



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Huffman, Schuring, Ramos

BILL SUMMARY

Medical Marijuana Control Program

- Establishes the Medical Marijuana Control Commission and Medical Marijuana Control Program and requires the Commission to adopt rules governing the operation of the Program.
- Requires that the Commission establish and maintain an electronic database to monitor medical marijuana from its seed source through dispensing.
- Permits patients to use marijuana for medical purposes.
- Provides for the licensure of medical marijuana cultivators, processors, retail dispensaries, and testing laboratories and the registration of physicians that recommend treatment with medical marijuana.
- Prohibits the cultivation of marijuana for personal, family, or household use.

Zoning

- Authorizes the legislative authority of a municipal corporation or a board of township trustees to adopt regulations to prohibit, or limit the number of, retail dispensaries of medical marijuana licensed under the Medical Marijuana Control Program.
- Provides that agricultural use zoning limitations that apply to counties and townships do not prohibit a county or township from regulating the location of retail dispensaries of medical marijuana or prohibiting such dispensaries from being located in the unincorporated territory of the county or township.

- Prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, public library, public playground, or public park.
- Requires the Commission to revoke the license of a cultivator, processor, retail dispensary, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park.
- Requires the Commission to specify if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or public park became established within 500 feet may remain in operation or must relocate or have its license revoked.

Employment laws

- Provides that nothing in the bill requires an employer to accommodate an employee's use of medical marijuana or prohibits an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana.
- Considers a person who is discharged from employment because of the person's use of medical marijuana to have been discharged for just cause under the Unemployment Compensation Law and thus ineligible for unemployment benefits, which appears to be similar to current law.
- Maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

Banking Services

- Exempts a financial institution that provides financial services to a licensed cultivator, processor, retail dispensary, or laboratory from any Ohio criminal law an element of which may be proven by substantiating that a person provides financial services to a person who possesses, delivers, or manufactures marijuana or marijuana derived products, *if* the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws.

OARRS

- Requires that a retail dispensary report to the Ohio Automated Rx Reporting System when dispensing medical marijuana to a patient.



Legislative intent

- Specifies the General Assembly's intent to enact an excise tax, to recommend that marijuana be reclassified as a schedule II controlled substance and to establish a program providing incentives for academic and medical research relating to medical marijuana.

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CONTENT AND OPERATION

Medical marijuana background

Current Ohio and federal law classify marijuana as a schedule I controlled substance, making its distribution, including by prescription, illegal. However, according to the National Conference of State Legislatures, 24 states allow for comprehensive public medical marijuana and cannabis programs.¹ Since 2009, the United States Department of Justice (DOJ) has encouraged federal prosecutors not to prosecute those who distribute marijuana for medical purposes in accordance with state law. In 2013, the DOJ updated its policy, noting that it will defer the right to challenge state laws legalizing marijuana for medical purposes so long as the states strongly enforce their own laws.²

Definition

Under the bill, medical marijuana means marihuana, as defined under existing Ohio law, that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.³ Current law defines "marihuana" as all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin.⁴ "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature

¹ National Conference of State Legislatures, *State Medical Marijuana Laws*, available at <<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>>.

² See <<https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>>.

³ R.C. 3796.01.

⁴ R.C. 3719.01.



stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.⁵

Medical Marijuana Control Commission

The bill creates the Medical Marijuana Control Commission in the Ohio Department of Health.⁶ The Commission consists of the following nine members:

- (1) A practicing physician;
- (2) A representative of the law enforcement community;
- (3) A representative of employers;
- (4) A representative of labor;
- (5) A representative of persons involved in the treatment of alcohol and drug addiction;
- (6) A representative of persons involved in mental health treatment;
- (7) A pharmacist;
- (8) A representative of persons supporting the legalization of marijuana use for medical purposes;
- (9) A representative of the general public.

Appointments

The Governor, with the advice and consent of the Senate, appoints all members of the Commission. Appointments must be made not later than 30 days after the bill's effective date. The Governor appoints the following members directly – the practicing physician and the representatives of law enforcement and employers. For the remaining members, the Governor must consider nominations made as follows:

- (1) The Senate President nominates individuals to serve as the pharmacist member and the members representing labor and the general public;
- (2) The Speaker of the House of Representatives nominates individuals to serve as the representative of persons involved in the treatment of alcohol and drug

⁵ *Id.*

⁶ R.C. 3796.02.

addiction, the representative of persons involved in mental health treatment, and the representative of persons supporting the legalization of marijuana use for medical purposes.

Under the bill, the Governor may reject a nomination submitted by the Senate President or the Speaker of the House. If the Governor rejects a nomination, he or she must request that another nomination be submitted. The Senate President or the Speaker must then submit another nomination.

Terms of membership

Of the Commission's initial members, those appointed directly by the Governor serve five-year terms, while members nominated by the Speaker and the Senate President serve four-year and three-year terms respectively. Thereafter, all terms are for three years.

Each member holds office from the date of appointment until the end of the term for which the member was appointed, except that members serve at the pleasure of the Governor. A member who is appointed to fill a vacancy that occurs before the expiration date of the predecessor's term holds office for the remainder of that term. A member continues in office after the expiration of the member's term until a successor takes office, or until a period of 60 days has elapsed, whichever occurs first. There is no limit on the number of terms that a member may serve.

Chairperson, compensation, and meetings

The Governor is to select a member of the Commission to serve as its chairperson. Each member, including the chairperson, receives a salary fixed in accordance with a schedule set by the Director of the Ohio Department of Administrative Services.⁷ In addition to that salary, each member receives actual and necessary travel expenses in connection with commission hearings and business.

Under the bill, the Commission must hold its initial meeting not later than 30 days after the last member of the Commission is appointed and must adopt internal management rules in accordance with current law.⁸ The bill specifies that the Commission is not subject to the law governing the sunset review of agencies.⁹

⁷ R.C. 124.15.

⁸ R.C. 111.15.

⁹ See R.C. 101.82 to 101.87.

Medical Marijuana Control Program

The bill requires that the Medical Marijuana Control Commission establish a Medical Marijuana Control Program to provide for the following:¹⁰

- (1) The licensure of medical marijuana cultivators, processors, and retail dispensaries;
- (2) The registration of physicians that recommend treatment with medical marijuana;
- (3) The licensure of laboratories that test medical marijuana;
- (4) The regulation of other activities relating to medical marijuana.

The Commission is charged with administering the Program and is authorized to take any action necessary to implement and enforce the bill's provisions.

Timeline

The bill requires that the Commission take all actions necessary to ensure that the Program is fully operational not later than two years after the bill's effective date.¹¹

Program rules

Not later than one year after its initial meeting, the Commission must adopt rules establishing standards and procedures for the Program.¹² The rules must be adopted in accordance with the Administrative Procedure Act¹³ and do all of the following:

- (1) Establish application procedures and fees for licenses issued by the Commission;
- (2) Specify the criminal offenses for which an applicant will be disqualified from licensure;
- (3) Specify the conditions that must be met to be eligible for licensure;

¹⁰ R.C. 3796.03.

¹¹ Section 3.

¹² R.C. 3796.04.

¹³ R.C. Chapter 119.



(4) Establish the number of cultivator and retail dispensary licenses that will be permitted at any one time;

(5) Establish a license renewal schedule, renewal procedures, and renewal fees;

(6) Specify reasons for which a license may be suspended or revoked;

(7) Establish standards under which a license suspension may be lifted;

(8) Establish procedures for the registration of physicians seeking to recommend medical marijuana for treatment and requirements that must be met to be eligible for registration with the commission;

(9) Specify the forms in which medical marijuana may be dispensed and the methods by which it may be used;

(10) Establish tamper-resistant standards for medical marijuana packaging;

(11) Establish labeling requirements for medical marijuana packages;

(12) Establish training requirements for employees of retail dispensaries;

(13) Specify when testing of medical marijuana must be conducted by licensed laboratories;

(14) Determine whether a licensed cultivator, processor, retail dispensary, or laboratory may remain in operation, must relocate, or have its license revoked if a school, church, public library, public playground, or public park is established within five hundred feet of the cultivator, processor, retail dispensary, or laboratory.

The bill also authorizes the Commission to adopt any other rules it considers necessary to administer and implement the Program. When adopting rules, the Commission must consider standards and procedures that have been found to be best practices relative to the use and regulation of medical marijuana.

Maximum number of cultivator and dispensary licenses

When adopting rules establishing the maximum number of cultivator and retail dispensary licenses that will be permitted at any one time, the Commission must consider the population of Ohio and the number of patients seeking to use medical marijuana. In the case of retail dispensary licenses, the Commission also must consider

the geographic distribution of dispensary sites in an effort to ensure patient access to medical marijuana.¹⁴

Permissible forms and methods of medical marijuana

When adopting rules specifying the forms in which medical marijuana may be dispensed and the methods by which it may be used, the Commission may include edibles, patches, plant materials, and oils. The bill requires that the Commission exclude any form or method that is considered attractive to children.¹⁵

Medical marijuana registry

Under the bill, the Commission must establish and maintain a medical marijuana registry containing the following information:

- The number of patients for whom treatment with medical marijuana has been recommended;
- The types of medical conditions for which treatment with medical marijuana has been recommended.¹⁶

Database to monitor medical marijuana

The bill also requires that the Commission establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The Commission may contract with a separate entity to establish and maintain the database on its behalf.

The database must allow for information regarding medical marijuana to be updated instantaneously. All persons designated by the Commission must submit to the Commission any information it determines is necessary for maintaining the database.¹⁷

¹⁴ R.C. 3796.05.

¹⁵ R.C. 3796.06.

¹⁶ R.C. 3796.07.

¹⁷ *Id.*

Registration as a qualifying physician

A physician seeking to recommend treatment with medical marijuana must apply to the Commission for registration as a qualifying physician.¹⁸ An application must be submitted in a manner established in rules adopted by the Commission. If an application is complete and meets the requirements established in rules, the Commission must register the applicant as a qualifying physician.

Authority to recommend medical marijuana treatment

A qualifying physician may recommend that a patient be treated with medical marijuana if a physician-patient relationship has been established through all of the following:

- (1) A physical examination of the patient by the physician;
- (2) A review of the patient's medical history by the physician;
- (3) An expectation of providing care and receiving care on an ongoing basis.

In the case of a patient who is a minor, the qualifying physician may recommend treatment only after obtaining the consent of a parent or another person responsible for providing consent to treatment.¹⁹

Requirements when recommending medical marijuana treatment

When issuing a recommendation to a patient, the qualifying physician must specify both of the following:

- The one or more forms of medical marijuana that may be dispensed to the patient;
- The one or more methods by which the patient may use medical marijuana.

A recommendation issued in accordance with the bill's provisions is valid for a period of not more than 90 days. A physician may renew a recommendation for an additional period of not more than 90 days upon an examination of or follow-up

¹⁸ R.C. 3796.10.

¹⁹ R.C. 3796.10(B).

consultation with the patient. There is no limit on the number of times a recommendation may be renewed.²⁰

Physician record-keeping requirements

When recommending treatment with medical marijuana, a qualifying physician shall maintain a record for each patient that includes the following:

(1) The disease or condition for which treatment with medical marijuana has been recommended;

(2) The one or more reasons that treatment with medical marijuana was recommended for the patient rather than recommending another form of treatment;

(3) The one or more forms of or methods of using medical marijuana recommended for the patient.²¹

Physician reporting requirements

At intervals not exceeding 90 days, each qualifying physician must submit to the Commission a report containing all of the following information:

(1) The number of patients for whom the physician has recommended treatment with medical marijuana;

(2) The diseases or conditions for which the treatment has been recommended;

(3) The reasons that treatment with medical marijuana was recommended rather than recommending other forms of treatment. Information submitted in a report is limited to the 90-day period covered by the report.

Annually, each qualifying physician must submit to the Commission a report that describes the physician's observations regarding the effectiveness of medical marijuana in treating his or her patients. The report is limited to observations concerning patients treated during the year covered by the report.²²

²⁰ R.C. 3796.10(C).

²¹ R.C. 3796.10(D).

²² R.C. 3796.10(E).



Prohibition on physician furnishing medical marijuana

The bill prohibits a qualifying physician from personally furnishing or otherwise dispensing medical marijuana.²³

Patients authorized to possess and use medical marijuana

The bill provides that a patient who obtains medical marijuana from a licensed retail dispensary (see "**Licensed retail dispensaries**" below) may possess and use the marijuana.²⁴ The bill does not provide for the registration of patients.

Smoking

If the Commission specifies in rules that smoking is a method by which medical marijuana may be used, the bill prohibits a patient from smoking medical marijuana in any place of public accommodation.²⁵ A place of public accommodation includes any inn, restaurant, eating house, barbershop, public transportation, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public.²⁶

Licensure of cultivators, processors, retail dispensaries, and laboratories

An entity that seeks a license to cultivate, process, or dispense at retail medical marijuana or to conduct laboratory testing of medical marijuana must file an application for licensure with the Commission. The application must be submitted in accordance with rules adopted by the Commission.²⁷

Conditions on eligibility for licensure

The Commission will issue a license to an applicant if all of the following conditions are met:

(1) The applicant demonstrates that it does not have an ownership or investment interest in, or compensation arrangement with, a cultivator, processor, retail dispensary, or laboratory licensed by the Commission or with another applicant for licensure;

²³ R.C. 3796.10(F).

²⁴ R.C. 3796.22.

²⁵ See R.C. 4112.01.

²⁶ R.C. 3796.22(B).

²⁷ R.C. 3796.11.

(2) The applicant demonstrates that it will not be located within 500 feet of a school, church, public library, public playground, or public park;

(3) The report of each criminal records check conducted demonstrates that the person subject to the check has not been convicted of or pleaded guilty to any disqualifying offense specified in rules adopted by the Commission;

(4) The applicant meets all other licensure eligibility conditions established in rules adopted by the Commission.²⁸

Criminal records check requirements

As part of the application process, each of the following individuals associated with an entity seeking licensure must complete a criminal records check:

(1) An administrator or other person responsible for the daily operation of the entity;

(2) An owner or prospective owner, officer or prospective officer, or board member or prospective board member of the entity.²⁹

The process for completing a criminal records check provided for in the bill is the same process that applies to certain professionals under existing law.³⁰ The Commission is required to specify by rule the offenses that disqualify an applicant from licensure (see "**Program rules**" above). If an individual subject to the criminal records check requirement fails to complete the check, the Commission must deny the entity's application for licensure.

Authority to suspend or revoke a license

The bill authorizes the Commission to suspend or revoke a license for any reason specified in rules adopted by the Commission.³¹ An action to suspend or revoke a license must be taken in accordance with the Administrative Procedure Act.³²

²⁸ *Id.*

²⁹ R.C. 3796.12.

³⁰ R.C. 109.572.

³¹ R.C. 3796.13.

³² R.C. Chapter 119.

Licensed cultivators

The bill authorizes the holder of a cultivator license to cultivate medical marijuana and deliver it to a processor.³³

Prohibition on personal, family, or household use

The bill prohibits a cultivator license holder from cultivating medical marijuana for personal, family, or household use.

Licensed processors

The holder of a processor license may do any of the following:

- (1) Obtain medical marijuana from one or more licensed cultivators;
- (2) Process medical marijuana obtained from a cultivator into a form that may be dispensed, as those forms are specified in rules adopted by the Commission;
- (3) Deliver processed medical marijuana to one or more licensed retail dispensaries.³⁴

When processing medical marijuana, a licensed processor must package it according to the tamper-resistant standards specified in rules adopted by the Commission. The processor also must label the packaging with the product's tetrahydrocannabinol and cannabidiol³⁵ content in accordance with labeling requirements specified in rules adopted by the Commission.

Licensed retail dispensaries

The holder of a retail dispensary license may obtain medical marijuana from one or more processors and may dispense it to patients. When dispensing medical marijuana, the dispensary must do all of the following:

³³ R.C. 3796.18.

³⁴ R.C. 3796.19.

³⁵ The marijuana plant contains more than 80 active cannabinoid chemicals, including tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the main psychoactive cannabinoid in marijuana. Unlike THC, CBD does not produce euphoria or intoxication. *See* National Institutes of Health, National Institute on Drug Abuse, *The Biology and Potential Therapeutic Effects of Cannabidiol*, available at <<https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/biology-potential-therapeutic-effects-cannabidiol>>.

(1) Dispense only in accordance with a recommendation issued by a qualifying physician registered with the Commission;

(2) Report to the drug database maintained by the State Board of Pharmacy that medical marijuana was dispensed to a patient (see "**OARRS**" below);

(3) Use only employees who have met the training requirements established in rules adopted by the Commission.³⁶

Licensed laboratories

The holder of a laboratory license may obtain medical marijuana from licensed cultivators, processors, and retail dispensaries and may conduct testing on the marijuana. When testing, a licensed laboratory must test for potency, homogeneity, and contamination and prepare a report of test results.³⁷

Township or municipal corporation may prohibit or limit number of retail dispensaries

The bill authorizes the legislative authority of a municipal corporation to adopt an ordinance, and a board of township trustees to adopt a resolution, to prohibit, or limit the number of, licensed retail dispensaries of medical marijuana within the municipal corporation or within the unincorporated territory of the township.³⁸

Zoning of retail dispensaries

The legislative authority of a municipal corporation has authority under constitutionally granted home rule authority³⁹ and under continuing law⁴⁰ to adopt zoning ordinances regulating land and buildings within municipal boundaries. And, along with various other zoning powers, townships have authority under continuing law to regulate, by resolution, the location and use of buildings and other structures and the uses of land for trade or industry in the unincorporated area of the township.⁴¹

³⁶ R.C. 3796.20.

³⁷ R.C. 3796.21.

³⁸ R.C. 3796.29.

³⁹ Ohio Const., art. XVIII, sec. 3; *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259 (1980).

⁴⁰ R.C. 713.07 to 713.10.

⁴¹ R.C. 519.02, not in the bill.

Counties have similar zoning authority,⁴² but county zoning regulations may apply only in the unincorporated area of the county not covered by township zoning regulations.⁴³

Current law limits the power of counties and townships to zone land used for agricultural purposes. The bill provides that these existing limitations do not prohibit a county, through its rural zoning commission, board of county commissioners, or board of zoning appeals,⁴⁴ or a township, through its zoning commission, board of township trustees, or board of zoning appeals,⁴⁵ from regulating the location of retail dispensaries of medical marijuana or from prohibiting such dispensaries from being located in the unincorporated territory of the county or of the township, respectively.

Proximity to school, church, or certain public places

The bill prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, public library, public playground, or public park.⁴⁶

The bill requires an entity seeking a license to cultivate, process, or dispense at retail medical marijuana, or to conduct laboratory testing of medical marijuana, to demonstrate the entity will not be located within 500 feet of a school, church, public library, public playground, or public park in order to receive a license from the Medical Marijuana Control Commission.⁴⁷ The Commission must revoke the license of a cultivator, processor, retail dispensary, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park.⁴⁸

Finally, the bill requires the Commission to specify, by ruled adopted under the Administrative Procedure Act, if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or

⁴² R.C. 303.02, not in the bill.

⁴³ R.C. 303.22, except county zoning regulations will apply in an area covered by township zoning regulations upon vote of the majority of voters in the area.

⁴⁴ R.C. 303.21(D).

⁴⁵ R.C. 519.21(D).

⁴⁶ R.C. 3796.30(A).

⁴⁷ R.C. 3796.11(B)(4).

⁴⁸ R.C. 3796.30(A).



public park became established within 500 feet may remain in operation or must relocate or have its license revoked.⁴⁹

The bill defines the following terms for purposes of these provisions:⁵⁰

- "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.
- "Public library" means a library provided for under Ohio Public Libraries Law.
- "Public park" means a park established by the state or a political subdivision of the state including a county, township, municipal corporation, or park district.
- "Public playground" means a playground established by the state or a political subdivision of the state including a county, township, municipal corporation, or park district.
- "School" means:
 - A public or nonpublic primary school or secondary school;
 - A preschool, meaning any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children.
- A child day-care center, meaning any place in which child care or publicly funded child care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child care or publicly funded child care is provided for seven to twelve children at one time. In counting children, any children under six

⁴⁹ R.C. 3796.04(B)(14).

⁵⁰ R.C. 3796.30(B).



years of age who are related to a licensee, administrator, or employee and who are on the premises of the center are counted. "Child day-care center" does not include any of the following:

- A child day camp;
- A place located in and operated by a hospital that administers the needs of ill or injured children who are monitored under the on-site supervision of a licensed physician or licensed registered nurse;
- A place where an organized religious body provides child care that is not publicly funded to preschool-age and school-age children for not more than 30 days a year and a parent, custodian, or guardian of at least one child receiving child care is on the premises and readily accessible at all times.

Employment laws

Employment – generally

The bill provides that nothing in the bill concerning medical marijuana does any of the following:

(1) Requires an employer to accommodate an employee's use of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use of medical marijuana;

(3) Affects the authority of the Administrator of Workers' Compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the Administrator.⁵¹

Under continuing law, the Bureau of Workers' Compensation's Drug-Free Safety Program offers eligible employers a premium rebate for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and drugs. In addition to satisfying other requirements, the employer's program must include alcohol and drug testing, including (1) pre-employment and new-hire drug testing, (2) post-

⁵¹ R.C. 3796.28(A).

accident alcohol and drug testing, (3) reasonable suspicion alcohol and drug testing, and (4) return-to-duty and follow-up alcohol and other drug testing.⁵²

Unemployment eligibility

Under the bill, a person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause under the Unemployment Compensation Law.⁵³ If a person has been discharged for just cause in connection with the person's work, for purposes of that Law that person is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment. Under current law, failure of a drug test could be "just cause" for purposes of this provision.⁵⁴

Workers' compensation – rebuttable presumption

Eligibility

The Workers' Compensation Law compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. Under continuing law, an employee or dependent is ineligible if the employee's injury or occupational disease is purposely self-inflicted or is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance was the proximate cause of the injury.⁵⁵

The bill maintains an employee's or dependent's ineligibility for compensation and benefits if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury. This applies regardless of whether the marijuana use is recommended by a physician.⁵⁶

Rebuttable presumption – current law

Under continuing law, a rebuttable presumption is established if an employee is intoxicated or under the influence of a controlled substance not prescribed by a

⁵² Ohio Administrative Code 4123-17-58.

⁵³ R.C. 3796.28(B).

⁵⁴ R.C. 4141.29(D), not in the bill.

⁵⁵ R.C. 4123.54(A).

⁵⁶ R.C. 4123.54(A) to (F).

physician and being intoxicated or under the influence of that controlled substance proximately caused an injury if either of the following applies:

--A qualifying chemical test is administered and the employee tests above certain levels for alcohol or certain controlled substances, including cannabinoids.

--The employee refuses to submit to a chemical test on the condition that the employee is given notice that refusal to submit to a qualifying chemical test may affect the employee's eligibility for compensation and benefits.⁵⁷

Under current law, a chemical test is considered a "qualifying chemical test" if it is administered to an employee after an injury under at least one of the following conditions: (1) when the employee's employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician, (2) at a police officer's request because the officer has reasonable grounds to believe that the employee was operating a vehicle while intoxicated or under the influence of a controlled substance, or (3) at a physician's request.⁵⁸

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following:

--Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance;

--A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

--The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

--A report of use of alcohol or a controlled substance provided by a reliable and credible source;

⁵⁷ R.C. 4123.54(B).

⁵⁸ R.C. 4123.54(B) and (C).

--Repeated or flagrant violations of the safety or work rules of the employee's employer that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.⁵⁹

"Safe harbor" for the provision of banking services

Under the bill, a financial institution that provides financial services to any cultivator, processor, retail dispensary, or laboratory licensed under the bill is exempt from any Ohio criminal law an element of which may be proven by substantiating that a person provides financial services to a person who possesses, delivers, or manufactures marijuana or marijuana-derived products, *if* the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws.⁶⁰ The bill defines "financial institution" as:

--Any bank, trust company, savings and loan association, savings bank, or credit union or any affiliate, agent, or employee of such an institution;

--Any money transmitter licensed under Ohio law or any affiliate, agent, or employee of a money transmitter.⁶¹

For purposes of this exemption, a financial institution may request the Medical Marijuana Control Commission to provide the following information:

(1) Whether a person with whom the financial institution is seeking to do business is a cultivator, processor, retail dispensary, or laboratory licensed under the bill;

(2) The name of any other business or individual affiliated with the person;

(3) A copy of the application for a license under the bill, and any supporting documentation, that was submitted by the person;

(4) If applicable, information relating to sales and volume of product sold by the person;

⁵⁹ R.C. 4123.55(C)(2).

⁶⁰ R.C. 3796.27(B). The criminal laws referred to by the bill include offenses relating to the funding of drug or marijuana trafficking and, as they apply to violations of the Drug Offenses Law, the offenses of conspiracy and complicity.

⁶¹ R.C. 3796.27(A)(1).

(5) Whether the person is in compliance with the bill;

(6) Any past or pending violation of the bill by the person, and any penalty imposed on the person for the violation.

Notwithstanding the Public Records Law, the Commission must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.⁶²

Likewise, a financial institution may request the Department of Taxation to provide the following information:

(1) Whether a cultivator, processor, retail dispensary, or laboratory licensed under the bill with whom the financial institution is seeking to do business is in compliance with the applicable Ohio tax laws;

(2) Any past or pending violation by the person of those tax laws, and any penalty imposed on the person for the violation.

Notwithstanding the Public Records Law or any law relating to the confidentiality of tax return information, the Department must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.⁶³

Information received by a financial institution under the bill is confidential. Except as otherwise permitted by other state law or federal law, a financial institution is prohibited from making the information available to any person other than the customer to whom the information applies and any trustee, conservator, guardian, personal representative, or agent of that customer.⁶⁴

OARRS

The Ohio Automated Rx Reporting System, or OARRS, is the drug database established and maintained by the State Board of Pharmacy to monitor the misuse and diversion of controlled substances.⁶⁵ Existing law requires that when a controlled substance is dispensed by a pharmacy or personally furnished by a health care

⁶² R.C. 3796.27(C).

⁶³ R.C. 3796.27(D).

⁶⁴ R.C. 3796.27(E).

⁶⁵ R.C. 4729.75.

professional to an outpatient, this information must be reported to OARRS. Health care professionals and pharmacists also may access patient information in the database.⁶⁶

Reporting to OARRS

The bill authorizes the Board of Pharmacy to monitor medical marijuana through OARRS, by requiring that a retail dispensary or its delegate report to OARRS when dispensing medical marijuana in accordance with the bill's provisions.⁶⁷ Under the bill, a dispensary must report all of the following to the database:

- (1) Retail dispensary identification;
- (2) Patient identification;
- (3) Recommending physician identification;
- (4) Date of physician recommendation;
- (5) Date marijuana was dispensed;
- (6) Form, quality, and clinical strength of marijuana dispensed;
- (7) Quantity of marijuana dispensed;
- (8) Number of days' supply of marijuana dispensed.

Access to patient information

The bill also permits the Board to provide to a delegate of a retail dispensary a report of information from OARRS relating to a patient, if the delegate requests the report and certifies in a form specified by the Board that the information requested is for the purpose of distributing medical marijuana for use in accordance with the bill's provisions and if the delegate or retail dispensary has not been denied access to OARRS. While it permits retail dispensaries to access OARRS, the bill does not require them to do so.

Board of Pharmacy reports

Under existing law, the Board must report biennially to the standing committees of the General Assembly primarily responsible for considering health issues information from the Board, prescribers, and pharmacies regarding the Board's

⁶⁶ R.C. 4729.80.

⁶⁷ R.C. 4729.75 and 4729.771.

effectiveness in providing information from OARRS. The bill requires that this report also include information from retail dispensaries licensed to dispense medical marijuana.

Current law also requires that the Board submit a semiannual report to the Governor, General Assembly, and various agencies or departments of state government that includes an aggregate of information regarding prescriptions for controlled substances containing opioids, as well as opioids personally furnished by prescribers. Under the bill, the Medical Marijuana Control Commission is to receive a copy of the report. The bill also requires that the report contain an aggregate of information relating to medical marijuana, including the following:

- (1) The number of retail dispensaries that dispensed marijuana;
- (2) The number of patients to whom marijuana was dispensed;
- (3) The average supply of marijuana dispensed at one time;
- (4) The average daily dose of marijuana dispensed.⁶⁸

Conforming changes

Because the bill authorizes the Pharmacy Board to monitor medical marijuana through its database and requires that retail dispensaries report to OARRS, it makes several conforming changes to the law governing the OARRS Program.⁶⁹

Legislative intent

Excise tax

The bill provides that the General Assembly intends to enact law levying an excise tax on each transaction by which medical marijuana is dispensed to a patient in accordance with the bill's provisions. In addition to levying the tax, the General Assembly intends for the law to subject persons dispensing medical marijuana to all customary nondiscriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon Ohio businesses, their gross or net revenues, their operations, their owners, and their property.⁷⁰

⁶⁸ R.C. 4729.85.

⁶⁹ R.C. 4729.81, 4729.82, 4729.83, 4729.84, and 4729.86.

⁷⁰ Section 4.



Marijuana drug abuse prevention programs

The bill requires that the Commission determine for each fiscal year an amount it considers necessary to fund marijuana drug abuse prevention programs. The amount determined by the Commission must be appropriated for that purpose from excise tax revenues and from license application and renewal fees established in rules adopted by the Commission.⁷¹

Reclassification as schedule II controlled substance

The bill specifies that the General Assembly declares its intent to recommend that the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Agency take actions as necessary to classify marijuana as a schedule II controlled substance in an effort to ease the regulatory burdens associated with research on the potential medical benefits of marijuana.⁷²

Incentives for academic and medical research

The bill provides that the General Assembly declares its intent to establish a program to provide incentives or otherwise encourage institutions of higher education and medical facilities within Ohio to conduct academic and medical research relating to medical marijuana.⁷³

HISTORY

ACTION	DATE
Introduced	04-14-16

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⁷¹ *Id.*

⁷² Section 5.

⁷³ Section 6.

