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## Bill Analysis

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**Primary Sponsors:** Sens. S. Huffman and Schuring

Nick Thomas, Research Analyst

### SUMMARY

- Creates the Division of Marijuana Control (DMC) within the Department of Commerce for the purpose of overseeing Ohio's Medical Marijuana Program.
- Transfers the portions of the Medical Marijuana Program currently overseen by the Board of Pharmacy to DMC, including registration of patients and the licensure and oversight of dispensaries.
- Establishes the Medical Marijuana Oversight Commission to develop and oversee DMC.
- Expands the types of medical conditions that are eligible for treatment with medical marijuana.
- Requires DMC to implement a merit-based system for reviewing applications.
- Requires DMC to endeavor to achieve a ratio of at least one licensed retail dispensary per 1,000 registered patients up to the first 300,000 registered patients and then adding additional retail dispensaries on an as-needed basis.
- Requires, within 90 days of the bill's effective date, DMC to issue dispensary licenses to all cultivators that meet the relevant requirements.
- Prohibits a new retail dispensary from being opened within one mile of an already existing dispensary.
- Allows licensed dispensaries to advertise, on social media or otherwise, without receiving prior approval from DMC.
- Allows licensed dispensaries to display products on advertisements and within the dispensary.
- Requires DMC to establish a new cultivator license for stand-alone processors.

- Creates two levels of cultivator licenses, with level I cultivating up to 50,000 square feet and level II cultivating up to 15,000 square feet.
- Enables cultivators to request an expansion of their cultivated area, with level I being able to cultivate up to 100,000 square feet and level II up to 20,000 square feet.
- Authorizes a level II cultivation license holder to receive a processor license.
- Allows marijuana products that fail laboratory testing or that falls outside of typical testing results to be retested.
- Allows tested samples to be sold.
- Expands the permissible forms of medical marijuana that may be dispensed to include pills, capsules and suppositories, oral pouches, oral strips, oral or topical sprays, salves, lotions, or similar items, and inhalers.
- Increases the permissible tetrahydrocannabinol (THC) content of extracts, from not more than 70% to 90%.
- Enables physicians to recommend medical marijuana via telemedicine.
- Requires that the medical director of a dispensary be certified to recommend medical marijuana and authorizes the medical director to do so.
- Replaces interstate reciprocity agreements with a foreign patient database.

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## DETAILED ANALYSIS

### Overview

The bill creates a new Division of Marijuana Control (DMC) within the Department of Commerce. The purpose of DMC is to oversee and administer Ohio’s Medical Marijuana Control Program. As such, the majority of responsibilities the State Board of Pharmacy currently has with regard to the medical marijuana program are transferred to DMC. These transferred responsibilities include: patient and caregiver registration, approval and oversight of retail dispensary licensees, oversight of licensee taxation, criminal records checks for license applicants and employees, investigations of violations of the Medical Marijuana Law, and maintenance of a toll-free telephone line for responding to inquiries related to the Medical Marijuana Program. It also changes references in the Revised Code as necessary to accommodate these changes.<sup>1</sup>

### Transition provisions

Not later than 60 days after the bill’s effective date, the Department of Commerce and the State Board of Pharmacy must transfer regulation of the Medical Marijuana Control Program to DMC. Until the transfer is complete, the Board retains regulatory authority over licensing of retail dispensaries, registering patients and caregivers, and related duties.<sup>2</sup>

Upon the completion of the transfer, the Medical Marijuana Control Program in the State Board of Pharmacy is abolished. All of its records, as well of all of its other assets and liabilities relating to the Medical Marijuana Control Program, must be transferred to DMC. DMC

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<sup>1</sup> 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.

<sup>2</sup> R.C. 3796.08(A)(1).

is successor to, and assumes the obligations of, the Medical Marijuana Control Program in the State Board of Pharmacy. Any business commenced, but not completed by the Board on the date of the completion of the transfer must be completed by DMC in the same manner, and with the same effect, as if completed by the State Board of Pharmacy. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer.

Furthermore, DMC is responsible for adopting rules establishing standards and procedures for the Medical Marijuana Control Program. The rules regulating the Medical Marijuana Control Program in existence on the bill's effective date continue in effect until repealed or amended by DMC. However, not later than 90 days after the bill's effective date, DMC must review and propose revisions to the rules related to medical marijuana retail dispensaries.

A license to operate as a retail dispensary, as well as a patient registration, issued by the Board remain in effect for the remainder of the license's or registration's term, unless earlier suspended or revoked. However, the bill authorizes DMC to suspend, suspend without prior hearing, revoke, or refuse to renew a license issued by the Board.<sup>3</sup> Until the transfer is complete, the Board will issue renewals; thereafter DMC will issue them.

Any form of medical marijuana approved by the State Board of Pharmacy remains approved until revoked by DMC, after giving notice to the petitioner for that alternate form. DMC must post notice of that revocation on its website.<sup>4</sup>

## **Medical Marijuana Oversight Commission**

The bill establishes the Medical Marijuana Oversight Commission as an independent body within DMC to develop and oversee DMC regarding any policies, procedures, regulations, and licensing related to the Medical Marijuana Control Program and the implementation and enforcement of the Medical Marijuana Law. The Commission is required to administer the program and may take any action necessary to implement and enforce that law. The 13-member commission is to consist of the following:

- A member who is a practicing pharmacist who supports the use of marijuana for medical purposes, appointed by the Governor;
- A member who is a practicing physician who supports the use of marijuana for medical purposes, appointed by the Governor;
- A member who represents local law enforcement, appointed by the Senate President;
- A member who represents employers, appointed by the Governor;
- A member who represents labor, appointed by the House Minority Leader;

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<sup>3</sup> R.C. 3796.14(A)(1)(a).

<sup>4</sup> Section 4 of the bill.

- A member who represents an organization involved in the treatment of alcohol and drug addiction, appointed by the Senate Minority Leader;
- A member who is a nurse, appointed by the Governor;
- A member who represents caregivers, appointed by the Speaker of the House of Representatives;
- A member who represents patients, appointed by the Governor;
- Two members who represent entities licensed under the Medical Marijuana Law, appointed by the Senate President;
- A member who represents the general public, appointed by the Governor;
- A member who engages in academic endocannabinoid research, appointed by the Speaker of the House of Representatives.

Appointments to the Commission are to be made not later than 30 days after the bill's effective date, and the Governor is required to select a member of the Commission to serve as its chairperson. The Commission is required to hold its initial meeting not later than 30 days after the last member of the Commission is appointed.

Each member of the Commission is to serve from the date of appointment until the member dies, resigns, or is removed by the appointing authority. Vacancies are to be filled in the same manner as original appointments. In connection with Commission meetings and business, each member is to receive a per diem rate of \$150 and the member's necessary travel expenses.

The bill specifies that the Commission is not subject to sunset provisions, but that Commission members are required to comply with Ethics Laws that apply to other state office holders.<sup>5</sup>

### **Expansion of qualifying condition**

The bill expands the types of medical conditions that would qualify for treatment with marijuana. Under current law, all of the following are qualifying medical conditions:

- Acquired immune deficiency syndrome;
- Alzheimer's disease;
- Amyotrophic lateral sclerosis;
- Cancer;
- Chronic traumatic encephalopathy;
- Crohn's disease;

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<sup>5</sup> R.C. 3796.021, with conforming changes in R.C. 102.02.

- Epilepsy or another seizure disorder;
- Fibromyalgia;
- Glaucoma;
- Hepatitis C;
- Inflammatory bowel disease;
- Multiple sclerosis;
- Pain that is either chronic and 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;
- Ulcerative colitis;
- Any other disease or condition added by the State Medical Board.

In February 2021, the State Medical Board added arthritis, chronic migraines, and complex region pain syndrome. In addition, the Medical Marijuana Control Program website includes as qualifying conditions cachexia, Huntington’s disease, spasticity, and terminal illness.

The bill adds the following conditions:

- Arthritis;
- Migraines;
- Autism spectrum disorder;
- Spasticity or chronic muscle spasms;
- Hospice care or terminal illness;
- Opioid use disorder.

The bill also allows physicians to recommend marijuana for treatment for any condition the physician is qualified to treat and that the physician considers, in the physician’s sole

discretion and medical opinion, to be as debilitating to the patient as any of the conditions listed above.<sup>6</sup>

## Adoption of rules

The bill requires DMC to adopt rules establishing standards and procedures for the Medical Marijuana Control Program. As part of the transfer of responsibilities from the State Board of Pharmacy, the Board's duty to adopt rules is transferred to DMC.

The bill tweaks or adds to the transferred rules as follows:

- The rules must prohibit a new retail dispensary from being opened within one mile of an already existing dispensary;
- The rules must prohibit 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;
- The rules must prohibit any person from owning more than five retail dispensaries in any of the following four geographic regions – northwest, northeast, southwest, southeast;
- The bill continues the requirement to adopt rules that 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. But the bill does not transfer the requirement to adopt rules that specify reasons for which a registration may be suspended, revoked, or not renewed or issued.
- The bill requires DMC to adopt rules that establish standards and procedures for the testing and retesting of medical marijuana by a licensed laboratory, but also expands this rule to apply to retesting as well.
- The rules must allow licensed dispensaries to advertise, on social media or otherwise, without receiving prior approval from DMC, allow licensed dispensaries to display products on advertisements and within the dispensary, and impose a fine or other penalties for licensed entities that fail to comply with these or any other rules DMC adopts pertaining to advertisements.
- The rules must prohibit licensed entities to include on the label of any product, or otherwise disseminate any claims, that medical marijuana can, or is intended to, diagnose or cure disease.
- The rules must provide for the dispensing or selling of Medical Marijuana through drive-through or curbside pickups.

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<sup>6</sup> R.C. 3796.01(A)(9) and Ohio Medical Marijuana Control Program [Frequently Asked Questions](#), which is available on the Ohio Medical Marijuana Control Program website: [OMMCP](#).

- The rules must provide for a level II cultivator to receive a processor license.
- The rules must prohibit dispensaries from selling or dispensing medical marijuana unless a current, valid identification card is presented along with a current, written recommendation for medical marijuana.<sup>7</sup>

### **Dispensary to patient ratio**

The bill transfers from the Board of Pharmacy the duty to adopt rules to establish the number of retail dispensary licenses that will be permitted at any one time. But the bill additionally requires these rules to endeavor to achieve a ratio of at least one retail dispensary per 1,000 registered patients up to the first 300,000 registered patients and then adding additional retail dispensaries on an as-needed basis thereafter, to be evaluated and awarded at least once every two years. When determining the number of retail dispensaries to license during any licensing event, DMC must take into account anticipated growth in patient numbers and patient demand based on sales and market data to ensure that new retail dispensary openings are timed to meet such demand.

In order to meet this ratio, the bill requires DMC, within 90 days of the bill's effective date, to issue dispensary licenses to cultivators that meet the associated cultivator standards. Each level I cultivator is to receive two provisional dispensary licenses and each level II cultivator is to receive one provisional dispensary license. Level II cultivators that are under construction, or stand-alone processors who have submitted a successful application, as of this date are also to receive a dispensary license.<sup>8</sup>

### **Merit-based system**

The bill also requires DMC to implement a merit-based system for reviewing applications for licensure and prohibits DMC from distributing licenses through any form of lottery. When reviewing applications for licensure, DMC must do all of the following:

- Consider the licensure eligibility conditions established in DMC rules;
- Use an impartial and numerical scoring process that takes into account the licensure eligibility conditions established by DMC rule;
- Establish a minimum score that an applicant must attain to be qualified for licensure;
- Assign a score to each applicant.

### **Change of ownership**

The DMC may contract with a separate entity to review and rank applications for licensure, so long as such an entity complies with the above review requirements.<sup>9</sup>

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<sup>7</sup> R.C. 3796.03(B) and 3796.20(C).

<sup>8</sup> R.C. 3796.03(B)(3).

<sup>9</sup> R.C. 3796.03(B)(3).

## **Cultivator license for stand-alone processors**

The bill requires DMC to establish a new category of cultivator license for stand-alone processors that is on the same terms and subject to the same conditions as a level II cultivator license. A stand-alone processor is eligible for a cultivation license if all of the following conditions are met:

- The processor, or its affiliate, does not already have a cultivation license;
- The processor, or its affiliate, initially applied for a cultivation license on the existing site where its processing facility currently resides;
- The processor obtained its certification of operation on or before October 1, 2021;
- The processor commits to develop the stand-alone processor cultivation facility on the existing site where its stand-alone processor facility currently resides.<sup>10</sup>

## **Change of ownership**

The DMC is required to establish a standard for the application and approval of a change of ownership in a medical marijuana-licensed business, including all of the following:

- A process for adding or removing owners without applying for a change of ownership when the addition or removal does not amount to a change in who controls the medical marijuana-licensed business;
- Allowing for investment in a medical marijuana-licensed business by an institutional investor without requiring a change of ownership application or the licensing of the officers, executives, directors, or board members of the institutional investor;
- Allowing for the investment or ownership in a medical marijuana-licensed business of less than 5% by any person or entity without requiring the person or any officers, executives, directors, or board members of the entity to become licensed except in such instances when the person or entity will exercise control over the affairs of the medical marijuana-licensed business.<sup>11</sup>

Finally, the bill additionally permits DMC to revoke a license for failure to secure a certificate of operation within 18 months of provisional licensure. The holder of a provisional license may apply to DMC for not more than two six-month extensions of this deadline. DMC must approve the extension if the license holder demonstrates that the license holder has made a good-faith effort at becoming operational.<sup>12</sup>

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<sup>10</sup> R.C. 3796.03(B)(22).

<sup>11</sup> R.C. 3796.04(B)(24).

<sup>12</sup> R.C. 3796.03 (with conforming changes in R.C. 109.572 and Section 4) and 3796.04, repealed.

## Licenses

### Cultivator licenses

The bill expands the reasons that must be considered when establishing the number of cultivator licenses that will be permitted at any one time. Under the bill, DMC must additionally consider whether licensed cultivators have expanded to full capacity. Continuing, unchanged, considerations are Ohio's population and the number of patients seeking to use medical marijuana.<sup>13</sup>

The bill also expands what the holder of a valid cultivator license may do. Under current law, a licensed cultivator may cultivate marijuana. The bill expands this to include the acquisition of seeds or clones necessary to begin cultivation of a particular of medical marijuana from another licensed cultivator. In addition to delivering or selling medical marijuana to one or more licensed processors, under the bill, a licensed cultivator may also sell or deliver medical marijuana to other cultivators or retail dispensaries. A cultivator would also be allowed to register cuttings with the Ohio Marijuana Enforcement Tracking Reporting and Compliance System if both of the following are met:

- The cuttings were obtained from a legal, out-of-state cultivator;
- The cuttings have not otherwise been rooted as a clone.<sup>14</sup>

The bill also requires cultivators to do all of the following when processing medical marijuana:

- Package the medical marijuana in accordance with federal child-resistant effectiveness standards;
- Label the medical marijuana packaging with the product's tetrahydrocannabinol (THC) and cannabidiol content;
- Comply with any packaging or labeling requirements established in rules adopted by DMC.<sup>15</sup>

The bill authorizes DMC to issue two levels of cultivator licenses, as follows:

- A level I license holder may be approved to cultivate an area of up to 50,000 square feet;
- A level II license holder may be approved to cultivate an area of up to 15,000 square feet.

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<sup>13</sup> R.C. 3796.05(A).

<sup>14</sup> R.C. 3796.18(A) and [METRC](#), which can be found on the METRC website: [METRC](#).

<sup>15</sup> R.C. 3796.18(C).

When reviewing applicants for a level I license, DMC is required to give preference to level II cultivator license holders.<sup>16</sup>

DMC may approve an expansion of an existing facility's marijuana cultivation area, based on cultivator compliance with licensure requirements, if the population of the state, number of patients seeking to use medical marijuana, and data from the drug database regarding patient recommendations and patient usage of medical marijuana support such expansion. If DMC approves an expansion of a facility's marijuana cultivation area, the marijuana cultivation area is not to exceed the following:

- 100,000 square feet for a level I license holder;
- 20,000 square feet for a level II license holder.

A cultivator is prohibited from submitting a request for expansion more than once during any 12-month period. A cultivator seeking to expand its marijuana cultivation area is required to submit an expansion plan, that, at a minimum, does all of the following:

- Includes plans and specifications for the expansion or alteration in accordance with rules adopted by DMC that demonstrate compliance with the requirements of the rules adopted by the Board of Building Standards and the State Fire Marshal;
- Proposes a timeline for completion of the proposed expansion, which, if approved, will become a mandatory condition;
- Demonstrates a history of compliance with the Medical Marijuana Law and the rules adopted under it, which includes a history of enforcement actions and sanctions issued by the Department of Commerce or law enforcement agencies against the cultivator;
- Provides supporting documentation that the cultivator has consistently met the cultivation requirements established in rules adopted by DMC;
- Demonstrates that the proposed expansion meets the applicable requirements established by DMC in rule and that the cultivator will remain in compliance with the Medical Marijuana Law and related rules, if the expansion is permitted.

Upon DMC's receipt of a request for expansion, DMC has 30 calendar days to review and approve or deny the request for expansion. If DMC does not deny the request for expansion prior to the expiration of 30 calendar days, the request is deemed approved. If the request is approved, the cultivator is bound to the terms in the request for expansion and must, prior to cultivating medical marijuana in the expanded marijuana cultivation area, pass an inspection conducted in accordance with rules adopted by DMC. A cultivator's failure to comply with the approved request for expansion may result in the revocation of DMC's approval or additional sanctions.<sup>17</sup>

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<sup>16</sup> R.C. 3796.18(D) and (H).

<sup>17</sup> R.C. 3796.18 (E) to (G).

DMC is required to establish a fee for a level II license holder for an expansion beyond 15,000 square feet. The fee is to be proportional to the increase, but less than the fee for a level I cultivator license.<sup>18</sup>

### **Retail dispensary licenses**

The bill expands what DMC must consider when establishing the number of retail dispensary licenses that will be permitted at any one time to include projected patient growth over the next two years. DMC must continue to consider Ohio's population, the number of patients seeking medical marijuana, and the geographic distribution of dispensary sites in an effort to ensure patient access to medical marijuana.<sup>19</sup>

The bill expands what a licensed retail dispensary may do. Under current law, a dispensary may obtain marijuana from a processor. Under the bill, a dispensary may also obtain marijuana from cultivators. The bill explicitly authorizes dispensaries to *purchase* marijuana from either source. The bill makes corresponding changes with regard to labelling requirements. It also explicitly authorizes a dispensary to obtain or purchase marijuana from another dispensary if the two dispensaries are under common ownership.<sup>20</sup>

### **Processor license**

The bill expands what a licensed medical marijuana processor may do. Under current law, processors may obtain medical marijuana from licensed cultivators. Under the bill they may also acquire it from other processors. They may also physically travel to the location of a cultivator and directly obtain the marijuana from the cultivator.

Under current law they may deliver or sell processed marijuana to one or more retail dispensaries. Under the bill they may also deliver or sell it to cultivators or processors.<sup>21</sup>

### **Laboratory license**

The bill expands what a licensed laboratory may do. Under current law, a laboratory may:

- Obtain medical marijuana from one or more cultivators, processors, and retail dispensaries;
- Conduct medical marijuana testing in the manner specified in rule.
- Under the bill they may also do the following:
- Conduct research and development testing for cultivators and processors;

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<sup>18</sup> R.C. 3796.18(I).

<sup>19</sup> R.C. 3796.05(B).

<sup>20</sup> R.C. 3796.20(A) and (B).

<sup>21</sup> R.C. 3796.19.

- In-process testing for processors;
- Research and development testing for cultivators and processors.<sup>22</sup>

Furthermore, the bill authorizes the holders of other license types to use state-licensed labs to conduct in-process product testing for internal use.

Under the bill, retesting is permitted if a product fails testing or if a product test results fall outside of the typical results for that specific product. Retesting may be conducted by a licensed laboratory that is not the original laboratory on a new sample taken from the same batch or lot of product that was originally tested. For purposes of testing product, a “batch or lot” is either of the following:

- All of the plant material of the same strain grown together under the same growing conditions;
- All of the manufactured product of the same type produced from the same oil.

Plant material and products that fall outside of the testing limits for contaminants established by DMC may be refined using a method approved by it.<sup>23</sup>

The bill adds a requirement for laboratories testing medical marijuana. Under current law they are required to:

- Test the marijuana for potency, homogeneity, and contamination;
- Prepare a report of the test results.

Under the bill, they are required to collect a sample of a size sufficient to conduct the requested tests, but equaling not more than twice the amount of material needed for such tests. They are also required to comply with relevant testing standards developed by the American Society for Testing and Materials as well as the Association of Official Agricultural Chemists.<sup>24</sup>

Finally, the bill authorizes marijuana plant material and processed products tested under research and development be sold to patients, but only after all required testing is completed and the product passes testing required for sale.<sup>25</sup>

## **Permissible forms and methods**

The bill expands the permissible forms of medical marijuana that may be dispensed to additionally include pills, capsules and suppositories, oral pouches, oral strips, oral or topical sprays, salves, lotions, or similar items, and inhalers. Under continuing law, oils, tinctures, plant

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<sup>22</sup> R.C. 3796.21(A).

<sup>23</sup> R.C. 3796.21(B), (C), and (D).

<sup>24</sup> R.C. 3796.21(E).

<sup>25</sup> R.C. 3796.21(F).

material, edibles, patches, and any other form approved by DMC (changed from the Board of Pharmacy) remain permissible forms of marijuana.

In a conforming change, the bill expands the permitted methods of using medical marijuana to apply to the additional permitted forms. Consequently, inhalation, oral administration, and transdermal administration of medical marijuana is permitted. In addition, oral absorption of medical marijuana into the bloodstream, either buccally (between the gum and cheek) or sublingually (under the tongue), is permitted. The smoking or combustion of medical marijuana continues to be prohibited.<sup>26</sup>

### **Petitioning for additional methods of consumption**

Under current law, a person may petition the Board of Pharmacy to approve an additional form or method of using medical marijuana. The bill transfers this responsibility to DMC. The bill removes several provisions related to the Board's processing of petitions, including:

- The explicit authorization for the Board to consolidate multiple petitions for similar methods, remaining silent on how DMC is to review these petitions;
- The requirement that the Board consult with experts and review relevant scientific evidence;
- The requirement that the Board make its determination in accordance with related rules;
- A prohibition on appeals regarding a determination by the Board.

Under the bill, DMC must make a determination on a petition within 60 days. The current law prohibition against seeking a petition to approve consumption of medical marijuana by smoking or combustion is maintained.<sup>27</sup>

### **Dosage of medical marijuana**

With respect to THC content, the bill increases the permissible THC of extracts from not more than 70% to 90%. Plant material continues to be capped at 35%. Also, the bill requires that a 90-day supply of plant material have a weight of not less than nine ounces.<sup>28</sup>

### **Inspections without notice**

Under current law, the Department of Commerce and the Board of Pharmacy are authorized to take certain actions without notice to a licensee or applicant for a license. Under current law, the Board is authorized to suspend a retail dispensary license without a hearing via

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<sup>26</sup> R.C. 3796.06(A) and (B).

<sup>27</sup> R.C. 3796.061.

<sup>28</sup> R.C. 3796.06(D) and (E).

a telephone conference call. This authority is repealed under the bill and not transferred to DMC.<sup>29</sup>

## **Equity study**

The bill requires the Department of Administrative Services to conduct an equity study of the medical cannabis industry and the medical cannabis market to determine whether there is a compelling interest to implement remedial measures, which may include applying the requirements of the Minority Business Enterprise Program, to assist minorities and women in the medical cannabis industry.<sup>30</sup>

## **Physician medical marijuana certification and the State Medical Board**

The bill makes changes to the law governing physicians certified to recommend marijuana as a treatment. Under current law, physicians are required to conduct an examination of the patient before recommending marijuana, either in person or via telemedicine. Under the bill, this requirement is removed.<sup>31</sup>

Furthermore, the bill partially removes a conflict of interest provision related to such physicians. Under current law, physicians are prohibited from being certified to recommend marijuana if the physician has an ownership interest or investment interest in, or a compensation arrangement with, a medical marijuana license holder. The bill requires the medical director of a dispensary to be certified to recommend medical marijuana and allows the medical director to recommend treatment in accordance with the certification requirements. However, the bill specifies that nothing in the Medical Marijuana Law is to be construed as requiring a dispensary to have a medical director.<sup>32</sup>

Finally, the bill authorizes the State Medical Board to approve a course of education for employees of a medical marijuana dispensary. If the Board adopts the training course, then dispensary employees must take the course.<sup>33</sup>

## **Health plan issuer claims**

The bill specifies that nothing in the Medical Marijuana Law is to be construed as requiring a public or private payor of health benefits to pay a claim relating to medical marijuana, including any of the following payors:

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<sup>29</sup> R.C. 3796.14(B).

<sup>30</sup> R.C. 3796.35.

<sup>31</sup> R.C. 4731.30(C)(1)(b)(i) and 4731.303.

<sup>32</sup> R.C. 3796.10(E) and (F) and 4731.30(I).

<sup>33</sup> R.C. 3796.20(D) and 4731.304.

- The Department of Medicaid, a Medicaid managed care organization, or a third-party administrator, acting on behalf of the Department or a Medicaid managed care organization;
- The Bureau of Workers' Compensation or an employer self-insuring for purposes of workers' compensation;
- An insurer or other health benefit plan issuer.<sup>34</sup>

## **Sheriff investigation**

Under current law, if the Pharmacy Board has any reason to believe that any provision of the Medical Marijuana Law or associated rules has been violated, the Board is required to investigate the matter and take appropriate action. Under the bill, this responsibility is transferred to DMC, with the proviso that DMC is also required to notify the sheriff of the county in which the licensee is located. The DMC is then required to work with the sheriff to investigate the matter and take necessary actions. The bill specifies that this requirement is not to be construed as authorizing a sheriff to enforce *regulatory* restrictions relating to medical marijuana license holders.<sup>35</sup>

## **Closed-loop payment system**

The bill repeals the authority of the Department of Commerce to establish a closed-loop payment processing system under which the state creates accounts to be used only by registered patients and caregivers at licensed dispensaries, as well as by all license holders under the Medical Marijuana Control Program. The authority to create the closed-loop system was granted in 2016, and it does not appear that the Department has established such a system.<sup>36</sup>

## **Foreign patient database**

The bill amends the law with regard to out-of-state medical marijuana recommendation holders. Under current law, the Pharmacy Board is required to attempt to negotiate and enter into medical marijuana reciprocity agreements with other states for the purpose of allowing Ohio medical marijuana recommendation holders to purchase medical marijuana in other states and vice versa. The bill removes this reciprocity requirement and instead requires DMC to establish a foreign patient database.

Under the bill, an out-of-state medical marijuana recommendation holder would be able to purchase medical marijuana in Ohio if the person is registered with DMC via the database. In order to register, a person must provide both of the following:

- Proof that the person holds a valid driver's license from another state;

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<sup>34</sup> R.C. 4731.30(J) and 3922.01.

<sup>35</sup> R.C. 3796.15(A).

<sup>36</sup> R.C. 3796.031.

- Proof that the person holds a valid medical marijuana recommendation in another state.

A dispensary is prohibited from selling or dispensing medical marijuana to an out-of-state resident unless the dispensary has accessed the database and verified that the person in question is registered as required.<sup>37</sup>

## Records checks for employees

Under continuing law, employees of licensees must obtain a records check to demonstrate that the person has not committed various crimes. The bill allows a temporary work permit (called an employment badge in the bill) to be issued if the records check results are not received by DMC within ten business days.<sup>38</sup>

## Definitions

The bill makes the following definitions:

**Medical marijuana-licensed business** means an entity licensed under the Medical Marijuana Law as a medical marijuana cultivator, processor, dispensary, or testing laboratory.

**Institutional investor** means any of the following entities owning 5 to 15% of an ownership interest in a medical marijuana-licensed business, operator, management company, or holding company:

- A corporation;
- A bank;
- An insurance company;
- A pension fund or pension fund trust;
- A retirement fund, including funds administered by a public agency, employees' profit-sharing fund, or employees' profit-sharing trust;
- Any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, including all of the following:
  - A hedge fund, mutual fund, or private equity fund;
  - Any trust in respect of which a bank is trustee or cotrustee;
  - An investment company registered under the federal Investment Company Act of 1940;
  - A collective investment trust organized by a bank under the rules of the comptroller of the currency related to the fiduciary responsibilities of federal banks;

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<sup>37</sup> R.C. 3796.16.

<sup>38</sup> R.C. 3796.13(B)(2).

- A closed-end investment trust;
- A chartered or licensed life insurance company or property and casualty insurance company;
- An investment advisor registered under the federal Investment Advisors Act of 1940;
- Any other person DMC reasonably determines to qualify as an institutional investor for reasons consistent with the Medical Marijuana Law, that does not exercise control over the affairs of a medical marijuana-licensed business, and its ownership interest in a medical marijuana-licensed business is for investment purposes only.

***Marijuana cultivation area*** means the boundaries of the enclosed areas in which medical marijuana is cultivated during the vegetative stage and flowering stage of the cultivation process. For purposes of calculating the marijuana cultivation area square footage, “marijuana cultivation area” does not include enclosed areas used solely for the storage and maintenance of mother plants, clones, or seedlings.

***Recommending physician*** means a physician certified to recommend medical marijuana for the treatment of a qualifying medical condition.

***Stand-alone processor*** means a licensed processor that has obtained its certificate of operation by October 1, 2021.

***Medical marijuana license*** means a medical marijuana cultivator, processor, dispensary, or laboratory license.<sup>39</sup>

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## HISTORY

Action	Date
Introduced	01-11-23

ANSB0009 -135/ts

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<sup>39</sup> R.C. 3796.01.