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OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research
and Drafting

Legislative Budget
Office

S.B. 9*
135th General Assembly

Occupational Regulation Report

[Click here for S.B.9's Bill Analysis/Fiscal Note](#)

Primary Sponsors: Sen. Stephen A. Huffman, Sen. Kirk Schuring

Impacted Professions: Medical marijuana cultivators, processors, laboratories, caregivers, retail dispensaries, and physicians

Jill Rowland, Attorney

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

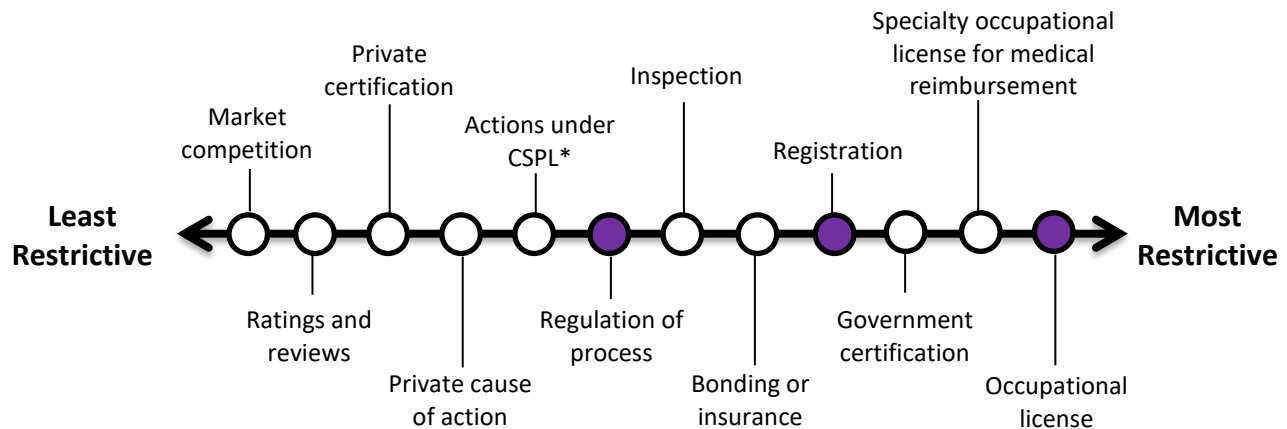
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."²

The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

* This report addresses the "As Introduced" version of S.B. 9. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

The bill creates a new Division of Marijuana Control (DMC) within the Department of Commerce to oversee and administer the state’s existing Medical Marijuana Control Program. In addition, it modifies existing licensure requirements for medical marijuana cultivators, processors, testing laboratories, retail dispensaries, and physicians (certificate to recommend). It also makes changes to several process regulations that apply to those professions. Furthermore, the bill slightly modifies an existing registration requirement for medical marijuana caregivers.³

The cultivator, processor, testing laboratory, and retail dispensary licenses appear to function primarily as “business licenses” which, by definition, are excluded from the state’s occupational regulation policy.⁴ However, since it is possible for an individual to apply for and obtain such a license, they are reviewed as occupational licenses for the purposes of this report.

Necessity of regulations

Senator Stephen Huffman, one of the bill’s primary sponsors, testified that S.B. 9 is intended to update and improve the state’s medical marijuana laws based on efficiencies gleaned in the seven years since the laws were enacted in 2016. He suggests that moving regulation of dispensaries, patients, and caregivers from the Board of Pharmacy to the newly created DMC will “streamline rules and regulations” and “simplify the compliance process for businesses within the industry.”

Senator Huffman’s testimony expresses concern that Ohio patients pay a much higher rate for medical marijuana (about \$222 per ounce) than patients in some surrounding states. He

³ R.C. Chapter 3796, generally, and R.C. 3796.02, 3796.03, 3796.08, and 3796.16, specifically.

⁴ See, R.C. 4798.01, not in the bill.

suggests that applying “free market principles to a highly regulated business” will improve the current state of affairs for both licensed practitioners and consumers.⁵

Restrictiveness of regulations

License provisions

Licensure is the most restrictive of all regulatory options identified within the state’s continuum of regulations. Accordingly, the state’s policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.⁶

Licensure of medical marijuana-related occupations appears to meet the state policy’s first criterion for appropriateness because marijuana is regulated by both state and federal law. It is classified as a Schedule I substance under the federal Controlled Substance Act and, consequently, distribution of marijuana is a federal offense.⁷ Nonetheless, the U.S. Attorney General grants federal prosecutors discretion in how to prioritize enforcement of federal marijuana laws and, in recent years, prosecutors have declined to pursue charges against persons using, cultivating, or distributing marijuana in accordance with state law. Thirty-seven states (including Ohio) have enacted laws allowing for cultivation, distribution, and use of marijuana under limited circumstances. The remaining 13 states still prohibit these activities.⁸

Licensure of medical marijuana-related occupations does not appear to meet the state policy’s second criterion for appropriateness because there is no reciprocal framework that allows out-of-state license holders to cultivate, process, or sell marijuana in Ohio. Such an arrangement likely would present logistical issues in the context of the state’s limits on the aggregate number of available licenses.

As for the policy’s third criterion involving national uniformity, licensure of medical marijuana-related occupations does not appear to meet it; Ohio’s medical marijuana licenses do not appear to be based on a uniform national law. However, the license types and regulatory structure are somewhat similar to Michigan, Pennsylvania, and West Virginia, which are three surrounding states that have enacted medical marijuana laws.

⁵ Senator Stephen Huffman, [S.B. 9 Sponsor Testimony](#), Senate General Government committee, January 17, 2023, which is available on the General Assembly’s website, legislature.ohio.gov, by searching for “S.B. 9” and looking under the “Committee Activity” tab.

⁶ R.C. 4798.02, not in the bill.

⁷ See, 21 United States Code 812.

⁸ National Conference of State Legislatures (NCSL), [State Medical Cannabis Laws](#), updated September 12, 2022.

S.B. 9 appears overall to decrease the restrictiveness of Ohio's existing medical marijuana licenses, through means such as increasing the scope of permissible activities for license holders. However, it does also increase restrictiveness in certain ways.

License-specific changes

The table below describes these changes to specific licenses in more detail.

License Title and Summary of Authorized Activities Under Current Law and the Bill	Restrictiveness Appears Increased Under the Bill	Restrictiveness Appears Decreased Under the Bill	Impact On Restrictiveness Appears Unclear
<p>Cultivator</p> <p>Cultivating medical marijuana for delivery or sale to other medical marijuana licensees</p> <p><i>(R.C. 3796.18)</i></p>	<p>Requires a level II license holder who expands beyond 15,000 square feet to pay a fee established by DMC</p> <p><i>(R.C. 3796.18(I))</i></p> <p>If a cultivator's request for expansion has been approved, requires the cultivator to: (1) pass an inspection before cultivating and (2) comply with the terms of the request and move forward with the expansion or risk revocation of the approval or imposition of additional sanctions</p> <p><i>(R.C. 3796.18(G))</i></p>	<p>Statutorily establishes two cultivator licenses that are currently established in rules and increases the maximum authorized cultivation area for each (level I: from 25,000 to 50,000 square feet; level II: from 3,000 to 15,000 square feet)</p> <p><i>(R.C. 3796.18(D); Ohio Administrative Code (O.A.C.) 3796:1-1-01(A)(23) and (24))</i></p> <p>For level I and II licenses, increases the current maximum allowable expansion of their cultivated area (level I: from 50,000 to 100,000 square feet; level II: from 6,000 to 20,000 square feet)</p> <p><i>(R.C. 3796.18(E); O.A.C. 3796:2-1-09)</i></p> <p>Specifies that if DMC does not deny a licensee's request for expansion within 30 days, the request is deemed approved.</p> <p><i>(R.C. 3796.18(G))</i></p>	<p>Requires level II license holders to be given preference by DMC when it reviews applicants for a level I license</p> <p><i>(R.C. 3796.18(H))</i></p> <p>Requires establishment of a stand-alone processor cultivation license that authorizes cultivation of up to 50,000 square feet by certain existing stand-alone processors that initially were denied a cultivation license.</p> <p><i>(R.C. 3796.03(B)(22))</i></p>

License Title and Summary of Authorized Activities Under Current Law and the Bill	Restrictiveness Appears Increased Under the Bill	Restrictiveness Appears Decreased Under the Bill	Impact On Restrictiveness Appears Unclear
		<p>Authorizes the holder of a level II license who does not hold a processor license to receive one <i>(R.C. 3796.03(B)(23))</i></p> <p>In determining the number of cultivator licenses that will be permitted at any one time, requires consideration of whether licensed cultivators have expanded to full capacity <i>(R.C. 3796.05(A))</i></p> <p>Allows cultivators to acquire seeds or clones from another licensed cultivator or from a legal, out-of-state cultivator and to register cuttings with the Ohio METRC <i>(R.C. 3796.18(A))</i></p>	
<p>Processor</p> <p>Obtaining medical marijuana from a licensed cultivator; packaging, labeling, or otherwise processing it for sale; and delivering or selling it to certain other medical marijuana licensees <i>(R.C. 3796.19)</i></p>		<p>Allows acquisition of medical marijuana from other processors (as opposed to only from cultivators as under current law) <i>(R.C. 3796.19)</i></p> <p>Allows delivery or sale to cultivators and processors (as opposed to only retail dispensaries as under current law) <i>(R.C. 3796.19)</i></p>	

License Title and Summary of Authorized Activities Under Current Law and the Bill	Restrictiveness Appears Increased Under the Bill	Restrictiveness Appears Decreased Under the Bill	Impact On Restrictiveness Appears Unclear
<p>Testing laboratory</p> <p>Obtaining medical marijuana from a cultivator, processor, or retail dispensary and conducting testing for potency, homogeneity, and contamination</p> <p><i>(R.C. 3796.21)</i></p>	<p>Requires compliance with standards adopted by the American Society for Testing and Materials</p> <p><i>(R.C. 3796.21(E))</i></p>	<p>Adds that a testing laboratory may conduct research and development testing for cultivators and processors and in-process testing for processors</p> <p><i>(R.C. 3796.21(A))</i></p> <p>Allows a testing laboratory to conduct re-testing if a product fails testing or if test results fall outside of typical results for that product</p> <p><i>(R.C. 3796.21(C))</i></p>	
<p>Retail dispensary</p> <p>Obtaining medical marijuana from a processor and selling it to registered patients or caregivers</p> <p><i>(R.C. 3796.20)</i></p>	<p>Prohibits a new retail dispensary from being opened within one mile of an existing dispensary</p> <p><i>(R.C. 3796.03(B)(3))</i></p> <p>Prohibits any person from owning more than five retail dispensaries in Ohio or more than 5% of the total number of retail dispensaries in Ohio, whichever is greater</p> <p><i>(R.C. 3796.03(B)(3))</i></p> <p>Divides Ohio into four geographic regions and prohibits any person from owning more than five retail dispensaries in any one region</p> <p><i>(R.C. 3796.03(B)(3))</i></p> <p>Prohibits retail dispensaries from selling or dispensing</p>	<p>Requires trying to achieve a ratio of at least one licensed retail dispensary per 1,000 registered patients up to the first 300,000 registered patients; subsequently requires adding additional retail dispensaries on an as-needed basis (Although this requirement appears likely to increase the number of licenses in the short-term, the long-term impact is less clear.)</p> <p><i>(R.C. 3796.03(B)(3))</i></p> <p>Requires, to meet this ratio, (within 90 days after the bill's effective date) issuance of retail dispensary licenses to cultivators that meet the</p>	

License Title and Summary of Authorized Activities Under Current Law and the Bill	Restrictiveness Appears Increased Under the Bill	Restrictiveness Appears Decreased Under the Bill	Impact On Restrictiveness Appears Unclear
	<p>medical marijuana unless a current, valid identification card is presented along with a current, written recommendation for it <i>(R.C. 3796.03(B))</i></p> <p>Prohibits a retail dispensary from dispensing or selling medical marijuana to a person who is not an Ohio resident unless the person is registered with the DMC via the foreign patient database that must be created under the bill <i>(R.C. 3796.16(D))</i></p> <p>Allows the DMC to require training for retail dispensary employees and allows the State Medical Board to approve a course of education for them <i>(R.C. 3796.03(B)(8)) and 4731.304)</i></p>	<p>associated cultivator standards <i>(R.C. 3796.03(B)(3))</i></p> <p>In determining the number of retail dispensary licenses that will be permitted at any one time, requires consideration of projected growth of the patient registry over the next two years and patient demand <i>(R.C. 3796.03(B)(3) and 3796.05(B))</i></p> <p>Allows retail dispensaries to obtain medical marijuana from licensed cultivators (as opposed to only processors as under current law) and explicitly authorizes dispensaries to <i>purchase</i> it from either source <i>(R.C. 3796.20(A))</i></p> <p>Explicitly authorizes a retail dispensary to obtain medical marijuana from another retail dispensary if they are under common ownership <i>(R.C. 3796.20(A))</i></p> <p>Explicitly allows licensed dispensaries to display products on advertisements and within the dispensary <i>(R.C. 3796.03(B)(18))</i></p>	

License Title and Summary of Authorized Activities Under Current Law and the Bill	Restrictiveness Appears Increased Under the Bill	Restrictiveness Appears Decreased Under the Bill	Impact On Restrictiveness Appears Unclear
Physician Issuing written recommendations for patients to use medical marijuana to treat a qualifying condition <i>(R.C. 4731.30)</i>	Requires, if a retail dispensary has a medical director, the medical director to be a licensed physician who holds a certificate to recommend <i>(R.C. 3796.10(E) and (F))</i>	Partially eliminates a conflict of interest provision that prohibits physicians from being certified to recommend if they have an ownership or investment interest in, or a compensation agreement with, a medical marijuana license holder. <i>(R.C. 4731.30(B) and (I))</i>	

Changes that apply to multiple types of licenses

Advertising, labeling, and marketing

Some of the bill's provisions apply to more than one type of license. For example, the bill specifically authorizes the holder of a cultivator, processor, testing laboratory, or retail dispensary licenses to advertise, on social media or otherwise, without receiving prior approval from DMC (this appears to decrease restrictiveness).⁹ However, the bill also prohibits those licensees from including on the label of the product, publishing, or disseminating in advertising or marketing, any claims that medical marijuana can, or is intended to, diagnose or cure disease (this appears to increase restrictiveness).¹⁰

In addition, the bill appears to increase restrictiveness by requiring DMC to adopt rules that impose a fine or other penalties on licensed entities that violate requirements related to advertising, labeling, and marketing of medical marijuana (and on dispensaries that display products improperly).¹¹

⁹ R.C. 3796.01(A)(14) and 3796.03(B)(17).

¹⁰ R.C. 3796.03(B)(19).

¹¹ R.C. 3796.03(B)(20).

Temporary work permits

In addition, the bill allows DMC to issue temporary work permits (called an “employment badge”) to employees of licensed cultivators, processors, and dispensaries who are awaiting the results of a criminal background check.¹² This appears to decrease restrictiveness.

Revocation of provisional licenses

Under current rules, an entity that wishes to become licensed under the Medical Marijuana Law first must submit an application, including plans and a fee, for a provisional license. A provisional license is a temporary license that establishes the conditions that must be met before the entity can begin operating. Once these conditions are met, the entity may obtain a license, called a certificate of operation, that authorizes the entity to operate under the Medical Marijuana Law.

The rules establish the following deadlines by which a provisional licensee must obtain a certificate of operation (or else the provisional license is revoked): cultivator – nine months, processor or testing laboratory – six months, retail dispensary – 270 days.¹³ The bill extends the deadline by which a provisional licensee must obtain a certificate of operation to 18 months. This appears to decrease restrictiveness.

The bill also allows up to two six-month extensions of this deadline if the provisional licensee can demonstrate a good-faith effort at becoming operational.¹⁴ Current rules give the Director of Commerce discretion to extend the deadlines for holders of provisional cultivator or processor licenses.¹⁵ Thus, it is unclear how this change would affect restrictiveness for those licensees. For testing laboratories and dispensaries, it appears that these authorized extensions would decrease restrictiveness.

Suspension of licenses by telephone

In addition, the bill limits the authority of DMC, as compared to the authority of the Department of Commerce and Board of Pharmacy under current law, when it comes to suspending a license without a hearing. Under current law, the Department and Board may suspend a license without a hearing via a telephone conference call. The bill grants DMC authority to suspend a license without a hearing, but does not allow suspension by telephone. This appears to decrease restrictiveness.¹⁶

¹² R.C. 3796.13(B)(2).

¹³ See Ohio Administrative Code (O.A.C.) 3796:2-1-06 (cultivators), 3796:3-1-06 (processors), 3796:4-1-06 (testing laboratories), and 3796:6-2-02 and 3796:6-2-04(L) (dispensaries).

¹⁴ R.C. 3796.03(B)(5)(b).

¹⁵ See O.A.C. 3796:2-1-06 and 3796:3-1-06, respectively.

¹⁶ R.C. 3796.14.

Transfer of ownership

The bill requires DMC to adopt rules establishing a standard for the application and approval of a change in ownership in an entity licensed as a medical marijuana cultivator, processor, dispensary, or testing laboratory.¹⁷ It appears that these rules will decrease restrictiveness.

Current rules establish criteria for what constitutes a change in ownership as well as requirements for applying to the department for approval of the change.¹⁸

The standard established under the bill generally must specify that neither a change of ownership application nor the licensing of officers, executives, directors, or board members is required for either of the following:

- Investment in a licensee by an institutional investor (as defined by the bill);
- Investment or ownership in a licensee of less than 5% by any person or entity unless it would impact control of the licensee.

In addition, the standard must establish a process for adding or removing owners without applying for a change in ownership when the change does not impact who controls the licensee.¹⁹

Registration provisions

The state's general policy provides that a registration requirement is the appropriate means by which to protect consumers "against potential damages by transient providers."²⁰ Continuing law establishes two types of medical marijuana-related registration requirements. The first is for patients – it authorizes them to possess and use medical marijuana to treat a qualifying condition.²¹ The second is for caregivers – it authorizes possession of medical marijuana on behalf of a registered patient to assist the patient in use or administration.²²

The purpose served by these registration requirements for medical marijuana patients and caregivers is not specified. However, the bill generally does not appear to affect the restrictiveness of those requirements for patients and caregivers in Ohio. The bill merely moves administration of the patient and caregiver registration from the Board of Pharmacy to DMC. However, to facilitate this transfer of authority, the bill requires DMC to adopt rules to establish

¹⁷ R.C. 3796.01(A)(3) and 3796.03(B)(24).

¹⁸ See O.A.C. 3796:2-1-08 (cultivators), 3796:3-1-08 (processors), 3796:4-1-07 (testing laboratories), and 3796:6-2-12 (dispensaries).

¹⁹ R.C. 3796.01(A)(3) and (6) and 3796.03(B)(24).

²⁰ R.C. 4798.02(B)(4), not in the bill.

²¹ R.C. 3796.22.

²² R.C. 3796.23.

registration-related procedures and eligibility criteria, and it is unclear how those rules may impact restrictiveness.²³

As for out-of-state patients, the bill allows them to obtain medical marijuana in Ohio if they register with DMC for inclusion in a foreign patient database that the bill requires DMC to create. To register, an out-of-state patient must provide DMC with proof of holding both a valid driver's license and medical marijuana recommendation issued in another state.

The foreign patient database provisions replace current law that requires the Board of Pharmacy to enter into reciprocity agreements with other states regarding patient and caregiver registration.²⁴ With respect to caregivers, it appears that the bill's elimination of reciprocity agreements increases restrictiveness because there is no longer any legal mechanism by which they lawfully may possess medical marijuana for purposes of assisting an out-of-state patient. With respect to patients, both in-state and out-of-state, it is unclear how elimination of the reciprocity agreements impacts restrictiveness; that depends on the particular terms of each agreement.

Under current law, the Board of Pharmacy is required to adopt rules specifying reasons for which a registration may be suspended, revoked, not renewed, or not issued. The bill requires DMC to adopt a similar rule for licenses, but does not reference registrations. It is not clear what (if any) impact this will have on the rules adopted by DMC.²⁵

Process regulations

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practice Act are not sufficient to achieve the intent of the regulation.

The bill generally reduces the restrictiveness of existing process regulations. For example, it allows physicians to issue a medical marijuana recommendation via telemedicine.²⁶ In addition, it provides for dispensing or selling of medical marijuana by licensed dispensaries via drive-through or curbside pick-ups.²⁷ It allows licensed testing laboratories to use state-licensed labs to conduct in-process product testing for internal use.²⁸ It also expressly allows a processor to physically travel to a cultivator's location for purposes of direct acquisition of medical marijuana.²⁹ It allows marijuana plant material and processed products tested under research

²³ R.C. 3796.02, 3796.03(B)(7), and 3796.08(A).

²⁴ R.C. 3796.16.

²⁵ R.C. 3796.04, repealed, and 3796.14.

²⁶ R.C. 4731.303.

²⁷ R.C. 3796.03(B)(21) and 3796.20(C).

²⁸ R.C. 3796.21(B).

²⁹ R.C. 3796.19.

and development to be sold to patients after passing all required tests.³⁰ Most notably, it eliminates a requirement that a certified physician conduct an examination of a patient, either in person or via telemedicine, before recommending medical marijuana.³¹

The bill establishes several new process regulations for medical marijuana cultivators related to packaging and labeling. On the surface, this would seem to increase restrictiveness. However, these new regulations are consistent with those that apply to processors under continuing law and appear to be implemented to accommodate the bill's authorization for cultivators to deliver medical marijuana directly to a dispensary.³²

As for process regulations that appear to increase restrictiveness, the bill creates a new requirement for testing laboratories. When testing medical marijuana, a laboratory must collect a sample of a size sufficient to conduct the requested tests, but equaling not more than twice the amount of material needed for the tests.³³

IMPACT STATEMENT

Opportunities for employment

S.B. 9 contains a few provisions which might reduce opportunities for employment, such as (1) requiring a Level II licensed cultivator to pay a fee in order to expand its cultivated area beyond 15,000 square feet, (2) prohibiting a retail dispensary from opening within one mile of an existing dispensary, and (3) authorizing the DMC to require training for dispensary employees. But such effects are very likely to be offset by those of other provisions of the bill, such as (1) allowing dispensaries to advertise, (2) permitting cultivators to expand their cultivated areas beyond current limits, and (3) at least initially, requiring DMC to endeavor to achieve a ratio of one retail dispensary for every 1,000 registered patients. These provisions would reduce the restrictiveness of regulation. The net effect of the bill is most likely to increase total employment in the industry.

As of January 2023, the Ohio Medical Marijuana Control Program had approved 60 certificates of operation for medical marijuana retail dispensaries, and an additional 12 provisional licenses. The Department of Commerce had approved 31 active cultivator licenses, of which 19 were for Level I licenses, and 6 provisional cultivator licenses. The Department had also approved 44 certificates of operation for processors, as well as 2 provisional licenses.

Consumer choice and cost and market competition

Allowing retail dispensaries to advertise would have the effect of expanding consumer choice and would allow greater competition. Requiring DMC to endeavor to achieve a ratio of one retail dispensary for every 1,000 patients would also have that effect. And requiring DMC to

³⁰ R.C. 3796.21(F).

³¹ R.C. 4731.30(C).

³² R.C. 3796.18(C).

³³ R.C. 3796.21(E).

establish a new cultivator license for standalone processors would have a similar effect. There are bill provisions that would (or might) act to limit consumer choice and market competition, though, specifically: (1) prohibiting a retail dispensary from opening within one mile of an existing dispensary and (2) requiring DMC to consider the capacity utilization of existing cultivators in determining the limit on the number of cultivator licenses that may be issued. The net effect of these provisions, as compared to the current regulatory framework, would most likely be that the bill would increase market competition, and lead to a greater number of licensed cultivators and retail dispensaries. The bill's licensing provisions would most likely result in reduced market prices for medical marijuana products in the state, but the provision expanding the number of medical conditions for which marijuana may be prescribed would likely increase demand for medical marijuana products; taking the bill provisions as a whole, the effect on medical marijuana prices is uncertain.

Cost to government

For the fiscal impact of the bill to government, please refer to the [LBO fiscal note](#).

SUMMARY OF PROPOSED REGULATIONS

In addition to the changes discussed under “Restrictiveness of regulations” above, the bill makes the following changes to the Medical Marijuana Law. For a summary of the full bill, please see the [LSC bill analysis \(PDF\)](#).

Division of Marijuana Control

The bill creates a new Division of Marijuana Control (DMC) within the Department of Commerce to oversee and administer the state's Medical Marijuana Control Program. The majority of the medical marijuana-related duties previously performed by the Board of Pharmacy – including licensure and oversight of retail dispensaries and registration of patients and caregivers – are transferred by the bill to DMC. Accordingly, under the bill, DMC is responsible for administering all medical marijuana licenses and registrations other than a physician's certificate to recommend, which remains under the auspices of the State Medical Board.³⁴

Merit-based ranking of licensure applications

The bill requires DMC to implement a merit-based system for reviewing applications for licensure and establishes guidelines for that purpose.³⁵

³⁴ R.C. 3796.02, 3796.03, 3796.032, 3796.04 (repealed), 3796.05, 3796.06, 3796.061, 3796.08, 3796.10, 3796.11, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, 3796.17, 3796.22, 3796.23, 3796.27, 3796.30, and 4776.01.

³⁵ R.C. 3796.03(B)(3)(d) and (e).

COMPARISON TO OTHER STATES

The table below compares the provisions of the bill that could be construed to increase the restrictiveness of occupational regulations with similar laws regulating medical marijuana professionals in the surrounding states. Three of the five surrounding states allow for cultivation, processing, dispensing, and use of medical marijuana. Each of those states utilizes a licensing framework similar to the one that applies in Ohio. Only Michigan prescribes different classes of cultivator licenses (based on number of plants rather than square footage). Pennsylvania and West Virginia both allow for a medical marijuana license to be suspended if the license holder fails to become operational. All three of the surrounding states that allow medical marijuana require training for dispensary employees.

Medical Marijuana Regulations						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Legality of marijuana	Medical only <i>(R.C. Chapter 3796)</i>	Low-THC hemp extract only (under 0.3%) <i>(Ind. Code 24-4-21-1 to 24-4-21-5, 24-4-22-1 to 24-4-22-4, 35-48-1-17.5, and 35-48-1-19)</i>	Limited medical only (Executive Order 2022-798 and <i>Ky. Rev. Stat. 218A.010(28))</i>	Medical and recreational <i>(Medical: Mich. Comp. Laws 333.26421 to 333.26430 and 333.27101 to 333.27801</i> <i>Recreational: Mich. Comp. Laws 333.27951 to 333.27967)</i>	Medical only <i>(35 Pa. Stat. 10231.101 to 10231.2110)</i>	Medical only <i>(W. Va. Code 16A-1-1 to 16A-16-1)</i>
License and registration types	Cultivator, processor, testing laboratory, patient, caregiver,	N/A	N/A	Medical: grower, Medical: operating license for processor,	Practitioner (i.e., physician), patient, caregiver, grower/possessor,	Grower, processor, dispensary, practitioner (i.e.,

Medical Marijuana Regulations						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	retail dispensary, and physician <i>(R.C. Chapter 3796)</i>			provisioning center, secure transporter, and safety compliance facility <i>(Mich. Comp. Laws 333.27401)</i> Recreational: marijuana establishment license for retailer, safety compliance facility, secure transporter, processor, microbusiness, and grower <i>(Mich. Comp. Laws 333.27959)</i>	dispensary, and laboratory <i>(35 Pa. Stat. 10231.401, 10231.403, 10231.502, 10231.602, and 10231.704)</i>	physician), patient, caregiver, and laboratory <i>(W. Va. Code 16A-6-1, 16A-4-1, 16A-4-3, 16A-5-2, and 16A-7-4).</i>
Classes of cultivator licenses	No separate classifications under current law. Under the bill: <ul style="list-style-type: none"> Stand-alone processor 	N/A	N/A	Medical: three grower license classifications based on number of plants: <ul style="list-style-type: none"> Class A – 500 plants; 	No similar provision	No similar provision

Medical Marijuana Regulations						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	cultivation license; <ul style="list-style-type: none"> ▪ Level I – up to 50,000 square feet (or 100,000 square feet with expansion); ▪ Level II – up to 15,000 square feet (or 20,000 square feet with expansion). (R.C. 3796.01, 3796.03, and 3796.18)			<ul style="list-style-type: none"> ▪ Class B – 1,000 plants; ▪ Class C – 1,500 plants (<i>Mich. Comp. Laws 333.27501</i>) Recreational: three grower license classifications based on number of plants: <ul style="list-style-type: none"> ▪ Class A – 100 plants; ▪ Class B – 500 plants; ▪ Class C – 2,000 plants (<i>Mich. Comp. Laws 333.27959</i>).		
Revocation of inactive licenses	DMC may revoke any of the licenses it administers if the license holder fails to secure a certificate of	N/A	N/A	The Marijuana Regulatory Agency may administratively withdraw an application for a	All license holders must, within six months of licensure, submit evidence that the license holder is	All license holders must, within six months of licensure, submit evidence that the license holder is

Medical Marijuana Regulations						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	operation within 18 months of provisional licensure <i>(R.C. 3796.03)</i>			marijuana-related license that was submitted and has been pending for more than one year <i>(Mich. Admin. Code R. 420.3)</i>	operational. If the license holder is not operational by that time and does not comply with its plan for correction (which can last no more than 90 days), then the license may be suspended or revoked. <i>(28 Pa. Code 1141.42)</i>	operational. If the license holder is not operational by that time and does not comply with its plan for correction (which can last no more than 90 days), then the license may be suspended or revoked <i>(W. Va. Code R. 64-109-15)</i>
Training for dispensary employees	State Medical Board may approve a course of education for employees of a licensed dispensary. If the Board adopts the training course, then dispensary employees must take the course. <i>(R.C. 4731.304)</i>	N/A	N/A	All marijuana-related license holders must train employees and maintain a training manual addressing safety, guidelines, security protocol, product information, dosage and purchasing limits,	All principals and employees of a grower/processor or dispensary who have direct contact with patients or caregivers who physically handle medical marijuana must complete a two-hour training course. Principals must do so before	All principals and employees of a dispensary, grower, or processor who have direct contact with patients or caregivers who physically handle medical cannabis must complete a two-hour training course. Principals

Medical Marijuana Regulations						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
				and education materials <i>(Mich. Admin. Code R. 420.602)</i>	initial operation of the business, and employees must do so within 90 days of starting employment. Physicians, pharmacists, and certain other medical professionals must complete a four-hour training course as continuing education credits. <i>(35 Pa. Stat. 10231.103 and 10231.301)</i>	must do so before initial operation of the business, and employees must do so within 90 days of starting employment. Physicians must complete a four-hour training course as continuing education credits. <i>(W. Va. Code. 16A-2-1 and 16A-3-1)</i>