



Ohio Senate General Government Committee  
Bryan A. Murray  
Acreage Holdings, LLC  
Opposition Testimony  
Senate Bill 9  
March 7, 2023

Chairman Rulli, Vice Chair Schuring, Ranking Member DeMora, and members of the committee, thank you for the opportunity to testify today regarding Senate Bill 9, legislation that makes changes to the medical marijuana control program. My name is Bryan Murray, and I am the Executive Vice President of Government Relations for Acreage Holdings.

Acreage is a multi-state operator of cannabis cultivation and retail facilities in the U.S., including the company's national retail store brand, The Botanist. In fact, our Ohio dispensaries located in Akron, Canton, Cleveland, Columbus, and Wycliffe scored the five highest in the original application process, which we were awarded in 2018. We are proud of our high standard of patient care and quality products.

It has been more than five years since Ohio created its medical marijuana program, and we appreciate the willingness of the Ohio Legislature to work on a corrections bill that both benefits our patients and the industry as a whole. Specifically, I would like to thank Senators Huffman and Schuring for prioritizing medical marijuana and trying to improve the program. That said, we are opposed to the massive expansion outlined in SB 9 because it lacks the data justifying that such an expansion is needed.

In fact, Ohio's patient count has flatlined, averaging 163,000 active patients since August 2022, despite an ongoing program expansion, resulting in oversupply. Currently, there are 163,000 active patients in Ohio's MMJ program, and approximately 460,000 square feet of cultivation, or 2.8 square feet per patient (enough to grow 11 small plants). Cultivator's and processors' vaults are full and the state is anticipating an increase of 150,000 square feet, or 33 percent, of cultivation to enter the market this quarter.

Crain's Cleveland January 2023 analysis of year-on-year program sales shows considerable slowing since the program's inception. Despite the slowdown, Ohio has four additional Level 1 and two additional Level 2 cultivators awaiting their certificates of operation, which will add 106,000 square feet of cultivation. In addition, the Department of Commerce approved the first round of cultivation area expansion, which adds another 617,000 square feet, if all operators expand. It is evident that Ohio does not need the 2,000,000 square feet expansion of cultivation, 14 additional processing, and 60 additional dispensary licenses proposed by SB 9, when the state already has 19 Level I and 12 Level II cultivators, 44 processors, and 66 dispensaries serving a decreasing medical patient population.

The problem is a lack of demand; there are simply not enough patients to consume what is being produced. **Last month Ohio's active patient number increased by a paltry 1,064 patients after losing almost 7,000 patients over the previous two reporting periods.**

The negative impact of oversupply in markets across the nation cannot be overstated. Marijuana is an industry with constrained capital and limited access to banking services, an inability to gain scale due to federal illegality, and a punitive federal 280e tax which costs the industry 30,000 jobs and \$2.8 billion in taxes each year.

Earlier this year, Curaleaf announced its plans to exit California, Oregon, and Colorado, consolidate Massachusetts cultivation, and downsize 10% of its workforce. Columbia Care announced plans to close four dispensaries in California and Colorado, consolidate cultivation facilities in California, Colorado, and Pennsylvania and decrease corporate headcount by 25%. Verano terminated its agreement to acquire Goodness Growth and Ayr Wellness announced plans to exit Arizona and terminated its agreement to acquire Dispensary 33. Tilt, Marimed, and Jushi completed refinancing deals at substantially higher rates that included dilutive warrants. Weedmaps announced plans to reduce 25% of its workforce, Springbig announced plans to reduce 23% of its workforce, and Leafly announced plans to reduce 21% of its workforce. IIPR, the premier REIT in cannabis announced payment defaults by Kings Garden, Holistic, Calyx Peak, Skymint, Vertical, and Parallel.

The expansion proposed by SB 9 will not improve Ohio's medical marijuana program. What will improve the program; however, are policies that reduce the regulatory bureaucracy and increase and stabilize patient enrollment.

While SB 9's provision to expand approved conditions would seem the panacea for a dwindling enrollment, thus justifying an increase in supply, it is likely to fail without the scaffolding of legislative and regulatory changes. In January 2019 New York's medical marijuana program had 105,000 registered patients. Starting in January 2022, the state allowed physicians to recommend medical marijuana for any condition. The expanded conditions had the potential to boost the patient count to over 700,000 (or 4% of the adult population). Unfortunately, the program realized a scant increase of 19,000 patients because the expansion was not supported by regulatory and legislative changes, like those the industry has advocated below.

### **Regulatory Fixes**

- **Eliminate the annual \$50 fee** charged by the program for a patient card: It costs the average patient over \$200 a year to register for the medical marijuana program (\$150 doctor visit + \$50 card) compared to \$0.00 to purchase in an adult-use or illicit market. Ohio's registered patients have spent over \$120 million dollars on registrations and doctor visits since the program started.
- **Create a category for "Terminal" and "Lifelong-chronic Conditions"**: Patients with incurable conditions should only have to visit a recommending physician once, rather than annually, as their condition is not going away.<sup>1</sup>

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<sup>1</sup> Illinois also has this option.

- **Include anxiety, depression, and insomnia to the list of approved conditions.** Physician discretion is helpful, but physicians may fear medical board sanctions if they overstep an ambiguous line. Adding these conditions helps protect physicians and patients.
- **Allow dispensaries to deliver:** Ohio allows drive-through and curbside pick-up, and delivery is less costly than a new dispensary, while offering the ability to reach more patients. Delivery is not prohibited in statute, but the Board of Pharmacy prohibited delivery via rule.<sup>2</sup>
- **Education Campaign:** The MMCP should initiate a public awareness campaign educating Ohioans about the medical marijuana program and the dangers of illicit cannabis consumption.

### Legislative Fixes

- **Move the MMJ program under the Department of Commerce.** As outlined in Governor DeWine’s budget, the medical marijuana program should be placed under the sole regulatory authority of the Department of Commerce (“Commerce”). Commerce has spent the last five years running the program and Steve Schierholt, Executive Director of the Board of Pharmacy, recently testified to the House budget committee of his preparedness to release control of the program to Commerce. Furthermore, he said he spoke to Director Maxfield and believes it will be a smooth transition. SB 9, in contrast, expands the government bureaucracy with a new agency and introduces uncertainty into an economically fragile industry.
- **Decouple state and federal 280e taxes.** State and federal 280E taxes increase the cost of medical marijuana for patients by prohibiting medical operators from taking more than 15 standard business deductions on things like payroll, employee benefits, construction costs, building rent, maintenance, and utilities.
- **Expand the Foreign Patient Database:** The foreign patient database proposed by SB 9 could also be used to allow patients that are not Ohio residents and live in states without a medical marijuana program to register for Ohio’s medical marijuana program. Kentucky presents a huge opportunity for Ohio’s program. The Governor of Kentucky recently issued an executive order allowing residents with a qualifying condition to possess up to 8 ounces of medical marijuana. However, Kentucky does NOT have a medical marijuana program and has not passed a law initiating a program. Kentucky does require eligible patients to have a doctor’s note and to have legally purchased medical cannabis. Kentuckians must travel to an adult use state (like Michigan) to purchase marijuana. Why not allow them to purchase in Ohio with an Ohio medical marijuana card? This is a way to increase demand for Ohio cannabis and stabilize its market.
- **Ban the sale of hemp-derived THC above .3%.** Hemp-derived THC is sold in gas stations and convenience stores and is completely unregulated.
- **Employment, Housing, and Parental Rights Protections.** Even in an at-will state medical marijuana patients should be afforded the same rights as patients using other

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<sup>2</sup> As of October 2022, 22 states allow some form of delivery. For the house-bound, delivery services would significantly expand the state’s patient base.

Schedule II drugs. Ohio could allow safety exemptions (like Oklahoma) for patients that carry firearms (cops), firefighters, childcare workers, heavy equipment operators, etc.

- **Change physician visits to once every three years** as annual visits are expensive. Illinois has moved to once every three years to retain patients.
- **Allow nurses and/or nurse practitioners to recommend Schedule II drugs** to the allowable recommenders. Most major hospital systems will not allow their doctors to participate. Additionally, nurses and nurse practitioners are more numerous in rural areas.
- **Eliminate the confusing 90-Day supply system and increase the allocation cap:** Ohio's dispensaries must sell cannabis in 1/10-ounce increments rather than 1/8-ounce increments, leaving patients feeling shorted. Additionally, Ohio also has one of the nation's lowest purchasing caps at 9 ounces every 90 days.<sup>3</sup>

As you can see from this list of recommendations, there are significant improvements Ohio can make to its medical marijuana program. The industry is ready to work with the Ohio General Assembly to identify program deficiencies and address patient access and bureaucratic hardships.

Thank you for the opportunity to provide testimony on this important matter and I would be happy to answer any questions.

Respectfully,

Bryan A. Murray

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<sup>3</sup> In Michigan, adult-use dispensaries cap transactions at 2.5 oz per transaction. Michigan's medical marijuana program caps patients at 10 ounces per month. For patients with higher tolerance levels, Ohio's program is simply not a solution.