph, Tentative Final Monograph, or FDA-approved new drug application or its legal equivalent. In determining compliance with this requirement, the following factors shall be considered:
 - a. the packaging of the product,
 - b. the name of the product, and
 - c. the distribution and promotion of the product, including verbal representations made at the point of sale.
- B. Any person who violates this section is guilty of a misdemeanor punishable by confinement for not more than one (1) year and by a fine not exceeding One Thousand Dollars (\$1,000.00).

EXHIBIT A

Article 6. Exceptions

Section 2-601. Medical Marijuana Exception; Application and Limitations

- A. A person in possession of a valid medical marijuana license issued by any Tribal or State government, shall be able to:
1. Consume marijuana legally;
 2. Legally possess up to three (3) ounces of marijuana on their person;
 3. Legally possess six mature marijuana plants;
 4. Legally possess six seedling plants;
 5. Legally possess one (1) ounce of concentrated marijuana;
 6. Legally possess seventy-two (72) ounces of edible marijuana; and
 7. Legally possess up to eight (8) ounces of marijuana in their residence.
- B. Possession of up to one and one-half (1.5) ounces of marijuana by persons who can state a medical condition, but are not in possession of a state-issued medical marijuana license, shall constitute a misdemeanor offense punishable by a fine not to exceed Four Hundred Dollars (\$400.00) and shall not be subject to imprisonment for the offense. Any law enforcement officer who comes in contact with a person in violation of this subsection and who is satisfied as to the identity of the person, as well as any other pertinent information the law enforcement officer deems necessary, shall issue to the person a written citation containing a notice to answer the charge against the person in the District Court of the Choctaw Nation of Oklahoma. Upon receiving the written promise of the alleged violator to answer as specified in the citation, the law enforcement officer shall release the person upon personal recognizance unless there has been a violation of another provision of law.
- C. No medical marijuana license holder may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this law, unless the behavior of the person creates an unreasonable danger to the safety of the minor.
- D. Any real or personal property located within the jurisdictional boundaries of the Choctaw Nation of Oklahoma, that is related to or involves medical marijuana, and that is owned, used or possessed by any person who holds a valid medical marijuana license issued by the Oklahoma State Department of Health, shall not be subject to any forfeiture laws of the Choctaw Nation of Oklahoma, as long as the ownership, use or possession of such real or personal property is not inconsistent with the medical marijuana license laws and regulations under Oklahoma State law (63 O.S. § 420, et seq., 63 O.S. § 426.1, 63 O.S. § 427.1 et seq., and 63 O.S. § 427a et seq.) and any other applicable law of the Choctaw Nation of Oklahoma.

EXHIBIT A

- E. Nothing in this Section shall prohibit the Choctaw Nation of Oklahoma from enforcing against any person all laws regarding marijuana when such person is not a holder of a valid medical marijuana license issued by a tribal or state government, is in violation of the laws and regulations applicable for medical marijuana licenses or is in violation of other applicable laws of the Choctaw Nation of Oklahoma.

EXHIBIT B

Section 2-402. Prohibited Acts B—Penalties

- A. It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice, or except as otherwise authorized by this act.
1. It shall be unlawful for any person to purchase any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to Section 2-313 of this title in an amount or within a time interval other than that permitted by Section 2-313 of this title.
 2. It shall be unlawful for any person or business to sell, market, advertise or label any product containing ephedrine, its salts, optical isomers, or salts of optical isomers, for the indication of stimulation, mental alertness, weight loss, appetite control, muscle development, energy or other indication which is not approved by the pertinent federal OTC Final Monograph, Tentative Final Monograph, or FDA-approved new drug application or its legal equivalent. In determining compliance with this requirement, the following factors shall be considered:
 - a. the packaging of the product,
 - b. the name of the product, and
 - c. the distribution and promotion of the product, including verbal representations made at the point of sale.
- B. Any person who violates this section is guilty of a misdemeanor punishable by confinement for not more than one (1) year and by a fine not exceeding One Thousand Dollars (\$1,000.00), with respect to:
1. ~~Any Schedule I or II substance, except marijuana or a substance included in subsection D of Section 2-206 of this title, is guilty of a felony punishable by imprisonment for not less than two (2) years nor more than three (3) years and by a fine not exceeding Five Thousand Dollars (\$5,000.00). Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code;~~
 2. ~~Any Schedule III, IV or V substance, marijuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a misdemeanor punishable by confinement for not more than one (1) year and by a fine not exceeding One Thousand Dollars (\$1,000.00);~~
 3. ~~Any Schedule III, IV or V substance, marijuana, a substance included in subsection~~

EXHIBIT B

~~D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act and who, during the period of any court imposed probationary term or within ten (10) years of the date following the completion of the execution of any sentence or deferred judgment for a violation of this section, commits a second or subsequent violation of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than three (3) years and by a fine not exceeding Five Thousand Dollars (\$5,000.00); or~~

4. ~~Any Schedule III, IV or V substance, marijuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act and who, ten (10) or more years following the date of completion of the execution of any sentence or deferred judgment for a violation of this section, commits a second or subsequent violation of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years and by a fine not exceeding Five Thousand Dollars (\$5,000.00).~~

~~C. Any person who violates any provision of this section by possessing or purchasing a controlled dangerous substance from any person, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including tribal, state, or federal owned parks and recreation areas, or in the presence of any child under twelve (12) years of age, shall be guilty of a felony.~~

1. ~~Any person convicted of violating the provisions of this paragraph shall be punished by imprisonment for not less than two (2) years nor more than three (3) years, or by a fine of up to Ten Thousand Dollars (\$10,000.00), or by both fine and imprisonment, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.~~
2. ~~Any person who commits a second or subsequent violation of the provisions of this paragraph may be prosecuted and punished as a habitual offender pursuant to Section 51 of the Choctaw Nation Criminal Code.~~

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- A. A person in possession of a valid medical marijuana license issued by any Tribal or State government, shall be able to:
1. Consume marijuana legally;
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 7. Legally possess up to eight (8) ounces of marijuana in their residence.
- B. Possession of up to one and one-half (1.5) ounces of marijuana by persons who can state a medical condition, but are not in possession of a state-issued medical marijuana license, shall constitute a misdemeanor offense punishable by a fine not to exceed Four Hundred Dollars (\$400.00) and shall not be subject to imprisonment for the offense. Any law enforcement officer who comes in contact with a person in violation of this subsection and who is satisfied as to the identity of the person, as well as any other pertinent information the law enforcement officer deems necessary, shall issue to the person a written citation containing a notice to answer the charge against the person in the District Court of the Choctaw Nation of Oklahoma. Upon receiving the written promise of the alleged violator to answer as specified in the citation, the law enforcement officer shall release the person upon personal recognizance unless there has been a violation of another provision of law.
- C. No medical marijuana license holder may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this law, unless the behavior of the person creates an unreasonable danger to the safety of the minor.
- D. Any real or personal property located within the jurisdictional boundaries of the Choctaw Nation of Oklahoma, that is related to or involves medical marijuana, and that is owned, used or possessed by any person who holds a valid medical marijuana license issued by the Oklahoma State Department of Health, shall not be subject to any forfeit re laws of the Choctaw Nation of Oklahoma, as long as the ownership, use or possession of such real or personal property is not inconsistent with the medical marijuana license laws and regulations under Oklahoma State law (63 O.S. § 420, et seq., 63 O.S. § 426.1, 63 O.S. § 427.1 et seq., and 63 O.S. § 427a et seq.) and any other applicable law of the Choctaw Nation of Oklahoma.

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- E. Nothing in this Section shall prohibit the Choctaw Nation of Oklahoma from enforcing against any person all laws regarding marijuana when such person is not a holder of a valid medical marijuana license issued by a tribal or state government, is in violation of the laws and regulations applicable for medical marijuana licenses or is in violation of other applicable laws of the Choctaw Nation of Oklahoma.