

HOUSE BILL 85

By Freeman

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 29; Title 33; Title 38; Title 39; Title 40; Title
41; Title 43; Title 45; Title 50; Title 53; Title 63;
Title 67; Title 68 and Title 71, relative to cannabis.

WHEREAS, Tennessee's motto is "Agriculture and Commerce," and this act supports these principles; and

WHEREAS, thirty-eight states have a marijuana regulatory structure, and Tennessee should act forthwith in order to remain competitive nationally and globally in the burgeoning cannabis industry; and

WHEREAS, Tennessee businesses believe in the promotion of free and fair markets by providing consumers with the highest quality goods at the lowest possible prices, and this act does so by protecting Tennessee farmers, processors, and retailers from undue influence on intrastate cannabis markets by special interests seeking to monopolize trade therein; and

WHEREAS, Tennesseans believe in product safety and the protection of minors, and this act includes measures to provide funding for both with regard to the cannabis industry; and

WHEREAS, the federal government has not demonstrated a willingness to violate Tennessee's Tenth Amendment right to promulgate laws regarding agriculture and commerce within the State; and

WHEREAS, this act honors the United States Constitution by codifying Fourth and Fifth Amendment protections for Tennesseans with respect to cannabis use and possession; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding the following as a new chapter:

43-23-101. Short title.

This chapter is known and may be cited as the "Free All Cannabis for Tennesseans Act" or "FACT Act."

43-23-102. Chapter definitions.

As used in this chapter:

(1) "Adult" means a natural person who is twenty-one (21) years of age or older;

(2) "Advertising":

(A) Means the act of providing consideration for the publication, dissemination, solicitation, or circulation of visual, oral, or written communication to induce, directly or indirectly, any person to patronize a particular marijuana dispensary, or to purchase marijuana or marijuana products;

(B) Includes marketing and marketing materials; and

(C) Does not include product packaging or labeling;

(3) "Batch number" means a unique numeric or alphanumeric identifier assigned prior to testing to allow for inventory tracking and traceability;

(4) "Cannabinoid":

(A) Means an active chemical compound that is found in cannabis; and

(B) Includes, but is not limited to, delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD);

(5) "Cannabis" means the plant species and subspecies of *Cannabis sativa* L.;

(6) "Child-resistant" means special packaging that is:

(A) Designed or constructed in accordance with 16 CFR Part 1700 to be significantly difficult to open for children under five (5) years of age and not difficult for normal adults to use properly;

(B) Opaque so that the outermost packaging does not allow the product to be seen without opening the packaging material; and

(C) Resealable to maintain its child-resistant effectiveness for multiple openings for any product intended for more than a single use or containing multiple servings;

(7) "Clone" means a nonflowering plant cut from a mother plant that is capable of developing into a new plant and has shown no signs of flowering;

(8) "Community facility" means:

(A) A licensed child care center, as defined in § 71-3-501;

(B) A public park;

(C) A public playground;

(D) A public swimming pool;

(E) A community center, the primary purpose of which is to provide recreational opportunities or services to children; or

(F) A place of worship;

(9) "Completed application":

(A) Means a document prepared in accordance with the requirements of this chapter and rules promulgated by the department, and the forms and instructions provided by the issuing department or agency; and

(B) Includes any required supporting documentation and the applicable license application fee;

(10) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marijuana plant by manual or mechanical means;

(11) "Department" means the department of agriculture;

(12) "Disadvantaged business" has the same meaning as defined in § 4-26-102;

(13) "Dispense" means the selling of marijuana or marijuana products to an adult consumer that is packaged in a suitable container appropriately labeled for subsequent administration to, or use by, an adult;

(14) "Edible marijuana product":

(A) Means a marijuana product that is intended to be ingested orally; and

(B) Includes, but is not limited to, food-based marijuana concentrate or marijuana-infused food, drink, or pills;

(15) "Entity" means an individual, general partnership, limited partnership, limited liability company, trust, estate, association, corporation, cooperative, or any other legal or commercial organization;

(16) "Flowering" means the reproductive state of a marijuana plant in which there are physical signs of flower or budding out of the nodes of the stem;

(17) "Food-based marijuana concentrate" means a marijuana concentrate that was produced by extracting cannabinoids from marijuana through the use of propylene glycol, glycerin, butter, olive oil, coconut oil, or other typical food-safe cooking fats;

(18) "Good cause" for purposes of an initial, renewal, or reinstatement license application, or for purposes of discipline of a licensee, means:

(A) The licensee or applicant has violated, does not meet, or has failed to comply with this chapter or any rules promulgated pursuant to this chapter;

(B) The licensee or applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the

department of agriculture, the department of revenue, or a local governmental entity with specific governing jurisdiction established by statute or rules promulgated pursuant to this chapter; or

(C) The licensed premises of a marijuana establishment or applicant have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate vicinity in which the establishment is located;

(19) "Healthcare practitioner" means a person licensed under title 63, or such person's counterpart in another state, who has the authority to prescribe or dispense controlled substances in the course of professional practice;

(20) "Heat- or pressure-derived marijuana concentrate" means a marijuana concentrate that was produced by extracting cannabinoids from marijuana through the use of heat or pressure;

(21) "Hemp" has the same meaning as defined in § 43-27-101;

(22) "Immature plant" means a nonflowering marijuana plant that has not demonstrated signs of flowering;

(23) "Inhalation" means the consumption of marijuana by smoking or vaporization;

(24) "Licensed premises" means the premises specified in an application for a marijuana establishment or marijuana research facility that is owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, test, or research marijuana or marijuana products pursuant to this chapter;

(25) "Manufacture" means the production, compounding, or processing of a marijuana product from marijuana, excluding natural marijuana plants or any part of such plant;

(26) "Marijuana":

(A) Means all parts of the plant cannabis with a total THC of greater than one percent (1%), whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds, or resin; and

(B) Does not include hemp;

(27) "Marijuana biomass" means the aerial parts of the cannabis plant that are removed from the roots, stalks, stems, or seeds to the extent possible and primarily used for extracting marijuana concentrate;

(28) "Marijuana concentrate":

(A) Means the cannabinoid-rich oil or extract from marijuana extracted from plant material or the resin created from the plant by physical or chemical means; and

(B) Includes water-based marijuana concentrate, food-based marijuana concentrate, solvent-based marijuana concentrate, and heat- or pressure-derived marijuana concentrate;

(29) "Marijuana dispensary" means a marijuana establishment that has been licensed by the department to purchase marijuana or marijuana products from a marijuana grower or marijuana processor for the purpose of reselling marijuana or marijuana products to adult consumers, or selling or transferring such products to another marijuana dispensary;

(30) "Marijuana establishment":

(A) Means an entity that is licensed by the department under this chapter;

(B) Includes, but is not limited to, marijuana dispensaries, marijuana processors, marijuana growers, marijuana testing facilities, and marijuana transporters; and

(C) Does not include a marijuana research facility;

(31) "Marijuana flower" means the reproductive organs of the marijuana plant, referred to as the "bud", and are parts of the plant, whether trimmed or not, that are harvested and consumed orally or via inhalation in the plant's natural form;

(32) "Marijuana grower" means an individual or entity that is licensed pursuant to this chapter to cultivate, prepare, and package marijuana for sale or transfer, or contract for transfer, to a marijuana establishment or marijuana research facility;

(33) "Marijuana plant" means a rooted cannabis plant, of a variety not intended to be cultivated as hemp as defined in § 43-27-101, that has a minimum of three (3) leaf sets;

(34) "Marijuana processor" means an individual or entity that is licensed pursuant to this chapter to operate a marijuana establishment that is responsible for the production, manufacture, extraction, processing, packaging, or creation of marijuana concentrate or marijuana products, including edible marijuana products, marijuana-infused products, and other marijuana products;

(35) "Marijuana product" means a product that contains cannabinoids extracted from marijuana by physical or chemical means and is intended for sale to and use by adult consumers and takes the form of oils, tinctures, flower, edibles, pills, topical forms,

gels, creams, vapors, patches, suppositories, liquids, and forms administered by a nebulizer;

(36) "Marijuana research facility" means a private postsecondary educational institution located in this state with a postgraduate program in agriculture or medicine conducting marijuana research or a public institution;

(37) "Marijuana testing facility" means an entity licensed by the department under this chapter to analyze the safety and potency of marijuana and marijuana products;

(38) "Marijuana transporter" means an individual or entity that is licensed by the department under this chapter to transport marijuana or marijuana products;

(39) "Marijuana trim" means the byproduct of trimming marijuana flower that may be used as marijuana biomass or as an ingredient in smokable or edible marijuana products;

(40) "Marijuana waste" means unused, surplus, returned, or out-of-date marijuana or marijuana products to be remediated or destroyed;

(41) "Material change" means a change that would require a substantive revision to the standard operating procedures of a licensee;

(42) "Mature plant" means a harvestable female marijuana plant that is flowering;

(43) "Minor" means a person who has not attained twenty-one (21) years of age;

(44) "Mother plant" means a marijuana plant that is grown or maintained for the purpose of generating clones;

(45) "Natural person" means an individual, living human being;

(46) "Owner" means a direct beneficial owner and is limited to the following:

(A) A shareholder owning at least a five percent (5%) interest of a corporate entity;

(B) An officer of a corporate entity;

(C) A partner in a general partnership;

(D) A general or limited partner who owns an interest in a limited partnership;

(E) A member who owns an interest in a limited liability company;

(F) A beneficiary who holds a beneficial interest in a trust;

(G) A trustee of a trust;

(H) A person who owns an interest in a joint venture;

(I) A person who owns an interest in an association;

(J) An owner of any other type of legal entity; and

(K) Any other person holding an interest or convertible note in any entity that owns, operates, or manages a licensed facility;

(47) "Package" or "packaging" means a container or wrapper that may be used by a marijuana establishment to enclose or contain marijuana or marijuana products;

(48) "Person":

(A) Means a natural person, partnership, association, business trust, company, corporation, estate, limited liability company, trust, or any other legal entity or organization, or a manager, agent, owner, director, servant, officer, or employee thereof; and

(B) Does not include a governmental entity;

(49) "Process" means to separate or otherwise prepare parts of the marijuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marijuana concentrate or marijuana products;

(50) "Production batch":

(A) Means:

(i) An amount of marijuana concentrate of the same category that is produced using the same extraction methods, standard operating procedures, and harvest batch of marijuana; or

(ii) An amount of marijuana product of the same exact type that is produced using the same ingredients, standard operating procedures, and production batch of marijuana concentrate; and

(B) Does not include marijuana flower;

(51) "Public institution" means an entity established or controlled by the federal government, state government, or a local government, including, but not limited to, institutions of higher education and related research institutions;

(52) "Public money" means funds or money obtained from a governmental entity by a licensee, including, but not limited to, research grants;

(53) "Registered to conduct business" means an eligible applicant who has provided proof that the applicant's business is in good standing with the secretary of state and department of revenue;

(54) "Remediation" means:

(A) The process by which marijuana flower or marijuana trim that has failed required testing is processed into marijuana concentrate and retested for compliance; or

(B) The process by which marijuana waste is recycled into usable product, where possible;

(55) "Research project" means a discrete scientific endeavor to answer a research question or a set of research questions related to hemp or marijuana as required by a marijuana research license;

(56) "Revocation" means the final decision by the department to rescind a license issued pursuant to this chapter because the licensee did not comply with the applicable requirements set forth in this chapter or rules promulgated pursuant to this chapter;

(57) "Solvent-based marijuana concentrate" means marijuana concentrate produced by extracting cannabinoids from marijuana through the use of a safe solvent medium, resulting in a finished product that meets state and federal guidelines for food safety;

(58) "Strain" means the classification of cannabis or marijuana plants based on the individual genetics of the plant that can be used to track genetic traits through the cultivation and processing of marijuana products and to help licensees and consumers predict the contents and effects of a marijuana product;

(59) "Suitable container" means a child-resistant package that complies with state law;

(60) "Test batch":

(A) With regard to usable marijuana, means a homogenous, identified quantity of usable marijuana by strain that is harvested during a seven-day period from a specified cultivation area; and

(B) With regard to oils, vapors, and waxes derived from usable marijuana, means an identified quantity that is uniform, intended to meet specifications for identity, strength, and composition, and manufactured,

packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol;

(61) "THC" means delta-9 tetrahydrocannabinol, which is a cannabinoid in cannabis formed by decarboxylation of natural tetrahydrocannabinolic acid, which generally occurs by exposure to heat;

(62) "THCA" means delta-9 tetrahydrocannabinolic acid, the precursor to the primary psychotropic cannabinoid contained in cannabis;

(63) "Total THC" means the sum of the amount of THC and the result of eight hundred seventy-seven one-thousandths (0.877) multiplied by the amount of THCA;

(64) "Transporter agent" means a person who transports marijuana or marijuana products for a licensed marijuana transporter and holds a transporter agent license;

(65) "Universal symbol" means an image indicating that marijuana or a marijuana product contains THC;

(66) "Veteran" means a person who has been honorably discharged from the army, navy, air force, marine corps, or coast guard, or any person who has been honorably discharged from a reserve component, as defined in 10 U.S.C. § 10101, having performed active federal service in the armed forces of the United States; and

(67) "Veteran-owned business" means a business that is a continuing, independent, for-profit business located in this state that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more veterans; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more veterans and whose management and daily business operations are under the control of one (1) or more veterans.

43-23-103. Authorized conduct – Personal use of marijuana.

(a) An adult is authorized under this chapter to:

(1) Except as provided in subdivision (a)(4), use, possess, and transport not more than sixty (60) grams of marijuana, except that not more than fifteen (15) grams of that amount may be in the form of marijuana concentrate; provided, that the restrictions regarding the amount of marijuana or marijuana concentrate that may be possessed or transported do not apply to a marijuana transporter or a transportation agent acting within the course and scope of the transporter's or agent's license;

(2) Transfer without remuneration to another adult not more than sixty (60) grams of marijuana, except that not more than fifteen (15) grams of that amount may be in the form of marijuana concentrate; provided, that the transfer is not advertised or promoted to the public;

(3) Cultivate for personal use not more than twelve (12) marijuana plants in an area on the premises of the adult's private residence; provided, that the cultivation occurs in a private area that is:

(A) Equipped with locks or other security devices that restrict access to the area; and

(B) Not visible from a public place without the use of aircraft or optical aids;

(4) Possess, store, or process on the premises of the adult's private residence not more than the amount of marijuana produced from plants cultivated on the premises; provided, that:

(A) Not more than the twelve (12) marijuana plants are possessed, cultivated, or processed on the premises at one (1) time; and

(B) Any other amount of marijuana in excess of sixty (60) grams is stored in a locked container or secure area equipped with security devices that restrict access; and

(5) Use, possess, transport, or transfer to another adult without remuneration marijuana-related drug paraphernalia.

(b)

(1) A parent, legal guardian, or conservator may administer for medical purposes a marijuana product, excluding a smokeable product, to a minor with a medical condition, or symptoms resulting from a medical condition, for whom the parent, guardian, or conservator has legal authority to provide for the care, supervision, and control.

(2) The department of health shall provide on the department's website a form that, if executed by the parent, guardian, or conservator after consultation with a healthcare practitioner, creates a rebuttable presumption:

(A) That the practitioner's patient, as a minor for whom the parent, guardian, or conservator has legal authority to provide for the care, supervision, and control, has a medical condition, or symptoms resulting from a medical condition, for which the patient, parent, guardian, or conservator seeks to use a marijuana product to treat the medical condition, or alleviate the symptoms thereof; and

(B) Of legal conduct under subdivision (b)(1).

43-23-104. Authorized conduct – Retail marijuana operations.

This chapter authorizes:

(1) A marijuana grower director, manager, or employee acting within the scope of the grower's license to:

(A) Cultivate marijuana for sale or transfer to a marijuana establishment, including the sale or transfer of seeds, flower, mother plants, mature plants, immature plants, or clones; and

(B) Possess marijuana and marijuana-related drug paraphernalia;

(2) A marijuana processor director, manager, or employee acting within the scope of the processor's license to:

(A) Produce marijuana products for sale or transfer to a marijuana establishment; and

(B) Possess marijuana and marijuana-related drug paraphernalia;

(3) A marijuana dispensary director, manager, or employee acting within the scope of the dispensary's license to:

(A) Possess marijuana and marijuana products; and

(B) Transfer and sell marijuana, marijuana products, and marijuana-related drug paraphernalia to an adult;

(4) A marijuana transporter director, manager, employee, or agent acting within the scope of the transporter's license to transport and transfer marijuana or marijuana products between marijuana establishments; and

(5) A marijuana testing or research facility director, manager, or employee acting within the scope of the facility's license to possess, test, and transport marijuana, marijuana products, and marijuana-related drug paraphernalia.

43-23-105. Protection from legal action for authorized conduct.

(a) A person is not subject to the denial of any right or privilege or to arrest, prosecution, forfeiture of property, or penalty, including any civil penalty or disciplinary

action by a court or occupational or professional licensing board or other like instrumentality solely due to conduct authorized under §§ 43-23-103 and 43-23-104.

(b) The fact that a person engages in conduct authorized by § 43-23-103 or § 43-23-104 does not in itself constitute grounds for denying, limiting, or restricting conservatorship or custody or possession of or access to a child.

(c) Unless expressly required by federal law, a person in compliance with this chapter shall not be denied eligibility, based on acts authorized under this chapter, for a public assistance program, including, but not limited to, the special supplemental food program for women, infants, and children; temporary assistance for needy families (TANF); medicaid; the supplemental nutrition assistance program (SNAP); or other such public assistance programs.

(d)

(1) An employer is authorized to establish policies permitting, restricting, or prohibiting the use of marijuana or marijuana products in the workplace.

(2) This chapter does not prohibit an employer from:

(A) Disciplining an employee for using marijuana or a marijuana product in the workplace or for working while under the influence of marijuana or a marijuana product; or

(B) Considering a job applicant's use of marijuana as a basis for refusing to hire the applicant for employment responsibilities described in § 50-9-106(a)(3)(A) as long as that consideration, including testing of the applicant, is consistent with and appropriate in its application to the employer's hiring policy with regard to other adulterants that cause a refusal of hiring for an applicant, including the time segment under review, so as to not disproportionately restrict the legal rights of the applicant.

(3) Notwithstanding title 50, chapters 7 and 9, and for purposes of eligibility for benefits under Tennessee Employment Security Law, compiled in title 50, chapter 7, the use of marijuana or a marijuana product, when there is no other action or cause by the employee or reason for the termination, shall not be deemed a discharge for misconduct under § 50-7-303 or otherwise a termination for cause.

(e) Notwithstanding title 39, chapter 17, part 13, the use of marijuana or marijuana products, personal cultivation of marijuana, or status as a licensee under this chapter or under title 43, chapter 27, shall not be grounds for the denial or infringement of the right to own, purchase, or possess a firearm, ammunition, or firearm accessory under state law.

43-23-106. Prohibition of marijuana on private property – Exception.

(a) Except as otherwise provided by subsection (b), a person may prohibit or restrict the possession, consumption, cultivation, distribution, manufacture, sale, or display of marijuana or marijuana products on property the person owns, occupies, or manages.

(b) A person shall not prohibit a residential tenant under a lease agreement from possessing marijuana, marijuana products, or marijuana-related drug paraphernalia or consuming marijuana by means other than smoking on the premises.

43-23-107. Conduct not authorized – Violations.

(a) This chapter does not authorize the following conduct:

(1) Smoking or otherwise consuming marijuana in:

(A) A motor vehicle;

(B) An aircraft;

(C) A watercraft on the public waters of this state; or

(D) A public place, unless:

(i) The public place is an area designated by a political subdivision as an area where using marijuana or a marijuana product is permissible; and

(ii) The area described by subdivision (a)(1)(D)(i) is not accessible to minors;

(2) Possessing or consuming marijuana or marijuana products or possessing marijuana-related drug paraphernalia:

(A) On the premises of a public or private child care facility, pre-kindergarten, or primary or secondary school;

(B) On a school bus that serves a facility or school described by subdivision (a)(2)(A); or

(C) On the premises of a correctional facility; or

(3) The separation of resin from the marijuana plant by butane extraction or another method that uses a substance with a flashpoint below one hundred degrees Fahrenheit (100° F) in a public place or motor vehicle or within the curtilage of a residential structure.

(b) A person commits an offense if the person:

(1) Under the authority of this chapter:

(A) Sells, gives, or causes to be sold or given, marijuana or a marijuana product to a minor; or

(B) Sells, gives, or causes to be sold or given, marijuana or a marijuana product to another person knowing the other person intends to deliver the marijuana or marijuana product to a minor, except as authorized under § 43-23-103(b); or

(2) Sells marijuana or a marijuana product in or from:

(A) A marijuana dispensary that is not in compliance with this chapter; or

(B) A marijuana establishment other than a dispensary and such sale is not authorized under this chapter.

(c) It is a defense to prosecution under subsection (b) that the person to whom the marijuana or marijuana product was sold or given presented apparently valid proof of identification. For purposes of this subsection (c), "apparently valid proof of identification" means a government-issued photo identification that contains a physical description and photograph consistent with the person's appearance and purports to establish that the person is twenty-one (21) years of age or older. Such government-issued photo identification may include a driver license issued by this state or another state, a passport, or other identification card issued by a state, territory, tribe, or the federal government.

(d) A violation of this section is punishable as follows:

(1) A first, second, or third offense is a Class C misdemeanor; and

(2) A fourth or subsequent offense is a Class A misdemeanor, and if the violator is a licensee, the revocation of the violator's license for a period of two (2) years.

43-23-108. Duties of the department – Rules.

(a) The department shall implement and administer this chapter.

(b) The department shall promulgate all necessary rules for the administration and enforcement of this chapter. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The department shall promulgate rules for the reasonable regulation of marijuana establishments and marijuana research facilities, including rules that:

(1) Set application and license fees under this chapter in amounts sufficient to administer this chapter and such fees may be adjusted annually for inflation;

(2) Establish standards for:

(A) The operation of marijuana testing facilities;

(B) The testing of cultivated marijuana flower and marijuana products; and

(C) The secure transportation of marijuana by marijuana transporters, including standards to ensure all marijuana establishments and marijuana research facilities are properly served;

(3) Restrict the use of dangerous pesticides;

(4) Regulate the packaging and labeling of marijuana products available at marijuana dispensaries, including requirements regarding:

(A) Child-resistant packaging;

(B) The use of a universal symbol; and

(C) The amount of THC or total THC present;

(5) Restrict advertising and display of marijuana and marijuana products;

(6) Restrict the maximum amount of THC or total THC, or regulate the serving size, that may be contained in a marijuana product sold to an adult consumer;

(7) Require recordkeeping and monitoring for identification of a production batch or test batch through the use of a batch number;

(8) Require recordkeeping for any remediation conducted by a marijuana establishment;

(9) Require recordkeeping and monitoring to track the transfer of marijuana and marijuana products between marijuana establishments or licensees;

(10) Require security measures; provided, that the security measures do not restrict the cultivation of marijuana outdoors or in greenhouses; and

(11) Establish protocols or restrictions with regard to the proximity of marijuana establishments to community facilities and elementary and secondary schools.

(d) The department, in consultation with the department of health, shall promulgate rules regarding the involvement of the state in sanctioning research projects or licensing marijuana research facilities, including a process by which marijuana research facilities may request and receive public money for research projects; provided, that a research project must include a description of a defined protocol, clearly articulated goals, defined methods and outputs, and a defined start and end date in order for the project to be sanctioned by the department.

(e) The department of health may promulgate rules and forms necessary to facilitate a medical use component of this chapter. In promulgating rules and forms, the department shall consider and prioritize the process by which patients, practitioners, and caregivers are able to document recommendations for the medical use of marijuana or marijuana products and by which patients and caregivers are able to establish that marijuana and marijuana products are being obtained for medical use when marijuana and marijuana products are purchased from a marijuana dispensary. The department of health shall publish such forms on the department's website.

(f) Except where prohibited by federal law and notwithstanding any other law to the contrary, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department of financial institutions shall promulgate rules authorizing marijuana establishments to conduct cashless transactions and use banking services, including the depositing of revenue, in Tennessee-chartered banks or other Tennessee-chartered financial institutions.

(g) The department shall establish a universal symbol and publish the symbol on the department's website.

43-23-109. Conflicts of interest.

(a) A person who is involved in the implementation, administration, or enforcement of this chapter as a member or employee of the department, or a consultant to the department, shall not also hold a pecuniary interest in any entity licensed by the department under this chapter.

(b) A person who holds a pecuniary interest in a marijuana testing facility or a marijuana transporter that holds a license issued under this chapter shall not hold a pecuniary interest in any entity that holds a marijuana dispensary, marijuana processor, or marijuana grower license issued under this chapter.

(c) A person may not hold a pecuniary interest in more than five (5) entities that are licensed under this chapter as a marijuana grower, unless otherwise authorized by the department.

43-23-110. Annual report.

The department shall annually submit to the governor and to the chief clerks of the senate and the house of representatives a report providing the following information regarding licensing and regulation under this chapter:

(1) The number of licenses issued for each class of license under this chapter;

(2) Demographic information pertaining to licensees;

(3) A description of any fines imposed on a licensee or disciplinary actions taken against a licensee by the department; and

(4) A statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this chapter.

43-23-111. Licensing.

(a) A license issued by the department under this chapter is required to operate as a marijuana establishment.

(b) The department by rule shall provide classes of licensure to be issued under this chapter and, for each class of license issued under this chapter, qualifications for licensure that are demonstrably related to the operations authorized and duties imposed under that class of license.

(c) The department shall prioritize the issuance of licenses in the following order:

(1) First priority to:

(A) Disadvantaged businesses and veteran-owned businesses that have held a hemp license, issued under § 43-27-102, in the prior year; and

(B) Business entities located in a tier 4 enhancement county, as described in § 67-4-2109, that have held a hemp license, issued under § 43-27-102, in the prior year;

(2) Second priority to business entities that have held a hemp license, issued under § 43-27-102, in the prior year;

(3) Third priority to entities that are:

(A) Owned solely by an individual who is a resident of this state;

or

(B) At least fifty-one percent (51%) owned and controlled by one (1) or more residents of this state; or, in the case of any publicly owned business, have at least fifty-one percent (51%) of the stock owned and controlled by one (1) or more residents of this state and management and daily business operations under the control of one (1) or more residents of this state;

(4) Fourth priority to disadvantaged businesses and veteran-owned businesses located in a tier 3 or tier 4 enhancement county as described in § 67-4-2109; and

(5) Fifth priority to all other qualified persons.

43-23-112. Licensure application.

(a) A person eligible for licensure may apply for an initial or renewal license under this chapter by submitting a form prescribed by the department along with the application fee in an amount set by the department.

(b) The completed application must indicate the class of license sought and include:

(1) The name and address of the applicant;

(2) The name of each owner, which the department shall make available as a matter of public record;

(3) The name and address of each of the applicant's directors, managers, and employees; and

(4) Any other information considered necessary by the department to determine the applicant's eligibility for the license.

(c) In addition to satisfying the other requirements provided by department rule under this chapter:

(1) An applicant for a license must submit to the department a complete and legible set of fingerprints, on a form prescribed by the department, for the purpose of obtaining criminal history record checks from the Tennessee bureau of investigation and the federal bureau of investigation;

(2) The department may deny a license to an applicant who does not comply with the requirement of subdivision (c)(1). Issuance of a license by the department is conditioned on the department obtaining the applicant's criminal history record check under this subsection (c); and

(3) Other than a conviction for an offense that involves the delivery, sale, distribution, or casual exchange of a controlled substance to a minor under eighteen (18) years of age where the person was an adult who was at least two (2) years older than the minor at the time of the offense, a person's conviction for an offense does not disqualify an applicant for licensure under this chapter.

43-23-113. Issuance, renewal, or denial of license.

(a) The department shall issue or renew a license under this chapter only if:

(1) The department determines the applicant meets the qualifications for the class of license sought, under §§ 43-23-111 and 43-23-112;

(2) The applicant is registered to conduct business; and

(3) The applicant is in compliance with any applicable local regulations.

(b) If the department denies the issuance or renewal of a license under subsection (a), then the department shall give written notice of the grounds for denial to the applicant.

(c) A license issued or renewed under this section expires on the second anniversary of the date of issuance or renewal, as applicable.

43-23-114. Duty to maintain qualifications.

(a) A licensee shall maintain compliance at all times with the qualifications for the applicable class of license established under § 43-23-111.

(b) A licensee shall notify the department in writing whenever there is a material change in the operations of a licensee.

43-23-115. License suspension or revocation.

(a) The department may at any time suspend or revoke a license issued under this chapter for good cause, including if the department determines that the licensee has not maintained the qualifications established under § 43-23-111 or has failed to comply with a duty imposed under this chapter.

(b) The department shall give written notice to a licensee of a license suspension or revocation under this section and the grounds for the suspension or revocation. The notice must be sent by certified mail, return receipt requested.

(c) After suspending or revoking a license issued under this chapter, the department may seize or place under seal all marijuana, marijuana products, and marijuana-related drug paraphernalia owned or possessed by the licensee. If the license is revoked, a disposition shall not be made of the seized or sealed marijuana, marijuana products, or drug paraphernalia until the time for administrative appeal of the order has elapsed or until all appeals have been concluded. When a revocation order becomes final, all marijuana, marijuana products, and drug paraphernalia may be forfeited to the state as contraband.

(d) Proceedings under this section must be conducted pursuant to title 4, chapter 5, part 3 of the Uniform Administrative Procedures Act.

43-23-116. Duties of licensees relating to dispensing marijuana or marijuana products.

Before dispensing marijuana or marijuana products to an adult consumer, a marijuana dispensary must make reasonable efforts to verify that:

- (1) The person receiving the marijuana or marijuana product is an adult;
- (2) The marijuana or marijuana product complies with testing and labeling rules promulgated by the department; and
- (3) The amount of marijuana or marijuana products dispensed is not greater than the amount authorized for personal use under § 43-23-103(a).

43-23-117. Duties of licensees relating to security.

(a) A licensee shall ensure that the cultivation, manufacture, sale, or display of marijuana, marijuana products, and marijuana-related drug paraphernalia is not visible from a public place without the use of optical aids or aircraft.

(b) A licensee shall not cultivate, manufacture, store, or sell marijuana, marijuana products, or marijuana-related drug paraphernalia at a location other than the physical address approved by the department for the establishment under the license issued to the establishment under this chapter.

(c) A licensee shall adopt reasonable security measures necessary to restrict access to areas where marijuana or marijuana products are stored and to prevent theft of marijuana and marijuana products.

43-23-118. Licensee employees.

A licensee shall not employ or otherwise accept the services of a person younger than eighteen (18) years of age.

43-23-119. Monthly sales report.

A marijuana dispensary shall submit a report to the department monthly specifying the amount of marijuana sold, the number of marijuana products sold, and the amount of money collected in sales by the establishment during the preceding month.

43-23-120. Taxes.

(a) Marijuana and marijuana products are taxable as tangible personal property and subject to sales and use taxes imposed by title 67, chapter 6. Notwithstanding § 67-6-702, a county, by resolution of the county legislative body, or an incorporated municipality, by ordinance of its governing body, is authorized to levy a local sales tax in a rate not to exceed five percent (5%) on the sale of marijuana and marijuana products within such county or municipality. Such local sales tax is to be levied, collected, and distributed in the same manner as local sales and use taxes under title 67, chapter 6, part 7.

(b)

(1) A marijuana tax is imposed on each sale of marijuana or a marijuana product by a marijuana dispensary.

(2) The rate of the tax is fifteen percent (15%) of the sales price of the marijuana or marijuana product.

(3) The tax imposed by this subsection (b) is administered, collected, and enforced in the same manner as the sales and use tax under title 67, chapter 6 is administered, collected, and enforced.

(4) The tax imposed by this subsection (b) is in addition to any other tax imposed by law.

(c)

(1) Notwithstanding any law to the contrary:

(A) A marijuana grower is entitled to a refund of twenty-five percent (25%) of the sales and use tax levied on supplies and materials purchased from a business located in this state and used for the cultivation of marijuana;

(B) A marijuana processor is entitled to a refund of twenty-five percent (25%) of the sales and use tax levied on supplies and materials purchased from a business located in this state and used for the manufacture or processing of marijuana and production of marijuana products; and

(C) A marijuana dispensary is entitled to a refund of twenty-five percent (25%) of the sales and use tax levied on supplies and materials purchased from a business located in this state and used for the dispensing and retail sale of marijuana and marijuana products.

(2) To receive a refund authorized under this subsection (c), a marijuana establishment must submit the form prescribed by the department of revenue, in addition to any documentation the department may require.

(d) Notwithstanding any law to the contrary, electronic payment and filing requirements for taxes levied under title 67 are waived and a marijuana establishment may file a return in paper form and remit payments in cash or other form approved by the department of revenue. The commissioner of revenue is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars (\$25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing, and processing any paper filing.

43-23-121. Allocation of marijuana tax.

The department of revenue shall allocate the revenue derived from the marijuana tax imposed by § 43-23-120(b) in the following manner:

(1) Fifty percent (50%) of the funds must be allocated to the department of agriculture to be used for:

(A) The administration and enforcement of this chapter;

(B) Educational and marketing programs related to the promotion and implementation of this chapter, including public safety campaigns; and

(C) Grant initiatives focused on economic development and green power infrastructure in tier 3 and tier 4 enhancement counties, as described in § 67-4-2109;

(2) Twenty percent (20%) of the funds must be allocated to the department of safety to be used for:

(A) Training and education of law enforcement agencies and officers with regard to cannabis-related laws in this state;

(B) The support of law enforcement officers injured in the line of duty; and

(C) The support of families of law enforcement officers killed in the line of duty;

(3) Twenty percent (20%) of the funds must be deposited, in equal amounts, into the state employee legacy pension stabilization reserve trust, created in § 9-4-1102, and the pension stabilization reserve trust, created in § 9-4-1001;

(4) Five percent (5%) of the funds must be allocated to the department of education to be used for educational programs for elementary and secondary

students regarding age restrictions for marijuana use and potential health and legal risks for improper or underage use of marijuana; and

(5) Five percent (5%) of the funds must be retained by the department of revenue to be used for administrative costs incurred pursuant to this chapter, including collection and enforcement costs.

43-23-122. Prohibited local regulation.

Except as provided in § 43-23-123(b), a political subdivision of this state shall not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits or unreasonably restricts the cultivation, production, manufacture, dispensing, transportation, or possession of marijuana or marijuana products or the operation of a marijuana grower, marijuana processor, marijuana dispensary, marijuana transporter, marijuana research facility, or marijuana testing facility as authorized by this chapter.

43-23-123. Permissible local regulation.

(a) A political subdivision may adopt regulations consistent with this chapter governing the hours of operation, location, manner of conducting business, and number of marijuana dispensaries; provided, that regulations must not be more restrictive than those that apply to establishments that are licensed as retail package stores pursuant to § 57-3-204.

(b)

(1) A county or municipality seeking to ban the sale of marijuana or marijuana products to adult consumers or the cultivation or manufacture of marijuana or marijuana products by marijuana establishments within its jurisdiction is authorized to do so by a two-thirds (2/3) vote of the local legislative body; provided, that the initial vote on a local ban occurs no later than September 30, 2023.

(2) Notwithstanding any law to the contrary, a ban established pursuant to this subsection (b) expires one (1) year from the ban's effective date; provided, that a ban may be renewed under the same procedure established in subdivision (b)(1).

(3) A county or municipality that bans the sale, cultivation, or manufacture of marijuana or marijuana products within its jurisdiction is disqualified from receiving any grant funds authorized under this chapter while the ban is in effect.

43-23-124. Use of gas chromatography mass spectrum tests.

Notwithstanding any law to the contrary:

(1) A person's bail, parole, probation, or suspended sentence shall not be revoked based solely on a positive confirmatory urine drug test conducted via a gas chromatography mass spectrum test (GC-MS) for THC-COOH (11-nor-9-carboxy-delta 9 tetrahydrocannabinol);

(2) A student shall not be prohibited or otherwise restricted from participation in voluntary extracurricular activities, or be required to receive referral information under § 49-6-4213(k)(3), based solely on a positive confirmatory urine drug test conducted via a gas chromatography mass spectrum test (GC-MS) for THC-COOH (11-nor-9-carboxy-delta 9 tetrahydrocannabinol) when the minor is administered a marijuana product in accordance with § 43-23-103(b);

(3) A governmental entity acting in its capacity as a public employer shall not take adverse action against an employee based solely on a positive confirmatory urine drug test conducted via a gas chromatography mass spectrum

test (GC-MS) for THC-COOH (11-nor-9-carboxy-delta 9 tetrahydrocannabinol);
and

(4) A person shall not be required to receive a referral to a treatment resource or be prohibited from receiving public assistance based solely on a positive confirmatory urine drug test conducted via a gas chromatography mass spectrum test (GC-MS) for THC-COOH (11-nor-9-carboxy-delta 9 tetrahydrocannabinol). For purposes of this subdivision (4), "public assistance" includes, but is not limited to, assistance from the special supplemental food program for women, infants, and children; temporary assistance for needy families (TANF); medicaid; the supplemental nutrition assistance program (SNAP); and other public assistance or welfare programs under title 71.

SECTION 2. Tennessee Code Annotated, Section 4-3-610(a), is amended by deleting the language "dogs trained to detect marijuana and other illicit substances" and substituting instead the language "dogs trained to detect illicit substances".

SECTION 3. Tennessee Code Annotated, Section 4-7-115, is amended by deleting the language "dogs trained to detect marijuana and other illicit substances" and substituting instead the language "dogs trained to detect illicit substances".

SECTION 4. Tennessee Code Annotated, Section 4-26-102, is amended by deleting subdivision (6)(B) and substituting instead the following:

(B) Impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex, or service in the armed forces;

SECTION 5. Tennessee Code Annotated, Section 29-38-104, is amended by deleting the following:

(1) From subdivision (5), the language "; or possession of one pound (1 lb.) or twenty-five (25) plants or more, but less than four pounds (4 lbs.) or fifty (50) plants, or distribution of less than one pound (1 lb.), of marijuana";

(2) From subdivision (6), the language "; or possession of four pounds (4 lbs.) or more or fifty (50) plants or more, but less than eight pounds (8 lbs.) or seventy-five (75) plants, or distribution of more than one pound (1 lb.), but less than five pounds (5 lbs.), of marijuana";

(3) From subdivision (7), the language "; or possession of eight pounds (8 lbs.) or more or seventy-five (75) plants or more, but less than sixteen pounds (16 lbs.) or one hundred (100) plants or more, or distribution of more than five pounds (5 lbs.), but less than ten pounds (10 lbs.), of marijuana"; and

(4) From subdivision (8), the language "; or possession of sixteen pounds (16 lbs.) or more or one hundred (100) plants or more, or distribution of ten pounds (10 lbs.) or more, of marijuana".

SECTION 6. Tennessee Code Annotated, Section 38-6-108, is amended by deleting the language "dogs trained to detect marijuana and other illicit substances" and substituting instead the language "dogs trained to detect illicit substances".

SECTION 7. Tennessee Code Annotated, Section 39-17-402(12), is amended by deleting subdivision (C) from the definition of "drug paraphernalia" and substituting instead the following:

(C) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body;

SECTION 8. Tennessee Code Annotated, Section 39-17-402, is amended by deleting subdivision (16) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 39-17-415(a), is amended by deleting subdivisions (1) and (2) in their entireties.

SECTION 10. Tennessee Code Annotated, Section 39-17-417, is amended by deleting subsection (g), subdivision (i)(14), and subdivision (j)(14) in their entireties.

SECTION 11. Tennessee Code Annotated, Section 39-17-418, is amended by deleting subsection (b); and deleting the language "subsections (a) or (b)" in subsection (d) and substituting instead the language "subsection (a)".

SECTION 12. Tennessee Code Annotated, Section 39-17-428(b), is amended by deleting the language "classified as marijuana or hashish" wherever it appears.

SECTION 13. Tennessee Code Annotated, Section 40-32-101(g)(1), is amended by:

(1) Deleting subdivision (A)(xxxiii) and substituting instead the following:

(xxxiii) Section 39-17-417(g)(1) — Manufacture, delivery, sale, or possession of Schedule VI controlled substance;

(2) Deleting subdivision (D)(xxv) and substituting instead the following:

(xxv) Section 39-17-417(g)(2) — Manufacture, delivery, sale, or possession of Schedule VI controlled substance; and

(3) Deleting subdivision (E)(xxii) and substituting instead the following:

(xxii) Section 39-17-417(g)(3) — Manufacture, delivery, sale, or possession of Schedule VI controlled substance;

SECTION 14. Tennessee Code Annotated, Section 41-1-118, is amended by deleting the language "marijuana and other illicit substances" wherever it appears and substituting instead the language "illicit substances".

SECTION 15. Tennessee Code Annotated, Section 67-4-2802, is amended by deleting subdivision (7) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-4-2803, is amended by deleting subdivisions (a)(1), (2), and (3) in their entireties; and deleting the language "marijuana or other" in subsection (b) and substituting instead the language "an".

SECTION 17. Tennessee Code Annotated, Section 67-4-2804, is amended by deleting subsection (b) in its entirety.

SECTION 18. Tennessee Code Annotated, Section 71-3-1201(4), is amended by deleting the language "marijuana,".

SECTION 19. Tennessee Code Annotated, Section 63-1-126, is amended by adding the following as a new subsection:

Notwithstanding this section to the contrary, neither the board nor the employer of the healthcare practitioner shall take adverse action against a healthcare practitioner based solely on a positive confirmatory urine drug test via GC-MS (gas chromatography mass spectrum) THC-COOH (11-nor-9-carboxy-delta 9 tetrahydrocannabinol).

SECTION 20. The Department of Correction shall review the records of persons who are incarcerated in this state for the cultivation, manufacture, delivery, sale, possession, or transfer of marijuana under Tennessee Code Annotated, Section 39-17-417 or Section 39-17-418. The department shall identify and list persons incarcerated for such offenses and include information as to whether the person was also convicted of a felony offense involving violence or the use of a firearm or a felony drug offense for a controlled substance other than marijuana. The department shall provide the list to the Governor and the Speakers of the House of Representatives and the Senate by December 31, 2023.

SECTION 21. Persons serving a sentence for the cultivation, manufacture, delivery, sale, possession, or transfer of marijuana under Tennessee Code Annotated, Section 39-17-417 or Section 39-17-418, who are not also serving a sentence for a felony offense involving violence or the use of a firearm or a felony drug offense for a controlled substance other than

marijuana are eligible for immediate release from incarceration, probation, and parole, and the Department of Correction shall take action to secure such release.

SECTION 22. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 23. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 24. For the purposes of promulgating rules and forms and initiating local bans, this act takes effect upon becoming a law, the public welfare requiring it. Section 20 of this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2024, the public welfare requiring it.