

DRUG ENFORCEMENT AND POLICY CENTER

Comparison of SB 261 Medical Marijuana Reform Proposal to Existing Ohio Medical Marijuana Control Program as of December 2021

Ohio House Bill 523, passed in summer 2016, legalized medical marijuana in Ohio and created the Ohio Medical Marijuana Control Program with an elaborate regulatory structure. Though this law became effective on September 8, 2016, it was not until January 2019 that the first sales of medical marijuana in licensed dispensaries took place. The slow roll out and the limited number of licensed dispensaries around the state are among the reasons patient satisfaction with OMMCP has been consistently low as documents in DEPC’s 2021 report [*Evaluating the Ohio Medical Marijuana Control Program: Satisfaction and Perception*](#). Patients and advocates have long argued that the current medical marijuana program needs major reform to address patients’ concerns with access and cost. In response to these concerns, Ohio SB 261 was introduced in November 2021 with bipartisan sponsorship and support. The table below compares this new proposed reform bill, SB 261, with the existing Ohio Medical Marijuana Control Program to highlight what elements of the medical program would undergo change.

Provision	Ohio Medical Marijuana Control Program <i>in effect since 9/2018</i>	SB 261 - Revise the medical marijuana law <i>Introduced on 11/10/2021</i>
Proposal Type	Enacted by Legislature in 2016 - HB 523	Legislative Proposal
Sponsors	State Representative Stephen Huffman	State Senator Stephen Huffman
Regulatory Agencies	Ohio Department of Commerce State of Ohio Board of Pharmacy State Medical Board of Ohio	Division of Marijuana Control (within Department of Commerce) established and Medical Marijuana Control Program State Medical Board of Ohio
Taxes	5.75% State Sales Tax 0.5-2.25% Local Sales Tax	Remain the same as under OMMCP.

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Revenue Allocated	No excise tax, sales tax from marijuana goes to state's general fund.	Does not alter tax structure or revenue allocation of current law.
License Types	<ul style="list-style-type: none"> • Cultivation – Level I Cultivator (25K sqf) & Level II Cultivator (3K sqf) - 33 licenses awarded, 19 Level I and 14 Level II. Initial cap was 12 licenses for each tier. • Processor – 47 provisional licenses issued, initial cap set at 40. • Testing Laboratory – No limit placed on testing laboratory licenses. • Dispensary – 57 licenses awarded to date, additional 73 dispensary licenses to be awarded in 2022. 	<p>Establish[es] a new category of cultivator license for stand-alone processors (Sec. 3796.03 (B)(3)(a)(ii))</p> <p>Expands cultivation area for Level I cultivators up to 75,000 feet (Sec. 3796.18 (E)(1)(a))</p> <p>Expands cultivation area for Level II cultivators up to 20,000 feet (Sec. 3796.18 (E)(1)(b))</p>
License Cap	Yes – Caps placed on cultivation, processor and dispensary licenses; subject to review and change based on potential patient population, supply of medical marijuana, and the number of cultivators needed to meet the demand.	<p>Yes - But allows for significant increase in the number of dispensary licenses based on a ratio of one dispensary per 1000 registered patients up to 300K and then adding additional licenses on as-needed basis. (Section 3796.03 (B)(3)(b)(i))</p> <p>The Division must also consider the anticipated growth in patient numbers and patient demand using sales and market data to ensure new dispensaries opening is timed to meet the demand. (Section 3796.03 (B)(3)(b)(ii))</p> <p>Sets a time period for evaluating the need for new retail dispensaries to at least once every two years.</p>
Vertical integration limited	No	<p>No</p> <p>Allows cultivators to deliver/sell medical marijuana to more than just the processor license and expands this to other licensed cultivators and retail dispensaries. (Sec. 3796.18 (A)(2))</p> <p>Processor licenses may now obtain medical marijuana from other licensed processors (Sec. 3796.19 (A)(1)(a)) and can deliver/sell processed marijuana to licensed cultivators and processors instead of just retail dispensaries. (Sec. 3796.19 (A)(3))</p> <p>Retail dispensaries may obtain/purchase medical marijuana from cultivators or processors (Sec. 3796.20 (A)(1)(a)) and may "obtain or purchase medical marijuana from another retail dispensary if the two retail dispensaries are under common ownership" (Sec. 3796.20 (A)(1)(b))</p>
Past Convictions Expungement Provisions	No	No

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Substance Abuse and Education Programs or Funding	No	No
Social Equity Provisions Included	HB 523 included a provision stating, ""The department shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that 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 or African Americans, American Indians, Hispanics or Latinos, and Asians."" Sec. 3796.09(C). Litigation followed after licenses were awarded in compliance with this provision, <i>see PharmaCann Ohio, LLC v. Ohio Dep't of Commerce</i> , No. 17-CV-10962, (Ohio Ct. Com. Pl. 2018); the provision was eventually found unconstitutional by a state court and no longer applies to licenses.	Calls for the State Board of Pharmacy and Department. of Commerce 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 described in section 122.921 of the Revised Code, to assist minorities and women in the medical cannabis industry." (Sec. 3796.35(B))
Local Authority	Yes – The legislative authority of a municipal corporation may adopt an ordinance, or a board of township trustees may adopt a resolution, to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation or within the unincorporated territory of the township, respectively.	Does not alter existing language for municipalities.
Home Cultivation Permitted	No	No
Possession Limit	The amount of medical marijuana possessed by a registered patient shall not exceed a ninety-day supply. Tier I of med. marijuana – 8 oz (226.8g) Tier II of med. marijuana – 5.3 oz (150.3g) 26.55 grams of THC content in lotions, patches, creams, ointments 9.9 g of THC content in oil, tinctures, capsules or edible form 53.1 g of THC content in oil for vaporization Terminally ill patients have higher limits	Increases the 90-day supply to "plant material shall have a weight of not less than nine ounces." (Section 3796.06 (E))

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Approved Medical Conditions	<ul style="list-style-type: none"> • AIDS • Amyotrophic lateral sclerosis • Alzheimer’s disease • Cachexia • Cancer • Chronic traumatic encephalopathy • Crohn’s disease • Epilepsy or another seizure disorder • Fibromyalgia • Glaucoma • Hepatitis C • Huntington’s disease • 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 • Spasticity • Spinal cord disease or injury] • Terminal illness • Tourette syndrome • Traumatic brain injury • Ulcerative colitis • Arthritis • Chronic migraines • Complex region pain syndrome 	<p>In addition to the already approved conditions, the reform bill adds the following:</p> <ul style="list-style-type: none"> • Autism spectrum disorder • Hospice care • Opioid use disorder • Any condition not specified in this division, if a recommending physician, in the physician’s sole discretion and medical opinion, finds either of the following: <ul style="list-style-type: none"> ○ That the patient’s symptoms may reasonably be expected to be relieved from medical marijuana; ○ That the patient may otherwise reasonably be expected to benefit from medical marijuana; • Any other disease or condition added by the state medical board under section 4731.302 of the Revised Code.

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Consumption Limitations	<p>Consumption method:</p> <ul style="list-style-type: none"> The smoking or combustion of medical marijuana is prohibited. Any form or method that is considered attractive to children is prohibited. <p>Tetrahydro-cannabinol content:</p> <ul style="list-style-type: none"> Plant material shall have a THC content of not more than 35%. Extracts shall have a THC content of not more than 70%. 	<p>Methods of Consumption Expanded as follows:</p> <ul style="list-style-type: none"> Inhalation (combustion still prohibited) (Sec. 3796.06 (B)(2)) Oral administration (Sec. 3796.06 (B)(3)) Transdermal administration (Sec. 3796.06 (B)(4)) Oral absorption into the bloodstream, either buccally or sublingually (Sec. 3796.06 (B)(5)) Individuals can petition to add other forms/methods of consumption and the Division “shall make its determination within 60 days” (Section 3796.061 (B)) <p>New forms that may be dispensed include (Sec. 3796.06 (A) (6-13)):</p> <ul style="list-style-type: none"> Pills Capsules and Suppositories Oral Pouches Oral Strips Oral or topical sprays Salves, lotions, or similar items Inhalers And any other form approved by the Division
Public Consumption	No	No
Employer/Employee Protections	<p>Employee: No</p> <p>Employer: Allowed to continue workplace drug policies prohibiting consumption.</p>	Does not change language or add any new language regarding employee/employment protections.

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Financial Institution Protections	<p>Yes – Section 3796.27 (B) A financial institution that provides financial services to any cultivator, processor, retail dispensary, or laboratory licensed under this chapter shall be exempt from any criminal law of this state 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, including section 2925.05 of the Revised Code and sections 2923.01 and 2923.03 of the Revised Code as those sections apply to violations of Chapter 2925. of the Revised Code, if the cultivator, processor, retail dispensary, or laboratory is in compliance with this chapter and the applicable tax laws of this state.</p>	<p>Does not change language protecting financial institutions.</p>
Other rights/protections	<p>None</p>	<p>Testing labs can now conduct research/development for cultivators and processors</p>