



Ohio Legislative Service Commission

Final Analysis

Elizabeth Molnar

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Sens. Yuko, Brown, Sawyer, Schiavoni, Tavares, Thomas

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ACT SUMMARY

- Requires the Department of Commerce and State Board of Pharmacy to administer a Medical Marijuana Control Program.
- Establishes the Medical Marijuana Advisory Committee and authorizes it to submit to the Department of Commerce, Board of Pharmacy, and State Medical Board any recommendations related to the Program.
- Abolishes the Advisory Committee on October 8, 2021.
- Permits a patient, on the recommendation of a physician, to use medical marijuana to treat a qualifying medical condition.
- Specifies that the act does not require an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana.
- Specifies that the act does not prohibit an employer from establishing and enforcing certain workplace drug policies.
- Considers a person who has been fired for using medical marijuana to have been fired for just cause and ineligible for unemployment benefits in certain circumstances.
- Maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the proximate cause of the employee's injury was being under the influence of marijuana.

- Authorizes the Board of Pharmacy to register patients and caregivers and to issue licenses to medical marijuana retail dispensaries.
- Authorizes the Medical Board to issue certificates to physicians seeking to recommend treatment with medical marijuana.
- Authorizes the Department of Commerce to issue licenses to medical marijuana cultivators, processors, and testing laboratories.
- Prohibits the cultivation of medical marijuana for personal, family, or household use.
- Prohibits the smoking or combustion of medical marijuana.
- Authorizes a municipal corporation or township to prohibit, or limit the number of, retail dispensaries.
- Specifies that agricultural use zoning limitations that apply to townships do not prevent a township from regulating the location of retail dispensaries or from prohibiting them within the unincorporated territory of the township.
- Prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, or public library, playground, or park.
- Specifies that land on which medical marijuana is cultivated or processed does not qualify for current agricultural use valuation.
- Exempts a financial institution that provides financial services to a licensed cultivator, processor, retail dispensary, or laboratory from certain criminal offenses, including those related to marijuana trafficking.
- Authorizes the Director of Commerce to establish a closed-loop medical marijuana payment processing system for use by registered patients and caregivers and licensed entities.

TABLE OF CONTENTS

Medical marijuana definition and classification	4
Medical Marijuana Control Program	5
Program rules	6
Department of Commerce rules	7
Cultivators	7
Medical marijuana testing.....	7
Board of Pharmacy rules.....	7
Medical Marijuana Advisory Committee	8



Appointments	9
Terms of membership	9
Chairperson, compensation, and meetings	9
Qualifying medical conditions	10
Permissible forms and methods of using medical marijuana	11
Tetrahydrocannabinol content	11
Smoking prohibition	11
Patient and caregiver registration	12
Authority to use, possess, or administer medical marijuana	12
Federal land	13
Caregiver use prohibited	13
Possession limits	13
Protection from arrest and criminal prosecution	13
Affirmative defense	14
Impact on employment	15
Unemployment compensation	15
Workers' compensation	15
Operating a vehicle	16
Field sobriety test	16
Parental rights and responsibilities	17
Transplant waiting list and other medical care	17
Tenant protection	17
Forfeiture or seizure of patient or caregiver property	17
Patient and caregiver registration renewals	18
Suspension, revocation, or refusal to renew	18
Authority to place medical marijuana under seal	18
Patient identifying information	19
Reciprocity	19
Physician certificate to recommend	20
Authority to recommend medical marijuana treatment	20
Requirements when recommending medical marijuana treatment	21
Physician discipline	21
Physician immunity	21
Physician reporting requirements	22
Continuing medical education	22
Exemption for research physicians	22
Prohibitions	23
Furnishing medical marijuana	23
Issuing a recommendation to a family member or the physician's self	23
Renewals	23
Medical Board rulemaking	23
Licensure of cultivators, processors, retail dispensaries, and laboratories	24
Conditions on eligibility for licensure	24
Compliance with state tax laws	25
Criminal records checks for prospective licensees	25
Criminal records checks for employees of licensees	26
Minority benchmarks	26
Enforcement	26
License suspension and revocation	26
Summary suspension of retail dispensary licenses	26
Civil penalty	27
Inspections	27



Placing medical marijuana under seal – retail dispensaries.....	27
Licensed cultivators.....	28
Personal, family, or household use prohibited	28
Cultivation on public land prohibited	28
Licensed processors	28
Licensed retail dispensaries	29
Patient identifying information	29
Licensed laboratories	29
Licenses temporarily restricted to public institutions of higher education	30
Forfeiture or seizure of license holder property	30
Other licensed professionals	30
Marijuana research	30
Property tax valuation of land used to cultivate or process marijuana	31
Township or municipal corporation may prohibit or limit retail dispensaries.....	32
Exemption for marijuana research.....	32
Zoning of retail dispensaries	32
Proximity to certain public places	32
Exemption for marijuana research.....	33
"Safe harbor" for banking services	33
Closed-loop payment processing system.....	34
OARRS.....	35
Reporting to OARRS.....	35
Access to patient information	35
Board of Pharmacy reports	36
Confidentiality of OARRS information.....	36
Conforming changes	37
Monitoring database	37
Assistance for veteran or indigent patients.....	37
Toll-free hotline	37
Legislative intent	38
Reclassification of marijuana.....	38
Physician recommendations and patient affirmative defense	38

CONTENT AND OPERATION

Medical marijuana definition and classification

The act defines "medical marijuana" as marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.¹

Federal and Ohio law classify marijuana as a schedule I controlled substance, making its distribution, including by prescription, illegal. For the purpose of this act only, medical marijuana is a schedule II controlled substance.²

¹ R.C. 3796.01.

² R.C. 3796.01.



Under the act, marijuana has the same meaning as marihuana, as defined under continuing Ohio law. "Marihuana" means 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. "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.³

Medical Marijuana Control Program

The act requires the Department of Commerce and State Board of Pharmacy to establish a Medical Marijuana Control Program to provide for:⁴

- (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.

The Department of Commerce is responsible for licensing cultivators, processors, and testing laboratories, while the Board of Pharmacy is charged with licensing retail dispensaries and registering patients and caregivers. The State Medical Board is to issue certificates to physicians seeking to recommend treatment with medical marijuana.⁵

The Department of Commerce and Board of Pharmacy must take all actions necessary to ensure that the Program is fully operational by September 8, 2018, which is two years after the act's effective date.⁶ The following table summarizes the timelines for the program's implementation:

Type of Program Participant	Regulating Authority	Rule-making Deadline
Cultivator	Department of Commerce	May 8, 2017
Processor	Department of Commerce	September 8, 2017
Testing Laboratory	Department of Commerce	September 8, 2017

³ R.C. 3796.01; R.C. 3719.01, not in the act.

⁴ R.C. 3796.02.

⁵ R.C. 4731.30.

⁶ Section 3.



Type of Program Participant	Regulating Authority	Rule-making Deadline
Retail Dispensary	Board of Pharmacy	September 8, 2017
Patient	Board of Pharmacy	September 8, 2017
Caregiver	Board of Pharmacy	September 8, 2017
Physician	State Medical Board	September 8, 2017

Program rules

Not later than September 8, 2017, 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.⁷ The rules must be adopted in accordance with the Administrative Procedure Act and do 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 schedules, procedures, and fees for license or registration renewal;
- (4) Specify the reasons for which a license or registration may be denied, not renewed, suspended, or revoked and the reasons for which a civil penalty may be imposed on a license holder;
- (5) Establish standards under which a license or registration suspension may be lifted;
- (6) Specify whether a license holder may remain in operation at its current location, or must relocate or have its license revoked if a school, church, or public library, playground, or park is established within 500 feet of its location;
- (7) Specify the criminal offenses for which a person will be disqualified from licensure or from employment with a license holder and which of those offenses *do not* disqualify a person when the conviction or a guilty plea is more than five years old.

The Department and Board may separately adopt any other rules each considers necessary for implementing and enforcing the act's provisions and for administering the portions of the Program each is responsible for. When adopting any rules regarding the Program, the Department and Board must each consider standards and procedures that

⁷ R.C. 3796.03 and 3796.04.



have been found to be best practices relative to the use and regulation of medical marijuana.⁸

Department of Commerce rules

Cultivators

Although the act requires that the Department of Commerce adopt rules by September 8, 2017, in the case of rules regarding the licensure of cultivators, those must be adopted not later than May 8, 2017.

The Department must adopt rules establishing the number of cultivator licenses permitted at any one time. When doing so, the Department must consider Ohio's population and the number of patients seeking to use medical marijuana.⁹

Medical marijuana testing

The Department must adopt rules establishing standards and procedures for the testing of medical marijuana. The rules must:

- (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.¹⁰

Board of Pharmacy rules

The Board of Pharmacy must adopt rules that:

- (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 issuing patient or caregiver registration cards;
- (3) Establish training requirements for employees of retail dispensaries;

⁸ R.C. 3796.03.

⁹ R.C. 3796.05.

¹⁰ R.C. 3796.05.



(4) Establish a program to assist patients who are veterans or indigent in obtaining medical marijuana;

(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 of medical marijuana to a registered patient;

(8) Establish the number of retail dispensary licenses that will be permitted at any one time.¹¹

When establishing the number of retail dispensary licenses, the Board 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.¹²

Medical Marijuana Advisory Committee

The act establishes the Medical Marijuana Advisory Committee and authorizes it to develop and submit to the Department of Commerce, Board of Pharmacy, and Medical Board any recommendations related to the Medical Marijuana Control Program.¹³ The Committee ceases to exist October 8, 2021.

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 Medical Board;

(3) A member who represents local law enforcement;

¹¹ R.C. 3796.04.

¹² R.C. 3796.05.

¹³ R.C. 3796.021.



- (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 by October 8, 2016. Not more than six members may be of the same political party.¹⁴ The Governor is responsible for appointing 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 is to appoint the member representing local law enforcement and the member representing caregivers, while the Senate Minority Leader is charged with appointing the member who is a nurse. The Speaker of the House of Representatives must appoint the member representing patients and the member who represents persons involved in mental health treatment. The House Minority Leader is to appoint the member who represents labor.

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 Administrative

¹⁴ R.C. 3796.021(B).



Services,¹⁵ as well as actual and necessary travel expenses in connection with committee meetings and business.

The Committee must hold its initial meeting not later than 30 days after the last member of the Committee is appointed. The Committee is not subject to the law governing the sunset review of agencies.¹⁶

Qualifying medical conditions

A physician may recommend medical marijuana to a patient only for treatment of a qualifying medical condition.¹⁷ Each of the following is a qualifying medical condition:¹⁸

AIDS	HIV positive status
ALS	Inflammatory bowel disease
Alzheimer's disease	Intractable pain
Cancer	Multiple sclerosis
Chronic and severe pain	Parkinson's disease
Chronic traumatic encephalopathy	Post-traumatic stress disorder
Crohn's disease	Sickle cell anemia
Epilepsy or another seizure disorder	Spinal cord disease or injury
Fibromyalgia	Tourette's syndrome
Glaucoma	Traumatic brain injury
Hepatitis C	Ulcerative colitis

An individual may petition the Medical Board to add a disease or condition to the list of qualifying medical conditions.¹⁹ When reviewing a petition, the Medical Board must:

- (1) Consult with 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;

¹⁵ R.C. 124.15, not in the act.

¹⁶ See R.C. 101.82 to 101.87, not in the act.

¹⁷ R.C. 4731.30.

¹⁸ R.C. 3796.01.

¹⁹ R.C. 4731.302.



(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 a physician treating the petitioner.

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

Permissible forms and methods of using medical marijuana

The act permits only the following forms of medical marijuana to be dispensed: oils, tinctures, plant material, edibles, patches, and any other form approved by the Board of Pharmacy. It prohibits any form or method considered attractive to children, as specified in rules adopted by the Board.²⁰

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.²¹

Tetrahydrocannabinol content

Plant material may not have a tetrahydrocannabinol (THC) content of not more than 35% and extracts may not have a THC content of not more than 70%.²²

Smoking prohibition

The act expressly prohibits the smoking or combustion of medical marijuana, but allows for its vaporization.²³

²⁰ R.C. 3796.04 and 3796.06.

²¹ R.C. 3796.061.

²² R.C. 3796.06. The marijuana plant contains more than 80 active cannabinoid chemicals, including tetrahydrocannabinol (THC). THC is the main psychoactive cannabinoid in marijuana. 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>.

²³ R.C. 3796.06.



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.²⁴ The physician who holds a certificate to recommend issued by the Medical Board and who is treating the patient must submit the application on the patient's or caregiver's behalf. The physician must do so in the manner established in Pharmacy Board rules.

An application must include a statement from the physician certifying that:

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

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

(3) 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 preceding 12 months;

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

In the case of a patient application, it must include the name or names of the one or more caregivers who will assist the patient in the use or administration of medical marijuana. In the case of a caregiver application, it must include the name of the patient or patients whom 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 the patient or caregiver an identification card.

Authority to use, possess, or administer medical marijuana

A registered patient may use or possess medical marijuana or may possess any medical marijuana paraphernalia or accessories specified in Board of Pharmacy rules. Similarly, a registered caregiver may possess or assist a registered patient in the use or

²⁴ R.C. 3796.08.

administration of medical marijuana or may possess any medical marijuana paraphernalia or accessories specified in Board of Pharmacy rules.²⁵

Federal land

The act specifies that it does not permit the use, possession, or administration of medical marijuana on federal land located in Ohio.²⁶

Caregiver use prohibited

The act prohibits a registered caregiver from using medical marijuana, unless the caregiver is also a registered patient.²⁷

Possession limits

The amount of medical marijuana that a registered patient or caregiver may possess must not exceed a 90-day supply, as specified in Board of Pharmacy rules. A registered caregiver who provides care to more than one registered patient must maintain separate inventories of medical marijuana for each patient.²⁸

Protection from arrest and criminal prosecution

A registered patient or caregiver is not subject to arrest or criminal prosecution for any of the following actions done in accordance with the act'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;

(4) In the case of a registered caregiver, assisting a registered patient in the use or administration of medical marijuana.²⁹

²⁵ R.C. 3796.22 and 3796.23.

²⁶ R.C. 3796.24.

²⁷ R.C. 3796.23.

²⁸ R.C. 3796.22 and 3796.23.

²⁹ R.C. 3796.22 and 3796.23.



Affirmative defense

Although the act provides a patient or caregiver protection from arrest or criminal prosecution for conduct taken in accordance with it, that protection is not available until the patient or caregiver registers with the Board of Pharmacy. In an effort to protect against criminal prosecution until registration procedures are in place, the act establishes for a patient, under specified conditions, an affirmative defense to the following criminal charges: knowingly obtaining, possessing, or using marijuana or knowingly using or possessing marijuana drug paraphernalia.³⁰ It also extends this affirmative defense to a parent or guardian of a minor patient. However, the affirmative defense may be raised only for conduct occurring on or after September 8, 2016, but not later than 60 days after the Board of Pharmacy begins accepting applications for patient or caregiver registrations.

To raise the defense, an Ohio-licensed physician must have issued a written recommendation for the patient certifying that:

- (1) A bona fide physician-patient relationship exists between the physician and patient;
- (2) The patient has been diagnosed with a qualifying medical condition;
- (3) The physician or physician's delegate requested from OARRS a report of information related to the patient that covers at least the immediately preceding 12 months;
- (4) 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) 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, or the parent or guardian must have possessed, medical marijuana only in a form or method permitted by the act. The act also provides that it does not establish for a patient's parent or guardian 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.

³⁰ Section 6. See R.C. 2925.11 and 2925.141, not in the act.



Impact on employment

The act provides that it does not:

(1) Require an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;

(2) Prohibit an employer from refusing to hire, firing, 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) Permit a person to sue an employer for taking any of the actions described in (2);

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

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

(6) Affect 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 in accordance with the Administrator's rules.³¹

Unemployment compensation

Under the act, a person who is fired for using medical marijuana is considered to have been fired for just cause under the Unemployment Compensation Law if the person violated an employer drug-free workplace policy, zero-tolerance policy, or other formal policy regulating the use of medical marijuana.³² A person fired for just cause is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment.³³

Workers' compensation

Under continuing law, an employee or employee's dependent may be eligible for compensation and benefits for an injury, occupational disease, or death occurring in the course of employment. An employee or dependent is ineligible, however, if the injury

³¹ R.C. 3796.28.

³² R.C. 3796.28.

³³ R.C. 4141.29, not in the act.



or disease is purposely self-inflicted or if the injury's proximate cause was the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician.³⁴

Under the act, an employee or dependent remains ineligible for compensation and benefits if the injury's proximate cause was the employee being under the influence of marijuana. This is the case regardless of whether a physician has recommended its use. A rebuttable presumption that being under the influence of marijuana was the proximate cause of the injury may be established by either a drug test, or the employee's refusal to submit to the test (as long as the employee is notified that refusal may affect eligibility for compensation and benefits), if the drug test is requested after an injury by (1) an employer who has reasonable cause to suspect that the employee may be under the influence, (2) a police officer who has reasonable grounds to believe that the employee was operating a vehicle while under the influence, or (3) a physician.³⁵

"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 observation, a pattern of behavior or work performance, the identification of an employee as the focus of a drug-related criminal investigation, a reliable and credible report of use, or repeated or flagrant violations of the employer's safety or work rules.³⁶

Operating a vehicle

The act does not authorize a registered patient to operate a vehicle, streetcar, trackless trolley, watercraft, or aircraft while under the influence of medical marijuana.³⁷

Field sobriety test

The act 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. It 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

³⁴ R.C. 4123.54.

³⁵ R.C. 4123.54.

³⁶ R.C. 4123.55.

³⁷ R.C. 3796.22.



a prohibited concentration of marijuana in the person's whole blood, blood serum, plasma, breath, or urine.³⁸

Parental rights and responsibilities

Unless there is clear and convincing evidence that a child is unsafe, the act provides that the use, possession, or administration of medical marijuana by a registered patient in accordance with its 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.³⁹

Transplant waiting list and other medical care

The act provides that the use or possession of medical marijuana by a registered patient in accordance with its provisions cannot be used as a reason for disqualifying the patient from medical care or from including the patient on a transplant waiting list.⁴⁰

Tenant protection

The act 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.⁴¹

Forfeiture or seizure of patient or caregiver property

The act provides that the use, possession, or administration of medical marijuana in accordance with its provisions cannot be used as the sole or primary reason for taking any action under any civil or criminal statute in the forfeiture or seizure of any property or asset.⁴²

³⁸ R.C. 3796.24.

³⁹ R.C. 2151.28, 3109.04, 3109.051, and 3109.12, none in the act; R.C. 3796.24.

⁴⁰ R.C. 3796.24.

⁴¹ R.C. 3796.24.

⁴² R.C. 3796.24.

Patient and caregiver registration renewals

A patient or caregiver registration expires according to the renewal schedule established in Board of Pharmacy rules and may be renewed in accordance with procedures established in those rules.⁴³

Suspension, revocation, or refusal to renew

The Board of Pharmacy may suspend, revoke, or refuse to issue or renew a patient or caregiver registration for any of the reasons specified in its rules.⁴⁴ The Board also may suspend a registration without prior hearing. Any action to suspend, revoke, or refuse to renew a registration must be taken in accordance with the Administrative Procedure Act.⁴⁵ The Board may use a telephone conference call to review any allegations and take a vote.

Authority to place medical marijuana under seal

The Board of Pharmacy may 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.⁴⁶

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, while the appeal is pending, to sell perishable medical marijuana. The Board must deposit the sale's proceeds with the court.⁴⁷

⁴³ R.C. 3796.08.

⁴⁴ R.C. 3796.04 and 3796.14.

⁴⁵ R.C. Chapter 119.

⁴⁶ R.C. 3796.15.

⁴⁷ R.C. 3796.15.



Patient identifying information

The act prohibits the Board of Pharmacy from making public any information that is reported to or collected by it for the purposes of registering patients or caregivers and that identifies or would tend to identify any specific patient.⁴⁸

Information collected by the Board as part of the registration process is confidential and is not a public record. The Board may share identifying information with a licensed retail dispensary to confirm that a person has a valid registration. Information that does not identify a person may be released in summary, statistical, or aggregate form.

Reciprocity

The Board of Pharmacy must 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 them are recognized in Ohio.⁴⁹

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

- (1) The other state's eligibility requirements are substantively comparable to Ohio's;
- (2) The other state recognizes an Ohio patient or caregiver registration and identification card.

If the Board reaches a reciprocity agreement with another state, that state's card or equivalent authorization 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 act's provisions.

The Board may adopt rules as necessary to implement the act's provisions regarding reciprocity agreements.

⁴⁸ R.C. 3796.08.

⁴⁹ R.C. 3796.16.



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. An application must be submitted in a manner established in rules adopted by the Medical Board.⁵⁰ The Medical Board must issue a certificate to recommend if both:

(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.

Authority to recommend medical marijuana treatment

A certificate to recommend authorizes a physician to 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.

Before recommending treatment with medical marijuana, the physician must request and review an OARRS report for the patient that covers at least the 12 months preceding the date of 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.⁵¹

The act also specifies that it does not require a physician to recommend that a patient use marijuana to treat a qualifying condition.⁵²

⁵⁰ R.C. 4731.30 and 4731.301.

⁵¹ R.C. 4731.30.

⁵² R.C. 3796.24(G)(1).



Requirements when recommending medical marijuana treatment

A written recommendation issued in accordance with the act's provisions is valid for not more than 90 days. The physician may renew the recommendation for up to three additional periods of not more than 90 days each. Thereafter, the physician may issue a new recommendation only after a physical examination.⁵³

When issuing a written recommendation to a patient, the physician must specify any information required by Medical Board rules.⁵⁴

Physician discipline

If a physician fails to comply with the act's requirements, the Medical Board may take action against the physician's certificate to recommend medical marijuana or the physician's certificate to practice, including suspending, revoking, or refusing to renew the certificate.⁵⁵ The Medical Board may also impose a civil fine in an amount not to exceed \$20,000. The Board must impose the fine pursuant to an adjudication and an affirmative vote of at least six Board members.⁵⁶ Any disciplinary action taken by the Medical Board against a physician's certificate to practice operates automatically on the physician's certificate to recommend and remains in effect for as long as the disciplinary action remains in effect on the certificate to practice.⁵⁷

Physician immunity

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, patient representative, 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.⁵⁸

⁵³ R.C. 4731.30.

⁵⁴ R.C. 4731.30 and 4731.301.

⁵⁵ R.C. 4731.22.

⁵⁶ R.C. 4731.225, not in the act.

⁵⁷ R.C. 4731.229.

⁵⁸ R.C. 4731.30.



Physician reporting requirements

Annually, the 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 and may not include any patient identifying information.⁵⁹

Continuing medical education

Each physician holding a certificate to recommend must complete annually at least two hours of continuing medical education in medical marijuana approved by the State Medical Board.⁶⁰

The Board must approve one or more continuing medical education courses of study that assist physicians in diagnosing qualifying medical conditions and treating those conditions with medical marijuana.

The Board must approve a course or courses of study that meets this requirement, which may include a course certified by the Ohio State Medical Association or the Ohio Osteopathic Association.⁶¹

Exemption for research physicians

A physician is not required to hold a certificate to recommend in order to recommend 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 (FDA), 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;

⁵⁹ R.C. 4731.30.

⁶⁰ R.C. 4731.30.

⁶¹ R.C. 4731.301.

(4) An expanded access submission.⁶²

Prohibitions

Furnishing medical marijuana

The act prohibits a physician from personally furnishing or otherwise dispensing medical marijuana.⁶³

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

The act prohibits a physician from issuing a recommendation for medical marijuana for a family member or the physician's self.⁶⁴

Renewals

A certificate to recommend expires according to the renewal schedule established in Medical Board rules and may be renewed in accordance with the procedures established in those rules.⁶⁵

Medical Board rulemaking

Not later than September 8, 2017, the Medical Board must adopt rules establishing:

- (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;

⁶² R.C. 4731.30. Expanded access, also referred to as "compassionate use," is an FDA process that allows the use of an investigational drug outside of a clinical trial.

⁶³ R.C. 4731.30.

⁶⁴ R.C. 4731.30.

⁶⁵ R.C. 4731.30 and 4731.301.



(6) The minimal standards of care when recommending treatment with medical marijuana.⁶⁶

The rules must be adopted in accordance with the Administrative Procedure Act.⁶⁷

The Medical Board may adopt any other rules it considers necessary, including rules specifying the information that must be contained in a written recommendation.

Licensure of cultivators, processors, retail dispensaries, and laboratories

An entity that seeks 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 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 Pharmacy.⁶⁸ An 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 demonstrates that the person subject to the check is not disqualified because the person was convicted of or pleaded guilty to an offense specified in rules;

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

⁶⁶ R.C. 4731.301.

⁶⁷ R.C. Chapter 119.

⁶⁸ R.C. 3796.09 and 3796.10.

(5) The applicant meets all other eligibility conditions established in rules.⁶⁹

Compliance with state tax laws

At the request of the Department of Commerce or Board of Pharmacy, the Department of Taxation must provide all of the following information regarding an applicant for licensure:

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

(2) Any past or pending violation by the applicant of those tax laws and any resulting penalty.⁷⁰

The Department of Commerce or Board may request information only as it pertains to an application for licensure submitted to it. The Department of Taxation may charge the Department of Commerce or Board a reasonable fee to cover the administrative costs of providing the information.

Information received from the Department of Taxation is confidential and the Department of Commerce or Board cannot make it available to any person other than the license applicant.

Criminal records checks 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 entity's daily operation;

(2) A current or prospective owner, officer, or board member of the entity.⁷¹

The process for completing a criminal records check provided for under the act is the same one that applies to other professionals under existing law.⁷² The Department of Commerce and Board of Pharmacy are each 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.

⁶⁹ R.C. 3796.09, 3796.10, and 3796.11.

⁷⁰ R.C. 3796.11.

⁷¹ R.C. 3796.12.

⁷² R.C. 109.572.



Criminal records checks for employees of licensees

Each person seeking employment with a licensed cultivator, processor, laboratory, or retail dispensary must complete a criminal records check.⁷³ The act prohibits a license holder from employing a person who does not comply with the criminal records check requirement or who has been convicted of or pleaded guilty to a disqualifying offense. The person may be employed, however, if the conviction or guilty plea is more than five years old and the offense is specified in rules adopted by the Department or Board, respectively.⁷⁴

Minority benchmarks

The Department of Commerce and Board of Pharmacy each must 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: blacks or African-Americans; American Indians; Hispanics or Latinos; or Asians. However, if an insufficient number of applications that meet the conditions for licensure are submitted by such entities, the Department and Board of Pharmacy each must issue licenses according to usual procedures.⁷⁵

Enforcement

License suspension and revocation

The Department of Commerce or Board of Pharmacy may suspend, revoke, or refuse to renew a license it issued for any reason specified in its rules. The act also authorizes the Department or Board to refuse to issue a license or to suspend a license it issued without prior hearing.⁷⁶ An action to suspend or revoke a license must be taken in accordance with the Administrative Procedure Act.

Summary suspension of retail dispensary licenses

The Board of Pharmacy may suspend a retail dispensary license without prior hearing if it finds clear and convincing evidence that continued distribution of medical marijuana by the dispensary presents a danger of immediate and serious harm to others.⁷⁷ The Board may use a telephone conference call to review the allegations and

⁷³ R.C. 3796.13, 4776.01, not in the act, 4776.02, 4776.03, not in the act, and 4776.04.

⁷⁴ R.C. 3796.13(B).

⁷⁵ R.C. 3796.09 and 3796.10.

⁷⁶ R.C. 3796.03, 3796.04, and 3796.14.

⁷⁷ R.C. 3796.14.



take a vote. The Board must comply with the requirements of the Administrative Procedure Act when suspending without prior hearing.

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 of the adjudication hearing, the suspension must be lifted on the 91st day following the hearing.

Civil penalty

The act authorizes the Department of Commerce or Board of Pharmacy to impose on a license holder a civil penalty in an amount it determines for any reason specified in its rules.⁷⁸ Any action to impose a civil penalty must be taken in accordance with the Administrative Procedure Act. In the case of the Board of Pharmacy, it may use a telephone conference call to review the allegations and take a vote.

Inspections

The act authorizes the Department of Commerce or Board of Pharmacy to inspect without prior notice the premises of a license holder or applicant for licensure.⁷⁹ In the case of the Board of Pharmacy, it may also inspect without prior notice all records that the act requires a dispensary to maintain.

Placing medical marijuana under seal – retail dispensaries

The Board of Pharmacy may place under seal all medical marijuana owned by or in the possession, custody, or control of a licensed retail dispensary if the Board both:

- (1) Suspends, revokes, or refuses to renew the dispensary's license; and
- (2) Determines that there is clear and convincing evidence of a danger of immediate and serious harm to any person.⁸⁰

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, while the appeal is pending, to sell perishable medical marijuana. The Board must deposit the sale's proceeds with the court.

⁷⁸ R.C. 3796.14.

⁷⁹ R.C. 3796.14.

⁸⁰ R.C. 3796.15.



Licensed cultivators

The act authorizes the holder of a cultivator license to cultivate medical marijuana and deliver or sell it to one or more processors.⁸¹

Personal, family, or household use prohibited

The act prohibits a licensed cultivator from cultivating medical marijuana for personal, family, or household use.⁸²

Cultivation on public land prohibited

The act prohibits a licensed cultivator from cultivating medical marijuana on any public land, including a state park.⁸³

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.

When processing medical marijuana, a licensed processor must package it according to federal child-resistant effectiveness standards in effect on September 8, 2016.⁸⁴ The processor also must label the packaging with the product's tetrahydrocannabinol and cannabidiol content and comply with any packaging or labeling requirements established in rules adopted by the Department of Commerce.⁸⁵

⁸¹ R.C. 3796.18.

⁸² R.C. 3796.18.

⁸³ R.C. 3796.18 and 154.01, not in the act.

⁸⁴ See 16 C.F.R. 1700.15(b).

⁸⁵ R.C. 3796.19. Tetrahydrocannabinol, or THC, is the main psychoactive cannabinoid in marijuana. Cannabidiol is another type of cannabinoid, but it does not produce the euphoria or intoxication that THC does. See National Institutes of Health at footnote 22.

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 and caregivers. When dispensing, the licensed retail dispensary must:

(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 Board of Pharmacy rules;

(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 physician who recommended treatment with medical marijuana;
- The directions for use as recommended by the physician;
- The date on which the medical marijuana was dispensed;
- The quantity, strength, kind, and form of medical marijuana contained in the package.⁸⁶

Patient identifying information

The act prohibits a licensed retail dispensary from making public any information it collects that identifies or would tend to identify any specific patient.⁸⁷

Licensed laboratories

The holder of a laboratory license may obtain medical marijuana from licensed cultivators, processors, or retail dispensaries and may conduct testing on the marijuana.

⁸⁶ R.C. 3796.20.

⁸⁷ R.C. 3796.20.

A licensed laboratory must test for potency, homogeneity, and contamination and prepare a report of test results.⁸⁸

Licenses temporarily restricted to public institutions of higher education

For one year after the Department of Commerce begins to accept applications for licenses to conduct laboratory testing, the Department is prohibited from issuing a license to any applicant other than an Ohio public institution of higher education. In addition, the institution must have the resources and facilities necessary to conduct testing in accordance with the standards and procedures established in rules adopted by the Department.⁸⁹

Forfeiture or seizure of license holder property

The act provides that the cultivation, processing, testing, or dispensing of medical marijuana in accordance with its provisions cannot be used as the sole or primary reason for taking action under any civil or criminal statute in the forfeiture or seizure of any property or asset.⁹⁰

Other licensed professionals

Under the act, a person who holds a license to engage in a profession, occupation, or occupational activity is not subject to professional disciplinary action solely for engaging in professional or occupational activities related to medical marijuana.⁹¹

Marijuana research

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

- (1) The Agency for Health Care Research and Quality;
- (2) The National Institutes of Health;

⁸⁸ R.C. 3796.21.

⁸⁹ Section 5.

⁹⁰ R.C. 3796.24.

⁹¹ R.C. 3796.24; R.C. 4776.01, not in the act.



- (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 evaluating the medical value of health care services.⁹²

The act 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 that is part of a research protocol approved by an institutional review board or equivalent entity.⁹³

Property tax valuation of land used to cultivate or process marijuana

The act specifies that land on which medical marijuana is cultivated or processed does not qualify for current agricultural use valuation (CAUV) for property tax purposes.⁹⁴ Instead, the land would be taxed based on its fair market value, the price that a seller is willing to accept and a buyer is willing to pay on the open market.⁹⁵

As a general rule, property taxes are based on fair market value. The Ohio Constitution provides for an exception, permitting land devoted exclusively to agricultural use to be valued according to its CAUV.⁹⁶ The CAUV formula is designed to estimate the value of property considering its potential agricultural use, rather than its "best" potential use. The formula may result in a lower tax bill, as the land is often

⁹² R.C. 3796.032.

⁹³ R.C. 3796.24.

⁹⁴ R.C. 5713.30.

⁹⁵ Section 2, Article XII, Ohio Constitution.

⁹⁶ Section 36, Article II, Ohio Constitution.



valued below its fair market value, especially in an area where it is in demand for residential or commercial development.⁹⁷

Township or municipal corporation may prohibit or limit retail dispensaries

The legislative authority of a municipal corporation may adopt an ordinance, and a board of township trustees may adopt a resolution, to prohibit, or limit the number of, licensed retail dispensaries of medical marijuana within the municipal corporation or unincorporated territory of the township.⁹⁸

Exemption for marijuana research

The act does not authorize a municipal corporation or township to limit marijuana-related research that is conducted at a state university, academic medical center, or private research and development organization and that is part of a research protocol approved by an institutional review board or equivalent entity.⁹⁹

Zoning of retail dispensaries

Continuing law limits the power of counties and townships to zone land used for agricultural purposes. The act provides that these existing limitations do not prohibit a township, through its zoning commission, board of township trustees, or board of zoning appeals,¹⁰⁰ from regulating the location of retail dispensaries of medical marijuana or from prohibiting dispensaries in the unincorporated territory of the township. The act, however, does not provide similarly for counties.¹⁰¹

Proximity to certain public places

The act prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, or public library, playground, or park. For this purpose, a school includes a child day-care center.¹⁰²

The Department of Commerce must revoke the license of a cultivator, processor, or laboratory that relocates to within 500 feet of a school, church, or public library,

⁹⁷ R.C. 5713.31, not in the act.

⁹⁸ R.C. 3796.29.

⁹⁹ R.C. 3796.29.

¹⁰⁰ R.C. 519.21.

¹⁰¹ R.C. 303.21, not in the act.

¹⁰² R.C. 3796.30.



playground, or park. Similarly, the Board of Pharmacy must revoke the license of retail dispensary that relocates to within 500 feet of such a place.¹⁰³

The Department and Board each must specify, in rules adopted under the Administrative Procedure Act, whether an existing license holder may remain in operation or must relocate or have its license revoked after a school, church, or public library, playground, or park opens within 500 feet of the license holder's premises (see "**Program rules**" above).¹⁰⁴

An entity seeking a license to cultivate, process, dispense, or test medical marijuana must demonstrate, as part of its application, that it will not be located within 500 feet of any of these places.¹⁰⁵

Exemption for marijuana research

The prohibition described above does not apply to a state university, academic medical center, or private research and development organization that conducts research related to marijuana as part of a research protocol approved by an institutional review board or equivalent entity.¹⁰⁶

"Safe harbor" for banking services

The act exempts a financial institution that provides financial services to a licensed cultivator, processor, retail dispensary, or laboratory from certain criminal laws, *if* the cultivator, processor, retail dispensary, or laboratory is in compliance with the act and Ohio tax laws. The act 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.

The exemption applies to crimes that involve providing financial services to another who possesses, delivers, or manufactures marijuana or marijuana-derived products, such as offenses related to the funding of drug or marijuana trafficking and the drug-related offenses of conspiracy and complicity.

¹⁰³ R.C. 3796.30.

¹⁰⁴ R.C. 3796.03 and 3796.04.

¹⁰⁵ R.C. 3796.09 and 3796.10.

¹⁰⁶ R.C. 3796.30.



For purposes of the 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 licensed cultivator, processor, retail dispensary, or laboratory;
- (2) The name of any other business or individual affiliated with the person;
- (3) A copy of the license application, and any supporting documentation, 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 act;
- (6) Any past or pending violation of the act by the person, and any penalty imposed for the violation.

The Department of Commerce or Board of Pharmacy must provide to the financial institution the information it requested. The Department or Board may charge the financial institution a reasonable fee to cover the administrative costs of doing so.

Information received by a financial institution under the act is confidential. Except as otherwise permitted by state or federal law, a financial institution is prohibited from making the information available to anyone other than the customer to whom the information applies and any trustee, conservator, guardian, personal representative, or agent of that customer.¹⁰⁷

Closed-loop payment processing system

The Director of Commerce may adopt, in accordance with the Administrative Procedure Act, rules establishing a closed-loop payment processing system. Under such a system, the Department creates accounts to be used by registered patients and caregivers at licensed dispensaries and by licensed cultivators, processors, retail dispensaries, and laboratories. 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;

¹⁰⁷ R.C. 3796.27.

- 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 state and federal law enforcement agencies, including the U.S. Department of the Treasury's Financial Crimes Enforcement Network.¹⁰⁸

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. Existing law unchanged by the act 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.¹⁰⁹

Reporting to OARRS

The act authorizes the Board of Pharmacy to monitor the misuse and diversion of medical marijuana through OARRS, by requiring that a retail dispensary or its delegate report to OARRS when dispensing medical marijuana.¹¹⁰ A dispensary must report to the database the information specified in rules adopted by the Board.

Access to patient information

The act 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;

¹⁰⁸ R.C. 3796.031.

¹⁰⁹ R.C. 4729.75 and 4729.80.

¹¹⁰ R.C. 4729.75 , 4729.771, and 4729.84.

(2) The delegate certifies in a form specified by the Board that the information is for the purpose of dispensing medical marijuana for use in accordance with the act's provisions;

(3) The delegate or retail dispensary has not been denied access to OARRS.¹¹¹

While it permits a retail dispensary to access certain patient information from OARRS, the act does not require it to do so.

Board of Pharmacy reports

Under existing law unchanged by the act, 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 effectiveness in providing information from OARRS. The act requires that this report also include information from retail dispensaries licensed to dispense medical marijuana.

Current law unchanged by the act also requires that the Board submit to the Governor, General Assembly, and various agencies or departments of state government a semiannual report that includes an aggregate of information regarding prescriptions for controlled substances containing opioids, as well as opioids personally furnished by prescribers. The act requires that the report also contain an aggregate of information submitted by retail dispensaries when dispensing medical marijuana.¹¹²

Confidentiality of OARRS information

With respect to information contained in OARRS, the act provides that it is confidential. It may be released in summary, statistical, or aggregate form if it does not identify any person, including any Board licensee or registrant.¹¹³

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

¹¹¹ R.C. 4729.80.

¹¹² R.C. 4729.85.

¹¹³ R.C. 4729.80.



Conforming changes

Because the act 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.¹¹⁴

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.¹¹⁵ 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 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.

Assistance for veteran or indigent patients

The Board of Pharmacy must establish a program to assist patients who are veterans or indigent in obtaining medical marijuana.¹¹⁶

Toll-free hotline

The Board of Pharmacy must establish a toll-free telephone line to:

- (1) Respond to inquiries from patients, caregivers, and health professionals regarding adverse reactions to medical marijuana;
- (2) Provide information about available services and assistance.¹¹⁷

The Board may contract with a separate entity to establish and maintain the telephone line.

¹¹⁴ R.C. 4729.84 and 4729.86.

¹¹⁵ R.C. 3796.07.

¹¹⁶ R.C. 3796.04.

¹¹⁷ R.C. 3796.17.



Legislative intent

Reclassification of marijuana

The act specifies that the General Assembly declares its intent to recommend that Congress, the U.S. Attorney General, and the U.S. Drug Enforcement Administration 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.¹¹⁸

COMMENT

Physician recommendations and patient affirmative defense

In order for a patient or the parent or guardian of a minor patient to assert the affirmative defense established by the act, certain requirements must be met, including that a physician issue for the patient a written recommendation for medical marijuana treatment.¹¹⁹ However, the act prohibits a physician from recommending treatment with medical marijuana unless the physician holds a certificate to recommend issued by the State Medical Board.¹²⁰ Since the Board is not required to adopt procedures for issuing such certificates until September 8, 2017, there have been concerns raised that the affirmative defense would not be available until those rules are adopted and the Board begins accepting applications for certificates to recommend. However, in guidance offered to physicians, the Board stated that, for the purposes of the affirmative defense, a physician may issue a recommendation before obtaining a certificate to do so from the Board, but recommended that physicians seek legal advice before doing so.

HISTORY

ACTION	DATE
Introduced	04-14-16
Reported, H. Select Committee on Medical Marijuana	05-09-16
Passed House (71-26)	05-10-16
Reported, S. Gov't Oversight & Reform	05-25-16
Passed Senate (18-15)	05-25-16
House concurred in Senate amendments (67-29)	05-25-16

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¹¹⁸ Section 4. On August 11, 2016, the U.S. Drug Enforcement Administration decided that marijuana will remain a schedule I controlled substance.

¹¹⁹ Section 6.

¹²⁰ R.C. 4731.30.

