

Governor Kasich Signs Bill to Legalize Marijuana for Medicinal Use in Ohio

On June 8, 2016, Governor John R. Kasich signed into law HB 523, which legalizes marijuana in Ohio for specified medicinal purposes. The bill moved swiftly through the Legislature as lawmakers acted to preempt a marijuana legalization initiative that appeared headed for the November 2016 ballot. HB 523 takes effect on September 7, 2016. Below we provide some background on the issue and a general summary of the bill.

Background

Last year, Ohio voters rejected a ballot initiative to legalize marijuana for medicinal and recreational use. Known as "Issue 3," the proposed constitutional amendment created a regulatory framework that allowed just ten pre-selected private businesses to commercially manufacture marijuana. The initiative was soundly defeated.

In the aftermath of Issue 3, a different marijuana legalization campaign led by the national organization Marijuana Policy Project immediately began collecting signatures for the November 2016 ballot. In an apparent response to the public support for legalization and MPP's proposed constitutional amendment, Ohio's legislative leaders convened a 15-member "marijuana task force," consisting of legislators as well as interested parties, to review the issue and submit policy recommendations.

Based on task force recommendations, HB 523 was introduced. The legislation establishes an extensive, highly regulated "seed to sale" system for growing, processing, testing, and dispensing marijuana for patients with any of 20 specified medical diseases or conditions. Immediately after the bill's passage, MPP announced that it was suspending its ballot issue campaign.

Overview of HB 523

Medical Marijuana Control Program: HB 523 requires the Department of Commerce and the State Board of Pharmacy to establish a Medical Marijuana Control Program to provide for the following: 1) the licensure of medical marijuana cultivators, processors, and retail dispensaries; 2) the registration of patients and caregivers; and 3) the licensure of laboratories that test marijuana.¹

The Department of Commerce will be responsible for the licensure of cultivators, processors, and testing laboratories, while the Board of Pharmacy will be charged with the licensure of retail dispensaries and the registration of patients and caregivers. The State Medical Board is tasked with issuing certificates to those physicians seeking to recommend treatment with medical marijuana.²

No later than one year after the bill's effective date, the Department of Commerce and Board of Pharmacy must separately adopt rules establishing standards and procedures for the portions of the Program each is responsible for administering.³

Medical Marijuana Advisory Committee: The bill establishes the Medical Marijuana Advisory Committee and authorizes it to develop and submit to the Department of Commerce, Board of Pharmacy, and Medical

¹ R.C. 3796.02.

² R.C. 4731.30(B)(1).

³ R.C. 3796.03(A)(1); R.C. 3796.04(A)(1).

Board any recommendations related to the Medical Marijuana Control Program. The Committee consists of the following 14 members:

- Two members who are practicing pharmacists, at least one of whom supports the use of marijuana for medical purposes and at least one of whom is a member of the Board of Pharmacy
- Two members who are practicing physicians, at least one of whom is a member of the State Medical Board
- A member who represents law enforcement
- A member who represents employers
- A member who represents labor
- A member who represents persons involved in mental health treatment
- A member who is a nurse
- A member who represents caregivers
- A member who represents patients
- A member who represents agriculture
- A member who represents persons involved in the treatment of alcohol and drug addiction
- A member who engages in academic research⁴

Qualifying Medical Conditions: HB 523 provides that medical marijuana may be recommended only for the treatment of “qualifying medical conditions,” which include: AIDS, amyotrophic lateral sclerosis, Alzheimer’s disease, cancer, chronic traumatic encephalopathy, Crohn’s Disease, 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, and ulcerative colitis. The new law also authorizes any individual to petition the State Medical Board to add a disease or condition to the list of qualifying medical conditions.⁵

Permissible Forms of Medical Marijuana: HB 523 permits only the following delivery methods of marijuana: oils, tinctures, plant material, edibles, patches, and any other form approved by the Board of Pharmacy. The bill expressly prohibits smoking or combustion, but allows for vaporization. Any method or form considered “attractive to children,” as specified in the rules adopted by the Board, is prohibited as well.⁶

Authority to Recommend Medical Marijuana Treatment: A physician seeking to recommend medical marijuana must apply to the State Medical Board for a “certificate to recommend.” A physician who holds a certificate may recommend that a patient be treated with medical marijuana if the patient has been diagnosed with a qualifying medical condition and a bona fide physician-patient relationship has been established through all of the following: 1) an in-person physical examination of the patient by the physician; 2) a review of the patient’s medical history by the physician; and 3) an expectation of providing and receiving care on an ongoing basis.⁷

Authority to Use, Possess, or Administer Medical Marijuana: 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 Board of Pharmacy for registration. The physician who holds a certificate to recommend and is treating the patient must submit the application on the patient’s or caregiver’s behalf.⁸

⁴ R.C. 3796.021(A)(1) - (12)

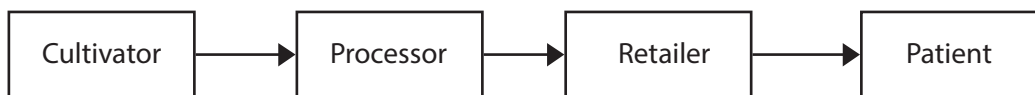
⁵ R.C. 4731.302(A).

⁶ R.C. 3796.06(C).

HB 523 authorizes a registered patient to use or possess medical marijuana or any paraphernalia specified in the Board of Pharmacy rules. A caregiver is also authorized to possess or assist a registered patient in the use or administration of medical marijuana. Under the bill, a registered patient or caregiver may not possess more than a 90-day supply. A registered caregiver who provides care to more than one registered patient must maintain separate inventories of medical marijuana for each patient.⁹

Protection from Arrest and Criminal Prosecution: HB 523 provides that a registered patient or caregiver is not subject to arrest or criminal prosecution for any of the following actions: 1) in the case of a registered patient, using medical marijuana; 2) obtaining or possessing medical marijuana; 3) possessing specified paraphernalia or accessories; and 4) in the case of a registered caregiver, assisting a registered patient in the use or administration of medical marijuana. The bill also establishes for patients an affirmative defense to a criminal charge of knowingly obtaining, possessing, or using marijuana.¹⁰

Cultivation and Sale of Medical Marijuana: The bill authorizes the holder of a cultivator license to cultivate medical marijuana and deliver or sell it to one or more licensed processors. Processors may then process the marijuana into a legally permitted form and sell it to one or more licensed retail dispensaries. Retail dispensaries may then sell to qualifying patients. Home grow is prohibited under the bill.



Licensure of Cultivators, Retail Dispensaries and Laboratories: An entity that seeks a license to cultivate, process, or conduct laboratory testing of medical marijuana must file an application for licensure with the Department of Commerce. An entity that seeks a license to dispense medical marijuana at retail must file an application with the Board of Pharmacy.

The Department of Commerce and the Board of Pharmacy may issue the licenses described above so long as the following conditions are met:

- (1) The applicant demonstrates that it does not have a financial interest in a laboratory testing operation
- (2) The applicant demonstrates that it does not share any corporate officers or employees with a laboratory testing operation
- (3) The applicant demonstrates that it will not be located within 500 feet of a school, church, public library, public playground, or public park
- (4) The report of the criminal records check conducted demonstrates that the person subject to the check is not disqualified because of a conviction or guilty plea to an offense specified in rules
- (5) Information provided by the Ohio Department of Taxation demonstrates that the applicant is in compliance with state tax laws
- (6) The applicant meets all other licensure eligibility conditions established in the rules¹¹

In addition, the Department of Commerce may not issue a license to conduct laboratory testing of medical marijuana unless the applicant is an institution of higher education that meets the following two conditions: 1) the institution is public and located in Ohio; and 2) the institution has the resources and facilities necessary to conduct testing in accordance with the standards and procedures established in rules adopted by the Department.¹²

⁷ R.C. 4731.30(c)(1)(a) - (c).

⁸ R.C. 3796.08(A)(1).

⁹ R.C. 3796.23(A)-(B).

¹⁰ R.C. 3796.22(c)(1) - (2).

Zoning / Municipal and Township Authority: HB 523 authorizes 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.¹³

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 from regulating the location of retail dispensaries. The bill does not provide similarly for counties.

Effect on Employers and Employment Laws: HB 523 specifically 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 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
- Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy
- Interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations
- 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
- 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.¹⁴

Unemployment Eligibility: Under the bill, a person who is discharged from employment based on that person's use of medical marijuana is considered to have been discharged for "just cause" so long as the person's use of medical marijuana violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.¹⁵

Workers' Compensation Eligibility: Under current law, an employee or dependent is ineligible for workers' compensation benefits if the employee's injury or occupational disease is caused by the employee being under the influence of a controlled substance not prescribed by a physician, so long as the intoxication was the proximate cause of the injury. The bill maintains that if an employee's intoxication from marijuana is the proximate cause of his or her injury, the employee becomes ineligible for benefits, regardless of whether the marijuana use was recommended by a physician.¹⁶

Banking Services Provisions: Under HB 523, financial institutions that provide financial services to cultivators, processors, retail dispensaries, or laboratories are exempt from certain state criminal laws that prohibit the provision of financial services to persons who process, deliver, or manufacture marijuana, so long as the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws.¹⁷

The bill authorizes the Director of Commerce to establish a closed-loop payment processing system under which the state creates accounts to be used only by registered patients, registered caregivers, and license holders. The system may include record-keeping and accounting functions that identify all parties involved in marijuana transactions.

¹¹ R.C. 3796.09(B)(1) - (6).

¹² Sub.H.B. No. 523, Section 5.

¹³ R.C. 3796.29.

Automated Prescription Reporting System: The Ohio Automated Rx Reporting System (OARRS) is a drug database established and maintained by the Board of Pharmacy to monitor the misuse and diversion of controlled substances. HB 523 authorizes the Board of Pharmacy to monitor medical marijuana through OARRS, by requiring that retail dispensaries report to OARRS when dispensing medical marijuana.¹⁸

Monitoring Database: The Department of Commerce must establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The Department may contract with a separate entity to establish and maintain all or part of the database itself.¹⁹

Federal Law: The bill declares that it is the intent of the Ohio General Assembly to recommend that the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Administration take actions as necessary to reclassify marijuana in an effort to ease the regulatory burdens associated with research on its potential medical benefits.²⁰

Conclusion

The timeline of Ohio's Medical Marijuana Control Program and its implementation depends on how quickly each regulatory agency can complete its assigned tasks and formulate its rules. However, the bill requires that the Department of Commerce and Board of Pharmacy take all actions necessary to ensure that the Program is fully operational not later than two years after the bill's effective date. That date is September 8, 2018.

Should you have any questions regarding the bill or the Medical Marijuana Control Program, please don't hesitate to contact the Dickinson Wright attorneys listed below.

Terrence O'Donnell

TODonnell@dickinsonwright.com – 614.744.2583

Scot Crow

SCrow@dickinsonwright.com – 614.744.2585

Bret Kravitz

BKravitz@dickinsonwright.com – 614.744.2930

Will Vorys

WVorys@dickinsonwright.com – 614.744.2936

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¹⁴ R.C. 3796.28(A)(1) - (6).

¹⁵ R.C. 3796.28(B).

¹⁶ R.C. 4123.54(A)(1) - (2).

¹⁷ R.C. 3796.27(B).

¹⁸ R.C. 4929.771(A).

¹⁹ R.C. 3796.07.

²⁰ Sub.H.B. 523, Section 4.

Ohio HB 523: Medical Marijuana

SUBJECT	OHIO HB 523
Implementation	Responsible agencies include Department of Commerce, Board of Pharmacy, and State Medical Board. Newly created 14-member Medical Marijuana Advisory Committee to submit policy recommendations to agencies.
Framework for Cultivation and Sale	Cultivator grows and sells to processor; Processor processes marijuana and sells to retailer; Retailer sells directly to patients. Home grow prohibited.
Licensure Requirements	1) Applicant may not have financial interest in or share employees with testing operation; 2) Facility may not be located within 500 feet of school, church, library, playground, or park; 3) Applicant must pass background check; 4) Applicant must be in compliance with state tax laws; 5) Applicant must meet all other licensure conditions established by rule.
Requirements for Physician Recommendation	Physician must 1) Obtain "certificate to recommend;" 2) Conduct in-person physical examination of patient; 3) Review patient's medical history; and 4) Relay expectation of providing ongoing care.
Qualifying Medical Conditions	AIDS, amyotrophic lateral sclerosis, Alzheimer's disease, cancer, chronic traumatic encephalopathy, Crohn's Disease, 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.
Permissible Forms of Marijuana	Oils, tinctures, plant material, edibles, patches, vapor, and any other form approved by the Board of Pharmacy. Smoking prohibited.
Permissible Amount to Possess	Patient or caregiver may not possess more than 90-day supply.
Zoning / Municipal Authority	Cities and townships may prohibit or limit number of dispensaries within their territory.
Timeline	Department of Commerce and Board of Pharmacy must establish standards for Program by September 8, 2017. Department and Board must take all actions necessary to ensure that Program is operational by September 8, 2018.

Disclaimer

Marijuana remains illegal at the federal level and is classified as a schedule i drug. Possessing, using, distributing and selling marijuana remains a federal crime. This document is merely a state law summary. It is not intended to be legal advice or to assist in the violation of federal law, nor will it assist in any way in compliance with federal law.