



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. H.B. 523\***

131st General Assembly

(As Reported by S. Government Oversight & Reform)

**Reps.** Huffman, Schuring, Ramos, Brown, Celebrezze, Maag, Perales, Rogers, Ruhl, Terhar

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## **BILL SUMMARY**

### **Medical Marijuana Control Program**

- Requires that the Ohio Department of Commerce and State Board of Pharmacy administer a Medical Marijuana Control Program.
- Establishes the Medical Marijuana Advisory Committee and authorizes it to make recommendations concerning the Medical Marijuana Control Program to the Department of Commerce, Board of Pharmacy, and State Medical Board.
- Abolishes the Advisory Committee five years and 30 days after the bill's effective date.
- Permits a patient, on the recommendation of a physician, to use medical marijuana to treat a qualifying medical condition.
- Authorizes the Board of Pharmacy to register patients and caregivers and to issue licenses to medical marijuana retail dispensaries.
- Authorizes the Department of Commerce to issue licenses to medical marijuana cultivators, processors, and testing laboratories.
- Authorizes the Medical Board to issue certificates to physicians seeking to recommend treatment with medical marijuana.
- Prohibits the cultivation of medical marijuana for personal, family, or household use.

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\* This analysis was prepared before the committee report appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Prohibits the smoking or combustion of medical marijuana.

## **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.
- Provides that agricultural use zoning limitations that apply to townships do not prohibit a township from regulating the location of retail dispensaries or prohibiting the dispensaries from being located in the unincorporated territory of the township.
- Prohibits a cultivator, processor, retail dispensary, or laboratory from being located or relocating within 500 feet of a school, church, public library, public playground, or public park.
- Requires that the Department of Commerce or Board of Pharmacy specify whether a license holder may remain in operation, must relocate, or have its license revoked after a school, church, public library, public playground, or public park opens within 500 feet of the license holder's premises.

## **Employment laws**

- Provides that nothing in the bill requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana; prohibits an employer from taking any adverse employment action an employer may take under current law because of a person's use, possession, or distribution of medical marijuana; or permits a person to sue an employer for taking an adverse employment action related to medical marijuana.
- Provides that nothing in the bill prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy or interferes with federal restrictions on employment, including U.S. Department of Transportation regulations.
- Considers a person who is discharged from employment because of the person's medical marijuana use to have been discharged for just cause under the Unemployment Compensation Law if the use violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating medical marijuana use 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.

## Tax laws

- Requires that land used to cultivate or process medical marijuana be taxed based on fair market value rather than current agricultural use value (CAUV).

## 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.
- Authorizes the Director of Commerce to adopt rules that establish a closed-loop payment processing system under which the state creates accounts to be used only by registered patients and caregivers at licensed retail dispensaries and by other licensed entities.

## OARRS

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

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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.<sup>1</sup> 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

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



state laws legalizing marijuana for medical purposes so long as the states strongly enforce their own laws.<sup>2</sup>

### **Definition**

Under the bill, marijuana has the same meaning as marihuana, as defined under existing Ohio law.<sup>3</sup> 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.<sup>4</sup> "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 stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.<sup>5</sup>

The bill defines "medical marijuana" as marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.<sup>6</sup>

### **Schedule II**

Although marijuana is classified as a schedule I controlled substance, for the purposes of this bill, medical marijuana is a schedule II controlled substance.<sup>7</sup> According to the U.S. Drug Enforcement Administration, a schedule I controlled substance has all of the following characteristics: no currently accepted medical use, a lack of accepted safety for use under medical supervision, and a high potential for abuse. A schedule II controlled substance is considered to have a high potential for abuse.<sup>8</sup>

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

<sup>3</sup> R.C. 3796.01.

<sup>4</sup> R.C. 3719.01.

<sup>5</sup> *Id.*

<sup>6</sup> R.C. 3796.01.

<sup>7</sup> *Id.*

<sup>8</sup> See <<http://www.deadiversion.usdoj.gov/schedules/>>.



## Medical Marijuana Control Program

The bill requires that the Department of Commerce and State Board of Pharmacy establish a Medical Marijuana Control Program to provide for the following:<sup>9</sup>

- (1) The licensure of medical marijuana cultivators, processors, and retail dispensaries;
- (2) The registration of patients and caregivers;
- (3) The licensure of laboratories that test medical marijuana.

Under the bill, the Department of Commerce is responsible for the licensure of cultivators, processors, and testing laboratories, while the Board of Pharmacy is charged with the licensure of retail dispensaries and the registration of patients and caregivers. In the case of physicians, the State Medical Board is to issue certificates to those seeking to recommend treatment with medical marijuana.<sup>10</sup>

### Program rules

Not later than one year after the bill's effective date, the Department of Commerce and Board of Pharmacy must separately adopt rules establishing standards and procedures for the portions of the Program each is responsible for administering.<sup>11</sup> The rules must be adopted in accordance with the Administrative Procedure Act and do all of the following:

- (1) Establish application procedures and fees for licenses and registrations;
- (2) Specify the conditions that must be met to be eligible for licensure;
- (3) Establish a license or registration renewal schedule, renewal procedures, and renewal fees;
- (4) Specify reasons for which a license or registration may be suspended, including without prior hearing, revoked, or may not be renewed or issued and reasons for which a civil penalty may be imposed on a license holder;

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<sup>9</sup> R.C. 3796.02.

<sup>10</sup> R.C. 4731.30.

<sup>11</sup> R.C. 3796.03 and 3796.04.



(5) Establish standards under which a license or registration suspension may be lifted;

(6) Specify whether a license holder 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 500 feet of the premises of a license holder.

(7) Specify (a) the criminal offenses for which an applicant will be disqualified from licensure and for which a person will be disqualified from employment with a license holder and (b) which of those criminal offenses are not disqualifiers if the applicant or person seeking employment was convicted of or pleaded guilty to the offense more than five years before the date the application is filed or the employment begins.

### **Department rules**

The bill requires that the Department adopt rules regarding the licensure of cultivators not later than 240 days after the bill's effective date.

The Department also must adopt rules establishing the number of cultivator licenses permitted at any one time and the standards and procedures for the testing of medical marijuana. With respect to the number of cultivator licenses, the Board must consider Ohio's population and the number of patients seeking to use medical marijuana.

In the case of medical marijuana testing, the Department must do all of the following:

- (1) Specify when testing must be conducted;
- (2) Determine the minimum amount of medical marijuana that must be tested;
- (3) Specify the manner in which testing is to be conducted in an effort to ensure uniformity of medical marijuana products processed for and dispensed to patients;
- (4) Specify the manner in which test results are provided.

### **Board of Pharmacy rules**

The Board of Pharmacy must adopt rules that do all of the following:

- (1) Establish procedures for the registration of patients and caregivers and requirements that must be met to be eligible for registration;





(2) Establish procedures for the issuance of patient or caregiver registration cards;

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

(4) Establish a program to assist patients who are veterans or indigent in obtaining medical marijuana in accordance with the bill's provisions;

(5) Specify the forms of or methods of using medical marijuana that are attractive to children;

(6) Specify, by form and tetrahydrocannabinol content, a maximum 90 day supply of medical marijuana that may be possessed;

(7) Specify the paraphernalia or other accessories that may be used in the administration to a registered patient of medical marijuana;

(8) Establish the number of retail dispensary licenses that will be permitted at any one time.

When establishing the number of retail dispensary licenses, the Board of Pharmacy must consider Ohio's population, the number of patients seeking to use medical marijuana, and the geographic distribution of dispensary sites in an effort to ensure patient access to medical marijuana.

The bill also authorizes the Department and Board of Pharmacy to separately adopt any other rules each considers necessary for the portions of the Program each is responsible for administering and for the implementation and enforcement of the bill's provisions. When adopting any rules regarding the Program, the Department and Board must each consider standards and procedures that have been found to be best practices relative to the use and regulation of medical marijuana.

### **Timeline**

The bill requires that the Department of Commerce and Board of Pharmacy take all actions necessary to ensure that the Program is fully operational not later than two years after the bill's effective date.<sup>12</sup>

### **Medical Marijuana Advisory Committee**

The bill establishes the Medical Marijuana Advisory Committee and authorizes it to develop and submit to the Department of Commerce, Board of Pharmacy, and

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<sup>12</sup> Section 3.

Medical Board any recommendations related to the Medical Marijuana Control Program.<sup>13</sup> Under the bill, the Committee ceases to exist five years and thirty days after the bill's effective date.

The Committee consists of the following 14 members:

(1) Two members who are practicing pharmacists, at least one of whom supports the use of marijuana for medical purposes and at least one of whom is a member of the Board of Pharmacy;

(2) Two members who are practicing physicians, at least one of whom supports the use of marijuana for medical purposes and at least one of whom is a member of the State Medical Board;

(3) A member who represents local law enforcement;

(4) A member who represents employers;

(5) A member who represents labor;

(6) A member who represents persons involved in mental health treatment;

(7) A member who is a nurse;

(8) A member who represents caregivers;

(9) A member who represents patients;

(10) A member who represents agriculture;

(11) A member who represents persons involved in the treatment of alcohol and drug addiction;

(12) A member who engages in academic research.

### **Appointments**

Appointments to the Committee must be made not later than 30 days after the bill's effective date. Not more than six members may be of the same political party. The Governor appoints the physician and pharmacist members along with the members who represent employers, agriculture, and persons involved in the treatment of drug and alcohol addiction. The Senate President appoints the member representing local

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<sup>13</sup> R.C. 3796.021.



law enforcement and the member representing caregivers, while the Senate Minority Leader appoints the member who is a nurse. The Speaker of the House of Representatives appoints the member representing patients and the member who represents persons involved in mental health treatment. The House Minority Leader appoints the member representing persons involved in mental health treatment.

### **Terms of membership**

Each member serves from the date of appointment until the Committee ceases to exist, except that members serve at the pleasure of the appointing authority. Vacancies are to be filled in the same manner as original appointments.

### **Chairperson, compensation, and meetings**

The Governor is to select a member of the Committee to serve as its chairperson. Each member receives a per diem compensation set by the Director of the Ohio Department of Administrative Services,<sup>14</sup> as well as actual and necessary travel expenses in connection with committee meetings and business.

Under the bill, the Committee must hold its initial meeting not later than 30 days after the last member of the Committee is appointed. The bill specifies that the Committee is not subject to the law governing the sunset review of agencies.<sup>15</sup>

### **Qualifying medical conditions**

The bill provides that medical marijuana may be recommended only for the treatment of a qualifying medical condition.<sup>16</sup> Under the bill, all of the following are qualifying medical conditions: AIDS, amyotrophic lateral sclerosis, Alzheimer's disease, cancer, chronic traumatic encephalopathy, Crohn's disease, epilepsy or another seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis, pain that is either chronic and severe or intractable, Parkinson's disease, positive status for HIV, post-traumatic stress disorder, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury, and ulcerative colitis.<sup>17</sup>

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<sup>14</sup> R.C. 124.15.

<sup>15</sup> See R.C. 101.82 to 101.87.

<sup>16</sup> R.C. 4731.30.

<sup>17</sup> R.C. 3796.01.



The bill also authorizes an individual to petition the Medical Board to add a disease or condition to the list of qualifying medical conditions.<sup>18</sup> When reviewing a petition, the Medical Board must do all of the following:

(1) Consult with one or more experts who specialize in the study of the disease or condition;

(2) Review any relevant medical or scientific evidence pertaining to the disease or condition;

(3) Consider whether conventional medical therapies are insufficient to treat or alleviate the disease or condition;

(4) Review evidence supporting the use of medical marijuana to treat or alleviate the disease or condition;

(5) Review any letters of support provided by physicians with knowledge of the disease or condition, including any letter provided by a physician treating the petitioner.

Following its review, the Medical Board must either approve or deny the petition.

### **Permissible forms and methods of medical marijuana**

The bill permits only the following forms of medical marijuana: oils, tinctures, plant material, edibles, patches, and any other form approved by the Board of Pharmacy. The bill prohibits any form or method considered attractive to children, as specified in rules adopted by the Board.<sup>19</sup>

Under the bill, an individual may petition the Board of Pharmacy to approve an additional form or method of using medical marijuana. On receipt of a petition, the Board must consult with one or more scientific experts and review any relevant scientific evidence. The Board must then approve or deny the petition.<sup>20</sup>

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<sup>18</sup> R.C. 4731.302.

<sup>19</sup> R.C. 3796.04 and 3796.06.

<sup>20</sup> R.C. 3796.061.

## **Tetrahydrocannabinol content**

The bill specifies that plant material have a tetrahydrocannabinol (THC) content of not more than 35%, while extracts have a THC content of not more than 70%.<sup>21</sup>

## **Smoking prohibition**

The bill expressly prohibits the use of medical marijuana by smoking or combustion, but allows for vaporization.<sup>22</sup>

## **Patient and caregiver registration**

A patient seeking to use medical marijuana or a caregiver seeking to assist a patient in the use of medical marijuana must apply to the Board of Pharmacy for registration.<sup>23</sup> The physician who holds a certificate to recommend issued by the Medical Board and is treating the patient must submit the application on the patient's or caregiver's behalf in the manner established in rules adopted by the Board.

An application must include a statement from the physician certifying all of the following:

(1) That a bona fide physician-patient relationship exists between the physician and patient;

(2) That the patient has been diagnosed with a qualifying medical condition;

(3) That the physician or physician's delegate has requested from the Board of Pharmacy's Ohio Automated Rx Reporting System (OARRS) a report of information related to the patient that covers at least the 12 months immediately preceding the date of the report;

(4) That the physician has informed the patient of the risks and benefits of medical marijuana as it pertains to the patient's qualifying medical condition and medical history;

(5) That the physician has informed the patient that it is the physician's opinion that the benefits of medical marijuana outweigh its risks.

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<sup>21</sup> R.C. 3796.06.

<sup>22</sup> R.C. 3796.06.

<sup>23</sup> R.C. 3796.08.



In the case of a patient, the application must also include the name or names of the one or more caregivers that will assist the patient in the use or administration of medical marijuana. In the case of a caregiver, the application also must include the name of the patient or patients that the caregiver seeks to assist.

If the application is complete and meets the requirements established in rules, the Board of Pharmacy must register the patient or caregiver and issue to the patient or caregiver an identification card.

### **Renewals**

A registration expires according to the renewal schedule established in rule and may be renewed in accordance with procedures established in those rules.

### **Suspension, revocation, or refusal to renew**

The bill authorizes the Board of Pharmacy to suspend, including without prior hearing, revoke, or refuse to renew or issue a registration for any of the reasons specified in rules adopted by the Board.<sup>24</sup> Any action to suspend, revoke, or refuse to renew a registration must be taken in accordance with the Administrative Procedure Act.<sup>25</sup> The bill provides that the Board of Pharmacy may utilize a telephone conference call to review any allegations and take a vote.

### **Authority to place medical marijuana under seal**

The bill authorizes the Board of Pharmacy to place under seal all medical marijuana owned by or in the possession, custody, or control of a registered patient or caregiver if the Board does all of the following:

- (1) Suspends, revokes, or refuses to renew the patient's or caregiver's registration;
- (2) Determines that there is clear and convincing evidence of a danger of immediate and serious harm to any person.<sup>26</sup>

The Board must not dispose of the medical marijuana placed under seal until the registrant exhausts all appeal rights under the Administrative Procedure Act. The court involved in the appeal may order the Board, during the pendency of the appeal, to sell medical marijuana that is perishable. The Board must deposit the sale's proceeds with the court.

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<sup>24</sup> R.C. 3796.04 and 3796.14.

<sup>25</sup> R.C. Chapter 119.

<sup>26</sup> R.C. 3796.15.

## **Patient identifying information**

The bill prohibits the Board of Pharmacy from making public any information reported to or collected by it for the purposes of registering patients or caregivers that identifies or would tend to identify any specific patient.<sup>27</sup>

The bill also provides that information collected by the Board as part of the registration process is confidential and is not a public record. The bill permits the Board to share identifying information with a licensed retail dispensary for the purpose of confirming that a person has a valid registration. The bill also allows information that does not identify a person to be released in summary, statistical, or aggregate form.

## **Authority to use, possess, or administer medical marijuana**

The bill authorizes a registered patient to use or possess medical marijuana or possess any paraphernalia or accessories specified in Board of Pharmacy rules. The bill authorizes a caregiver to possess or assist a registered patient in the use or administration of medical marijuana or possess any paraphernalia or accessories specified in Board of Pharmacy rules.<sup>28</sup>

### **Possession limits**

Under the bill, the amount of medical marijuana possessed by a registered patient or caregiver must not exceed a 90-day supply, as specified in Board of Pharmacy rules. In the case of a registered caregiver who provides care to more than one registered patient, the caregiver must maintain separate inventories of medical marijuana for each patient.<sup>29</sup>

### **Protection from arrest and criminal prosecution**

The bill provides that a registered patient or caregiver is not subject to arrest or criminal prosecution for any of the following actions done in accordance with the bill's provisions:

- (1) In the case of a registered patient, using medical marijuana;
- (2) Obtaining or possessing medical marijuana;
- (3) Possessing specified paraphernalia or accessories;

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<sup>27</sup> R.C. 3796.08.

<sup>28</sup> R.C. 3796.22 and 3796.23.

<sup>29</sup> R.C. 3796.22 and 3796.23.



(4) In the case of a registered caregiver, assisting a registered patient in the use or administration of medical marijuana.

### **Affirmative defense**

The bill establishes for a patient, under specified conditions, an affirmative defense to a criminal charge of knowingly obtaining, possessing, or using marijuana and to a criminal charge of knowingly using or possessing marijuana drug paraphernalia.<sup>30</sup> It also extends the affirmative defense to a parent or guardian of a minor patient.

To raise the affirmative defense established under the bill, a physician must have issued a written recommendation for the patient certifying all of the following:

(1) That a bona fide physician-patient relationship exists between the physician and patient;

(2) That the patient has been diagnosed with a qualifying medical condition;

(3) That the physician or physician delegate requested from OARRS a report of information related to the patient that covers at least the 12 months immediately preceding the date of the report;

(4) That the physician has informed the patient or the patient's parent or guardian that it is the physician's opinion that the benefits of medical marijuana outweigh its risks.

Additionally, the patient must have used or possessed medical marijuana or the parent or guardian must have possessed medical marijuana only in a form or method in accordance with the bill's provisions.

The bill specifies that the affirmative defense may be raised only for conduct occurring on or after the bill's effective date, but not later than 60 days after the Board of Pharmacy begins accepting applications for patient or caregiver registrations.

The bill also provides that it does not establish for a parent or guardian of a patient an affirmative defense to a criminal charge relating to the use of medical marijuana, unless the parent or guardian is also a patient who meets the foregoing requirements.

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<sup>30</sup> Section 7 and R.C. 2925.11 and 2925.141.



### **Operating a vehicle**

The bill does not authorize a registered patient to operate a vehicle, streetcar, trackless trolley, watercraft, or aircraft while under the influence of medical marijuana.<sup>31</sup>

### **Field sobriety test**

The bill provides that a person's status as a registered patient or caregiver is not a sufficient basis for conducting a field sobriety test on the person or for suspending the person's driver's license. The bill specifies that to conduct a field sobriety test, a law enforcement officer must have an independent, factual basis giving reasonable suspicion that the person is operating a vehicle under the influence of marijuana or with a prohibited concentration of marijuana in the person's whole blood, blood serum, plasma, breath, or urine.<sup>32</sup>

### **Prohibition on caregiver use**

The bill prohibits a registered caregiver from using medical marijuana, unless the caregiver is also a registered patient.<sup>33</sup>

### **Parental rights and responsibilities**

The bill provides that, unless there is clear and convincing evidence that a child is unsafe, the use, possession, or administration of medical marijuana by a registered patient in accordance with the bill's provisions cannot be the sole or primary basis for any of the following:

- (1) An adjudication determining that a child is an abused, neglected, or dependent child;
- (2) An allocation of parental rights and responsibilities;
- (3) A parenting time order.<sup>34</sup>

### **Transplant waiting list and other medical care**

The bill provides that the use or possession of medical marijuana by a registered patient in accordance with the bill's provisions cannot be used as a reason for

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<sup>31</sup> R.C. 3796.22.

<sup>32</sup> R.C. 3796.24.

<sup>33</sup> R.C. 3796.23.

<sup>34</sup> R.C. 2151.28, not in the bill, 3109.04, not in the bill, 3109.051, not in the bill, 3109.12, not in the bill, and 3796.24.



disqualifying the patient from medical care or from including the patient on a transplant waiting list.<sup>35</sup>

### **Tenant protection**

The bill provides that a person's status as a registered patient or caregiver is not to be used as the sole or primary basis for rejecting the person as a tenant, unless the rejection is required by federal law.<sup>36</sup>

### **Patient reciprocity agreements**

The bill requires that the Board of Pharmacy attempt in good faith to negotiate and enter into reciprocity agreements with other states under which medical marijuana registry identification cards or equivalent authorizations issued by the other states are recognized in Ohio.<sup>37</sup>

Before entering into an agreement with another state, the Board must determine that both of the following apply:

(1) The eligibility requirements imposed by the other state in order to obtain a registry identification card are substantively comparable to Ohio's requirements;

(2) The other state recognizes a patient or caregiver registration and identification card issued under the bill's provisions.

If a reciprocity agreement is reached with another state, the card or equivalent authorization issued by the other state is recognized and accepted as valid in Ohio. It grants the patient or caregiver the same right to use, possess, obtain, or administer medical marijuana in Ohio as a patient or caregiver registered in accordance with the bill's provisions.

The bill grants the Board authority to adopt rules as necessary to implement the bill's provisions regarding reciprocity agreements.

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<sup>35</sup> R.C. 3796.24.

<sup>36</sup> R.C. 3796.24.

<sup>37</sup> R.C. 3796.16.

### **Assistance for veteran or indigent patients**

The bill requires that the Board of Pharmacy establish a program to assist patients who are veterans or indigent in obtaining medical marijuana.<sup>38</sup>

### **Use, possession, or administration on federal land**

The bill specifies that it does not permit the use, possession, or administration of medical marijuana on federal land located in Ohio.<sup>39</sup>

### **Forfeiture or seizure of patient or caregiver property**

The bill provides that the use, possession, or administration of medical marijuana in accordance with the bill's provisions cannot be used as the sole or primary reason for taking any action under any criminal or civil statute in the forfeiture or seizure of any property or asset.<sup>40</sup>

### **Physician certificate to recommend**

A physician seeking to recommend treatment with medical marijuana must apply to the State Medical Board for a certificate to recommend.<sup>41</sup> An application must be submitted in a manner established in rules adopted by the Medical Board.<sup>42</sup> The Medical Board must issue a certificate to recommend if both of the following conditions are met:

(1) The application is complete and meets the requirements established in rules;

(2) The applicant demonstrates that he or she does not have an ownership or investment interest in, or a compensation arrangement with, a licensed cultivator, processor, laboratory, or retail dispensary or an applicant for licensure.

### **Renewals**

A registration expires according to the renewal schedule established in rules adopted by the Medical Board and may be renewed in accordance with the procedures established in those rules.

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<sup>38</sup> R.C. 3796.04.

<sup>39</sup> R.C. 3796.24.

<sup>40</sup> R.C. 3796.24.

<sup>41</sup> R.C. 4731.30.

<sup>42</sup> R.C. 4731.301.

## Physician discipline

In the event a physician fails to comply with the bill's requirements, the bill authorizes the Medical Board to take the same disciplinary actions against the physician's certificate to recommend as against a certificate to practice.<sup>43</sup> These include the suspension or revocation of or the refusal to renew the certificate.

The bill also authorizes the Medical Board to impose on a physician holding a certificate to recommend a civil penalty in an amount not to exceed \$20,000. The Board must do so pursuant to an adjudication and an affirmative vote of at least six Board members.<sup>44</sup>

The bill specifies that any disciplinary action taken against a physician's certificate to practice operates automatically on the physician's certificate to recommend. The action taken on the certificate to recommend remains in effect for as long as the disciplinary action remains in effect on the certificate to practice.<sup>45</sup>

## Authority to recommend medical marijuana treatment

A physician who holds a certificate to recommend may recommend that a patient be treated with medical marijuana if the patient has been diagnosed with a qualifying medical condition (see "**Qualifying medical condition**" above) and a bona fide physician-patient relationship has been established through all of the following:

- (1) An in-person 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.

The bill also requires that the physician both request a report of information related to the patient from OARRS that covers at least the 12 months immediately preceding the date of the report and review the report.

In the case of a patient who is a minor, the physician may recommend treatment with medical marijuana only after obtaining the consent of a parent or another person responsible for providing consent to treatment.<sup>46</sup>

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<sup>43</sup> R.C. 4731.22.

<sup>44</sup> R.C. 4731.225, not in the bill.

<sup>45</sup> R.C. 4731.229.

<sup>46</sup> R.C. 4731.30.



## **Requirements when recommending medical marijuana treatment**

When issuing a written recommendation to a patient, the physician must specify any information required in rules adopted by the Medical Board.

A written recommendation issued in accordance with the bill's provisions is valid for a period of not more than 90 days. The physician may renew the recommendation for not more than three additional periods of not more than 90 days. Thereafter, the physician may issue another recommendation to the patient only upon a physical examination of the patient.<sup>47</sup>

### **Physician immunity**

The bill provides that a physician is immune from civil liability and is not subject to professional disciplinary action or criminal prosecution for any of the following:

- (1) Advising a patient or caregiver about the risks and benefits of medical marijuana;
- (2) Recommending that a patient use medical marijuana;
- (3) Monitoring a patient's treatment with medical marijuana.<sup>48</sup>

### **Physician reporting requirements**

Annually, each qualifying physician must submit to the Medical Board 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.<sup>49</sup>

### **Continuing medical education**

The bill requires that each physician holding a certificate to recommend annually complete at least two hours of continuing medical education in medical marijuana approved by the State Medical Board.<sup>50</sup>

The bill further requires that the Board approve one or more continuing medical education courses of study that assist physicians in both of the following:

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<sup>47</sup> R.C. 4731.30.

<sup>48</sup> R.C. 4731.30.

<sup>49</sup> R.C. 4731.30.

<sup>50</sup> R.C. 4731.30.



- (1) Diagnosing qualifying medical conditions;
- (2) Treating qualifying medical conditions with medical marijuana.

The Board may approve a course or courses of study certified by the Ohio State Medical Association or the Ohio Osteopathic Association.

### **Exemption for research physicians**

The bill exempts from the certificate to recommend requirement a physician who recommends treatment with marijuana or a drug derived from marijuana under any of the following that is approved by an investigational review board or equivalent entity, the U.S. Food and Drug Administration, or the National Institutes of Health or one of its cooperative groups or centers under the U.S. Department of Health and Human Services:

- (1) A research protocol;
- (2) A clinical trial;
- (3) An investigational new drug application;
- (4) An expanded access submission.<sup>51</sup>

### **Standard of care**

The bill requires that the Medical Board adopt rules establishing for physicians the minimal standards of care when recommending treatment with medical marijuana.<sup>52</sup>

### **Prohibitions**

#### **Furnishing medical marijuana**

The bill prohibits a physician from personally furnishing or otherwise dispensing medical marijuana.<sup>53</sup>

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<sup>51</sup> R.C. 4731.30.

<sup>52</sup> R.C. 4731.301.

<sup>53</sup> R.C. 4731.30.

### **Issuing a recommendation to a family member or the physician's self**

The bill prohibits a physician from issuing a recommendation for medical marijuana for a family member or the physician's self.<sup>54</sup>

### **Medical Board rulemaking**

Not later than one year after the bill's effective date, the Medical Board must adopt rules establishing all of the following:

- (1) The procedures when applying for a certificate to recommend;
- (2) The conditions that must be met to be eligible for a certificate to recommend;
- (3) The schedule and procedures for renewing a certificate to recommend;
- (4) The reasons for which a certificate may be suspended or revoked;
- (5) The standards under which a certificate suspension may be lifted.<sup>55</sup>

The rules must be adopted in accordance with the Administrative Procedure Act.<sup>56</sup>

The bill also provides that the Medical Board may adopt any other rules it considers necessary, which may include rules specifying the information that must be included in a written recommendation.

### **Licensure of cultivators, processors, retail dispensaries, and laboratories**

An entity that seeks a license to cultivate or process medical marijuana or to conduct laboratory testing of medical marijuana must file an application for licensure with the Department of Commerce. An entity that seeks a license to dispense medical marijuana at retail must file an application with the Board of Pharmacy. An application for a cultivator, processor, or laboratory license must be submitted in accordance with rules adopted by the Department of Commerce, while an application for a retail dispensary license must be submitted in accordance with rules adopted by the Board of

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<sup>54</sup> R.C. 4731.30.

<sup>55</sup> R.C. 4731.301.

<sup>56</sup> R.C. Chapter 119.

Pharmacy.<sup>57</sup> Each entity must submit an application for each location from which it seeks to operate.

### **Conditions on eligibility for licensure**

A license will be issued 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 laboratory licensed by the Department of Commerce or with an applicant for a license to conduct laboratory testing;

(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 is not disqualified because of a conviction or guilty plea to an offense specified in rules;

(4) The information provided to the Department or Board of Pharmacy by the Ohio Department of Taxation demonstrates that the applicant is in compliance with state tax laws;

(5) The applicant meets all other licensure eligibility conditions established in rules.<sup>58</sup>

### **Compliance with state tax laws**

The bill requires the Department of Taxation to provide, on the request of the Department of Commerce or Board of Pharmacy, all of the following information regarding an applicant for licensure:

(1) Whether the applicant is in compliance with applicable state tax laws;

(2) Any past or pending violation by the applicant of those tax laws and any penalty imposed on the applicant for the violation.<sup>59</sup>

The bill provides that the Department of Commerce or Board can request information only as it pertains to an application for licensure that the Department or Board, as applicable, is reviewing. The Department of Taxation may charge the

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<sup>57</sup> R.C. 3796.09 and 3796.10.

<sup>58</sup> R.C. 3796.09, 3796.10, and 3796.11.

<sup>59</sup> R.C. 3796.11.





Department of Commerce or Board a reasonable fee to cover the administrative cost of providing the information.

The bill specifies that the information received is confidential and provides that the Department of Commerce or Board cannot make the information available to any person other than the applicant for licensure.

### **Criminal records check requirements**

#### *For prospective licensees*

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.<sup>60</sup>

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.<sup>61</sup> The Department and Board of Pharmacy are required to specify in 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 Department or Board of Pharmacy must deny the entity's application for licensure.

#### *For employees of licensees*

The bill requires that each person seeking employment with a licensed cultivator, processor, laboratory, or retail dispensary complete a criminal records check.<sup>62</sup> It also prohibits a license holder from employing a person unless the person complies with the criminal records check requirement and the check demonstrates that the person is not disqualified because of a conviction or guilty plea to an offense specified in rules.

### **Minority benchmarks**

The bill requires that the Department of Commerce and Board of Pharmacy each issue not less than 15% of licenses to entities that are owned or operated by individuals who are members of one of the following economically disadvantaged groups:

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<sup>60</sup> R.C. 3796.12.

<sup>61</sup> R.C. 109.572.

<sup>62</sup> R.C. 3796.13, 4776.01, 4776.02, 4776.03, and 4776.04.

- (1) Blacks or African-Americans;
- (2) American Indians;
- (3) Hispanics or Latinos;
- (4) Asians.

However, if no applications or an insufficient number of applications are submitted by entities that meet the conditions for licensure, the Department and Board of Pharmacy each must issue licenses according to usual procedures.<sup>63</sup>

### **Authority to suspend or revoke a license**

The bill authorizes the Department of Commerce or Board of Pharmacy to suspend, including without prior hearing, revoke, or refuse to renew a license it issued for any reason specified in rules adopted by the Department or Board.<sup>64</sup> The bill also provides that the Department or Board may refuse to issue a license. An action to suspend or revoke a license must be taken in accordance with the Administrative Procedure Act.<sup>65</sup>

### **Board of Pharmacy - summary suspension**

With respect to a suspension without prior hearing, the Board may do so only if it finds clear and convincing evidence that continued distribution of medical marijuana by a licensed retail dispensary presents a danger of immediate and serious harm to others. Under the bill, the Board may utilize a telephone conference call to review the allegations and take a vote. The bill requires that the Board comply with the requirements of the Administrative Procedure Act when suspending without prior hearing.<sup>66</sup>

The bill also provides that a summary suspension remains in effect, unless lifted by the Board, until the Board issues its final adjudication order. If the Board does not issue the order within 90 days after the adjudication hearing, the suspension must be lifted on the 91 day following the hearing.

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<sup>63</sup> R.C. 3796.09 and 3796.10.

<sup>64</sup> R.C. 3796.03, 3796.04, and 3796.14.

<sup>65</sup> R.C. Chapter 119.

<sup>66</sup> R.C. Chapter 119.

### **Authority to impose a civil penalty**

The bill authorizes the Department of Commerce or Board of Pharmacy, as applicable, to impose on a license holder a civil penalty in an amount to be determined by the Department or Board for any reason specified in rules adopted by the Department or Board.<sup>67</sup> Any action to impose a civil penalty must be taken in accordance with the Administrative Procedure Act.<sup>68</sup> In the case of the Board of Pharmacy, the Board may utilize a telephone conference call to review the allegations and take a vote.

### **Authority to inspect**

The bill authorizes the Department of Commerce or Board of Pharmacy, as applicable, to inspect the premises of an applicant for licensure and a license holder without prior notice to the applicant or license holder.<sup>69</sup> In the case of the Board of Pharmacy, it may, in addition, inspect all records maintained by a licensed retail dispensary as required by the bill.

### **Authority to place medical marijuana under seal – retail dispensaries**

The bill authorizes the Board of Pharmacy to place under seal all medical marijuana owned by or in the possession, custody, or control of a licensed retail dispensary if the Board does all of the following:

- (1) Suspends, revokes, or refuses to renew the dispensary's license;
- (2) Determines that there is clear and convincing evidence of a danger of immediate and serious harm to any person.<sup>70</sup>

The Board must not dispose of the medical marijuana placed under seal until the license holder exhausts all appeal rights under the Administrative Procedure Act. The court involved in the appeal may order the Board, during the pendency of the appeal, to sell medical marijuana that is perishable. The Board must deposit the sale's proceeds with the court.

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<sup>67</sup> R.C. 3796.14.

<sup>68</sup> R.C. Chapter 119.

<sup>69</sup> R.C. 3796.14.

<sup>70</sup> R.C. 3796.15.

## **Licensed cultivators**

The bill authorizes the holder of a cultivator license to cultivate medical marijuana and deliver or sell it to one or more processors.<sup>71</sup>

### **Prohibition on personal, family, or household use**

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

### **Prohibition on cultivation on public land**

The bill prohibits a cultivator license holder from cultivating medical marijuana on any public land, including a state park.<sup>72</sup>

## **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;
- (3) Deliver or sell processed medical marijuana to one or more licensed retail dispensaries.<sup>73</sup>

When processing medical marijuana, a licensed processor must package it according to federal child-resistant effectiveness standards in effect on the bill's effective date.<sup>74</sup> The processor also must label the packaging with the product's tetrahydrocannabinol and cannabidiol<sup>75</sup> content and comply with any packaging or labeling requirements established in rules adopted by the Department of Commerce.

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<sup>71</sup> R.C. 3796.18.

<sup>72</sup> R.C. 3796.18 and 154.01, not in the bill.

<sup>73</sup> R.C. 3796.19.

<sup>74</sup> See 16 C.F.R. 1700.15(b).

<sup>75</sup> 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>>.

## Licensed retail dispensaries

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

(1) Dispense or sell only upon a showing of a current, valid identification card issued by the Board of Pharmacy and in accordance with a physician recommendation;

(2) Report to the drug database maintained by the 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 Board of Pharmacy;

(4) Label the package containing medical marijuana with the following information:

- The name and address of the licensed processor and retail dispensary;
- The name of the patient and caregiver, if any;
- The name of the qualifying physician who recommended treatment with medical marijuana;
- The directions for use as recommended by the qualifying physician;
- The date on which the medical marijuana was dispensed;
- The quantity, strength, kind, and form of medical marijuana contained in the package.<sup>76</sup>

## Patient identifying information

The bill prohibits a licensed retail dispensary from making public any information it collects that identifies or would tend to identify any specific patient.<sup>77</sup>

## 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

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<sup>76</sup> R.C. 3796.20.

<sup>77</sup> R.C. 3796.20.

marijuana. When testing, a licensed laboratory must test for potency, homogeneity, and contamination and prepare a report of test results.<sup>78</sup>

### **Temporarily restricted to certain Ohio institutions of higher education**

For one year following the date that the Department of Commerce begins to accept applications for a license to conduct laboratory testing of medical marijuana, the Department is prohibited from issuing a license to any applicant that is not an institution of higher education that meets all of the following conditions:

(1) The institution is public and located in Ohio;

(2) The institution has the resources and facilities necessary to conduct testing in accordance with the standards and procedures established in rules adopted by the Department.<sup>79</sup>

### **Forfeiture or seizure of license holder property**

The bill provides that the cultivation, processing, testing, or dispensing of medical marijuana in accordance with the bill's provisions cannot be used as the sole or primary reason for taking any action under any criminal or civil statute in the forfeiture or seizure of any property or asset.<sup>80</sup>

### **Other licensed professionals**

Under the bill, the holder of a license, as defined under current law, is not subject to professional disciplinary action solely for engaging in professional or occupational activities related to medical marijuana.<sup>81</sup>

### **Academic medical centers, state universities, and private research and development organizations that engage in marijuana research**

The bill provides that it does not authorize the Department of Commerce or Board of Pharmacy to oversee or limit research conducted at a state university, academic medical center, or private research and development organization that is related to marijuana and is approved by a federal agency, board, center, department, or institute, including any of the following:

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<sup>78</sup> R.C. 3796.21.

<sup>79</sup> Section 5.

<sup>80</sup> R.C. 3796.24.

<sup>81</sup> R.C. 3796.24 and 4776.01, not in the bill.



- (1) The Agency for Health Care Research and Quality;
- (2) The National Institutes of Health;
- (3) The National Academy of Sciences;
- (4) The Centers for Medicare and Medicaid Services;
- (5) The U.S. Department of Defense;
- (6) The Centers for Disease Control and Prevention;
- (7) The U.S. Department of Veterans Affairs;
- (8) The Drug Enforcement Administration;
- (9) The Food and Drug Administration;
- (10) Any board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services.<sup>82</sup>

The bill also provides that it does not restrict research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.<sup>83</sup>

### **Property tax valuation of land used to cultivate or process marijuana**

The bill specifies that land on which medical marijuana is cultivated or processed does not qualify for current agricultural use valuation (CAUV) for property tax purposes.<sup>84</sup> Instead, such land would be taxed based on fair market value (i.e., the price that a seller is willing to accept and a buyer is willing to pay on the open market).<sup>85</sup>

As a general rule, property taxes are based on the fair market value of the land. An exception to this rule is authorized in the Ohio Constitution, permitting land devoted exclusively to agricultural use to be valued according to its CAUV.<sup>86</sup> The

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<sup>82</sup> R.C. 3796.032.

<sup>83</sup> R.C. 3796.24.

<sup>84</sup> R.C. 5713.30.

<sup>85</sup> Section 2, Article XII, Ohio Constitution, not in the bill.

<sup>86</sup> Section 36, Article II, Ohio Constitution, not in the bill.



CAUV formula is designed to estimate the value of property considering only its potential use for agriculture, rather than its "best" potential use (i.e., for residential or commercial development). The CAUV method usually results in a lower tax bill for farmland owners because the land is often valued below its actual market value, particularly in areas where farmland is in demand for development purposes.<sup>87</sup>

### **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.<sup>88</sup>

#### **Exemption for marijuana research**

The bill provides that it does not authorize a municipal corporation or township to limit research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.

### **Zoning of retail dispensaries**

The legislative authority of a municipal corporation has authority under constitutionally granted home rule authority<sup>89</sup> and under continuing law<sup>90</sup> 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.<sup>91</sup> Counties have similar zoning authority,<sup>92</sup> but county zoning regulations may apply only in the unincorporated area of the county not covered by township zoning regulations.<sup>93</sup>

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<sup>87</sup> R.C. 5713.31, not in the bill.

<sup>88</sup> R.C. 3796.29.

<sup>89</sup> Ohio Const., art. XVIII, sec. 3; *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259 (1980).

<sup>90</sup> R.C. 713.07 to 713.10, not in the bill.

<sup>91</sup> R.C. 519.02, not in the bill.

<sup>92</sup> R.C. 303.02, not in the bill.

<sup>93</sup> R.C. 303.22, not in the bill, except county zoning regulations will apply in an area covered by township zoning regulations upon vote of majority of voters in the area.





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 township, through its zoning commission, board of township trustees, or board of zoning appeals,<sup>94</sup> from regulating the location of retail dispensaries of medical marijuana or from prohibiting such dispensaries from being located in the unincorporated territory of the township. The bill does not provide similarly for counties.<sup>95</sup>

### **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.<sup>96</sup>

The bill requires an entity seeking a license to demonstrate the entity will not be located within 500 feet of a school, church, public library, public playground, or public park.<sup>97</sup> The Department of Commerce must revoke the license of a cultivator, processor, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park. Similarly, the Board of Pharmacy must revoke the license of retail dispensary that relocates to within 500 feet of such places.<sup>98</sup>

Finally, the bill requires that the Department and Board specify, in rules adopted under the Administrative Procedure Act, whether a license holder may remain in operation, must relocate, or have its license revoked after a school, church, public library, public playground, or public park opens within 500 feet of the license holder's premises (see "**Program rules**" above).<sup>99</sup> For purposes of the bill, a school includes a child day-care center.<sup>100</sup>

### **Exemption for marijuana research**

The bill specifies that the prohibition described above does not apply to a state university, academic medical center, or private research and development organization

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<sup>94</sup> R.C. 519.21(D).

<sup>95</sup> The relevant county provision is R.C. 303.21, not in the bill.

<sup>96</sup> R.C. 3796.30(A).

<sup>97</sup> R.C. 3796.09 and 3796.10.

<sup>98</sup> R.C. 3796.30.

<sup>99</sup> R.C. 3796.03 and 3796.04.

<sup>100</sup> R.C. 3796.30.



that conducts research related to marijuana as part of a research protocol approved by an institutional review board or equivalent entity.

## **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 permit or accommodate an employee's use, possession, or distribution of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, disciplining, 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, possession, or distribution of medical marijuana;

(3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;

(4) Interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations;

(5) Permits a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;

(6) 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.<sup>101</sup>

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-

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<sup>101</sup> R.C. 3796.28.

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.<sup>102</sup>

### **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 if the person's use of medical marijuana violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.<sup>103</sup> 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.<sup>104</sup>

### **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.<sup>105</sup>

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.<sup>106</sup>

#### **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

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<sup>102</sup> Ohio Administrative Code 4123-17-58.

<sup>103</sup> R.C. 3796.28.

<sup>104</sup> R.C. 4141.29, not in the bill.

<sup>105</sup> R.C. 4123.54.

<sup>106</sup> R.C. 4123.54.



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.<sup>107</sup>

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.<sup>108</sup>

"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;

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<sup>107</sup> R.C. 4123.54.

<sup>108</sup> R.C. 4123.54.

--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.<sup>109</sup>

### **"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.<sup>110</sup> 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.<sup>111</sup>

For purposes of this exemption, a financial institution may request that the Department of Commerce or Board of Pharmacy 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;

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

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<sup>109</sup> R.C. 4123.55.

<sup>110</sup> R.C. 3796.27. 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.

<sup>111</sup> R.C. 3796.27.



(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 Department of Commerce or Board of Pharmacy 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.<sup>112</sup>

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.<sup>113</sup>

### **Closed-loop payment processing system**

The bill authorizes the Director of Commerce to adopt, in accordance with the Administrative Procedure Act, rules that establish a closed-loop payment processing system under which the state creates accounts to be used only by registered patients and caregivers at licensed dispensaries as well as by all license holders under the bill. The system may include record-keeping and accounting functions that identify all parties involved in those transactions. The purpose of the system is to prevent:

- Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- The diversion of marijuana from a state where it is legal in some form under that state's law to another state;
- The distribution of marijuana to minors;
- The use of state-authorized marijuana activity as a cover or pretext for the trafficking of other illegal drugs or for other illegal activity.

The information recorded by the system must be fully accessible to the Board of Pharmacy and all state and federal law enforcement agencies, including the U.S. Department of the Treasury's financial crimes enforcement network (FinCEN).<sup>114</sup>

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<sup>112</sup> R.C. 3796.27.

<sup>113</sup> R.C. 3796.27(E).

<sup>114</sup> R.C. 3796.031



## **OARRS**

The Ohio Automated Rx Reporting System, or OARRS, is the drug database established and maintained by the Board of Pharmacy to monitor the misuse and diversion of controlled substances.<sup>115</sup> Existing law requires that when a controlled substance is dispensed by a pharmacy or personally furnished by a health care professional to an outpatient, this information must be reported to OARRS. Health care professionals and pharmacists also may access patient information in the database.<sup>116</sup>

### **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.<sup>117</sup> Under the bill, a dispensary must report to the database the information specified in rules adopted by the Board of Pharmacy.

### **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 pertaining only to a patient's use of medical marijuana, if all of the following apply:

- (1) The delegate requests the report;
- (2) The delegate 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;
- (3) 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

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<sup>115</sup> R.C. 4729.75.

<sup>116</sup> R.C. 4729.80.

<sup>117</sup> R.C. 4729.75 , 4729.771, and 4729.84.



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. The bill also requires that the report contain an aggregate of information submitted by retail dispensaries when dispensing medical marijuana.<sup>118</sup>

### **Confidentiality of OARRS information**

With respect to information contained in OARRS, the bill provides that it is confidential and may be released in summary, statistical, or aggregate form if it does not identify a person, including any Board licensee or registrant.<sup>119</sup>

The bill also specifies that information contained in OARRS may be provided only as expressly permitted in law, including any information that relates to any person, including any Board licensee or registrant.

### **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.<sup>120</sup>

### **Monitoring database**

The Department of Commerce must establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing.<sup>121</sup> The Department may contract with a separate entity to establish and maintain all or any part of the database on its behalf.

The database must allow for information regarding medical marijuana to be updated instantaneously. Any licensed cultivator, processor, retail dispensary, or

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<sup>118</sup> R.C. 4729.85.

<sup>119</sup> R.C. 4729.80.

<sup>120</sup> R.C. 4729.84 and 4729.86.

<sup>121</sup> R.C. 3796.07.



laboratory must submit to the Department any information the Department determines is necessary for maintaining the database.

The Department and any entity under contract with the Department is prohibited from making public any information reported to or collected by it that identifies or would tend to identify any specific patient.

### **Toll-free hotline**

The bill requires that the Board of Pharmacy establish a toll-free telephone line to do all of the following:

- (1) Respond to inquiries from patients, caregivers, and health professionals regarding adverse reactions to medical marijuana;
- (2) Provide information about available services and assistance.<sup>122</sup>

The bill also authorizes the Board of Pharmacy to contract with a separate entity to establish and maintain the telephone line.

### **Legislative intent**

#### **Reclassification of marijuana**

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 reclassify marijuana in an effort to ease the regulatory burdens associated with research on the potential medical benefits of marijuana.<sup>123</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-14-16
Reported, H. Select Committee on Medical Marijuana	05-09-16
Passed House (71-26)	05-10-16
Reported, S. Government Oversight & Reform	---

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<sup>122</sup> R.C. 3796.17.

<sup>123</sup> Section 4.

