

SB276 INTRODUCED



1 SB276
2 CN8DWQW-1
3 By Senators Sessions, Melson
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 02-Apr-24



SYNOPSIS:

The Alabama Medical Cannabis Commission is responsible for issuing licenses for the processing and dispensing of medical cannabis products.

Under existing law, the Alabama Medical Cannabis Commission may issue no more than four processor licenses and dispensary licenses and no more than five integrated facility licenses to eligible applicants.

This bill would increase the number of licenses the Alabama Medical Cannabis Commission issues to six processor licenses, seven dispensary licenses, and 15 integrated facility licenses to eligible applicants.

This bill would also make the issuance of the specified number of licenses mandatory rather than discretionary.

This bill would void the rescission of licenses and the denial of license applications for certain applicants that were previously acted on by the commission.

This bill would require the Alabama Medical Cannabis Commission to reissue licenses to certain applicants.

This bill would also provide for certain requirements and guidelines pertaining to the awarding of any additionally available licenses to certain



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applicants.

This bill would provide for an administrative adjudicatory process that provides the commission with a recommended order pertaining to the awarding of any additionally available licenses to certain applicants.

This bill would further provide for an appeals process allowing aggrieved applicants to challenge the final orders of the commission pertaining to the awarding of any additionally available licenses to certain applicants.

A BILL

TO BE ENTITLED

AN ACT

Relating to medical cannabis; to amend Sections 20-2A-63, 20-2A-64, and 20-2A-67, Code of Alabama 1975, to require the Alabama Medical Cannabis Commission to issue an increased number of licenses to eligible applicants; and to provide certain requirements and guidelines related to the licensure of certain applicants; to add Sections 20-2A-67.1 and 20-2A-67.2 to the Code of Alabama 1975, to provide for an administrative adjudicatory process for recommendation of the awarding of available licenses to certain applicants; and to provide for an appeals process to challenge the final orders of the commission regarding the licensure of certain applicants.



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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 20-2A-63, 20-2A-64, and 20-2A-67, Code of Alabama 1975, are amended to read as follows:

"§20-2A-63

(a) (1) A processor license authorizes all of the following:

a. The purchase or transfer of cannabis from a cultivator.

b. The processing of cannabis into medical cannabis which shall include properly packaging and labeling medical cannabis products, in accordance with this section.

c. The sale or transfer of medical cannabis to a dispensary.

(2) A processor license authorizes the processor to transfer medical cannabis only by means of a secure transporter.

(b) The commission shall issue ~~no more than four~~ six processor licenses to eligible applicants.

(c) (1) All medical cannabis products must be medical grade product, manufactured using documented good quality practices, and meet Good Manufacturing Practices, such that the product is shown to meet intended levels of purity and be reliably free of toxins and contaminants. Medical cannabis products may not contain any additives other than pharmaceutical grade excipients.

(2) The department shall be responsible for enforcing Good Manufacturing Practices.

(d) Medical cannabis products may not be processed into



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a form that is attractive to or targets children, including all of the following which are prohibited:

(1) Any product bearing any resemblance to a cartoon character, fictional character whose target audience is children or youth, or pop culture figure.

(2) Any product bearing a reasonable resemblance to a product available for consumption as a commercially available candy.

(3) Any product whose design resembles, by any means, another object commonly recognized as appealing to, or intended for use by, children.

(4) Any product whose shape bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon rendering.

(e) All of the following shall apply to all packages and labels of medical cannabis products:

(1) Labels, packages, and containers shall not be attractive to minors and may not contain any content that reasonably appears to target children, including toys, cartoon characters, and similar images. Packages shall be designed to minimize appeal to children and must contain a label that reads: "Keep out of reach of children."

(2) All medical cannabis products must be packaged in child-resistant, tamper-evident containers.

(3) All medical cannabis product labels shall contain, at a minimum, the following information:

a. Lot and batch numbers.



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b. A license identification number for the cultivator
and a license identification number for the processor.

c. Cannabinoids content and potency.

d. The universal state symbol printed in color at least
one-half inch by one-half inch in size.

(f) The commission shall establish one universal flavor
for all gelatinous cube, cuboid, and lozenge medical cannabis
products.

(g) The following statement shall be included on each
label, if space permits, or as an insert within the package:
"WARNING: This product may make you drowsy or dizzy. Do not
drink alcohol with this product. Use care when operating a
vehicle or other machinery. Taking this product with
medication may lead to harmful side effects or complications.
Consult your physician before taking this product with any
medication. Women who are breastfeeding, pregnant, or plan to
become pregnant should discuss medical cannabis use with their
physicians."

(h) Any advertisement and any package or label may not
contain any false statement or statement that advertises
health benefits or therapeutic benefits of medical cannabis.

(i) The commission may require the implementation of a
digital image such as a QR Code for purposes of tracking
medical cannabis products. The digital image must interface
with the statewide seed-to-sale tracking system.

(j) The commission shall determine what information
from the label shall be entered into the statewide
seed-to-sale tracking system."



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141 "§20-2A-64

142 (a) (1) A dispensary license authorizes all of the
143 following:

144 a. The purchase or transfer of medical cannabis from a
145 processor.

146 b. If a cultivator contracted with a processor to
147 process its cannabis into medical cannabis on the cultivator's
148 behalf, the purchase or transfer of medical cannabis from the
149 cultivator.

150 c. The purchase or transfer of medical cannabis from an
151 integrated facility.

152 d. The dispensing and sale of medical cannabis only to
153 a registered qualified patient or registered caregiver.

154 (2) A dispensary license authorizes the dispensary to
155 transfer medical cannabis only by means of a secure
156 transporter, including transport between its dispensing sites.

157 (b) The commission shall issue ~~no more than four~~ seven
158 dispensary licenses to eligible applicants.

159 (c) A dispensary license authorizes the dispensary to
160 transfer medical cannabis to or from a state testing
161 laboratory for testing by means of a secure transporter.

162 (d) A licensed dispensary shall comply with all of the
163 following:

164 (1) Each dispensing site must be located at least ~~one~~
165 ~~thousand~~ 1,000 feet from any school, day care, or child care
166 facility.

167 (2) Each dispensing site must be equipped with
168 surveillance cameras that are focused on each point of entry



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and that operate on a continuous basis. The dispensary must maintain surveillance records for a minimum of 60 days following the date of recording.

(3) Sell and dispense medical cannabis at a dispensing site to a registered qualified patient or registered caregiver only after it has been tested and bears the label required for retail sale.

(4) Enter all transactions, current inventory, and other information into the statewide seed-to-sale tracking system as required in Section 20-2A-54.

(5) Only allow dispensing of medical cannabis by certified dispensers, as provided in subsection (e).

(6) Not allow the use of medical cannabis products on the premises.

(7) Only allow registered qualified patients and registered caregivers on the premises.

(e)(1) As used in this subsection, "certified dispenser" means an employee of a dispensary who dispenses medical cannabis to a registered qualified patient or registered caregiver and who has been trained and certified by the commission.

(2) The commission shall establish and administer a training program for dispensers that addresses proper dispensing procedures, including the requirements of this subsection, and other topics relating to public health and safety and preventing abuse and diversion of medical cannabis. The commission shall certify trained dispensers and may require, as a qualification to remain certified, periodic



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197 training.

198 (3) A certified dispensary shall comply with all of the
199 following:

200 a. Before dispensing medical cannabis, inquire of the
201 patient registry to confirm that the patient or caregiver
202 holds a valid, current, unexpired, and unrevoked medical
203 cannabis card and that the dispensing of medical cannabis
204 conforms to the type and amount recommended in the physician
205 certification and will not exceed the 60-day daily dosage
206 purchasing limit.

207 b. Enter into the patient registry the date, time,
208 amount, and type of medical cannabis dispensed.

209 c. Comply with any additional requirements established
210 by the commission by rule.

211 (4) The commission shall adopt rules to implement this
212 subsection.

213 (f) A licensee may operate up to three dispensing
214 sites, each of which must be located in a different county
215 from any other dispensing site; provided, however, the
216 commission may authorize a licensee to operate a greater
217 number of dispensing sites if, at least one year after the
218 date when the maximum number of total dispensing sites
219 authorized under this section and Section 20-2A-67 are
220 operating, the commission determines that the patient pool has
221 reached a sufficient level to justify an additional dispensing
222 site in an underserved or unserved area of the state.

223 Notwithstanding the foregoing, a licensee may not operate any
224 dispensing site in the unincorporated area of a county or in a



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municipality that has not adopted a resolution or ordinance authorizing the operation of dispensing sites under subsection (c) of Section 20-2A-51."

"§20-2A-67

(a) An integrated facility license authorizes all of the following:

(1) The cultivation of cannabis.

(2) The processing of cannabis into medical cannabis, including proper packaging and labeling of medical cannabis products.

(3) The dispensing and sale of medical cannabis only to a registered qualified patient or registered caregiver.

(4) The transport of cannabis or medical cannabis between its facilities.

(5) The sale or transfer of medical cannabis to a dispensary.

(b) The commission ~~may~~ shall issue ~~no more than five~~ 15 integrated facility licenses to eligible applicants.

(c) An integrated facility licensee shall have the same authorizations granted to, and shall comply with all requirements for, cultivators, processors, secure transporters, and dispensaries, in addition to any other authorizations or requirements under this section or as established by rule by the commission.

(d) An applicant for an integrated facility license shall provide all of the following:

(1) A letter of commitment or other ~~acknowledgement~~ acknowledgment, as determined by commission rule, of the



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applicant's ability to secure a performance bond issued by a surety insurance company approved by the commission in the amount of two million dollars (\$2,000,000).

(2) Proof of at least two hundred fifty thousand dollars (\$250,000) in liquid assets.

(3) Proof that the applicant has the financial ability to maintain operations for not less than two years following the date of application.

(e) At the time a license is issued under this section, the commission shall ensure that the licensee has secured a performance bond as provided in subdivision (1) of subsection (d).

(f) A licensee may operate up to five dispensing sites, each of which must be located in a different county from any other dispensing site that the licensee operates; provided, however, the commission may authorize a licensee to operate a greater number of dispensing sites if, at least one year after the date when the maximum number of total dispensing sites authorized under this section and Section 20-2A-64 are operating, the commission determines that the patient pool has reached a sufficient level to justify an additional dispensing site in an underserved or unserved area of the state.

Notwithstanding the foregoing, a licensee may not operate any dispensing site in the unincorporated area of a county or in a municipality that has not adopted a resolution or ordinance authorizing the operation of dispensing sites under subsection (c) of Section 20-2A-51. This subsection shall not be construed to limit wholesale distribution from integrated



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facility licensees to dispensary licensees."

Section 2. Sections 20-2A-67.1 and 20-2A-67.2 are added to the Code of Alabama 1975, to read as follows:

§20-2A-67.1

(a) Notwithstanding any provision of this chapter or the Alabama Administrative Procedure Act, the awarding of licenses by the commission on June 12, 2023, August 10, 2023, December 1, 2023, and December 12, 2023, is hereby ratified, approved, and confirmed. To the extent that an applicant was awarded a license on June 12, 2023, August 10, 2023, December 1, 2023, or December 12, 2023, and the award was purported to have been subsequently rescinded, or the applicant was subsequently denied a license, that purported rescission or denial is hereby deemed void and without force or effect.

(b) No later than June 15, 2024, the commission shall issue licenses to those applicants that were awarded a license described in subsection (a).

(c) Any additional licenses available under this article, which are not issued pursuant to subsections (a) and (b), shall be awarded only to applicants whose applications were deemed submitted by the commission on April 13, 2023, pursuant to the procedures in Section 20-2A-67.2.

(d) Nothing in this section shall prohibit the commission from suspending, revoking, or restricting any license pursuant to Section 20-2A-57 or relieve any applicant or licensee from any fee payment obligation.

§20-2A-67.2

(a) Any additional licenses available pursuant to



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Section 20-2A-67.1(c) shall be awarded following an investigative hearing before an administrative law judge designated by the director, which, except as provided in this section, shall be heard as a contested case subject to Sections 41-22-12 and 41-22-13. Eligible applicants may elect to participate in the award process under this section by filing notice no later than June 15, 2024. Applicants that have duly filed a request for an investigative hearing prior to June 15, 2024, shall be deemed to have met this filing requirement. Applicants receiving a license pursuant to Section 20-2A-67.1(a) and (b) shall be ineligible to apply for additional licenses under this section.

(b)(1) All applications in a license category shall be consolidated for hearing purposes under this section. No later than 10 calendar days prior to the hearing, the administrative law judge shall issue a notice including a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the sections of the law and rules involved; and a statement identifying the action that is the subject of the appeal, which shall be deemed to satisfy the notice requirements of Section 41-22-12.

(2) On motion of a party, the administrative law judge, in his or her sole discretion, may issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the Alabama Rules of Civil Procedure and the provisions of this chapter. The commission may set a reasonable fee by rule for the issuance of a subpoena to be



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paid by the moving party and in the absence of such rule shall charge a fee of fifty dollars (\$50). Process issued pursuant to this subsection shall be enforced by a court in the same manner as process that is issued by the court.

(3) The administrative law judge may implement measures to streamline the hearing process, including, but not limited to, reasonable limitations on the number of witnesses, time of presentation, and restrictions on the presentation of testimony that is purely cumulative in nature.

(c) The commission shall secure a licensed court reporter who shall maintain an index of all exhibits identified or offered at the time hearing. All parties to the appeal shall be responsible for the cost of any transcripts produced by the court reporter for such party. The administrative law judge shall coordinate with the court reporter and the secretary of the commission to maintain for the commission an indexed copy of all other filings of record, rulings, and orders from the date of assignment of the case to the administrative law judge through the issuance of a final order.

(d) In addition to the requirements of Section 41-22-12(g), the record in the investigative hearing shall include the applications, prior to filings made by the applicants, the record of prior proceedings before the commission relating to such application, and additional testimony and evidence relating to the applications that are submitted on behalf of the parties and admitted into evidence; provided, however, that evaluation or scoring of the



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applications by third parties engaged by the commission shall not be considered or required.

(e) The commission shall not be an advocate or party in the investigative hearing, and no commission member, agency staff, or representative shall be called as a witness in such hearing or be subject to discovery.

(f) The fee for the administrative law judge shall be based on the hourly rate or other fee basis approved by the executive director of the commission and shall be apportioned, on a pro rata basis, between all parties to the hearing, with each party paying its pro rata amount within 30 days of receipt of an itemized invoice from the administrative law judge. If a state employee who is employed outside of the commission is utilized as an administrative law judge, the parties shall pay an amount equal to the reimbursement required under any interagency agreement through which such services are provided. The director may waive all or a portion of this apportionment and payment required for the investigative hearings conducted under this section.

(g) Unless extended by the administrative law judge upon agreement of all parties:

(1) Any hearing before an administrative law judge pursuant to this article shall begin within 45 days of assignment to the administrative law judge and completed within 90 days of the assignment; and

(2) The administrative law judge shall render a recommended order containing findings of fact and conclusions of law in accordance with the Alabama Administrative Procedure



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393 Act within 30 days of completion of the transcript.

394 (h)(1) In license categories where the number of
395 eligible applicants participating in the hearing exceeds the
396 number of licenses that may be issued under this chapter, the
397 recommended order shall include findings regarding the
398 applications of each applicant and a recommendation as to the
399 most suitable applicant among the applicants to be awarded
400 available licenses, applying applicable legal standards to the
401 evidence of the record. The recommended order shall be
402 distributed to all parties, and all parties shall have 15 days
403 to file exceptions or briefs relating to the recommended
404 order. The commission shall thereafter schedule the matter for
405 deliberation and vote.

406 (2) The commission may approve or reject the
407 administrative law judge's proposed findings of fact and
408 conclusions of law, in whole or in part, and may adopt, in
409 whole or in part, exceptions filed by the parties. In its
410 deliberations and vote, the commission shall follow the latest
411 edition of Robert's Rules of Order, except as provided in this
412 chapter or commission rules. As provided in Section 36-25A-7,
413 the commission may meet in executive session following the
414 issuance of the recommended order to deliberate and discuss
415 the evidence and testimony of record; provided, however, any
416 motion or vote shall be made in an open meeting.

417 (3) Upon the award of all available licenses in a
418 category, the remaining applications in that category shall be
419 deemed denied.

420 (i) Within 15 days following a commission vote on a



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proposed order issued by an administrative law judge and any exceptions filed thereto, the chair shall issue a written order reflecting the decisions of the commission, which shall become the final order of the commission. Notice of the final order must be served either by personal delivery or by certified mail, postage prepaid, to all parties to the investigative hearing. The final order may incorporate by reference all or portions of the recommended order or exceptions. The final order shall not be subject to reconsideration or rehearing. The final order of the commission on appeal shall automatically supersede any prior action taken by the commission regarding the applications filed by the parties to the investigative hearing.

(j)(1) An aggrieved party who has exhausted its administrative remedies under this chapter may appeal the final written order of the commission directly to the Alabama Court of Civil Appeals, which shall be the exclusive appellate remedy for the grant or denial of a license application, subject to certiorari review by the Alabama Supreme Court. An appeal shall be perfected by filing a written notice of appeal with the commission and the clerk of the Alabama Court of Civil Appeals within 21 days after the issuance of the written final order of the commission. The notice of appeal shall be on a form prescribed by the Alabama Rules of Appellate Procedure. The Court of Civil Appeals shall have no discretion to refuse to hear appeals of the final orders of the commission timely filed under this section.

(2) Within 30 days after a notice of appeal is filed,



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the commission shall transmit the administrative record to the clerk of the Alabama Court of Civil Appeals, with the appealing parties bearing the costs associated with the preparation and transmission of the record and transcript of the hearing and of giving notice to the parties of the transmittal. Upon the transmittal of the administrative record to the Alabama Court of Civil Appeals, the appeal shall proceed in accordance with the Alabama Rules of Appellate Procedure.

(3) The final order of the commission shall be taken as prima facie evidence as being just and reasonable, and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(k) The investigative hearing process provided for in this section shall be the sole administrative process for the consideration of applications for licenses available pursuant to Section 20-2A-67.1(c) and shall apply to any licenses awarded after June 1, 2024. The commission may adopt rules consistent with this section.

(1) Nothing in this section shall prohibit the commission from suspending, revoking, or restricting any license under Section 20-2A-57 or relieve any applicant or licensee from any fee payment obligation.

Section 3. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions or application of this act or any amendment or statute that can be given effect without the invalid provisions or application, and to this end, the



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477 provisions of this act and any amendments and statutes are
478 declared to be severable.

479 Section 4. This act shall become effective on June 1,
480 2024.