



# Ohio Legislative Service Commission

*Revised*

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 523 of the 131st G.A.

**Date:** May 25, 2016

**Status:** As Enacted

**Sponsor:** Rep. Huffman

**Local Impact Statement Procedure Required:** No

**Contents:** Authorizes the use of marijuana for medical purposes and establishes the Medical Marijuana Control Program

### State Fiscal Highlights

- **The Department of Commerce (COM)** will incur increased costs related to the establishment of the Medical Marijuana Control Program to license medical marijuana cultivators, processors, and laboratories that test medical marijuana. Likely costs include those for establishing program rules, regulatory staff, and development of the required database.
- **COM** will begin to generate medical marijuana licensing fee revenue once the Medical Marijuana Control Program is operational within two years of the bill's effective date.
- **The State Board of Pharmacy** will generate an indeterminate amount of revenue annually from retail dispensary licensing fees, as the number of dispensaries to be licensed and the amount to be charged for a license or license renewal is uncertain. The money collected from these fees, as well as civil penalties that might be imposed, will be deposited into the state's existing Occupational Licensing and Regulatory Fund (Fund 4K90). Whether that money will be sufficient to cover all, or some, of the Board's start-up and ongoing operating expenses is unclear.
- **The Attorney General's Office** may incur a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
- **The State Medical Board** will incur an increase in costs of approximately \$300,000 annually to implement the certificate to recommend.

### Local Fiscal Highlights

- **Public hospitals** that employ physicians who obtain a certificate to recommend may experience an increase in administrative costs for various duties associated with recommending medical marijuana.

- **County sheriff's offices** could realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
  - The bill's affirmative defense for patients and caregivers for criminal drug charges may have some savings effect on local criminal and juvenile justice systems as it reduces the likelihood that a person will be arrested, tried, and sanctioned.
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## **Detailed Fiscal Analysis**

### **Medical Marijuana Control Program**

The bill establishes the Medical Marijuana Control Program within the Department of Commerce (COM) and the State Board of Pharmacy. COM is to oversee the licensure of medical marijuana cultivators and processors as well as the licensure of laboratories that test medical marijuana. The State Board of Pharmacy is to provide for the licensure of retail dispensaries and the registration of patients and their caregivers. Additionally, the bill establishes the Medical Marijuana Advisory Committee within the State Board of Pharmacy. The bill specifies that the Medical Marijuana Control Program is to be fully operational within two years after the effective date of the bill. The fiscal effects of the bill's provisions are described below. For further details on license requirements and permissible activities, please consult the LSC Bill Analysis.

### **Department of Commerce**

Under the bill, COM is required to license medical marijuana cultivators and processors and license laboratories that test medical marijuana. The bill also permits COM to adopt rules that establish a "closed-loop payment processing system" which can include recordkeeping and accounting functions that identify parties involved in medical marijuana transactions. Additionally, COM is required to establish and maintain a database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The bill allows COM to contract with an entity to establish and maintain the electronic database.

Given the scope of new responsibilities, in all likelihood COM will incur an increase in both start-up and ongoing costs for creating the Medical Marijuana Control Program. Costs will include licensing cultivators, processors, and laboratories, establishing program rules and standards, and developing and maintaining the required database mentioned just above. In addition to these expenses, COM anticipates hiring additional staff to perform regulatory or other day-to-day functions. However, once the Medical Marijuana Control Program is fully operational, the licensing fee revenue generated under the regulatory program would help offset these costs. As mentioned previously, the program must be fully operational within two years of the bill's effective date.

## **State Board of Pharmacy**

### **Medical Marijuana Control Program**

As part of establishing a Medical Marijuana Control Program, the Board of Pharmacy is required to license medical marijuana retail dispensaries and to register patients and caregivers. The Board is required to adopt rules establishing standards and procedures. The rules are to include, in part, (1) application processes and fees for licenses, registrations, and renewals, (2) the number and allowable locations of licensed retail dispensaries, (3) training requirements for dispensary employees, (4) procedures for patient and caregiver identification cards, and (5) the allowable paraphernalia and other accessories for the use of medical marijuana.

The Board is required to approve or deny petitions submitted to request a method of using medical marijuana that is not allowed under the bill or subsequently approved by the Board. The Board may not approve any method that involves smoking or combustion.

Lastly, the Board is required to establish a toll-free telephone line to respond to inquiries from patients, caregivers, and health professionals regarding adverse reactions to medical marijuana and to provide information about available services and assistance.

### **Licensure and registration**

The bill requires (1) patients and caregivers to register with the Board, and (2) retail dispensaries to be licensed by the Board. The Board is required to establish a schedule, procedures, and fees for licenses and license renewals. The amount of revenue that these fees will generate annually is indeterminate, as the number of dispensaries to be licensed and the amount to be charged for a license or license renewal is uncertain. The Board is permitted to suspend, revoke, or refuse to renew a license or registration and may impose a civil penalty in any amount as determined by the Board on a license holder. The money collected from fees and civil penalties will be deposited into the state's existing Occupational Licensing and Regulatory Fund (Fund 4K90).

The bill also requires each retail dispensary to submit information regarding medical marijuana dispensed to a patient to the Board's existing Ohio Automated Rx Reporting System (OARRS). A delegate of the retail dispensary is permitted, under certain specified conditions, to request information from OARRS relating to a patient. The Board is neither explicitly authorized nor prohibited from imposing any charge on a retail dispensary for the establishment or maintenance of OARRS. The Board is also required to adopt rules regarding retail dispensaries for the purposes of maintaining the database and must include information from retail dispensaries in its drug database biennial report. The bill requires the report to include an aggregate of the information submitted to the Board regarding medical marijuana.

According to the Board, the data required to be submitted to OARRS differs from the data currently collected by the drug database and the method of data collection. Thus, the Board anticipates that an expansion of the current OARRS system will be necessary. The Board estimates that the cost to expand and maintain the system will be substantial, but is not known at this time.

### **Medical Marijuana Advisory Committee**

The bill creates the 14-member Medical Marijuana Advisory Committee in the Board of Pharmacy. Each member of the Committee will receive a per diem compensation determined in accordance with R.C. 124.15(J) and travel expenses. The Committee will cease to exist five years and 30 days after the bill's effective date. The annual costs for the Board to support operations of the Committee are uncertain, but are most likely to be minimal.

### **General fiscal effects on the Board of Pharmacy**

Given the scope of new duties and responsibilities under the bill, the Board will incur both start-up and ongoing costs to administer their portion of the Medical Marijuana Control Program (licensing, registration, enforcement, and database management) and to support the Medical Marijuana Advisory Committee (per diem compensation and travel expense reimbursement for members). The Board anticipates hiring additional staff to handle these duties and responsibilities, the annual cost of which is indeterminate because the number of new staff to be hired is uncertain. These start-up and ongoing costs will be paid for with money appropriated from Fund 4K90. Whether the amount of additional revenue collected from fees and civil penalties annually will be sufficient to cover all, or some, of these additional costs is unclear.

### **Criminal background checks**

Administrators as well as owners, officers, or board members of entities seeking a license are required to complete a criminal records check as part of the application process. Background checks can be requested by appearing at a Bureau of Criminal Identification and Investigation office. The base fees of the state-only and Federal Bureau of Investigation (FBI) background checks are \$22 and \$24, respectively. The \$22 state-only background check fee and \$2 of the \$24 FBI background check fee are deposited into the state treasury to the credit of the Attorney General's General Reimbursement Fund (Fund 1060). The remaining \$22 of the FBI background check fee is sent to the FBI. Background checks may also be obtained by county sheriff's offices, which may charge additional fees.

### **State Medical Board – certificate to recommend**

The bill requires a physician seeking to recommend treatment with medical marijuana to apply to the State Medical Board for a certificate to recommend. Under the bill, the Medical Board must grant a certificate if the applicant's application is complete and meets the requirements established in rules and the applicant does not have an ownership or investment in or compensation with a cultivator, processor, or retail

dispensary of medical marijuana. A physician that recommends treatment with marijuana or a drug derived from marijuana under a research protocol, clinical trial, investigational new drug application, or expanded access submission approved by the federal government is not required to hold a certificate to recommend.

In addition, the bill requires the Medical Board to adopt rules, not later than one year after the effective date of the bill, regarding certificates to recommend to establish several standards and procedures. These standards and procedures include governing the issuance and renewal of certificates to recommend and the minimal standards of care when recommending treatment with medical marijuana. The bill also requires the Medical Board approve one or more continuing medical education courses of study that assist physicians holding certificates to recommend in diagnosing qualifying medical conditions and treating qualifying medical conditions with medical marijuana. The bill authorizes the Medical Board to take any disciplinary action for a certificate to recommend holder as they can currently take for a certificate to practice holder.

The bill also specifies that a person may submit a petition to the Medical Board requesting a disease or condition be added as a qualifying medical condition. On receipt of such a petition, the Medical Board is to review it to determine whether to approve or deny the additional disease or condition. The bill specifies what the Medical Board is to do or consider in making its determination.

According to the Medical Board, the total cost to implement the certificate to recommend will be approximately \$300,000 per year. This estimate includes: approximately \$75,000 to examine applications (estimated 6,000 certificate applications), \$180,000 to investigate complaints (estimated 360 complaints), \$37,500 to draft and file rules (estimated 750 hours), and approximately \$10,000 for ongoing information technology development and maintenance. There is no fee to obtain a certificate to recommend. There might also be administrative costs to make determinations regarding petitions to approve or deny additional diseases and to approve continuing education courses.

### **Physician duties associated with recommending medical marijuana**

The bill requires a physician to obtain and review a report of information related to the patient that covers at least the 12 months immediately preceding the date of the report from the Ohio Automated Rx Reporting System (OARRS) before the physician may recommend treatment with medical marijuana.

The bill authorizes a physician who holds a certificate to recommend or a physician's delegate, to submit to the Board of Pharmacy an application for patient or caregiver registration on a patient's or caregiver's behalf. The bill also requires a physician with a certificate to recommend to submit annually to the Medical Board a report that describes that physician's observations regarding the effectiveness of medical marijuana in treating the physician's patients. There could be a minimal cost to a physician employed by a state or local entity to create the report and send the report to the Medical Board, as well as to submit applications to the Board of Pharmacy.

The bill also provides that a physician is immune from civil liability and is not subject to professional disciplinary action or criminal prosecution for advising a patient or caregiver about the risks and benefits of medical marijuana, recommending that a patient use medical marijuana, or monitoring a patient's treatment with medical marijuana.

### **Financial institutions**

The bill also exempts financial institutions that provide financial services to any licensed cultivator, processor, retail dispensary, or laboratory from Ohio criminal law if the licensee is in compliance with the bill and tax law. COM or the State Board of Pharmacy is required to share certain information with a financial institution upon request and may charge the institution a reasonable fee to cover the administrative cost of providing the information, offsetting any potential costs incurred for retrieving the particular data.

### **Ordinances or resolutions to limit retail dispensaries**

The bill provides that agricultural use zoning limitations affecting townships do not prohibit a township from (1) regulating the location of retail dispensaries, or (2) prohibiting such dispensaries from being located in the unincorporated territory of the county or township. Additionally, the legislative authority of a municipal corporation or a board of township trustees may adopt an ordinance or resolution to prohibit or limit the number of retail dispensaries of medical marijuana within the municipal corporation or the unincorporated territory of the township. The cost involved in adopting local ordinances or resolutions that limit or prohibit the location of retail dispensaries within municipalities or unincorporated areas of counties or townships would be very small.

### **Department of Taxation**

The bill requires the Ohio Department of Taxation (TAX) to provide COM and the State Board of Pharmacy information on whether an applicant for licensure is compliant with applicable state tax laws, has past or pending violation of these tax laws, and penalties imposed on the applicant for such a violation. The bill specifies that this information is confidential. This may increase administrative costs for TAX. However, the bill allows TAX to charge COM and the Board a reasonable fee to cover the administrative cost for providing this information.

### **Courts**

If the Board of Pharmacy suspends, revokes, or refuses to renew any license or registration and determines that there is evidence of danger or harm to any person, the Board is permitted to place all medical marijuana owned or under control of the license holder under seal. The Board is not permitted to dispose of the sealed medical marijuana until all appeals have been exhausted in a relevant court. The court involved in any appeal is permitted to direct the Board to sell perishable items during the appeal process and deposit the proceeds with the court. An appeal of a Board decision would

most likely be filed with the appropriate court of common pleas. The number of such appeals is expected to be relatively small, with the costs to the Board to defend its decision and the court to adjudicate the appeal likely to be minimal at most.

The bill prescribes an affirmative defense for patients and caregivers for criminal charges resulting from possession of marihuana and/or marihuana paraphernalia when the patient or caregiver has met the requirements prescribed by the bill for use of medical marijuana and/or paraphernalia. Presumably, this defense will have some savings effect on local criminal and juvenile justice systems as it reduces the likelihood that a person will be arrested, tried, and sanctioned.

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