



OHIO MEDICAL MARIJUANA LEGALIZATION– SUB. H.B. 523

On June 8, 2016, Ohio Gov. John Kasich signed a medical marijuana bill, Sub. H.B. 523, into law, making Ohio the 25th state to adopt some form of approval and regulation of medical marijuana.

Sub. H.B. 523, which underwent robust discussion and numerous amendments, attempts to balance a perceived acceptance by Ohioans to approve medical marijuana while getting ahead of various groups' efforts to permanently incorporate medical marijuana measures into the Ohio Constitution.

Following extensive House committee review, the House version introduced in April 2016 passed by a 70 to 25 vote. It incorporated many concepts discussed during a series of public meetings convened by the House's Medical Marijuana Task Force earlier this year. Although the Senate version passed by a much narrower version, the Senate amendments also incorporated public input. The highlights of the final version include the following components:

Legislative intent

Sub. H.B. 523 is intended to tax and regulate medical marijuana use and distribution, to recommend to Congress that marijuana be reclassified as a schedule II controlled substance, and to establish incentives for academic and medical research relating to medical marijuana.

Definition of medical marijuana

"Medical marijuana" is defined as marijuana (as currently defined by Ohio law) cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

Who will regulate medical marijuana in Ohio?

The governor will appoint a Medical Marijuana Advisory Commission within the state Board of Pharmacy to make recommendations to the Department of Commerce, the Pharmacy Board, and the Medical Board for a medical marijuana control program.

Within one year of the effective date of this law, the Department of Commerce will make rules, set standards, and establish best practices for this program. The program shall, in part:

- Establish application procedures, fees, disqualifying factors, and number of licenses for cultivators, processors, and retail dispensaries, based on population, number of patients, and geographic distribution, within 240 days of the effective date. Further, 15% of cultivators, processors, or labs are to be owned or controlled by residents who are members of economically disadvantaged groups;
- Determine how licenses will be renewed, suspended, or revoked, and how a suspension may be lifted;
- Regulate activities from taking place within 500 feet of schools, churches, libraries, playgrounds, parks;
- Create confidential databases to monitor medical marijuana from seed source through dispensing.

The state's existing Automated Rx Reporting System will be used to track the movement of dispensed medical marijuana.

The Pharmacy Board will regulate testing laboratories, and will also require licensed dispensaries to have a pharmacist on staff.

The Medical Board will regulate physicians who may recommend use.

Who may use medical marijuana?

The State Medical Board may determine additional conditions, but those who suffer from the following conditions may apply to become registered users: 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 chronic, severe, and 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.

Before the implementation of sales of Ohio-grown product (*i.e.*, between September 2016 and sometime in late 2017 or early 2018), the Pharmacy Board may negotiate reciprocity agreements with other states where medical marijuana is legal to enable registered users and caregivers to purchase medical marijuana and transport it back into Ohio for use.

Registered users and caregivers are immune from arrest and prosecution for consuming medical marijuana in the form of edibles, oils, tinctures, patches, and vaporization (vaping will be limited to extracts from plants by approved sources with THC content of less than 70%). However, driving or using a vehicle while under the influence is not authorized.

Medical Recommendations

A qualifying physician may recommend – *not prescribe* -- that a patient consider medical marijuana to patients with whom a documented physician-patient relationship exists. Qualifying physicians may not personally furnish/dispense medical marijuana, or have any involvement in a medical-marijuana cultivating or retailing enterprise.

Physicians who wish to recommend medical marijuana will be registered and controlled through the Ohio State Medical Board, which will issue and may revoke certificates to recommend. They will be required to confidentially track the use and outcomes of medical marijuana recommendations. They will also be required to participate in continuing education courses.

A patient recommendation cannot be renewed more than three times for 90 days each, absent a physical examination. The physician must conform to confidential reporting requirements that track the effectiveness of use during the year covered by the recommendation and renewals.

Dispensing, Content Limits, Labeling, and Safety

The law permits dispensation of up to 90-day supplies of medical marijuana from licensed dispensaries, but prohibits cultivation for personal use.

Labeling must specify the tetrahydrocannabinol (THC) and cannabidiol ratios. The law imposes prohibitions on making products attractive to minors, and requires that dispensed product be inaccessible to minors.

Labs regulated by the Board of Pharmacy will test for potency, homogeneity, and contamination, and must report results.

The Pharmacy Board shall establish a toll-free line to respond to patients and medical providers about adverse reactions to medical marijuana.

Employment Considerations

Employers may test and take disciplinary action against employees who test positive for use of marijuana.

There is no requirement to accommodate an employee's use of medical marijuana, or to prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana. Moreover, there is no provision for suing an employer who takes such actions.

A termination based on using medical marijuana is a discharge for just cause for unemployment purposes if it violates a written policy of the employer (i.e., a zero-tolerance substance abuse policy, or comparable policy against use of drugs), and would render the applicant for benefits ineligible.

The workers' compensation rebuttable presumption, allowing an employer to initially deny a claim in the event of a positive drug test and allowing the employee to dispute that denial at a hearing, could render an employee ineligible if being under the influence of marijuana was the proximate cause of the injury, regardless of whether its use is recommended by a physician.

The Ohio BWC can continue to grant premium rebates/discounts to employers that participate in the drug-free workplace program.

Zoning

Municipalities and townships may regulate or prohibit licensed retail dispensaries. Counties and townships may apply agricultural-use zoning limitations to regulate retail dispensaries in unincorporated territory.

Banking Services

The bill authorizes financial institutions to conduct business with licensed cultivators, processors, retail dispensaries, or labs.

Post-script

One day after the General Assembly passed Sub. H.B. 523, Ohioans for Medical Marijuana, the group seeking to place the medical marijuana issue before voters in November as a proposed constitutional amendment, suspended its effort to collect petition signatures. The group, backed by the national Marijuana Policy Project, said the changes made to the legislation were acceptable, despite not permitting smoking or home growing of medical marijuana.