

Am. Sub. H.B. 166
As Passed by the Senate

_____ moved to amend as follows:

In line 64 of the title, after "3781.1010," insert "3796.03,
3796.09," 1
2

In line 165 of the title, after "3781.40," insert "3796.091," 3

In line 269, after "3781.1010," insert "3796.03, 3796.09," 4

In line 342, after "3781.40," insert "3796.091," 5

After line 43878, insert: 6

"**Sec. 3796.03.** (A)(1) Except as provided in division (A)(2) 7
of this section, not later than one year after ~~the effective date~~ 8
~~of this section~~ September 8, 2016, the department of commerce 9
shall adopt rules establishing standards and procedures for the 10
medical marijuana control program. 11

(2) The department shall adopt rules establishing standards 12
and procedures for the licensure of cultivators not later than two 13
hundred forty days after ~~the effective date of this section~~ 14
September 8, 2016. 15

(3) All rules adopted under this section shall be adopted in 16
accordance with Chapter 119. of the Revised Code. 17

(B) The rules shall do all of the following: 18

(1) Establish application procedures and fees for licenses it 19

issues under this chapter;	20
(2) Specify all of the following:	21
(a) The conditions that must be met to be eligible for licensure;	22 23
(b) Subject to division (B)(2)(c) of this section, the criminal offenses for which an applicant will be disqualified from licensure;	24 25 26
(c) Which of the criminal offenses specified pursuant to division (B)(2)(b) of this section will not disqualify an applicant from licensure if the applicant was convicted of or pleaded guilty to the offense more than five years before the date the application for licensure is filed.	27 28 29 30 31
(3) Establish, in accordance with section 3796.05 of the Revised Code, the number of cultivator licenses that will be permitted at any one time;	32 33 34
(4) Establish a license renewal schedule, renewal procedures, and renewal fees;	35 36
(5) Specify reasons for which a license may be suspended, including without prior hearing, revoked, or not be renewed or issued and the reasons for which a civil penalty may be imposed on a license holder;	37 38 39 40
(6) Establish standards under which a license suspension may be lifted;	41 42
(7) Specify if a cultivator, processor, or laboratory that is licensed under this chapter and that existed at a location before a school, church, public library, public playground, or public park became established within five hundred feet of the cultivator, processor, or laboratory, may remain in operation or	43 44 45 46 47

shall relocate or have its license revoked by the board; 48

(8) Specify both of the following: 49

(a) Subject to division (B)(8)(b) of this section, the 50
criminal offenses for which a person will be disqualified from 51
employment with a license holder; 52

(b) Which of the criminal offenses specified pursuant to 53
division (B)(8)(a) of this section will not disqualify a person 54
from employment with a license holder if the person was convicted 55
of or pleaded guilty to the offense more than five years before 56
the date the employment begins. 57

(9) Establish, in accordance with section 3796.05 of the 58
Revised Code, standards and procedures for the testing of medical 59
marijuana by a laboratory licensed under this chapter; 60

(10) Establish, in accordance with section 3796.091 of the 61
Revised Code, standards and procedures for the review and ranking 62
of applications for licensure. 63

(C) In addition to the rules described in division (B) of 64
this section, the department may adopt any other rules it 65
considers necessary for the program's administration and the 66
implementation and enforcement of this chapter. 67

(D) When adopting rules under this section, the department 68
shall consider standards and procedures that have been found to be 69
best practices relative to the use and regulation of medical 70
marijuana. 71

Sec. 3796.09. (A) An entity that seeks to cultivate or 72
process medical marijuana or to conduct laboratory testing of 73
medical marijuana shall file an application for licensure with the 74
department of commerce. The entity shall file an application for 75

each location from which it seeks to operate. Each application 76
 shall be submitted in accordance with rules adopted under section 77
 3796.03 of the Revised Code. 78

(B) The department shall issue a license to an applicant if 79
 all of the following conditions are met: 80

(1) The report of the criminal records check conducted 81
 pursuant to section 3796.12 of the Revised Code with respect to 82
 the application demonstrates the following: 83

(a) Subject to division (B)(1)(b) of this section that the 84
 person subject to the criminal records check requirement has not 85
 been convicted of or pleaded guilty to any of the disqualifying 86
 offenses specified in rules adopted under division (B)(2)(b) of 87
 section 3796.03 of the Revised Code; 88

(b) That the disqualifying offense the person was convicted 89
 of or pleaded guilty to is one of the offenses specified in rules 90
 adopted under division (B)(2)(c) of section 3796.03 of the Revised 91
 Code and the person was convicted of or pleaded guilty to the 92
 offense more than five years before the date the application for 93
 licensure is filed. 94

(2) The applicant demonstrates that it does not have an 95
 ownership or investment interest in or compensation arrangement 96
 with any of the following: 97

(a) A laboratory licensed under this chapter; 98

(b) An applicant for a license to conduct laboratory testing. 99

(3) The applicant demonstrates that it does not share any 100
 corporate officers or employees with any of the following: 101

(a) A laboratory licensed under this chapter; 102

(b) An applicant for a license to conduct laboratory testing. 103

(4) The applicant demonstrates that it will not be located within five hundred feet of a school, church, public library, public playground, or public park.

(5) The information provided to the department pursuant to section 3796.11 of the Revised Code demonstrates that the applicant is in compliance with the applicable tax laws of this state.

(6) The applicant meets all other licensure eligibility conditions established in rules adopted under section 3796.03 of the Revised Code.

(C) The department shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are:

(1) Applied for licensure on or before December 31, 2017;

(2) Were assigned scores that were equal to or greater than the score described in division (A)(3) of section 3796.091 of the Revised Code; and

(3) Are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: ~~Blacks~~

(a) Blacks or African Americans~~;~~

(b) American Indians;

(c) Hispanics or Latinos, ~~and;~~

(d) Asians. ~~If~~

If no applications or an insufficient number of applications are submitted by such entities that meet the conditions set forth in division (B) of this section, the licenses shall be issued according to usual procedures.

As used in this division, "owned and controlled" means that
 at least fifty-one per cent of the business, including corporate
 stock if a corporation, is owned by persons who belong to one or
 more of the groups set forth in this division, and that those
 owners have control over the management and day-to-day operations
 of the business and an interest in the capital, assets, and
 profits and losses of the business proportionate to their
 percentage of ownership.

(D) A license expires according to the renewal schedule
 established in rules adopted under section 3796.03 of the Revised
 Code and may be renewed in accordance with the procedures
 established in those rules.

Sec. 3796.091. (A) When reviewing and ranking applications
 for licensure, the department of commerce shall do all of the
 following:

(1) Consider the licensure eligibility conditions established
 in rules adopted under section 3796.03 of the Revised Code;

(2) Use an impartial and numerical scoring process that takes
 into account the licensure eligibility conditions established in
 rules;

(3) Establish a minimum score that an applicant must attain
 to be qualified for licensure;

(4) Assign a score to each applicant.

(B) The department may contract with a separate entity to
 review and rank applications for licensure. If the department
 contracts with a separate entity, the entity shall comply with the
 requirements of division (A) of this section."

In line 82859, after "3781.1010," insert "3796.03, 3796.09,"

After line 96539, insert: 160

"Section 737.____. (A) In amending division (C) of section 161
3796.09 of the Revised Code under this act, the 133rd General 162
Assembly finds all of the following to be the case: 163

(1) The State of Ohio has worked for decades to reduce and 164
eliminate well-documented disparities in the marketplace affecting 165
economically disadvantaged groups, including by implementing the 166
Minority Business Enterprise (MBE) program and the Encouraging 167
Diversity Growth and Equity (EDGE) program. 168

(2) Numerous studies conducted in conjunction with the 169
State's MBE and EDGE programs have identified racial disparities 170
in the administration of State programs and also barriers to entry 171
that disproportionately hinder the creation and expansion of 172
minority-owned businesses. The 131st General Assembly, when 173
enacting Sub. H.B. 523, considered these MBE/EDGE studies, as well 174
as studies from other states regarding racial disparities in 175
medical marijuana facility licensure. 176

(3) When enacting Sub. H.B. 523, the 131st General Assembly 177
observed that the negative impacts of criminal marijuana laws were 178
disproportionately imposed on minority communities, while the 179
positive impacts of state-sanctioned medical marijuana programs 180
disproportionately benefitted non-minorities. 181

(4) However, in *Pharmacann Ohio, LLC vs. Ohio Department of* 182
Commerce, 17-CV-10962 (November 15, 2018), the Franklin County 183
Court of Common Pleas held that division (C) of section 3796.09 of 184
the Revised Code was unconstitutional. The Court found that the 185
131st General Assembly failed to compile and review enough 186
evidence related to the medical marijuana industry to support the 187
finding of a strong basis in evidence for a compelling government 188
interest to exist. The Court also held that, even if there were a 189

finding of a strong basis in evidence for a compelling government 190
 interest to exist, the language of division (C) of section 3796.09 191
 of the Revised Code was not narrowly tailored to meet such an 192
 interest. 193

(5) Additional amendments to division (C) of section 3796.09 194
 of the Revised Code shall be considered after each study described 195
 in division (B) of this section is conducted. 196

(B) The General Assembly shall contract with an entity, 197
 selected jointly by the Speaker of the House of Representatives, 198
 House Minority Leader, Senate President, and Senate Minority 199
 Leader to conduct a study in calendar year 2020 and a study in 200
 calendar year 2021 to determine the appropriate minority 201
 benchmarks for future medical marijuana licensure. In conducting 202
 each study, the entity shall consider all of the following: 203

(1) Race-neutral alternative remedies; 204

(2) Numerical goals in relationship to the relevant labor 205
 market; 206

(3) Impacts on third-parties; 207

The entity also shall propose amendments to division (C) of 208
 section 3796.09 of the Revised Code that are narrowly tailored to 209
 the compelling governmental interest in ensuring the minimization 210
 of racial disparity in the issuance of medical marijuana licenses 211
 and in increasing minority inclusion. 212

The General Assembly hereby declares that it intends to enter 213
 into contracts for similar studies in years subsequent to calendar 214
 year 2021." 215

The motion was _____ agreed to.

SYNOPSIS

Medical marijuana licensure - review and ranking of applications 216
217

R.C. 3796.03 and 3796.091 (new) 218

Requires the Department of Commerce to adopt rules 219
establishing standards and procedures for the review and ranking 220
of applications for licensure as medical marijuana cultivators, 221
processors, and testing laboratories. 222

Requires the Department, when reviewing and ranking 223
applications for licensure, to do the following: 224

(1) Consider licensure eligibility conditions established in 225
rule; 226

(2) Use an impartial and numerical scoring process that takes 227
into account the licensure eligibility conditions; 228

(3) Establish a minimum score that an applicant must attain 229
to be qualified for licensure; 230

(4) Assign a score to each applicant. 231

Authorizes the Department to contract with a separate entity 232
to review and rank applications for licensure and requires the 233
contracting entity to review and rank applications as if it were 234
the Department. 235

Minority benchmarks and medical marijuana licenses 236

R.C. 3796.09; Section 737.____ 237

Revises current law (declared unconstitutional by the 238
Franklin County Court of Common Pleas) which requires the 239
Department of Commerce to issue not less than 15% of cultivator, 240
processor, and laboratory licenses to applicants that are members 241

of minority or economically disadvantaged groups by also requiring	242
that those applicants meet the following conditions:	243
(1) Have applied for licensure on or before December 31,	244
2017;	245
(2) Were assigned scores that were equal to or greater than	246
the minimum score that must be attained to be qualified for	247
licensure.	248
Requires the General Assembly to contract with an entity to	249
conduct a study in calendar years 2020 and 2021 to determine	250
appropriate minority benchmarks for future medical marijuana	251
licensure and to propose future amendments to the minority	252
benchmark law.	253