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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Synopsis of Senate Amendments

(This synopsis addresses amendments adopted in the Senate General Government Committee and on the Senate Floor.)

### H.B. 86 of the 135<sup>th</sup> General Assembly

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#### Oversight of adult-use marijuana

- Repeals the Cannabis Control Law, enacted by petition and scheduled to take effect December 7, 2023, and incorporates many of its provisions into the existing Medical Marijuana Control Law (hereafter, “Marijuana Control Law”) administered by the Division of Marijuana Control (DMC) within the Department of Commerce.
- Allows the Ohio Investigative Unit (OIU) within the Department of Public Safety to assist the DMC in enforcing Marijuana Control Law. Specifies that OIU may not investigate or inspect a person or facility for an alleged violation unless the person is licensed under the Marijuana Control Law or OIU is invited by local law enforcement.
- Specifies that medical marijuana information in the Ohio Automated Rx Reporting System (OARRS) is confidential and not a public record.

#### Transition

- Exempts, for 12 months after the effective date of the bill, rules adopted by DMC from the requirement that certain state agencies repeal two regulatory restrictions for every new one adopted and that certain state agencies reduce their total number of regulatory restrictions by 30% by 2025.
- Requires DMC to adopt rules related to adult-use marijuana within nine months after the effective date of the bill.
- Temporarily allows licensed retail dispensaries to sell medical marijuana to any adult-use consumer, upon presentation of valid identification demonstrating the adult-use consumer is at least 21 years of age, beginning on the bill’s effective date and ending within one year thereafter, as specified by DMC rule.
- Provides that medical marijuana dispensed pursuant to the temporary authorization is to be treated as adult-use marijuana for the purposes of the excise tax and Marijuana Control Law, except that:

- The THC and possession limits for medical marijuana apply;
- Administrative rules relative to medical marijuana apply to the extent they do not conflict with rules or code specific to adult-use marijuana.
- Specifies that medical marijuana dispensed under the temporary authorization is not to be tracked in OARRS.

### **Allowable forms**

- Allows all forms of adult-use marijuana that would have been authorized under the Cannabis Control Law, but eliminates the authority to request an additional form or method of use.
- Prohibits adult-use marijuana from being dispensed in a form that bears the likeness or characteristics of a realistic or fictional human, animal, or fruit.

### **THC limits**

- Specifies that tetrahydrocannabinol (THC) limits for adult-use marijuana are as follows:
  - 35% for plant material;
  - 50% for extracts.
- Specifies that the THC content of adult-use marijuana, other than adult-use marijuana intended for consumption by vaporization, must not exceed 10 milligrams per serving, or 100 milligrams per package.
- Repeals general authority to increase or eliminate THC limits. Authorizes DMC, if supported by scientific evidence and industry standards, to do either or both of the following:
  - Allow adult-use extracts intended for consumption via vaporization to have a THC content of more than 50%;
  - Establish THC limits as a percentage of weight, content per unit, or content per package.

### **Home grow**

- Limits home grow to six plants per adult-use consumer and not more than six plants per household.
- Repeals authority to transfer homegrown marijuana.
- Specifies that home grow must occur in the adult-use consumer's primary residence and prohibits cultivating or growing homegrown marijuana on behalf of another person.

### **Use and transportation**

- Specifies that the smoking, combustion, and vaporization of adult-use and homegrown marijuana is permitted only in a private residence that is not a child care home or where

such activity is prohibited according to a lease, and makes a violation of this prohibition a minor misdemeanor.

- Authorizes the use of adult-use cannabis in only certain locations, such that a vehicle, streetcar, trackless trolley, watercraft, or aircraft is not included.
- Subjects the operator of a vehicle, streetcar, trackless trolley, watercraft, or aircraft to R.C. 1547.11 (watercraft OVI), 4511.19 (vehicle OVI), or 4561.15 (aircraft OVI), as applicable.
- Subjects a passenger using adult use cannabis in a vehicle, streetcar, trackless trolley, watercraft, or aircraft to criminal penalties, with escalating penalties for multiple offenses.
- Prohibits any person from transporting marijuana or marijuana paraphernalia in a motor vehicle unless it is either adult-use, homegrown, or medical marijuana and meets either or both of the following:
  - The marijuana or paraphernalia is in its original, unopened packaging (does not apply to homegrown marijuana);
  - The marijuana or paraphernalia is stored in the trunk of the vehicle or, if there is no trunk, such as in a truck, behind the last upright seat of the vehicle or in an area not normally occupied by the driver or passengers and not easily accessible by the driver.

## **Licenses**

- Repeals the authority of DCC to issue Level III cultivator licenses.
- Requires license holders to engage in both adult-use and medical marijuana operations.
- Requires DMC to evaluate and prioritize applications for licensure according to the applicant's eligibility, suitability, and ability to operate. Specifies that DMC is prohibited from issuing a license unless all eligibility conditions are met.
- Requires applicants to demonstrate both of the following:
  - Sufficient liquid capital to meet financial responsibilities;
  - That the municipality or township in which the facility is to be located has not passed a moratorium or taken any other action that would prohibit the applicant from operating there.
- Expressly requires that the license application contain no false, misleading, or deceptive information (or an omission of material information).
- Expressly requires the license applicant to pay all fees required by DMC.
- Provides a process and criteria for DMC to follow for ranking applicants if the number of applicants for licenses exceeds the allowable number of licenses.

- Prohibits the transfer of provisional marijuana licenses (i.e., licenses that establish conditions to be met before the license holder may engage in marijuana-related activities).
- Limits the total number of dispensary licenses that can be issued by DMC to 350.
- Requires DMC to issue dispensary licenses in such a way as to prevent oversaturation in any one geographic location
- Prohibits DMC from issuing a license or approving a relocation that would result in a dispensary from being located within one-half mile of another dispensary.
- Prohibits dispensaries from sharing a location or facility with an entity that sells beer or liquor.
- Repeals limits on the number of licenses that can be held by any one person.
- Requires licensed dispensaries to ensure a sufficient supply of medical marijuana products necessary to meet demand.
- Requires dispensaries to ensure that medical marijuana products are kept separate from adult-use products and prominently displayed in the dispensary.
- Allows DMC to revoke a retail dispensary license for failure to secure a certificate of operation within 18 months after provisional licensure. Requires DMC to grant up to two six-month extensions if the provisionally licensed retail dispensary demonstrates a good-faith effort at becoming operational.
- Specifies that dispensaries that dispense more than the authorized possession amounts of adult-use marijuana to the same consumer in the same day are guilty of trafficking marijuana.

## **Advertisements**

- Specifies that any rules adopted regulating advertisements of adult-use marijuana must be no less stringent than the most stringent rules or laws regulating tobacco or alcohol sales.
- Prohibits adult-use marijuana from being marketed using any graphic, picture, or drawing that bears any resemblance to a cartoon character or popular figure whose target audience is children or youth.

## **Packaging and labeling**

- Requires that all adult-use marijuana must be stored in its original packaging unless it is actively being used.
- Requires a processor to comply with continuing law requirements concerning packaging and labeling (i.e., meeting federal child-resistant effectiveness standards, labeling with THC content, and complying with DMC rules) before delivering medical marijuana or adult-use marijuana to a licensed dispensary.

- Requires licensed dispensaries to label dispensed adult-use marijuana with all of the following:
  - The name and address of the processor and dispensary;
  - A statement that the use of marijuana by underage persons is both harmful and illegal;
- The quantity, strength, kind, or form of marijuana in the package.

### **Local governments**

- Allows a municipality or township to prohibit, or limit the number of marijuana licensees but specifies that such a prohibition or limitation must not be applied to a person licensed on the bill's effective date.

### **Rights of adult-use consumers**

- Repeals protections in the Cannabis Control Law against certain adverse actions based solely on a person's lawful activities under the law, including the following:
  - Taking a disciplinary action against professional license holder;
  - Making a determination that a child is an abused, neglected, or dependent child;
  - Making an allocation of parental rights;
  - Making a parenting time order;
  - Disqualifying a person from medical care;
  - Taking action under any criminal or civil statute;
  - Subjecting a person to a field sobriety test;
  - Rejecting a person as a tenant, unless required by federal law;
  - Disqualifying an individual from a public benefit program.
- Preserves similar protections under continuing law respecting medical marijuana patients only.

### **Expungement**

- Permits a person who was convicted of or pled guilty to a marijuana possession offense involving an amount of marijuana that is now legal to possess under the bill to have the record of their conviction or guilty plea expunged.
- Creates a five-year program administered by the Attorney General to reimburse costs (1) for legal aid societies in assisting individuals seeking expungement for marijuana possession offenses decriminalized by the bill, and (2) for individuals to cover their expungement application fees.

## **Cannabis social equity and jobs program**

- Repeals the Cannabis Social Equity and Jobs Program which would have provided financial assistance and license application support to individuals most directly and adversely impacted by the enforcement of marijuana-related laws.

## **Unemployment compensation**

- Specifies that a person is ineligible to serve a waiting period or be paid unemployment benefits for the duration of the person's unemployment if the person is discharged from employment for using marijuana in violation of the employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating cannabis use (continuing law considers such a person discharged for just cause for unemployment purposes).

## **Taxation**

### **Adult-use marijuana excise tax**

- Increases the rate of the excise tax levied on the sale to consumers of adult-use marijuana from 10% to 15%.
- Imposes the excise tax on the sale of any marijuana by an unlicensed seller to a consumer.
- Redistributes the revenue from the excise tax, which under current law requires 3% of receipts be directed to administration of the tax and the remainder be divided between funds for a social equity and jobs program (36%), townships and municipalities that host dispensaries (36%), and substance abuse and addiction (25%), as follows:
  - 28%, up to \$80 million per fiscal year, to grants administered by DRC to fund the construction and renovation of county jails;
  - 16%, up to \$45 million per fiscal year until five years after the provision's effective date, then 19%, up to \$55 million per fiscal year, for DPS to fund peace officer training;
  - Beginning in FY2026, 14%, up to \$40 million per fiscal year, for the Attorney General to fund law enforcement continuing education training costs;
  - 9%, up to \$25 million per fiscal year until five years after the provision's effective date, then 11%, up to \$30 million per fiscal year, for OMHAS to fund substance abuse treatment, prevention, and education programs;
  - 9%, up to \$25 million per fiscal year, for OMHAS to fund and administer the 9-8-8 suicide prevention hotline;
  - 5%, up to \$15 million per fiscal year, for a five-year program under which the Attorney General reimburses certain costs associated with expungement for marijuana possession offenses decriminalized by the bill;
  - 5%, up to \$15 million per fiscal year, for the Division of Criminal Justice Services to fund local drug task forces;

- 5%, up to \$15 million per fiscal year, to fund safe driving programs administered by DPS;
- 4%, up to \$13 million per fiscal year, for DPS to pay the expenses of administering the Ohio Investigative Unit;
- 3%, up to \$8 million per fiscal year, to fund the administrative expenses of the Division of Marijuana Control;
- 2%, up to \$5 million per fiscal year, for DOH to fund poison control centers;
- To the GRF, any revenue that exceeds any designated fund's annual dollar limit or continues past the county jail funding program's sunset dates.

### **Local arts tax**

- Allows counties, with voter approval, to levy up to a 3% excise tax on the retail sale of adult-use marijuana to support artistic, cultural, and entertainment opportunities.

### **Current agricultural use value**

- Makes land used to cultivate adult-use marijuana ineligible to be valued for property tax purposes as other agricultural land pursuant to its CAUV. (A similar exclusion already applies to lands used to cultivate medical marijuana.)

### **9-8-8 Suicide Prevention and Mental Health Crisis Hotline**

- Adds exercising the powers and performing the duties relating to 9-8-8 suicide and crisis response to the existing law powers and duties of the Director of Mental Health and Addiction Services.
- Establishes the 9-8-8 Administrator within the Department of Mental Health and Addiction Services to oversee the administration of the 9-8-8 Suicide Prevention and Mental Health Crisis Hotline (9-8-8 Hotline) system statewide.
- Requires the 9-8-8 Administrator to compile an annual report regarding the operation of the 9-8-8 Hotline in Ohio that must include certain information, and to submit the report to the General Assembly and the Governor.

### **Miscellaneous**

- Modifies the definitions of "hashish" and "controlled substance analog" as they are used in the Drug Offenses Law and the Pharmacy Law.
- Redefines "hemp" and "hemp product" and adds additional definitions to the Hemp Law that close several loopholes in the law that unintentionally allow for the sale of hemp products with additional THC compounds that have an intoxicating effect.