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SUMMARY

Drug Offense Law changes

- Allows a person to legally cultivate up to 12 marihuana plants but requires the cultivation area to not be open to public view and to be secured from unauthorized access.
- Reduces the penalties for illegal cultivation of marihuana from a range of a fourth degree misdemeanor to a first degree felony, depending on the circumstances, to a civil infraction punishable by fines ranging from \$500 to \$2,000, making the violation a first degree misdemeanor only if the offense involves more than 24 marihuana plants and is habitual, willful, and for a commercial purpose, or involves violence.
- Allows a person to possess up to 5 ounces of marihuana or up to 15 grams of hashish.
- Reduces the penalties for the offense of possession of marihuana or hashish from a range of a minor misdemeanor to a second degree felony, depending on the circumstances, to minor misdemeanors accompanied by fines ranging from \$100 to \$2,000.
- Repeals the offense of illegal use or possession of marihuana drug paraphernalia.
- Enacts a number of offenses involving marihuana that parallel the existing provisions relating to sales of tobacco products to minors.
- Permits a person convicted of committing offenses covering certain marihuana-related behavior decriminalized by the bill to apply to a court to expunge the records of those convictions.

Marihuana Establishment Law

- Requires the Department of Commerce to adopt rules as necessary to implement, administer, and enforce the Marihuana Establishment Law.
- Authorizes the Department of Commerce to employ personnel and contract with advisors and consultants, subject to conflict of interest limitations, and provides these individuals with civil immunity for harm caused by the employee, advisor, or consultant in the performance of their duties.
- Creates the Marijuana Regulatory Agency (MRA) within the Department of Commerce and authorizes the MRA to issue marihuana establishment licenses and oversee the Marihuana Establishment Law.
- Requires the MRA to adopt rules relating to the issuance of licenses, standards for operation of marihuana establishments, oversight of the Marihuana Establishment Law and permits the MRA to adopt rules relating to industrial hemp and for the issuance of additional types or classes of state licenses to operate marihuana-related businesses.
- Prohibits the MRA from adopting rules that limit the number of state licenses, require a purchaser to provide certain identifying information, prohibit shared locations and facilities, or that are unreasonably impracticable.
- Establishes licenses for various types of marihuana establishments: marihuana growers, marihuana safety compliance facilities, marihuana processors, marihuana microbusinesses, marihuana retailers, and marihuana secure transporters.
- Establishes procedures and criteria for obtaining and renewing a marihuana establishment license.
- Limits, for the first two years after the MRA begins to receive applications for marihuana establishment licenses, the types of persons who may apply for a license to be a marihuana grower, marihuana processor, marihuana microbusiness, marihuana retailer, or a marihuana secure transporter, but permits the MRA to expand the applicant pool after one year if certain criteria are met.
- Requires marihuana establishments to engage in certain activities, such as including warning labels and taking specified security measures.
- Prohibits marihuana establishments from engaging in certain activities, including:
 - Permitting the marihuana to be visible from a public place outside of the marihuana establishment without the use of optical aids;
 - Engaging in licensed activities at an unauthorized site;
 - Refusing Department of Commerce representatives the right to inspect the licensed premises during business hours or to audit the establishment's books and records;
 - Allowing a person under 21 to volunteer or work for the marihuana establishment;

- Selling or otherwise transferring marihuana that was not produced, distributed, and taxed in compliance with the bill;
- Selling or otherwise transferring tobacco.
- Permits municipalities and townships to ban or limit the number of marihuana establishments, impose certain other marihuana-related restrictions, and impose an annual fee to defray the costs associated with the operation of the marihuana establishments in the municipality or township.
- Permits municipalities and townships to issue local marihuana establishment licenses if the Department of Commerce or MRA does not timely adopt relevant rules or begin processing marijuana establishment license applications.
- Requires the Department of Commerce to hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of the Marihuana Establishment Law.
- Requires the Department of Commerce to annually submit a report to the Governor covering the previous year that includes the number of licenses issued, licensee demographic information, enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses.

Marihuana excise tax

- Levies an excise tax of 10% on a marihuana retailer's or microbusiness's gross receipts from the sale of marihuana, except medical marihuana.
- Requires each marihuana retailer and microbusiness to file a return and pay the tax for each calendar quarter in which the retailer or microbusiness has gross receipts from the sale of marihuana.
- Imposes penalties or interest against any taxpayer who fails to file a return or pay the tax.
- Distributes tax revenue first to cover administrative expenses, and then up to \$20 million annually for two years for clinical trials researching the efficacy of marihuana in treating the medical conditions of veterans and preventing veteran suicide.
- Distributes remaining tax revenue as follows:
 - 15% to municipalities with at least one marihuana store, allocated based on the number of stores in each municipality;
 - 15% to counties with at least one marihuana store, allocated based on the number of stores in each county;
 - 35% for primary and secondary (K-12) education;
 - 35% for the repair and maintenance of roads and bridges.

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DETAILED ANALYSIS

Overview

The bill decriminalizes cultivation and use of limited amounts of marihuana by adults. It also regulates the now-legal marihuana industry by requiring the licensing of the various marihuana-related businesses involved in producing marihuana at retail establishments. Finally, the bill imposes a 10% tax on the marihuana receipts of marihuana retailers and microbusinesses.

Drug Offense Law changes

Illegal cultivation of marihuana

The bill allows a person to legally cultivate up to 12 marihuana plants by limiting the application of the offense of illegal cultivation of marihuana to prohibit the cultivation of more than 12 marihuana plants. The bill also explicitly excludes marihuana from the continuing offense of illegal manufacture of drugs.

Under existing law, the penalty for illegal cultivation of marihuana ranges from a fourth degree misdemeanor to a first degree felony, depending on the circumstances surrounding the offense.¹

Instead, under the bill, illegal cultivation of marihuana is generally a civil infraction, punishable by a fine of up to \$500 on a first offense, and by a fine of up to \$1,000 on a second offense. On a third offense, illegal cultivation of marihuana is a minor misdemeanor, punishable by a fine of up to \$2,000. And, if the offense involves more than 24 marihuana plants and is habitual, willful, and for a commercial purpose, or involves violence, the violation is a first degree misdemeanor.²

Additionally, the bill prohibits a person from knowingly cultivating marihuana under any of the following circumstances:³

1. In a place that is open to public view without use of binoculars, aircraft, or other optical aids;
2. In a place that is not secured by functioning security devices that restrict access by persons under age 21 or persons who do not have the cultivator's permission to access the place.

A person who violates this prohibition is guilty of a minor misdemeanor, and the court may fine the offender up to \$100 and order forfeiture of the marihuana.⁴ But, arrest or conviction for a violation of this prohibition does not constitute a criminal record. The person so arrested or convicted need not report the arrest or conviction in response to any inquiries about the person's criminal record, including inquiries in employment applications or in connection with the person's appearance as a witness.⁵

Possession of marihuana/possession of controlled substances

Existing law, prohibits a person from knowingly obtaining, possessing, or using a controlled substance or its analog. If the controlled substance is marihuana or hashish, the offense is possession of marihuana or possession of hashish.⁶ The bill provides that more than 5 ounces (141.75 grams) of marihuana or more than 15 grams of hashish is necessary to commit the offense of possession of marihuana or hashish. In addition, the bill revises the penalties for possession of marihuana or hashish. Existing penalties range from a minor misdemeanor to a second degree felony, depending on the circumstances; under the bill, the penalties are minor misdemeanors with fines ranging from \$100 to \$2,000:

¹ R.C. 2925.04.

² R.C. 2925.042.

³ R.C. 2925.043(A).

⁴ R.C. 2925.043(B).

⁵ R.C. 2925.043(C).

⁶ R.C. 2925.11 and a conforming change in R.C. 2925.01.

Current law		The bill	
Amount	Penalty	Amount	Penalty (all include forfeiture)
Less than 100 grams of marihuana	Minor misdemeanor	5 ounces or less (141.75 grams) of marihuana	No penalty
Equals or exceeds 100 grams but less than 200 grams of marihuana	Fourth degree misdemeanor	More than 5 - 10 ounces (141.75 - 283.5 grams) of marihuana	Minor misdemeanor: \$100 fine
Equals or exceeds 200 grams but less than 1,000 grams of marihuana	Fifth degree felony	More than 10 ounces (283.5 grams) of marihuana	Minor misdemeanor: \$500 fine
Equals or exceeds 1,000 grams but less than 5,000 grams of marihuana	Third degree felony	More than 10 ounces of marihuana, with 1 prior	Minor misdemeanor: \$1,000 fine
Equals or exceeds 5,000 grams but less than 20,000 grams of marihuana	Third degree felony (presumption of prison term)	More than 10 ounces of marihuana, with 2 prior	Minor misdemeanor: \$2,000 fine
Equals or exceeds 20,000 grams but less than 40,000 grams of marihuana	Second degree felony (5, 6, 7, or 8 year mandatory prison term)		
Equals or exceeds 40,000 grams of marihuana	Second degree felony (maximum mandatory prison term)		
Less than 5 grams of hashish in a solid form or less than 1 gram of hashish in a liquid concentrate	Minor misdemeanor	15 grams or less of hashish	No penalty
Equals or exceeds 5 grams but less than 10 grams of hashish in a solid form or equals or exceeds 1 gram but less than 2 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Fourth degree misdemeanor	More than 15 - 30 grams of hashish	Minor misdemeanor: \$100 fine

Current law		The bill	
Amount	Penalty	Amount	Penalty (all include forfeiture)
Equals or exceeds 10 grams but less than 50 grams of hashish in a solid form or equals or exceeds 2 grams but less than 10 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Fifth degree felony	More than 30 grams of hashish	Minor misdemeanor: \$500 fine
Equals or exceeds 50 grams but less than 250 grams of hashish in a solid form or equals or exceeds 10 grams but less than 50 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Third degree felony	More than 30 grams of hashish, with 1 prior	Minor misdemeanor: \$1,000 fine
Equals or exceeds 250 grams but less than 1,000 grams of hashish in a solid form or equals or exceeds 50 grams but less than 200 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Third degree felony (presumption of prison term)	More than 30 grams of hashish, with 2 priors	Minor misdemeanor: \$2,000 fine
Equals or exceeds 1,000 grams but less than 2,000 grams of hashish in a solid form or equals or exceeds 200 grams but less than 400 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Second degree felony (5, 6, 7, or 8 year mandatory prison term)		
Equals or exceeds 2,000 grams of hashish in a solid form or equals or exceeds 400 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form	Second degree felony (maximum mandatory prison term)		

The amounts cultivated, harvested, and stored in accordance with the provisions described in “**Illegal cultivation of marihuana**” are not to be used for purposes of

determining the amount of marihuana or hashish involved in a violation of the offense of possession of marihuana or hashish.⁷

Illegal use or possession of drug paraphernalia

The bill repeals the offense of illegal use or possession of marihuana drug paraphernalia, which prohibits a person from knowingly using, or possessing with purpose to use, any drug paraphernalia that is equipment, a product, or material that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.⁸

In the continuing offense of illegal use or possession of drug paraphernalia, the bill also revises the definition of “drug paraphernalia” to exclude items relating to marihuana and hashish. The offense of illegal use or possession of drug paraphernalia generally prohibits a person from:

1. Knowingly using, or possessing with purpose to use, drug paraphernalia;
2. Knowingly selling, or possessing or manufacturing with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that it will be used as such;
3. Placing an advertisement if the person knows that the purpose of the advertisement is to promote the illegal sale of equipment, products, or materials that is intended or designed for use as drug paraphernalia.⁹

Marihuana sales to underage persons

The bill enacts a number of offenses that parallel the existing provisions relating to sales of tobacco products to minors.

Illegal distribution of marihuana and marihuana products

The bill prohibits a person from doing any of the following:¹⁰

1. Recklessly giving, selling, or otherwise distributing marihuana or marihuana products to any child (person under 21);
2. Recklessly give away, sell, or distribute marihuana or marihuana products in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing marihuana or marihuana products to a person under 21 years of age is prohibited by law;

⁷ R.C. 2925.11 and 2925.111.

⁸ R.C. 2925.141, repealed, with conforming changes in R.C. 109.572, 2925.38, and 4510.17.

⁹ R.C. 2925.14.

¹⁰ R.C. 2927.30(A)(1) and (3) and (B)(1), (2), and (4).

3. Recklessly give, sell, or otherwise distribute marihuana or marihuana products over the internet or through another remote method without age verification. “Age verification” means a service provided by an independent third party (other than a manufacturer, distributor, wholesaler, or retailer of marihuana or marihuana products) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is 21 years of age or older.

A person who violates these prohibitions is guilty of illegal distribution of marihuana or marihuana products. The violation is a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on subsequent offenses.¹¹

It is not a violation of either paragraph (1) or (2), above, for a person to give or otherwise distribute to a child marihuana or marihuana products while the child is participating in a research protocol if certain criteria are met.¹²

In addition, it is an affirmative defense to a charge under paragraph (1) above if either the child was accompanied by the child’s parent, spouse who is 21 or older, or legal guardian or if the person who distributed the marihuana to the child is such a person.¹³

Permitting children to use marihuana or marihuana products

The bill prohibits a person from knowingly furnishing any false information regarding the name, age, or other identification of any child with purpose to obtain marihuana or marihuana products for that child. A person who violates this prohibition is guilty of permitting children to use marihuana or marihuana products. The violation is a fourth degree misdemeanor on a first offense and a third degree misdemeanor on subsequent offenses.¹⁴

Forfeiture

If any marihuana or marihuana products are distributed to a child in violation of the prohibitions against illegal distribution of marihuana or marihuana products or permitting children to use marihuana or marihuana products and that are used, possessed, purchased, or received by a child in violation of the prohibition against possession of marihuana or hashish are subject to seizure and forfeiture as contraband.¹⁵

¹¹ R.C. 2927.30(E)(1).

¹² R.C. 2927.30(D).

¹³ R.C. 2927.30(C).

¹⁴ R.C. 2927.30(B)(3) and (E)(2).

¹⁵ R.C. 2927.30(F).

Affirmative defense – good faith mistake of age

A seller or an agent or employee of a seller (seller) may not be found guilty of illegal distribution of marihuana or marihuana products or permitting children to use marihuana or marihuana products if an element of the alleged violation was the age of the purchaser or other recipient, if the seller raises and proves as an affirmative defense that all of the following occurred:¹⁶

1. A cardholder attempting to purchase or receive marihuana or marihuana products presented a driver's or commercial driver's license or a state identification card (identification card);
2. A transaction scan of the identification card that the cardholder presented indicated that it was valid;
3. The marihuana or marihuana products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

In determining whether the seller has proven the affirmative defense, the trier of fact must consider any written policy that the seller has adopted and implemented that is intended to prevent such violations. In addition, the trier of fact must consider that reasonable reliance upon the identification presented may require the seller to exercise reasonable diligence to determine the following:¹⁷

- Whether the recipient of the marihuana or marihuana products is 21 years of age or older;
- Whether the description and picture appearing on the identification presented is that of the card holder.

In any criminal action in which the affirmative defense is raised, the Registrar of Motor Vehicles or a deputy registrar who issued a state identification card may submit certified copies of the records of that issuance in lieu of testimony.¹⁸

Engaging in an illegal marihuana or marihuana product transaction scan

The bill authorizes a seller or an agent or employee of a seller (seller) to perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or state identification card (identification card) presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder

¹⁶ R.C. 2927.30(A).

¹⁷ R.C. 2927.32(B).

¹⁸ R.C. 2927.32(C).

marihuana or marihuana products.¹⁹ The bill contains a number of prohibitions relating to transaction scans:²⁰

- If the information deciphered by the transaction scan fails to match the information printed on the identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, the seller is prohibited from selling, giving away, or otherwise distributing any marihuana or marihuana products to the card holder;
- The seller may not electronically or mechanically record or maintain any information derived from a transaction scan, except the name and date of birth of the person listed on the identification card and the expiration date and identification number of the identification card;
- The seller may not use the information that is derived from a transaction scan or that is permitted to be recorded and maintained, except for purposes of the affirmative defense relating to good faith mistakes of age, described above;
- The seller may not use a transaction scan device for a purpose other than verifying the age of the cardholder attempting to obtain the marihuana or marihuana product;
- The seller may not sell or otherwise disseminate the information derived from a transaction scan to any third party. But a seller may release that information pursuant to a court order or for the purpose of establishing the affirmative defense relating to a good faith mistake of age.

A person who violates any of these prohibitions is guilty of engaging in an illegal marihuana or marihuana product transaction scan. The court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The clerk of the court must pay each collected civil penalty to the county treasurer for deposit into the county treasury.²¹

The bill also permits a seller to use a transaction scan device to check the validity of a document other than an identification card as a condition for selling, giving away, or otherwise distributing marihuana or marihuana products to the person presenting the document.²²

A seller is not relieved of any responsibility to comply with any other applicable Ohio or federal laws or rules governing the sale, giving away, or other distribution of marihuana or marihuana products.²³

¹⁹ R.C. 2927.31(B)(1).

²⁰ R.C. 2927.31(B)(2) and (D).

²¹ R.C. 2927.31(F).

²² R.C. 2927.31(B)(3).

²³ R.C. 2927.31(E).

Definitions

The bill defines the following terms for the purposes of the offenses of illegal distribution of marihuana or marihuana products, permitting children to use marihuana or marihuana products, and engaging in an illegal marihuana or marihuana product transaction scan:²⁴

Card holder means any person who presents a driver's license or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive marihuana or marihuana products from the seller, agent, or employee.

Distribute means to furnish, give, or provide marihuana or marihuana products to the ultimate consumer of the marihuana or marihuana products.

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. "Marihuana" does not include "hemp" or a "hemp product" as those terms are defined in [R.C. 928.01](#).

Proof of age means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card that shows that a person is 21 years of age or older.

Seller means a seller of marihuana or marihuana products and includes any person whose gift of or other distribution of marihuana or marihuana products is subject to the offenses of illegal distribution of marihuana or marihuana products, permitting children to use marihuana or marihuana products.

Transaction scan means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving marihuana or marihuana products.

Transaction scan device means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

²⁴ R.C. 2927.30(A), 2927.31(A), and 3719.01, not in the bill.

Hemp excluded

The bill clarifies that the term “marihuana plant” does not include a plant that constitutes “hemp.”²⁵

Expungement

The bill permits a person convicted of committing offenses covering certain marihuana-related behavior decriminalized by the bill to apply to a court to expunge the records of those convictions.

Application

Under the bill, any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to any of the following marihuana offenses (qualified marihuana offense) may file an application for the expungement of the record of conviction:²⁶

- Possession of marihuana, as that offense existed prior to the bill’s effective date, that involved the obtaining, possession, or use of 5 ounces of marihuana or less, or that involved the obtaining, possession, or use of 15 grams of hashish or less;
- Illegal cultivation of marihuana, as that offense existed prior to the bill’s effective date, that involved the cultivation of 12 or fewer marihuana plants;
- Illegal use or possession of marihuana drug paraphernalia, as that offense existed prior to the bill’s effective date.

“Expunge” means to destroy, delete, or erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.²⁷

The person may file the application at any time on or after the bill’s effective date. The application must do all of the following:²⁸

1. Identify the applicant, the offense for which the expungement is sought, the date of the conviction or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;
2. Include evidence that the offense was a qualified marihuana offense;
3. Include a request for expungement of the record of conviction of that offense under this provision (note – other expungement laws exist that contain different criteria).

Upon the filing of the application and the payment of the \$50 fee (unless indigent), the court must set a date for a hearing and notify the prosecutor for the case of the hearing. The

²⁵ R.C. 2925.01(QQ).

²⁶ R.C. 2953.39(A)(5) and (B).

²⁷ R.C. 2953.39(A)(1).

²⁸ R.C. 2953.39(B).

prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor must specify in the objection the reasons for believing a denial of the application is justified.²⁹

Hearing and order

The court must hold the scheduled hearing. At the hearing, the court must do each of the following:³⁰

- If the prosecutor has filed an objection, consider the prosecutor's reasons against granting the application;
- Determine whether the applicant has been convicted of or pleaded guilty to a qualified marihuana offense.

If the court determines at the hearing that an offense that is the subject of the application is a qualified marihuana offense, the court must order the expungement of all official records pertaining to the case and the deletion of all index references to the case. (See **COMMENT**) If it does order the expungement, the court must send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case.³¹

The proceedings in the case that is the subject of such an order must be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings must be expunged. The record of the conviction cannot be used for any purpose, including a criminal records check or a determination of eligibility for a concealed handgun license. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.³²

Application fee

Upon the filing of an application under this section, the applicant, unless indigent, must pay a fee of \$50.

The court must pay \$30 of the fee into the state treasury, with \$15 of that amount credited to the Attorney General Reimbursement Fund.

The court must pay \$20 of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.³³

²⁹ R.C. 2953.39(C).

³⁰ R.C. 2953.39(D).

³¹ R.C. 2953.39(E).

³² R.C. 2953.39(F).

³³ R.C. 2953.39(G).

Definitions

The bill defines the following terms for the purposes of expunging qualified marijuana offenses:³⁴

Official records means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all DNA specimens, DNA records, and DNA profiles; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and shall not be considered to be official records when they are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. “Official records” also includes all records that are possessed by any public office or agency that relate to an application for, or the issuance or denial of, a certificate of qualification for employment. “Official records” does not include any of the following:

1. Records or reports maintained by a public children services agency or the Department of Job and Family Services;
2. Any report of an investigation maintained by the inspector general, to the extent that the report contains information that pertains to an individual who was convicted of or pleaded guilty to an offense discovered in or related to the investigation and whose conviction or guilty plea was not overturned on appeal;
3. Records, reports, or audits maintained by the State Auditor.

Prosecutor means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

Record of conviction means any record related to a conviction of or plea of guilty to an offense.

³⁴ R.C. 2953.31 and 2953.51, not in the bill and 2953.39(A).

Marijuana Establishment Law³⁵

Overview, purpose, and construction

The bill enacts a Revised Code chapter, the Marijuana Establishment Law, which operates in addition to the continuing Medical Marijuana Control Program. The Marijuana Establishment Law creates the Marijuana Regulatory Agency (MRA) in the Department of Commerce, which licenses “marihuana establishments,” which are the various types of businesses in the supply chain, from marihuana growers to marihuana retailers. The bill authorizes the Department of Commerce and the MRA to adopt rules implementing the bill; specifies what marihuana establishments may and may not do; and authorizes municipalities and townships to ban or limit the number of marihuana establishments, impose other restrictions, assess an annual fee, and issue local licenses under limited circumstances.

The bill states that the purpose of the Marijuana Establishment Law is to control the commercial production and distribution of marihuana under a system that licenses and regulates the businesses involved. Its intent is to do all of the following:

1. Remove the commercial production and distribution of marihuana from the illicit market;
2. Prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs;
3. Prevent the distribution of marihuana to persons under 21;
4. Prevent the diversion of marihuana to illicit markets;
5. Ensure the safety of marihuana and marihuana-infused products;
6. Ensure the security of marihuana establishments.

To the fullest extent possible, the bill requires the Marijuana Establishment Law to be interpreted in accordance with this purpose and intent. It also must be broadly construed to accomplish this intent. But, nothing in the Marijuana Establishment Law purports to supersede any applicable federal law, except where allowed by federal law. And all other Ohio laws inconsistent with the Marijuana Establishment Law do not apply to conduct that the Marijuana Establishment Law permits. In addition, all provisions of the Marijuana Establishment Law are self-executing.³⁶

The bill specifies that the Marijuana Establishment Law is not to be construed as authorizing any of the following:

³⁵ The agency’s name uses the more common spelling for marijuana, while the remainder of the bill uses the spelling that is more common in the Revised Code, to avoid ambiguity within the Revised Code itself.

³⁶ R.C. 3775.01, 3775.03(D), and 3775.11.

- The operation, navigation, or physical control of any motor vehicle, snowmobile, off-road recreational vehicle, aircraft, or motorboat (vehicle) while under the influence of marihuana;
- The transfer of marihuana or marihuana accessories to a person under 21;
- The possession, consumption, cultivation, processing, transportation, or purchase or other acquisition of marihuana by a person under 21;
- The separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100° Fahrenheit in any public place, motor vehicle, or on residential property;
- The consumption of marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property. “Public place” in this context excludes an area designated for marihuana consumption within a municipality or a township that has authorized consumption in designated areas (see “**Local governments – Other permissible restrictions,**” below).
- The cultivation of marihuana plants that are visible from a public place without the use of binoculars, aircraft, or other optical aids or that are outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;
- The consumption of marihuana while operating, navigating, or being in physical control of a vehicle, or smoking marihuana within the passenger area of a vehicle upon a public way;
- The possession or consumption of marihuana, or the possession of marihuana accessories, on the grounds of a correctional facility, on a school bus, or on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12;
- The possession of more than 2.5 ounces of marihuana within a person’s place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area.

In addition, the Marihuana Establishment Law is not to be construed as doing any of the following:

1. Limiting any privileges, rights, immunities, or defenses of a person as provided in Medical Marijuana Control Program Law or any other Ohio law allowing for or regulating marihuana for medical use;
2. Requiring an employer to permit or accommodate the consumption or possession of marihuana in any workplace or on the employer’s property;
3. Prohibiting an employer from disciplining an employee for violating a workplace drug policy or for working while under the influence of marihuana;

4. Preventing an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person because that person violated a workplace drug policy or because that person worked while under the influence of marihuana;
5. Prohibiting a person from prohibiting or otherwise regulating the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking.³⁷

Department of Commerce responsibilities

The Department of Commerce is responsible for implementing the Marihuana Establishment Law. The bill states that the Department has the power and authority necessary to control the commercial production and distribution of marihuana.

The Department's responsibilities include adopting rules as necessary to implement, administer, and enforce the Law, which must be adopted in accordance with the Administrative Procedure Act, and these rules are exempt from an existing provision prohibiting a state agency from adopting a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.

As necessary to adequately perform its duties, the Department is authorized to employ personnel, and contract with advisors and consultants. The Marihuana Establishment Law prohibits conflicts of interest: no person who holds a pecuniary interest, either directly or indirectly, in any marihuana establishment may be an employee, advisor, or consultant involved in the implementation, administration, or enforcement of the Law. The Law also provides these employees, advisors, and consultants immunity from personal civil liability for damages sustained by a person because of an action performed or done in the performance of the employee's, advisor's, or consultant's duties in the implementation, administration, or enforcement of the Law.³⁸

Marijuana Regulatory Agency

The Marihuana Establishment Law creates the Marijuana Regulatory Agency within the Department of Commerce. The MRA is the agency authorized to issue marihuana establishment licenses and oversee the Marihuana Establishment Law. It is required to adopt rules covering certain topics, permitted to adopt rules covering others, and prohibited from adopting rules covering certain topics. All of the rules must be adopted in accordance with the Administrative Procedure Act and are exempt from an existing provision prohibiting a state agency from

³⁷ R.C. 3775.03(A) to (C).

³⁸ R.C. 3775.05 and 3775.06(E) and (F).

adopting a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.³⁹

Required rules

Under the bill, the MRA is required to adopt rules to implement and administer the Marihuana Establishment Law that address all of the following:

1. Procedures for issuing a state license (local governments may issue local licenses under specified circumstances, see “**Local governments**,” below) and for renewing, suspending, and revoking a state license;
2. A schedule of fees;
3. Qualifications for licensure;
4. Requirements and standards for safe cultivation, processing, and distribution of marihuana by marihuana establishments, including health standards to ensure the safe preparation of marihuana-infused products and prohibitions on pesticides that are not safe for use on marihuana;
5. Testing, packaging, and labeling standards, procedures, and requirements for marihuana, including a maximum tetrahydrocannabinol (THC) level for marihuana-infused products, a requirement that a representative sample be tested by a marihuana safety compliance facility, and a requirement that the amount of marihuana or marihuana concentrate contained within a marihuana-infused product be specified on the product label;
6. Security requirements;
7. Recordkeeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana by licensees;
8. Requirements for the operation of marihuana secure transporters to ensure that all marihuana establishments are properly serviced;
9. Reasonable restrictions on advertising, marketing, and display of marihuana and marihuana establishments;
10. A plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately impacted by marihuana prohibition and enforcement and to positively impact those communities;
11. Penalties for failure to comply with any MRA rule or for any violation of the Marihuana Establishment Law by a licensee, including civil fines and suspension, revocation, or restriction of a state license;

³⁹ R.C. 3775.06(A), (E), and (F).

12. Informational pamphlet standards for marihuana retailers and marihuana microbusinesses, including a requirement to make available to every customer at the time of sale a pamphlet measuring 3.5 by 5 inches that includes safety information related to marihuana use by minors and the poison control hotline number;
13. Procedures and standards for approving an appointee to operate a marihuana establishment.⁴⁰

Optional rules

The bill permits the MRA to adopt rules to regulate the cultivation, processing, distribution, and sale of industrial hemp and rules to provide for the issuance of additional types or classes of state licenses to operate marihuana-related businesses, including licenses that authorize any of the following:

- Limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marihuana;
- Consumption of marihuana within designated areas;
- Consumption of marihuana at special events in limited areas and for a limited time;
- Cultivation for purposes of propagation;
- Facilitation of scientific research or education.⁴¹

Prohibited rules

The MRA is prohibited from adopting a rule that does any of the following:

1. Establishes a limit on the number of any type of state licenses that may be granted (but see “**Transition provisions**,” below);
2. Requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer’s age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;
3. Prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the Medical Marijuana Control Program Law;
4. Prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility.

Furthermore, the MRA is prohibited from adopting unreasonably impracticable rules. An unreasonably impracticable rule is any rule such that the measures necessary to comply with the rule subject licensees to unreasonable risk or require such a high investment of money,

⁴⁰ R.C. 3775.06(B).

⁴¹ R.C. 3775.06(C).

time, or any other resource or asset that a reasonably prudent business person would not operate the marihuana establishment.⁴²

Licensure

Types of state licenses for marihuana establishments

Under the bill, the MRA will issue the following types of licenses for marihuana (state licenses), which are collectively called “marihuana establishments”:

- Marihuana retailer (a person licensed to obtain marihuana from marihuana establishments and to sell or transfer it to marihuana establishments and to individuals who are 21 or older);
- Marihuana safety compliance facility (a person licensed to test marihuana, including certification for potency and the presence of contaminants);
- Marihuana secure transporter (a person licensed to obtain marihuana from marihuana establishments in order to transport it to marihuana establishments);
- Marihuana processor (a person licensed to obtain marihuana from marihuana establishments, process and package marihuana, and sell or transfer marihuana to marihuana establishments);
- Marihuana microbusiness (a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or transfer marihuana to individuals who are 21 or older or to a marihuana safety compliance facility, but not to other marihuana establishments);
- Class A marihuana grower (a person licensed to cultivate 100 or fewer marihuana plants and sell or transfer marihuana to marihuana establishments);
- Class B marihuana grower (a person licensed to cultivate 500 or fewer marihuana plants and sell or transfer marihuana to marihuana establishments);
- Class C marihuana grower (a person licensed to cultivate 2,000 or fewer marihuana plants and sell or transfer marihuana to marihuana establishments).⁴³

Procedure to obtain a state license

Application

The Department of Commerce will begin accepting applications for marihuana establishment licenses within 12 months after the bill’s effective date. Each application for a state license must be submitted to the MRA along with an application fee. The MRA will adopt rules establishing procedures for issuing a state license and establishing a schedule of fees. The

⁴² R.C. 3775.02(R) and 3775.06(D).

⁴³ R.C. 3775.02 and 3775.07(C).

fees must be in amounts not more than necessary to pay for the implementation, administration, and enforcement costs of the Marihuana Establishment Law and must be proportional to the size of each licensee or the volume of business conducted by the licensee.

Within 15 days of receipt of a complete application and application fee, the MRA must forward a copy of the application to the municipality or township in which the marihuana establishment is to be located.

And, upon receipt of the application and fee, the MRA must determine whether the applicant and the premises qualify for the state license and comply with the Marihuana Establishment Law and the rules adopted under it. The MRA is to establish qualifications in rule, and the qualifications must be directly and demonstrably related to the operation of a marihuana establishment.

The Department is responsible for investigating each applicant to determine eligibility for licensure, including, with the assistance of the Attorney General, conducting a background check on each person holding an ownership interest in the applicant. A prior conviction solely for a marihuana-related offense cannot disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.

Within 90 days after receiving the application, the MRA must either issue the appropriate state license or send the applicant a notice of rejection that sets forth specific reasons for the rejection.

The application fee is to be deposited into the Marihuana Regulation Fund, to be used to defray the costs incurred in administering the Marihuana Establishment Law.

Finally, information obtained from an applicant related to licensure under the Marihuana Establishment Law is confidential, not subject to a public records request under the Public Records Law, and may not be released.⁴⁴

Criteria to approve a license

Generally, the MRA must approve the application and issue a one-year state license if all of the following criteria are met:

1. The applicant has submitted an application in compliance with MRA rules, is in compliance with the Marihuana Establishment Law and related rules, and has paid the required fee;
2. The proposed marihuana establishment site is not within an area zoned exclusively for residential use and is not within 1,000 feet of a preexisting public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality or township adopts an ordinance or resolution that reduces this distance requirement;

⁴⁴ R.C. 3775.05(E) and (F)(2) and (5), 3775.06(B)(1), (2), and (3), 3775.07(A), (B), (J), and (N), and 5755.13(A)(3).

3. The applicant has submitted an attestation signed by a bona fide labor organization stating that the applicant has entered into a labor peace agreement with the bona fide labor organization;
4. The municipality or township in which the proposed marihuana establishment will be located notifies the MRA that the proposed marihuana establishment is in compliance with all local marihuana ordinances or resolutions adopted in accordance with the Marihuana Establishment Law and that are in effect at the time of application. If the municipality or township does not send a notification within 30 days of receiving a copy of the application, the MRA must consider the applicant to be in compliance with all relevant ordinances or resolutions.⁴⁵

If a municipality or township limits the number of marihuana establishments that may be licensed in the municipality or the unincorporated areas of the township and that limit prevents the MRA from issuing a state license to all applicants who meet the state licensing requirements, the municipality or township must decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with the Marihuana Establishment Law within the municipality or township.⁴⁶

The MRA is prohibited from approving an application if any person who would hold an ownership interest in the proposed marihuana establishment meets any of the following:

1. The person holds an ownership interest in both (a) a marihuana safety compliance facility or a marihuana secure transporter and (b) a marihuana grower, a marihuana processor, a marihuana retailer, or a marihuana microbusiness;
2. The person holds an ownership interest in both (a) a marihuana microbusiness and (b) a marihuana grower, a marihuana processor, a marihuana retailer, a marihuana safety compliance facility, or a marihuana secure transporter;
3. The person holds an ownership interest in more than five marihuana growers or in more than one marihuana microbusiness. But, the MRA may approve a license application from such a person if, after January 1, 2025, the Department of Commerce adopts a rule authorizing an individual to hold an ownership interest in more than five marihuana growers or in more than one marihuana microbusiness.⁴⁷

Renewal of license

A license is effective for one year and may be renewed in accordance with procedures the MRA will adopt. The MRA must renew a license upon receipt of a complete renewal application and a renewal fee from any marihuana establishment in good standing. In setting renewal fees, the MRA must set the fee at an amount not more than necessary to pay for the

⁴⁵ R.C. 3775.07(D) and (H).

⁴⁶ R.C. 3775.07(G).

⁴⁷ R.C. 3775.07(E).

implementation, administration, and enforcement costs of the Marihuana Establishment Law, and it must be proportional to the size of the licensee or the volume of business conducted by the licensee. The renewal fees must be deposited into the Marihuana Regulation Fund.⁴⁸

Transition provisions

For two years after the MRA begins to receive applications for marihuana establishments, the MRA must only accept applications for licensure as follows:

- For a class A marihuana grower or for a marihuana microbusiness, from persons who are Ohio residents;
- For a marihuana retailer, marihuana processor, class B marihuana grower, class C marihuana grower, or a marihuana secure transporter, from persons holding a Medical Marijuana Control Program license (according to the Ohio Medical Marijuana Control Program, as of September 24, 2021, there were 57 dispensary licensees with certificates of operation, 34 cultivator licensees with certificates of operation, 33 processor licensees with certificates of operation, with an additional 14 provisional processor licensees; three testing lab licensees with certificates of operation, with an additional six provisional licensees⁴⁹);
- For a marihuana safety compliance facility, from any applicant.

Upon the expiration of the two years after the MRA begins to accept applications, the MRA must accept applications from all applicants. But, if, one year after the MRA begins to accept applications, the MRA determines that additional state licenses are necessary to minimize the illegal market for marihuana in Ohio, to efficiently meet the demand for marihuana, or to provide for reasonable access to marihuana in rural areas, the MRA must begin accepting applications from any applicant.⁵⁰

Marihuana establishments

Required, permitted, and prohibited activities

The bill requires the Department of Commerce to ensure compliance with the Marihuana Establishment Law and rules by taking appropriate disciplinary action against a licensee, including prescribing civil fines for violations of the Marihuana Establishment Law or rules and suspending, restricting, or revoking a state license.⁵¹

⁴⁸ R.C. 3775.05(F)(5), 3775.06(B)(2), and 3775.07(H) and (I).

⁴⁹ Medical Marijuana Control Program, Marijuana Businesses, <https://www.medicalmarijuana.ohio.gov/cultivation> (accessed September 24, 2021).

⁵⁰ R.C. 3775.07(K), (L), and (M).

⁵¹ R.C. 3775.05(F)(3).

The MRA must adopt a rule requiring that all marihuana sold through marihuana retailers and marihuana microbusinesses include on the exterior of the marihuana packaging the following warning printed in clearly legible type and surrounded by a continuous heavy line:

WARNING: USE BY PREGNANT OR BREASTFEEDING WOMEN, OR BY WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL PROBLEMS FOR THE CHILD.

Under the bill marihuana establishments must secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees, other persons permitted by the marihuana establishment to access the area, Department of Commerce agents, state and local law enforcement officers, and emergency personnel. The establishment also must secure its inventory and equipment during and after operating hours to deter and prevent theft of marihuana and marihuana accessories.

The MRA must adopt rules establishing security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marihuana between marihuana establishments. These requirements must not prohibit cultivation of marihuana outdoors or in greenhouses.

The bill also establishes a series of prohibitions relating to marihuana establishments. Under the bill, a marihuana establishment is prohibited from doing any of the following:

- Allowing the cultivation, processing, sale, or display of marihuana or marihuana accessories to be visible from a public place outside of the marihuana establishment without the use of binoculars, aircraft, or other optical aids;
- Cultivating, processing, testing, or storing marihuana at any location other than a physical address approved by the MRA and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marihuana establishment to access the area;
- Refusing representatives of the Department of Commerce the right during the hours of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment;
- Allowing a person under 21 to volunteer or work for the marihuana establishment;
- Selling or otherwise transferring marihuana that was not produced, distributed, and taxed in compliance with the bill;
- Selling or otherwise transferring tobacco.⁵²

⁵² R.C. 3775.06(F)(5)(d) and (6) and 3775.09(A) to (F) and (K).

The bill also establishes several license-specific prohibitions:

- Marihuana growers, marihuana retailers, marihuana processors, marihuana microbusinesses, and marihuana testing facilities, and agents acting on their behalf, are prohibited from transporting more than 15 ounces of marihuana or more than 60 grams of marihuana concentrate at one time;
- Marihuana secure transporters are prohibited from holding title to marihuana;
- Marihuana processors are prohibited from processing, and marihuana retailers are prohibited from selling, edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana;
- Marihuana retailers are prohibited from selling or otherwise transferring marihuana that is not contained in an opaque, resealable, child-resistant package designed to be significantly difficult for children under five to open and not difficult for normal adults to use properly, unless the marihuana is transferred for consumption on the premises where sold.⁵³

Oversight

Under the bill, the Department of Commerce is required to ensure that marihuana establishments comply with the Marihuana Establishment Law and rules by performing investigations of compliance and regular inspections of marihuana establishments and by taking appropriate disciplinary action against a licensee, including prescribing civil fines and suspending, restricting, or revoking a state license. The Department must deposit all fines it collects into the General Revenue Fund.⁵⁴

Local governments

May ban or limit the number of establishments

Generally, a municipality or township may completely prohibit or limit the number of marihuana establishments within the municipality's boundaries or the boundaries of the unincorporated areas of the township.

Similarly, residents of the municipality or township may petition to initiate an ordinance or resolution to accomplish the same purpose. If the petition is signed by qualified electors in the municipality or unincorporated areas in a number greater than 5% of the votes cast for Governor in that area at the last gubernatorial election, the ordinance or resolution must be put on the ballot at the next regular election.⁵⁵

⁵³ R.C. 3775.09(G) to (J); 16 Code of Federal Regulations 1700.20, not in the bill.

⁵⁴ R.C. 3775.05(F)(3) and (5) and 3775.06(D)(11).

⁵⁵ R.C. 3775.04(A).

Other permissible restrictions

A municipality or township also may adopt other ordinances or resolutions related to the regulation of marihuana so long as those ordinances or resolutions do not conflict with the Marihuana Establishment Law or related rules and are not unreasonably impracticable. These other ordinances or resolutions may relate to any of the following topics:

- Establishing reasonable restrictions on public signs related to marihuana establishments;
- Regulating the time, place, and manner of operation of marihuana establishments and of the production, manufacture, sale, or display of marihuana accessories;
- Authorizing the sale of marihuana for consumption in designated areas that are not accessible to persons under 21, or at special events in limited areas and for a limited time;
- Designating a violation of the ordinance or resolution and establishing a penalty for that violation by a marihuana establishment, provided that such violation is a civil infraction with a civil fine of not more than \$500.⁵⁶

A municipality or township also may require a marihuana establishment with a physical location within the municipality or within the unincorporated areas of the township to obtain a local license. But the municipality or township may not impose qualifications for licensure that conflict with the Marihuana Establishment Law or rules adopted under it.⁵⁷

Prohibited local restrictions

A municipality or township cannot restrict the transportation of marihuana through the municipality or township or prohibit a licensed marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility or from operating at a location shared with a medical marihuana facility operating pursuant to the Medical Marijuana Control Program.⁵⁸

Annual fee

A municipality or township may charge a marihuana establishment an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishments in the municipality or the unincorporated areas of the township.⁵⁹

⁵⁶ R.C. 3775.04(B).

⁵⁷ R.C. 3775.02(R) and 3775.04(C).

⁵⁸ R.C. 3775.04(E).

⁵⁹ R.C. 3775.04(D).

Local licensure

If the Department of Commerce or the MRA does not timely adopt rules or accept or process applications, beginning one year after the bill's effective date, an applicant may submit an application for a marihuana establishment directly to the municipality or township where the marihuana establishment will be located, if the municipality or township has adopted ordinances or resolutions as necessary to process applications and oversee licensees.

If a marihuana establishment submits an application to a municipality or township, the municipality or township must issue a local license to the applicant within 90 days after receipt of the application unless the municipality or township finds and notifies the applicant that the applicant is not in compliance with an ordinance, resolution, or rule. If the municipality or township issues a local license, it must notify the Department of Commerce that the local license has been issued.

A local license has the same force and effect as a state license. But the holder of a local license is not subject to regulation or enforcement by the Department of Commerce during the local license term. If, after the term of a local license has expired, the Department of Commerce or the MRA has adopted rules and is accepting applications, the local license holder must apply for a new license with the MRA.⁶⁰

Licensee must maintain a labor peace agreement

The bill requires all state and local licensees, except microbusinesses, to maintain and abide by a labor peace agreement entered into with a labor union that represents, or is actively seeking to represent, cannabis workers. A "labor peace agreement" is an agreement between a marihuana establishment and such a labor union that protects the state's proprietary interests by, at a minimum, prohibiting the union from engaging in picketing, work stoppages, or boycotts against the establishment.

The labor peace agreement is an ongoing material condition of the license and the MRA may take punitive action against a licensee who violates the terms of a labor peace agreement, including suspension or revocation of the license.

But, for both first-time license applicants and renewal applicants, if there is no such union operating in the municipality or township of the applicant at the time of application, then the labor peace agreement requirement does not apply at the time of application nor for the one-year duration of the license.⁶¹

Court appointed individual to operate

The MRA may approve the operation of a marihuana establishment by a court-appointed receiver or trustee or by a court-appointed personal representative, guardian, or conservator of an individual who holds a state license or has an interest in a person that

⁶⁰ R.C. 3775.10.

⁶¹ R.C. 3775.02(C) and 3775.07(F).

holds a state license. If an individual so appointed receives notice from the MRA that the marihuana establishment is in violation of the Marihuana Establishment Law or related rules, the individual must notify the appointing court of the notice within two days after receiving the notice.⁶²

Public hearings

Under the bill, the Department of Commerce must hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of the Marihuana Establishment Law.⁶³

Report to Governor

The bill requires the Department to annually submit a report to the Governor covering the previous year that includes the number of state licenses of each class issued, demographic information on licensees, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses related to the implementation, administration, and enforcement of the Marihuana Establishment Law.⁶⁴

Marihuana Regulatory Agency definitions

As used in the Marihuana Establishment Law:⁶⁵

Cultivate means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.

Industrial hemp means a plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of 0.3% or less on a dry-weight basis or per volume or weight of marihuana-infused product, or for which the combined percent of delta-9 THC and tetrahydrocannabinolic acid in any part of the plant, regardless of moisture content, is 0.3% or less.

Licensee means a person holding a state license or a local license.

Marihuana means all parts of the plant of the genus cannabis, growing or not, including (a) the seeds of the plant, (b) the resin extracted from any part of the plant, and (c) every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products.

Marihuana does not include any of the following:

⁶² R.C. 3775.08.

⁶³ R.C. 3775.05(F)(4).

⁶⁴ R.C. 3775.05(F)(6).

⁶⁵ R.C. 3775.02 and 3775.07(C).

- The mature stalks of the plant, fiber produced from the mature stalks, oil, or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks;
- Industrial hemp;
- Any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

Marihuana accessories means any equipment, product, material, or combination of equipment, products, or materials, that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.

Marihuana concentrate means the resin extracted from any part of the plant of the genus cannabis.

Marihuana establishment means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the Department of Commerce.

Marihuana grower means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments. A Class A grower may cultivate not more than 100 plants, a Class B grower may cultivate not more than 500 plants, and a Class C grower may cultivate not more than 2,000 plants.

Marihuana-infused product means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption.

Marihuana microbusiness means a person licensed to do all of the following:

- Cultivate not more than 150 marihuana plants;
- Process and package marihuana;
- Sell or otherwise transfer marihuana to individuals who are 21 or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

Marihuana processor means a person licensed to obtain marihuana from marihuana establishments, process and package marihuana, and sell or otherwise transfer marihuana to marihuana establishments.

Marihuana retailer means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 or older.

Marihuana secure transporter means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

Marihuana safety compliance facility means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

Process or processing means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

Marihuana excise tax

The bill levies an excise tax on each marihuana retailer and microbusiness selling marihuana in Ohio. The tax equals 10% of the marihuana retailer's or microbusiness's marihuana receipts – the gross amounts received from the sale of marihuana, including marihuana-infused products, to consumers legally authorized to purchase marihuana under the bill. The tax does not apply to medical marihuana sold and regulated under the state's existing Medical Marijuana Control Program.

The marihuana excise tax is in addition to any other tax imposed under continuing law, including state and local, i.e., county and transit authority, sales and use taxes.⁶⁶ (The sale and use of medical marihuana is also subject to sales and use taxes under continuing law.)

Returns and tax payments

Each taxpayer must file returns and pay the marihuana excise tax for each calendar quarter (also referred to as a "tax period" in the bill) in which the taxpayer has marihuana receipts. Returns must be filed and payments must be made by the 10th of February, May, August, and November for the immediately preceding tax period.⁶⁷

Payments must be made electronically, and the Tax Commissioner may require returns to be filed electronically through the Ohio Business Gateway or another specified manner. A taxpayer may be excused from paying or filing electronically for good cause.

The Commissioner may adopt rules regarding returns and tax payments.⁶⁸

Refunds

Taxpayers may apply for a refund not later than four years from the date of overpayment of the marihuana excise tax and in the same manner as other state-administered taxes. Taxpayers may apply a refund to the taxpayer's future tax liability or the state may redirect a refund to cover any debt the taxpayer owes to the state, including other state taxes or fees, workers compensation premiums, unemployment compensation contributions or payments, or unpaid Medicaid services payments.⁶⁹

⁶⁶ R.C. 5755.01 and 5755.02.

⁶⁷ R.C. 5755.04.

⁶⁸ R.C. 5755.06(A), (B), and (D).

⁶⁹ R.C. 5755.07, 5755.071, 5703.052, 5703.053, 5703.50, 5703.70, and 5703.77.

Penalties

A marijuana retailer or microbusiness that fails to file a return or pay the marijuana excise tax by the tax period's deadline is subject to a penalty of up to \$50 or 10% of the tax shown due on the return, whichever is greater, in addition to interest.⁷⁰ Additional penalties, as well as criminal liability, may be imposed if the taxpayer files a false or fraudulent return, owes additional tax, fails to register with the Tax Commissioner (see below), fails to pay the tax electronically, or, if required, fails to file returns electronically.⁷¹

The Commissioner may abate monetary penalties, but not interest, and may adopt rules regarding abatements.⁷² If any penalty remains unpaid for at least 90 days or if any tax is unreported or unpaid, the Attorney General may, upon request of the Commissioner, seek to terminate by court order the marijuana retailer's or microbusiness's license issued by the MRA.⁷³

Distribution of tax revenue and fees

The bill requires all revenue collected from the marijuana excise tax, all penalties and interest, all fees from licenses issued by the MRA, and 30% of the expungement fee to be distributed in the same manner.⁷⁴ (As described above, the remaining expungement fee is used to cover the costs associated with the expungement, including 30% of the total fee provided to the Attorney General and 40% of the total fee provided to the county or city.⁷⁵)

First, amounts must be deducted for tax refunds, the costs of administering the tax, and the costs of administering the licensing and regulation of marijuana by the MRA, in that order.

Then, for the first two fiscal years only, up to \$20 million must be used to fund clinical trials researching the efficacy of marijuana in treating veterans' medical conditions and preventing veteran suicide. The clinical trials must be approved by the U.S. Drug Administration and sponsored by a nonprofit organization or an academic institution located in Ohio. All funds used for this purpose must be appropriated by the General Assembly.

All remaining amounts must be distributed as follows:

- 15% to municipalities that have at least one marijuana store located within its jurisdiction, allocated based on the proportion of stores in each municipality;
- 15% to counties, allocated in the same manner as municipalities;

⁷⁰ R.C. 5755.05(A) and (F).

⁷¹ R.C. 5755.03(B), 5755.05(B), (C) and (G), 5755.06(C)(1), and 5755.99.

⁷² R.C. 5755.03(B), 5755.05(E), and 5755.06(C)(2).

⁷³ R.C. 5755.10.

⁷⁴ R.C. 5755.13(B), 5755.03(C), 5755.05(D), 5755.06(C)(2), 5755.08(E), and 5755.12(C).

⁷⁵ R.C. 2953.39(G).

- 35% for the support of K-12 education, as appropriated by the General Assembly;
- 35% for highway and road construction.

Counties and municipalities may use amounts received under the bill for any lawful purpose.⁷⁶

Registration with the Tax Commissioner

Each marijuana retailer and microbusiness must register with the Tax Commissioner within 30 days from the date the retailer or microbusiness begins selling marijuana subject to the marijuana excise tax, and must thereafter inform the Commissioner if any of the following occur:

- The taxpayer's license issued by the MRA is revoked or expires;
- The taxpayer's commercial activities change (e.g., becomes authorized to distribute or manufacture marijuana subject to the tax);
- The taxpayer's authorized store locations change.⁷⁷

Record keeping requirements

Each taxpayer must maintain a record of purchases and sales of marijuana subject to the marijuana excise tax, and the Tax Commissioner may require taxpayers, by rule, to maintain other documents for record keeping purposes. All documents must be maintained for four years. Except for identifiable information relating to registered taxpayers, such as business names and addresses, all information obtained by the Commissioner must be kept confidential.⁷⁸

Auditing and assessments

If the Tax Commissioner possesses information indicating that a taxpayer owes additional marijuana excise tax, the Commissioner may audit the taxpayer, including reviewing any documents and inspecting any facilities, and issue an assessment for any additional tax owed.⁷⁹

The Commissioner may seize marijuana from a marijuana retailer or microbusiness that the Commissioner discovers is intentionally evading the tax, and may sell those seized goods.⁸⁰

⁷⁶ R.C. 5755.13.

⁷⁷ R.C. 5755.03(A) and (D).

⁷⁸ R.C. 5755.11.

⁷⁹ R.C. 5755.08 and 5703.19.

⁸⁰ R.C. 5755.12.

Exiting the business

If a taxpayer exits the business (i.e., the taxpayer quits, sells its equity interest, or sells at least 75% of the business's assets), all marijuana excise taxes, penalties, and interest become due by the taxpayer within 45 days of that exit. The Tax Commissioner may adopt rules governing the issuance of certificates to prospective buyers indicating that no tax is due by a selling taxpayer. If the selling taxpayer fails to pay the tax, the buyer must withhold payment to the selling taxpayer up to the amount of the tax or will otherwise become liable for the amounts owed.⁸¹

COMMENT

While the bill authorizes the prosecutor to file objections, and requires the court to consider those objections, the standard the court must use to determine whether to order the expungement is limited to whether the offense is a qualified marijuana offense (see page 15).

HISTORY

Action	Date
Introduced	08-02-21

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⁸¹ R.C. 5755.09.