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**AMENDED
PASSED**
JUN 27 2024

Cherokee Council House
Cherokee, North Carolina

JAN 04 2024

Date

Ordinance No. 63 (2023)

WHEREAS, the Charter and Governing Document authorizes and empowers the Eastern Band of Cherokee Indians (EBCI) Tribal Council to adopt laws and regulations for the general government of the Tribe. Charter and Governing Document, sect. 23 (Sept. 5, 1995) *see also* C.C. §117-10.

WHEREAS, on August 16, 2021, Tribal Council established a medical marijuana code. EBCI Ordinance No. 539 (Aug. 16, 2021) codified at C.C. Ch. 17.

WHEREAS, on March 15, 2022, Tribal Council amended the medical marijuana code. EBCI Ordinance No. 138 (2022) codified at C.C. Ch. 17.

WHEREAS, on September 7, 2023, EBCI registered voters overwhelmingly (70% voting in favor) approved adult use cannabis on the Qualla Boundary for individuals 21 and over.

WHEREAS, Tribal Council is following through with the People's vote and amends Cherokee Code, Ch. 17 to allow for adult use.

NOW THEREFORE BE IT ORDAINED in Council assembled at which a quorum is present that the Tribal Council amends Cherokee Code Chapter 17, as follows in EXHIBIT A.

BE IT FURTHER ORDAINED the Ordinance provisions that amend or adopt new sections of the Cherokee Code shall be codified by the Department of Justice. The Department of Justice shall incorporate such amended provisions in the next codification of the Cherokee Code.

BE IT STILL FURTHER ORDAINED should any provision of this Ordinance be determined invalid by the Cherokee Supreme Court, or the Cherokee Court without appeal to the Cherokee Supreme Court, or any other court of competent jurisdiction, those portions of this Ordinance which are not determined invalid shall remain the law of the Eastern Band of Cherokee Indians

BE IT FINALLY ORDAINED that any resolution or ordinance in conflict are rescinded and that this ordinance shall become effective upon ratification.

Submitted By: Tribal Council

EXHIBIT A

Chapter 17 ~~MEDICAL~~ MARIJUANA

ARTICLE I. GENERAL PROVISIONS

Sec. 17-1. Legislative findings and declarations.

- (a) The ~~medical~~ cannabis industry has the potential to be beneficial to the public health of the Tribe and the general welfare of enrolled members, including through job creation and economic development.
- (b) The growth and success of a ~~medical~~ cannabis industry is dependent upon public confidence and trust that:
 - (1) People who suffer from chronic or debilitating medical conditions will be able to obtain ~~medical~~ cannabis safely and conveniently;
 - (2) Cannabis can reduce dependence on and abuse of opioids;
 - (3) Medical cannabis establishmentsCannabis facilities do not unduly impact the quality of life enjoyed ~~by~~ nearby residents and the community at large;
 - (4) Medical cannabis establishmentCannabis facility licenses, agent cards, and patient cards are issued in a responsible manner; and
 - (5) The ~~medical~~ cannabis industry is free from criminal and corruptive practices.
- (c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations, and activities related to the operation of ~~medical cannabis establishments~~cannabis facilities.
- (d) All ~~medical cannabis establishments~~cannabis facilities and ~~medical~~ cannabis ~~establishment~~ agents must therefore be licensed, controlled, and assisted to protect the public health, safety, morals, good order, and general welfare of the Tribe and to foster the stability and success of the ~~medical~~ Tribe's cannabis industry.
- (e) This Chapter is amended in acknowledgement and recognition of the will of the Cherokee people as expressed through the referendum of September 7, 2023.

(Ord. No. 539 , 8-16-2021)

Sec. 17-2. Definitions.

As used in this chapter, unless the context clearly otherwise requires, the following words and terms have the following definitions:

~~Administer~~ means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) — A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
- (2) — The patient or research subject at the direction and in the presence of the practitioner.

~~Agent card~~ means a ~~medical cannabis establishment agent card~~.

~~Attending provider of health care~~ means a provider of health care who is licensed or certified to practice a profession which authorizes the person to write a prescription for a medication to treat a chronic or debilitating medical condition; and has responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

~~Board~~ means the EBCI Cannabis Control Board.

~~Cannabis~~ means a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis are subspecies thereof. Cannabis also refers to any form of the plant in which the THC concentration on a dry weight basis as not yet been determined.

Cannabis agent or agent means a person approved by the Board to be an owner, officer, board member, employee, or volunteer of a cannabis facility, an independent contractor who provides labor relating to the cultivation, processing, or sale of cannabis or cannabis products for a cannabis facility, or an employee or sub-contractor of such an independent contractor.

Cannabis agent card or agent card means an identification card that is issued by the Board pursuant to Section 17-56 to authorize a person:

- (1) To be an owner, officer, or board member of a cannabis facility; or
- (2) To be employed by, volunteer for, work at, or contract to provide labor or services to a cannabis facility.

Cannabis facility means:

- (1) A cannabis laboratory;
- (2) A cannabis cultivation facility;
- (3) A cannabis processing facility; or
- (4) A cannabis retail facility.

Cannabis cultivation facility mean a business that:

- (1) Is licensed by the Board pursuant to Section 17-52 and
- (2) Grows, acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells marijuana and related supplies to cannabis retail facilities, cannabis processing facilities, or other cannabis cultivation facilities.

Cannabis facility license or license means a license issued by the Board pursuant to Section 17-52 to authorize the operation of a cannabis facility.

Cannabis laboratory means a business described in Section 17-54 that:

- (1) Is licensed by the Board pursuant to Section 17-52; and
- (2) Tests the plants in the genus Cannabis and products associated and derived therefrom intended for human consumption.

Cannabis processing facility means a business that:

- (1) Is licensed by the Board pursuant to Section 17-52; and
- (2) Acquires, possesses, packages, prepares, manufactures, delivers, transfers, transports, supplies, or sells marijuana or marijuana products to cannabis retail facilities.

Cannabis patient card means a card issued by the Board which identifies a person as someone with a chronic or debilitating medical condition and may possess marijuana or marijuana products as a patient pursuant to this Chapter.

Cannabis retail facility means a business that:

- (1) Is licensed by the Board pursuant to Section 17-52 and
- (2) Acquires, possesses, delivers, transfers, transports, supplies, sells, or dispenses marijuana, marijuana products, or related supplies and educational materials to eligible members of the public, holders of a valid cannabis patient card, or to another cannabis retail facility.

Chronic or debilitating medical condition means:

- (1) Acquired immune deficiency syndrome;
- (2) An anxiety disorder;
- (3) An autism spectrum disorder;
- (4) An autoimmune disease;
- (5) Anorexia nervosa;

- (6) Cancer;
- (7) Dependence upon or addiction to opioids;
- (8) Glaucoma;
- (9) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
 - (i) Cachexia;
 - (ii) Muscle spasms, including, without limitation, spasms caused by multiple sclerosis;
 - (iii) Seizures, including, without limitation, seizures caused by epilepsy;
 - (iv) Nausea; or
 - (v) Severe or chronic pain;
- (10) A medical condition related to the human immunodeficiency virus;
- (11) A neuropathic condition, whether or not such condition causes seizures; or
- (12) Any other medical condition ~~or treatment for a medical condition~~ that is: classified as a chronic or debilitating medical condition by regulation of the Board; or
 - ~~(i) Classified as a chronic or debilitating medical condition by regulation of the Board; or~~
 - ~~(ii) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with Section 17-99.~~
- (13) Post-traumatic stress disorder.

~~Commission means the EBCI Cannabis Advisory Commission.~~

Community facility means a facility that provides education or day care to children, a public park, a playground, a public swimming pool, a community club building, or a church or other building or place used for religious worship or a religious purpose.

Concentrated ~~marijuana-cannabis~~ means the extracted or separated resin, whether crude or purified, containing THC or CBD from marijuana.

Court means the Cherokee Court or the Cherokee Supreme Court as the context requires.

Day means a calendar day not including Tribal government holidays.

Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Electronic verification system means an electronic database that:

- (1) Keeps track of data in real time; and
- (2) Is accessible by the Board and by the cannabis facility~~medical cannabis establishment~~.

Enclosed, locked ~~area~~facility means a closet, display case, room, greenhouse, or other enclosed area that meets the requirements of Section 17-~~617-4~~ and is equipped with locks or other security devices which allow access only by a registrant~~cannabis agent~~.

Excluded offense means a conviction of an offense pursuant to Article XIV.A of Cherokee Code Chapter 14 or an offense that would constitute a felony in the state of North Carolina or another jurisdiction. The term does not include a criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, completed more than ten years ago or an offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to this chapter except that the conduct occurred before the effective date of this chapter or in a jurisdiction other than the Eastern Band of Cherokee Indians.

Executive director means the Executive Director of the EBCI Cannabis Control Board appointed pursuant to Section 17-27~~this Chapter~~.

Inventory control system means a process, device, or other contrivance that may be used to monitor the chain of custody of ~~marijuana and marijuana products~~cannabis from the point of cultivation to the end consumer.

Licensee means the holder of a ~~medical cannabis establishment~~cannabis facility license.

Marijuana means all parts of the plants in the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. This term does not include hemp, as defined in section 297A of the federal Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). The term means all cannabis that tests as having a THC concentration level of higher than 0.3 percent on a dry weight basis.

Marijuana product means a product which contains marijuana or the extract thereof, including, without limitation, edible marijuana products intended for human consumption by oral ingestion and presented in the form of a foodstuff, extract, or similar product, or marijuana-infused products intended for use or consumption by humans through means other than inhalation or oral ingestion, like topical products, ointments, oils, or tinctures.

Medical cannabis cultivation facility mean a business that:

- (1) ~~Is licensed by the Board pursuant to Section 17-62 and~~
- (2) ~~Acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells medical cannabis and related supplies to:~~
 - (i) ~~Medical cannabis dispensaries;~~
 - (ii) ~~Medical cannabis production facilities; or~~
 - (iii) ~~Other medical cannabis cultivation facilities;~~

Medical cannabis dispensary means a business that:

- (1) ~~Is licensed by the Board pursuant to Section 17-62 and~~
- (2) ~~Acquires, possesses, delivers, transfers, transports, supplies, sells, or dispenses medical cannabis or related supplies and educational materials to the holder of a valid medical cannabis patient card or to another medical cannabis dispensary;~~

Medical cannabis establishment means:

- (1) ~~A medical cannabis independent testing laboratory;~~
- (2) ~~A medical cannabis cultivation facility;~~
- (3) ~~A medical cannabis production facility; or~~
- (4) ~~A medical cannabis dispensary;~~

Medical cannabis establishment agent means an owner, officer, board member, employee, or volunteer of a medical cannabis establishment, an independent contractor who provides labor relating to the cultivation or processing of cannabis or the production of usable cannabis or cannabis products for a medical cannabis establishment or an employee of such an independent contractor.

Medical cannabis establishment agent card means an identification card that is issued by the Board pursuant to Section 17-66 to authorize a person:

- (1) ~~To be an owner, officer, or board member of a medical cannabis establishment; or~~
- (2) ~~To volunteer for, work at, or contract to provide labor or services to a medical cannabis establishment;~~

Medical cannabis establishment license means a license that is issued by the Board pursuant to Section 17-62 to authorize the operation of a medical cannabis establishment.

Medical cannabis independent testing laboratory means a facility described in Section 17-64 that:

(1) — Is licensed by the Board pursuant to Section 17-62; and

(2) — Tests:

(i) — Cannabis intended for the medical use of cannabis;

(ii) — Medical cannabis products.

Medical cannabis-infused product means a product intended for the medical use of cannabis that:

(1) — Is infused with cannabis or an extract thereof; and

(2) — Is intended for use or consumption by humans through means other than inhalation or oral ingestion;

(3) — The term includes, without limitation, topical products, ointments, oils, and tinctures.

Medical cannabis product means:

(1) — A medical edible cannabis product; or

(2) — A medical cannabis-infused product.

Medical cannabis production facility means a business that:

(1) — Is licensed by the Board pursuant to Section 17-62; and

(2) — Acquires, possesses, manufactures, delivers, transfers, transports, supplies or sells medical cannabis products to medical cannabis dispensaries.

Medical cannabis patient card means a document issued by the Board that identifies a person who is exempt from Tribal prosecution for engaging in medical use of cannabis or the designated primary caregiver, if any, of such a person exempt from tribal prosecution for engaging in medical use of cannabis.

Medical edible cannabis product means a product intended for the medical use of cannabis that:

(1) — Contains cannabis or an extract thereof;

(2) — Is intended for human consumption by oral ingestion; and

(3) — Is presented in the form of a foodstuff, extract, oil, tincture, or other similar product.

Medical Use of marijuana/cannabis means:

(1) The possession, delivery, production, or use of marijuana/cannabis or marijuana products;

(2) The possession, delivery or use of paraphernalia used to administer marijuana/cannabis or marijuana products; or

(3) Any combination of the acts described in subsections (1) and (2) above, ~~as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.~~

Paraphernalia means accessories, devices and other equipment that is necessary or useful, for a person to engage in the ~~medical use of~~ marijuana/cannabis or the adult use of cannabis.

Patient cardholder means a person who has been issued a cannabis patient card by the Board.

Person means a natural person, corporation, limited liability company, or other such or similar entity.

Production includes the manufacturing of a controlled substance and the planting, cultivation, growing, or harvesting of a plant from which a controlled substance is derived.

Registrant means the holder of a medical cannabis establishment agent card.

Registration card means:

(1) — A medical cannabis establishment agent card.

THC means:

(1) Delta-9-tetrahydrocannabinol;

- (2) Delta-8-tetrahydrocannabinol
- ~~(3) Delta-10-tetrahydrocannabinol;~~ and
- ~~(4) The optical isomers of such substances.~~

Tribe or Tribal means the Eastern Band of Cherokee Indians.

~~*Unreasonably impracticable* means the measures necessary to comply with the law or regulation require such a high investment of risk, money, time or any other resource or asset that the operation of a medical cannabis establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.~~

Written documentation means a statement signed by the attending provider of health care of a person diagnosed with a chronic or debilitating medical condition; copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition; proof of current prescription of opioid, opiate, or other pain medications; or a valid proof of authorization to use medical cannabis issued by another jurisdiction.

(Ord. No. 539 , 8-16-2021; Ord. No. 461 , 1-31-2023)

Secs. 17-3—17-9. Reserved.

~~ARTICLE II. EBCI CANNABIS ADVISORY COMMISSION~~

~~Sec. 17-10. Commission established.~~

~~(a) The EBCI Cannabis Advisory Commission is hereby created for the purposes of studying issues related to cannabis and making recommendations to the EBCI Cannabis Control Board, Tribal Council, and Principal Chief regarding the regulation of medical cannabis and any activity related to cannabis. The Commission consists of:~~

- ~~(1) The Principal Chief, or his or her designee;~~
- ~~(2) The Chair of Tribal Council, or his or her designee;~~
- ~~(3) The Community Club Chair, or his or her designee;~~
- ~~(4) The Secretary of Agriculture and Natural Resources, or his or her designee;~~
- ~~(5) The Secretary of Public Health and Human Services, or his or her designee;~~
- ~~(6) The Chief of Police, or his or her designee; and~~
- ~~(7) The Chief Executive Officer of the Cherokee Indian Hospital Authority, or his or her designee.~~

~~(b) A designee on the Commission serves a term of two years. Designees may be reappointed. Designees shall not serve more than three consecutive terms.~~

~~(c) Members of the Commission shall not be compensated for their service on the Commission.~~

~~(d) The members of the Commission may meet throughout each year at the times and places specified by a call of the Chair or a majority of its members. A majority of the members of the Commission constitutes a quorum, and a quorum may exercise all the powers conferred on the Commission. The Commission shall designate members as Chair, Vice-Chair, and any other officers deemed necessary or appropriate.~~

~~(e) The Cannabis Control Board shall provide the Commission with such staff and logistical support as is necessary to carry out the duties of the Commission. The Attorney General, or his or her other designated attorney, shall represent the Commission.~~

~~(Ord. No. 539 , 8-16-2021)~~

Sec. 17-11. Commission duties.

(a) ~~The Commission shall:~~

- ~~(1) Consider all matters submitted to it by the Board, the Principal Chief, the Vice Chief, or Tribal Council;~~
- ~~(2) On its own initiative, recommend to the Board any policies, procedures, guidelines, rules, or regulations or any changes to existing guidelines, rules, or regulations that the Commission considers important or necessary for the review and consideration of the Board;~~
- ~~(3) Advise the Board on the preparation and amendment of any regulations adopted pursuant to this chapter;~~
- ~~(4) Study the distribution of licenses, including, without limitation, the number of licenses authorized to be issued to medical cannabis establishments within the jurisdiction of the Tribe, and recommend to the Board any legislative changes that the Commission determines to be appropriate, and~~
- ~~(5) Study the feasibility of the use of emerging technologies, including, without limitation, blockchain and systems that use a single source of truth, as a means of collecting data or efficiently and effectively handling transactions electronically to reduce or eliminate the handling of cash.~~

(b) ~~The Commission may establish subcommittees for the purposes of carrying out its duties.~~

~~(Ord. No. 539, 8-16-2021)~~

Sees. 17-12—17-19. Reserved.

ARTICLE III. EBCI CANNABIS CONTROL BOARD

Sec. 17-~~1020~~. Board established.

The EBCI Cannabis Control Board is hereby established.

(Ord. No. 539, 8-16-2021)

Sec. 17-~~1121~~. Members of the Board.

- (a) There shall be five members of the Board. The members of the Board are appointed by nomination by the Principal Chief and confirmation by Tribal Council.
- (b) At least three members of the Board shall be enrolled members of the Eastern Band of Cherokee Indians or another federally-recognized Tribe.
- (c) It is the intention of Tribal Council that the Board be made up of the most qualified persons. At least one member of the Board shall:
 - (1) be selected with special reference to his or her knowledge, skill, and experience in general accounting and have a comprehensive knowledge of the principles and practices of corporate finance and auditing, general finance, or economics.
 - (2) be selected with special reference to his or her training and experience in the fields of investigation, financial auditing, or corporate compliance.
 - (3) be a selected with special reference to his or her knowledge, skill, and experience in law or regulatory compliance.
 - (4) be selected with special reference to his or her knowledge, skill, and experience in the cannabis industry.

- (5) be a selected with special reference to his or her knowledge, skill, and experience in the area of medicine, public health, mental health, or be a clinical professional counselor, alcohol and drug counselor, or social worker with knowledge, skill, and experience in the area of education and prevention of abuse relating to cannabis."
- (d) In addition to any other requirements imposed by this section, the member who is designated as Chair of the Board must have at least five years of leadership experience in his or her field.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~1222~~. Terms, chair, removal.

- (a) The term of office of each member of the Board is four years.
- (b) The Principal Chief shall nominate the members of the Board and designate one member to serve as Chair, who shall preside over all official activities of the Board.
- (c) Tribal Council may remove any member for misfeasance, malfeasance, or nonfeasance in office. Removal may be made after:
- (1) The member has been served with a copy of the charges against the member; and
- (2) A public hearing before Tribal Council is held upon the charges, if requested by the member charged. The request for a public hearing must be made to the Chair of Tribal Council within ten days after service upon such member of the charges. If a hearing is not requested, a member is removed effective ten days after service of charges upon the member. A record of the proceedings at the public hearing must be open to public inspection.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~1323~~. Certain political activities, financial interests prohibited.

- (a) Elected Tribal officials and appointed Tribal officials are not eligible to serve as Board members.
- (b) A Board member may not be an official, employee, or agent in any business or organization holding a license under this chapter.
- (c) Before entering upon the duties of office, each Board member shall subscribe to the oath of office and, in addition, swear that the member is not an official, employee, or agent of any person, business, or organization holding a license or ~~registration-agent~~ card under this ~~C~~chapter or doing business with any such person, business, or organization. ~~The oath of office must be filed in the Office of the Attorney General.~~
- (Ord. No. 539 , 8-16-2021; Ord. No. 507 , 3-8-2023)

~~Sec. 17-24. Reserved.~~

~~Sec. 17-25. Employment of consultants.~~

- ~~(a) The Board may employ the services of such persons or firms as it considers necessary for the purposes of consultation, investigation, or other professional services.~~
- ~~(b) The Board may consult with divisions or offices of the Tribal government as it considers necessary.~~
- ~~(Ord. No. 539 , 8-16-2021)~~

Sec. 17-~~1426~~. Meetings, quorum.

- (a) The Board may hold regular and special meetings at such times and places as it may deem convenient, and it shall hold at least one regular meeting each month.

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- (b) A majority of the members constitutes a quorum of the Board, and a majority of members present at any meeting determines the action of the Board.
 - (c) All meetings of the Board are open to the public, except that the Board may hold executive sessions closed to the public for the purposes listed in Section 117-13.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~1527~~. Executive director.

- (a) The position of Executive Director of the Cannabis Control Board is hereby created.
- (b) The Executive Director:
 - (1) Is appointed by the Board and may be removed by the Board;
 - (2) Is responsible for the conduct of the administrative matters of the Board; and
 - (3) Shall devote his or her entire time and attention to the business of the office of Executive Director and shall not pursue any other business or occupation or hold any other office for profit if it conflicts with his or her Board-related duties.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~1628~~. Organization, expenses, employees.

- (a) The Executive Director may, subject to the approval of the Board
 - (1) Establish, and from time to time alter, such a plan of organization as he or she may deem expedient.
 - (2) Acquire such furnishings, equipment, supplies, stationery, books, motor vehicles and other things as he or she may deem necessary or desirable in carrying out his or her functions and the functions of the Board.
 - (3) Incur such other expenses, within the limit of money available to the Board, as he or she may deem necessary.
- (b) Except as otherwise provided in this chapter, all costs of administration incurred by the Board must be paid out of the Tribe's operating budget in the same manner as other governmental expenses are paid.
- (c) The Executive Director shall organize the work of the Board in such a way as to secure maximum efficiency in the conduct of the Board and make possible a definite placing of responsibility. To this end, the Executive Director may establish such organizational units within the Board as he or she deems necessary.
- (d) The Executive Director may employ such clerical or expert assistance as may be required.
- (e) Persons employed by the Board may be assigned to stations, offices, or locations selected by the Executive Director both within and outside the jurisdiction of the Tribe where, in the judgment of the Executive Director, it is necessary to maintain personnel to protect, investigate, and ensure the safe and lawful conduct of the cannabis industry on Tribal lands.
- (f) Any person assigned to a station, office or location as provided in subsection (e) shall be entitled to receive a per diem allowance only when the business of the Board takes the person away from the particular station, office, or location to which he or she is assigned.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~29~~17. General board powers.

In addition to any other powers granted by this chapter, the Board has the power to:

- (a) Establish and amend a plan of organization for the Board and Board staff, including, without limitation, various divisions, or sections with leaders for such divisions or sections
- (b) Apply for and accept any gift, donation, bequest, grant or other source of money to carry out the provisions of this Cchapter.
- (c) Prepare, publish, and distribute such studies, reports, bulletins, and other materials as the Board deems appropriate.
- (d) Refer cases to the Office of the Attorney General for criminal prosecution.
- (e) Maintain an official Internet website for the Board.
- (f) Monitor federal activity regarding cannabis and report its findings to the Commission.
- (g) Employ the services of such persons or firms as it considers necessary for the purposes of consultation, investigation, or other professional services.
- (h) Consult with other divisions, departments, or offices of the Tribal government as necessary.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~18~~30. Board regulations.

- (a) The Board may issue regulations pursuant to Cherokee Code Chapter 150 when necessary or convenient to carry out the provisions of this chapter. Such regulations may include, without limitation:
 - (1) Financial requirements for licensees.
 - (2) Establishing such investigative and enforcement mechanisms as the Board deems necessary to ensure the compliance of a licensee, agent, or patient cardholder or registrant with the provisions of this Cchapter.
 - (3) Requirements for licensees or agentregistrants relating to the cultivation, processing, manufacture, transport, distribution, testing, study, advertising, and sale of cannabis and cannabis products.
 - (4) Reasonable restrictions on the signage, marketing, display, and advertising of cannabis facilitiesmedical cannabis establishments. Such a restriction must not require a cannabis facilitymedical cannabis establishment to obtain the approval of the Board before using a logo, sign, or advertisement.
 - (5) Prescribe the form and any additional required content of applications for licenses or agentregistration cards issued pursuant to this Cchapter;
 - (6) Establish procedures for the suspension or revocation of a license or agentregistration card or other disciplinary action to be taken against a licensee or registrantagent;
 - (7) Set forth rules pertaining to the safe and healthful operation of cannabis facilitiesmedical cannabis establishments, including, without limitation:
 - (i) The manner of protecting against diversion and theft without imposing an undue burden on medical cannabis establishmentscannabis facilities or compromising the confidentiality of consumers and patient cardholdersholders of patient identification cards and letters of approval;
 - (ii) Minimum requirements for the oversight of medical cannabis establishmentscannabis facilities;
 - (iii) Minimum requirements for the keeping of records by medical cannabis establishmentscannabis facilities;

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- (iv) Minimum requirements for the conduct of ~~medical cannabis establishment~~ agents;
 - (v) Provisions for the security of ~~medical cannabis establishments~~~~cannabis facilities~~, including without limitation, requirements for the protection by a fully operational security alarm system of each ~~medical cannabis establishment~~~~cannabis facility~~; and
 - (vi) Procedures pursuant to which ~~medical cannabis establishments~~~~cannabis facilities~~ must use the services of ~~medical cannabis independent testing~~ laboratories to ensure that any cannabis or cannabis product ~~or commodity or product made from hemp~~ sold by a ~~medical cannabis dispensary~~~~cannabis retail facility~~ to an end user is tested for content, quality, and potency in accordance with standards established by the Board;
 - (vii) Establish circumstances and procedures pursuant to which the maximum fees set forth in ~~this Chapter~~~~Section 17-69~~ may be reduced over time to ensure that the fees are, insofar as may be practicable, revenue neutral;
 - (viii) As far as possible while maintaining accountability, protect the identity, and personal identifying information of each person who receives, facilitates, or delivers services in accordance with this ~~C~~chapter;
 - (ix) Address such other matters as the Board deems necessary to carry out the provisions of this ~~C~~chapter.

(Ord. No. 539, 8-16-2021)

Sec. ~~17-1931~~. Board records.

- (a) The Board shall cause to be made and kept minutes of all proceedings at regular and special meetings of the Board. These minutes are open to public inspection.
- (b) Any and all information and data prepared or obtained by the Board or by an agent or employee of the Board relating to a holder of or an applicant for a ~~medical cannabis establishment~~~~cannabis facility~~ license, other than the name of a licensee and each owner, officer, and board member of the licensee and information relating to the scoring and ranking of applications and the imposition of disciplinary action, are confidential and may be revealed in whole or in part only in the course of the necessary administration of this ~~C~~chapter or upon the lawful order of a court of competent jurisdiction. The Board may reveal such information and data to an authorized agent of any agency of the United States Government. Notwithstanding any other provision of Cherokee law, such information and data may not be otherwise revealed without specific authorization by the Board pursuant to the regulations of the Board.
- (c) Any and all information and data prepared or obtained by the Board or by an agent or employee of the Board relating to a holder of or an applicant for a medical cannabis patient card or a ~~medical cannabis agent card~~ are confidential and may be revealed in whole or in part only in the course of the necessary administration of this ~~C~~chapter or upon the lawful order of a court of competent jurisdiction. The Board may reveal such information and data to an authorized agent of any agency of the United States Government. Notwithstanding any other provision of Cherokee law, such information and data may not be otherwise revealed without specific authorization by the Board pursuant to the regulations of the Board.
- (d) As used in this section, "information and data" means all information and data in any form, including, without limitation, any oral, written, audio, visual, digital, or electronic form, and the term includes, without limitation, any account, book, correspondence, file, message, paper, record, report, or other type of document, including, without limitation, any document containing self-evaluative assessments, self-critical analysis, or self-appraisals of an applicant's or licensee's compliance with regulatory requirements.

(Ord. No. 539, 8-16-2021)

Sec. 17-~~2032~~. Audits of licenses, standards, annual report.

- (a) As often as the Board deems necessary, the Board shall conduct a financial or operational audit of the accounts, funds, programs, activities, and functions of all licensees.
- (b) A licensee shall make available to the Board all books, accounts, claims, reports, vouchers, and other records requested by the Board in connection with an audit conducted pursuant to subsection (a).
- (c) If a licensee refuses to produce any of the records described in subsection (b), the Board ~~or Department~~ may petition the Cherokee Court to order the licensee to produce the requested records. The Court shall order the production of all such records upon a finding that the requested records are within the scope of the audit.
- (d) If any audit report of the accounts, funds, programs, activities, and functions of a licensee contains adverse or critical audit results, the Board may require the licensee subject to the audit to respond, in writing, to the results of the audit. A licensee shall provide such response to the Board not more than 15 days after receiving a request from the Board.
- (e) ~~On or before April 1 of~~ each year, the Board shall submit to the Chair of Tribal Council a report concerning the audits conducted pursuant to this section for the preceding year. The report must include, without limitation:
 - (1) The number of audits performed pursuant to this section in the preceding year;
 - (2) A summary of the findings of the audits; and
 - (3) The cost of each audit.

(Ord. No. 539 , 8-16-2021)

Secs. 17-~~2133~~—17-~~2939~~. Reserved.

ARTICLE ~~III~~ IV. DISCIPLINARY ACTIONS

Sec. 17-~~3040~~. Complaints.

- (a) If the Executive Director becomes aware that a licensee, ~~cannabis agent, or patient cardholder or registrant~~ has violated, is violating or is about to violate any provision of this ~~C~~echapter or any regulation adopted pursuant thereto, the Executive Director may transmit the details of the suspected violation, along with any further facts or information related to the violation which are known to the Executive Director, to ~~the Attorney General or~~ the Cherokee Indian Police Department.
- (b) If any person other than the Executive Director becomes aware that a licensee, ~~cannabis agent, or patient cardholder or registrant~~ has violated, is violating or is about to violate any provision of this ~~C~~echapter or any regulation adopted pursuant thereto, the person may file a written complaint with the Executive Director specifying the relevant facts. The Executive Director shall review each such complaint and, if the Executive Director finds the complaint not to be frivolous, may transmit the details of ~~a~~the suspected ~~criminal~~ violation, along with any further facts or information derived from the review of the complaint to ~~the Attorney General or~~ the Cherokee Indian Police Department.
- (c) Employees of the Board shall cooperate with the ~~Attorney General and~~ Cherokee Indian Police Department in the performance of any investigation.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~31~~41. Investigations, recommendations to Board.

- (a) If the Executive Director transmits the details of a suspected violation to the Cherokee Indian Police Department pursuant to Section 17-~~30~~40, the Cherokee Indian Police Department shall investigate the matter in accordance with its policies and procedures.
- ~~(b) If the Executive Director transmits the details of a suspected violation to the Attorney General pursuant to Section 17-40, the Attorney General shall conduct an investigation of the suspected violation to determine whether it warrants proceedings for disciplinary action of the licensee or registrant. If the Attorney General determines that further proceedings are warranted, he or she shall report the results of the investigation together with a recommendation to the Executive Director in a manner which does not violate the right of the person charged in the complaint to due process in any later hearing on the complaint. The Executive Director shall transmit the recommendation and other information received from the Attorney General to the Board.~~
- ~~(c) The Board shall promptly make a determination with respect to each complaint resulting in an investigation by the Attorney General. The Board shall:~~
- ~~(1) Dismiss the complaint; or~~
 - ~~(2) Proceed with appropriate disciplinary action in accordance with this chapter and regulations adopted by the Board.~~
- ~~(Ord. No. 539, 8-16-2021)~~

Sec. 17-~~32~~42. Complaint, answer, notice of hearing.

- (a) If the Board proceeds with disciplinary action pursuant to ~~Section 17-41~~, the Board shall serve a complaint upon the respondent either personally, or by registered or certified mail at the address of the respondent that is on file with the Board. Such complaint must be a written statement of charges and must set forth in ordinary and concise language the acts or omissions with which the respondent is charged. The complaint must specify the sections and regulations which the respondent is alleged to have violated, but must not consist merely of charges raised in the language of the sections or regulations. The complaint must provide notice of the right of the respondent to request a hearing. The Chair of the Board may grant an extension to respond to the complaint for good cause.
- (b) Unless granted an extension, the respondent must answer within 20 days after the service of the complaint. In the answer the respondent:
- (1) Must state in short and plain terms the defenses to each claim asserted.
 - (2) Must admit or deny the facts alleged in the complaint.
 - (3) Must state which allegations the respondent is without knowledge or information to form a belief as to their truth. Such allegations shall be deemed denied.
 - (4) Must affirmatively set forth any matter which constitutes an avoidance or affirmative defense.
 - (5) May demand a hearing. Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any decision or order of the Board, but the Board may order a hearing even if the respondent so waives his or her right.
- (c) Failure to answer or to appear at the hearing constitutes an admission by the respondent of all facts alleged in the complaint. The Board may take action based on such an admission and on other evidence without further notice to the respondent. If the Board takes action based on such an admission, the Board shall include in the record which evidence was the basis for the action.
- (d) The Board shall determine the time and place of the hearing as soon as is reasonably practical after receiving the respondent's answer. The Board shall deliver or send by registered or certified mail a notice of hearing to all parties at least ten days before the hearing. The hearing must be held within 45 days after receiving the

respondent's answer unless an expedited hearing is determined to be appropriate by the Board, in which event the hearing must be held as soon as practicable.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~3343~~. Subpoenas, depositions.

- (a) Before a hearing before the Board, and during a hearing upon reasonable cause shown, the Board shall issue subpoenas and subpoenas duces tecum at the request of a party.
- (b) The testimony of any material witness residing within or without the jurisdiction of the Tribe may be taken by deposition in the manner provided by the Rules of Civil Procedure of the Cherokee Courts.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~3444~~. Hearing procedure.

- (a) At all hearings before the Board:
 - (1) Oral evidence may be taken only upon oath or affirmation administered by the Board.
 - (2) Every party has the right to:
 - (i) Call and examine witnesses;
 - (ii) Introduce exhibits relevant to the issues of the case;
 - (iii) Cross-examine opposing witnesses on any matters relevant to the issues of the case, even though the matter was not covered in a direct examination;
 - (iv) Impeach any witness regardless of which party first called the witness to testify; and;
 - (v) Offer rebuttal evidence.
 - (3) If the respondent does not testify in his or her own behalf, the respondent may be called and examined as if under cross-examination.
 - (4) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action in the Cherokee Courts.
 - (5) The parties or their counsel may by written stipulation agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.
- (b) The Board may take official notice of any generally accepted information or technical or scientific matter within the field of cannabis, and of any other fact which may be judicially noticed by the Cherokee Courts. The parties must be informed of any information, matters, or facts so noticed, and must be given a reasonable opportunity, on request, to refute such information, matters, or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the Board.
- (c) Affidavits may be received in evidence at any hearing of the Board in accordance with the following:
 - (1) The party wishing to use an affidavit must, not less than ten days before the day set for hearing, serve upon the opposing party or counsel, either personally or by registered or certified mail, a copy of the affidavit which the party proposes to introduce in evidence together with a notice as provided in paragraph (3) below.

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(2) Unless the opposing party, within seven days after such service, mails or delivers to the proponent a request to cross-examine the affiant, the opposing party's right to cross-examine the affiant is waived and the affidavit, if introduced in evidence, must be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made in accordance with this paragraph, the affidavit may be introduced in evidence, but must be given only the same effect as other hearsay evidence.

(3) The notice referred to in paragraph (1) above must be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing set for the ... day of the month of ... of the year ... (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question (here insert name of affiant) unless you notify the undersigned that you wish to cross-examine (here insert name of affiant). To be effective your request must be mailed or delivered to the undersigned on or before seven days from the date this notice and the enclosed affidavit are served upon you.

(Party or Counsel)

(Address)

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~35~~45. Members present, reporting.

(a) At least three members of the Board shall be present at every hearing, and they shall exercise all powers relating to the conduct of the hearing and shall enforce all decisions with respect thereto.

(b) The proceedings at the hearing must be reported either stenographically or by a phonographic reporter.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~36~~46. Limitations on communication.

After the Board has initiated a hearing, the members of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or the party's representative, except upon notice and opportunity to all parties to participate.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~37~~47. Amended or supplemental pleadings.

The Board may, before submission of the case for decision, permit the filing of amended or supplemental pleadings and shall notify all parties thereof, and provide a reasonable opportunity for objections thereto.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~38~~48. Contempt.

If any person in proceedings before the Board disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during the hearing or so near the place thereof as to obstruct the proceeding, the Board may certify the facts to the Cherokee Court. The Court shall thereupon issue an order directing the person to appear before the Court and show cause why the person should not be punished as for contempt. The Court order and a copy of the statement

of the Board must be served on the person cited to appear. Thereafter the Court has jurisdiction of the matter, and the same proceedings must be had, the same penalties may be imposed and the person charged may purge himself or herself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before the Cherokee Court.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~39~~49. Written decision.

- (a) Within 60 days after the hearing or service of the complaint, whichever is later, the Board shall render a written decision on the merits which must contain findings of fact, a determination of the issues presented, and the penalty to be imposed, if any. The Board shall thereafter make and enter its written order in conformity to its decision. No member of the Board who did not hear the evidence may vote on the decision. The affirmative votes of a majority of the whole Board are required to impose any penalty. Copies of the decision and order must be served on the parties personally or sent to them by registered or certified mail. The decision is effective upon such service, unless the Board orders otherwise.
- (b) The Board may, upon motion made within ten days after service of a decision and order, order a rehearing before the Board upon such terms and conditions as it may deem just and proper if a petition for judicial review of the decision and order has not been filed. The motion must not be granted except upon a showing that there is additional evidence which is material and necessary and reasonably calculated to change the decision of the Board, and that sufficient reason existed for failure to present the evidence at the hearing of the Board. The motion must be supported by an affidavit of the moving party or his or her counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced at the hearing. Upon rehearing, rebuttal evidence to the additional evidence must be permitted. After rehearing, the Board may modify its decision and order as the additional evidence may warrant.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~40~~50. Penalties.

If the Board finds that a licensee, ~~or agent, or patient cardholder~~registrant has violated a provision of this chapter or any regulation adopted pursuant thereto, the Board may take any or all of the following actions:

- (a) Limit, condition, suspend or revoke the license, ~~agent card, or patient card~~ or registration card of the licensee or registrant.
- (b) Impose a civil penalty in an amount established by regulation for each violation.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~41~~51. Judicial review.

- (a) Any person aggrieved by a final decision or order of the Board made after hearing or rehearing by the Board and whether or not a motion for rehearing was filed, may obtain a judicial review thereof in the Cherokee Supreme Court.
- (b) The judicial review must be instituted by filing a petition within 20 days after the effective date of the final decision or order. A petition may not be filed while a motion for rehearing or a rehearing is pending before the Board. The petition must set forth the order or decision appealed from and the grounds or reasons why petitioner contends a reversal or modification should be ordered.
- (c) Copies of the petition must be served upon the Board and all other parties of record, or their counsel of record, either personally or by certified mail.

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- (d) The Court, upon a proper showing, may permit other interested persons to intervene as parties to the appeal or as friends of the court.
 - (e) The filing of the petition does not stay enforcement of the decision or order of the Board, but the Board itself may grant a stay upon such terms and conditions as it deems proper.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~42~~⁵². Record on review.

- (a) Upon written request of the petitioner, the complete record on review, or such parts thereof as are designated by the petitioner, must be prepared by the Board.
- (b) The complete record on review must include copies of:
 - (1) All pleadings in the case;
 - (2) All notices and interim orders issued by the Board in connection with the case;
 - (3) All stipulations;
 - (4) The decision and order appealed from;
 - (5) A transcript of all testimony, evidence and proceedings at the hearing;
 - (6) The exhibits admitted or rejected; and
 - (7) Any other papers in the case.
- (c) The original of any document may be used in lieu of a copy thereof. The record on review may be shortened by stipulation of all parties to the review proceedings. The record on review must be filed with the Court within 30 days after service of the petition for review, but the Court may allow the Board additional time to prepare and transmit the record on review.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~43~~⁵³. Additional evidence, review, court decisions.

- (a) The Court may, upon motion therefor, order that additional evidence in the case be taken by the Board upon such terms and conditions as the Court deems just and proper. The motion must not be granted except upon a showing that the additional evidence is material and necessary and that sufficient reason existed for failure to present the evidence at the hearing of the Board. The motion must be supported by an affidavit of the moving party or his or her counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced in the Board hearing. Rebuttal evidence to the additional evidence must be permitted. In cases in which additional evidence is presented to the Board, the Board may modify its decisions and orders as the additional evidence may warrant and shall file with the Court a transcript of the additional evidence together with any modifications of the decision and order, all of which become a part of the record on review.
- (b) The review must be not be a trial de novo but is confined to the record on review. The filing of briefs and oral argument must be made in accordance with the Court's rules.
- (c) The Court may affirm the decision and order of the Board, or it may remand the case for further proceedings or reverse the decision if the substantial rights of the petitioner have been prejudiced because the decision is:
 - (1) In violation of the Charter and Governing Document;
 - (2) In excess of the authority or jurisdiction of the Board;
 - (3) Made upon unlawful procedure;

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- (4) Unsupported by any evidence; or
 - (5) Arbitrary or capricious or otherwise not in accordance with law.
- (d) The judicial review afforded in this chapter is the exclusive method of review of the Board's actions, decisions, and orders in disciplinary hearings against a licensee. Review of actions, decisions, and orders of the Board relating to the denial of a license or agent registration card is pursuant to Cherokee Code Chapter 150. Decisions of the Cherokee Supreme Court are final.
- (Ord. No. 539 , 8-16-2021)

Secs. 17-~~4454~~—17-~~4959~~. Reserved.

**ARTICLE IV. LICENSING OF CANNABIS FACILITIES MEDICAL
CANNABIS ESTABLISHMENTS AND MEDICAL CANNABIS
ESTABLISHMENT AGENTS**

Sec. 17-~~5060~~. License and purpose.

- (a) The purpose for licensing ~~medical cannabis establishments~~cannabis facilities and registering ~~medical cannabis establishment~~cannabis agents is to protect the public health and safety and the general welfare of the Tribe.
- (b) Any ~~medical cannabis facility establishment~~ license ~~or~~; ~~medical cannabis establishment~~ agent card, is a revocable privilege and the holder of such a license or card, as applicable, does not acquire thereby any vested right.
- ~~(c) A medical cannabis establishment is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, or dispensing cannabis for any purpose except to~~
 - ~~(1) Directly or indirectly assist patients who possess valid patient cards;~~
 - ~~(2) Assist patients who possess valid patient cards by way of those patients' designated primary caregivers; and~~
 - ~~(3) Return for a refund cannabis, medical edible cannabis products or medical cannabis-infused products to the medical cannabis establishment from which the cannabis, medical edible cannabis products or medical cannabis-infused products were acquired.~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5164~~. General qualifications for licensure or agent registration.

- (a) Any person who the Board determines is qualified to receive a license or registration-agent card under the provisions of this ~~C~~chapter, having due consideration for the proper protection of the health, safety, morals, good order, and general welfare of the Tribe and its enrolled members and the declared policy of the Tribe, may be issued a license or registration-agent card. The burden of proving an applicant's qualification to receive any license or registration-agent card under this ~~C~~chapter is on the applicant.
- (b) When determining whether to approve an application to receive a license or registration-agent card, the Board may consider whether the applicant is:
 - (1) A person of good character, honesty, and integrity;
 - (2) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of the Tribe or to the effective regulation and control of cannabis, or create or

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enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of cannabis-related activities, or in the carrying on of the business and financial arrangements incidental thereto; and

- (3) In all other respects qualified to be issued a license or registration agent card consistently with the declared policy of the Tribe.
- (c) An application to receive a license or registration agent card constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with a medical cannabis establishment~~facility~~. Any written or oral statement made in the course of an official proceeding of the Board by any member thereof or any witness testifying under oath which is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.
- (d) The Board may by regulation establish such other qualifications for a license or registration agent card as it may, in its discretion, deem to be in the public interest and consistent with the declared policy of the Tribe.
- (e) Any person granted a license or registration agent card by the Board must continue to meet the applicable standards and qualifications set forth in this Chapter and any other qualifications established by the Board by regulation. The failure to continue to meet such standards and qualifications constitutes grounds for disciplinary action.
- ~~(f) The Board shall, to the greatest extent practicable, ensure that persons who have been adversely affected by cannabis prohibition have equal opportunity to obtain licenses and registration cards and to participate in the cannabis industry of the Tribe.~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5262~~. Licensing medical cannabis establishments~~cannabis facilities~~.

- (a) A person shall not engage in the business of a medical cannabis facility~~establishment~~ unless the person holds a medical cannabis establishment~~cannabis facility~~ license issued by the Board pursuant to this section. The Board is the sole issuer of medical cannabis establishment~~cannabis facility~~ licenses. Operating a cannabis facility without the applicable cannabis facility license issued by the Board is unlawful.
- (b) A person who wishes to engage in the business of a medical cannabis establishment~~cannabis facility~~ must submit to the Board an application on a form~~s~~ prescribed by the Board.
- (c) After receiving a complete application to engage in the business of a medical cannabis establishment~~cannabis facility~~, the Board may deny or approve the application and register the medical cannabis establishment~~cannabis facility~~ and issue a cannabis facility~~medical cannabis establishment~~ license and a random 20-digit~~an~~ alphanumeric identification number if:
 - (1) The person who wishes to operate the proposed cannabis facility~~medical cannabis establishment~~ has submitted to the Board all of the following:
 - (i) The application fee, as set forth in Section 17-69;
 - (ii) And application, which must include:
 - (A) The legal name of the proposed medical cannabis establishment~~cannabis facility~~;
 - (B) The physical address where the proposed medical cannabis establishment~~cannabis facility~~ will be located and the physical address of any co-owned additional or otherwise associated medical cannabis establishments~~cannabis facilities~~, the locations of which may not be within 1,000 feet of a school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed cannabis facility~~medical cannabis establishment~~ was submitted to the Board, or within 100 feet of a community facility or gaming facility that existed on the date on which

- the application for the proposed ~~medical cannabis establishment~~cannabis facility was submitted to the Board.
- (C) Evidence that the applicant controls not less than \$250,000.00 in liquid assets to cover the initial expenses of opening the proposed ~~medical cannabis establishment~~cannabis facility and complying with the provisions of this ~~C~~chapter.
 - (D) Evidence that the applicant owns or has lawful possession of the property on which the proposed ~~medical cannabis establishment~~cannabis facility will be located or has the written permission of the property owner to operate the proposed ~~medical cannabis establishment~~cannabis facility on that property;
 - (E) For the applicant and each person who is proposed to be an owner, officer, or board member of the proposed ~~cannabis facility~~medical cannabis establishment, a complete set of the person's fingerprints and written permission of the person authorizing the Board to use the fingerprints for criminal background check purposes, including submission to the Federal Bureau of Investigation for its report; and
 - (F) The full legal name, address, and date of birth of each person who is proposed to be an owner, officer, or board member of the proposed ~~medical cannabis establishment~~licensee;
- (iii) Operating procedures consistent with rules of the Board for oversight of the proposed ~~medical cannabis establishment~~cannabis facility, including, without limitation:
 - (A) Procedures to ensure the use of adequate security measures; and
 - (B) The use of an electronic verification system and an inventory control system pursuant to ~~this Chapter~~Section 17-72 and Section 17-73;
 - (iv) If the proposed ~~medical cannabis establishment~~cannabis facility will sell or deliver ~~medical~~ cannabis products, proposed operating procedures for handling such products which must be preapproved by the Board;
 - (v) Proof that the proposed location is in compliance with all applicable building requirements; and
 - (vi) Such other information ~~or materials~~ as the Board may require by regulation.
- (2) None of the persons who are proposed to be owners, officers, or board members of the proposed ~~medical cannabis establishment~~cannabis facility have been convicted of an excluded offense;
 - (3) None of the persons who are proposed to be owners, officers, or board members of the proposed ~~medical cannabis establishment~~cannabis facility have:
 - (i) Served as an owner, officer, or board member for a cannabis ~~establishment~~facility that has had its ~~medical cannabis facility~~cannabis establishment license or adult-use ~~cannabis facility~~cannabis establishment license, or equivalent, revoked in any jurisdiction;
 - (ii) Previously had a cannabis ~~establishment~~ agent ~~registration~~ card revoked, or equivalent, in any jurisdiction; and
 - (4) None of the persons who are proposed to be owners, officers, or board members of the proposed ~~medical cannabis establishment~~cannabis facility are under 21 years of age.
- ~~(d) For each person who submits an application pursuant to this section, and each person who is proposed to be an owner, officer, or board member of a proposed medical cannabis establishment, the Board shall submit the fingerprints of the person to the Federal Bureau of Investigation to determine the criminal history of that person.~~
- ~~(de)~~ Except as otherwise provided in subsection ~~(ef)~~, if an application for registration as a ~~medical cannabis establishment~~ satisfies the requirements of this section, is qualified in the determination of the Board, ~~pursuant to Section 17-61~~ and the ~~establishment~~facility is not disqualified from being registered as a ~~medical cannabis establishment~~cannabis facility pursuant to this section or other applicable law, the Board shall issue to the

establishment a ~~cannabis facility~~medical cannabis establishment license. A ~~cannabis facility~~medical cannabis establishment license expires one year after the date of issuance and may be renewed upon:

- (1) Submission of the information required by the Board by regulation; and
 - (2) Payment of the renewal fee ~~set forth in Section 17-69.~~
- (~~ef~~) In determining whether to issue a ~~medical cannabis establishment~~cannabis facility license pursuant to this section, the Board shall consider the criteria of merit set forth in ~~Section 17-63~~this Chapter.
- (~~fg~~) For the purposes of ~~sub-subparagraph (B) of subparagraph (ii) of paragraph (1) of subsection (e)~~measuring distances in this section, the distance must be measured from the front door of the proposed ~~medical cannabis establishment~~cannabis facility to the front door of a school, community facility, or gaming ~~establishment~~facility.
- (~~gh~~) A ~~cannabis facility~~medical cannabis establishment license is not a substitute for a Tribal business license. Licensees must abide by all applicable Tribal laws, rules, and regulations at all times.
- (~~hi~~) The Board, by regulation, may adopt regulations prescribing requirements for the issuances of licenses to business entities and standards for licensees that are business entities which are more stringent than the requirements and standards otherwise set forth in this ~~C~~ehapter.
- (Ord. No. 539 , 8-16-2021; Ord. No. 138 , 3-15-2022)

Sec. 17-~~5363~~. Considerations in issuing licenses.

- (a) In determining whether to issue a ~~cannabis facility~~medical cannabis establishment license pursuant to Section 17-~~5262~~, the Board shall, in addition to the factors set forth in that section, consider criteria of merit established by regulation of the Board. Such criteria must include, without limitation:
- (1) Whether the applicant controls liquid assets in an amount determined by the Board to be sufficient to cover the initial expenses of opening the proposed ~~medical cannabis establishment~~cannabis facility and complying with the provisions of this ~~C~~ehapter;
 - (2) The previous experience of the persons who are proposed to be owners, officers, or board members of the proposed ~~medical cannabis establishment~~cannabis facility at operating other businesses or nonprofit organizations;
 - (3) The educational and life experience of the persons who are proposed to be owners, officers, or board members of the proposed ~~medical cannabis establishment~~cannabis facility;
 - (4) Any demonstrated knowledge or expertise on the part of the persons who are proposed to be owners, officers, or board members of the proposed ~~cannabis facility~~medical cannabis establishment with respect to the compassionate use of cannabis to treat medical conditions;
 - (5) Whether the proposed location of the proposed ~~cannabis facility~~medical cannabis establishment would be convenient to serve the needs of persons who are authorized to engage in the medical use of cannabis;
 - (6) The likely impact of the proposed ~~cannabis facility~~medical cannabis establishment on the community in which it is proposed to be located;
 - (7) The adequacy of the size of the proposed ~~cannabis facility~~medical cannabis establishment to serve the needs of persons who are authorized to engage in the medical use of cannabis;
 - (8) Whether the applicant has an integrated plan for the care, quality, and safekeeping of medical cannabis from seed to sale; and
 - (9) Any other criteria of merit that the Board determines to be relevant.
- (~~b~~) ~~The Board shall adopt regulations for determining the relative weight of each criteria of merit established by the Board pursuant to subsection (a)~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5464~~. Medical cannabis independent testing Cannabis laboratories.

- (a) The Board shall establish standards for and certify one or more cannabis ~~independent testing~~ laboratories to test cannabis ~~for medical use~~ and ~~medical~~ cannabis products that are to be sold in within the Tribe's jurisdiction.
- (b) Such a cannabis ~~independent testing~~ laboratory must be able to:
 - (1) Determine accurately, with respect to cannabis or cannabis products that are sold or will be sold at cannabis ~~sales-retail~~ facilities:
 - (i) The concentration therein of THC and cannabidiol.
 - (ii) The presence and identification of microbes, molds, and fungus.
 - (iii) The composition of the tested material.
 - (iv) The presence of chemicals in the tested material, including, without limitation, pesticides, heavy metals, herbicides, or growth regulators.
 - (2) Demonstrate the validity and accuracy of the methods used by the cannabis ~~independent testing~~ laboratory to test cannabis and cannabis products.
- (c) To obtain a license to operate a cannabis ~~independent testing~~ laboratory, an applicant must:
 - (1) Apply successfully as required pursuant to Section 17-~~5262~~.
 - (2) Pay the ~~required fees required pursuant to Section 17-69~~.
 - (3) ~~Agree to~~ become accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization within one year after licensure.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5565~~. Information regarding the inspection or review of a cannabis facility ~~medical cannabis establishment~~ by a Tribal division, department, or office.

The Board may request information regarding any inspection or review of a cannabis facility ~~medical cannabis establishment~~ by a Tribal division, department, or office. The recipient of a reasonable request from the Board pursuant to this section shall comply with the request as soon as is reasonably practicable after receiving the request.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5666~~. Agents required to register with board, requirements.

- (a) Except as otherwise provided in this section, ~~a person shall not own, manage, operate, work at, be employed by, volunteer, or be an independent contractor or sub-contractor for cannabis-related services to a cannabis facility unless the person is registered with the Board as a cannabis agent pursuant to this section a person shall not hold an ownership interest in a medical cannabis establishment of less than five percent, volunteer or work at, contract to provide labor to, or be employed by an independent contractor to provide labor to a medical cannabis establishment as a medical cannabis establishment agent unless the person is registered with the Board pursuant to this section.~~
- (b) A person who wishes to ~~volunteer or work at a medical cannabis establishment~~ receive an agent card shall submit to the Board an application on a form prescribed by the Board. The application must be accompanied by:

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- (1) The full legal name, physical and mailing address, and date of birth of the prospective ~~medical cannabis establishment~~ agent;
 - (2) A statement signed by the prospective ~~medical cannabis establishment~~ agent pledging not to dispense or otherwise divert cannabis to any person who is not authorized to possess cannabis in accordance with the provisions of this Chapter;
 - (3) A statement signed by the prospective medical cannabis establishment agent asserting that he or she has not previously had a ~~medical cannabis establishment agent registration~~ card revoked;
 - (4) Any information required by the Board to complete an investigation into the background of the prospective cannabis agent;
 - ~~(5) The application fee, as set forth in Section 17-69; and~~
 - ~~(6) Such other information as the Board may require by regulation.~~
- (c) ~~A person who wishes to contract to provide labor to or be employed by an independent contractor to provide labor to a medical cannabis establishment shall submit to the Board an application on a form prescribed by the Board for the registration of the independent contractor and each employee of the independent contractor who will provide labor as a medical cannabis establishment agent. The application must be accompanied by:~~
- ~~(1) The full legal name and physical and mailing address of the prospective medical cannabis establishment agent;~~
 - ~~(2) The name, address and date of birth of each employee of the prospective medical cannabis establishment agent who will provide labor as a medical cannabis establishment agent;~~
 - ~~(3) A statement signed by the prospective medical cannabis establishment agent pledging not to dispense or otherwise divert cannabis to, or allow any of its employees to dispense or otherwise divert cannabis to, any person who is not authorized to possess cannabis in accordance with the provisions of this chapter;~~
 - ~~(4) A statement signed by the prospective medical cannabis establishment agent asserting that it has not previously had a medical cannabis establishment agent registration card revoked and that none of its employees who will provide labor as a medical cannabis establishment agent have previously had a medical cannabis establishment agent registration card revoked;~~
 - ~~(5) The application fee, as set forth in Section 17-69; and~~
 - ~~(6) Such other information as the Board may require by regulation.~~
- (d) ~~A person who wishes to hold an ownership interest in a medical cannabis establishment of less than five percent shall submit to the Board an application on a form prescribed by the Board. The application must be accompanied by:~~
- ~~(1) The name, physical and mailing address, and date of birth of the prospective medical cannabis establishment agent;~~
 - ~~(2) A statement signed by the prospective medical cannabis establishment agent pledging not to dispense or otherwise divert cannabis to any person who is not authorized to possess cannabis in accordance with the provisions of this chapter;~~
 - ~~(3) A statement signed by the prospective medical cannabis establishment agent asserting that he or she has not previously had a medical cannabis establishment agent registration card revoked;~~
 - ~~(4) Any information required by the Board to complete an investigation into the background of the prospective medical cannabis establishment agent, including, without limitation, financial records and other information relating to the business affairs of the prospective medical cannabis establishment agent;~~
 - ~~(5) The application fee, as set forth in Section 17-69; and~~
 - ~~(6) Such other information as the Board may require by regulation.~~

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- (ce) The Board may conduct any investigation of a prospective ~~medical cannabis establishment~~ agent and, for an independent contractor, each employee of the prospective ~~medical cannabis establishment~~ agent who will provide labor as a ~~medical cannabis establishment~~ agent, that the Board deems appropriate. In connection with such an investigation, the Board may:
- (1) Conduct or accept any background check the Board determines to be reliable and expedient to determine the criminal history of the prospective ~~medical cannabis establishment~~ agent or the employee;
 - (2) Require a prospective ~~medical cannabis establishment~~ agent, if a natural person, and each employee of a prospective ~~medical cannabis establishment~~ agent who will provide labor as a ~~medical cannabis establishment~~ agent to submit to the Board a complete set of fingerprints and written permission authorizing the Board to submit to the Federal Bureau of Investigation for its report; and
 - (3) If the Board imposes the requirement described in paragraph (2), submit the fingerprints of the prospective ~~medical cannabis establishment~~ agent and each employee of the prospective ~~medical cannabis establishment~~ agent who will provide labor as a ~~medical cannabis establishment~~ agent to the Federal Bureau of Investigation for its report.
- (cf) A ~~medical cannabis establishment-cannabis facility~~ shall notify the Board within ten days after a ~~medical cannabis establishment~~ agent ceases to hold an ownership interest in the ~~cannabis facility medical-cannabis establishment of less than five percent~~, be employed by, volunteer at, or provide labor as a ~~medical-cannabis establishment~~ agent to the ~~cannabis facility medical-cannabis establishment~~.
- (cg) A person who has been convicted of an excluded offense, is less than 21 years of age, or is not qualified in the determination of the Board pursuant to ~~Section 17-61~~ shall not serve as a ~~medical cannabis establishment~~ agent.
- ~~(ch) The provisions of this section do not require a person who is an owner, officer, or board member of a medical cannabis establishment to resubmit information already furnished to the Board at the time the establishment was licensed with the Board.~~
- (ci) If an applicant for ~~registration as a medical cannabis establishment agent card~~ satisfies the requirements of this section, is found to be qualified by the Board, ~~pursuant to C.C. Section 17-61~~ and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Board shall issue to the person ~~and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a medical cannabis establishment agent, a medical cannabis establishment agent registration card~~. A ~~medical cannabis establishment agent registration card~~ expires two years after the date of issuance and may be renewed upon:
- (1) Resubmission of the information set forth in this section; and
 - (2) Payment of the renewal fee ~~set forth in Section 17-69~~.
- ~~(cj) A person to whom a medical cannabis establishment agent registration card is issued or for whom such a registration card is renewed shall submit to the Board on the date of the first anniversary of the issuance or renewal an affidavit attesting that in the preceding year there has been no change in the information previously provided to the Board which would subject the person to disciplinary action by the Board.~~
- (ck) A ~~medical cannabis establishment agent registration card~~ issued pursuant to this section to an independent contractor or an employee of an independent contractor authorizes the independent contractor or employee to provide labor to any ~~cannabis facility medical-cannabis establishment~~ within the Tribe's jurisdiction.
- (cl) A ~~medical cannabis establishment agent registration card~~ issued pursuant to this section to a person who wishes to volunteer or work at a ~~cannabis facility medical-cannabis establishment~~ authorizes the person to volunteer or work at any ~~cannabis facility medical-cannabis establishment~~ within the Tribe's jurisdiction for which the category of the ~~medical cannabis establishment agent registration card~~ authorizes the person to volunteer or work.
- (cm) Except as otherwise prescribed by regulation of the Board, an applicant for registration or renewal of ~~an registration as a medical cannabis establishment agent card~~ is deemed temporarily registered as a ~~medical~~

cannabis ~~establishment~~ agent on the date on which a complete application for registration or renewal of registration is submitted to the Board. A temporary registration as a ~~an~~ medical cannabis establishment agent expires ~~60~~45 days after the date upon which the application is received.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5767~~. License and registration agent card non-transferable.

~~Licenses and agent cards are non-transferable, except as otherwise provided by regulations issued by the Board for the transfer of a license to another person or entity who is qualified to hold a license pursuant to this Chapter.~~

~~(a) — Except as otherwise provided by regulations adopted by the Board pursuant to subsection (b), the following are nontransferable:~~

~~(1) — A medical cannabis establishment license.~~

~~(2) — A cannabis establishment agent registration card.~~

~~(b) — The Board shall adopt regulations which prescribe procedures and requirements by which a holder of a license may transfer the license to another party who is qualified to hold such a license pursuant to the provisions of this chapter.~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5868~~. Grounds for immediate revocation of registration agent card.

(a) The following acts constitute grounds for the immediate revocation of a ~~medical cannabis establishment agent registration card of a medical cannabis establishment agent:~~

(1) Having committed or committing any excluded offense.

(2) Dispensing, delivering, or otherwise transferring cannabis to a person who is not authorized by law to possess cannabis in accordance with the provisions of this ~~C~~chapter.

(3) Having been electronically recorded by a video monitoring system stealing cannabis or cannabis products.

(4) Having been convicted of any crime involving the theft of cannabis or cannabis products.

~~(5) — Having been electronically recorded by a video monitoring system smoking or otherwise consuming cannabis on the premises of a cannabis establishment.~~

~~(6) Intentionally submitting to the Board any document required under the provisions of this ~~C~~chapter which is false or contains any material misstatement of fact.~~

~~(7) Violating a regulation of the Board, the violation of which is stated to be grounds for immediate revocation of a cannabis ~~establishment agent registration~~ card.~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~5969~~. Fees.

(a) Except as otherwise provided in subsection (b), the Board shall collect not more than the following maximum fees:

(1) For the initial issuance of a ~~medical cannabis establishment~~ cannabis facility license for a ~~medical cannabis dispensary retail facility~~: \$30,000.00.

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- (2) For the renewal of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a medical cannabis ~~dispensary~~~~retail facility~~: \$5,000.00.
 - (3) For the initial issuance of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis cultivation facility: \$3,000.00
 - (4) For the renewal of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis cultivation facility: \$1,000.00.
 - (5) For the initial issuance of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis ~~production~~~~processing~~ facility: \$3,000.00.
 - (6) For the renewal of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis ~~production~~~~processing~~ facility: \$1,000.00.
 - (7) For the initial issuance of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis ~~independent testing~~ laboratory: \$5,000.00.
 - (8) For the renewal of a ~~cannabis facility~~~~medical cannabis establishment~~ license for a ~~medical~~ cannabis ~~independent testing~~ laboratory: \$3,000.00.
 - (9) For each person identified in an application for the initial issuance of a ~~medical~~ cannabis ~~establishment~~ agent ~~registration~~ card: \$150.00.
 - (10) For each person identified in an application for the renewal of a cannabis ~~establishment~~ agent ~~registration~~ card: \$150.00.
- (b) In addition to the fees described in subsection (a), each applicant for a ~~cannabis facility~~~~medical cannabis establishment~~ license must pay to the Board:
- (1) A one-time, nonrefundable application fee of \$5,000; and
 - (2) The actual costs incurred by the Board in processing the application, including, without limitation, conducting background checks.
- (c) Any revenue generated from the fees imposed pursuant to this section
- (1) Must be expended first to pay the costs of the Board in carrying out the provisions of this ~~C~~chapter; and
 - (2) If any excess revenue remains after paying the costs described in paragraph (c)(1), such excess revenue must be paid over as instructed by the Secretary of the Treasury so as not to comeingle such revenue with the Tribe's other monies.
- (Ord. No. 539 , 8-16-2021)

ARTICLE VI. REQUIREMENTS CONCERNING OPERATION OF ~~MEDICAL CANNABIS ESTABLISHMENTS~~~~CANNABIS FACILITIES~~

Sec. 17-~~6070~~. Location, land use and signage, change of location.

- (a) ~~As used in this Article, the term "marijuana" also includes marijuana products unless otherwise excluded.~~
- (b) Each cannabis ~~establishment~~~~facility~~ must
- (1) comply with all Tribal ordinances and rules pertaining to land development, land use, and signage.
 - (2) Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified, and consistent with ~~the traditional style of pharmacies, medical offices, or commercial/industrial properties~~~~regulations issued by the Board~~; and

- (3) Have discreet and professional signage that is consistent with ~~the traditional style of signage for pharmacies and medical offices or commercial industrial properties~~ regulations issued by the Board.
- (cb) A cannabis ~~establishment~~ facility may not change locations without permission from the Board.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~6171~~. Operating documents, security, inspections.

- (a) The operating documents of a ~~medical cannabis establishment~~ cannabis facility must include procedures:
- (1) For the oversight of the ~~cannabis facility~~ medical cannabis establishment; and
 - (2) To ensure accurate recordkeeping
- (b) Except as otherwise provided in this subsection, a ~~cannabis facility~~ medical cannabis establishment:
- (1) That is a ~~medical~~ cannabis ~~retail facility~~ dispensary must have a single entrance for patrons, which must be secure, and shall implement strict security measures to deter and prevent the theft ~~of cannabis~~ and unauthorized entrance into areas containing ~~marijuana~~ cannabis.
 - (2) That is not a ~~medical~~ cannabis ~~retail facility~~ dispensary must have a ~~single~~ secure entrances and shall implement strict security measures to deter and prevent the theft ~~of cannabis~~ and unauthorized entrance into areas containing ~~marijuana~~ cannabis.
- (c) All cultivation or ~~production~~ processing of ~~marijuana~~ cannabis that a ~~medical~~ cannabis cultivation facility carries out or causes to be carried out must take place in an enclosed, locked ~~area~~ facility at the physical address provided to the Board during the licensing process for the ~~cannabis facility~~ medical cannabis cultivation facility. Such an enclosed, locked ~~area~~ facility must be accessible only by ~~medical~~ cannabis ~~establishment~~ agents who are lawfully associated with the cannabis cultivation facility, except that limited access by ~~other~~ persons ~~necessary to perform construction or repairs or provide other labor~~ is permissible if such persons are supervised by a ~~medical cannabis establishment~~ agent of the cannabis facility.
- ~~(d) A medical cannabis establishment shall not allow any person to consume cannabis on the property or premises of the establishment.~~
- (de) ~~C~~ Medical cannabis facilities ~~establishments~~ are subject to reasonable inspection by the Board at any time, and a person who holds a license must make himself or herself, or a designee thereof, available and present for any inspection by the Board of the medical cannabis establishment.
- (ef) Each ~~cannabis facility~~ medical cannabis establishment shall install a video monitoring system which must, at a minimum:
- (1) Allow for the transmission and storage, by digital or analog means, of a video feed which displays the interior and exterior of the medical cannabis establishment; and
 - (2) Be capable of being accessed remotely by a law enforcement agency in real-time upon request.
- ~~(g) A medical cannabis establishment shall not dispense or otherwise sell medical cannabis or medical cannabis products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises of the cannabis establishment.~~

Sec. 17-~~6272~~. Electronic verification system.

- (a) Each ~~cannabis facility~~ medical cannabis establishment, in consultation with the Board, shall maintain an electronic verification system.
- (b) The electronic verification system required pursuant to subsection (a) must be able to monitor and report information, including, without limitation:

- (1) ~~In the case of a medical cannabis dispensary, for each person who holds a valid patient card and who purchased cannabis from the dispensary in the immediately preceding 60-day period:~~
- ~~(i) The number of the card;~~
 - ~~(ii) The date on which the card was issued; and~~
 - ~~(iii) The date on which the card will expire.~~
- (12) For each cannabis ~~establishment~~ agent who is employed by or volunteers at the ~~cannabis establishment~~ cannabis facility ~~medical cannabis establishment~~, the number of the person's cannabis ~~establishment~~ agent card.
- (23) In the case of a ~~medical cannabis retail facility~~ dispensary, such information as may be required by the Board by regulation regarding persons ~~who are not residents of Tribal land and who have purchased marijuana cannabis~~ from the ~~dispensary~~ retail facility.
- (34) Verification of ~~the~~ identity of a person to whom ~~marijuana cannabis or medical cannabis products are~~ sold or otherwise distributed.
- (45) Such other information as the Board may require by regulation.
- (c) Nothing in this section prohibits more than one ~~cannabis facility~~ medical cannabis establishment from co-owning an electronic verification system in cooperation with other ~~cannabis facilities~~ medical cannabis establishments, or sharing the information obtained therefrom.
- (d) A ~~cannabis facility~~ medical cannabis establishment must exercise reasonable care to ensure that the personal identifying information of persons ~~who hold patient identification cards which is~~ contained in an electronic verification system is encrypted, protected, and not divulged for any purpose not specifically authorized by law.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~6373~~. Inventory control system.

- (a) Each ~~cannabis facility~~ medical cannabis establishment, in consultation with the Board, shall maintain an inventory control system.
- (b) The inventory control system required pursuant to subsection (a) must be able to monitor and report information, including, without limitation:
- (1) Insofar as is practicable, the chain of custody and current whereabouts, in real time, of marijuana cannabis from the point that it is harvested at a cannabis cultivation facility until it is sold at a ~~medical cannabis retail facility~~ dispensary and, if applicable, ~~medical cannabis processing~~ production facility;
 - (2) The name of each person or other ~~cannabis facility~~ medical cannabis establishment, or both, to which the ~~establishment~~ facility sold marijuana cannabis;
 - (3) In the case of a ~~medical cannabis retail facility~~ dispensary, the date on which it sold marijuana cannabis to a person ~~who holds a patient card~~ and, if any, the quantity of ~~medical cannabis products~~ cannabis sold, measured both ~~by~~ weight and potency; and
 - (4) Such other information as the Board may require by regulation.
- (c) Nothing in this section prohibits more than one ~~cannabis facility~~ medical cannabis establishment from co-owning an inventory control system in cooperation with other ~~cannabis facilities~~ medical cannabis establishments, or sharing the information obtained therefrom.
- (d) A ~~cannabis facility~~ medical cannabis establishment must exercise reasonable care to ensure that the personal identifying information of persons ~~who hold patient cards which is~~ contained in an inventory control system is encrypted, protected, and not divulged for any purpose not specifically authorized by law.
- (Ord. No. 539 , 8-16-2021)

**Sec. 17-~~6474~~. Requirements for storage, removal, transportation of marijuana-~~medical~~
cannabis.**

- (a) At each cannabis facility~~medical-cannabis establishment~~, medical cannabis marijuana must be stored only in an enclosed, locked area~~facility~~.
- (b) Except as otherwise provided in subsection (c), at each ~~medical~~ cannabis retail facility~~dispensary~~, medical cannabis marijuana must be stored in a secure, locked device, display case, cabinet, or room within the enclosed, locked area~~facility~~. The secure, locked device, display case, cabinet, or room must be protected by a lock or locking mechanism that meets at least the security rating established by the Underwriters Laboratories for key locks.
- (c) At a ~~medical~~ cannabis retail facility~~dispensary~~, medical cannabis marijuana may be removed from the secure setting described in subsection (b):
 - (1) Only for the purpose of selling~~dispensing~~ the marijuana cannabis;
 - (2) Only immediately before the marijuana cannabis is sold~~dispensed~~; and
 - (3) Only by a cannabis ~~establishment~~ agent who is employed by or volunteers at the dispensary~~retail facility~~.
- (d) A cannabis facility~~medical-cannabis establishment~~ may:
 - (1) Transport medical cannabis marijuana to another cannabis facility~~medical-cannabis establishment~~ or between the buildings of the cannabis facility~~medical-cannabis establishment~~; and
 - (2) Enter into a contract with a third party to transport cannabis marijuana to another cannabis facility~~medical-cannabis establishment~~ or between the buildings of the cannabis facility~~medical-cannabis establishment~~.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~6575~~. Duties of medical retail facilities~~medical cannabis dispensaries~~ relating to sale of medical cannabis marijuana.

- (a) Each cannabis retail facility~~medical-cannabis dispensary~~ shall ensure all of the following:
 - (1) That marijuana or marijuana products are not sold to any person under 21 years old as proven by valid, government-issued identification.
 - (2) The weight, concentration, and content of THC in all marijuana cannabis and marijuana cannabis products that the retail facility~~dispensary~~ sells is clearly and accurately stated on the product sold.
 - (3) That the dispensary-retail facility does not sell to a person, in any one transaction, more than one and one-half (1.5) ounces of marijuana cannabis per day.
 - (4) That the retail facility does not sell to a person marijuana products containing more than 2,500 milligrams of THC per day, not to exceed 10,000 milligrams of THC per month.
 - (5) That the legal limits on the possession of marijuana is posted clearly and conspicuously within the retail facility, posted clearly and conspicuously within the dispensary, are the legal limits on the possession of cannabis for medical purposes, as set forth in Section 17-91.
 - (6) That only persons who are at least 21 years of age or hold a patient card are allowed to enter the premises of the medical cannabis retail facility~~dispensary~~.
- (b) A ~~medical~~ cannabis retail facility~~dispensary~~ shall not sell marijuana cannabis or marijuana cannabis products to a consumer through the use of, or accept a sale of marijuana cannabis or marijuana cannabis products from,

a third party, intermediary business, broker or any other business that does not hold a ~~medical cannabis retail facility license~~ establishment license for a medical cannabis dispensary.

- (c) ~~The Board may issue regulations by which a retail facility may sell and deliver marijuana and marijuana products to an eligible person through its cannabis agents outside of a cannabis retail facility. A medical cannabis dispensary may deliver medical cannabis or medical cannabis products to a person who holds a valid patient card if the delivery is made by a medical cannabis establishment agent who is authorized to make the delivery by the medical cannabis dispensary which sold the cannabis or cannabis product.~~

~~(1) The Board may adopt regulations prescribing procedures and protocols for deliveries conducted pursuant to subsection (c).~~

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~6676~~. Requirements concerning ~~medical cannabis~~ marijuana products.

- (a) Each ~~cannabis facility~~ medical cannabis establishment shall, in consultation with the Board, cooperate to ensure that all ~~marijuana cannabis~~ products offered for sale:

(1) Are labeled clearly and unambiguously:

(i) As ~~medical cannabis marijuana~~ with the words "THIS IS A ~~MEDICAL CANNABIS~~ MARIJUANA PRODUCT" or "THIS IS A CANNABIS PRODUCT" in bold type; and

(ii) As required by the other provisions of this ~~C~~ chapter.

(2) Are not presented in packaging that contains an image of a cartoon character, mascot, action figure, balloon, or toy, except that such an item may appear in the logo of the ~~cannabis facility~~ cannabis production facility which produced the product.

(3) Are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(4) Are packaged and labeled in such a manner as to allow tracking by way of an inventory control system.

(5) Are not packaged and labeled in a manner which is modeled after a brand of products primarily consumed by or marketed to children.

(6) Are labeled in a manner which indicates the amount of THC in the product, measured in milligrams, and includes a statement that the product contains ~~marijuana cannabis~~ and its potency was tested with an allowable variance of the amount determined by the Board by regulation.

(7) Are not labeled or marketed as candy.

- (b) A ~~medical cannabis~~ processing ~~production~~ facility shall not produce ~~marijuana cannabis~~ products in any form that:

(1) Is or appears to be a lollipop.

(2) Bears the likeness or contains characteristics of a real or fictional person, animal or fruit, including, without limitation, a caricature, cartoon or artistic rendering.

(3) Is modeled after a brand of products primarily consumed by or marketed to children.

(4) Is made by applying concentrated cannabis to a commercially available candy or snack food item other than dried fruit, nuts, or granola.

- (c) A ~~medical cannabis~~ processing ~~production~~ facility shall:

(1) Seal any ~~medical cannabis marijuana~~ product that consists of cookies or brownies in a bag or other container which is not transparent.

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- (2) Affix a label to each ~~medical cannabis marijuana~~ product which includes without limitation, in a manner which must not mislead consumers, the following information:
 - (i) The words "Keep out of reach of children";
 - (ii) A list of all ingredients used in the ~~medical cannabis marijuana~~ product;
 - (iii) A list of all allergens in the ~~cannabis marijuana~~ product; and
 - (iv) The total content of THC measured in milligrams.
 - (3) Maintain a hand washing area with hot water, soap and disposable towels which is located away from any area in which cannabis products are cooked or otherwise prepared.
 - (4) Require each person who handles ~~marijuana cannabis~~ or ~~medical cannabis marijuana~~ products to restrain his or her hair, wear clean clothing, and keep his or her fingernails neatly trimmed.
 - (5) Package all ~~cannabis marijuana~~ products produced by the cannabis ~~production-processing~~ facility on the premises of the cannabis ~~production-processing~~ facility.
 - (d) A ~~cannabis facility~~~~medical cannabis establishment~~ shall not engage in advertising that in any way makes ~~cannabis marijuana~~ or ~~medical cannabis marijuana~~ products appeal to children, including without limitation, advertising which uses an image of a cartoon character, mascot, action figure, balloon, fruit, or toy.
 - (e) Each ~~medical~~ cannabis ~~retail facility~~~~dispensary~~ shall offer for sale containers for the storage of ~~medical marijuana cannabis~~ and ~~medical cannabis marijuana~~ products which lock and are designed to prohibit children from unlocking and opening the container.
 - (f) A ~~medical cannabis~~ ~~dispensary-retail facility~~ shall:
 - (1) Include a written notification with each sale of ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products which advises the purchaser:
 - (i) To keep ~~cannabis marijuana~~ and ~~cannabis marijuana~~ products out of the reach of children;
 - (ii) That ~~cannabis marijuana~~ products can cause severe illness in children;
 - (iii) That allowing children to ingest ~~marijuana cannabis~~ or ~~cannabis marijuana~~ products or storing ~~cannabis marijuana~~ or ~~cannabis marijuana~~ products in a location which is accessible to children may result in an investigation by an agency which provides child welfare services or criminal prosecution for child abuse or neglect;
 - (iv) That the intoxicating effects of edible ~~marijuana cannabis~~ products may be delayed by two hours or more and users of edible ~~medical cannabis marijuana~~ products should initially ingest a small amount of the product, then wait at least 120 minutes before ingesting any additional amount of the product;
 - (v) That pregnant women should consult with a physician before ingesting ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products;
 - (vi) That ingesting ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products with alcohol or other drugs, including prescription medication, may result in unpredictable levels of impairment and that a person should consult with a physician before doing so;
 - (vii) That ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products can impair concentration, coordination and judgment and a person should not operate a motor vehicle while under the influence of ~~marijuana cannabis~~ or ~~cannabis marijuana~~ products; and
 - (viii) That ingestion of any amount of ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products before driving may result in criminal prosecution for driving under the influence.
 - (2) Enclose all ~~medical cannabis marijuana~~ and ~~medical cannabis marijuana~~ products in opaque, child-proof packaging upon sale.

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- (g) A cannabis ~~dispensary-retail facility~~ shall not allow any person who is at less than 21 years of age to enter the premises of the cannabis ~~retail facility~~ ~~dispensary~~.
- ~~(h) If the applicable health authority where a medical cannabis production facility or medical cannabis dispensary which sells edible medical cannabis products is located requires persons who handle food at a food establishment to obtain certification, the medical cannabis production facility or medical cannabis dispensary shall ensure that at least one employee maintains such certification.~~
- (hi) A ~~medical~~ cannabis ~~cultivation~~ ~~production~~ facility or a cannabis ~~processing~~ ~~facility~~ may sell a commodity or product made using hemp or containing cannabidiol to a ~~medical~~ cannabis ~~retail facility~~ ~~dispensary~~.
- (ij) In addition to any other product authorized by the provisions of this ~~C~~chapter, a ~~medical~~ cannabis ~~retail facility~~ ~~dispensary~~ may sell:
- (1) Any commodity or product made using hemp;
 - (2) Any commodity or product containing cannabidiol with a THC concentration of not more than 0.3 percent; and
 - (3) Any other product specified by regulation of the Board.
- ~~(jk) A cannabis facility~~ ~~medical cannabis establishment~~:
- (1) Shall not engage in advertising which contains any statement or illustration that:
 - (i) Is false or misleading;
 - (ii) Promotes overconsumption of ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products;
 - (iii) Depicts the actual consumption of ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products; or
 - (iv) Depicts a child or other person who is less than 21 years of age consuming ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products or objects suggesting the presence of a child, including, without limitation, toys, characters, or cartoons, or contains any other depiction which is designed in any manner to be appealing to or encourage consumption of ~~medical cannabis marijuana~~ or ~~medical cannabis marijuana~~ products by a person who is less than 21 years of age.
 - ~~(2) Shall not advertise in any publication or on radio, television, or any other medium if 30 percent or more of the audience of that medium is reasonably expected to be persons who are less than 21 years of age.~~
 - ~~(23) Shall not place an marijuana advertisement:~~
 - (i) Within 1,000 feet of a school, playground, public park, or library, but may maintain such an advertisement if it was initially placed before the school, playground, public park, or library was located within 1,000 feet of the location of the advertisement;
 - (ii) On or inside of a motor vehicle used for public transportation or any shelter for public transportation;
 - (iii) At a sports event to which persons who are less than 21 years of age are allowed entry; or
 - (iv) At an entertainment event if it is reasonably estimated that 30 percent or more of the persons who will attend that event are less than 21 years of age.
 - ~~(34) Shall not advertise or offer any medical cannabis marijuana or medical cannabis marijuana product as "free" or "donated" without a purchase.~~
 - ~~(45) Shall ensure that all advertising by the cannabis facility~~ ~~medical cannabis establishment~~ contains such warnings as may be prescribed by the Board, which must include, without limitation, the following words:
 - (i) "Keep out of reach of children"; and
-

(ii) "For use only by adults 21 years of age and older."

~~(l) If a medical cannabis establishment engages in advertising for which it is required to determine the percentage of persons who are less than 21 years of age and who may reasonably be expected to view or hear the advertisement, the medical cannabis establishment shall maintain documentation for not less than five years after the date on which the advertisement is first broadcasted, published, or otherwise displayed that demonstrates the manner in which the medical cannabis establishment determined the reasonably expected age of the audience for that advertisement.~~

~~(km)~~ In addition to any other penalties provided for by law, the Board may impose a civil penalty upon a cannabis facility~~cannabis establishment~~ that violates the provisions of subsection (k) and (l)~~this section~~ as follows:

- (1) For the first violation in the immediately preceding two years, a civil penalty not to exceed \$1,250.00.
- (2) For the second violation in the immediately preceding two years, a civil penalty not to exceed \$2,500.00.
- (3) For the third violation in the immediately preceding two years, a civil penalty not to exceed \$5,000.00.
- (4) For the fourth violation in the immediately preceding two years, a civil penalty not to exceed \$10,000.00.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~6777~~. Advertising, selling, appearing to sell medical cannabis marijuana without a license is prohibited.

A person shall not advertise the sale of medical cannabis marijuana or medical cannabis marijuana products by the person, sell, offer to sell, or appear to sell medical cannabis marijuana or medical cannabis marijuana products unless the person holds a cannabis facility~~medical cannabis establishment~~ license. Only cannabis retail facilities may sell marijuana and marijuana products to the public.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~6878~~. Random laboratory assurance checks.

(a) The Board may establish a program to ensure the integrity of all testing performed by a medical cannabis independent testing laboratory by subjecting each such laboratory to random laboratory assurance checks.

~~(b) If the Board establishes a program pursuant to subsection (a), each medical cannabis independent testing laboratory shall participate in the program.~~

~~(be)~~ If the Board establishes a program pursuant to subsection (a), as part of the program, the Board shall:

- (1) Collect samples of marijuana~~cannabis~~ or marijuana~~cannabis~~ products from cannabis facilities~~medical cannabis establishments~~ that have already been tested by medical cannabis independent testing laboratories in amounts deemed sufficient by the Board;
- (2) Remove identifying characteristics from and randomize such samples; and
- (3) Provide each cannabis independent testing laboratory with a sample for analysis.

~~(cd)~~ A cannabis independent laboratory that receives a sample from the Board shall perform such quality assurance tests upon the sample as the Board may require. Such tests may include, without limitation:

- (1) Screening the sample for pesticides, heavy metals, chemical residues, herbicides, growth regulators and microbial analysis;
- (2) A potency analysis to test for and quantify the presence of the following cannabinoids:
 - (i) THC;

- (ii) Tetrahydrocannabinolic acid;
 - (iii) Cannabidiol;
 - (iv) Cannabidiolic acid; and
 - (v) Cannabinol; and
- (3) Such other quality assurance tests that the Board may require.
- (de) If the Board establishes a program pursuant to subsection (a), the Board shall adopt regulations necessary to carry out the program. Such regulations:
- (1) Must require each cannabis independent testing laboratory to perform a random laboratory assurance check at least once every six months but not more frequently than once every three months.
 - (2) May modify the procedures and requirements set forth in this section if the Board determines that advances in science necessitate such a modification.
- (f) As used in this section, "random laboratory assurance check" means the evaluation of the performance of a cannabis independent testing laboratory in conducting quality assurance tests upon a sample if required by the Board under the program established pursuant to subsection (a).
- (Ord. No. 539 , 8-16-2021)

Sec. 17-6979. Consumption within a cannabis facility Reciprocity.

The Board may adopt regulations prescribing the requirements and standards for the consumption of marijuana and marijuana products within a cannabis facility. Medical cannabis dispensaries shall offer reciprocity to the participants of medical cannabis programs of other jurisdictions. A medical cannabis dispensary may sell medical cannabis and medical cannabis products to a person without a medical cannabis patient card if the person has valid documentation or credentials showing that the person is a participant of a medical cannabis program in a different jurisdiction.

(Ord. No. 539 , 8-16-2021)

ARTICLE VII. MISCELLANEOUS LICENSING PROVISIONS

Sec. 17-7080. Certain employees and persons exempt from prosecution.

- (a) A member or employee of the Board who, in the course of his or her duties:
 - (1) Possesses, delivers, or produces marijuanaeannabis;
 - (2) Aids and abets another in the possession, delivery or production of marijuanaeannabis;
 - (3) Performs any combination of the acts described in paragraphs (1) and (2); or
 - (4) Performs any other criminal offense in which the possession, delivery or production of marijuanaeannabis is an element, is exempt from Tribal prosecution for such offense. The persons described in this subsection must ensure that the cannabis described in this section is safeguarded in a secure location.
- (b) In addition to the provisions of subsection (a), no person may be subject to Tribal prosecution for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of the marijuanaeannabis in accordance with the provisions of this Chapter.
- (c) As used in this section, "marijuana eannabis" includes, without limitation, marijuanaeannabis products.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~7181~~. Enforcement of contracts.

It is the public policy of the Tribe that contracts related to the operation of ~~cannabis establishments~~cannabis facilities under this ~~C~~chapter should be enforceable, and no contract entered into by the licensee or ~~registrant-agent~~ as permitted pursuant to such a license or ~~agent registration~~ card, or by those who allow property to be used by a licensee or ~~registrant-agent~~ as permitted pursuant to such a license or ~~registration-agent~~ card, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license or ~~registration-agent~~ card are prohibited by federal law.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~82~~. Training of medical cannabis establishment agents.

- ~~(a) — An independent contractor, including, without limitation, an educational institution, nonprofit organization, or labor organization, may enter into a contract with a medical cannabis establishment to provide training to the medical cannabis establishment agents who volunteer or work at, contract to provide labor to, or are employed by an independent contractor to provide labor to the medical cannabis establishment.~~
- ~~(b) — The Board shall issue to an independent contractor who wishes to provide training as described in subsection (a) a medical cannabis establishment agent registration card if:
 - ~~(1) — The independent contractor submits to the Board an organized, written plan describing the manner in which the independent contractor will conduct the training which has been agreed to by the independent contractor and the cannabis establishment; and~~
 - ~~(2) — The independent contractor satisfies the requirements of Section 17-66.~~~~

~~(Ord. No. 539 , 8-16-2021)~~

Sec. 17-~~7283~~. Petition to determine if criminal history is disqualifying.

- (a) The Board shall develop and implement a process by which a person with a criminal history may petition the Board to review the criminal history of the person to determine if the person's criminal history will disqualify the person from obtaining a license or ~~medical cannabis establishment agent registration~~ card pursuant to this ~~C~~chapter.
- (b) Not later than 90 days after a petition is submitted to the Board pursuant to subsection (a), the Board shall inform the person of the determination of the Board of whether the person's criminal history will disqualify the person from obtaining a license or ~~medical cannabis establishment agent registration~~ card. The Board is not bound by its determination of disqualification or qualification and may rescind such a determination at any time.
- (c) The Board may provide instructions to a person who receives a determination of disqualification to remedy the determination of disqualification. A person may resubmit a petition pursuant to subsection (a) not earlier than six months after receiving instructions pursuant to this subsection if the person remedies the determination of disqualification.
- (d) A person with a criminal history may petition the Board at any time, including, without limitation, before obtaining any education or paying any fee required to obtain a license or ~~medical cannabis establishment agent registration~~ card from the Board.
- (e) A person may submit a new petition to the Board not earlier than two years after the final determination of the initial petition submitted to the Board.

(Supp. No. 33)

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- (f) The Board may impose a fee of up to \$50.00 upon the person to fund the administrative costs in complying with the provisions of this section. The Board may waive such fees or allow such fees to be covered by funds from a scholarship or grant.
- (g) The Board may post on its Internet website:
- (1) The requirements to obtain a license and an ~~an medical cannabis establishment agent registration~~ card from the Board; and
 - (2) A list of crimes, if any, that would disqualify a person from obtaining a license or an ~~an medical cannabis establishment agent registration~~ card from the Board.
- (h) The Board may request the criminal history record of a person who petitions the Board for a determination pursuant to subsection (a). ~~To the extent consistent with federal law, if the Board makes such a request of a person, the Board shall require the person to submit his or her criminal history record which includes a report from:~~
- ~~(1) The Central Repository for North Carolina Records of Criminal History; and~~
 - ~~(2) The Federal Bureau of Investigation.~~
- (i) A person who petitions the Board for a determination pursuant to subsection (a) shall not submit false or misleading information to the Board.
- ~~(j) The Director shall transmit a report of petitions and the results thereof to Tribal Council quarterly, unless otherwise directed by the Commission.~~
- (Ord. No. 539 , 8-16-2021)

Sec. 17-7384. Government-to-government agreements.

- (a) The ~~Tribe, or~~ Board ~~with approval of Tribal Council,~~ may enter into one or more intergovernmental agreements to efficiently coordinate the cross-jurisdictional administration of the laws of the Tribe and the laws of the State of North Carolina relating to ~~marijuana~~~~cannabis~~. The agreements may include, without limitation, provisions relating to:
- (1) criminal and civil law enforcement;
 - (2) regulatory issues relating to the possession, delivery, production, processing or use of ~~cannabis marijuana~~ or ~~cannabis marijuana~~ products;
 - (3) the administration of laws relating to taxation;
 - (4) any immunity, preemption, or conflict of law relating to the possession, delivery, production, processing, or use of ~~cannabis marijuana~~ or ~~cannabis marijuana~~ products; and
 - (5) the resolution of any disputes between a tribal government and the state, which may include, without limitation, the use of mediation or other nonjudicial processes.
- (b) An agreement entered into pursuant to this section shall:
- (1) provide for the preservation of public health and safety;
 - (2) ensure the security of cannabis establishments;
 - (3) establish provisions regulating business involving ~~marijuana~~~~cannabis~~ that passes between tribal land and nontribal land in North Carolina; and
 - (4) be negotiated in good faith, which shall respect and protect state and tribal sovereign immunity.

(Ord. No. 539 , 8-16-2021)

Secs. 17-74. Ownership limitation. 85

~~There shall be no cannabis facility license, other than a license for a cannabis laboratory, issued to any person or entity other than an entity wholly owned by the Tribe organized under Tribal law or one of its wholly owned subsidiaries organized under Tribal law.~~

Secs. 17-75—17-7989. Reserved.

ARTICLE VIII. MEDICAL USE OF CANNABIS

Sec. 17-8090. Exemption from tribal prosecution for certain acts involving marijuana cannabis.

- (a) Possessing, cultivating, delivering, transferring, transporting, supplying, or selling in accordance with this Chapter is authorization to possess marijuana controlled substance for purposes of Cherokee Code Chapter 14.
- ~~(b) A person who hold a cannabis patient card may not, at any one time, collectively possess with another who is authorized to possess, deliver, or produce more than:~~
- ~~(i) Sixteen (16) ounces of usable cannabis;~~
 - ~~(ii) Six cannabis plants, irrespective of whether the cannabis plants are mature or immature; and~~
 - ~~(iii) A maximum allowable quantity of cannabis products as established by regulation of the Board.~~
- ~~(b) Except as otherwise provided in this chapter, a person who holds a valid medical cannabis patient card is exempt from tribal prosecution for:~~
- ~~(1) The possession, delivery, or production of cannabis;~~
 - ~~(2) The possession or delivery of paraphernalia;~~
 - ~~(3) Aiding and abetting another in the possession, delivery or production of cannabis;~~
 - ~~(4) Aiding and abetting another in the possession or delivery of paraphernalia;~~
 - ~~(5) Any combination of the acts described in paragraphs (1) to (4), inclusive; and~~
 - ~~(6) Any other criminal offense in which the possession, delivery, or production of cannabis or the possession or delivery of paraphernalia is an element.~~
- ~~(c) The exemption from tribal prosecution set forth in subsection (a) applies only to the extent that a person who holds a patient identification card and the designated primary caregiver, if any, of such a person:~~
- ~~(1) Engage in or assist in, as applicable, the medical use of cannabis in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of a person's chronic or debilitating medical condition; and~~
 - ~~(2) Do not, at any one time, collectively possess with another who is authorized to possess, deliver or produce more than:~~
 - ~~(i) Two and one-half ounces of usable cannabis;~~
 - ~~(ii) Twelve cannabis plants, irrespective of whether the cannabis plants are mature or immature; and~~
 - ~~(iii) A maximum allowable quantity of cannabis products as established by regulation of the Board.~~

- (d) ~~If the persons described in subsection (c) possess, deliver, or produce cannabis in an amount which exceeds the amount described in paragraph (c)(2), those persons are not exempt from prosecution for the possession, delivery or production of cannabis.~~
- (ce) A person who holds a valid ~~medical cannabis establishment~~cannabis facility license or a valid ~~medical cannabis establishment~~ agent card and who confines his or her activities to those authorized by this Cchapter, and the regulations adopted by the Board pursuant thereto, is exempt from tribal prosecution for:
- (1) The possession, delivery, or production of marijuanaeannabis;
 - (2) The possession or delivery of paraphernalia;
 - (3) Aiding and abetting another in the possession, delivery or production of marijuanaeannabis;
 - (4) Aiding and abetting another in the possession or delivery of paraphernalia;
 - (5) Any combination of the acts described in paragraphs (1) to (4), inclusive; and
 - (6) Any other criminal offense in which the possession, delivery or production of marijuanaeannabis or the possession or delivery of paraphernalia is an element.
- (df) In addition to the provisions of subsections ~~above(a) and (d)~~, no person may be subject to tribal prosecution for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of the ~~medical~~ use of marijuanaeannabis in accordance with the provisions of this Cchapter.
- (eg) The persons described in this section must ensure that the ~~usable cannabis marijuana and cannabis plants~~ described in this subsection are safeguarded in an enclosed, secure location.
- (fh) As used in this section, "marijuanaeannabis" includes, without limitation, marijuanaeannabis products.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~8191~~. CMedical cannabis patient cards.

- (a) The Board shall establish and maintain a program for the issuance of ~~medical~~ cannabis patient cards to persons who meet the requirements of this section. ~~Medical C~~annabis patient cards may only be issued to natural persons who are at least 21 years old.
- (b) Except as otherwise provided in ~~Section 17-93~~this Chapter, the Board shall issue a patient ~~identification~~ card to a person who submits an application on a form prescribed by the Board accompanied by the following:
 - (1) The name, physical and mailing address, telephone number, and date of birth of the person;
 - (2) A copy of a government-issued identification;
 - (3) Written documentation a chronic or debilitating medical condition;
 - ~~(4) The name, physical and mailing address, telephone number, and date of birth of the person's designated primary caregiver, if any~~
 - ~~(5) The name, physical and mailing address, telephone number, and date of birth of the person for whom the applicant is acting as designated primary caregiver, if any, and~~
 - ~~(46)~~ Such other and further information required by the Board to ensure the accuracy of the written documentation.
- (c) The Board shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within the period of time specified by the Board by regulation, not to exceed 30 days. The Board may contact an applicant ~~or~~ the applicant's attending provider of health care ~~or designated primary caregiver, if any, by telephone~~ to determine that the information provided on or accompanying the application is accurate. The Board may deny an application only on the following grounds:

- (1) The applicant failed to provide a complete application;
- (2) The applicant failed to comply with regulations adopted by the Board;
- (3) The Board determines that the information provided by the applicant was falsified or incorrect;
- (4) The Board determines that the attending provider of health care of the applicant is not licensed, certified, or not in good standing as reported by the applicable professional licensing board;
- (5) The Board has prohibited the applicant from obtaining or using a patient ~~identification~~ card pursuant to ~~Section 17-97~~this Chapter.
- (6) The Board determines that the applicant, ~~or the applicant's designated primary caregiver, if applicable,~~ has had a patient card revoked.

~~(d) A person may have only one designated primary caregiver at one time. A person may act a designated primary caregiver for multiple people at one time.~~

~~(de)~~ The decision of the Board to deny an application for a ~~medical~~ cannabis patient card is a final decision for the purposes of administrative appeal and judicial review. Only the person whose application has been denied has standing to contest the determination of the Board. A judicial review shall be conducted with the procedures set forth Chapter 150 for review of administrative actions.

(f) A person whose application has been denied may not reapply for six months after the date of the denial.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~8292~~. Issuance of ~~medical~~ cannabis patient cards.

(a) If the Board approves a ~~medical~~ cannabis patient card application, the Board shall issue the applicant a serially numbered ~~medical~~ cannabis patient card as soon as practicable.

(b) A ~~medical~~ cannabis patient card must set forth:

(1) The name, address, photograph, and date of birth of the applicant;

(2) The date of issuance and date of expiration of the patient card; and

~~(3) The name and address of the applicant's designated primary caregiver, if any; and~~

~~(34)~~ Any other information prescribed by regulation of the Board.

~~(c) A patient card issued to a designated primary caregiver must set forth:~~

~~(1) The name, address and photograph of the designated primary caregiver;~~

~~(2) The date of issuance and date of expiration of the patient identification card;~~

~~(3) The name and address of the applicant for whom the person is the designated primary caregiver;~~

~~(4) Any other information prescribed by regulation of the Board.~~

~~(cd)~~ Unless sooner revoked, a patient card is valid for a period of one year from the date of issuance.

(Ord. No. 539 , 8-16-2021)

Sec. 17-~~8393~~. ~~C~~Medical cannabis patient card revocation.

(a) If, at any time after the Board has issued a patient card, the Board determines ~~on the basis of official documents or records or other credible evidence,~~ that the person provided falsified or materially inaccurate information on his or her application to the Board ~~or used the patient card in violation of this Chapter or any regulations promulgated hereunder,~~ the Board shall immediately revoke the patient ~~identification~~ card issued

to that person ~~and shall immediately revoke the patient identification card issued to that person's designated primary caregiver, if any.~~

- (b) Upon the revocation of a patient card pursuant to this section:
- (1) The Board shall ~~provide written send, by certified mail, return receipt requested,~~ notice to the person whose patient ~~identification~~ card has been revoked, advising the person of the requirements of paragraph (2) below; and
 - (2) The person shall return his or her patient card to the Board within seven days after receiving the notice sent pursuant to paragraph (1) above.
- (c) The decision of the Board to revoke a patient card pursuant to this section is a final decision for the purposes of judicial review.
- (d) A person whose patient identification card has been revoked pursuant to this section may not reapply for a patient identification card for ~~12 months~~ one year after the date of the revocation.
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~8494~~. Duty to notify Board of certain changes in information.

- (a) A person to whom the Board has issued a patient ~~identification~~ card shall, in accordance with regulations adopted by the Board:
- (1) Notify the Board of any change in the person's name, physical or mailing address, telephone number, or attending provider of health care ~~or designated primary caregiver, if any; or~~
 - ~~(2) Notify the Board of any change in the identity of a person for whom he or she acts as designated primary caregiver, if any;~~
 - (3) Notify the Board of any change in the person's chronic or debilitating medical condition, with accompanying written documentation; ~~and~~
 - ~~(4) If the person elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:
 - ~~(i) The name, physical and mailing address, and telephone number of the designated primary caregiver.~~~~
- (b) If a person fails to comply with the provisions of subsection (a), the ~~medical~~ cannabis patient card shall be deemed expired. ~~If a person's patient card is deemed expired under subsection (a), the patient card for the person's designated primary caregiver, if any, shall also be deemed expired.~~
- (Ord. No. 539 , 8-16-2021)

Sec. 17-~~8595~~. Renewal and expiration of ~~medical~~ cannabis patient cards.

- (a) Upon the expiration of a patient card pursuant to this section:
- (1) The Board shall send ~~written, by certified mail, return receipt requested,~~ notice to the person whose patient identification card has ~~expired~~ been revoked, advising the person of the requirements of paragraph (2) below; and
 - (2) The person shall return his or her patient card to the Board within seven days after receiving the notice sent pursuant to paragraph (1) above.
- (b) A person may apply for renewal of his or her patient card pursuant to regulations issued by the Board, but no earlier than 30 days from the date of expiration.

(Ord. No. 539 , 8-16-2021)

Sec. 17-8696. Diagnosis of absence of chronic or debilitating medical condition.

- (a) If a person to whom the Board has issued a patient card is diagnosed by the person's attending provider of health care as no longer having a chronic or debilitating medical condition, the person shall return his or her patient card and his or her designated primary caregiver, if any, shall return his or her patient card to the Board within seven days after notification of the diagnosis.
- (b) Failing to comply with this section is grounds for revocation of ~~aa-medical~~ cannabis patient card.

(Ord. No. 539 , 8-16-2021)

~~Sec. 17-97. Acts for which there is no exemption of tribal prosecution.~~

- ~~(a) A person who holds a patient identification card is not exempt from tribal prosecution for any of the following acts:
 - ~~(1) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of cannabis;~~
 - ~~(2) Transporting an open container of cannabis in the passenger area of a motor vehicle;~~
 - ~~(3) Delivering cannabis to another person who he or she knows does not lawfully hold a patient card issued by the Board;~~
 - ~~(4) Delivering cannabis for consideration or remuneration to any person, regardless of whether the recipient lawfully holds a patient identification card issued by the Division;~~
 - ~~(5) Possessing cannabis if the possession occurs in any place open to the public or exposed to public view, in any Tribal government office or facility, in any place which the owner or one in lawful possession prohibits possession of cannabis, or on the property of a school or community facility;~~
 - ~~(6) Any other act as set out in regulations issued by the Board.~~~~
- ~~(b) In addition to any other penalty provided by law, if the Board determines that a person has willfully violated a provision of this chapter or any regulation adopted by the Board to carry out the provisions of this chapter, the Division may, at its own discretion, prohibit the person from obtaining or using a patient identification card for a period of up to six months.~~

~~(Ord. No. 539 , 8-16-2021)~~

~~Sec. 17-98. Search and seizure.~~

- ~~(a) The fact that a person possesses a medical cannabis patient card, a medical cannabis establishment license, or a medical cannabis establishment agent card does not, alone:
 - ~~(1) Constitute probable cause to search the person or the person's property; or~~
 - ~~(2) Subject the person or the person's property to inspection by any governmental agency.~~~~
- ~~(b) Except as otherwise provided in this subsection, if the officers of a law enforcement agency seize cannabis, paraphernalia, or other related property from a person engaged in, facilitating, or assisting in the medical use of cannabis the law enforcement agency shall ensure that the cannabis, paraphernalia, or other related property is not destroyed while in the possession of the law enforcement agency.~~

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- (1) Any property interest of the person from whom the cannabis, paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.
- (2) Upon a decision not to prosecute, dismissal of charges, or acquittal the law enforcement agency shall, to the extent permitted by law, return to that person any usable cannabis, cannabis plants, paraphernalia or other related property that was seized.
- (3) The provisions of this subsection do not require a law enforcement agency to care for live cannabis plants.

(Ord. No. 539, 8-16-2021)

Sec. 17-99. Addition of diseases and conditions to the list of chronic and debilitating medical conditions.

- (a) A person may submit to the Board a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions.
- (b) The Board shall adopt regulations setting forth the manner in which the Board will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:
 - (1) The Board will approve or deny a petition within 180 days after the Division receives the petition; and
 - (2) The decision of the Board to deny a petition is a final decision for the purposes of judicial review.

(Ord. No. 539, 8-16-2021)

Sec. 17-87100. Effect of chapter.

- (a) The provisions of this Chapter do not:
 - (1) Require any employer to allow the medical use of marijuana in the workplace.
 - (2) Except as otherwise provided in subsection (a)(3), require an employer to modify the job or working conditions of a person who engages in the medical use of cannabis that are based upon the reasonable business purposes of the employer, but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of cannabis if the employee holds a valid patient identification card, provided that such reasonable accommodation would not:
 - (i) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or
 - (ii) Prohibit the employee from fulfilling any and all of his or her job responsibilities.
 - (3) Prohibit a law enforcement agency from adopting policies and procedures that preclude an employee from engaging in the medical use of marijuana.
 - (4) Impose any responsibility upon the Tribe for any deleterious outcomes from the medical use of marijuana by any person.
 - (5) In any way or manner waive the sovereign immunity of the Tribe.

(Ord. No. 539, 8-16-2021)

ARTICLE IX. INTRODUCTORY PERIOD

Sec. 17-101. Introductory period established.

- (a) ~~There is hereby established an introductory period of 36 months from the date this legislation becomes effective. During the introductory period the restrictions of this section shall apply and the Board may not adopt regulations or policies in conflict with this section.~~
- (b) ~~During the introductory period the following restrictions shall be apply:~~
- (1) ~~There shall be a limit of one ounce of medical marijuana sold to a medical cannabis patient card holder per day, not to exceed six ounces per month.~~
 - (2) ~~There shall be a limit of 2,500 milligrams of THC in medical cannabis products sold to a medical cannabis patient card holder per day, not to exceed 10,000 milligrams of THC within medical cannabis products per month.~~
 - (3) ~~There shall be no medical cannabis establishment licenses, other than a license for a medical cannabis laboratory, issued to any person or entity other than an entity wholly owned by the Eastern Band of Cherokee Indians as the sole member, or one of its wholly-owned subsidiaries incorporated under Tribal law.~~
 - (4) ~~There shall not be more than two medical cannabis dispensary locations.~~
- (c) ~~After the exclusivity period ends, the Board may consider the issuance of additional medical cannabis establishment licenses and the adoption of regulations or policies in conflict with this section. Nothing in this section reduces, lessens, or otherwise alters the applicability of the remainder of this chapter during or after the introductory period.~~

(Ord. No. 539, 8-16-2021; Ord. No. 138, 3-15-2022)

CHAPTER 17A HEMP

Sec. 17A-1. Legislative Findings.

- (a) The hemp industry has the potential to be beneficial to the public health of the Tribe and general welfare of enrolled members, including through job creation and economic development.
- (b) The growth and success of the hemp industry depends upon public confidence and trust that:
- (1) People who could benefit from hemp and hemp products are able to obtain them safely and conveniently;
 - (2) Hemp stores do not unduly impact the quality of life enjoyed by nearby residents and the community at-large;
 - (3) Hemp store licenses are issued in a responsible manner;
 - (4) The hemp industry is free from criminal and corruptive practices.
- (c) Public confidence and trust can only be maintained by strict regulation of the hemp industry.
- (d) All hemp stores must therefore be licensed, controlled, and assisted to protect public health, safety, morals, good order, and general welfare of the Tribe and to foster the success of the Tribe's hemp industry.

Sec. 17A-2. Definitions.

The definitions in Cherokee Code Chapter 17 also apply to this Chapter. As used in this chapter, unless the context clearly otherwise requires, the following words and terms have the following definitions.

Hemp means plants of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, which do not have a THC concentration higher than 0.3 percent on a dry weight basis. This term includes hemp as defined in section 297A of the federal Agricultural Marketing Act of 1946.

Hemp product means a product which contains hemp or the extract thereof, including, without limitation, edible hemp products intended for human consumption by oral ingestion and presented in the form of a foodstuff, extract, or similar product, or hemp-infused products intended for use or consumption by humans through means other than inhalation or oral ingestion, like topical products, ointments, oils, or tinctures. Hemp products do not have a THC concentration higher than 0.3 percent on a dry weight basis.

Hemp Store means a business that:

- (1) Is licensed by the Board pursuant to this chapter, and
- (2) Acquires, possesses, delivers, transfers, transports, supplies, sells, or dispenses hemp, hemp products, or related supplies and educational materials to eligible members of the public or to another hemp store.

Sec. 17A-3. Role and Authority of the Board.

- (a) Civil regulation of hemp stores is the responsibility and within the authority of the EBCI Cannabis Control Board. The provisions of Articles II and III of Cherokee Code Chapter 17 also apply to the regulation of hemp stores. This chapter does not replace Chapter I of Title 16 of the Cherokee Administrative Regulations.
- (b) The Board shall issue administrative regulations pursuant to Cherokee Code Chapter 150 to carry out this chapter and in furtherance of the findings of Section 17A-1. The Board may issue regulations for, but not limited to, the following issues involving hemp and hemp products:
 - (1) Safety and health testing standards and criteria;
 - (2) Security of hemp store locations;
 - (3) Location and operation of hemp stores;
 - (4) Packaging, disclosures, and educational materials provided to the public;
 - (5) Advertising and public communication;
 - (6) Requirements, conduct, and practices for owners, employees, or other persons associated with hemp stores; and
 - (7) Disciplinary procedures, fines, fees, and license suspension and revocation.

Sec. 17A-4. Hemp Store Licenses.

- (a) A person shall not engage in the business of a hemp store unless the person holds a hemp store license issued by the Board. The Board is the sole issuer of hemp store licenses. Operating a hemp store without the applicable cannabis facility license issued by the Board is unlawful.
- (b) A person who wishes to engage in the business of a hemp store must submit to the Board an application as prescribed by the Board.
- (c) Any hemp store license is a revocable privilege and the holder of such a license does not acquire any vested right in such license. A hemp store license is not a substitute for a Tribal business license. Hemp store licensees must abide by all applicable Tribal laws, rules, and regulations at all times. Licenses are non-transferable, except as otherwise provided by regulations issued by the Board for the transfer of a license to another person or entity who is qualified to hold a license pursuant to this Chapter.

Sec. 17A-5. Fees.

- (a) The Board shall collect not more than the following maximum fees:
 - (1) For initial issuance of a hemp store license: \$10,000.00.
 - (2) For renewal of a hemp store license: \$5,000.00.
- (b) Any revenue generated from the fees imposed pursuant to this section
 - (1) Must be expended first to pay the costs of the Board in carrying out the provisions of this Chapter; and
 - (2) If any excess revenue remains after paying the costs described in paragraph (b)(1), such excess revenue must be paid over as instructed by the Secretary of the Treasury so as not to commingle such revenue with the Tribe's other monies.

Sec. 17A-6. Requirements Concerning Operation of Hemp Stores.

- (a) As used in this section, the term "hemp" also includes hemp products unless otherwise excluded.
- (b) Each hemp store must:

-
- (1) comply with all Tribal ordinances and rules pertaining to land development, land use, and signage.
 - (2) Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified, and consistent with regulations issued by the Board; and
 - (3) Have discreet and professional signage that is consistent with regulations issued by the Board.
 - (c) A hemp store may not change locations without permission from the Board.
 - (d) A hemp store may not refuse to sale or sale at an increased price hemp or hemp products to the Board or an agent of the Board.
 - (e) A hemp store may not exclude or obstruct a Board agent while conducting his or her duties pursuant to this chapter or other Tribal law.

Sec. 17A-7. Requirements Concerning Hemp and Hemp Products.

- (a) A hemp store shall present to any person upon request the certificates of analysis for any and all hemp and hemp products offered for sale at the hemp store.
- (b) A hemp store shall not sell hemp or hemp products to any person who is less than 18 years old.
- (c) A hemp store may not sell hemp or hemp products that are not in compliance with this chapter or the regulations issued by the Board. The unlawful sale of marijuana is a crime pursuant to Cherokee Code Chapter 14.

Chapter 14 CRIMINAL LAW

ARTICLE XIV.A. – CONTROLLED SUBSTANCES

Sec. 14-95.1. Title of the Article.

This Article shall be known and may be cited as the "Cherokee Controlled Substances Act."
(Ord. No. 589, Art. II, 2-8-2007)

Sec. 14-95.2. Applicability.

This Article shall take effect January 1, 2007 and applies to criminal offenses in Cherokee that occur on or after January 1, 2007.
(Ord. No. 589, Art. II, 2-8-2007)

Sec. 14-95.3. Definitions.

(a) Except as noted herein, as used in this article, the Tribe hereby adopts the definitions, as codified in North Carolina General Statutes 90-87, as well as any amendments, additions, deletions, or redefining which may be made to these definitions under state law.

(b) "~~Marijuana~~" means ~~all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. This term does not include hemp, as defined in section 297A of the federal Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). The term means all cannabis that tests as having a THC concentration level higher than 0.3 percent on a dry weight basis~~ ~~all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. The term does not include hemp, hemp extracts, or hemp products as defined below.~~

~~(1) "Hemp" means the plant Cannabis sativa (L.) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, within the federally defined THC level for hemp.~~

~~(2) "Hemp extract" means an extract from hemp, or a mixture or preparation containing hemp plant material or compounds.~~

36 ~~(3) "Hemp product" means any product within the federally defined THC level for hemp~~
37 ~~derived from, or made by, processing hemp plants or plant parts, that are prepared in a~~
38 ~~form available for commercial sale, including, but not limited to, cosmetics, personal~~
39 ~~care products, food intended for animal or human consumption, cloth, cordage, fiber,~~
40 ~~fuel, paint, paper, particleboard, plastics, and any product containing one or more~~
41 ~~hemp-derived cannabinoids, such as cannabidiol.~~

42 (c) As appropriate in context, "state" means the State of North Carolina or the Eastern Band of
43 Cherokee Indians.

44 (d) "THC" means Delta-9-tetrahydrocannabinol, Delta-8-tetrahydrocannabinol, Delta-10-
45 tetrahydrocannabinol, and the optical isomers of such substances.

46 ~~(de)~~ "Tribe" means the Eastern Band of Cherokee Indians.

47 ~~(ef)~~ "Unfinished," relating to dextromethorphan, means any concentration or amount of
48 dextromethorphan that is not in finished dosage form.

49 **Sec. 14-95.4. Authority to Control.**

50 (a) The Tribe hereby adopts the schedules of controlled substances as codified in the North
51 Carolina General Statutes Section 90-89 through Section 90-~~94~~ 93, as well as any
52 amendments, additions, deletions, or rescheduling which may be made to these schedules
53 under state law.

54 (b) The Tribe hereby grants the Commission for Mental Health, Developmental Disabilities and
55 Substance Abuse Services of the State of North Carolina, established under Part 4 of Article
56 3 of Chapter 143B of the North Carolina General Statutes authority to regulate the
57 registration and control of the manufacture, distribution, security and dispensing of
58 controlled substances within the jurisdiction of the Eastern Band of Cherokee Indians.

59 (c) The Tribe hereby adopts North Carolina General Statutes 90-101 through 90-113.8, as
60 amended to regulate the registration and control of the manufacture, distribution, security
61 and dispensing of controlled substances within the jurisdiction of the Eastern Band of
62 Cherokee Indians and authorizes state officials empowered therein to enforce provisions of
63 these statutes within the jurisdiction of the Eastern Band of Cherokee Indians.

64 (d) The Tribe hereby adopts North Carolina General Statutes 90-113.9(1) and 90-113.10
65 through 90-113.12, as amended to regulate the inhalation of toxic vapors.

66 (e) As appropriate in context in these adopted statutes, "state" means the State of North
67 Carolina or the Eastern Band of Cherokee Indians.

68 (f) Authority to control under this Article does not include distilled spirits, wine, malt
69 beverages or tobacco.

70 **Sec. 14-95.5. Possession of a controlled substance.**

71 (a) Except as authorized by Cherokee Law, it is unlawful for any person to possess a controlled
72 substance.

73 (b) Unless a person's conduct is covered under some other provision of law providing greater
74 punishment, possession of a controlled substance classified in schedule I, II, III, IV, or V
75 shall be punished with a class C penalty.

76 ~~(e) Unless a person's conduct is covered under some other provision of law providing greater
77 punishment, possession of more than one ounce (avoirdupois) of marijuana, the possession
78 of more than three twentieths of an ounce (avoirdupois) of extracted resin of marijuana,
79 commonly known as hashish, or the possession of any other controlled substance classified
80 in Schedule VI shall be known as "possession of marijuana," and shall be punished with a
81 class C penalty.~~

82 ~~(d) Unless a person's conduct is covered under some other provision of law providing greater
83 punishment, possession of marijuana or the possession of extracted resin of marijuana,
84 commonly known as hashish, by a person less than 21 years old shall be known as
85 "underage possession of marijuana," and be punished with a class D penalty.~~

86 (e) (c) Unless a person's conduct is covered under some other provision of law providing greater
87 punishment, possession of unfinished dextromethorphan shall be classified in schedule V
88 and shall be punished with a class C penalty.

89 (f) (d) Unless a person's conduct is covered under some other provision of law providing greater
90 punishment, possession of 2.5-dimethoxy-4-ethylphenethylamine (2 C-E) shall be
91 classified in schedule I and shall be punished with a class C penalty.

92 **Sec. 14-95.6. Manufacture, sell or deliver, or possession with intent to manufacture sell or**
93 **deliver of a controlled substance.**

94 (a) Except as authorized by Cherokee Law, it is unlawful for any person to manufacture, sell or
95 deliver, or possess with intent to manufacture, sell or deliver a controlled substance.

96 (b) Unless a person's conduct is covered under some other provision of law providing greater
97 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
98 controlled substance classified in schedule I, II, III, IV, or V shall be punished with a class
99 B penalty.

100 ~~(e) Unless a person's conduct is covered under some other provision of law providing greater
101 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
102 controlled substance classified in schedule VI shall be punished with a class C penalty.~~

103 (cd) Manufacture of methamphetamine shall be punished with a class A penalty.

104 (de) Manufacture, sell or deliver, or possession with intent to manufacture, sell or deliver
105 unfinished dextromethorphan shall be punished with a class B penalty.

106 (ef) Unless a person's conduct is covered under some other provision of law providing greater
107 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of 2.5-
108 dimethoxy-4-ethylphenethylamine (2 C-E) shall be classified in schedule I and shall be
109 punished with a class B penalty.

110 **Sec. 14-95.7. Manufacture, sell or deliver, or possession with intent to manufacture sell or**
111 **deliver of a counterfeit controlled substance.**

- 112 (a) Except as authorized by Cherokee Law, it is unlawful for any person to manufacture, sell or
113 deliver, or possess with intent to manufacture, sell or deliver a counterfeit controlled
114 substance.
- 115 (b) Unless a person's conduct is covered under some other provision of law providing greater
116 punishment, manufacture, sell or deliver, or possess with intent to sell or deliver of a
117 counterfeit controlled substance shall be punished with a class C penalty.

118 **Sec. 14-95.8. Possession of an immediate precursor chemical.**

- 119 (a) Except as authorized by Cherokee Law, it is unlawful for any person to possess an
120 immediate precursor chemical with intent to manufacture a controlled substance; or possess
121 or distribute an immediate precursor chemical knowing, or having reasonable cause to
122 believe, that the immediate precursor chemical will be used to manufacture a controlled
123 substance. Unless a person's conduct is covered under some other provision of law
124 providing greater punishment, violation of this section shall be punished with a class B
125 penalty, unless the immediate precursor is one that can be used to manufacture
126 methamphetamine.
- 127 (b) Except as authorized by Cherokee Law, it is unlawful for any person to possess an
128 immediate precursor chemical with intent to manufacture methamphetamine; or possess or
129 distribute an immediate precursor chemical knowing, or having reasonable cause to believe,
130 that the immediate precursor chemical will be used to manufacture methamphetamine.
131 Unless a person's conduct is covered under some other provision of law providing greater
132 punishment, violation of this subsection shall be punished with a class A penalty.
- 133 (c) The immediate precursor chemicals to which this section applies are those immediate
134 precursor chemicals designated by North Carolina General Statute 90-95(d2).
- 135 (d) Except as authorized by Cherokee Law, it is unlawful for any person to possess a seed or
136 ripened ovule of gymnosperm or angiosperm plant which can be used to produce any
137 controlled substance, whether or not said seed or ovule is scheduled as a controlled
138 substance. Unless a person's conduct is covered under some other provision of law
139 providing greater punishment, violation of this section shall be punished with a class C
140 penalty.
- 141 (e) The tribe hereby adopts North Carolina General Statutes § 90-113.50 through § 90-113.60,
142 as amended to regulate the use, possession and distribution of methamphetamine precursors.

143 **Sec. 14-95.9. Drug trafficking.**

- 144 (a) Except as authorized by Cherokee Law, any person who sells, manufactures, delivers,
145 transports or possesses in excess of the following amounts of controlled substances **or**
146 **marijuana** shall be guilty of "trafficking," and shall be punished with a class A penalty:

i.	Marijuana	more than 3 <u>31</u> pounds
ii.	Methaqualone	more than 125 dosage units
iii.	Cocaine	more than 3 grams
iv.	Methamphetamine/amphetamine	more than 3 grams
v.	Opiate or heroin	more than 2 grams
vi.	Lysergic acid diethylamide	more than 10 dosage units
vii.	MDA/MDMA	more than 4 grams or 10 dosage units

147

148 (b) The controlled substances listed in this section includes the controlled substance named and
 149 any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any
 150 leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of leaves,
 151 stems, seeds, buds or any part of any plant named, and any salt, isomer, salts of isomers,
 152 compound, derivative or preparation thereof which is chemically equivalent or identical
 153 with any of these substances (except leaves or any extraction of leaves which does not
 154 contain the controlled substance) or any mixture containing such substances. The term
 155 "dosage units," used in this section shall include tablets, capsules, or dosage units as
 156 appropriate.

157 ~~(c) No person convicted under this section shall be allowed to enter the territory of the Eastern~~
 158 ~~Band of Cherokee Indians until permitted by Tribal Council. Prior to release from custody,~~
 159 ~~any person convicted of an offense under this section, shall receive a hearing before tribal~~
 160 ~~council to determine the term, if any, of exclusion.~~

161 **Sec. 14-95.10. Transporting controlled substance into the territory of the Eastern Band of**
 162 **Cherokee Indians.**

163 (a) Except as authorized by Cherokee Law, it is unlawful for any person to transport, carry, or
 164 otherwise cause, assist, or provide for the importation of any controlled substance or
 165 immediate precursor chemical into the territory of the Eastern Band of Cherokee Indians.
 166 Unless a person's conduct is covered under some other provision of law providing greater
 167 punishment, violation of this section shall be punished with a class B penalty.

168 ~~(b) It shall be unlawful for a person to transport cannabis, medical cannabis, concentrated~~
 169 ~~cannabis, or medical cannabis products in the passenger area of a motor vehicle in other~~
 170 ~~than the manufacturer's unopened original container. It shall be unlawful for a person who is~~
 171 ~~driving a motor vehicle on a highway or public vehicular area to consume in the passenger~~
 172 ~~area of that vehicle cannabis of any kind or nature. Violation of this section shall constitute~~
 173 ~~a criminal offense punishable by a fine of \$25.00 to \$500.00 or imprisonment for not more~~
 174 ~~than 30 days.~~

175 ~~(c) For purposes of this section, the definitions contained in Sections 14-15.3(c) and 17-2 shall~~
 176 ~~apply.~~

177 **Sec. 14-95.11. Drug paraphernalia.**

178 (a) As used in this Section, "drug paraphernalia" means all equipment, products and materials
 179 of any kind that are used to facilitate, or intended or designed to facilitate, violations of the
 180 Controlled Substances Act, including planting, propagating, cultivating, growing,

181 harvesting, manufacturing, compounding, converting, producing, processing, preparing,
182 testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled
183 substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances
184 into the human body. "Drug paraphernalia" includes, but is not limited to, the following:

185 (1) Kits for planting, propagating, cultivating, growing, or harvesting any species of plant
186 which is a controlled substance or from which a controlled substance can be derived;

187 (2) Kits for manufacturing, compounding, converting, producing, processing, or preparing
188 controlled substances;

189 (3) Isomerization devices for increasing the potency of any species of plant which is a
190 controlled substance;

191 (4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of
192 controlled substances;

193 (5) Scales and balances for weighing or measuring controlled substances;

194 (6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose,
195 and lactose for mixing with controlled substances;

196 (7) Blenders, bowls, containers, spoons, and mixing devices for compounding controlled
197 substances;

198 (8) Capsules, balloons, envelopes and other containers for packaging small quantities of
199 controlled substances;

200 (9) Containers and other objects for storing or concealing controlled substances;

201 (10) Hypodermic syringes, needles, and other objects for parenterally injecting controlled
202 substances into the body;

203 (11) Objects for ingesting, inhaling, or otherwise introducing cocaine, hashish, or hashish
204 oil into the body, such as:

205 a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
206 screens, permanent screens, hashish heads, or punctured metal bowls;

207 b. Water pipes;

208 c. Carburetion tubes and devices;

209 d. Smoking and carburetion masks;

210 e. Miniature cocaine spoons and cocaine vials;

211 f. Chamber pipes;

212 g. Carburetor pipes;

213 h. Electric pipes;

214 i. Air-driven pipes;

215 j. Chillums;

216 k. Bongs;

- 217 1. Ice pipes or chillers.
- 218 (b) The following, along with all other relevant evidence, may be considered in determining
219 whether an object is drug paraphernalia:
- 220 (1) Statements by the owner or anyone in control of the object concerning its use;
- 221 (2) Prior convictions of the owner or other person in control of the object for violations of
222 controlled substances law;
- 223 (3) The proximity of the object to a violation of the Controlled Substances Act;
- 224 (4) The proximity of the object to a controlled substance;
- 225 (5) The existence of any residue of a controlled substance on the object;
- 226 (6) The proximity of the object to other drug paraphernalia;
- 227 (7) Instructions provided with the object concerning its use;
- 228 (8) Descriptive materials accompanying the object explaining or depicting its use;
- 229 (9) Advertising concerning its use;
- 230 (10) The manner in which the object is displayed for sale;
- 231 (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
232 related items to the community, such as a seller of tobacco products or agricultural
233 supplies;
- 234 (12) Possible legitimate uses of the object in the community;
- 235 (13) Expert testimony concerning its use;
- 236 (14) The intent of the owner or other person in control of the object to deliver it to persons
237 whom he knows or reasonably should know intends to use the object to facilitate
238 violations of this article.
- 239 (c) It is unlawful for any person to knowingly use, or to possess with intent to use, drug
240 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
241 produce, process, prepare, test, analyze, package, repackage, store, contain, or conceal a
242 controlled substance which it would be unlawful to possess, or to inject, ingest, inhale, or
243 otherwise introduce into the body a controlled substance which it would be unlawful to
244 possess. Violation of this section shall be known as "possession of drug paraphernalia", and
245 shall be punished with a class D penalty.
- 246 (d) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with
247 intent to deliver, drug paraphernalia knowing that it will be used to plant, propagate,
248 cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test,
249 analyze, package, repackage, store, contain, or conceal a controlled substance which it
250 would be unlawful to possess, or that it will be used to inject, ingest, inhale, or otherwise
251 introduce into the body a controlled substance which it would be unlawful to possess.
252 Violation of this section shall be punished with a class C penalty.
- 253 (e) Possession, delivery, possession with intent to deliver, or manufacture with intent to deliver,
254 of each separate and distinct item of drug paraphernalia is a separate offense.

255 (f) It is unlawful for any person to purchase or otherwise procure an advertisement in any
256 newspaper, magazine, handbill, or other publication, or purchase or otherwise procure an
257 advertisement on a billboard, sign, or other outdoor display, when he knows that the
258 purpose of the advertisement, in whole or in part, is to promote the sale of objects designed
259 or intended for use as drug paraphernalia described in this Section. Violation of this section
260 shall be punished with a class D penalty.

261 **Sec. 14-95.12 – Prohibited Marijuana Conduct.**

- 262 (a) It shall be unlawful for any person, business, or other entity to:
- 263 (1) Possess marijuana when the person is less than 21 years old;
 - 264 (2) Provide, give, or transfer in any way, marijuana to any person less than 21 years
265 old;
 - 266 (3) Cultivate marijuana without a valid license, valid agent card, or a valid medical
267 cannabis patient card issued by the EBCI Cannabis Control Board;
 - 268 (4) Operate any marijuana facility without a valid license issued by the EBCI Cannabis
269 Control Board;
 - 270 (5) Sell marijuana without a valid license from the EBCI Cannabis Control Board;
 - 271 (6) Sell hemp or hemp products without a valid license from the EBCI Cannabis
272 Control Board;
 - 273 (7) Possess marijuana in any place where possession is prohibited by the conspicuous
274 posting of a sign or notice by the owner or possessor of the location;
 - 275 (8) Consuming marijuana in public;
 - 276 (9) Possess or consume marijuana within 100 feet of a school, child day care facility,
277 church, hospital, Tribal government building, public park, playground, community
278 club building, or public swimming pool, or community facility as defined in
279 Chapter 17;
 - 280 (10) Transport marijuana, hemp, or hemp products in the passenger area of a
281 motor vehicle in other than the manufacturer's unopened original container;
 - 282 (11) Consume marijuana, hemp, or hemp products while driving a motor vehicle
283 on a highway or public vehicular area as defined as Chapter 20 of the Cherokee
284 Code.
- 285 (b) Violation of subsection (a)(1) shall constitute a criminal offense punishable by a fine of
286 up to \$500.00, 72 hours of community service, and defendant shall obtain a substance
287 abuse assessment.
- 288 (c) Violation of subsection (a)(2) shall constitute a criminal offense punishable as follows:
- 289 (1) First offense. A mandatory minimum sentence of not less than a \$1,000.00 fine, and
290 no more than \$5,000.00 fine, costs and imprisonment for not less than seven days
291 up to 30 days.
 - 292 (2) Second offense. A mandatory minimum sentence of not less than a \$3,000.00 fine,
293 nor more than \$5,000.00 fine, costs and imprisonment for not less than 30 days up
294 to six months.
 - 295 (3) Third and subsequent offenses. A mandatory minimum sentence of not less than a
296 \$5,000.00 fine, nor more than \$15,000.00 fine, costs, and imprisonment for not less
297 than 6 months.

- 298 (d) Violation of subsections (a)(3)-(6) shall be punishable by a fine of not less than \$5,000.00,
299 costs, and no more than \$15,000.00 per violation.
- 300 (e) Violation of subsections (a)(7)-(10) shall constitute an infraction and shall be punishable
301 by a fine of up to \$250.00 plus costs.
- 302 (f) Violation of subsection (a)(11) shall constitute a criminal offense punishable by
303 imprisonment up to six months and no more than \$5,000.00 plus costs.
- 304 (g) Any and all marijuana, hemp, or hemp products seized pursuant to any court action brought
305 under this section, is summarily forfeited to the Cherokee Indian Police Department to be
306 destroyed upon completion of the criminal case, including appellate timeframes.
- 307 (h) Fines collected under this section shall be placed in the CIPD budget in a designated line
308 item to fund behavioral health supports and peer supports for individuals who may become
309 involved with the Justice System. If there is money left in this line item at the end of the
310 fiscal year, the money shall stay within the CIPD budget and not returned to the general
311 fund.

312 **Secs. 14-95.12 13—14-95.19. Reserved.**

313 **Sec. 14-95.20. Purpose of punishment.**

314 The primary purposes of sentencing a person convicted of a crime are to impose a
315 punishment commensurate with the injury the offense has caused, taking into account factors that
316 may diminish or increase the offender's culpability; to protect the public by restraining offenders;
317 to assist the offender toward treatment, rehabilitation and restoration to the community as a
318 lawful citizen; and to provide a general deterrent to criminal behavior.

319 **Sec. 14-95.21. Punishment levels.**

320 The authorized punishment for each class of penalty is as specified below:

- 321 (a) Any person subject to a class A penalty shall be imprisoned in active custody for not
322 less than 18 months nor more than three years and pay a fine of not less than \$5,000.00
323 nor more than \$15,000.00 and shall be subject to exclusion for a period of not less than
324 ten years nor more than life. This punishment shall require a mandatory 18 months
325 active sentence and the remainder of any sentence greater than the mandatory
326 minimum may be suspended only if a condition of special probation is imposed to
327 require the defendant to serve the remaining portion of a term greater than the
328 mandatory 18 months, and the imprisonment may not be spent on electronic home
329 confinement.
- 330 (b) Any person subject to a class B penalty shall be imprisoned in active custody for not
331 less than ~~one-year~~ 6 months nor more than ~~three-years~~ one year and pay a fine of not
332 less than ~~\$2~~ 1,000.00, nor more than ~~\$15,000.00~~ and shall be subject to exclusion for a
333 period of not less than three years nor more than 15 years. This punishment shall
334 require a mandatory ~~one-year~~ six month active sentence and the remainder of any
335 sentence greater than ~~the~~ the mandatory minimum may be suspended only if a condition
336 of special probation is imposed to require the defendant to serve the remaining portion
337 of a term greater than the mandatory ~~one-year~~ minimum sentence.

- 338 (c) Any person subject to a class C penalty shall be imprisoned for not less than ~~six~~ three
339 months nor more than one year and pay a fine of not less than ~~\$1,000.00~~ 500.00, nor
340 more than \$5,000.00 and shall be subject to exclusion for a period of not more than ten
341 years. This punishment shall require a mandatory ~~six~~ three months active sentence and
342 the remainder of any sentence greater than the mandatory minimum may be suspended
343 only if a condition of special probation is imposed to require the defendant to serve the
344 remaining portion a term greater than the mandatory ~~six months~~ minimum sentence.
- 345 (d) Any person subject to a Class D Penalty shall be imprisoned for not more than ~~three~~
346 months 30 days and pay a fine of not more than \$5,000.00, perform 24 hours of
347 community service and pay the costs of community service in the sum of \$200.00, and
348 shall be subject to exclusion for a period of not more than ten years.
- 349 (e) Any additional penalties required under Cherokee Law shall be imposed and the
350 mandatory minimum fines shall be reduced appropriately to ensure any punishment
351 imposed complies with the requirements of the Indian Civil Rights Act.
- 352 (f) The court may stay a sentence imposed under subparagraph (c) above and transfer the
353 case to the Wellness Court in accordance with Section 14-95.37[.] The court may not
354 grant a Prayer for Judgment Continued for violations under this Article.
- 355 (g) The sentence of persons violating this article ~~will~~ may be elevated under the provisions
356 of Section 14-95.22, 14-95.23, and 14-95.24. Except as provided in 14-95.22(a)(v), if
357 two or more elevating factors are found, then the person ~~shall~~ may be subject to a class
358 A penalty.
- 359 (h) Credit for inpatient treatment. The judge may order that a term of imprisonment
360 imposed as a condition of special probation under any level of punishment be served as
361 an inpatient in a facility approved by the Tribe for the treatment of substance abuse
362 where the defendant has been accepted for admission or commitment as an inpatient[.]
363 The defendant shall bear the expense of any treatment. The judge may impose
364 restrictions on the defendant's ability to leave the premises of the treatment facility and
365 require that the defendant follow the rules of the treatment facility. The judge may
366 credit against the active sentence imposed on a defendant the time the defendant was
367 an inpatient at the treatment facility, provided such treatment occurred after the
368 commission of the offense for which the defendant is being sentenced[.] This section
369 shall not be construed to limit the authority of the judge in sentencing under any other
370 provisions of law.

371 **Sec. 14-95.22. Prior convictions.**

- 372 (a) The penalty for any offender ~~shall~~ may be elevated one level for each prior drug
373 conviction and two levels for each prior drug distribution conviction.
- 374 i. Any person who commits an offense with a class B penalty who has one prior drug
375 conviction or one prior drug distribution conviction ~~shall~~ may be subject to a class A
376 penalty.
- 377 ii. Any person who commits an offense with a class C penalty who has ~~a~~ two or more
378 prior drug convictions or one or more prior drug distribution conviction ~~shall~~ may be
379 subject to a class A penalty.

- 380 iii. Any person who commits an offense with a class C penalty who has one prior drug
381 conviction ~~shall~~ may be subject to a class B penalty.
- 382 iv. Any person who commits an offense with a class D penalty who has ~~a~~ three or more
383 prior drug convictions or two or more prior drug distribution conviction ~~shall~~ may be
384 subject to a class A penalty.
- 385 v. Any person who commits an offense with a class D penalty who has ~~a~~ two or more
386 prior drug convictions or one or more prior drug distribution conviction ~~shall~~ may be
387 subject to a class B penalty.
- 388 vi. Any person who commits an offense with a class D penalty who has ~~a~~ one prior drug
389 conviction ~~shall~~ may be subject to a class C penalty.
- 390 (b) Prior drug conviction. A person has a prior drug conviction when, on the date a criminal
391 judgment is entered, the person being sentenced has been previously convicted of a crime
392 involving the possession or use of any controlled substance in the courts of the Tribe, the
393 State of North Carolina or another state or the United States, regardless of whether the
394 crime was committed before or after the effective date of this Article. This section shall
395 not apply to any prior conviction of drug paraphernalia, marijuana, or Schedule VI
396 controlled substance.
- 397 (c) Prior Drug Distribution Conviction. A person has a prior drug distribution conviction
398 when, on the date a criminal judgment is entered, the person being sentenced has been
399 previously convicted of a crime involving the trafficking, sale, delivery, or possession
400 with intent to distribute any controlled substance in the courts of the Tribe, the State of
401 North Carolina or another state or the United States, regardless of whether the crime was
402 committed before or after the effective date of this article.
- 403 (d) Proof of prior convictions. A prior conviction shall be proved by any of the following
404 methods:
- 405 (1) Stipulation of the parties.
- 406 (2) An original or copy of the court record of the prior conviction.
- 407 (3) A copy of records maintained by the Division of Criminal Information, the Division of
408 Motor Vehicles, or of the Administrative Office of the Courts.
- 409 (4) Any other method found by the court to be reliable.
- 410 The Tribe bears the burden of proving, by a preponderance of the evidence, that a prior
411 conviction exists and that the offender before the court is the same person as the offender named
412 in the prior conviction. The original or a copy of the court records or a copy of the records
413 maintained by the Cherokee Court, the North Carolina Division of Criminal Information, the
414 North Carolina Division of Motor Vehicles, or of the North Carolina Administrative Office of
415 the Courts, bearing the same name as that by which the offender is charged, is prima facie
416 evidence that the offender named is the same person as the offender before the court, and that the
417 facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper
418 writing containing a reproduction of a record maintained electronically on a computer or other
419 data processing equipment, and a document produced by a facsimile machine. The prosecutor
420 shall make all feasible efforts to obtain and present to the court the offender's full record.
421 Evidence presented by either party at trial may be utilized to prove prior convictions.

422 ~~(e) Convictions for violations of this article, Cherokee Code Section 14-25.2, North Carolina~~
423 ~~General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or~~
424 ~~90-113.12, or 90-113.21 or any similar state or federal law shall be considered previous~~
425 ~~convictions.~~

426 **Sec. 14-95.23. Drugs; children and elders.**

427 (a) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
428 who violates Section 14-95.6 or 14-95.7 and it is found as provided in Section 14-95.31 that
429 the person sold or delivered a controlled substance to a person under 16 years of age or a
430 pregnant female, then the person shall be subject to a class A penalty.

431 (b) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
432 who violates Section 14-95.11(d) and it is found as provided in Section 14-95.31 that the
433 person delivered a drug paraphernalia to a person under 16 years of age, then the person
434 shall be subject to a class B penalty.

435 (c) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
436 is convicted of an offense under this article and it is found as provided in Section 14-95.31
437 that the person purchased or received a controlled substance from a minor 16 years of age or
438 younger who possessed, sold, or delivered the controlled substance in violation of this
439 article, then the person shall be subject to a class A penalty.

440 (d) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
441 violates Section 14-95.5, 14-95.6, 14-95.7, or 14-95.8 and it is found as provided in Section
442 14-95.31 that the offense occurred while the person was pregnant, then the person shall be
443 subject to a class A penalty.

444 (e) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
445 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
446 provided in Section 14-95.31 that any part of the crime occurred on property used for a
447 school, day care center, playground, or community building or within 300 feet of the
448 boundary of real property used for a school, day care center, playground, or community
449 building, then the person shall be subject to a class A penalty. This section shall not apply if
450 the person was a regularly enrolled student in good standing currently attending classes at
451 the school where the offense occurred.

452 (f) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
453 is convicted of an offense under Section 14-95.5 and it is found as provided in Section 14-
454 95.31 that the person possessed the controlled substance on property used for a school, day
455 care center, playground, or community building or within 300 feet of the boundary of real
456 property used for a school, day care center, playground, or community building playground,
457 or community building, then the person shall be subject to a class B penalty. This section
458 shall not apply if the person was a regularly enrolled student in good standing currently
459 attending classes at the school where the offense occurred.

460 (g) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
461 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
462 provided in Section 14-95.31 that any part of the crime occurred in a dwelling which is the

463 primary residence of a child who is 13 years of age or younger, then the person will be
464 subject to a class A penalty.

465 (h) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
466 is convicted of an offense an offense under Section 14-95.5 and it is found as provided in
467 Section 14-95.31 that the person possessed the controlled substance in a dwelling which is
468 the primary residence of a child who is 13 years of age or younger, then the person will be
469 subject to a class B penalty.

470 (i) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
471 is convicted of an offense under Section 14-95.6, 14-95.7 or 14-95.8 and it is found as
472 provided in Section 14-95.31 that any part of the crime occurred within the sensory
473 perception of a child who is 13 years of age or younger, whether or not the child actually
474 perceived the crime, then the person will be subject to a class A penalty.

475 (j) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
476 is convicted of an offense under Section 14-95.5 and it is found as provided in Section 14-
477 95.31 that the person possessed the controlled substance within the sensory perception of a
478 child who is 13 years of age or younger, whether or the child actually perceived the crime
479 then the person will be subject to a class B penalty.

480 (k) Unless a person's conduct is covered under some other provision of law providing greater
481 punishment, if a person who is at least 18 years old is convicted of an offense under this
482 section and it is found as provided in Section 14-95.31 that any part of the crime occurred in
483 a dwelling which is the primary residence of a child under 16 years of age but more than 13
484 years of age or within the sensory perception of a child under 16 years of age but more than
485 13 years of age, then the person shall be punished as an offense one level higher than the
486 offense committed.

487 (l) Mistake of age is not a defense to a prosecution under this section.

488 (m) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
489 is convicted of an offense under Section 14-95.6 or 14-95.6 and it is found as provided in
490 Section 14-95.31 that the person possessed the controlled substance within 300 feet of
491 Tribal real property dedicated to housing for elderly or disabled tribal members and their
492 families, then the person shall be subject to a Class A penalty.

493 (n) Notwithstanding other provisions of this article, if a person who is 18 years of age or older
494 is convicted of an offense under Section 14-95.6 or 14-95.7 and it is found as provided in
495 Section 14-95.31 that any part of the crime occurred in a dwelling which is the primary
496 residence of a vulnerable adult as defined in Section 108-7, then the person will be subject
497 to a class A penalty.

498 **Sec. 14-95.24. Drugs and guns.**

499 Notwithstanding other provisions of this article, if a person who is 18 years of age or older
500 is convicted of an offense under this section and it is found as provided in Section 14-95.31 at
501 the time of the offense that the person actually possessed the firearm about his or her person, or
502 used, displayed, or threatened to use or display a firearm, then the then the person shall be
503 punished as an offense two levels higher than the offense committed.

504 **Secs. 14-95.25—14-95.29. Reserved.**

505 **Sec. 14-95.30. Determination of punishment.**

- 506 (a) Before determining a penalty level and imposing a sentence, the court shall ascertain the
507 existence of any and all elevating factors presented to the Court. When considering the
508 exact sentence to impose within the range of the penalty level, the court has complete
509 discretion with regard to imposition of a penalty above the mandatory minimum and may
510 consider any aggravating and mitigating factors which may be appropriate in the imposition
511 of a penalty above the mandatory minimum.
- 512 (b) Consolidation of sentences. If an offender is convicted of more than one offense at the same
513 session of court, the court may consolidate the offenses for judgment and impose a single
514 judgment for the consolidated offenses. Any sentence imposed shall be consistent with the
515 appropriate mandatory minimum penalty for each of the consolidated offenses.

516 **Sec. 14-95.31. Procedure for determining elevating factors.**

- 517 (a) *Generally, burden of proof.* The court shall consider evidence of elevating factors present in
518 the offense that make an elevated sentence appropriate. The Tribe bears the burden of
519 proving beyond a reasonable doubt that an elevating factor exists.
- 520 (b) *Procedure for determination of prior record.* The existence of elevating factors under
521 section 14-95.22 will be determined as provided in that section. The existence of other
522 elevating factors will be determined in accordance with the procedures of this section.
- 523 (c) *Jury to determine elevating factors; jury procedure if trial bifurcated.* The defendant may
524 admit to the existence of an elevating factor, and the factor so admitted shall be treated as
525 though it were found by a jury pursuant to the procedures in this subsection. If the defendant
526 does not so admit, only a jury may determine if an elevating factor is present in an offense.
527 The jury impaneled for the trial of the offense may, in the same trial, also determine if one
528 or more elevating factors is present, unless the court determines that the interests of justice
529 require that a separate sentencing proceeding be used to make that determination. If the
530 court determines that a separate proceeding is required, the proceeding shall be conducted
531 by the trial judge before the trial jury as soon as practicable after the guilty verdict is
532 returned. If prior to the time that the trial jury begins its deliberations on the issue of
533 whether one or more elevating factors exist, any juror dies, becomes incapacitated or
534 disqualified, or is discharged for any reason, an alternate juror shall become a part of the
535 jury and serve in all respects as those selected on the regular trial panel. An alternate juror
536 shall become a part of the jury in the order in which the juror was selected. If the trial jury is
537 unable to reconvene for a hearing on the issue of whether one or more elevating factors
538 exist after having determined the guilt of the accused, the trial judge shall impanel a new
539 jury to determine the issue. A jury selected to determine whether one or more elevating
540 factors exist shall be selected in the same manner as juries are selected for the trial of
541 criminal cases.

- 542 (d) *Procedure if defendant admits elevating factor only.* If the defendant admits that an
543 elevating factor exists, but pleads not guilty to the underlying offense, a jury shall be
544 impaneled to dispose of the offense charge. In that case, evidence that relates solely to the
545 establishment of an elevating factor shall not be admitted in the trial.
- 546 (e) *Procedure if defendant pleads guilty to the offense only.* If the defendant pleads guilty to the
547 offense, but contests the existence of one or more elevating factors, a jury shall be
548 impaneled to determine if the elevating factor or factors exist.
- 549 (f) *Pleading of elevating factors.* Elevating factors set forth in this article need not be included
550 in a complaint or other charging instrument.
- 551 (g) *Notice of intent to use elevating factors or prior record level points.* The Tribe must provide
552 a defendant with written notice of its intent to prove the existence of one or more elevating
553 factors under this article at least 30 days before trial or the entry of a guilty or no contest
554 plea. A defendant may waive the right to receive such notice. The notice shall list all the
555 elevating factors the Tribe seeks to establish.
- 556 (h) *Written findings; when required.* The court shall make findings of the elevating factors
557 present in the offense. If the jury finds elevating factors, the court shall ensure that those
558 findings are entered in the court's judgment. Findings shall be in writing.

559 **Sec. 14-95.32. Special evidence procedure.**

- 560 (a) Notwithstanding any provision to the contrary in the North Carolina General Statutes as
561 adopted herein, whenever a substance is submitted to either the North Carolina State Bureau
562 of Investigations Laboratory, the Charlotte, North Carolina, Police Department Laboratory;
563 the Toxicology Laboratory, Reynolds Health Center, Winston-Salem; the Forensic Testing
564 Laboratory at Duke University Medical Center; or any other accredited laboratory testing
565 facility, whether owned publicly or privately, approved by the Cherokee Court for chemical
566 analysis, the report of that analysis shall be certified by the person performing the analysis
567 and shall be admissible as evidence without further authentication in all proceedings in the
568 Cherokee Court as evidence of the identity, nature, and quantity of the substance analyzed
569 provided that:
- 570 i. The Tribe notifies the defendant and files notice with the court at least 30 days before
571 trial of its intention to introduce the certified report into evidence under this subsection
572 and provides a copy of the certified report to the defendant, and
- 573 ii. The defendant fails to make a written objection to the admission of the certified report
574 into evidence at least 15 days before the trial. Failure to make such a written objection
575 shall be deemed a waiver of the defendant's right to confront the person performing the
576 chemical analysis at trial.
- 577 (b) Nothing in subsection (a) precludes the right of any party to call any witness or to introduce
578 any evidence supporting or contradicting the results contained in the certified report under
579 subsection (a). The defendant shall have the right to confront the person performing the
580 chemical analysis unless that right is waived in accordance with the procedures in
581 subsection (a). However, if the defendant objects to the admission of the certified report in
582 subsection (a) and if the defendant is found guilty of an offense under this section, the

583 defendant will be responsible for all costs associated with obtaining the testimony of the
584 person performing the chemical analysis.

585 (c) When a certified report under subsection (e) is sought to be admitted into evidence by the
586 Tribe, a statement signed by each successive person in the chain of custody of the substance
587 analyzed shall be required as evidence of the chain of custody of the substance analyzed.
588 The statement shall indicate the date when the substance analyzed was in the custody and
589 control of the persons whose signatures appear on the statement and that he/she delivered
590 the substance analyzed to the next consecutive person whose signature appears on the
591 statement. The statement shall contain a sufficient description of the material or its
592 container so as to distinguish it as the particular item in the chain of custody and shall state
593 that the material was delivered in essentially the same condition as received. The statement
594 may be placed on the same document as the certified report provided for in subsection (e) of
595 this section. A statement under this subsection shall be prima facie evidence that the persons
596 whose signatures appears on the statement had custody and control of the substance
597 analyzed on the dates indicated on the statement and that those persons made delivery of the
598 substance analyzed to the next consecutive person whose signature appear on the statement
599 and it shall not be necessary to call each person whose signature appears on the statement to
600 testify at trial in order to establish the chain of custody of the substance analyzed. The
601 provisions of this subsection may be utilized by the Tribe only if:

602 i. The Tribe notifies the defendant at least 30 days before trial of its intention to
603 introduce the statement into evidence under this subsection and provides defendant
604 with a copy of the statement, and

605 ii. The defendant fails to file a written objection to the introduction of the statement into
606 evidence at least 15 days before trial. Failure to make such a written objection shall be
607 deemed a waiver of the defendant's right to confront the persons whose signatures are
608 contained in the statement.

609 (d) Nothing in subsection (c) precludes the right of any party to call any witnesses or to
610 introduce any evidence supporting or contradicting the chain of custody of the substance
611 analyzed. The defendant shall have the right to confront all persons who had physical
612 custody or control of the substance analyzed unless that right is waived in accordance with
613 the procedures of subsection (c). However, if the defendant objects to the admission of the
614 statement in subsection (c) and if the defendant is found guilty of an offense under this
615 section, the defendant will be responsible for all costs associated with obtaining the
616 testimony of the persons whose signatures appear in statement.

617 (e) When a person is subject to random drug testing as a result of a term of probation or
618 electronic home confinement or provides a blood or urine sample under the provisions of
619 Chapter 20 of the North Carolina General Statutes, scientific evidence demonstrating the
620 possession of a controlled substance in the blood or urine of the person shall be admissible
621 and shall constitute a rebuttable presumption of prima fascia evidence of willful possession
622 of a controlled substance in violation of this article.

623 **Sec. 14-95.33. Cooperation between law-enforcement agencies.**

624 (a) The Chief of the Cherokee Indian Police Department may temporarily receive assistance
625 from any law enforcement agency in enforcing the laws pursuant of this article if approved

626 in writing by Principal Chief. The assistance may consist of allowing officers of the agency
627 to work temporarily with officers of the Cherokee Indian Police Department (including in
628 an undercover capacity) and lending equipment and supplies. While working with another
629 agency under the authority of this section, an assisting officer shall have the same
630 jurisdiction, powers, rights, privileges, and immunities (including those relating to the
631 defense of civil actions and payment of judgments) as the officers of the requesting agency
632 in addition to those he normally possesses. While on duty with the other agency, he shall be
633 subject to the lawful operational commands of his superior officers in the Cherokee Indian
634 Police Department, but he shall for personnel and administrative purposes remain under the
635 control of his own agency, including for purposes of pay.

636 (b) The Chief of the Cherokee Indian Police Department may temporarily provide assistance to
637 any tribal, state or federal law enforcement agency in enforcing controlled substances laws
638 pursuant to Tribal, state or federal law if approved in writing by Principal Chief. The
639 assistance may consist of allowing officers of the Cherokee Indian Police Department to
640 work temporarily with officers of the agency (including in an undercover capacity) and
641 lending equipment and supplies. The requesting agency must ensure that while working
642 with the other agency, the Cherokee officer shall have the same jurisdiction, powers, rights,
643 privileges, and immunities (including those relating to the defense of civil actions and
644 payment of judgments) as the officers of the requesting agency in addition to those he
645 normally possesses. While on duty with the other agency, he shall be subject to the lawful
646 operational commands of his superior officers in the other agency, but he shall for personnel
647 and administrative purposes remain under the control of the Cherokee Indian Police
648 Department, including for purposes of pay. He shall furthermore be entitled to workers'
649 compensation when acting pursuant to this section to the same extent as though he were
650 functioning within the normal scope of his duties.

651 (c) As used in this section, "Law-enforcement agency" means any Tribal, federal, state or local
652 agency, force, department, or unit responsible for enforcing criminal laws, including the
653 Bureau of Indian Affairs Law Enforcement, the police department of another tribe, or any
654 local police department or sheriff's department,

655 (d) This section in no way reduces the jurisdiction or authority of Tribal law-enforcement
656 officers.

657 **Sec. 14-95.34. Restitution; civil liability.**

658 (a) When any person is convicted of an offense under this Article, the court may order him to
659 make restitution to any law-enforcement agency for reasonable expenditures made in
660 purchasing controlled substances from him or his agent as part of an investigation leading to
661 his conviction.

662 (b) When any person is convicted of an offense under this Article, the court must order him to
663 make restitution for the cost of storage, testing and disposal of controlled substances or
664 immediate precursor chemicals.

665 (c) When any person is convicted of an offense under this Article involving the manufacture of
666 controlled substances, the court must order the person to make restitution for the actual cost
667 of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to

668 manufacture the controlled substances, including personnel overtime, equipment, and
669 supplies.

670 (d) A person 18 years of age or older, who hires, employs, or intentionally uses a person under
671 18 years of age to commit a violation of this Article is liable in a civil action for damages
672 for drug addiction proximately caused by the violation. The doctrines of contributory
673 negligence and assumption of risk are no defense to liability under this section.

674 (e) Recoveries under this section shall be considered debts to the tribe.

675 **Sec. 14-95.35. Conditional discharge and expunction of records for first offense of youthful**
676 **offenders.**

677 (a) Whenever any person if he were not over 21 years of age at the time of the offense, who has
678 not previously been convicted of any offense under this Article or under any statute of the
679 United States or any state relating to scheduled controlled substances or to that drug
680 paraphernalia pleads guilty to or is found guilty of an offense under this article under which
681 the person would be subject to Class C or D penalty, the court may, without entering a
682 judgment of guilt and with the consent of such person, defer further proceedings and place
683 him on probation upon such reasonable terms and conditions as it may require. To fulfill the
684 terms and conditions of probation the court may allow the defendant to participate in a drug
685 education program approved for this purpose by the Department of Health and Human
686 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt
687 and proceed as otherwise provided. Upon fulfillment of the terms and conditions and upon
688 payment of any special fines imposed under Section 14-96.1, the court shall discharge such
689 person and dismiss the proceedings against him. Discharge and dismissal under this section
690 shall be without court adjudication of guilt and shall not be deemed a conviction for
691 purposes of this section or for purposes of disqualifications or disabilities imposed by law
692 upon conviction of a crime including the additional penalties imposed for second or
693 subsequent convictions under this Article. Discharge and dismissal under this section may
694 occur only once with respect to any person. Prior to taking any action to discharge and
695 dismiss under this section the court shall make a finding that the defendant has no record of
696 previous convictions under the laws of the Tribe, the United States, or any state.

697 (b) Convictions for violations of this article, Cherokee Code Section 14-25.2, North Carolina
698 General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or
699 90-113.12, ~~or 90-113.21~~ or any similar state or federal law shall be considered previous
700 convictions. This section shall not apply to any prior conviction of drug paraphernalia,
701 marijuana, or Schedule VI controlled substance.

702 (c) Upon the dismissal of such person, and discharge of the proceedings against him under
703 subsection (a) of this section, such person, if he were not over 21 years of age at the time of
704 the offense, may apply to the court for an order to expunge from all official records (other
705 than the confidential file to be retained by the Clerk of Court under subsection (c)) all
706 recordation relating to his arrest, indictment or information, trial, finding of guilty, and
707 dismissal and discharge pursuant to this section. The applicant shall attach to the application
708 the following:

- 709 (1) An affidavit by the applicant that he has been of good behavior during the period of
710 probation since the decision to defer further proceedings on the offense in question and
711 has not been convicted of any felony, or misdemeanor, other than a traffic violation,
712 under the laws of the United States or the laws of this state or any other state;
- 713 (2) Verified affidavits by two persons who are not related to the applicant or to each other
714 by blood or marriage, that they know the character and reputation of the petitioner in
715 the community in which he lives, and that his character and reputation are good;
- 716 (3) Affidavits of the clerk of court, Chief of the Cherokee Indian Police Department,
717 where appropriate, and sheriff of the county of which the petitioner is a resident,
718 showing that the applicant has not been convicted of a felony or misdemeanor other
719 than a traffic violation under the laws of the tribe or the State of North Carolina at any
720 time prior to the conviction for the offense in question or during the period of
721 probation following the decision to defer further proceedings on the offense in
722 question.

723 The judge to whom the petition is presented is authorized to call upon a probation officer for any
724 additional investigation or verification of the petitioner's conduct during the probationary period
725 deemed desirable.

726 If the court determines, after hearing, that such person was dismissed and the proceedings against
727 him discharged and that he was not over 21 years of age at the time of the offense, it shall enter
728 such order. The effect of such order shall be to restore such person in the contemplation of the
729 law to the status he occupied before such arrest or indictment or information. No person as to
730 whom such order was entered shall be held thereafter under any provision of any law to be guilty
731 of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge
732 such arrest, or indictment or information, or trial in response to any inquiry made of him for any
733 purpose.

734 The court shall also order that said conviction and the records relating thereto be expunged from
735 the records of the court, and direct all law-enforcement agencies bearing records of the same to
736 expunge their records of the conviction. The clerk shall forward a certified copy of the order to
737 the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of
738 police or other arresting agency, as appropriate, shall forward such order to the State Bureau of
739 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
740 Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

- 741 (d) The clerk of court shall maintain a confidential file containing the names of persons granted
742 conditional discharges. The information contained in the file shall be disclosed only to
743 Judges of the Cherokee Court for the purpose of ascertaining whether any person charged
744 with an offense under this Article has been previously granted a conditional discharge.
- 745 (e) Whenever any person is charged with violation of 14-95.5, upon dismissal by the state of
746 the charges against him upon a finding of not guilty or other adjudication of innocence, such
747 person may apply to the court for an order to expunge from all official records all
748 recordation relating to his arrest, indictment or information, or trial. If the court determines,
749 after hearing that such person was not over 21 years of age at the time any of the
750 proceedings against him occurred, it shall enter such order. No person as to whom such
751 order has been entered shall be held thereafter under any provision of any law to be guilty of

752 perjury or otherwise giving a false statement by reason of his failures to recite or
753 acknowledge such arrest, or indictment or information, or trial in response to any inquiry
754 made of him for any purpose.

755 **Sec. 14-95.36. Conditional discharge for first offense after completion of treatment.**

756 Upon the first conviction only of any offense under this article under which the person
757 would be subject to class C or D penalty, ~~except for a conviction under 14-95.6(c) or 14-95.7(d),~~
758 the court may place defendant on probation under this section for an offense under this Article.
759 The probation, if imposed, shall be for not less than one year and shall contain a minimum
760 condition that the defendant who was found guilty or pleads guilty pay all fines required under
761 Section 14-96.1 and complete a substance abuse assessment by the Analenisgi program of the
762 Tribe and follow all recommendations, including enrollment in and successful completion,
763 within 150 days of the date of the imposition of said probation, the program of drug treatment at
764 a program approved by the Analenisgi program of the Tribe. If no recommendation for treatment
765 is made, the defendant must provide proof of completion of all recommendations within 150
766 days of the date of imposition of said treatment. If defendant is able to show successful
767 completion of recommendations of the substance abuse assessment within the time allowed by
768 the Court, and the defendant has not been convicted of any violations of probation, then the
769 defendant may file a motion asking to withdraw his/her plea and ask that the charges be
770 dismissed.

771 For the purposes of determining whether the conviction is a first conviction or whether a
772 person has already had discharge and dismissal, no prior offense occurring more than seven
773 years before the date of the current offense shall be considered. If a person already has had a
774 discharge and dismissal, it shall be indicated in his/her record as "dismissed - conditional
775 discharge." In addition, convictions for violations of this article, ~~Cherokee Code Section 14-25.2,~~
776 or North Carolina General Statutes 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
777 90-113.11, or 90-113.12, ~~or 90-113.21~~ shall be considered previous convictions. This section
778 shall not apply to any prior conviction of drug paraphernalia, marijuana, or Schedule VI
779 controlled substance.

780 Failure to successfully complete the recommendations including an approved program of
781 drug treatment shall constitute grounds to revoke probation and deny application for expunction
782 of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
783 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
784 "Failure to successfully complete the recommendations including an approved program of drug
785 treatment " includes failure to attend scheduled classes without a valid excuse, failure to
786 complete the course within 150 days of imposition of probation, willful failure to pay the
787 required fee for the treatment, or any other manner in which the person fails to complete the
788 treatment successfully. Analenisgi shall report any failure of a person to complete successfully
789 the program of instruction to the court which imposed probation. Upon receipt of the
790 Analenisgi's report that the person failed to complete the program successfully, the Court shall
791 revoke probation and/or deny application for expunction of all recordation of defendant's arrest,
792 indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this
793 section. A person may obtain a hearing before the court of original jurisdiction prior to
794 revocation of probation or denial of application for expunction.

795 **Sec. 14-95.37. Transfer to Cherokee Wellness Court.**

796 Upon the conviction of any offense under this article the court may transfer the case to
797 Cherokee Wellness Court pursuant to the provisions of Chapter 7C. Upon unsuccessful discharge
798 from the Wellness Court program and transfer back to the Cherokee Court, the Cherokee Court
799 shall immediately activate the sentence or the balance of the sentence that was stayed including
800 the collection of all outstanding fines, fees and costs, notwithstanding any term of imprisonment
801 imposed by the Wellness Court. Payment of required fines shall be stayed until discharge from
802 the Wellness Court.

The attached Resolution/Ordinance 63 dated JANUARY 4, 2024 was:

PASSED (X)

KILLED ()

and ratified in open Council on June 06, 2024 by 81 voting for the act
and 13 members voting against it as follows:

<i>VOTE</i>	<i>FOR</i>	<i>AGAINST</i>	<i>ABSTAIN</i>	<i>ABSENT</i>
Richard French	X			
Perry Shell	X			
Boyd Owle	X			
Bucky Brown	X			
Tom Wahnetah	X			
David Wolfe		X		
Adam Wachacha				X
Mike Parker	X			
Bo Crowe	X			
Jim Owle	X			
Dike Sneed		X		
Michael Stamper	X			
	81	13	0	6

JUN 27 2024

	EASTERN BAND OF CHEROKEE INDIANS PROTEST HEARING/ TRIBAL COUNCIL FILE CODE SHEET JUNE 27, 2024 10:00 A.M.	
PROTEST OF ORD. 63 (2024) READ. RES. NO. 239	Protest resolution requesting that Sect..17-74(c) be amended to allow privately owned hemp stores to be operated on the Qualla Boundary	Protest Upheld/Passed
Ord. 63 2023	Amendment to CC Chapter 17 Adult Use	Amended/Passed

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PASSED
JUN 27 2024

CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY

Date: JUN 27 2024

ORDINANCE NO.: 63 (2024)

Amendment

Delete the amended Section 17-74 and replace with the following:

Secs. 17-74. Ownership limitation.

There shall be no cannabis facility license, other than a license for a cannabis laboratory, issued to any person or entity other than an entity wholly owned by the Tribe organized under Tribal law or one of its wholly owned subsidiaries organized under Tribal law.

Add Chapter 17A (Hemp) back into the ordinance as follows:

CHAPTER 17A HEMP

Sec. 17A-1. Legislative Findings.

- (a) The hemp industry has the potential to be beneficial to the public health of the Tribe and general welfare of enrolled members, including through job creation and economic development.
- (b) The growth and success of the hemp industry depends upon public confidence and trust that:
 - (1) People who could benefit from hemp and hemp products are able to obtain them safely and conveniently;
 - (2) Hemp stores do not unduly impact the quality of life enjoyed by nearby residents and the community at-large;
 - (3) Hemp store licenses are issued in a responsible manner;
 - (4) The hemp industry is free from criminal and corruptive practices.
- (c) Public confidence and trust can only be maintained by strict regulation of the hemp industry.
- (d) All hemp stores must therefore be licensed, controlled, and assisted to protect public health, safety, morals, good order, and general welfare of the Tribe and to foster the success of the Tribe's hemp industry.

Sec. 17A-2. Definitions.

The definitions in Cherokee Code Chapter 17 also apply to this Chapter. As used in this chapter, unless the context clearly otherwise requires, the following words and terms have the following definitions.

Hemp means plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, which do not have a THC concentration higher than 0.3 percent on a dry weight basis. This term includes hemp as defined in section 297A of the federal Agricultural Marketing Act of 1946.

Hemp product means a product which contains hemp or the extract thereof, including, without limitation, edible hemp products intended for human consumption by oral ingestion and

49 presented in the form of a foodstuff, extract, or similar product, or hemp-infused products
50 intended for use or consumption by humans through means other than inhalation or oral
51 ingestion, like topical products, ointments, oils, or tinctures. Hemp products do not have a THC
52 concentration higher than 0.3 percent on a dry weight basis.

53
54 Hemp Store means a business that:

- 55 (1) Is licensed by the Board pursuant to this chapter, and
56 (2) Acquires, possesses, delivers, transfers, transports, supplies, sells, or dispenses hemp, hemp products, or
57 related supplies and educational materials to eligible members of the public or to another hemp store.

58
59 **Sec. 17A-3. Role and Authority of the Board.**

- 60 (a) Civil regulation of hemp stores is the responsibility and within the authority of the EBCI Cannabis Control
61 Board. The provisions of Articles II and III of Cherokee Code Chapter 17 also apply to the regulation of
62 hemp stores. This chapter does not replace Chapter 1 of Title 16 of the Cherokee Administrative
63 Regulations.
- 64 (b) The Board shall issue administrative regulations pursuant to Cherokee Code Chapter 150 to carry out this
65 chapter and in furtherance of the findings of Section 17A-1. The Board may issue regulations for, but not
66 limited to, the following issues involving hemp and hemp products:
- 67 (1) Safety and health testing standards and criteria;
68 (2) Security of hemp store locations;
69 (3) Location and operation of hemp stores;
70 (4) Packaging, disclosures, and educational materials provided to the public;
71 (5) Advertising and public communication;
72 (6) Requirements, conduct, and practices for owners, employees, or other persons associated with hemp
73 stores; and
74 (7) Disciplinary procedures, fines, fees, and license suspension and revocation.

75
76 **Sec. 17A-4. Hemp Store Licenses.**

- 77 (a) A person shall not engage in the business of a hemp store unless the person holds a hemp store license
78 issued by the Board. The Board is the sole issuer of hemp store licenses. Operating a hemp store without
79 the applicable cannabis facility license issued by the Board is unlawful.
- 80 (b) A person who wishes to engage in the business of a hemp store must submit to the Board an application as
81 prescribed by the Board.
- 82 (c) Any hemp store license is a revocable privilege and the holder of such a license does not acquire any vested
83 right in such license. A hemp store license is not a substitute for a Tribal business license. Hemp store
84 licenses must abide by all applicable Tribal laws, rules, and regulations at all times. Licenses are non-
85 transferable, except as otherwise provided by regulations issued by the Board for the transfer of a license to
86 another person or entity who is qualified to hold a license pursuant to this Chapter.

87
88 **Sec. 17A-5. Fees.**

- 89 (a) The Board shall collect not more than the following maximum fees:
- 90 (1) For initial issuance of a hemp store license: \$10,000.00.
91 (2) For renewal of a hemp store license: \$5,000.00.
- 92 (b) Any revenue generated from the fees imposed pursuant to this section
- 93 (1) Must be expended first to pay the costs of the Board in carrying out the provisions of this Chapter; and
94 (2) If any excess revenue remains after paying the costs described in paragraph (b)(1), such excess revenue
95 must be paid over as instructed by the Secretary of the Treasury so as not to comingle such revenue
96 with the Tribe's other monies.

97
98 **Sec. 17A-6. Requirements Concerning Operation of Hemp Stores.**

- 99 (a) As used in this section, the term "hemp" also includes hemp products unless otherwise excluded.
- 100 (b) Each hemp store must:
- 101 (1) comply with all Tribal ordinances and rules pertaining to land development, land use, and signage.

- 102 (2) Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified, and
103 consistent with regulations issued by the Board; and
104 (3) Have discreet and professional signage that is consistent with regulations issued by the Board.
105 (c) A hemp store may not change locations without permission from the Board.
106 (d) A hemp store may not refuse to sale or sale at an increased price hemp or hemp products to the Board or an
107 agent of the Board.
108 (e) A hemp store may not exclude or obstruct a Board agent while conducting his or her duties pursuant to this
109 chapter or other Tribal law.
110

111 **Sec. 17A-7. Requirements Concerning Hemp and Hemp Products.**

- 112 (a) A hemp store shall present to any person upon request the certificates of analysis for any and all hemp and
113 hemp products offered for sale at the hemp store.
114 (b) A hemp store shall not sell hemp or hemp products to any person who is less than 18 years old.
115 (c) A hemp store may not sell hemp or hemp products that are not in compliance with this chapter or the
116 regulations issued by the Board. The unlawful sale of marijuana is a crime pursuant to Cherokee Code
117 Chapter 14.
118

119
120 *Floor amendment submitted by Robert Mark Saunooke.*

The attached Resolution/Ordinance No. 63 dated JANUARY 4, 2024 was:

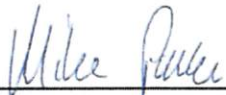
PASSED (X)

KILLED ()

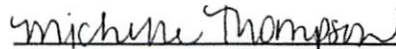
and ratified in open Council on JUNE 27, 2024 by 68 voting for the act

and 0 members voting against it as follows:

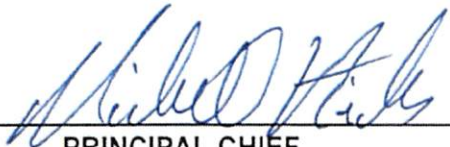
VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Perry Shell				X
Boyd Owle	X			
Bucky Brown	X			
Tom Wahnetah			X	
David Wolfe	X			
Adam Wachacha	X			
Mike Parker	X			
Bo Crowe	X			
Jim Owle				X
Dike Sneed			X	
Michael Stamper	X			
	68	0	13	19



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED () VETOED ()

VETO UPHELD () VETO DENIED ()

DATE: 6-27-24

I hereby certify that the foregoing act of the Council was duly:

PASSED ()

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and has been fully and freely discussed.

INTERPRETED ()

OMITTED ()