



Ohio Legislative Service Commission

Bill Analysis

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H.B. 214

129th General Assembly
(As Introduced)

Reps. Yuko and R. Hagan, Ramos, Foley, Okey, Antonio, Young

BILL SUMMARY

- Authorizes a patient who either holds a valid registry identification card issued by the Ohio Department of Health or has equivalent documentation to use, acquire, possess, or cultivate cannabis (marihuana) to treat or alleviate certain debilitating medical conditions or related symptoms.
- Allows a registered qualifying patient to designate a primary caregiver to assist with the patient's medical use of cannabis and requires the caregiver to hold a valid registry identification card issued by the Department.
- Permits a registered qualifying patient, visiting qualifying patient, or registered primary caregiver (for each of up to five patients) to possess up to 200 grams of usable cannabis and 12 mature cannabis plants.
- Permits specified documents to be considered valid registry identification cards for the bill's purposes if the Department fails to issue registry identification cards.
- Extends certain protections to registered qualifying patients, visiting qualifying patients, registered primary caregivers, and other persons relating to employment, schooling, housing, parental rights and responsibilities, criminal and civil liabilities, and disclosure of information relating to the medical use of cannabis.
- Permits any person to submit a petition to the Director of Health requesting that a medical condition or its treatment be added as a debilitating medical condition for the purpose of the law governing the medical use of cannabis.
- Requires the Department to operate an Internet-based system for use by law enforcement officers to verify whether (1) a person is a registered qualifying patient or registered primary caregiver, and (2) the address of a location at which cannabis

is being cultivated is a patient's or caregiver's registered cultivation site, and requires law enforcement officers to verify this information before initiating an arrest, raid, or other law enforcement action concerning cannabis.

- Provides that the law governing the medical use of cannabis is not to be construed as requiring a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis or as requiring an employer to accommodate the use of cannabis in any workplace or any employee working while impaired.
- Requires the Department to submit an annual report to the General Assembly regarding data on the medical use of cannabis in Ohio.
- Creates the Medical Cannabis Advisory Council.

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CONTENT AND OPERATION

OVERVIEW

The bill authorizes a qualifying patient to use, acquire, possess, or cultivate cannabis to treat or alleviate certain debilitating medical conditions or related symptoms. Cannabis, or marihuana, includes the following under existing law: (1) parts of a plant of the genus cannabis, whether growing or not, (2) the seeds of the plant, (3) the resin extracted from a part of the plant, and (4) every compound, manufacture, salt, derivative, mixture, or preparation of the plant or of its seeds or resin. It does not include (1) the mature stalks of the plant, (2) fiber produced from the stalks, (3) oils or cake made from the seeds of the plant, or (4) any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks.¹

To use, acquire, possess, or cultivate cannabis, a patient must hold a valid registry identification card issued by the Ohio Department of Health to qualify for the

¹ R.C. 3719.01 and 3728.01.

card, the patient must have been diagnosed by a medical practitioner as having a debilitating medical condition and have received a written certification from a medical practitioner stating that the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis.

A qualifying patient holding a valid registry identification card may designate a primary caregiver to assist with the patient's medical use of cannabis. The caregiver must also hold a valid registry identification card issued by the Department. A registered primary caregiver may not serve more than five patients and must be at least 21 years old.

The maximum amount of cannabis that may be possessed for medical use is based on weight and number of plants. A patient may possess not more than 200 grams of cannabis and not more than 12 plants. A caregiver may possess for each patient the same number of grams of cannabis and plants, for a total amount calculated according to the number of patients being served.

The bill requires the Department to issue registry identification cards to qualifying patients and primary caregivers. However, if the Department fails to take certain actions regarding the registry identification cards, specified documents are deemed valid registry identification cards.

A visiting patient who holds a valid document issued under the laws of another state or territory of the United States that is the equivalent of a registry identification card and is not an Ohio resident (or has been an Ohio resident for less than 30 days) may use, acquire, or possess cannabis to treat or alleviate a debilitating medical condition or related symptom without a registry identification card. The visiting patient, however, may not cultivate cannabis.

The bill extends certain protections to registered qualifying patients, visiting qualifying patients, registered primary caregivers, and other persons relating to employment, schooling, housing, parental rights and responsibilities, criminal and civil liabilities, and the disclosure of information relating to the medical use of cannabis.

The bill creates the Medical Cannabis Advisory Council to provide outreach services regarding the medical use of cannabis and advice to the Director of Health regarding petitions submitted to the Department to add medical conditions or treatments to the debilitating medical conditions for which a person may use, acquire, or possess cannabis.

MEDICAL USE OF CANNABIS

Registered qualifying patients

Diagnosis of debilitating medical condition

To become a registered qualifying patient, which authorizes the patient's medical use of cannabis, a patient must obtain a registry identification card from the Ohio Department of Health. The patient first must be diagnosed by a practitioner as having a debilitating medical condition.² The following qualify as debilitating medical conditions:

(1) Cancer; glaucoma; positive HIV status; AIDS; hepatitis C; amyotrophic lateral sclerosis (Lou Gehrig's disease); Crohn's disease; agitation of Alzheimer's disease; nail patella; multiple sclerosis; injury or disease to the spinal cord, spinal column, or vertebra; mylomalacia; celiac disease; sickle cell anemia; or the treatment of these conditions;

(2) 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; or severe or persistent muscle spasms;

(3) Any other medical condition or its treatment approved as a debilitating medical condition by the Director of Health (see "**Additional debilitating medical conditions**," below).³

Certification of medical cannabis benefits

The patient also must obtain a practitioner's written certification that it is the practitioner's professional opinion that the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis. The certification must (1) be signed by the practitioner in the course of a bona fide practitioner-patient relationship with the patient and after a full assessment of the patient's medical history, and (2) specify the patient's debilitating medical condition.⁴

² R.C. 3728.01(M) and 3728.02.

³ R.C. 3728.01(D).

⁴ R.C. 3728.07.

Authorized practitioners

Under the bill, any one of the following practitioners is qualified to diagnose a patient's debilitating medical condition or provide the required written certification regarding the benefits to the patient of the medical use of cannabis: a dentist; clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner holding a certificate to prescribe; optometrist holding a therapeutic pharmaceutical agents certificate; physician, including a podiatrist; or physician assistant holding a certificate to prescribe.⁵

Application for registry identification card

Once diagnosed by a practitioner and receiving a practitioner's certification as described above, the patient seeking a registry identification card must submit an application to the Department. The application must, at a minimum, include the following information:

- (1) The patient's name, address, and date of birth (no address is required for a homeless patient);
- (2) The name, address, and telephone number of the practitioner;
- (3) The name, address, and telephone number of the patient's primary caregiver, if any;
- (4) A specification as to whether the patient, the patient's primary caregiver (if any), both, or neither will cultivate cannabis after receiving a registry identification card and the address of each location (if any) where cannabis will be cultivated (see "**Registered cultivation sites**," below).

As part of the application process, the patient must submit the written certification obtained from a practitioner regarding the benefits to the patient of the medical use of cannabis. The patient must pay the initial card fee established in rules to be adopted by the Director of Health.⁶

Issuance of registry identification card

The Department is required to issue a registry identification card to the qualifying patient no later than five business days after the application is approved. The card is valid for one year and must contain the following information:

⁵ R.C. 3728.01(K) and 3728.07.

⁶ R.C. 3728.10.

- (1) The patient's name and date of birth;
- (2) The date of issuance and expiration date;
- (3) The address of each of the patient's registered cultivation sites, if any;
- (4) A random identification number that is unique to the patient;
- (5) At the option of the Department, a photograph of the patient.⁷

Notice of changes and lost cards

The bill requires a registered qualifying patient who no longer has a debilitating medical condition to notify the Department within 30 days after ceasing to have the condition. In this event, the Department must revoke the patient's registry identification card.⁸

The patient must notify the Department of a name or address change within 30 days of the change. Notice of a lost registry identification card must be given within ten days of the loss. If there is a name or address change, the Department must issue a new card; if a card is lost, it must issue a replacement card.⁹

Authorized activities

Once a qualifying patient obtains a valid registry identification card, the patient may (1) acquire, possess, transport, and use cannabis and paraphernalia relating to the administration of cannabis, (2) cultivate cannabis at the patient's registered cultivation sites, and (3) manufacture paraphernalia relating to the administration of cannabis.¹⁰

Prohibited activities

The bill prohibits a registered qualifying patient from doing any of the following:

(1) Possessing more than 200 grams of usable cannabis – "usable cannabis" means the dried flowers of the female cannabis plant and any mixture, tincture, oil, reduction, compound, or preparation thereof, but does not include the leaves, seeds, stalks, or roots of the female cannabis plant;

⁷ R.C. 3728.13.

⁸ R.C. 3728.20.

⁹ R.C. 3728.22 and 3728.25.

¹⁰ R.C. 3728.02(A).

(2) Possessing more than 12 mature cannabis plants – a "mature cannabis plant" is a cannabis plant that has undergone sexual differentiation as shown by having readily observable flower buds;

(3) Undertaking any task under the influence of cannabis when doing so would constitute negligence or professional malpractice;

(4) Possessing cannabis or otherwise engaging in the medical use of cannabis in a school bus, on the grounds of any preschool, primary school, or secondary school, or in any correctional facility;

(5) Smoking cannabis on any form of public transportation or in any public place;

(6) Operating a motor vehicle under the influence of cannabis;

(7) Transporting cannabis into Ohio from outside of Ohio;

(8) Having more than two registered cultivation sites.¹¹

Registered primary caregivers

The bill authorizes a registered primary caregiver to assist with a registered qualifying patient's medical use of cannabis; however, it does not require that a patient have a caregiver. A caregiver must be at least age 21 and may not serve more than five registered qualifying patients.¹² The bill does not establish any further qualifications for registration as a caregiver.

Application for registry identification card

To assist a registered qualifying patient with the medical use of cannabis, a primary caregiver must obtain a registry identification card from the Department. To obtain the card, the caregiver must submit the following:

(1) An application that must, at a minimum, include the following information:

--The caregiver's name, address, and date of birth;

--The name, address, and date of birth of each of the caregiver's qualifying patients (no address is required for a homeless patient);

¹¹ R.C. 3728.02(B) and 3728.26.

¹² R.C. 3728.01(L) and 3728.09.

--The address of each location, if any, at which the caregiver will cultivate cannabis once issued a registry identification card;

--A list of each felony drug abuse offense for which the caregiver has been convicted or to which the caregiver has pleaded guilty.

(2) Evidence that the caregiver is at least 21 years of age;

(3) The initial card fee established in rules to be adopted by the Director of Health.¹³

Issuance of registry identification card

The Department is required to issue a registry identification card to a primary caregiver no later than five business days after the application is approved.¹⁴ The card is valid for one year and must contain the following information:

(1) The caregiver's name and date of birth;

(2) The name and date of birth of each registered qualifying patient for whom the caregiver is to serve (as specified in the application);

(3) The date of issuance and expiration date of the card;

(4) The address of each of the caregiver's registered cultivation sites, if any;

(5) A random identification number that is unique to the caregiver;

(6) At the option of the Department, a photograph of the caregiver.

Notice of changes and lost cards

The bill requires a registered primary caregiver serving a patient who ceases to have a debilitating medical condition to notify the Department within 30 days after the patient ceases to have the debilitating medical condition. Depending on the number of patients being served, the Department must either revoke or modify the caregiver's registry identification card.¹⁵

¹³ R.C. 3728.08 and 3728.11.

¹⁴ R.C. 3728.13.

¹⁵ R.C. 3728.21.

The caregiver must notify the Department of a name or address change within 30 days of the change. Notice of a lost registry identification card must be given within ten days of the loss. If there is a name or address change, the Department must issue a new card; if a card is lost, it must issue a replacement card.¹⁶

Authorized activities

Once a primary caregiver obtains a valid registry identification card, the caregiver may do any of the following to assist up to five registered qualifying patients: (1) acquire, possess, and transport cannabis and paraphernalia relating to the administration of cannabis, (2) cultivate cannabis at the caregiver's registered cultivation sites, (3) manufacture paraphernalia relating to the administration of cannabis.¹⁷ The bill permits a caregiver to be compensated for costs associated with any of these activities.¹⁸

Prohibited activities

The bill prohibits a registered primary caregiver from doing any of the following:

- (1) Possessing more than 200 grams of usable cannabis per registered qualifying patient the caregiver serves;
- (2) Possessing more than 12 mature cannabis per patient the caregiver serves;
- (3) Possessing cannabis in a school bus, on the grounds of any preschool, primary school, or secondary school, or in any correctional facility;
- (4) Transporting cannabis into Ohio from outside of Ohio;
- (5) Having more than two registered cultivation sites.¹⁹

Determining the permitted amount of cannabis

As discussed above (see "**Prohibited activities**"), the bill limits the amount of cannabis that may be possessed for medical use as follows:

- (1) A patient may possess not more than 200 grams of cannabis and not more than 12 plants;

¹⁶ R.C. 3728.22 and 3728.25.

¹⁷ R.C. 3728.03(A).

¹⁸ R.C. 3728.04.

¹⁹ R.C. 3728.03(B) and 3728.26.

(2) A caregiver may possess an amount of cannabis and number of plants determined by multiplying the limits that apply to a patient under (1), above, by the number of patients being served (which may be one to five patients).

Regarding the limits on the cannabis that may be possessed, the bill provides that if the usable cannabis is added as an ingredient in a food, the weight of the other food ingredients does not count toward the limit. Similarly, regarding the limit on the number of mature cannabis plants that may be possessed, immature cannabis plants do not count toward the limit.²⁰

Administrative duties of the Department of Health

Application processing

The bill requires the Department to verify the information contained in each application for an initial registry identification card submitted by a patient or primary caregiver. The Department must approve or deny an application no later than 15 days after receiving the application. The action must be taken in accordance with the Administrative Procedure Act (R.C. Chapter 119.). As discussed above (see "**Issuance of registry identification card**"), the Department must issue the card within five business days of approving the application.²¹

Identification card list

The bill requires the Department to maintain a list of the persons to whom it issues registry identification cards. The bill specifies that all identifying information on the list is confidential and not subject to disclosure, except to authorized employees of the Department performing official departmental duties under the bill or when collaborating with law enforcement officers as authorized by the bill (see "**Falsified or fraudulent information**," below).²²

Incomplete application

If an application for an initial registry identification card is incomplete, the bill requires the Department to notify the qualified patient or primary caregiver that the application is incomplete and that the Department has the authority to deny the

²⁰ R.C. 3728.02(C) and 3728.03(C).

²¹ R.C. 3728.12(A) and 3728.13.

²² R.C. 3728.40.

application if the patient or caregiver does not submit a complete application within ten days of receiving the notice.²³

Reasons for application denial

The bill authorizes the Department to deny a qualified patient's or primary caregiver's application for an initial registry identification card for any of the following reasons:

(1) The original application is incomplete and the patient or caregiver does not submit a complete application within ten days of receiving the Department's notice that the application is incomplete;

(2) The Department determines that the application or the practitioner's written certification was purposefully falsified;

(3) The patient or caregiver fails to pay the application fee;

(4) In the case of a patient, the patient does not submit with the application a practitioner's written certification regarding the benefits to the patient of the medical use of cannabis for a debilitating medical condition;

(5) In the case of a patient who is under age 18, either of the following applies:

--The practitioner who signed the patient's written certification has not explained the potential risks and benefits of the medical use of cannabis to the patient and to a parent, guardian, or legal custodian of the patient;

--The parent, guardian, or legal custodian of the patient has not consented in writing to (a) allowing the patient's medical use of cannabis, (b) becoming and serving as one of the patient's registered primary caregivers, and (c) controlling the patient's acquisition and dosage of cannabis and frequency of the medical use of cannabis;

(6) In the case of a caregiver, the Department determines that any felony drug abuse offense listed in the caregiver's application is sufficient grounds to deny the application.²⁴

²³ R.C. 3728.12(B).

²⁴ R.C. 3728.12(C).

A patient or caregiver whose application is denied must wait at least 30 days to reapply for a registry identification card.²⁵

Card renewal

To renew a registry identification card, the registered qualifying patient or registered primary caregiver must submit to the Department the same information required for the initial card and pay the renewal fee established in rules to be adopted by the Director of Health. After reviewing the information, the Department must approve or deny the application according to the same procedures that apply to an initial application.²⁶

Documentation deemed an identification card

In the event of either of the following, a qualifying patient's or primary caregiver's application for an initial or renewed registry identification card is to be considered a valid registry identification card on the 20th day after the date on which the complete application was submitted if all of the requirements for approval of the application were met:

- (1) The Department's failure to approve or deny the application within 15 days of receiving it;
- (2) The Department's failure to issue the registry identification card within five business days of approving the application.

An application considered a valid registry identification card in this manner is valid as long as the requirements for approval of the application continue to be met.²⁷

If, after 140 days after the bill's effective date, the Department fails to accept an application from a qualifying patient for a registry identification card for any reason, including the Department's failure to adopt rules, a patient's written certification from a medical practitioner and a notarized statement by the patient containing the following information is to be considered a valid registry identification card:

- (1) The patient's name, address, and date of birth (no address is required of a homeless patient);

²⁵ R.C. 3728.12(D).

²⁶ R.C. 3728.10 to 3728.12.

²⁷ R.C. 3728.14 and 3728.17(B).

(2) The name, address, and telephone number of the practitioner who signed the certification regarding the benefits to the patient of the medical use of cannabis for a debilitating medical condition;

(3) The address of each location, if any, at which the patient will cultivate cannabis.

A practitioner's certification and patient's notarized statement that are considered a valid registry identification card in this manner are valid as long as the holder remains a qualifying patient.²⁸

If, after 140 days after the bill's effective date, the Department fails to accept an application from a primary caregiver for a registry identification card for any reason, including the Department's failure to adopt rules, a notarized statement by the caregiver containing the following information is to be considered a valid registry identification card:

(1) The primary caregiver's name, address, and date of birth;

(2) The name, address, and date of birth of each qualifying patient the caregiver seeks to serve as a caregiver (no address is required for a homeless patient);

(3) The address of each location, if any, at which the caregiver will cultivate cannabis.

A caregiver's notarized statement that is considered a valid registry identification card is valid as long as the as long as the holder remains a primary caregiver.²⁹

Card revocation and modification based on changes in medical condition

In the case of a registered qualifying patient who ceases to have a debilitating medical condition and has notified the Department, the bill requires the Department to revoke the patient's registry identification card within ten days of receiving the notice.³⁰

In the case of a registered primary caregiver for a patient who ceases to have a debilitating medical condition and has notified the Department, the bill requires the Department to do the following within ten days of receiving of the caregiver's notice:

²⁸ R.C. 3728.15 and 3728.17(C).

²⁹ R.C. 3728.16 and 3728.17(D).

³⁰ R.C. 3728.20.

(1) If the caregiver's registry identification card shows that the caregiver serves more than one patient, remove from the card the information about the patient who ceased to have a debilitating medical condition;

(2) If the caregiver's registry identification card shows that the patient who ceased to have a debilitating medical condition was the only patient being served, revoke the card.³¹

Other reasons for card revocation

The bill permits the Department to revoke the registry identification card of a qualifying patient or primary caregiver who does any of the following:

(1) Delivers, transports, transfers, or otherwise provides cannabis for free or for a charge to a person who is not a cardholder;

(2) Fails to comply with a requirement of the law governing the medical use of cannabis;

(3) Violates a prohibition under the law governing the medical use of cannabis.³²

Address change

The bill requires the Department to issue a new registry identification card to a qualifying patient or primary caregiver within ten business days after the Department receives notice of a patient's or caregiver's name or address change. The patient or caregiver must pay a \$10 fee.³³

Lost card

The bill requires the Department to issue a replacement registry identification card, containing a new random identification number, to a qualifying patient or primary caregiver within five business days after the Department receives notice of a lost card from the patient or caregiver. The patient or caregiver must pay a \$10 fee.³⁴

³¹ R.C. 3728.21.

³² R.C. 3728.18.

³³ R.C. 3728.22.

³⁴ R.C. 3728.25.

Falsified or fraudulent information

The bill permits a Department employee to notify a law enforcement officer about falsified or fraudulent information submitted in an initial or renewal application for a registry identification card, or in a practitioner's certification submitted with an application, if the employee first confers with the employee's supervisor or at least one other Department employee and both agree that circumstances warranting notification exist.³⁵

Visiting qualifying patients

The bill permits a visiting qualifying patient who holds a valid document issued to the patient under the laws of another state or territory of the United States that is the equivalent of an Ohio registry identification card to acquire, possess, transport, and use cannabis and related paraphernalia (and to manufacture the paraphernalia) to treat or alleviate a debilitating medical condition or related symptom without having to hold an Ohio registry identification card. This provision applies only to a person who is not an Ohio resident or who has been an Ohio resident for less than 30 days.³⁶

A visiting patient is subject to the same prohibitions as a registered qualifying patient. In addition, a visiting patient may not cultivate cannabis.³⁷

Registered cultivation sites

The bill requires cardholders who cultivate cannabis to maintain the plants in a room, greenhouse, garden, or other enclosed area that is kept locked whenever the cardholder is away and out of public view. However, this requirement does not apply if the plants are being transported to the cardholder's property or, in the case of a registered primary caregiver, to the property of the registered qualifying patient. It also does not apply when the plants are being transported because the cardholder is moving.³⁸

Statutory protections regarding medical use of cannabis

The bill extends certain protections to all cardholders, separate categories of cardholders, practitioners, and other persons.

³⁵ R.C. 3728.42.

³⁶ R.C. 2925.43, 3728.01(T), and 3728.02(A)(1) and (3).

³⁷ R.C. 3728.02(A)(2) and (B).

³⁸ R.C. 3728.27.

Protections for all cardholders

The bill prohibits all of the following with respect to all cardholders:

(1) An employer or licensing agency from taking disciplinary action against the cardholder for delivering, transporting, transferring, or otherwise providing cannabis to another cardholder in accordance with the bill's provisions;³⁹

(2) A school, employer, or landlord from refusing to enroll, employ, or lease to a person, or otherwise penalizing a person, because the person is a cardholder, unless failing to do so would render the school, employer, or landlord in violation of federal law;⁴⁰

(3) A person's status as a cardholder from being used as a factor in a determination of the person's parental rights and responsibilities, parenting time, or companionship or visitation rights with a minor, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated;⁴¹

(4) Possession of a valid registry identification card, application for a registry identification card, or valid visiting qualifying patient identification card from constituting probable cause or reasonable suspicion to search or seize the person or property of the person possessing or applying for the card.⁴²

Protections for patients

The bill prohibits all of the following with respect to a registered qualifying patient or visiting qualifying patient:

(1) An employer or licensing agency from taking disciplinary action against the patient because the patient engages in the medical use of cannabis;⁴³

(2) A law enforcement officer or law enforcement agency from seizing any cannabis, cannabis paraphernalia, licit property, or interest in licit property that is

³⁹ R.C. 3728.28.

⁴⁰ R.C. 3728.29.

⁴¹ R.C. 3728.30.

⁴² R.C. 2925.44(A).

⁴³ R.C. 3728.28.

possessed, owned, or used in connection with a patient's medical use of cannabis or in connection with acts incidental to a patient's medical use of cannabis;⁴⁴

(3) A court from ordering the forfeiture of any cannabis, cannabis paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with a patient's medical use of cannabis or in connection with acts incidental to a patient's medical use of cannabis.⁴⁵

If a law enforcement officer seizes cannabis from a patient and fails to return it, the officer's employing agency is liable to the patient for the value of the cannabis.⁴⁶

Protections for primary caregivers

The bill prohibits an employer or licensing agency from taking disciplinary action against a registered primary caregiver because the caregiver engages in the activities authorized by the bill.⁴⁷

Protections for practitioners

The bill prohibits an employer or licensing agency from taking disciplinary action against a practitioner because the practitioner engages in the activities authorized by the bill. However, this prohibition does not apply when a licensing agency takes disciplinary action against a practitioner for failing to properly evaluate a patient's medical condition or for otherwise violating the standard of care for evaluating medical conditions.⁴⁸

Protections for other persons

The bill prohibits an employer or licensing agency from taking disciplinary action against a person for any of the following reasons:

(1) Delivering, transporting, transferring, or otherwise providing paraphernalia relating to the administration of cannabis for free or for a charge to a cardholder;⁴⁹

⁴⁴ R.C. 2925.44(C).

⁴⁵ R.C. 2925.44(C).

⁴⁶ R.C. 2925.44(C).

⁴⁷ R.C. 3728.28(A)(2) and (3).

⁴⁸ R.C. 3728.28(A)(5) and (B).

⁴⁹ R.C. 3728.28(A)(4).

(2) Because the person is in the presence or vicinity of a registered qualifying patient or visiting qualifying patient engaging in the medical use of cannabis;⁵⁰

(3) Because the person assists a patient's or visiting patient's use or administration of cannabis, regardless of whether the person is a registered primary caregiver.⁵¹

Immunity from criminal and civil liability

General immunity

The bill provides that a cardholder, practitioner, or other person is not subject to arrest, prosecution, or any criminal or civil penalty and cannot be denied any right or privilege for engaging in activities that are authorized by the bill.⁵²

The bill creates a legal presumption that a registered qualifying patient or visiting qualifying patient is engaged in the medical use of cannabis if the patient is in possession of a valid registry identification card or valid visiting qualifying patient identification card and an amount of usable cannabis or number of mature cannabis plants that does not exceed the maximum permitted by the bill. The bill specifies that this presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating the patient's debilitating medical condition or related symptoms.⁵³

The bill creates a legal presumption that a registered primary caregiver is engaging in an authorized activity if the caregiver is in possession of a valid registry identification card and an amount of usable cannabis or number of mature cannabis plants that does not exceed the maximum permitted by the bill. The bill specifies that this presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating the debilitating medical condition or related symptoms of a caregiver's patient.⁵⁴

⁵⁰ R.C. 3728.28(A)(6).

⁵¹ R.C. 3728.28(A)(7).

⁵² R.C. 2925.43(B).

⁵³ R.C. 2925.43(C)(1).

⁵⁴ R.C. 2925.43(C)(2).

Exceptions to drug offenses

The bill establishes circumstances under which cardholders are not subject to existing criminal prohibitions related to drugs. Specifically, the bill provides that the drug laws are not applicable as follows:

(1) The prohibition on furnishing or administering a controlled substance to a juvenile who is at least two years the offender's junior does not apply when a cardholder provides cannabis to another cardholder.⁵⁵

(2) The prohibition on inducing or causing a juvenile who is at least two years the offender's junior to use a controlled substance does not apply in the case of a practitioner signing a written certification for a juvenile who is a patient.⁵⁶

(3) The prohibition on trafficking in drugs, including marihuana, does not apply to a cardholder complying with the law governing the medical use of cannabis.⁵⁷

(4) The prohibition on knowingly cultivating marihuana, or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance, does not apply to a cardholder complying with the law governing the medical use of cannabis.⁵⁸

(5) The prohibition on knowingly obtaining, possessing, or using a controlled substance does not apply to a cardholder complying with the law governing the medical use of cannabis.⁵⁹

(6) The prohibition on knowingly using, or possessing with purpose to use; selling, possessing, or manufacturing with purpose to sell; or advertising the sale of drug paraphernalia does not apply to a cardholder complying with the law governing the medical use of cannabis or a person permitted under the bill to deliver, transport, transfer, or otherwise provide cannabis-related paraphernalia for free or for a charge to a cardholder.⁶⁰

⁵⁵ R.C. 2925.02(B)(2).

⁵⁶ R.C. 2925.02(B)(3).

⁵⁷ R.C. 2925.03(B)(4).

⁵⁸ R.C. 2925.04(B).

⁵⁹ R.C. 2925.11(B)(5).

⁶⁰ R.C. 2925.14(D)(2) and 3728.06.

Nonregistered persons

Defenses to prosecution

The bill permits a person who is not a registered qualifying patient or visiting qualifying patient to assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis unless the person is being prosecuted for violating a prohibition that would be applicable if the person were a registered patient (see "**Registered qualifying patients – Prohibited activities**," above). This defense is presumed valid if the evidence shows that all of the following apply:⁶¹

(1) At least 30 days before the date the charges against the person are filed, a practitioner made a statement regarding the benefits to the person of the medical use of cannabis that is substantively similar to the written certification from a practitioner that a patient must obtain to receive a registry identification card. In this case, the practitioner's statement may relate to the benefits of the medical use of cannabis for not only a debilitating medical condition, but also a serious medical condition.

(2) The person was in possession of less than 200 grams of usable cannabis and 12 mature cannabis plants.

(3) The person was engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of cannabis or paraphernalia necessary for the administration of cannabis to treat or alleviate the person's serious or debilitating medical condition or related symptoms.

Immunity from disciplinary action or property forfeiture

If a person who is not a registered qualifying patient or visiting qualifying patient demonstrates the person's medical purpose for using cannabis, the bill provides that the person is not subject to the following: (1) disciplinary action by a business or licensing agency, and (2) forfeiture of any interest in or right to property.⁶²

Disclosure of information

The bill prohibits any person or government entity from disclosing any information contained in an application for an initial or renewed registry identification card, a practitioner's written certification submitted with an application, or a registry identification card except as necessary for the administration of the law governing the medical use of cannabis or in collaboration with a law enforcement officer as authorized

⁶¹ R.C. 2925.46(A).

⁶² R.C. 2925.46(B).

by the bill (see "**Falsified or fraudulent information**," above). Any person violating this provision is guilty of a first degree misdemeanor.⁶³

If an individual being investigated by a state or local law enforcement officer credibly asserts during the course of the investigation that the individual is a cardholder, the bill prohibits the law enforcement officer and the law enforcement agency from providing any information from the investigation of a cardholder to any law enforcement authority that does not recognize the bill's law enforcement protections relating to the medical use of cannabis, except as required by federal law or the United States Constitution.⁶⁴

Additional debilitating medical conditions

The bill permits any person to submit a petition to the Director of Health requesting that a medical condition or its treatment be added as a debilitating medical condition for the purpose of the law governing the medical use of cannabis. The petition must be submitted in accordance with rules to be adopted by the Director.⁶⁵

The bill requires the Director to conduct a hearing for each petition; however, the Director may hear multiple petitions as one hearing. The Director must give public notice of each hearing, make each hearing open to the public, and allow public comment on petitions. The Director has 180 days after a petition is submitted to approve or deny it. In determining whether to approve or deny a petition, the Director must consider the petition, any comments regarding the petition made at the hearing, and the advice of the Medical Cannabis Advisory Council (see "**MEDICAL CANNABIS ADVISORY COUNCIL**," below). The Director's approval or denial must be in the form of an adjudication issued in accordance with, and subject to, the Administrative Procedure Act.⁶⁶

Internet-based patient and caregiver verification system

The bill requires the Department to operate an Internet-based system for use by law enforcement officers to verify whether a person is a registered qualifying patient or registered primary caregiver and whether the address of a location at which cannabis is being cultivated is a patient's or caregiver's registered cultivation site. A law enforcement officer must verify this information before initiating an arrest, raid, or

⁶³ R.C. 3728.41 and 3728.99.

⁶⁴ R.C. 2925.45.

⁶⁵ R.C. 3728.01(D)(3) and 3728.37.

⁶⁶ R.C. 3728.37.

other law enforcement action concerning cannabis. If the person is a patient or caregiver or the location is a registered cultivation site, no further action may be initiated except on issuance of a warrant.

The bill requires the Department to make weekly updates to the system while verifying its accuracy. The Department must make the system available for use by law enforcement officers 24 hours a day.⁶⁷

No reimbursement by medical assistance programs or health insurers

The bill provides that no portion of the law governing the medical use of cannabis is to be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis.⁶⁸

Use of cannabis in the workplace

The bill provides that no portion of the law governing the medical use of cannabis is to be construed to require an employer to accommodate the use of cannabis in any workplace or any employee working while impaired. The bill specifies, however, that a registered qualifying patient or a visiting qualifying patient is not to be considered impaired solely because of the presence in the patient's body of metabolites or components of cannabis, if the metabolites or components are in a concentration insufficient to cause impairment.⁶⁹

Rule-making

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

- (1) Govern the manner in which the Department considers applications for initial and renewed registry identification cards;
- (2) Establish fees for initial and renewed registry identification cards;
- (3) Govern the submission of petitions requesting that a medical condition or its treatment be added as a debilitating medical condition for the bill's purposes.⁷⁰

⁶⁷ R.C. 3728.43.

⁶⁸ R.C. 3728.31(A).

⁶⁹ R.C. 3728.31(B).

⁷⁰ R.C. 3728.35(A).

With respect to fees for registry identification cards, the bill permits the Director to establish the fees according to a sliding scale based on family income. However, the amount of the fees must be sufficient to generate enough revenue to offset all expenses of implementing and administering the bill. The bill permits the Department to accept donations from private sources to help offset the expenses in order to reduce the fees.⁷¹

The bill requires the Director to adopt the initial rules no later than 120 days after the bill's effective date. If the Director fails to adopt the initial rules within that time, a qualifying patient or primary caregiver may petition the Franklin County Court of Appeals for a writ of mandamus to compel the Director to adopt the rules.⁷²

Annual report

The bill requires the Department to submit to the General Assembly an annual report that contains, at a minimum, all of the following information for the previous year:

- (1) The number of applications for initial and renewed registry identification cards;
- (2) The number of applications denied and the reasons for the denials;
- (3) The number of registered qualifying patients and registered primary caregivers in each county;
- (4) The nature of the debilitating medical conditions of the patients;
- (5) The number of registry identification cards revoked;
- (6) The number of practitioners providing written certifications for patients.

The bill provides that the report must not disclose any identifying information about patients, caregivers, or practitioners.⁷³

⁷¹ R.C. 3728.35(B).

⁷² R.C. 3728.351.

⁷³ R.C. 3728.45.

MEDICAL CANNABIS ADVISORY COUNCIL

Creation and membership

The bill creates the Medical Cannabis Advisory Council to provide outreach services regarding the medical use of cannabis and advice to the Director of Health regarding petitions to add medical conditions or treatments to the list of debilitating medical conditions for which cannabis may be used under the bill.⁷⁴

The Council is to consist of the following members, all of whom are to be appointed by the Director of Health:

(1) Four physicians who are certified by a national organization recognized by the State Medical Board as specializing in family medicine or an area that focuses on pain management or clinical oncology;

(2) Three registered qualifying patients. (The initial members need to have only a debilitating medical condition, since the registration process will not yet have begun.)⁷⁵

The bill permits any person to submit to the Director recommendations regarding individuals to be appointed to the Council. However, it prohibits the Director from appointing an individual who is opposed to the legal use of cannabis to treat or alleviate a debilitating medical condition or its associated symptoms. The Director must make the initial appointments to the Council not later than 120 days after the bill's effective date.⁷⁶

The Council must select one of the members to serve as the chairperson.⁷⁷

Terms of office

Each Council member is to serve a two-year term and hold office from the date of appointment until the end of the member's term. Council members may be reappointed.⁷⁸

⁷⁴ R.C. 3728.38 and 3728.381.

⁷⁵ R.C. 3728.38(A); Section 3.

⁷⁶ R.C. 3728.38(B); Section 3.

⁷⁷ R.C. 3728.38(E).

⁷⁸ R.C. 3728.38(C).

Vacancies are to be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed is to hold office for the remainder of that term. The bill provides that a member may continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

Compensation

The bill provides that Council members do not receive compensation for their service on the Council, but the members may be reimbursed for their actual and necessary expenses incurred in the performance of service on the Council.⁷⁹

Meetings

The bill requires the chairperson to call the Council to meet at least quarterly and at other times as necessary. The Department is to provide the Council with support services as necessary for the Council to perform its duties, including providing the Council with a place to meet.⁸⁰

HISTORY

ACTION	DATE
Introduced	04-26-11

H0214-I-129/ejs

⁷⁹ R.C. 3728.38(D).

⁸⁰ R.C. 3728.38(F) and (G).