



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 57\*  
133rd General Assembly

## Bill Analysis

[Click here for S.B. 57's Fiscal Note](#)

**Version:** As Reported by House Agriculture and Rural Development

**Primary Sponsor:** Sen S. Huffman

Carlen Zhang-D'Souza, Attorney

### SUMMARY

- Decriminalizes hemp and hemp products by excluding them from the definition of marijuana that is used to enforce controlled substance laws.
- Prohibits the State Board of Pharmacy from listing hemp or hemp products as controlled substances.
- Requires the Director of Agriculture, in consultation with the Governor and Attorney General, to submit a plan to regulate hemp cultivation to the Secretary of the U.S. Department of Agriculture for approval, in accordance with federal law.
- Requires the Director of Agriculture to establish a Hemp Cultivation and Processing Program (program) to monitor and regulate hemp cultivation and hemp processing .
- Requires a person who intends to cultivate hemp to obtain a hemp cultivation license from the Director.
- Requires a person who intends to process hemp into any hemp product to obtain a hemp processing license from the Director.
- Requires the Director, in consultation with the Governor and the Attorney General, to adopt rules establishing standards and procedures for the program that comply with federal law.
- Establishes prohibitions, procedures (including corrective action plan requirements) and criminal penalties for purposes of the program enforcement.
- Authorizes the Director, when the Director determines that certain emergency conditions exist, to issue an order requiring actions be taken to mitigate those conditions.

---

\* This analysis was prepared before the report of the House Agriculture and Rural Development Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Establishes in the state treasury the Hemp Program Fund to be used by the Department of Agriculture to administer and enforce the program.
- Establishes a Hemp Marketing Program.
- Specifically allows land used for hemp farming to be valued according to its current agricultural use value (CAUV).
- Authorizes the release of hemp and hemp products seized prior to the bill’s effective date under certain circumstances.
- Declares an emergency.

---

## TABLE OF CONTENTS

Introduction .....	2
Controlled substances and decriminalization of hemp .....	3
Hemp Cultivation and Processing Program .....	4
Federal Agriculture Improvement Act of 2018 requirements .....	4
Hemp cultivation license and hemp processing license .....	5
Rules .....	6
Enforcement.....	8
Prohibitions .....	9
Negligence: corrective action plan .....	9
Recklessness: criminal penalties and prosecution .....	9
Additional enforcement mechanisms for compliance .....	10
Hemp Program Fund.....	10
Hemp Marketing Program .....	10

---

## DETAILED ANALYSIS

### Introduction

Hemp is a variety of the plant *Cannabis sativa* L. (cannabis) that can be used in industrial applications, such as paper, textiles, biofuel, and animal feed. Both hemp and marijuana come from the cannabis plant, but hemp contains a lower concentration of the psychoactive constituent of cannabis, delta-9 tetrahydrocannabinol (THC). Ohio does not currently have any specific laws in place regarding hemp or hemp products, and hemp and hemp products are prohibited in Ohio because hemp comes from the same plant as marijuana – cannabis. Thus, hemp is considered a Schedule I controlled substance under Ohio law.<sup>1</sup>

---

<sup>1</sup> R.C. 3719.01(O) and 3719.41(C)(19), amended in Section 1. Note that the bill amends the current versions of R.C. 3719.01 and 3719.41 in Section 1 of the bill and the future versions of those sections in Section 5 of the bill.

Until recently, federal law also made no distinction between hemp and marijuana. However, the federal Agriculture Improvement Act of 2018 both: (1) exempts hemp grown in accordance with the Act from the federal Controlled Substances Act (CSA), and (2) authorizes states to regulate hemp under specific conditions. The federal Act was signed into law on December 20, 2018.

## **Controlled substances and decriminalization of hemp**

The bill prohibits the State of Ohio Board of Pharmacy (Board) from listing hemp or hemp products as a controlled substance and decriminalizes hemp and hemp products by excluding them from the definition of marijuana that is used to enforce laws governing controlled substances.

Under the federal CSA, drugs are classified into one of five schedules (I through V) depending on the drug's acceptable medical use and its abuse or dependency potential. Generally, marijuana is a Schedule I controlled substance under the CSA, meaning it is prohibited and no prescription can be written for it. However, the federal Agriculture Improvement Act of 2018 specifies that hemp (and THC found in hemp) grown in accordance with that Act is not marijuana, and therefore, is not a controlled substance.

Ohio's controlled substance schedules are similar to those established under the federal CSA. Generally, the schedules under Ohio law are automatically updated when certain federal changes occur, subject to rulemaking authority granted to the Board. However, in the 132<sup>nd</sup> General Assembly, S.B. 229 was enacted. It requires the Board to adopt rules establishing Schedules I through V. Ohio's controlled substance schedules will therefore be eliminated from statute when this provision of S.B. 229 becomes effective on March 22, 2020. The Board will have the authority to include in the schedules any substance that was included in the schedules immediately prior to March 22, 2020.<sup>2</sup>

In light of these changes, the bill removes hemp, hemp products, and THC in hemp from the current list of Schedule I controlled substances in Ohio law. The Board is also prohibited from adopting rules including hemp or a hemp product in any schedule as a controlled substance.<sup>3</sup> Further, the bill excludes "hemp" and "hemp product" from the definition of "drug" in the pharmacy dangerous drug law.<sup>4</sup> The bill further decriminalizes hemp and hemp products by excluding them from the Ohio definition of marijuana used for regulating controlled substances and the criminal enforcement of those laws.<sup>5</sup> For purposes of the bill, hemp is:

The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether

---

<sup>2</sup> R.C. 3719.41, amended in Section 5.

<sup>3</sup> R.C. 3719.01 and 3719.41, as amended in Section 1 and Section 5.

<sup>4</sup> R.C. 4729.01(E), amended in Section 1. Note that the bill amends the current version R.C. 4729.01(E) in Section 1 of the bill and the future version of that section in Section 5 of the bill.

<sup>5</sup> R.C. 3719.01(O) and 3719.01(M), amended in Section 5.

growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.<sup>6</sup>

A hemp product is any product, containing a THC concentration of not more than 0.3%, made with hemp, including cannabidiol. Cannabidiol is a compound derived from hemp.<sup>7</sup>

Under the bill, “delta-9 tetrahydrocannabinol” is defined as the sum of the percentage by weight of tetrahydrocannabinolic acid (THCa) multiplied by 0.877 plus the percentage by weight of delta-9 tetrahydrocannabinol (THC). THCa (which is not psychoactive) converts to THC when heated or dried. As such, the definition encompasses the total potential THC amount by combining the existing THC amount and the potential THC amount that exists in THCa. Otherwise put, delta-9 tetrahydrocannabinol = THC + (THCa x 0.877).<sup>8</sup>

## **Hemp Cultivation and Processing Program**

### **Federal Agriculture Improvement Act of 2018 requirements**

Under the provisions of the federal Agriculture Improvement Act of 2018, hemp and hemp products may be legally cultivated, produced, and sold<sup>9</sup> under two circumstances:

1. The state submits a plan for hemp regulation to the U.S. Secretary of Agriculture that complies with the Act’s requirements; or
2. If the state does not submit a plan and hemp is not prohibited by that state, the U.S. Secretary of Agriculture establishes a plan to monitor and regulate hemp in that state.

Under the first circumstance, the state’s plan must include all of the following:

- A way to keep track of land where hemp is cultivated within the state;
- Methods the state will use to test how much THC is in hemp plants;
- A way to dispose of plants or products that have a higher THC concentration than is legally allowed;
- A procedure for inspecting hemp cultivators;
- Procedures for enforcing the plan;
- A procedure for annual inspections;
- A system for dissemination of a hemp cultivator’s information to the U.S. Department of Agriculture (USDA); and
- Assurances that the state has the resources to carry out the plan.

---

<sup>6</sup> R.C. 928.01(B).

<sup>7</sup> R.C. 928.01(D) and (A).

<sup>8</sup> R.C. 928.01(J).

<sup>9</sup> As used in this analysis, the term “cultivate” refers to the act of growing hemp, and “produce” and “process” refer to the processing of hemp into a hemp product.

Under the second circumstance, a plan established by the Secretary generally must meet the same criteria as a plan submitted by a state, but must also establish a licensing procedure for hemp cultivators. The Act specifically allows a state to outlaw hemp cultivation within its boundaries or to include additional restrictions and requirements in its plan as long as the plan complies with the Act.<sup>10</sup>

In accordance with the Act, the bill requires the Director of Agriculture, in consultation with the Governor and Attorney General, to submit a plan for the regulation of hemp cultivation to the Secretary for approval not later than 180 days after the bill's effective date.<sup>11</sup> The bill further requires the Director to establish a hemp cultivation and processing licensing program that incorporates the elements required for a state plan submitted under the federal Act to be approved by the Secretary, as further explained below.<sup>12</sup>

### **Hemp cultivation license and hemp processing license**

Under the bill, the Director of Agriculture must establish a Hemp Cultivation and Processing Program (program) to monitor and regulate hemp cultivation and processing. Under the program, the Director must issue hemp cultivation licenses and hemp processing licenses to eligible applicants. "Cultivate" means to plant, water, grow, fertilize, till, or harvest a plant or crop, and "cultivating" includes processing and storing a plant or crop on a premises where that plant or crop was cultivated until transported to the first point of sale. "Process" means converting hemp into a hemp product.<sup>13</sup>

A person seeking to cultivate hemp or process hemp must apply to the Director for a license, which is valid for three years (unless earlier suspended or revoked by the Director).<sup>14</sup> However, as authorized by the Director, the Department of Agriculture or a university may cultivate hemp or process hemp without a license for research purposes.<sup>15</sup>

The bill specifies that no hemp cultivation license or hemp processing license is required to possess, buy, or sell hemp or a hemp product.<sup>16</sup>

In addition, the bill specifies that notwithstanding any other provision of law, the addition of hemp or a hemp product to any other product does not adulterate that other product.<sup>17</sup> Under current law, adulteration of a food, device, cosmetic, or drug is criminally

---

<sup>10</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10113.

<sup>11</sup> Section 7 of the bill.

<sup>12</sup> R.C. Chapter 928.

<sup>13</sup> R.C. 928.01(B) and (I) and R.C. 928.02.

<sup>14</sup> R.C. 928.02(B).

<sup>15</sup> R.C. 928.02(A).

<sup>16</sup> R.C. 928.02(C).

<sup>17</sup> R.C. 928.02(D).

prohibited. Thus, the bill exempts the addition of hemp to a product from being prosecuted as “adulteration” under that law.<sup>18</sup>

## Rules

The bill requires the Director, in consultation with the Governor and the Attorney General, to adopt rules under the Administrative Procedure Act establishing standards and procedures to regulate hemp cultivation and processing. In establishing rulemaking authority, the bill incorporates all of the elements required to be included in a state plan by the federal Agriculture Improvement Act of 2018 and additional specified elements. The rules must include all of the following:

- The form of an application for a hemp cultivation license and hemp processing license and information required to be included in each application;
- The amount of the initial application fee and annual license fee that must be submitted with each application. The Director must establish the fees at a rate not to exceed an amount sufficient to cover costs incurred by the Department to administer and enforce the program. Further, the rate for the application fee and annual license fee must be uniform as applied to all hemp cultivation licensees;
- Requirements and procedures for applicant background investigations, including a requirement that a license applicant comply with existing procedures that govern criminal background checks. (The Bureau of Criminal Identification and Investigation must conduct the criminal background check, and the Director may not issue a license to an applicant who fails to comply);
- Requirements regarding the experience, equipment, facilities, or land necessary to obtain a hemp cultivation license;
- Requirements and procedures regarding standards of financial responsibility for each applicant for a hemp processing license;
- Procedures and requirements for the issuance, renewal, denial, suspension, and revocation of a license, including providing for an administrative hearing with regard to a denial, suspension, or revocation of a license;
- Grounds for the denial, suspension, and revocation of a license, including a requirement that the Director revoke a person’s hemp cultivation or processing license, for a period of ten years, if the person pleads guilty to or is convicted of a felony related to a controlled substance;
- A requirement that the Director cannot issue a license to any person who has pleaded guilty to or been convicted of a felony related to a controlled substance in the ten years immediately prior to submission of an application;

---

<sup>18</sup> See, e.g., R.C. 3715.52, 3715.99, and R.C. Chapter 3715 generally, not in the bill.

- A requirement that any person who materially falsifies information in an application is ineligible to receive either license;
- A practice for maintaining relevant information regarding land on which hemp cultivation licensees cultivate hemp, including a legal description of the land;
- Requirements prohibiting a hemp cultivation licensee and a hemp processing licensee from cultivating or processing marijuana;
- A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 THC concentration of plants and products for determining compliance with the program;
- Requirements and procedures governing the production, storage, and disposal of hemp byproducts. The bill allows a hemp byproduct to exceed a delta-9 THC concentration of 0.3% and still maintain its status as a hemp product that is not subject to regulation and criminal enforcement as marijuana. However, the byproduct must be produced, stored, and disposed of in accordance with rules in order for this exception to apply.
- Requirements and procedures for the issuance, administration, and enforcement of corrective action plans (see “**Negligence: corrective action plan**”);
- A procedure for conducting, at a minimum, random annual inspections of hemp cultivation license holders to verify that all cannabis-type plants are being cultivated in accordance with the program;
- A procedure for conducting, at a minimum, random annual inspections of hemp processing license holders to verify that license holders are in compliance with the program;
- A procedure for complying with enforcement procedures required under federal law;
- A procedure for the effective disposal of all of the following:
  - Plants that violate program requirements;
  - Products derived from plants that violate program requirements; and
  - Products produced in violation of program requirements.
- Requirements prohibiting hemp processing in a building used as a personal residence or on land that is zoned residential;
- Procedures and requirements for transporting and storing hemp and hemp products;
- Procedures for sharing information regarding hemp cultivation license holders with the USDA;
- A setback distance requirement that specifies the distance that a hemp cultivation licensee must locate hemp plants from a location where medical marijuana is being cultivated (this requirement does not apply if a medical marijuana cultivator locates

medical marijuana within the setback distance after the hemp cultivation license holder has already begun operating);

- Annual reporting requirements and procedures for hemp cultivation license holders and hemp processing license holders;
- Recordkeeping and documentation maintenance requirements and procedures for hemp cultivation license holders and hemp processing license holders;
- Fees for the laboratory testing of hemp and hemp products;
- Standards for the testing and labeling of hemp and hemp products;
- Production standards and manufacturing practices for processing hemp;
- Any other requirements or procedures necessary to administer and enforce the program.<sup>19</sup>

## **Enforcement**

The bill establishes enforcement procedures that mirror those required for a state plan to be approved by the Secretary of Agriculture under the federal Agricultural Act of 2018. Generally, a state plan must require violations of a hemp program involving criminal negligence to be addressed through the use of a corrective action plan, and for violations involving a culpable mental state of recklessness (or greater) to be referred for criminal prosecution.

Under current Ohio law, a culpable mental state is the degree of culpability necessary to commit a criminal offense. In descending order, the various degrees of culpability are:

- Purposely (specific intent to cause a certain result);
- Knowingly (with knowledge that a certain result probably will occur);
- Recklessly (heedless indifference to consequences that a known risk may cause a certain result); and
- Negligently (a substantial lapse in due care that an act may cause a certain result).

Each mental state includes the levels of mental states listed after it. For example, if a criminal offense requires a person to have acted recklessly, then a person acting knowingly or purposely would be guilty of that offense.<sup>20</sup>

The bill creates general prohibitions, a scheme for issuing corrective action plans, criminal penalties, procedures for prosecuting violations committed with a culpable mental state greater than negligence, and additional enforcement mechanisms for ensuring compliance with the program.

---

<sup>19</sup> R.C. 928.03.

<sup>20</sup> R.C. 2901.22, not in the bill.



## **Prohibitions**

The bill prohibits all of the following:

- Cultivating hemp without a hemp cultivation license;
- Processing hemp without a hemp processing license;
- Holding a license and violating any provision of the program or rules;
- Transporting hemp in violation of the program or rules;
- Failing to comply with a corrective action plan issued by the Director.<sup>21</sup>

The applicable criminal penalty for a violation of the prohibitions depends on the culpable mental state of the offender. However, negligent violations must be addressed by the Director with a corrective action plan, as described below. There is no criminal penalty associated with a negligent violation of any of these prohibitions.

### **Negligence: corrective action plan**

The bill requires the Director to issue a corrective action plan to any person that the Director determines has negligently violated the bill's prohibitions. The Director must include in the corrective action plan both of the following:

- A reasonable date by which the person must correct the violation;
- A requirement that the person report to the Director regarding the person's compliance with the program, rules, and the corrective action plan for two calendar years immediately following the date of the violation.<sup>22</sup>

If the Director determines that a person negligently violated any of the bill's prohibitions three or more times in any five-year period, the Director must revoke the person's hemp cultivation license or hemp processing license (if any) and may not issue a hemp cultivation license or hemp processing license to that person for a period of five years beginning on the date that the Director determines that the person committed the most recent violation.<sup>23</sup>

### **Recklessness: criminal penalties and prosecution**

The bill requires the Director to report a person whom the Director determines has violated the bill's prohibitions with a culpable mental state of recklessness (or greater) to the Attorney General, the U.S. Attorney General, and the applicable county prosecutor.<sup>24</sup> The bill authorizes a county prosecutor or the Attorney General to prosecute such violations.<sup>25</sup>

---

<sup>21</sup> R.C. 928.04.

<sup>22</sup> R.C. 928.05(A).

<sup>23</sup> R.C. 928.05(B).

<sup>24</sup> R.C. 928.05(C).

<sup>25</sup> R.C. 928.99(B).

In addition, the bill establishes the following criminal penalties that apply to such violations:

- For a first offense, a minor misdemeanor;
- For each subsequent offense, a fourth degree misdemeanor.

The bill specifies that the sentencing court must issue an order prohibiting a repeat offender (a person convicted of or who has pleaded guilty to a third or subsequent offense) from obtaining a hemp cultivation license or hemp processing license. The court must provide notice of that order to the Director. The Director must then revoke any license the person holds and refuse to issue the person a license beginning on the date of the court order.<sup>26</sup>

### **Additional enforcement mechanisms for compliance**

The bill authorizes the Director to enter at reasonable times upon any public or private property at which hemp is being cultivated or processed for the purpose of determining compliance with the program and rules adopted under it. The Director may apply for, and any judge can issue, a search warrant needed to achieve the program's purpose.

And, the bill authorizes the Director, when the Director determines that emergency conditions exist requiring immediate action to protect public health, safety, or the environment, to issue an order requiring specific actions be taken to mitigate those conditions without prior notice or a hearing. Any person to whom such an order is issued must immediately comply, but the person may apply to the Director for an adjudication hearing. On the basis of the hearing, the Director must continue, revoke, or modify the order.

In addition to any other available remedies, the bill authorizes the Director, the Attorney General, and a county prosecutor to apply to the court of common pleas in the county where a violation of the program is happening for an injunction to restrain the person from continuing that violation, including for a violation of an emergency order.

## **Hemp Program Fund**

The bill establishes in the state treasury the Hemp Program Fund, which must consist of all fees collected under the program, money appropriated to the fund, and any other money received from gifts or federal grants. The fund's investment earnings must be credited to the fund. The Director must use the fund to administer and enforce the program and rules.<sup>27</sup>

## **Hemp Marketing Program**

The bill establishes a Hemp Marketing Program to promote the sale and use of hemp products, and expand present markets for hemp and hemp products. It generally applies the same procedures, requirements, and other provisions that exist for the Grain and Soybean Marketing Programs in current law.<sup>28</sup> The Hemp Marketing Program Operating Committee must

---

<sup>26</sup> R.C. 928.99(A).

<sup>27</sup> R.C. 928.06.

<sup>28</sup> See R.C. 924.21 and 924.211.

consist of 18 members, 14 of whom must be elected by eligible hemp producers in accordance with the election procedures that apply to the Grain Marketing Program's Operating Committee.

The Director must appoint the remaining four members. With regard to levying assessments to fund the Hemp Marketing Program, the bill requires the Director to levy an assessment on hemp producers at the rate of 0.5% of the value of the hemp seed, fiber, or flower at the first point of sale. This assessment is similar to the assessments currently levied on grains and soybeans under the Grain and Soybean Marketing Programs, which are levied at the rate of 0.5% per bushel.<sup>29</sup>

## **Hemp farming and CAUV**

The bill specifically allows land used for hemp farming to qualify for the CAUV property tax program. To be eligible, the farm owner must hold a hemp cultivation license issued by the Director of Agriculture.

Under the CAUV program, farmland that is devoted to commercial agriculture is valued for property tax purposes according to its "current agricultural use value," which is the value of the property considering only its use for agriculture (rather than its "best" potential use). The CAUV program usually results in a lower tax bill for farm owners because the land is often valued below its actual market value, particularly in areas where farmland is in demand for development purposes.

Continuing law provides that land used to cultivate or process medical marijuana is not eligible for the CAUV program, but does not specifically address hemp farming.<sup>30</sup>

## **Release of previously seized hemp**

The bill authorizes any person that had hemp or a hemp product (hemp) seized prior to the bill's enactment to request the law enforcement agency responsible for the seizure to release the hemp if the hemp has not yet been disposed of. The person must either:

1. Demonstrate that the seized hemp was cultivated or processed in accordance with federal law; or
2. Pay for testing to demonstrate that the hemp's THC concentration is below 0.3%.<sup>31</sup>

## **Emergency clause**

The bill includes an emergency clause; as such, the bill, when enacted, goes into immediate effect.<sup>32</sup>

---

<sup>29</sup> R.C. 924.01(A) and 924.212.

<sup>30</sup> R.C. 5713.30(A)(1)(a) and (A)(2).

<sup>31</sup> Section 8.

<sup>32</sup> Section 10.

---

## HISTORY

Action	Date
Introduced	02-20-19
Reported, S. Agriculture & Natural Resources	03-28-19
Passed Senate (30-0)	03-28-19
Reported, H. Agriculture and Rural Development	---

---