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**S.B. 57**  
**133rd General Assembly**

## Final Analysis

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### SUMMARY

- Decriminalizes hemp and hemp products, thereby allowing anyone to (1) buy, sell, or possess hemp or a hemp product, and (2) cultivate and process hemp, if properly licensed.
- Requires the Director of Agriculture to submit a plan to regulate hemp cultivation to the U.S. Secretary of Agriculture for approval.
- If the plan is approved, requires the Director to establish a Hemp Cultivation and Processing Program to monitor and regulate hemp cultivation and, though not specifically required under federal law, hemp processing.
- Requires the Director to adopt rules that establish federally compliant standards and procedures for the program.
- 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 to enforce the program.
- Authorizes the Director, when the Director determines that certain emergency conditions exist, to issue an order requiring those conditions to be mitigated.

- Establishes the Hemp Program Fund in the state treasury for the Department of Agriculture to use 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, under certain circumstances, the release of hemp and hemp products seized prior to the act’s effective date.

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## DETAILED ANALYSIS

### Introduction

Hemp is a variety of the plant *Cannabis sativa* L. (cannabis) that can be used in a variety of applications, such as paper, textiles, biofuel, animal feed, and personal care products. Both hemp and marijuana come from the cannabis plant. However, hemp contains a lower concentration (0.3% or below) of cannabis’s psychoactive constituent, delta-9 tetrahydrocannabinol (THC).

Federal law did not distinguish between hemp and marijuana until the federal Agriculture Improvement Act of 2018, which: (1) decriminalizes hemp by exempting hemp-grown in accordance with the federal 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. Prior to the federal act, hemp was considered marijuana and was

classified as a Schedule I controlled substance (meaning it was prohibited and no prescription could be written for it).

Prior to this act, Ohio did not have any specific laws regarding hemp or hemp products: both were generally prohibited because hemp was considered marijuana. Thus, hemp was also considered a Schedule I controlled substance under Ohio law.<sup>1</sup>

## Hemp decriminalization

The act decriminalizes hemp and hemp products, thereby allowing a person to:

1. Buy, sell, or possess hemp or a hemp product;
2. Cultivate and process hemp, provided the person is properly licensed in accordance with the act.

To decriminalize hemp, the act aligns Ohio's controlled substance schedules with the federal CSA by providing for the removal of hemp from the schedules. It also decriminalizes hemp by excluding hemp and hemp products from both the definition of "drug" in the pharmacy dangerous drug law and from the definition of "marijuana" in the law governing controlled substances and its criminal enforcement.<sup>2</sup>

For purposes of the act, 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 growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.<sup>3</sup>

A hemp product is any product made with hemp that contains a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3%. This includes cannabidiol, which is a compound derived from hemp.<sup>4</sup>

Additionally, the act defines "delta-9 tetrahydrocannabinol," the psychoactive component of cannabis, to include both the actual THC amount and the potential THC amount (tetrahydrocannabinolic acid (THCa)): the sum of the percentage by weight of THCa multiplied by 0.877 plus the percentage by weight of THC. Otherwise put:

$$\text{delta-9 tetrahydrocannabinol} = \text{THC} + (\text{THCa} \times 0.877)$$

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<sup>1</sup> R.C. 3719.01(O) and 3719.41(C)(19) and (27), amended in Section 1. Note that the act amends the current versions of R.C. 3719.01 and 3719.41 in Section 1 and the future versions of those sections (R.C. 3719.01(M), 3719.41(C) and (D)) in Section 5.

<sup>2</sup> R.C. 3719.01(O), 3719.41(C)(27), and 4729.01(E), amended in Section 1; R.C. 3719.01(M), 3719.41(C) and (D), 4729.01(E), amended in Section 5.

<sup>3</sup> R.C. 928.01(C).

<sup>4</sup> R.C. 928.01(F).

THCa (which is not psychoactive), as it exists in cannabis's plant form, converts to THC when heated or dried. As such, the definition encompasses the total potential THC amount.<sup>5</sup>

## **Hemp Cultivation and Processing Program**

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

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

In accordance with (1) above, the act requires the Ohio Director of Agriculture, in consultation with the Governor and Attorney General, to submit a plan to regulate hemp to the Secretary for approval by January 27, 2020 (180 days after the act's effective date).<sup>6</sup> The state's plan must include:

- 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 disseminating 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>7</sup>

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

In response to the federal requirements, the act requires the Director of Agriculture to establish a Hemp Cultivation and Processing Program to monitor and regulate hemp cultivation. It also adds additional requirements, not specifically required under federal law, governing the processing of hemp.

Under the program, the Director must issue hemp cultivation licenses and hemp processing licenses to eligible applicants. Thus, any person who plants or harvests hemp, and

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<sup>5</sup> R.C. 928.01(J).

<sup>6</sup> Section 7.

<sup>7</sup> Agriculture Improvement Act of 2018, Public Law No. 115-334, § 10113.

processes and stores hemp on the site of cultivation until transported for sale, must obtain a hemp cultivation license. A person who converts hemp into a hemp product must obtain a hemp processing license.<sup>8</sup> However, a person may possess, buy, or sell hemp or a hemp product without a license, provided the person is not cultivating or processing the hemp.<sup>9</sup>

A person seeking to cultivate or process hemp must apply to the Director for a license, which is valid for three years (unless the Director has suspended or revoked the license).<sup>10</sup> But, as authorized by the Director, the Department of Agriculture or a university may cultivate hemp or process hemp for research purposes without a license.<sup>11</sup>

## Rules

The Director, in consultation with the Governor and the Attorney General, must adopt rules that establish standards and procedures to regulate hemp cultivation and processing. The act incorporates all of the elements required to be included in a state plan by the federal Agriculture Improvement Act of 2018 and additional elements. The rules must include all of the following:

- The form of an application for a hemp cultivation license and a 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 that does not exceed an amount sufficient to cover costs the Department incurs to administer and enforce the program.
  - The rate for the application fee and annual license fee must be uniform for 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 financial responsibility standards for each applicant for a hemp processing license;

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<sup>8</sup> R.C. 928.01(B) and (I) and R.C. 928.02.

<sup>9</sup> R.C. 928.02(C).

<sup>10</sup> R.C. 928.02(B).

<sup>11</sup> R.C. 928.02(A).

- Procedures and requirements for license issuance, renewal, denial, suspension, and revocation, including providing for an administrative hearing with regard to a license denial, suspension, or revocation;
- Grounds for license denial, suspension, and revocation, including a requirement that the Director revoke a person's hemp cultivation or processing license, for 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 any 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 submitting an application;
- 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, respectively;
- A procedure for testing, using post-decarboxylation or other similarly reliable methods, the delta-9 THC concentration of plants and products for determining compliance with the program;
- Requirements and procedures governing hemp byproduct production, storage, and disposal.
  - The act 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 exempt from regulation or criminal enforcement as marijuana.
  - The exemption only applies if the byproduct is produced, stored, and disposed of in accordance with rules.
- 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 and hemp processing license holders to verify that they are in compliance with the program;
- A procedure for complying with federally required enforcement procedures;
- A procedure for the effective disposal of:
  - Plants that violate program requirements;
  - Products derived from plants that violate program requirements; and
  - Products produced in violation of program requirements;

- Requirements that prohibit 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 how far away a hemp cultivation licensee must locate hemp plants from a location where medical marijuana is being cultivated.
  - This 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 hemp and hemp product laboratory testing;
- Standards for hemp and hemp product testing and labeling;
- Production standards and manufacturing practices for processing hemp;
- Any other requirements or procedures necessary to administer and enforce the program.<sup>12</sup>

## **Enforcement**

The act establishes enforcement procedures (as required for a state plan to be approved under the federal Agriculture Improvement Act of 2018). Generally, violations of a hemp program that involve criminal negligence must be addressed through a corrective action plan, and violations that involve a culpable mental state of recklessness (or greater) must be referred for criminal prosecution.

Under 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).

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<sup>12</sup> R.C. 928.03.

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>13</sup>

### **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>14</sup>

The applicable penalty for violating a prohibition depends on the offender's culpable mental state. The Director must address negligent violations with a corrective action plan, as described below. There is no criminal penalty associated with a negligent violation of any of these prohibitions. Criminal penalties apply only when the offender has recklessly violated one of the prohibitions listed above.

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

The Director must issue a corrective action plan to any person whom the Director determines has negligently violated the act's prohibitions. The corrective action plan must include both:

- 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.

If the Director determines that a person negligently violated any of the act'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, the Director may not issue a hemp cultivation license or hemp processing license to that person for a five-year period beginning on the date that the Director determines that the person committed the most recent violation.<sup>15</sup>

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

The Director must report a person whom the Director determines has violated the act's prohibitions—with a culpable mental state of recklessness (or greater)—to the Ohio Attorney

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<sup>13</sup> R.C. 2901.22, not in the act.

<sup>14</sup> R.C. 928.04.

<sup>15</sup> R.C. 928.05(A) and (B).



General, the U.S. Attorney General, and the county prosecutor. A county prosecutor or the Ohio Attorney General may prosecute these violations.<sup>16</sup>

The following criminal penalties apply to these violations:

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

The sentencing court also must issue an order that prohibits a repeat offender (a person who has been 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>17</sup>

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

The Director may, at reasonable times, enter into any public or private property where hemp is being cultivated or processed to determine program compliance. The Director may apply for, and any appropriate judge may issue, a search warrant if needed.

And, when the Director determines that there is an emergency condition that requires immediate action to protect public health, safety, or the environment, the Director may issue an order requiring specific actions be taken to mitigate those conditions. The order may be issued without prior notice or a hearing. Any person to whom the 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.

The Director, the Attorney General, and a county prosecutor also may apply to the court of common pleas in the county where a violation, including a violation of an emergency order, is happening for an injunction to restrain the person from continuing that violation.<sup>18</sup>

### **Release of previously seized hemp**

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

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

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<sup>16</sup> R.C. 928.05(C) and 928.99(B).

<sup>17</sup> R.C. 928.99(A).

<sup>18</sup> R.C. 928.07.

The act specifies that the State of Ohio is not liable for damages to any person for the seizure or disposition of hemp or a hemp product that occurred prior to the act's effective date.<sup>19</sup>

### **Adulteration of products**

The act specifies that the addition of hemp or a hemp product to any other product does not adulterate that other product.<sup>20</sup> Under continuing law, adulteration of a food, device, cosmetic, or drug is criminally prohibited. Thus, the act exempts the addition of hemp to a product from being prosecuted as "adulteration" under that law.<sup>21</sup>

### **Hemp Program Fund**

The act establishes the Hemp Program Fund in the state treasury, 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>22</sup>

### **Hemp Marketing Program**

The act 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.<sup>23</sup> The Hemp Marketing Program Operating Committee must 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. The act requires the Director to levy an assessment on hemp producers at a 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>24</sup>

### **Hemp farming and CAUV**

The act 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.

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<sup>19</sup> Section 8.

<sup>20</sup> R.C. 928.02(D).

<sup>21</sup> See, e.g., R.C. 3715.52, 3715.99, and R.C. Chapter 3715 generally, not in the act.

<sup>22</sup> R.C. 928.06.

<sup>23</sup> See R.C. 924.21 and 924.211, not in the act.

<sup>24</sup> R.C. 924.01(A); R.C. 924.212, not in the act.

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.<sup>25</sup>

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## 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	06-05-19
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Senate concurred in House amendments (31-0)	07-17-19

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<sup>25</sup> R.C. 5713.30(A)(1)(a) and (A)(2).