



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 153

130th General Assembly  
(As Introduced)

Reps. R. Hagan, Foley, Ramos

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## 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 certain debilitating medical conditions.
- Allows a registered qualifying patient to designate a primary caregiver to assist with the patient's medical use of cannabis and requires that 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 up to five patients each) to possess not more than 200 grams of usable cannabis and 12 mature cannabis plants.
- Specifies certain documents as valid registry identification cards 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 regarding 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 petition the Director of Health to include a medical condition or its treatment as a debilitating medical condition.
- Requires the Department to operate an Internet-based system for use by law enforcement to verify (1) whether a person is registered as a qualifying patient or primary caregiver and (2) whether a location at which cannabis is being cultivated is a registered cultivation site.

- Requires law enforcement to verify registration and location information before initiating an arrest, raid, or other 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 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.<sup>1</sup>

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 card, the patient must (1) have been diagnosed by a medical practitioner as having a

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<sup>1</sup> R.C. 3719.01 and 3728.01.

debilitating medical condition and (2) 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 (1) provide outreach services regarding the medical use of cannabis and (2) advise the Director of Health regarding petitions submitted to the Department seeking 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 authorized to use 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.<sup>2</sup> 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).<sup>3</sup>

#### Certification of medical cannabis benefits

In order to obtain a registry identification card, the patient also must submit a practitioner's written certification stating that, in the practitioner's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis. The certification must be signed (1) in the course of a bona fide practitioner-patient relationship and (2) after a full assessment of the patient's medical history. The certification must specify the patient's debilitating medical condition.<sup>4</sup>

#### Authorized practitioners

Under the bill, any one of the following practitioners may diagnose a patient's debilitating medical condition or provide the required written certification: a dentist;

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<sup>2</sup> R.C. 3728.01(M) and 3728.02.

<sup>3</sup> R.C. 3728.01(D).

<sup>4</sup> R.C. 3728.07.



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.<sup>5</sup>

### **Application for registry identification card**

Upon diagnosis by a practitioner and receipt of a practitioner's certification, the patient may submit an application for a registry identification card 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).

The patient also must (1) submit to the Department the written certification obtained from a practitioner and (2) pay the initial card fee established in rules to be adopted by the Director of Health.<sup>6</sup>

### **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:

- (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;

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<sup>5</sup> R.C. 3728.01(K) and 3728.07.

<sup>6</sup> R.C. 3728.10.

(5) At the option of the Department, a photograph of the patient.<sup>7</sup>

### **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. The Department must then revoke the patient's registry identification card.<sup>8</sup>

The patient also 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.<sup>9</sup>

### **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.<sup>10</sup>

### **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;

(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;

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<sup>7</sup> R.C. 3728.13 and 3728.17(A).

<sup>8</sup> R.C. 3728.20.

<sup>9</sup> R.C. 3728.22 and 3728.25.

<sup>10</sup> R.C. 3728.02(A).



(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.<sup>11</sup>

### **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 21 years old and may not serve more than five registered qualifying patients.<sup>12</sup> The bill does not establish any further qualifications for registration as a caregiver.

#### **Application for registry identification card**

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

(1) An application that includes 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);

--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;

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<sup>11</sup> R.C. 3728.02(B) and 3728.26.

<sup>12</sup> R.C. 3728.01(L) and 3728.09.

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

### **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.<sup>14</sup> 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.<sup>15</sup>

### **Notice of changes and lost cards**

The bill requires a registered primary caregiver serving a patient who no longer has 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.<sup>16</sup>

The caregiver also 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.<sup>17</sup>

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<sup>13</sup> R.C. 3728.08 and 3728.11.

<sup>14</sup> R.C. 3728.13.

<sup>15</sup> R.C. 3728.13 and 3728.17(A).

<sup>16</sup> R.C. 3728.21.

<sup>17</sup> R.C. 3728.22 and 3728.25.



## 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, and (3) manufacture paraphernalia relating to the administration of cannabis.<sup>18</sup> The bill permits a caregiver to be compensated for costs associated with any of these activities.<sup>19</sup>

## 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.<sup>20</sup>

## 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;
- (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).

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<sup>18</sup> R.C. 3728.03(A).

<sup>19</sup> R.C. 3728.04.

<sup>20</sup> R.C. 3728.03(B) and 3728.26.

Regarding the limit on the amount of 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, with respect to the limit on the number of mature cannabis plants that may be possessed, immature cannabis plants do not count toward the limit.<sup>21</sup>

## **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.<sup>22</sup>

### **Identification card list**

The bill requires the Department to maintain a list of the persons who have been issued registry identification cards. The bill specifies that identifying information contained on the list is confidential and not subject to disclosure, except to authorized employees of the Department when performing official duties or collaborating with law enforcement officers (see "**Falsified or fraudulent information**," below).<sup>23</sup>

### **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. Under the bill, the Department has the authority to deny the application if the patient or caregiver does not submit a complete application within ten days of receiving the notice.<sup>24</sup>

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<sup>21</sup> R.C. 3728.02(C) and 3728.03(C).

<sup>22</sup> R.C. 3728.12(A) and 3728.13.

<sup>23</sup> R.C. 3728.40.

<sup>24</sup> R.C. 3728.12(B).

## Reasons for application denial

Under the bill, the Department may 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 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;

(5) In the case of a patient 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 the patient's parent, guardian, or legal custodian;

--The patient's parent, guardian, or legal custodian 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 a felony drug abuse offense listed in the application is sufficient grounds for denial.<sup>25</sup>

A patient or caregiver whose application is denied may not reapply until at least 30 days after the Department issues the denial.<sup>26</sup>

## Card renewal

To renew a registry identification card, the registered qualifying patient or 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

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<sup>25</sup> R.C. 3728.12(C).

<sup>26</sup> R.C. 3728.12(D).

Director of Health. The Department may approve or deny the renewal according to the same procedures that apply to an initial application.<sup>27</sup>

### **Documentation deemed an identification card**

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 under certain circumstances. If all of the requirements for approval of the application have been met, the application will be considered a valid card on the 20th day after the complete application was submitted, if the Department fails to do either of the following:

- (1) Approve or deny the application within 15 days of receiving it;
- (2) Issue the registry identification card within five business days of approving the application.

An application considered a registry identification card in this manner is valid as long as the requirements for approval of the application continue to be met.<sup>28</sup>

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 notarized statement are to be considered a valid registry identification card if they contain the following:

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

Documentation considered to be a registry identification card in this manner is valid as long as the holder remains a qualifying patient.<sup>29</sup>

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<sup>27</sup> R.C. 3728.10 to 3728.12.

<sup>28</sup> R.C. 3728.14 and 3728.17(B).

<sup>29</sup> R.C. 3728.15 and 3728.17(C).



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 is considered a valid registry identification card if it contains the following information:

- (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 registry identification card in this manner is valid as long as the holder remains a primary caregiver.<sup>30</sup>

### **Card revocation and modification based on changes in medical condition**

If a registered qualifying patient 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.<sup>31</sup>

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

- (1) Remove from the registry identification card any information about the patient who ceased to have a debilitating medical condition if the caregiver serves more than one patient;
- (2) Revoke the card if the caregiver serves only one patient.<sup>32</sup>

### **Other reasons for card revocation**

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

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<sup>30</sup> R.C. 3728.16 and 3728.17(D).

<sup>31</sup> R.C. 3728.20.

<sup>32</sup> R.C. 3728.21.

(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.<sup>33</sup>

### **Address change**

In the event of a patient's or caregiver's name or address change, the bill requires the Department to issue a new registry identification card within ten business days after the Department receives notice. The patient or caregiver must pay a \$10 fee.<sup>34</sup>

### **Lost card**

In the event a patient or caregiver loses a registry identification card, the bill requires the Department to issue a replacement card, containing a new random identification number, within five business days after the Department receives notice. The patient or caregiver must pay a \$10 fee.<sup>35</sup>

### **Falsified or fraudulent information**

The bill permits a Department employee to notify a law enforcement officer about falsified or fraudulent information contained in an application. If an initial or renewal application, or a practitioner's certification includes falsified or fraudulent information, and the employee first confers with the employee's supervisor or at least one other Department employee and both agree that circumstances warrant notification, then the employee may notify law enforcement.<sup>36</sup>

### **Visiting qualifying patients**

The bill permits a visiting qualifying patient who holds a valid document issued under the laws of another state or territory that is equivalent to an Ohio registry identification card to acquire, possess, transport, and use cannabis and related paraphernalia without holding an Ohio registry identification card. This provision

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<sup>33</sup> R.C. 3728.18.

<sup>34</sup> R.C. 3728.22.

<sup>35</sup> R.C. 3728.25.

<sup>36</sup> R.C. 3728.42.

applies only to a person who is not an Ohio resident or who has been an Ohio resident for less than 30 days.<sup>37</sup>

A visiting patient is subject to the same prohibitions as a registered qualifying patient. In addition, a visiting patient may not cultivate cannabis.<sup>38</sup>

### **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 out of public view and is kept locked whenever the cardholder is away. 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.<sup>39</sup>

### **Statutory protections regarding medical use of cannabis**

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

#### **Protections for all cardholders**

The bill provides for the following protections for all cardholders by prohibiting all of the following:

(1) An employer or licensing agency from disciplining a cardholder for delivering, transporting, transferring, or otherwise providing cannabis to another cardholder in accordance with the bill's provisions;<sup>40</sup>

(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 the failure to do so would violate federal law;<sup>41</sup>

(3) A court from considering a person's status as a cardholder when determining parental rights and responsibilities, parenting time, or companionship or visitation

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<sup>37</sup> R.C. 2925.43, 3728.01(T), and 3728.02(A)(1) and (3).

<sup>38</sup> R.C. 3728.02(A)(2) and (B).

<sup>39</sup> R.C. 3728.27.

<sup>40</sup> R.C. 3728.28.

<sup>41</sup> R.C. 3728.29.

rights with a minor, unless the person's behavior is such that it creates an unreasonable danger that can be clearly articulated and substantiated;<sup>42</sup>

(4) A law enforcement officer from considering a person's possession of a valid registry identification card, application for a registry identification card, or valid visiting qualifying patient identification card as probable cause or reasonable suspicion to search the person or seize the person's property.<sup>43</sup>

### **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 disciplining a patient for engaging in the medical use of cannabis;<sup>44</sup>

(2) A law enforcement officer or agency from seizing 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 acts incidental to a patient's medical use of cannabis;<sup>45</sup>

(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 acts incidental to a patient's medical use of cannabis.<sup>46</sup>

If a law enforcement officer seizes cannabis from a patient and fails to return it, the officer's employer is liable to the patient for the value of the cannabis.<sup>47</sup>

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<sup>42</sup> R.C. 3728.30.

<sup>43</sup> R.C. 2925.44(A).

<sup>44</sup> R.C. 3728.28.

<sup>45</sup> R.C. 2925.44(C).

<sup>46</sup> R.C. 2925.44(C).

<sup>47</sup> R.C. 2925.44(C).



## **Protections for primary caregivers**

The bill prohibits an employer or licensing agency from disciplining a registered primary caregiver for engaging in activities authorized by the bill.<sup>48</sup>

## **Protections for practitioners**

The bill prohibits an employer or licensing agency from disciplining a practitioner for engaging in activities authorized by the bill. However, this prohibition does not apply when a licensing agency disciplines a practitioner for (1) failing to properly evaluate a patient's medical condition or (2) violating the standard of care for evaluating medical conditions.<sup>49</sup>

## **Protections for other persons**

The bill prohibits an employer or licensing agency from disciplining 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;<sup>50</sup>

(2) Being in the presence or vicinity of a registered qualifying patient or visiting qualifying patient engaging in the medical use of cannabis;<sup>51</sup>

(3) Assisting a patient's or visiting patient's use or administration of cannabis, regardless of whether the person is a registered primary caregiver.<sup>52</sup>

## **Immunity from criminal and civil liability**

### **General immunity**

The bill provides that a cardholder, practitioner, or other person (1) is not subject to arrest, prosecution, or any criminal or civil penalty and (2) cannot be denied any right or privilege for engaging in activities authorized by the bill.<sup>53</sup>

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<sup>48</sup> R.C. 3728.28(A)(2) and (3).

<sup>49</sup> R.C. 3728.28(A)(5) and (B).

<sup>50</sup> R.C. 3728.28(A)(4).

<sup>51</sup> R.C. 3728.28(A)(6).

<sup>52</sup> R.C. 3728.28(A)(7).

<sup>53</sup> R.C. 2925.43(B).



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 possesses (1) a valid identification card and (2) an amount of usable cannabis or number of mature cannabis plants that does not exceed the maximum permitted by the bill. Under the bill, 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.<sup>54</sup>

The bill creates a legal presumption that a registered primary caregiver is engaged in an authorized activity if the caregiver possesses 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. Under the bill, 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.<sup>55</sup>

### **Exceptions to drug offenses**

The bill specifies circumstances in which cardholders are not subject to existing drug laws. Specifically, the bill provides that the following prohibitions do not apply to cardholders or practitioners, as applicable:

(1) The prohibition on furnishing or administering a controlled substance to a juvenile at least two years the cardholder's junior when a cardholder provides cannabis to another cardholder.<sup>56</sup>

(2) The prohibition on inducing or causing a juvenile at least two years the practitioner's junior to use a controlled substance when a practitioner signs a written certification for a juvenile who is a patient.<sup>57</sup>

(3) The prohibition on trafficking in drugs, including marihuana, when a cardholder complies with the law governing the medical use of cannabis.<sup>58</sup>

(4) The prohibition on knowingly cultivating marihuana, or knowingly manufacturing or otherwise engaging in any part of the production of a controlled

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<sup>54</sup> R.C. 2925.43(C)(1).

<sup>55</sup> R.C. 2925.43(C)(2).

<sup>56</sup> R.C. 2925.02(B)(2).

<sup>57</sup> R.C. 2925.02(B)(3).

<sup>58</sup> R.C. 2925.03(B)(4).

substance, when a cardholder complies with the law governing the medical use of cannabis.<sup>59</sup>

(5) The prohibition on knowingly obtaining, possessing, or using a controlled substance when a cardholder complies with the law governing the medical use of cannabis.<sup>60</sup>

(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 when a cardholder complies 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.<sup>61</sup>

## **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:<sup>62</sup>

(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.

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<sup>59</sup> R.C. 2925.04(B).

<sup>60</sup> R.C. 2925.11(B)(5).

<sup>61</sup> R.C. 2925.14(D)(2) and 3728.06.

<sup>62</sup> R.C. 2925.46(A).

(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 either of the following: (1) disciplinary action by a business or licensing agency or (2) forfeiture of any interest in or right to property.<sup>63</sup>

### **Disclosure of information**

The bill generally 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. Disclosure is allowed if necessary for the administration of the law governing the medical use of cannabis or in collaboration with a law enforcement officer as authorized by the bill (see "**Falsified or fraudulent information**," above). Any person violating this provision is guilty of a first degree misdemeanor.<sup>64</sup>

If an individual under investigation by state or local law enforcement credibly asserts during the course of the investigation that the individual is a cardholder, the bill prohibits law enforcement from providing any information to another law enforcement authority that does not recognize the bill's protections relating to the medical use of cannabis, except as required by federal law or the United States Constitution.<sup>65</sup>

### **Additional debilitating medical conditions**

The bill permits any person to petition the Director of Health to add a medical condition or its treatment to the list of 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.<sup>66</sup>

The bill requires the Director to conduct a hearing for each petition; however, the Director may hear multiple petitions in one hearing. The Director must give public

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<sup>63</sup> R.C. 2925.46(B).

<sup>64</sup> R.C. 3728.41 and 3728.99.

<sup>65</sup> R.C. 2925.45.

<sup>66</sup> R.C. 3728.01(D)(3) and 3728.37.

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.<sup>67</sup>

### **Internet-based patient and caregiver verification system**

The bill requires the Department to operate an Internet-based system for use by law enforcement to verify (1) whether a person is a registered qualifying patient or primary caregiver and (2) whether a location at which cannabis is being cultivated is a registered cultivation site. A law enforcement officer must verify this information before initiating an arrest, raid, or 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 update and verify system accuracy on a weekly basis. The system must be available for use by law enforcement 24 hours a day.<sup>68</sup>

### **No reimbursement by medical assistance programs or health insurers**

Under the bill neither a government medical assistance program nor a private health insurer is required to reimburse a person for costs associated with the medical use of cannabis.<sup>69</sup>

### **Use of cannabis in the workplace**

The bill does not 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 of metabolites or components of cannabis in the patient's body, if the concentration of metabolites or components is insufficient to cause impairment.<sup>70</sup>

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<sup>67</sup> R.C. 3728.37.

<sup>68</sup> R.C. 3728.43.

<sup>69</sup> R.C. 3728.31(A).

<sup>70</sup> R.C. 3728.31(B).

## 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.<sup>71</sup>

With respect to card fees, the bill permits the Director to establish fees according to a sliding scale based on family income. However, fees must be sufficient to generate enough revenue to offset all expenses incurred as a result of the bill. The bill permits the Department to accept donations from private sources to help offset expenses and reduce fees.<sup>72</sup>

The bill requires the Director to adopt 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 compelling the Director to adopt the rules.<sup>73</sup>

## Annual report

The bill requires the Department to submit to the General Assembly an annual report that contains, at a minimum, 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;

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<sup>71</sup> R.C. 3728.35(A).

<sup>72</sup> R.C. 3728.35(B).

<sup>73</sup> R.C. 3728.36.



(5) The number of registry identification cards revoked;

(6) The number of practitioners providing written certifications for patients.

The report must not disclose any identifying information about patients, caregivers, or practitioners.<sup>74</sup>

## **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 to advise 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.<sup>75</sup>

The Council consist of the following members, all of whom are 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 only have a debilitating medical condition, since the registration process will not yet have begun.)<sup>76</sup>

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.<sup>77</sup>

The Council must select one member to serve as the chairperson.<sup>78</sup>

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<sup>74</sup> R.C. 3728.45.

<sup>75</sup> R.C. 3728.38 and 3728.381.

<sup>76</sup> R.C. 3728.38(A); Section 3.

<sup>77</sup> R.C. 3728.38(B); Section 3.

<sup>78</sup> R.C. 3728.38(E).



## Terms of office

Each Council member serves a two-year term and holds office from the date of the appointment until the end of the term. Council members may be reappointed.<sup>79</sup>

Vacancies are filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring before the expiration date of the predecessor's term holds office for the remainder of that term. The bill provides that a member may continue in office past the term's expiration date until a successor takes office or a period of 60 days has elapsed, whichever occurs first.<sup>80</sup>

## Compensation

The bill provides that Council members may not receive compensation for their service, but may be reimbursed for actual and necessary expenses incurred.<sup>81</sup>

## Meetings

The bill requires the chairperson to call the Council to meet at least quarterly and at other times as necessary. The Department of Health must provide the Council with support services as necessary for it to perform its duties, including providing a meeting place.<sup>82</sup>

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## HISTORY

ACTION	DATE
Introduced	05-02-13

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<sup>79</sup> R.C. 3728.38(C).

<sup>80</sup> R.C. 3728.38(C).

<sup>81</sup> R.C. 3728.38(D).

<sup>82</sup> R.C. 3728.38(F) and (G).

