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Bill Analysis
Legislative Service Commission

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Sen. Hagan

BILL SUMMARY

- Enacts a statutory mechanism to regulate and authorize the medical use of marihuana, and permits any person to apply to the Director of Health for a "registry identification card" to be used under the mechanism, with the application including a physician's statement stating that, in the physician's opinion, after having assessed the person's medical history and current medical condition in the course of a *bona fide* physician-patient relationship, the person has a "debilitating medical condition" and the potential benefits of the "medical use of marihuana" would likely outweigh the health risks for the person.
- Requires the Director of Health to approve or deny an application within 30 days after receipt, permits the Director to deny an application only if the applicant did not provide the information required under the bill or the Director determines that any of the information provided is false, provides that, if the Director approves an application, the registry identification card issued is valid for one year following its issuance, and requires the Director to maintain a register, which generally is confidential, of persons who are issued registry identification cards.
- Specifies that no insurance company, health maintenance organization, Medicaid program, or other entity or program providing health care coverage is required to pay for the medical use of marihuana.
- Specifies that application for or possession of a registry identification card is not, by itself, probable cause to search the person or property of the person applying for or possessing the card and does not otherwise subject the person or property to inspection by any governmental agency.

- Provides that most of the prohibitions that comprise the offense of "corrupting another with drugs" do not apply to a holder of a valid registry identification card under, or a physician who provides a physician's statement under, the bill's statutory mechanism to regulate and authorize the medical use of marihuana, and that the prohibitions that comprise the drug trafficking offenses, drug possession offenses, and drug paraphernalia offenses and the offenses of "illegal manufacture of drugs" and "illegal cultivation of marihuana" do not apply to a holder of a valid registry identification card under that mechanism.
- Specifies that no person may be subject to arrest or prosecution under R.C. Chapter 2925. solely because the person was in the presence or vicinity of the "medical use of marihuana" under the bill.
- Reduces, to a minor misdemeanor, the penalty for the offense of "obstructing official business" if the violation comprising the offense consists of the communication of false information relating to the medical use of marihuana to a law enforcement officer for the purpose of hindering or avoiding arrest or prosecution.
- Specifies that a physician is not subject to discipline by the State Medical Board under R.C. Chapter 4731., solely by reason of having provided a physician's statement under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, regardless of whether such act violates federal law.

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CONTENT AND OPERATION

Regulation and authorization of the medical use of marihuana

The bill enacts a statutory mechanism to regulate and authorize the medical use of marihuana under the auspices of the Department of Health.

Application for registry identification card

The bill permits any person to apply to the Director of Health for a "registry identification card" on an application form prescribed by the Director. The application must be accompanied by a "physician's statement" and a fee not exceeding \$25 and must include all of the following information: (1) the name, address, and date of birth of the "qualifying patient," (2) the name, address, and telephone number of the physician providing the written certification for the qualifying patient, (3) the name, address, and date of birth of the qualifying patient's "primary caregiver," if any, and (4) any other information the Director requires by rule (see "*Definitions*," below for definitions of terms in quotes). (R.C. 3701.148(B)(1).)

Approval or denial of application; issuance of registry identification card

The Director of Health must verify the information contained in an application and must approve or deny an application within 30 days after receipt of it. The Director may deny an application only if the applicant did not provide the required information or the Director determines that any of the information provided is false. A person whose application is denied may not reapply for six months from the date of the denial, unless the Director authorizes or a court of competent jurisdiction orders the reapplication.

The Director must issue a registry identification card within five days after approving an application. A registry identification card is valid for one year following the date of issuance and must include: (1) the name, address, and date of birth of the qualifying patient and the primary caregiver, if any, (2) the date of issuance and expiration date of the card, and (3) any other information the Director requires by rule.

A person who possesses a registry identification card is required to notify the Director in writing of any change in the person's name, address, qualifying patient's physician, or qualifying patient's primary caregiver and of any change in the status of the qualifying patient's "debilitating medical condition" (see "Definitions," below). The notification must be made within ten days after the change occurs. Failure to provide timely notice invalidates the registry identification cards of the qualifying patient and of the qualifying patient's primary caregiver, if any, except as the Director by rule otherwise provides. (R.C. 3701.148(B)(2), (C), and (D).)

Confidential register of cardholders

The bill requires the Director of Health to maintain a confidential register of the persons to whom the Director has issued registry identification cards. Individual names in the register are confidential and cannot be disclosed except to authorized Department of Health employees when required for the performance of official duties of the Department or to other persons to whom disclosure is required by law. (R.C. 3701.148(E).)

Health care provider not required to pay for use

The bill specifies that no insurance company, health maintenance organization, Medicaid program, or other entity or program that provides health care coverage is required to pay for the medical use of marijuana (R.C. 3701.148(G)).

Search or inspection--no linkage to application for or possession of card

The bill specifies that application for or possession of a registry identification card is not, by itself, probable cause to search the person or property of the person applying for or possessing the card and does not otherwise subject the person or property of the person applying for or possessing the card to inspection by any governmental agency (R.C. 3701.148(H)).

Adoption of rules; public petition to expand list of debilitating medical conditions

The bill requires the Director of Health to adopt rules necessary for the implementation of its provisions described above. The rules must include a procedure by which members of the public may petition the Director to add to the list of medical conditions that qualify as "debilitating medical conditions" (see "Definitions," below) and must provide for public hearings on the petitions to be held after public notice and giving members of the public an opportunity to comment on the petitions. The Director must approve or deny a petition within 180 days after its submission. The approval or denial of a petition is a final agency action, subject to judicial review. (R.C. 3701.148(F).)

The bill requires the Director to adopt the rules described in the preceding paragraph regarding the procedure by which members of the public may petition the Director to add to the list of medical conditions that qualify as "debilitating medical conditions" not later than 90 days after the bill's effective date (Section 3).

Definitions

The bill enacts the following definitions that apply to its provisions described above (R.C. 3701.148(A)):

(1) "Adequate supply" means an amount of "marihuana" (see (3), below) collectively possessed between a qualifying patient and the qualifying patient's primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of alleviating the symptoms or effects of the qualifying patient's debilitating medical condition. In no event may an "adequate supply" mean more than 1,000 grams of marihuana in usable dried form plus 1,000 grams of marihuana in living plant form. In determining the weight of marihuana in living plant form for the purpose of this provision, a plant must be dry when weighed, and the weight of the mature stalks, the stems greater than three millimeters in width, and the root system of the plant must be excluded.

(2) "Debilitating medical condition" means: (a) cancer, glaucoma, positive status for Human Immunodeficiency Virus, Acquired Immune Deficiency Syndrome, or the treatment of these conditions, (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe or chronic pain; severe or chronic nausea; seizures, including those characteristic of epilepsy; severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or any other medical condition or its treatment approved by the Director of Health in accordance with rules adopted pursuant to the provision described above in "Adoption of rules; public petition to expand list of debilitating medical conditions."

(3) "Marihuana" means all parts of a plant of the genus *Cannabis*, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. (By reference to existing R.C. 3719.01, not in the bill.)

(4) "Medical use of marihuana" means the cultivation on the premises of a qualifying patient or primary caregiver, possession, "transfer" (see (9), below), transportation, or use of an "adequate supply of marihuana" (see (1), above) or of paraphernalia relating to the administration of marihuana when done for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(5) "Physician's statement" means a statement signed by a physician and stating that, in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marihuana would likely outweigh the health risks for the qualifying patient.

(6) "Primary caregiver" means a person who is at least 18 years old and who has agreed in writing to supervise or administer a qualifying patient's "medical use of marihuana" (see (4), above) or to cultivate marihuana for medical use by a qualifying patient.

(7) "Qualifying patient" means a person who meets all of the following criteria: (a) the person has been diagnosed by a physician who holds a certificate

to practice medicine in Ohio as having a debilitating medical condition, (b) the person's physician has explained the potential risks and benefits of the medical use of marihuana to the person and to a parent, guardian, or other person having legal custody of the person, if any, and (c) if the person is under 18 years of age and not emancipated or is under guardianship, an individual having legal custody of the person has consented in writing to the person's medical use of marihuana, to serve as the person's primary caregiver, and to control the cultivation and use of marihuana by the person.

(8) "Registry identification card" means a document issued by the Director of Health that identifies a person as a qualifying patient or primary caregiver.

(9) "Transfer" means transfer within Ohio between a primary caregiver and a qualifying patient.

Corrupting another with drugs

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) by force, threat, or deception, administering to another or inducing or causing another to use a controlled substance, (2) by any means, administering or furnishing to another or inducing or causing another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent, (3) by any means, administering or furnishing to another or inducing or causing another to use a controlled substance, and thereby causing serious physical harm to the other person, or causing the other person to become drug dependent, (4) by any means, when the offender knows the juvenile's age or is reckless in that regard, furnishing or administering a controlled substance to a juvenile who is at least two years the offender's junior, inducing or causing a juvenile who is at least two years the offender's junior to use a controlled substance, or inducing or causing a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, or (5) by any means, using a juvenile, whether or not the offender knows the age of the juvenile, to perform any surveillance activity intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

The prohibitions set forth in clauses (1), (3), (4), and (5) of the preceding paragraph do not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741. A violation of any of the prohibitions set

forth in the preceding paragraph is the offense of "corrupting another with drugs." The penalty for the offense is a felony of the first, second, third, or fourth degree, depending upon the prohibition violated, the controlled substance involved, and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.02.)

Operation of the bill

The bill provides that the prohibitions set forth in clauses (3), (4), and (5) of the first paragraph included in '**Existing law**' under "**Corrupting another with drugs**" do not apply to a holder of a valid registry identification card (see "**Definitions**," above) under, or a physician who provides a physician's statement under, the bill's statutory mechanism to regulate and authorize the medical use of marihuana to the extent and under the circumstances described in that mechanism (R.C. 2925.02(B)(2)).

Drug trafficking offenses

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) selling or offering to sell a controlled substance, or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

The prohibitions do not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration (the FDA), or (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

A violation of any of the prohibitions is the offense of "aggravated trafficking in drugs," "trafficking in drugs," "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," or "trafficking in hashish," depending upon the controlled substance involved. The penalty for a violation is a felony of the first, second, third, fourth, or fifth degree, a misdemeanor of the third degree, or a minor misdemeanor, depending upon the type and amount of controlled substance involved and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.03.)

Operation of the bill

The bill provides that the prohibitions set forth in **Existing law**" under **Drug trafficking offenses**" do not apply to a holder of a valid registry identification card (see **Definitions**," above) under the bill's statutory mechanism to regulate and authorize the medical use of marihuana to the extent and under the circumstances described in that mechanism (R.C. 2925.03(B)(4)).

Illegal manufacture of drugs or cultivation of marihuana

Existing law

Existing law prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance.

The prohibition does not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the FDA, or (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

A violation of the prohibition is the offense of "illegal manufacture of drugs" or, if the violation involves marihuana, "illegal cultivation of marihuana." The penalty for a violation is a felony of the first, second, third, fourth, or fifth

degree, a misdemeanor of the third or fourth degree, or a minor misdemeanor, depending upon the type and amount of controlled substance involved and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense.

Existing law provides that it is an affirmative defense to a charge of a violation of the prohibition involving the cultivation of marihuana that would be a fifth degree felony that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances indicating that the marihuana was solely for personal use. But, notwithstanding the preceding sentence, if a person charged with a violation of the prohibition involving the cultivation of marihuana that would be a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in that sentence, the person may be prosecuted for and convicted of a misdemeanor violation of illegal cultivation of marihuana. Existing law provides that arrest or conviction for a minor misdemeanor violation of the prohibition (the only minor misdemeanor violation is one involving a specified small amount of marihuana--see **COMMENT 1**) does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness. (R.C. 2925.04.)

Operation of the bill

The bill provides that the prohibition set forth in "**Existing law**" under "**Illegal manufacture of drugs or cultivation of marihuana**" does not apply to a holder of a valid registry identification card (see "**Definitions**," above) under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, as described above in "**Regulation and authorization of the medical use of marihuana**," to the extent and under the circumstances described in that mechanism (R.C. 2925.04(B)).

Drug possession offenses

Existing law

Existing law prohibits a person from knowingly obtaining, possessing, or using a controlled substance.

The prohibition does not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the FDA, (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act, or (4) any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

A violation of any of the prohibitions is the offense of "aggravated possession of drugs," "possession of drugs," "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish," depending upon the controlled substance involved. The penalty for a violation is a felony of the first, second, third, fourth, or fifth degree, a misdemeanor of the second, third, or fourth degree, or a minor misdemeanor, depending upon the type and amount of controlled substance involved and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense.

Existing law provides that arrest or conviction for a minor misdemeanor violation of the prohibition (the only minor misdemeanor violations are ones involving a specified small amount of marihuana or hashish--see **COMMENT 1** regarding the marihuana penalty) does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, license, or other right or privilege or made in connection with the person's appearance as a witness. (R.C. 2925.11.)

Operation of the bill

The bill provides that the prohibition set forth in "**Existing law**" under "**Drug possession offenses**" does not apply to a holder of a valid registry identification card (see "**Definitions**," above) under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, as described above in "**Regulation and authorization of the medical use of marihuana**," to the extent and under the circumstances described in that mechanism (R.C. 2925.11(B)(5)).

Drug paraphernalia offenses

Existing law

Existing law prohibits a person from doing any of the following: (1) knowingly using, or possessing with purpose to use, "drug paraphernalia" (see **COMMENT 2**), (2) knowingly selling, or possessing or manufacturing with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia, or (3) placing an advertisement in any newspaper, magazine, handbill, or other publication published and printed and circulated primarily within Ohio, if the person knows that the purpose of the advertisement is to promote the illegal sale in Ohio of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

The prohibitions do not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741., and are not to be construed to prohibit the possession or use of a hypodermic as authorized by R.C. 3719.172. A violation of the prohibition set forth in clause (1) of the preceding paragraph is the offense of "illegal use or possession of drug paraphernalia" (a misdemeanor of the fourth degree), a violation of the prohibition set forth in clause (2) of that paragraph is the offense of "dealing in drug paraphernalia" (a misdemeanor of the second degree) or, if the paraphernalia is sold to a juvenile, "selling drug paraphernalia to juveniles" (a misdemeanor of the first degree), and a violation of the prohibition set forth in clause (3) of that paragraph is the offense of "illegal advertising of drug paraphernalia" (a misdemeanor of the second degree). (R.C. 2925.14.)

Operation of the bill

The bill provides that the prohibitions set forth in *Existing law* under "*Drug paraphernalia offenses*" do not apply to a holder of a valid registry identification card (see "*Definitions*," above) under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, as described above in "*Regulation and authorization of the medical use of marihuana*," to the extent and under the circumstances described in that mechanism (R.C. 2925.14(D)(2)).

Arrest or prosecution for controlled substance offense--no linkage to being in presence or vicinity of medical use of marihuana

The bill specifies that no person may be subject to arrest or prosecution under R.C. Chapter 2925., which contains numerous controlled substance and drug abuse prohibitions, including all of those discussed in the prior portions of this

analysis, solely because the person was in the presence or vicinity of the "medical use of marihuana" as defined in the bill's statutory mechanism to regulate and authorize the medical use of marihuana, as described above in "Regulation and authorization of the medical use of marihuana" (R.C. 2925.60).

Obstructing official business

Existing law

Existing law prohibits a person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, from doing any act that hampers or impedes a public official in the performance of the public official's lawful duties. A violation of the prohibition is the offense of "obstructing official business." The offense generally is a misdemeanor of the second degree, but, if the violation comprising the offense creates a "risk" of "physical harm to any person" (see **COMMENT 3**), it is a felony of the fifth degree. (R.C. 2921.31.)

Operation of the bill

The bill modifies the penalty that applies to the offense of "obstructing official business" by providing a reduced penalty in certain circumstances if the violation comprising the offense pertains to the medical use of marihuana. Under the bill: (1) as under existing law, the offense generally is a misdemeanor of the second degree, (2) if the violation comprising the offense, except by communicating false information relating to the medical use of marihuana to a law enforcement officer for the purpose of hindering or avoiding arrest or prosecution, creates a "risk" of "physical harm to any person" (see **COMMENT 3**), it is a felony of the fifth degree, and (3) if the violation comprising the offense consists of the communication of false information relating to the medical use of marihuana to a law enforcement officer for the purpose of hindering or avoiding arrest or prosecution, it is a minor misdemeanor. (R.C. 2921.31.)

Discipline of physician--no linkage to provision of physician's statement regarding application for medical use of marihuana

Existing law

Existing law provides a mechanism and procedures that govern the disciplining by the State Medical Board of physicians and other persons licensed or issued a certificate by the Board under R.C. Chapter 4731. It specifies that the Board, by an affirmative vote of not fewer than six members, must, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or

place on probation the holder of a certificate for one or more of a list of specified reasons. The specified reasons include the following reasons that arguably could be relevant to the bill (see **COMMENT 4** for a list of the other specified reasons, which generally are not relevant to the bill): (1) failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease, (2) selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug, (3) departing from, or failing to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established, (4) a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony, (5) committing an act that constitutes a felony in Ohio, regardless of the jurisdiction in which the act was committed, (6) a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice, (7) committing an act in the course of practice that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed, (8) a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude, (9) committing an act involving moral turpitude that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which the act was committed, (10) violating the conditions of limitation placed by the Board upon a certificate to practice, (11) subject to R.C. 4731.226, violating any provision of a code of ethics of the American Medical Association, American Osteopathic Association, or American Podiatric Medical Association, or any other national professional organization the Board specifies by rule, (12) any action taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees, that consists of the limitation, revocation, or suspension of a license to practice, acceptance of a license surrender, denial of a license, refusal to renew or reinstate a license, imposition of probation, or issuance of an order of censure or other reprimand, or (13) the revocation, suspension, restriction, reduction, or termination of clinical privileges by the U.S. Department of Defense or Department of Veterans Affairs or the termination or suspension of a certificate of registration to prescribe drugs by the U.S. Drug Enforcement Administration.

Disciplinary actions taken by the Board must be taken pursuant to an adjudication under the Administrative Procedure Act, except that, in lieu of an



adjudication, the Board may enter into a consent agreement with an individual to resolve an allegation of a violation. A consent agreement, when ratified by an affirmative vote of not fewer than six Board members, constitutes the findings and order of the Board with respect to the matter addressed in the agreement.

If the Secretary and supervising member determine that there is clear and convincing evidence that an individual has committed a violation that is one of the specified reasons for sanction and that the individual's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the Board suspend the individual's certificate to practice without a prior hearing. The Board, upon review of those allegations and by an affirmative vote of not fewer than six of its members, excluding the Secretary and supervising member, may suspend a certificate without a prior hearing. The individual subject to the summary suspension may request an adjudicatory hearing by the Board. (R.C. 4731.22.)

Operation of the bill

The bill amends the mechanism and procedures that govern the disciplining by the State Medical Board of physicians and other persons licensed or issued a certificate by the Board under R.C. Chapter 4731. by adding to the mechanism a provision that specifies that a physician is not subject to discipline under the mechanism solely by reason of having provided a physician's statement under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, as described above in "**Regulation and authorization of the medical use of marihuana**," regardless of whether such act violates federal law (R.C. 4731.22(P)).

COMMENT

1. Existing law provides the following penalties for violations of R.C. 2925.02, 2925.03, 2925.04, and 2925.11 that involve marihuana:

(a) A violation of any prohibition set forth in R.C. 2925.02 is the offense of "corrupting another with drugs." If the drug involved in the violation is marihuana, the offense generally is a felony of the fourth degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. But if the violation was committed in the vicinity of a school, the offense is a felony of the third degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.02(C)(3) and (D).)

(b) A violation of any prohibition set forth in R.C. 2925.03 that involves marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, is "trafficking in marihuana." The penalty for the offense is determined as follows: (i) except as otherwise provided in clause (ii), (iii), (iv), (v), (vi), or (vii) of this paragraph, the offense is a felony of the fifth degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (ii) except as otherwise provided in clause (iii), (iv), (v), (vi), or (vii) of this paragraph, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the fourth degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (iii) if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams, the offense is a felony of the fourth degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, except that if the amount of the drug involved is within that range and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the third degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (iv) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams, the offense is a felony of the third degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, except that if the amount of the drug involved is within that range and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the second degree, and there is a presumption that a prison term must be imposed for the offense, (v) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams, the offense is a felony of the third degree, and there is a presumption that a prison term must be imposed for the offense, except that if the amount of the drug involved is within that range and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the second degree, and there is a presumption that a prison term must be imposed for the offense, (vi) if the amount of the drug involved equals or exceeds 20,000 grams, the offense is a felony of the second degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree, except that if the amount of the drug involved equals or exceeds 20,000 grams and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the first degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree, and (vii) if the violation involves a gift of 20 grams or less of marihuana, the offense is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense, except that if the violation involves a gift of 20 grams or less of marihuana and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a misdemeanor of the third degree. Additionally, special fine, driver's license

suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.03(C)(3) and (H).)

(c) A violation of the prohibition set forth in R.C. 2925.04 that involves marihuana is the offense of "illegal cultivation of marihuana." The penalty for the offense is determined as follows: (i) except as otherwise provided in clause (ii), (iii), (iv), (v), or (vi) of this paragraph, the offense is a minor misdemeanor or, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree, (ii) if the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, the offense is a misdemeanor of the fourth degree or, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree, (iii) if the amount of marihuana involved equals or exceeds 200 grams but is less than 1,000 grams, the offense is a felony of the fifth degree or, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the fourth degree, and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender, (iv) if the amount of marihuana involved equals or exceeds 1,000 grams but is less than 5,000 grams, the offense is a felony of the third degree or, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (v) if the amount of marihuana involved equals or exceeds 5,000 grams but is less than 20,000 grams, the offense is a felony of the third degree or, if the violation was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense, and (vi) if the amount of marihuana involved equals or exceeds 20,000 grams, the offense is a felony of the second degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree, except that if the amount of the drug involved equals or exceeds 20,000 grams and the violation was committed in the vicinity of a school or in the vicinity of a juvenile, the offense is a felony of the first degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree. Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.04(C)(1), (C)(4), and (D).)

(d) A violation of the prohibition set forth in R.C. 2925.11 that involves marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish is the offense of "possession of marihuana." The penalty for the offense is determined as follows: (i) except as otherwise provided in clause (ii), (iii), (iv), (v), or (vi) of this paragraph, the offense is a minor misdemeanor, (ii) if the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, the offense is a misdemeanor of the fourth degree, (iii)

if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams, the offense is a felony of the fifth degree, and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender, (iv) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams, the offense is a felony of the third degree, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (v) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams, the offense is a felony of the third degree, and there is a presumption that a prison term must be imposed for the offense, and (vi) if the amount of the drug involved equals or exceeds 20,000 grams, the offense is a felony of the second degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.11(C)(3) and (E).)

2. Existing R.C. 2925.14(A), unchanged by the bill, specifies that, as used in the drug paraphernalia provisions contained in the section, "drug paraphernalia" means any equipment, product, or material of any kind used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of R.C. Chapter 2925.

"Drug paraphernalia" includes, but is not limited to, any of the following equipment, products, or materials used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners: (a) a kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived, (b) a kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance, (c) any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine, (d) an isomerization device for increasing the potency of any species of a plant that is a controlled substance, (e) testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance, (f) a scale or balance for weighing or measuring a controlled substance, (g) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance, (h) a separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana, (i) a blender, bowl, container, spoon, or mixing device for compounding a controlled substance, (j) a capsule, balloon, envelope, or container for packaging small quantities of a controlled substance, (k) a container or device for storing or concealing a

controlled substance, (l) a hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body, or (m) an object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

Existing R.C. 2925.14(B), unchanged by the bill, specifies that, in determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer must consider, in addition to other relevant factors, the following: (a) any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use, (b) the proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of R.C. Chapter 2925., (c) the proximity of the equipment, product, or material to any controlled substance, (d) the existence of any residue of a controlled substance on the equipment, product, or material, (e) direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom the owner or person in control of the equipment, product, or material knows intends to use the object to facilitate a violation of any provision of this chapter, (f) any oral or written instruction provided with the equipment, product, or material concerning its use, (g) any descriptive material accompanying the equipment, product, or material and explaining or depicting its use, (h) national or local advertising concerning the use of the equipment, product, or material, (i) the manner and circumstances in which the equipment, product, or material is displayed for sale, (j) direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise, (k) the existence and scope of legitimate uses of the equipment, product, or material in the community, or (l) expert testimony concerning the use of the equipment, product, or material.

3. Existing R.C. 2901.01(A), not in the bill provides that, as used in the Revised Code: (a) "risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist, and (b) "physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

4. Under existing R.C. 4731.22, the other specified reasons for the State Medical Board's limitation, revocation, or suspension of an individual's certificate to practice, refusal to register or reinstate a certificate, or reprimanding or placing on probation the holder of a certificate, are: (a) permitting one's name, certificate to practice, or certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given, (b) willfully betraying a professional confidence, (c) making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients, in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine, or in securing or attempting to secure any certificate to practice or certificate of registration issued by the Board, (d) representing, with the purpose of obtaining compensation or other advantage as personal gain or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured, (e) obtaining, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice, (f) failure to pay license specified renewal fees, (g) except as authorized in R.C. 4731.31, engaging in the division of fees for referral of patients, or receiving a thing of value in return for a specific referral of a patient to utilize a particular service or business, (h) inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills, (i) except when civil penalties are imposed under R.C. 4731.225 or 4731.281, and subject to R.C. 4731.226, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of R.C. Chapter 4731. or any rule promulgated by the Board, (j) violating any abortion rule adopted by the Public Health Council pursuant to R.C. 3701.341, (k) violating R.C. 2919.12 or performing or inducing an abortion upon a pregnant woman with actual knowledge that the conditions specified in R.C. 2317.56(B) have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless a specified affirmative defense would apply in a related civil action, (l) termination or suspension from participation in the Medicare or Medicaid programs by the Department of Health and Human Services or other responsible agency for any act that also would constitute a violation of R.C. 4731.22(B)(2), (3), (6), (8), or (19), (m) impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice, (n) a second or subsequent violation of R.C. 4731.66 or 4731.69, (o) except as provided in R.C. 4731.22(N), waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the individual's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that individual, or advertising that the

individual will waive the payment of all or any part of such a deductible or copayment, (p) failure to use universal blood and body fluid precautions established by rules adopted under R.C. 4731.051, (q) failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by R.C. 4731.143 prior to providing nonemergency professional services, or failure to maintain that notice in the patient's file, (r) failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of R.C. Chapter 4730. and the rules adopted under that Chapter, (s) failure of a physician or podiatrist to enter into a standard care arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to R.C. 4731.27 or failure to fulfill the responsibilities of collaboration after entering into a standard care arrangement, (t) failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to R.C. 4729.39, (u) failure to cooperate in an investigation conducted by the Board under R.C. 4731.22(F), including failure to comply with a subpoena or order issued by the Board or to answer truthfully a question presented by the Board at a deposition or in written interrogatories, unless a court has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue, (v) failure to supervise an acupuncturist in accordance with R.C. Chapter 4762. and the Board's rules for supervision of an acupuncturist, (w) failure to supervise an anesthesiologist assistant in accordance with R.C. Chapter 4760. and the Board's rules for supervision of an anesthesiologist assistant, or (x) assisting suicide as defined in R.C. 3795.01.

HISTORY

ACTION	DATE
Introduced	02-22-05

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