



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 523

131st General Assembly

(As Reported by H. Select Committee on Medical Marijuana)

**Reps.** Huffman, Schuring, Ramos, Brown, Celebrezze

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## BILL SUMMARY

### Medical Marijuana Control Program

- Establishes the Medical Marijuana Control Commission in the Ohio Department of Commerce and requires that the Commission administer the Medical Marijuana Control Program.
- Permits patients to use marijuana to treat specified medical conditions with a physician's recommendation.
- Provides for the registration of patients and caregivers, the licensure of medical marijuana cultivators, processors, retail dispensaries, and testing laboratories, and the registration of physicians that recommend treatment with medical marijuana.
- Prohibits the cultivation of medical marijuana for personal, family, or household use.
- Prohibits the smoking or combustion of medical marijuana.

### Zoning

- Authorizes the legislative authority of a municipal corporation or a board of township trustees to adopt regulations to prohibit, or limit the number of, retail dispensaries.
- Provides that agricultural use zoning limitations that apply to townships do not prohibit a township from regulating the location of retail dispensaries or prohibiting the dispensaries from being located in the unincorporated territory of the township.

- Prohibits a cultivator, processor, retail dispensary, or laboratory from being located or relocating within 1,000 feet of a school, church, public library, public playground, or public park.
- Requires the Commission to specify if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or public park became established within 1,000 feet may remain in operation or must relocate or have its license revoked.

## Employment laws

- Provides that nothing in the bill requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana, prohibits an employer from taking any adverse employment action an employer may take under current law because of a person's use, possession, or distribution of medical marijuana, or permits a person to sue an employer for taking an adverse employment action related to medical marijuana.
- Provides that nothing in the bill prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy or interferes with federal restrictions on employment, including U.S. Department of Transportation regulations.
- Considers a person who is discharged from employment because of the person's use of medical marijuana to have been discharged for just cause under the Unemployment Compensation Law and thus ineligible for unemployment benefits, which appears to be similar to current law.
- Maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

## Banking Services

- Exempts a financial institution that provides financial services to a licensed cultivator, processor, retail dispensary, or laboratory from any Ohio criminal law an element of which may be proven by substantiating that a person provides financial services to a person who possesses, delivers, or manufactures marijuana or marijuana derived products, *if* the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws.



## OARRS

- Requires that a retail dispensary report to the Ohio Automated Rx Reporting System when dispensing medical marijuana to a patient or caregiver.

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## CONTENT AND OPERATION

### Medical marijuana background

Current Ohio and federal law classify marijuana as a schedule I controlled substance, making its distribution, including by prescription, illegal. However, according to the National Conference of State Legislatures, 24 states allow for comprehensive public medical marijuana and cannabis programs.<sup>1</sup> Since 2009, the

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<sup>1</sup> National Conference of State Legislatures, *State Medical Marijuana Laws*, available at <<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>>.



United States Department of Justice (DOJ) has encouraged federal prosecutors not to prosecute those who distribute marijuana for medical purposes in accordance with state law. In 2013, the DOJ updated its policy, noting that it will defer the right to challenge state laws legalizing marijuana for medical purposes so long as the states strongly enforce their own laws.<sup>2</sup>

### **Definition**

Under the bill, medical marijuana means marihuana, as defined under existing Ohio law, that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.<sup>3</sup> Current law defines "marihuana" as 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.<sup>4</sup> "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.<sup>5</sup>

### **Schedule II**

Although marijuana is classified as a schedule I controlled substance, for the purposes of this bill, medical marijuana is a schedule II controlled substance.<sup>6</sup> According to the U.S. Drug Enforcement Administration, a schedule I controlled substance has all of the following characteristics: no currently accepted medical use, a lack of accepted safety for use under medical supervision, and a high potential for abuse. A schedule II controlled substance is considered to have a high potential for abuse.<sup>7</sup>

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<sup>2</sup> See <<https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>>.

<sup>3</sup> R.C. 3796.01.

<sup>4</sup> R.C. 3719.01.

<sup>5</sup> *Id.*

<sup>6</sup> R.C. 3796.01.

<sup>7</sup> See <<http://www.dea.gov/schedules/>>.



## **Medical Marijuana Control Commission**

The bill creates the Medical Marijuana Control Commission in the Ohio Department of Commerce.<sup>8</sup> The Commission consists of the following nine members:

- (1) A practicing physician;
- (2) A representative of local law enforcement;
- (3) A representative of employers;
- (4) A representative of labor;
- (5) A representative of persons involved in the treatment of alcohol and drug addiction;
- (6) A representative of persons involved in mental health treatment;
- (7) A pharmacist;
- (8) A representative of persons supporting the legalization of marijuana use for medical purposes;
- (9) A representative of patients.

### **Appointments**

Appointments to the Commission must be made not later than 30 days after the bill's effective date. No more than four members may be of the same political party. The Governor appoints the physician member and the members representing local law enforcement and employers. The Senate President appoints the pharmacist member and the member representing patients, while the Senate Minority Leader appoints the member representing labor. The Speaker of the House of Representatives appoints the members representing persons involved in mental health treatment and persons supporting the legalization of marijuana use for medical purposes. The House Minority Leader appoints the member representing persons involved in the treatment of alcohol and drug addiction.

### **Terms of membership**

Of the Commission's initial members, those appointed by the Governor serve five-year terms, while members appointed by the Speaker or House Minority Leader

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<sup>8</sup> R.C. 3796.02.



serve four-year terms. Those appointed by the Senate President or Senate Minority Leader serve three-year terms. Thereafter, all terms are for three years.

Each member holds office from the date of appointment until the end of the term for which the member was appointed, except that members serve at the pleasure of the appointing authority. Vacancies are to be filled in the same manner as original appointments. A member who is appointed to fill a vacancy that occurs before the expiration date of the predecessor's term holds office for the remainder of that term. A member continues in office after the expiration of the member's term until a successor takes office, or until a period of 60 days has elapsed, whichever occurs first. There is no limit on the number of terms that a member may serve.

### **Chairperson, compensation, and meetings**

The Governor is to select a member of the Commission to serve as its chairperson. Each member receives a per diem compensation set by the Director of the Ohio Department of Administrative Services,<sup>9</sup> as well as actual and necessary travel expenses in connection with commission hearings and business.

Under the bill, the Commission must hold its initial meeting not later than 30 days after the last member of the Commission is appointed and must adopt internal management rules in accordance with current law.<sup>10</sup> The bill specifies that the Commission is not subject to the law governing the sunset review of agencies.<sup>11</sup>

### **Medical Marijuana Control Program**

The bill requires that the Medical Marijuana Control Commission establish a Medical Marijuana Control Program to provide for the following:<sup>12</sup>

- (1) The licensure of medical marijuana cultivators, processors, and retail dispensaries;
- (2) The registration of physicians that recommend treatment with medical marijuana;
- (3) The registration of patients and caregivers;

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<sup>9</sup> R.C. 124.15.

<sup>10</sup> R.C. 111.15.

<sup>11</sup> See R.C. 101.82 to 101.87.

<sup>12</sup> R.C. 3796.03.



- (4) The licensure of laboratories that test medical marijuana;
- (5) The regulation of other activities relating to medical marijuana.

The Commission is charged with administering the Program and is authorized to take any action necessary to implement and enforce the bill's provisions.

### **Commission recommendations**

The Commission is required to develop and submit recommendations to the Department of Commerce regarding the standards and procedures governing the Program that are to be established in rules adopted by the Department (see "**Program rules**" below). When developing its recommendations, the Commission must do all of the following:

- (1) Consider standards and procedures that have been found to be best practices relative to the use and regulation of medical marijuana;
- (2) With respect to standards and procedures involving retail dispensaries, consult and cooperate with the State Board of Pharmacy;
- (3) With respect to standards and procedures involving qualifying physicians or qualifying medical conditions, consult and cooperate with the State Medical Board;
- (4) With respect to the number of cultivator and retail dispensary licenses that will be permitted at any one time, consider all of the following:
  - (a) The population of the state;
  - (b) The number of patients seeking to use medical marijuana;
  - (c) In the case of retail dispensary licenses, the geographic distribution of dispensary sites in an effort to ensure patient access to medical marijuana.
- (5) With respect to criminal offenses for which an applicant is disqualified from licensure, provide that certain criminal offenses that an applicant was convicted of or pleaded guilty to more than five years before the date the application for licensure is filed are not disqualifying offenses;
- (6) Develop and submit any other recommendations it considers necessary for the Program's administration and the implementation and enforcement of the bill's provisions.





The Commission must submit its recommendations to the Department as necessary for the Department to fulfill its duty to adopt rules. At the Department's request, the Commission must reconsider a recommendation it has submitted and upon reconsideration, must resubmit the recommendation.

### **Program rules**

Not later than one year after the Commission's initial meeting, the Department of Commerce must adopt rules establishing standards and procedures for the Program.<sup>13</sup> The rules must be adopted in accordance with the Administrative Procedure Act,<sup>14</sup> be consistent with recommendations developed and submitted by the Committee, and do all of the following:

(1) Establish application procedures and fees for licenses and registrations issued by the Commission;

(2) Specify the criminal offenses for which an applicant will be disqualified from licensure;

(3) Specify the conditions that must be met to be eligible for licensure;

(4) Establish the number of cultivator and retail dispensary licenses that will be permitted at any one time;

(5) Establish a license or registration renewal schedule, renewal procedures, and renewal fees;

(6) Specify reasons for which a license or registration may be suspended or revoked;

(7) Establish standards under which a license or registration suspension may be lifted;

(8) Establish procedures for the registration of physicians seeking to recommend treatment with medical marijuana and requirements that must be met to be eligible for registration;

(9) Establish procedures for the registration of patients and caregivers and requirements that must be met to be eligible for registration;

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<sup>13</sup> R.C. 3796.04.

<sup>14</sup> R.C. Chapter 119.



(10) Establish training requirements for employees of retail dispensaries;

(11) Specify when testing of medical marijuana must be conducted by licensed laboratories;

(12) Specify whether a licensed cultivator, processor, retail dispensary, or laboratory may remain in operation, must relocate, or have its license revoked if a school, church, public library, public playground, or public park is established within 1,000 feet of the cultivator, processor, retail dispensary, or laboratory;

(13) Establish a program to assist patients who are veterans or indigent in obtaining medical marijuana in accordance with the bill's provisions.

The bill also authorizes the Department to adopt any other rules, consistent with Commission recommendations, it considers necessary for the Program's administration and the implementation and enforcement of the bill's provisions. The rules may specify additional diseases or conditions for which treatment with medical marijuana may be recommended (see "**Qualifying medical conditions**" below).

### **Timeline**

The bill requires that the Department of Commerce and Commission take all actions necessary to ensure that the Program is fully operational not later than two years after the bill's effective date.<sup>15</sup>

### **Qualifying medical conditions**

The bill provides that medical marijuana may be recommended only for the treatment of a qualifying medical condition.<sup>16</sup> Under the bill, all of the following are qualifying medical conditions: AIDS, Amyotrophic lateral sclerosis, cancer, chronic traumatic encephalopathy, Crohn's disease, epilepsy or another seizure disorder, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis, pain that is chronic, severe, or intractable, Parkinson's disease, positive status for HIV, post-traumatic stress disorder, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury, and ulcerative colitis.<sup>17</sup>

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<sup>15</sup> Section 3.

<sup>16</sup> R.C. 3796.10(A).

<sup>17</sup> R.C. 3796.01.



The bill also authorizes the Department of Commerce to specify in rule additional diseases or conditions for which treatment with medical marijuana may be recommended.<sup>18</sup>

## **Permissible forms and methods of medical marijuana**

The bill permits only the following forms of medical marijuana for use: oils, tinctures, plant material, edibles, and patches. The bill prohibits any form or method considered attractive to children.<sup>19</sup>

### **Tetrahydrocannabinol content**

The bill specifies that plant material have a tetrahydrocannabinol (THC) content between 3% and 35%, while extracts have a THC content of not more than 70%.<sup>20</sup>

### **Smoking prohibition**

The bill expressly prohibits the use of medical marijuana by smoking or combustion, but allows for vaporization.<sup>21</sup>

## **Patient and caregiver registration**

A patient seeking to use medical marijuana or a caregiver seeking to assist a patient in the use of medical marijuana must apply to the Commission for registration.<sup>22</sup> An application must be submitted in a manner established in rules adopted by the Commission and must include a copy of the recommendation issued by a qualifying physician (see "**Requirements when recommending medical marijuana treatment**" below). In the case of a caregiver, the application also must include the name of the patient that the caregiver seeks to assist.

If the application is complete and meets the requirements established in rules, the Commission must register the patient or caregiver. The Commission also must issue to the patient or caregiver an identification card.

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<sup>18</sup> R.C. 3796.04.

<sup>19</sup> R.C. 3796.06.

<sup>20</sup> R.C. 3796.06.

<sup>21</sup> R.C. 3796.06.

<sup>22</sup> R.C. 3796.11.



## **Renewals**

A registration expires according to the renewal schedule established in rule and may be renewed in accordance with procedures established in those rules.

## **Suspension or revocation**

The bill authorizes the Commission to suspend or revoke a registration for any of the reasons specified in rules adopted by the Department.<sup>23</sup> Any action to suspend or revoke a registration must be taken in accordance with the Administrative Procedure Act.<sup>24</sup>

## **Patient identifying information**

The bill prohibits the Commission from making public any information reported to or collected by it for the purposes of registering patients or caregivers that identifies or would tend to identify any specific patient.<sup>25</sup>

## **Authority to use, possess, or administer medical marijuana**

The bill authorizes a registered patient to use or possess medical marijuana and a caregiver to possess or assist a registered patient in the use or administration of medical marijuana.<sup>26</sup>

## **Possession limits**

Under the bill, the amount of medical marijuana possessed by a registered patient or caregiver must not exceed a 90-day supply, as determined by the qualifying physician. In the case of a registered caregiver who provides care to more than one registered patient, the caregiver must maintain separate inventories of medical marijuana for each patient.

## **Protection from arrest and criminal prosecution**

The bill provides that a registered patient or caregiver is not subject to arrest or criminal prosecution for any of the following actions done in accordance with the bill's provisions:

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<sup>23</sup> R.C. 3796.14.

<sup>24</sup> R.C. Chapter 119.

<sup>25</sup> *Id.*

<sup>26</sup> R.C. 3796.22 and 3796.23.



- (1) In the case of a registered patient, using medical marijuana;
- (2) Obtaining or possessing medical marijuana;
- (3) In the case of a registered caregiver, assisting a registered patient in the use or administration of medical marijuana.

### **Operating a vehicle**

The bill does not authorize a registered patient to operate a vehicle, streetcar, trackless trolley, watercraft, or aircraft while under the influence of medical marijuana.

### **Prohibition on caregiver use**

The bill prohibits a registered caregiver from using medical marijuana, unless the caregiver is also a registered patient.

### **Parental rights and responsibilities**

The bill provides that, unless there is clear and convincing evidence that a child is unsafe, the use, possession, or administration of medical marijuana by a registered patient in accordance with the bill's provisions cannot be the sole or primary basis for any of the following:

- (1) An adjudication determining that a child is an abused, neglected, or dependent child;
- (2) An allocation of parental rights and responsibilities;
- (3) A parenting time order.<sup>27</sup>

### **Patient reciprocity agreements**

The bill requires the Commission to attempt in good faith to negotiate and enter into a reciprocity agreement with another state under which a medical marijuana registry identification card or equivalent authorization issued by the other states is recognized in Ohio.<sup>28</sup>

Before entering into an agreement with the other state, the Commission must determine that both of the following apply:

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<sup>27</sup> R.C. 2151.28, not in the bill, 3109.04, not in the bill, 3109.051, not in the bill, 3109.12, not in the bill, and 3796.24.

<sup>28</sup> R.C. 3796.15.



(1) The eligibility requirements imposed by the other state in order to obtain a registry identification card must be substantively comparable to Ohio's requirements;

(2) The other state must recognize a patient or caregiver registration and identification card issued under the bill's provisions.

If a reciprocity agreement is reached, the card or equivalent authorization issued by the other state is recognized and accepted as valid in Ohio. It grants the patient or caregiver the same right to use, possess, obtain, or administer medical marijuana in Ohio as a patient or caregiver registered in accordance with the bill's provisions.

The bill grants the Department the authority to adopt rules, consistent with Commission recommendations, as necessary to implement the bill's provisions regarding reciprocity agreements.

#### **Assistance for veteran or indigent patients**

The bill requires that the Commission establish a program to assist patients who are veterans or indigent in obtaining medical marijuana.<sup>29</sup>

#### **Registration as a qualifying physician**

A physician seeking to recommend treatment with medical marijuana must apply to the Commission for registration as a qualifying physician.<sup>30</sup> An application must be submitted in a manner established in rules adopted by the Commission. The Commission must register the applicant as a qualifying physician if both of the following conditions are met:

(1) The application is complete and meets the requirements established in rules;

(2) The applicant demonstrates that he or she does not have an ownership or investment interest in, or a compensation arrangement with, a cultivator, processor, laboratory, or retail dispensary licensed by the Commission or an applicant for licensure.

#### **Renewals**

A registration expires according to the renewal schedule established in rules adopted by the Department of Commerce and may be renewed in accordance with the procedures established in those rules.

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<sup>29</sup> R.C. 3796.04.

<sup>30</sup> R.C. 3796.10(A).



## **Suspension or revocation**

The bill authorizes the Commission to suspend or revoke a registration for any of the reasons specified in rules adopted by the Department.<sup>31</sup> Any action to suspend or revoke a registration must be taken in accordance with the Administrative Procedure Act.<sup>32</sup>

## **Authority to recommend medical marijuana treatment**

A qualifying physician may recommend that a patient be treated with medical marijuana if the patient has been diagnosed with a qualifying medical condition (see "**Qualifying medical condition**" above) and a physician-patient relationship has been established through all of the following:

- (1) A physical examination of the patient by the physician;
- (2) A review of the patient's medical history by the physician;
- (3) An expectation of providing care and receiving care on an ongoing basis.

In the case of a patient who is a minor, the qualifying physician may recommend treatment only after obtaining the consent of a parent or another person responsible for providing consent to treatment.<sup>33</sup>

## **Requirements when recommending medical marijuana treatment**

When issuing a recommendation to a patient, the qualifying physician must specify the following:

- (1) The one or more forms of medical marijuana that may be dispensed to the patient;
- (2) The amount of THC in medical marijuana dispensed to the patient;
- (3) The one or more methods by which the patient may use medical marijuana.

The qualifying physician also may specify on the recommendation the disease or condition for which treatment with medical marijuana was recommended. The physician may use a classification included in the International Statistical Classification

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<sup>31</sup> R.C. 3796.14.

<sup>32</sup> R.C. Chapter 119.

<sup>33</sup> R.C. 3796.10(B).



of Diseases and Related Health Problems, or ICD, when specifying the disease or condition (see "**ICD classifications**" below).

A recommendation issued in accordance with the bill's provisions is valid for a period of not more than 90 days. The physician may renew the recommendation for an additional period of not more than 90 days after an in-person follow-up appointment with the patient. During the one-year period beginning on the date of the follow-up appointment, the physician may renew the recommendation for not more than three additional periods of not more than 90 days. Thereafter, the physician may issue another recommendation to the patient only upon a physical examination of the patient.<sup>34</sup>

### **Physician record-keeping requirements**

When recommending treatment with medical marijuana, a qualifying physician shall maintain a record for each patient that includes the following:

(1) The disease or condition for which treatment with medical marijuana has been recommended;

(2) The one or more reasons that treatment with medical marijuana was recommended for the patient rather than recommending another form of treatment;

(3) The one or more forms of or methods of using medical marijuana recommended for the patient.<sup>35</sup>

### **Physician reporting requirements**

Annually, each qualifying physician must submit to the Commission a report that describes the physician's observations regarding the effectiveness of medical marijuana in treating his or her patients. The report is limited to observations concerning patients treated during the year covered by the report.<sup>36</sup>

At intervals not exceeding 90 days, each qualifying physician must submit to the Commission a report containing all of the following information:

(1) The number of patients for whom the physician has recommended treatment with medical marijuana;

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<sup>34</sup> R.C. 3796.10(C).

<sup>35</sup> R.C. 3796.10(D).

<sup>36</sup> R.C. 3796.10(E).





(2) The diseases or conditions for which the treatment has been recommended;

(3) The reasons that treatment with medical marijuana was recommended rather than recommending other forms of treatment;

(4) The forms of or methods of using medical marijuana recommended to the patients. Information submitted in a report is limited to the 90-day period covered by the report.

### **ICD classifications**

With respect to the required reporting of diseases or conditions, a qualifying physician may satisfy the requirement if both of the following conditions are met:

(1) The physician includes ICD classifications in each recommendation the physician issues;

(2) The retail dispensaries that dispense medical marijuana for the physician's patients include the ICD classifications in their required reports to the drug database maintained by the State Board of Pharmacy (see "**OARRS**" below).<sup>37</sup>

### **Continuing medical education**

The bill requires that each qualifying physician complete the number of hours of continuing medical education in medical marijuana specified in rules adopted by the State Medical Board. It also requires the Board to adopt those rules.<sup>38</sup>

The bill further requires that the Board approve one or more continuing medical education courses of study that assist qualifying physicians in both of the following:

(1) Diagnosing qualifying medical conditions;

(2) Treating qualifying medical conditions with medical marijuana.

### **Standard of care**

The bill requires that the Medical Board adopt rules establishing for qualifying physicians the minimal standards of care when recommending treatment with medical marijuana.<sup>39</sup>

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<sup>37</sup> R.C. 4729.771.

<sup>38</sup> R.C. 3796.10(F) and 4731.283.

<sup>39</sup> R.C. 4731.283.



## **Prohibitions**

### **Furnishing medical marijuana**

The bill prohibits a qualifying physician from personally furnishing or otherwise dispensing medical marijuana.<sup>40</sup>

### **Issuing a recommendation to the physician's self**

The bill prohibits a qualifying physician from issuing a recommendation for medical marijuana for the qualifying physician's self.<sup>41</sup>

### **Advertising**

The bill prohibits a qualifying physician from advertising any services related to medical marijuana on a radio or television broadcast.<sup>42</sup>

## **Licensure of cultivators, processors, retail dispensaries, and laboratories**

An entity that seeks a license to cultivate, process, or dispense at retail medical marijuana or to conduct laboratory testing of medical marijuana must file an application for licensure with the Commission. The application must be submitted in accordance with rules adopted by the Commission.<sup>43</sup>

### **Conditions on eligibility for licensure**

The Commission will issue a license to an applicant if all of the following conditions are met:

(1) The applicant demonstrates that it does not have an ownership or investment interest in, or compensation arrangement with, a laboratory licensed by the Commission or with an applicant for a license to conduct laboratory testing;

(2) The applicant demonstrates that it will not be located within 1,000 feet of a school, church, public library, public playground, or public park;

(3) The report of each criminal records check conducted demonstrates that the person subject to the check has not been convicted of or pleaded guilty to any disqualifying offense specified in rules adopted by the Commission;

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<sup>40</sup> R.C. 3796.10(G).

<sup>41</sup> *Id.*

<sup>42</sup> R.C. 3796.26.

<sup>43</sup> R.C. 3796.12.



(4) The applicant meets all other licensure eligibility conditions established in rules adopted by the Commission.<sup>44</sup>

#### **Criminal records check requirements**

As part of the application process, each of the following individuals associated with an entity seeking licensure must complete a criminal records check:

(1) An administrator or other person responsible for the daily operation of the entity;

(2) An owner or prospective owner, officer or prospective officer, or board member or prospective board member of the entity.<sup>45</sup>

The process for completing a criminal records check provided for in the bill is the same process that applies to certain professionals under existing law.<sup>46</sup> The Department is required to specify in rule the offenses that disqualify an applicant from licensure (see "**Program rules**" above). If an individual subject to the criminal records check requirement fails to complete the check, the Commission must deny the entity's application for licensure.

#### **Minority benchmarks**

The bill requires that the Commission issue not less than 15% of cultivator, processor, retail dispensary, or laboratory licenses to entities that are owned or operated by individuals who are members of one of the following economically disadvantaged groups:

(1) Blacks or African-Americans;

(2) American Indians;

(3) Hispanics or Latinos;

(4) Asians.

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<sup>44</sup> *Id.*

<sup>45</sup> R.C. 3796.13.

<sup>46</sup> R.C. 109.572.



However, if no applications or an insufficient number of applications are submitted by entities that meet the conditions for licensure, the Commission must issue licenses according to usual procedures.<sup>47</sup>

### **Authority to suspend or revoke a license**

The bill authorizes the Commission to suspend or revoke a license for any reason specified in rules adopted by the Commission.<sup>48</sup> An action to suspend or revoke a license must be taken in accordance with the Administrative Procedure Act.<sup>49</sup>

### **Authority to impose a civil penalty**

The bill authorizes the Commission to impose on a license holder a civil penalty in an amount to be determined by the Commission for any reason specified in rules adopted by the Department.<sup>50</sup> Any action to impose a civil penalty must be taken in accordance with the Administrative Procedure Act.<sup>51</sup>

### **Authority to inspect**

The bill authorizes the Commission to inspect the premises of a license holder without prior notice to the license holder.<sup>52</sup>

### **Advertising prohibition**

The bill prohibits a licensed cultivator, processor, retail dispensary, or laboratory from advertising any services related to medical marijuana on a radio or television broadcast.<sup>53</sup>

### **Licensed cultivators**

The bill authorizes the holder of a cultivator license to cultivate medical marijuana and deliver it to a processor.<sup>54</sup>

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<sup>47</sup> R.C. 3796.12(C).

<sup>48</sup> R.C. 3796.14.

<sup>49</sup> R.C. Chapter 119.

<sup>50</sup> R.C. 3796.14.

<sup>51</sup> R.C. Chapter 119.

<sup>52</sup> R.C. 3796.14.

<sup>53</sup> R.C. 3796.26.

<sup>54</sup> R.C. 3796.18.



## Prohibition on personal, family, or household use

The bill prohibits a cultivator license holder from cultivating medical marijuana for personal, family, or household use.

## Licensed processors

The holder of a processor license may do any of the following:

- (1) Obtain medical marijuana from one or more licensed cultivators;
- (2) Process medical marijuana obtained from a cultivator into a form that may be dispensed, as those forms are specified in rules adopted by the Commission;
- (3) Deliver processed medical marijuana to one or more licensed retail dispensaries.<sup>55</sup>

When processing medical marijuana, a licensed processor must package it according to federal child-resistant effectiveness standards in effect on the bill's effective date.<sup>56</sup> The processor also must label the packaging with the product's tetrahydrocannabinol and cannabidiol<sup>57</sup> content.

## Licensed retail dispensaries

The holder of a retail dispensary license may obtain medical marijuana from one or more processors and may dispense it to patients. When dispensing medical marijuana, the dispensary must do all of the following:

- (1) Dispense only upon a showing of a current, valid identification card issued by the Commission and in accordance with a recommendation issued by a qualifying physician registered with the Commission;
- (2) Report to the drug database maintained by the State Board of Pharmacy that medical marijuana was dispensed to a patient (see "**OARRS**" below);

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<sup>55</sup> R.C. 3796.19.

<sup>56</sup> See 16 C.F.R. 1700.15(b).

<sup>57</sup> The marijuana plant contains more than 80 active cannabinoid chemicals, including tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the main psychoactive cannabinoid in marijuana. Unlike THC, CBD does not produce euphoria or intoxication. See National Institutes of Health, National Institute on Drug Abuse, *The Biology and Potential Therapeutic Effects of Cannabidiol*, available at <https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/biology-potential-therapeutic-effects-cannabidiol>.

(3) Use only employees who have met the training requirements established in rules adopted by the Commission;

(4) Label the package containing medical marijuana with the following information:

- The name and address of the licensed processor and retail dispensary;
- The name of the patient and caregiver, if any;
- The name of the qualifying physician who recommended treatment with medical marijuana;
- The directions for use as recommended by the qualifying physician;
- The date on which the medical marijuana was dispensed;
- The quantity, strength, kind, and form of medical marijuana contained in the package.<sup>58</sup>

#### **Patient identifying information**

The bill prohibits a licensed retail dispensary from making public any information it collects that identifies or would tend to identify any specific patient.<sup>59</sup>

#### **Licensed laboratories**

The holder of a laboratory license may obtain medical marijuana from licensed cultivators, processors, and retail dispensaries and may conduct testing on the marijuana. When testing, a licensed laboratory must test for potency, homogeneity, and contamination and prepare a report of test results.<sup>60</sup>

#### **Other licensed professionals**

Under the bill, the holder of a license, as defined under current law, is not subject to professional disciplinary action solely for engaging in professional or occupational activities related to medical marijuana.<sup>61</sup>

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<sup>58</sup> R.C. 3796.20.

<sup>59</sup> *Id.*

<sup>60</sup> R.C. 3796.21.

<sup>61</sup> R.C. 3796.24 and 4776.01, not in the bill.

## **Township or municipal corporation may prohibit or limit number of retail dispensaries**

The bill authorizes the legislative authority of a municipal corporation to adopt an ordinance, and a board of township trustees to adopt a resolution, to prohibit, or limit the number of, licensed retail dispensaries of medical marijuana within the municipal corporation or within the unincorporated territory of the township.<sup>62</sup>

### **Zoning of retail dispensaries**

The legislative authority of a municipal corporation has authority under constitutionally granted home rule authority<sup>63</sup> and under continuing law<sup>64</sup> to adopt zoning ordinances regulating land and buildings within municipal boundaries. And, along with various other zoning powers, townships have authority under continuing law to regulate, by resolution, the location and use of buildings and other structures and the uses of land for trade or industry in the unincorporated area of the township.<sup>65</sup> Counties have similar zoning authority,<sup>66</sup> but county zoning regulations may apply only in the unincorporated area of the county not covered by township zoning regulations.<sup>67</sup>

Current law limits the power of counties and townships to zone land used for agricultural purposes. The bill provides that these existing limitations do not prohibit a township, through its zoning commission, board of township trustees, or board of zoning appeals,<sup>68</sup> from regulating the location of retail dispensaries of medical marijuana or from prohibiting such dispensaries from being located in the unincorporated territory of the township. The bill does not provide similarly for counties.<sup>69</sup>

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<sup>62</sup> R.C. 3796.29.

<sup>63</sup> Ohio Const., art. XVIII, sec. 3; *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259 (1980).

<sup>64</sup> R.C. 713.07 to 713.10, not in the bill.

<sup>65</sup> R.C. 519.02, not in the bill.

<sup>66</sup> R.C. 303.02, not in the bill.

<sup>67</sup> R.C. 303.22, not in the bill, except county zoning regulations will apply in an area covered by township zoning regulations upon vote of majority of voters in the area.

<sup>68</sup> R.C. 519.21(D).

<sup>69</sup> The relevant county provision is R.C. 303.21, not in the bill.



## Proximity to school, church, or certain public places

The bill prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 1,000 feet of a school, church, public library, public playground, or public park.<sup>70</sup>

The bill requires an entity seeking a license to cultivate, process, or dispense at retail medical marijuana, or to conduct laboratory testing of medical marijuana, to demonstrate the entity will not be located within 1,000 feet of a school, church, public library, public playground, or public park in order to receive a license from the Medical Marijuana Control Commission.<sup>71</sup> The Commission must revoke the license of a cultivator, processor, retail dispensary, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park.<sup>72</sup>

Finally, the bill requires the Commission to specify, by rules adopted under the Administrative Procedure Act, if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or public park became established within 1,000 feet may remain in operation or must relocate or have its license revoked.<sup>73</sup> For purposes of the bill, a school is defined to include a child day-care center.<sup>74</sup>

## Employment laws

### Employment – generally

The bill provides that nothing in the bill concerning medical marijuana does any of the following:

(1) Requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana;

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<sup>70</sup> R.C. 3796.30(A).

<sup>71</sup> R.C. 3796.11(B)(4).

<sup>72</sup> R.C. 3796.30(A).

<sup>73</sup> R.C. 3796.04(B)(14).

<sup>74</sup> R.C. 3796.30(B).





(3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;

(4) Interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations;

(5) Permits a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;

(6) Affects the authority of the Administrator of Workers' Compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the Administrator.<sup>75</sup>

Under continuing law, the Bureau of Workers' Compensation's Drug-Free Safety Program offers eligible employers a premium rebate for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and drugs. In addition to satisfying other requirements, the employer's program must include alcohol and drug testing, including (1) pre-employment and new-hire drug testing, (2) post-accident alcohol and drug testing, (3) reasonable suspicion alcohol and drug testing, and (4) return-to-duty and follow-up alcohol and other drug testing.<sup>76</sup>

### **Unemployment eligibility**

Under the bill, a person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause under the Unemployment Compensation Law.<sup>77</sup> If a person has been discharged for just cause in connection with the person's work, for purposes of that Law that person is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment. Under current law, failure of a drug test could be "just cause" for purposes of this provision.<sup>78</sup>

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<sup>75</sup> R.C. 3796.28(A).

<sup>76</sup> Ohio Administrative Code 4123-17-58.

<sup>77</sup> R.C. 3796.28(B).

<sup>78</sup> R.C. 4141.29(D), not in the bill.



## **Workers' compensation – rebuttable presumption**

### **Eligibility**

The Workers' Compensation Law compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. Under continuing law, an employee or dependent is ineligible if the employee's injury or occupational disease is purposely self-inflicted or is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance was the proximate cause of the injury.<sup>79</sup>

The bill maintains an employee's or dependent's ineligibility for compensation and benefits if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury. This applies regardless of whether the marijuana use is recommended by a physician.<sup>80</sup>

### **Rebuttable presumption – current law**

Under continuing law, a rebuttable presumption is established if an employee is intoxicated or under the influence of a controlled substance not prescribed by a physician and being intoxicated or under the influence of that controlled substance proximately caused an injury if either of the following applies:

--A qualifying chemical test is administered and the employee tests above certain levels for alcohol or certain controlled substances, including cannabinoids.

--The employee refuses to submit to a chemical test on the condition that the employee is given notice that refusal to submit to a qualifying chemical test may affect the employee's eligibility for compensation and benefits.<sup>81</sup>

Under current law, a chemical test is considered a "qualifying chemical test" if it is administered to an employee after an injury under at least one of the following conditions: (1) when the employee's employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician, (2) at a police officer's request because the officer has reasonable grounds to believe that the employee was operating a vehicle

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<sup>79</sup> R.C. 4123.54(A).

<sup>80</sup> R.C. 4123.54(A) to (F).

<sup>81</sup> R.C. 4123.54(B).



while intoxicated or under the influence of a controlled substance, or (3) at a physician's request.<sup>82</sup>

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following:

--Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance;

--A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

--The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

--A report of use of alcohol or a controlled substance provided by a reliable and credible source;

--Repeated or flagrant violations of the safety or work rules of the employee's employer that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.<sup>83</sup>

### **"Safe harbor" for the provision of banking services**

Under the bill, a financial institution that provides financial services to any cultivator, processor, retail dispensary, or laboratory licensed under the bill is exempt from any Ohio criminal law an element of which may be proven by substantiating that a person provides financial services to a person who possesses, delivers, or manufactures marijuana or marijuana-derived products, *if* the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws.<sup>84</sup> The bill defines "financial institution" as:

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<sup>82</sup> R.C. 4123.54(B) and (C).

<sup>83</sup> R.C. 4123.55(C)(2).

<sup>84</sup> R.C. 3796.27(B). The criminal laws referred to by the bill include offenses relating to the funding of drug or marijuana trafficking and, as they apply to violations of the Drug Offenses Law, the offenses of conspiracy and complicity.

--Any bank, trust company, savings and loan association, savings bank, or credit union or any affiliate, agent, or employee of such an institution;

--Any money transmitter licensed under Ohio law or any affiliate, agent, or employee of a money transmitter.<sup>85</sup>

For purposes of this exemption, a financial institution may request the Medical Marijuana Control Commission to provide the following information:

(1) Whether a person with whom the financial institution is seeking to do business is a cultivator, processor, retail dispensary, or laboratory licensed under the bill;

(2) The name of any other business or individual affiliated with the person;

(3) A copy of the application for a license under the bill, and any supporting documentation, that was submitted by the person;

(4) If applicable, information relating to sales and volume of product sold by the person;

(5) Whether the person is in compliance with the bill;

(6) Any past or pending violation of the bill by the person, and any penalty imposed on the person for the violation.

Notwithstanding the Public Records Law, the Commission must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.<sup>86</sup>

Likewise, a financial institution may request the Department of Taxation to provide the following information:

(1) Whether a cultivator, processor, retail dispensary, or laboratory licensed under the bill with whom the financial institution is seeking to do business is in compliance with the applicable Ohio tax laws;

(2) Any past or pending violation by the person of those tax laws, and any penalty imposed on the person for the violation.

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<sup>85</sup> R.C. 3796.27(A)(1).

<sup>86</sup> R.C. 3796.27(C).

Notwithstanding the Public Records Law or any law relating to the confidentiality of tax return information, the Department must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.<sup>87</sup>

Information received by a financial institution under the bill is confidential. Except as otherwise permitted by other state law or federal law, a financial institution is prohibited from making the information available to any person other than the customer to whom the information applies and any trustee, conservator, guardian, personal representative, or agent of that customer.<sup>88</sup>

## **OARRS**

The Ohio Automated Rx Reporting System, or OARRS, is the drug database established and maintained by the State Board of Pharmacy to monitor the misuse and diversion of controlled substances.<sup>89</sup> Existing law requires that when a controlled substance is dispensed by a pharmacy or personally furnished by a health care professional to an outpatient, this information must be reported to OARRS. Health care professionals and pharmacists also may access patient information in the database.<sup>90</sup>

### **Reporting to OARRS**

The bill authorizes the Board of Pharmacy to monitor medical marijuana through OARRS, by requiring that a retail dispensary or its delegate report to OARRS when dispensing medical marijuana in accordance with the bill's provisions.<sup>91</sup> Under the bill, a dispensary must report all of the following to the database:

- (1) Retail dispensary identification;
- (2) Patient identification;
- (3) Recommending physician identification;
- (4) Date of physician recommendation;

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<sup>87</sup> R.C. 3796.27(D).

<sup>88</sup> R.C. 3796.27(E).

<sup>89</sup> R.C. 4729.75.

<sup>90</sup> R.C. 4729.80.

<sup>91</sup> R.C. 4729.75 and 4729.771.



(5) If provided to the retail dispensary, the ICD classification specified on the physician recommendation;

(6) Date marijuana was dispensed;

(7) Form, quality, and clinical strength of marijuana dispensed;

(8) Quantity of marijuana dispensed;

(9) Number of days' supply of marijuana dispensed;

(10) Source of payment for the marijuana dispensed.

### **Access to patient information**

The bill also permits the Board to provide to a delegate of a retail dispensary a report of information from OARRS relating to a patient, if the delegate requests the report and certifies in a form specified by the Board that the information requested is for the purpose of distributing medical marijuana for use in accordance with the bill's provisions and if the delegate or retail dispensary has not been denied access to OARRS. While it permits retail dispensaries to access OARRS, the bill does not require them to do so.

### **Access to ICD classifications**

The bill permits the Board to provide to a designated representative of the Medical Marijuana Control Commission information from OARRS relating to the ICD classifications used by qualifying physicians.

### **Board of Pharmacy reports**

Under existing law, the Board must report biennially to the standing committees of the General Assembly primarily responsible for considering health issues information from the Board, prescribers, and pharmacies regarding the Board's effectiveness in providing information from OARRS. The bill requires that this report also include information from retail dispensaries licensed to dispense medical marijuana.

Current law also requires that the Board submit a semiannual report to the Governor, General Assembly, and various agencies or departments of state government that includes an aggregate of information regarding prescriptions for controlled substances containing opioids, as well as opioids personally furnished by prescribers. Under the bill, the Medical Marijuana Control Commission is to receive a copy of the



report. The bill also requires that the report contain an aggregate of information relating to medical marijuana, including the following:

- (1) The number of retail dispensaries that dispensed marijuana;
- (2) The number of patients to whom marijuana was dispensed;
- (3) The average supply of marijuana dispensed at one time;
- (4) The average daily dose of marijuana dispensed;

(5) The types of diseases or conditions for which treatment with medical marijuana was recommended.<sup>92</sup>

### **Conforming changes**

Because the bill authorizes the Pharmacy Board to monitor medical marijuana through its database and requires that retail dispensaries report to OARRS, it makes several conforming changes to the law governing the OARRS Program.<sup>93</sup>

### **Commission databases**

The bill requires that the Commission establish and maintain two separate databases concerning medical marijuana. The first contains information reported by qualifying physicians regarding the treatment of patients with medical marijuana, while the second monitors medical marijuana from its seed source through being dispensed. In the case of each database, the Commission must not make public any information reported to or collected by it that identifies or would tend to identify any specific patient. This prohibition extends to any entity under contract with the Commission to maintain and establish the second database.<sup>94</sup>

### **Informational database**

The informational database must contain all of the following information:

(1) The number of patients for whom treatment with medical marijuana has been recommended;

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<sup>92</sup> R.C. 4729.85.

<sup>93</sup> R.C. 4729.81, 4729.82, 4729.83, 4729.84, and 4729.86.

<sup>94</sup> R.C. 3796.07.



(2) The types of diseases or conditions for which treatment with medical marijuana has been recommended;

(3) The one or more reasons that treatment with medical marijuana was recommended for the patient rather than recommending another form of treatment;

(4) The one or more forms of or methods of using medical marijuana recommended for the patient.

### **Monitoring database**

The Commission must establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The Commission may contract with a separate entity to establish and maintain the database on its behalf.

The database must allow for information regarding medical marijuana to be updated instantaneously. All persons designated by the Commission must submit to the Commission any information it determines is necessary for maintaining the database.

### **Toll-free hotline**

The bill requires that the Commission establish a toll-free telephone line to do all of the following:

(1) Respond to inquiries from patients, caregivers, and health professionals regarding adverse reactions to medical marijuana;

(2) Provide information about available services and assistance.<sup>95</sup>

### **Legislative intent**

#### **Excise tax**

The bill provides that the General Assembly may enact law levying an excise tax on each transaction by which medical marijuana is dispensed to a patient in accordance with the bill's provisions. In addition to levying the tax, the law must subject persons dispensing medical marijuana to all customary nondiscriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon Ohio

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<sup>95</sup> R.C. 3796.07.





businesses, their gross or net revenues, their operations, their owners, and their property.<sup>96</sup>

### **Marijuana drug abuse prevention programs**

The bill requires that the Commission determine for each fiscal year an amount it considers necessary to fund drug abuse prevention programs. The amount determined by the Commission must be appropriated for that purpose from excise tax revenues and from license application and renewal fees established in rules adopted by the Commission.<sup>97</sup>

### **Reclassification as schedule II controlled substance**

The bill specifies that the General Assembly declares its intent to recommend that the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Agency take actions as necessary to classify marijuana as a schedule II controlled substance in an effort to ease the regulatory burdens associated with research on the potential medical benefits of marijuana.<sup>98</sup>

### **Incentives for academic and medical research**

The bill provides that the General Assembly declares its intent to establish a program to provide incentives or otherwise encourage institutions of higher education and medical facilities within Ohio to conduct academic and medical research relating to medical marijuana.<sup>99</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-14-16
Reported, H. Select Committee on Medical Marijuana	05-09-16

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<sup>96</sup> Section 4.

<sup>97</sup> *Id.*

<sup>98</sup> Section 5.

<sup>99</sup> Section 6.

