



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 523 of the 131st G.A. **Date:** May 4, 2016
Status: In House Select Committee on Medical Marijuana **Sponsor:** Rep. Huffman

Local Impact Statement Procedure Required: No

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

State Fiscal Highlights

- The Department of Commerce (COM) will experience an increase in costs related to the creation of the Medical Marijuana Control Commission and the Medical Marijuana Control Program. Costs may include per diem compensation and reimbursement for Commission members, establishing program rules, regulatory staff, development of the required registry and database, and additional costs for equipment, supplies, and a meeting space.
- COM will realize a gain in medical marijuana licensing fee revenue once the Medical Marijuana Control Program is operational within two years of the bill's effective date.
- The State Board of Pharmacy estimates an initial development cost of \$750,000 for a medical marijuana reporting system and recurring maintenance costs of approximately \$500,000 per year.
- The Attorney General's Office may realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
- The State Medical Board will realize a minimal increase in administrative costs to review and approve continuing education courses and to adopt associated rules.

Local Fiscal Highlights

- Public hospitals that employ physicians who are registered to recommend treatment with medical marijuana may experience an increase in administrative costs for physicians to maintain certain records and submit required reports to the Commission.
- The legislative authority of a municipal corporation or a board of township trustees may incur minimal administrative costs if it chooses to adopt an ordinance or

resolution to prohibit or limit the number of retail dispensaries of medical marijuana.

- County sheriff's offices could realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
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Detailed Fiscal Analysis

Medical Marijuana Control Commission membership and duties

The bill establishes the Medical Marijuana Control Commission within the Department of Commerce (COM). The bill outlines the Commission's membership, which consists of nine individuals, each of whom will receive a per diem pursuant to existing pay schedules for members of boards or commissions. Members will also receive actual and necessary travel expenses in connection with Commission hearings and business. The appointments to the Commission must be made no later than 30 days after the bill's effective date and the initial meeting of the Commission must be held no later than 30 days after the last member is appointed. The bill specifies that the Commission is not subject to review by the Sunset Review Committee.

The bill requires that the Commission establish a Medical Marijuana Control Program. The program must provide for the licensure of medical marijuana cultivators, processors, retail dispensaries, and laboratories that test medical marijuana. There are also registration requirements that apply to other groups. This includes physicians that recommend treatment with medical marijuana and patients who seek treatment with medical marijuana and their caregivers. Other activities relating to medical marijuana would also be regulated. The Commission is required to administer the program and may take any action necessary in accordance with rules adopted by COM to implement and enforce the bill's provisions.

Specific responsibilities

Not later than one year after the Commission's initial meeting, COM is required to adopt rules for the program based on recommendations from the Commission. The rules are required to cover 13 specific areas dealing with the regulation of medical marijuana. Specifically the rules must (1) establish procedures and fees for licenses and registrations issued under the bill, (2) specify the criminal offenses for which an applicant will be disqualified from licensure, (3) specify the conditions that must be met to be eligible for licensure, (4) establish the number of cultivator and retail dispensary licenses that will be permitted at any one time, (5) establish a license renewal schedule, renewal procedures, and renewal fees, (6) specify reasons for which a license may be suspended or revoked, (7) establish standards under which a license suspension may be lifted, (8) establish procedures for registration of physicians seeking to recommend medical marijuana for treatment and requirements that must be met to be eligible for registration with the Commission, (9) establish procedures for registration of patients

and caregivers and requirements that must be met to be eligible for registration, (10) establish training requirements for employees of retail dispensaries, (11) specify when testing of medical marijuana must be conducted by a licensed laboratory, (12) specify if a cultivator, processor, retail dispensary, or laboratory that is licensed and that existed at a location before a school, church, public library, public playground, or public park became established within 1,000 feet of the licensee may remain in operation or shall relocate or have its license revoked by the Commission, and (13) establish a program to assist patients who are veterans or indigent in obtaining medical marijuana. In addition, COM may adopt other rules it considers necessary for the program's administration, implementation, and enforcement of the bill. Ultimately, the bill specifies that the Commission is required to take all actions necessary to ensure that the program is fully operational not later than two years after the effective date.

Databases to be maintained by the Medical Marijuana Control Commission

The Commission is required to establish and maintain a medical marijuana information database containing (1) the number of patients for whom treatment with medical marijuana has been recommended, (2) the types of diseases or conditions for which treatment with medical marijuana has been recommended, (3) the reasons that treatment with medical marijuana was recommended over another form of treatment, and (4) the forms of or methods of using medical marijuana recommended to patients. The Commission is prohibited from making public any information reported to or collected by the Commission.

The Commission is also required to establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The bill allows the Commission to contract with a separate entity to establish and maintain the database. The database shall allow for information regarding medical marijuana to be updated instantaneously. All persons designated by the Commission shall submit any information the Commission determines is necessary for maintaining the database. Lastly, the Commission is required to establish a toll-free telephone line to respond to inquiries from patients, caregivers, and health professionals regarding adverse reactions to medical marijuana and to provide information about available services and assistance.

Given the scope of new responsibilities under the bill, in all likelihood COM will experience an increase in both start-up and ongoing costs for creating both the Medical Marijuana Control Commission and the Medical Marijuana Control Program. Costs will include per diem compensation and reimbursement for Commission members, establishing program rules, development of the required informational database, and additional costs for equipment, supplies, and a meeting space. It is possible that COM may have to hire additional staff to perform regulatory or other day-to-day functions. However, once the Medical Marijuana Control Program is fully operational, the licensing fee revenue generated under the regulatory program would help offset these

costs. As mentioned above, the program must be fully operational within two years of the effective date.

Criminal background checks

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

State Board of Pharmacy duties

The bill also requires the State Board of Pharmacy to monitor medical marijuana in its drug database. Each retail dispensary is required to submit to the Board certain information regarding medical marijuana dispensed to a patient. Upon request, a delegate of retail dispensary may also request information from the database relating to a patient. The Board is required to notify the Commission if the Board determines that a violation may have been committed by a retail dispensary. The Board is not permitted to impose any charge on a retail dispensary for the establishment or maintenance of the database. The Board is also required to adopt rules regarding retail dispensaries for the purposes of maintaining the database and must include information from retail dispensaries in its drug database biennial report. Additionally, the bill includes the Commission in the list of recipients of the Board's drug database semiannual report. The bill requires the semiannual report to include an aggregate of the information submitted to the Board regarding medical marijuana.

According to the State Board of Pharmacy, the data required to be submitted under the bill to the Ohio Automated Rx Reporting System (OARRS) differs from the data currently collected by the drug database and the method of data collection. Thus, the Board anticipates that another reporting system will be necessary. The Board estimates an initial development cost of \$750,000 and recurring maintenance costs of approximately \$500,000 per year for the reporting system.

Physicians seeking to recommend treatment with medical marijuana

The bill specifies that a physician seeking to recommend treatment with medical marijuana shall apply to the Commission for registration as a qualifying physician. A physician is required to maintain a record for each patient when recommending treatment with medical marijuana specifying certain information and must also submit reports to the Commission every 90 days specifying the number of patients for whom the physician has recommended treatment with medical marijuana as well as other

information. The physician is also required to submit an annual report describing the physician's observations regarding the effectiveness of medical marijuana in treating the physician's patients. Public hospitals that employ physicians who are registered to recommend treatment with medical marijuana may experience an increase in administrative costs for physicians to maintain certain records and submit the required reports to the Commission.

Financial institutions

The bill also exempts financial institutions that provide financial services to any licensed cultivator, processor, retail dispensary, or laboratory from Ohio criminal law if the licensee is in compliance with the bill and tax law. The Commission is required to share certain information with a financial institution upon request and may charge the institution a reasonable fee to cover the administrative cost of providing the information. Financial institutions may also request certain information from the Ohio Department of Taxation (TAX) regarding tax law compliance by a cultivator, processor, retail dispensary, or laboratory with whom the institution is seeking to do business. TAX may charge the financial institution a reasonable fee to cover the administrative cost of providing this information as well.

Employee's use of medical marijuana

The bill specifies that employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana or refusing to hire, discharging, disciplining, or taking an adverse employment action because of a person's use, possession, or distribution of medical marijuana. The bill considers a person discharged from employment because of a person's use to have been discharged for just cause under the Unemployment Compensation Law and thus, ineligible for unemployment benefits, which appears to be similar to current law. The bill also maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the employee was under the influence and being under the influence was the proximate cause of the injury.

Ordinances or resolutions to limit retail dispensaries

The bill provides that agricultural use zoning limitations that apply to townships do not prohibit a township from regulating the location of retail dispensaries or prohibiting such dispensaries from being located in the unincorporated territory of the county or township. Additionally, the legislative authority of a municipal corporation or a board of township trustees may adopt an ordinance or resolution to prohibit or limit the number of retail dispensaries of medical marijuana within the municipal corporation or the unincorporated territory of the township. These local entities may incur minimal administrative costs to adopt such regulations.

State Medical Board – continuing education requirements

The bill requires the State Medical Board to approve one or more continuing education courses of study that assist qualifying physicians registered with the Commission in diagnosing certain qualifying medical conditions and treating these qualifying conditions with medical marijuana. The bill also requires the Board to adopt rules specifying the number of hours of continuing education in medical marijuana approved by the Board that a registered qualifying physician must complete biennially and the minimal standards of care when recommending treatment with medical marijuana. There would be minimal administrative costs to the Board to review and approve continuing education courses and to adopt rules.

Intent language

The bill specifies that the General Assembly may enact law levying an excise tax on each transaction by which medical marijuana is dispensed to a patient. In addition, the law shall subject persons dispensing medical marijuana to all customary nondiscriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon other Ohio businesses. The Commission is required to determine for each fiscal year an amount it considers necessary to fund marijuana drug abuse prevention programs. The amount shall be appropriated for that purpose from revenue arising from this excise tax and revenue from license application and renewal fees.

The bill also specifies that the General Assembly intends to recommend that the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Administration take actions as necessary to classify marijuana as a schedule II controlled substance in an effort to ease the regulatory burdens associated with research on its potential medical benefits. Finally, the bill specifies that the General Assembly intends to establish a program to provide incentives or otherwise encourage institutions of higher education and medical facilities within this state to conduct academic and medical research regarding medical marijuana.

Synopsis of Fiscal Effect Changes

The substitute bill moves the Medical Marijuana Control Commission from the Ohio Department of Health to the Department of Commerce (COM). Additionally, it requires COM to adopt rules based on the recommendations of the Commission. This may increase regulatory oversight and administrative costs for COM, as discussed in more detail under "**Medical Marijuana Control Commission Membership and Duties**" and related subheadings.

The substitute bill requires the State Medical Board to approve one or more continuing education courses of study to assist qualifying physicians registered with the Commission in diagnosing certain qualifying medical conditions and treating these qualifying conditions with medical marijuana. The bill also requires the Board to adopt certain rules regarding medical marijuana. There would be minimal administrative costs to the Board to review and approve continuing education courses and to adopt rules.