



Dennis M. Papp

Bill Analysis
Legislative Service Commission

S.B. 343
127th General Assembly
(As Introduced)

Sens. Roberts, D. Miller

BILL SUMMARY

- Enacts a statutory mechanism to regulate and authorize the medical use of marihuana by "qualifying patients" who have a valid "registry identification card" (i.e., a "registered qualifying patient") and permits any qualifying patient to apply to the Department of Health for a registry identification card to be used under the mechanism, with the application including a health care "practitioner's" written certification stating that, in the practitioner's professional opinion and scope of practice, and in the course of a *bona fide* practitioner-client relationship with the qualifying patient and after the practitioner has completed a full assessment of the qualifying patient's medical history, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis.
- Defines a "qualifying patient" as a person who has been diagnosed by a health care practitioner acting within the practitioner's scope of practice as having a debilitating medical condition.
- Specifies certain cannabis-related activities that a registered qualifying patient may engage in under the mechanism to treat or alleviate the patient's debilitating medical condition or symptoms associated with it.
- Permits a "primary caregiver" who is at least 21 years of age to apply to the Department of Health for a registry identification card and specifies certain cannabis-related activities that a caregiver who obtains such a card (i.e., a "registered primary caregiver") may engage in to assist a registered qualifying patient for whom the registered primary caregiver serves in that capacity.
- Defines a "primary caregiver" as an individual who has agreed to assist with a registered qualifying patient's medical use of cannabis.

- Requires the Department of Health to approve or deny an application within 15 days after receipt of a completed application, specifies circumstances in which the Department may deny an application, and provides that a "registry identification card" issued upon approval of an application is valid for one year following its issuance.
- Provides that an application for a registry identification card is deemed a valid registry identification card beginning on the 20th day after the date the application is submitted to the Department of Health if all of the requirements for approval of the application have been met and the Department either fails to approve or deny the application, or fails to issue the registry identification card, within the deadlines specified in the bill.
- Provides that if, at any time after 140 days after the bill's effective date, the Department of Health is not accepting applications from qualifying patients or primary caregivers for a registry identification card for any reason: (1) a written certification for the qualifying patient together with a notarized statement by the qualifying patient of specified information are deemed a valid registry identification card for the qualifying patient, and (2) a notarized statement by the primary caregiver of specified information is deemed a valid registry identification card for the primary caregiver.
- Provides for the revocation of a registry identification card in specified circumstances.
- Requires a cardholder to maintain cannabis plants in a room, greenhouse, garden, or other enclosed area that is out of public view, subject to specified limited exceptions.
- Provides certain protections to registered qualifying patients and registered primary caregivers related to their cardholder status from: (1) disciplinary action by an employer or licensing agency, (2) generally, certain penalizing conduct by a school, employer, or landlord, and (3) generally, a denial of parental rights and responsibilities or visitation with a minor.
- Specifies that the mechanism does not require: (1) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis, or (2) an employer to

accommodate the use of cannabis in any workplace or any employee working while impaired.

- Imposes a number of other functions and duties upon the Department of Health that relate to the medical use of cannabis mechanism, including the adoption of rules, the maintenance of a list of persons who are issued registry identification cards, which generally is confidential, the sharing of specified information related to the mechanism with law enforcement officers, and the submission to the General Assembly of an annual report regarding the mechanism.
- Establishes the Medical Cannabis Advisory Council to accept and consider petitions from the public to add medical conditions to the list of debilitating medical conditions recognized under the mechanism or to increase the number of grams of medical cannabis and the number of mature cannabis plants a cardholder may possess, and establishes the Cannabis Cultivation Advisory Council to provide cardholders advice and recommendations on the best practices for the safe and efficient cultivation of cannabis.
- Provides that a valid document issued to a "visiting qualifying patient" under the laws of another state, district, territory, commonwealth, or insular possession of the United States that is the equivalent to a registry identification card has the same force and effect as a registry identification card issued to a registered qualifying patient.
- Prohibits any person or government entity from disclosing any information contained in an application for a registry identification card, a written certification submitted with such an application, or a registry identification card except as necessary in the administration of its provisions regarding the medical use of cannabis or as authorized by the provisions regarding the sharing of information with law enforcement officers, and makes a violation of this prohibition a misdemeanor of the first degree.
- Specifies that: (1) possession of or application for a registry identification card does not constitute probable cause or reasonable suspicion to search or seize the person or property of the person possessing or applying for the card, (2) no person may be subject to arrest, prosecution, or penalty or be denied any right or privilege solely for being with or near a registered primary caregiver engaging in the use,

or assisting a registered qualifying patient's use or administration of cannabis, under the mechanism, (3) no law enforcement officer or law enforcement agency may seize cannabis, cannabis paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with use of cannabis under the mechanism, no court may order the forfeiture of any such item that is so possessed, owned, or used, and, if a law enforcement officer seizes and does not return cannabis possessed in accordance with the mechanism, the officer's agency is liable to the cardholder for the value of the cannabis.

- Specifies circumstances in which a person who is not a registered qualifying patient generally may assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis.
- Provides that most of the prohibitions that comprise the offense of "corrupting another with drugs" do not apply to a holder of a valid registry identification card under, or a physician who provides a practitioner's written certification under, the bill's statutory mechanism to regulate and authorize the medical use of marihuana, to the extent and under the circumstances described in the mechanism.
- Provides that the prohibitions that comprise the drug trafficking offenses, drug possession offenses, and drug paraphernalia offenses and the offenses of "illegal manufacture of drugs" and "illegal cultivation of marihuana" do not apply to a holder of a valid registry identification card under the bill's statutory mechanism to regulate and authorize the medical use of marihuana, to the extent and under the circumstances described in the mechanism.

TABLE OF CONTENTS

Regulation and authorization of the medical use of cannabis	5
General authorization for a registered qualifying patient.....	6
Registered primary caregivers.....	6
Delivery, transport, transfer, or other provision of cannabis or paraphernalia to a registered qualifying patient or a registered primary caregiver	7
Certification by practitioner as to benefit to qualifying patient	7
Registry identification cards--issuance, revocation, and replacement	8
Cardholder maintenance of cannabis plants.....	11
Protections afforded to registered qualifying patients and registered primary caregivers	12

No requirement of reimbursement for costs of, or of employer accommodation for employee using, cannabis.....	12
Department of Health functions and duties in general	13
Medical Cannabis Advisory Council.....	14
Cannabis Cultivation Advisory Council.....	16
Recognition of documents issued by other jurisdictions that are equivalent to a registry identification card	17
Confidentiality of information related to registry identification cards and applications	17
Definitions	17
Criminal investigations, prosecutions, and punishments--generally no linkage to activities authorized under the medical use of cannabis mechanism	20
Specified persons acting in accordance with the mechanism are not subject to arrest, prosecution, or criminal or civil penalty; presumptions of authorized conduct	20
Possession of registry identification card, being in the presence or vicinity of cardholder, and seizure of items	21
Use of medical use of cannabis as a defense, by person who is not a registered qualifying patient	22
Limitation on law enforcement sharing of information	23
Corrupting another with drugs.....	23
Existing law	23
Operation of the bill.....	24
Drug trafficking offenses.....	24
Existing law	24
Operation of the bill.....	25
Illegal manufacture of drugs or cultivation of marihuana.....	26
Existing law	26
Operation of the bill.....	27
Drug possession offenses	27
Existing law	27
Operation of the bill.....	28
Drug paraphernalia offenses.....	28
Existing law	28
Operation of the bill.....	29
Correction of mistaken cross-reference.....	29

CONTENT AND OPERATION

Regulation and authorization of the medical use of cannabis

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

General authorization for a registered qualifying patient

The bill provides that, subject to the provisions described in the next paragraph, a "registered qualifying patient" (see "**Definitions**," below for definitions of terms in quotes) may do any of the following to treat or alleviate the registered qualifying patient's "debilitating medical condition" or symptoms associated with the patient's debilitating medical condition: (1) acquire, possess, transport, and use "cannabis" and paraphernalia relating to the administration of cannabis, (2) cultivate cannabis at the registered qualifying patient's "registered cultivation sites," or (3) manufacture paraphernalia relating to the administration of cannabis.

A registered qualifying patient's possession of a valid "registry identification card" does not authorize the patient to do any of the following: (1) except as provided in rules adopted under the bill's provision described below in "**Medical Cannabis Advisory Council**," possess more than 200 grams of "usable cannabis" or more than 12 mature "cannabis plants," (2) undertake any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice, (3) possess cannabis or otherwise engage in the "medical use of cannabis" in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility, (4) smoke cannabis on any form of public transportation or in any public place, (5) operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while impaired (for purposes of this provision, a registered qualifying patient is not to be considered to be impaired solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment), or (6) transport cannabis into Ohio from outside Ohio.

Neither of the following may be included for purposes of determining whether a registered qualified patient possesses more usable cannabis or mature cannabis plants than permitted by the provision described in clause (1) of the preceding paragraph or rules adopted under the bill's provision described below in "**Medical Cannabis Advisory Council**": (1) immature cannabis plants, or (2) if the usable cannabis is added as an ingredient to food to be consumed by a registered qualifying patient, the weight of the other ingredients that are not usable cannabis included in the food. (R.C. 3728.02.)

Registered primary caregivers

The bill specifies that, except as described in the next paragraph, a "registered primary caregiver" may do any of the following to assist a registered qualifying patient for whom the registered primary caregiver serves as registered primary caregiver to engage in the medical use of cannabis: (1) acquire, possess, and transport cannabis and paraphernalia relating to the administration of

cannabis, (2) cultivate cannabis at the registered primary caregiver's registered cultivation sites, or (3) manufacture paraphernalia relating to the administration of cannabis.

A registered primary caregiver's possession of a valid registry identification card does not authorize the caregiver to do any of the following: (1) except as provided in rules adopted under the bill's provision described below in "Medical Cannabis Advisory Council," possess more than 200 grams of usable cannabis or more than 12 mature cannabis plants, (2) possess cannabis in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility, or (3) transport cannabis into Ohio from outside Ohio.

Neither of the following may be included for purposes of determining whether a registered primary caregiver possesses more usable cannabis or mature cannabis plants than permitted by the provision described in clause (1) of the preceding paragraph or rules adopted under the bill's provision described below in "Medical Cannabis Advisory Council": (1) immature cannabis plants, or (2) if the usable cannabis is added as an ingredient to food to be consumed by a registered qualifying patient, the weight of the other ingredients that are not usable cannabis included in the food.

A registered primary caregiver may receive compensation for costs associated with the activities the caregiver engages in pursuant to the provisions described above in the preceding three paragraphs. No individual under 21 years of age may become a registered primary caregiver. (R.C. 3728.03, 3728.04, and 3728.05.)

Delivery, transport, transfer, or other provision of cannabis or paraphernalia to a registered qualifying patient or a registered primary caregiver

The bill permits a "cardholder" (defined by the bill in R.C. 3728.01 as a registered qualifying patient or registered primary caregiver) to deliver, transport, transfer, or otherwise provide cannabis to another cardholder if the transfer does not cause the other cardholder to possess more usable cannabis or mature cannabis plants than permitted by the bill or rules adopted under the bill. The bill permits any person to deliver, transport, transfer, or otherwise provide paraphernalia relating to the administration of cannabis for free or charge to a cardholder. (R.C. 3728.06 and 3728.07.)

Certification by practitioner as to benefit to qualifying patient

The bill provides that a "practitioner" may sign a "written certification" for a "qualifying patient" stating that in the practitioner's professional opinion and

scope of practice the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis. The practitioner may sign the written certification only in the course of a *bona fide* practitioner-patient relationship with the qualifying patient and after the practitioner has completed a full assessment of the qualifying patient's medical history. The written certification must specify the qualifying patient's debilitating medical condition. (R.C. 3728.08.)

Registry identification cards--issuance, revocation, and replacement

Application by qualifying patient. The bill provides that a qualifying patient who seeks an initial or renewed registry identification card must submit all of the following to the Department of Health in accordance with the rules it is required by the bill to adopt: (1) a completed application for the registry identification card, which must include, at a minimum, the name, address, and date of birth of the qualifying patient, except that no address is required for an applicant who is homeless; the name, address, and telephone number of the qualifying patient's practitioner who signs the written certification for the qualifying patient; and the address of each location, if any, at which the qualifying patient will cultivate cannabis once issued a registry identification card, (2) the initial or renewal fee, as appropriate, established in those rules, and (3) a written certification for the qualifying patient (R.C. 3728.10).

Application by primary caregiver. Under the bill, a primary caregiver who seeks an initial or renewed registry identification card must submit all of the following to the Department of Health in accordance with the rules it is required by the bill to adopt: (1) a completed application for the registry identification card, which must include, at a minimum, the name, address, and date of birth of the primary caregiver; the name, address, and date of birth of each qualifying patient the primary caregiver seeks to serve as a registered primary caregiver, except that no address is required for a qualifying patient who is homeless; and the address of each location, if any, at which the primary caregiver will cultivate cannabis once issued a registry identification card, (2) evidence satisfactory to the Department that the primary caregiver is at least twenty-one years of age, and (3) the initial or renewal fee, as appropriate, established in those rules (R.C. 3728.11).

Department of Health duties regarding application. The bill requires the Department of Health to verify the information contained in an application for an initial or renewed registry identification card submitted by a qualifying patient or primary caregiver under the provisions described above and, in accordance with the Administrative Procedure Act, approve or deny the application. Unless the application is incomplete, the Department must issue the approval or denial not later than 15 days after receiving the application. If the application is incomplete, the Department must notify the applicant that it is incomplete and that the applicant has ten days from the date of receiving the notice to provide a complete

application to the Department, and the Department must issue the approval or denial not later than 15 days after the date the applicant receives the notice. An applicant whose application is denied in either case may reapply under the provisions described above in the two preceding paragraphs, as appropriate, no earlier than 30 days after the Department issues the denial.

The Department may deny the application if one or more of the following applies:

- (1) The application is not complete;
- (2) In the case of an application from a qualifying patient, the applicant does not submit a written certification for the qualifying patient with the application;
- (3) The Department determines that the application or written certification was purposefully falsified;
- (4) The applicant fails to pay the initial or renewal fee, as appropriate;
- (5) In the case of an applicant who is a qualifying patient under 18 years of age, either of the following apply: (a) the applicant's practitioner who signs the written certification for the qualifying patient has not explained the potential risks and benefits of the medical use of cannabis to the applicant and to a parent, guardian, or legal custodian of the applicant, or (b) the parent, guardian, or legal custodian fails to consent in writing to allowing the applicant's medical use of cannabis in accordance with the bill's provisions described above in "**General authorization for a registered qualifying patient**," to becoming and serving as one of the applicant's registered primary caregivers, and to controlling the applicant's acquisition, dosage, and frequency of the medical use of cannabis. (R.C. 3728.12.)

Issuance of card. The bill specifies that, not later than five business days after approving an application, the Department of Health must issue a registry identification card to the applicant. The registry identification card shall contain all of the following: (1) in the case of a registry identification card for a qualifying patient, the name and date of birth of the qualifying patient, (2) in the case of a registry identification card for a primary caregiver, the name and date of birth of the primary caregiver and the name and date of birth of each registered qualifying patient for whom the registered primary caregiver is to serve as a registered primary caregiver as specified in the application for the registry identification card, (3) the date of issuance and expiration date of the registry identification card, (4) a random identification number that is unique to the cardholder, and (5) a photograph of the cardholder, if the Department requires one. (R.C. 3728.13.)

A registry identification card expires one year after the date of issuance unless revoked earlier (R.C. 3728.17).

Validity of application as identification card due to inaction of Department of Health. The bill provides that an application for an initial or renewed registry identification card is deemed a valid registry identification card beginning on the 20th day after the date the application is submitted to the Department of Health if all of the requirements for approval of the application have been met and the Department either fails to approve or deny the application within the time required by the bill or fails to issue the registry identification card within the time required by the bill (R.C. 3728.14).

Validity of written certification or notarized statement as identification card due to Department of Health not accepting applications. The bill provides that if, at any time after 140 days after the bill's effective date, the Department of Health is not accepting applications from qualifying patients for a registry identification card for any reason, including due to failure to adopt the rules it is required by the bill to adopt, a written certification for the qualifying patient together with a notarized statement by the qualifying patient of all of the following are deemed a valid registry identification card for the qualifying patient: (1) the name, address, and date of birth of the qualifying patient, except that no address is required if the qualifying patient is homeless, (2) the name, address, and telephone number of the qualifying patient's practitioner who signs the written certification for the qualifying patient, and (3) the address of each location, if any, at which the qualifying patient will cultivate cannabis (R.C. 3728.15).

Similarly, if, at any time after 140 days after the bill's effective date, the Department of Health is not accepting applications from primary caregivers for a registry identification card for any reason, including due to failure to adopt the rules the bill required it to adopt, a notarized statement by the primary caregiver of all of the following is deemed a valid registry identification card for the primary caregiver: (1) the name, address, and date of birth of the primary caregiver, (2) the name, address, and date of birth of each qualifying patient the primary caregiver seeks to serve as a registered primary caregiver, except that no address is required for a qualifying patient who is homeless, and (3) the address of each location, if any, at which the primary caregiver will cultivate cannabis (R.C. 3728.16).

Revocation of registry identification card. The bill includes three separate provisions regarding revocation of a registry identification card (R.C. 3728.18, 3728.20, and 3728.21):

(1) It authorizes the Department of Health to revoke the registry identification card of a cardholder who does either of the following: (a) delivers, transports, transfers, or otherwise provides cannabis for free or charge to a person

who is not a cardholder, or (b) fails to comply with a requirement of the bill included in R.C. Chapter 3728.

(2) It requires a registered qualifying patient who ceases to have a debilitating medical condition to notify the Department of that fact not later than 30 days after ceasing to have the debilitating medical condition, and provides that, not later than ten days after receipt of the notice, the Department must revoke the registered qualifying patient's registry identification card.

(3) It requires a registered primary caregiver for a registered qualifying patient who ceases to have a debilitating medical condition to notify the Department of that fact not later than 30 days after the registered qualifying patient ceases to have the debilitating medical condition, and provides that, not later than ten days after receipt of the notice, the Department must revoke the registered primary caregiver's registry identification card unless the registered primary caregiver serves as the registered primary caregiver for another registered qualifying patient who still has a debilitating medical condition.

Issuance of new or replacement registry identification card. Under the bill, a cardholder whose name or address changes must notify the Department of Health of the change not later than 30 days after the change. The Department must issue a new registry identification card to the cardholder not later than ten business days after the date it receives both the notice from the cardholder and a \$10 fee for the new card. (R.C. 3728.22.)

A cardholder who loses his or her registry identification card must notify the Department of the loss not later than ten days after the loss. The Department must issue a replacement registry identification card with a new random identification number to the cardholder not later than five business days after the date it receives both the notice from the cardholder and a \$10 fee for the replacement card. (R.C. 3728.25.)

Cardholder maintenance of cannabis plants

The bill requires a cardholder to maintain cannabis plants in a room, greenhouse, garden, or other enclosed area that is out of public view unless the plants are being transported because the cardholder is moving or 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 primary caregiver's registered qualifying patient (R.C. 3728.26).

Protections afforded to registered qualifying patients and registered primary caregivers

The bill provides that no employer or "licensing agency" may do any of the following: (1) take disciplinary action against a registered qualifying patient because the patient engages in the medical use of cannabis, (2) take disciplinary action against a registered primary caregiver because the caregiver engages in an activity authorized by the bill, (3) take disciplinary action against a cardholder because the cardholder engages in an activity authorized by the bill, (4) take disciplinary action against a person because the person engages in an activity authorized by the bill, (5) take disciplinary action against a practitioner because the practitioner engages in an activity authorized by the bill, (6) take disciplinary action against a person because the person is in the presence or vicinity of a registered primary caregiver engaging in the medical use of cannabis, or (7) take disciplinary action against a person because the person assists a registered qualifying patient's use or administration of cannabis, regardless of whether the person is a registered primary caregiver. The bill specifies that the provision described in clause (5) of the preceding sentence does not prohibit a licensing agency from taking disciplinary action against a practitioner for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions. (R.C. 3728.27.)

Additionally, the bill specifies that no school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize a person because of the person's status as a cardholder, unless failing to do so would put the school, employer, or landlord in violation of federal law (R.C. 3728.28).

Also, the bill provides that no person may be denied any parental rights and responsibilities or visitation with a minor because of the person's status as a cardholder, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated (R.C. 3728.29).

The bill does not include a criminal penalty for a violation of any of the prohibitions described in the three preceding paragraphs.

No requirement of reimbursement for costs of, or of employer accommodation for employee using, cannabis

The bill specifies that nothing in its provisions regarding the medical use of cannabis may be construed to require either of the following (R.C. 3728.30): (1) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis, or (2) an employer to accommodate the use of cannabis in any workplace or any employee working

while impaired, provided that a registered qualifying patient shall not be considered to be impaired solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Department of Health functions and duties in general

The bill imposes a number of functions and duties upon the Department of Health that relate to the bill's provisions regarding the medical use of cannabis.

Adoption of rules. The bill requires the Director of Health, not later than 120 after the bill's effective date, to adopt rules in accordance with the Administrative Procedure Act governing the manner in which the Department of Health will consider applications for initial and renewed registry identification cards. The rules must establish fees for initial and renewed registry identification cards, with the amount of the fees being on a sliding scale based on family income and being sufficient to generate enough revenues to offset all expenses of implementing and administering the bill's provisions regarding the medical use of cannabis. The Department may accept donations from private sources in order to reduce the fees. The bill specifies that, if the Director fails to adopt the rules within the specified 120-day period, a qualifying patient or primary caregiver may commence a mandamus action in the Franklin County Court of Appeals to compel the Director to adopt the rules. (R.C. 3728.35 and 3728.36.)

List of persons issued registry identification cards. The bill requires the Department of Health to maintain a list of the persons to whom it has issued registry identification cards. All identifying information on the list is confidential and not subject to disclosure, except to authorized employees of the Department as necessary to perform the Department's official duties or as authorized by the provisions described below in "**Provision of information to law enforcement officers**" (R.C. 3728.40).

Additionally, the bill includes a general prohibition against disclosure of any information related to registry identification cards and applications, except as necessary in administering its provisions regarding the medical use of cannabis or as authorized by the provisions described below in "**Provision of information to law enforcement officers**" (R.C. 3728.41).

Provision of information to law enforcement officers. The bill authorizes an employee of the Department of Health to notify a "law enforcement officer" about falsified or fraudulent information submitted to the Department in an application for an initial or renewed registry identification card or a written certification submitted with such an application, if the employee first confers with

his or her supervisor or at least one other employee of the Department and both agree that circumstances exist that warrant notification (R.C. 3728.42).

The bill requires the Department to operate a system under which law enforcement officers contact the Department to verify whether a person is a cardholder and whether the address of a location at which cannabis is being cultivated is a cardholder's registered cultivation site. The system must be available for use by law enforcement officers 24 hours each day. A law enforcement officer is required to utilize the system to verify the status of an individual or address before initiating an arrest, raid, or other law enforcement action concerning cannabis. If the person is a cardholder or the address of a location at which cannabis is being cultivated is a cardholder's registered cultivation site, no further action may be initiated except on issuance of a warrant. (R.C. 3728.43.)

Report to the General Assembly. The bill requires the Department of Health 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 that were submitted to the Department for initial and renewed registry identification cards, (2) the number of such applications that were 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 registered qualifying patients, (5) the number of registry identification cards revoked, and (6) the number of practitioners providing written certifications for qualifying patients. The report the Department submits to the General Assembly cannot disclose any identifying information about qualifying patients, primary caregivers, or practitioners. (R.C. 3728.45.)

Medical Cannabis Advisory Council

The bill establishes the Medical Cannabis Advisory Council, to consist of the following members appointed by the Governor: (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, and (2) three registered qualifying patients. The State Medical Board is required to provide the Governor with a list of physicians eligible for appointment to the Council each time the Governor is to appoint a physician to the Council. Members of the Council will serve two-year terms, with each member holding office from the date of appointment until the end of the term for which he or she was appointed. Members may be reappointed. Vacancies will be filled in the manner provided for original appointments, and any member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed will hold office as a member for the remainder of that term. A member will continue in office subsequent to the expiration date of his or

her term until his or her successor takes office or until a period of 60 days has elapsed, whichever occurs first. Members of the Council will not receive compensation for their service on the Council but will be reimbursed for their actual and necessary expenses incurred in the performance of that service. The Council is required to select one of its members to serve as Chairperson, and the Chairperson is required 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 the Council to perform its duties, including providing it with a place to meet. (R.C. 3728.37.)

The bill requires the Governor to make the initial appointments to the Medical Cannabis Advisory Council not later than 120 days after the bill's effective date of this section and specifies that, notwithstanding the provision described in the preceding paragraph regarding the makeup of the Council, the initial members who are to be registered qualifying patients instead must be persons who suffer from a "debilitating medical condition" (see "Definitions," below) and are nominated to the Council by the Ohio Patient Action Network (Section 3 of the bill).

The bill requires the Medical Cannabis Advisory Council to adopt rules in accordance with the Administrative Procedure Act governing the manner in which the Council will accept and consider petitions from the public under the provisions described in the next paragraph. The rules must provide for public notice of, and an opportunity to comment in a public hearing upon, such petitions. (R.C. 3728.372.)

The bill requires the Medical Cannabis Advisory Council, in accordance with rules adopted as described in the preceding paragraph, to accept and consider petitions from the public to do either or both of the following: (1) add medical conditions to the list of debilitating medical conditions included in the definition of debilitating medical conditions, or (2) increase, for the purpose of the provisions described above in clause (1) of the second paragraph under "General authorization for a registered qualifying patient" or in clause (1) of the second paragraph under "Registered primary caregivers," the number of grams of medical cannabis and the number of mature cannabis plants a cardholder may possess. After consideration of a petition filed as described in this paragraph, the Council must provide the Director of Health the Council's recommendation on whether the petition should be approved or denied. The Director is required to approve or deny the petition not later than 30 days after receiving the Council's recommendation and to provide written notice of the Director's decision to the petitioner by certified mail, return receipt requested. If the Director denies a petition in whole or in part, the petitioner may appeal the decision to the Court of Common Pleas of Franklin County by filing a notice of appeal with the Director,

within 15 days after the mailing of the notice of the Director's decision, setting forth the decision appealed from and the grounds of the appeal. The petitioner also must file a copy of the notice of appeal with the court. The court must order that the petition be approved if it finds that the petitioner presented the Director with substantial evidence that the medical conditions requested to be added to the list of debilitating medical conditions should be added or that the number of grams of medical cannabis and the number of mature cannabis plants a cardholder may possess should be increased. If the Director approves the petition or is ordered by a court to approve the petition, the Director must adopt rules under the Administrative Procedure Act to implement the petition. (R.C. 3728.371.)

The bill specifies that R.C. 101.82 to 101.87, which establish the Sunset Review Committee and generally provide for the periodic expiration of boards, commissions, committees, and councils established by statute unless renewed by legislative enactment, do not apply to the Medical Cannabis Advisory Council (R.C. 3728.373).

Cannabis Cultivation Advisory Council

The bill establishes the Cannabis Cultivation Advisory Council, to consist of the following members appointed by the Governor: (1) four representatives of the Department of Agriculture who are knowledgeable about Botany, and (2) three cardholders. Members of the Council will serve two-year terms, with each member holding office from the date of appointment until the end of the term for which he or she was appointed. Members may be reappointed. Vacancies will be filled in the manner provided for original appointments, and any member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed will hold office as a member for the remainder of that term. A member will continue in office subsequent to the expiration date of his or her term until his or her successor takes office or until a period of 60 days has elapsed, whichever occurs first. Members of the Council will not receive compensation for their service on the Council but will be reimbursed for their actual and necessary expenses incurred in the performance of that service. The Council is required to select one of its members to serve as Chairperson, and the Chairperson is required to call the Council to meet at least quarterly and at other times as necessary. The Department of Agriculture must provide the Council with support services as necessary for the Council to perform its duties, including providing it with a place to meet. (R.C. 3728.38.)

The bill requires the Governor to make the initial appointments to the Cannabis Cultivation Advisory Council not later than 120 days after the bill's effective date and specifies that, notwithstanding the provisions described in the preceding paragraph regarding the makeup of the Council, the initial members who are to be cardholders instead must be persons who suffer from a "debilitating

medical condition" or are the primary caregivers of such persons and are nominated to the Council by the Ohio Patient Action Network (Section 4 of the bill).

The bill requires the Cannabis Cultivation Advisory Council to provide cardholders sound advice and recommendations on the best practices for the safe and efficient cultivation of cannabis (R.C. 3728.381).

The bill specifies that R.C. 101.82 to 101.87, which establish the Sunset Review Committee and generally provide for the periodic expiration of boards, commissions, committees, and councils established by statute unless renewed by legislative enactment, do not apply to the Cannabis Cultivation Advisory Council (R.C. 3728.382).

Recognition of documents issued by other jurisdictions that are equivalent to a registry identification card

The bill provides that a valid document issued to a "visiting qualifying patient" under the laws of another state, district, territory, commonwealth, or insular possession of the United States that is the equivalent to a registry identification card has the same force and effect as a registry identification card issued to a registered qualifying patient (R.C. 3728.47).

Confidentiality of information related to registry identification cards and applications

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 written certification submitted with such an application, or a registry identification card except as necessary in the administration of its provisions regarding the medical use of cannabis or as authorized by the provisions described above in "**Provision of information to law enforcement officers**" under "**Department of Health functions and duties in general.**" A violation of this prohibition is a misdemeanor of the first degree. (R.C. 3728.41 and 3728.99.)

Definitions

The bill defines the following terms for purposes of its provisions regarding the medical use of cannabis (R.C. 3728.01):

"**Cannabis**" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Cannabis" does not

include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination (by reference to existing R.C. 3719.01, which is not in the bill).

"Cannabis plant" means female individuals of the cannabis genus or their cultivars.

"Cardholder" means a registered qualifying patient or registered primary caregiver.

"Debilitating medical condition" means one or more of the following: (1) cancer; glaucoma; positive status for human immunodeficiency virus; acquired immune deficiency syndrome; hepatitis C; amyotrophic lateral sclerosis; 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; 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: (a) cachexia or wasting syndrome, (b) severe or chronic pain, (c) severe or chronic nausea, (d) seizures, including those characteristic of epilepsy, or (e) severe or persistent muscle spasms, or (3) any other medical condition or its treatment added as a debilitating medical condition pursuant to the bill's provisions described above in **"Medical Cannabis Advisory Council."**

"Law enforcement officer" means any of the following (by reference to existing R.C. 2901.01, which is not in the bill): (1) a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), or State Highway Patrol trooper, (2) an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (3) a mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation, (4) a member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission, (5) a person lawfully called pursuant to R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called, (6) a person appointed by a mayor pursuant to R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed, (7) a member of the Ohio organized militia or the armed forces of the United States,

lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence, (8) a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor, (9) a veterans' home police officer appointed under R.C. 5907.02, (10) a member of a police force employed by a regional transit authority under R.C. 306.35(Y), (11) a special police officer employed by a port authority under R.C. 4582.04 or 4582.28, (12) the House of Representatives Sergeant at Arms if given arrest authority pursuant to R.C. 101.311(E)(1) and an assistant House of Representatives Sergeant at Arms, or (13) a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations and that is required to be under a security program and is governed by federal aviation security rules.

"Licensing agency" means a department, division, board, section of a board, or other state governmental unit authorized by the Revised Code to issue a license, certificate, permit, card, or other authority to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises.

"Medical use of cannabis" means the activities authorized by the bill's provisions described above in **"General authorization for a registered qualifying patient."**

"Practitioner" means any of the following: (1) a dentist licensed under R.C. Chapter 4715., (2) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under R.C. 4723.48, (3) an optometrist licensed under R.C. Chapter 4725. to practice optometry under a therapeutic pharmaceutical agents certificate, (4) a physician authorized under R.C. Chapter 4731. to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, or (5) a physician assistant who holds a certificate to prescribe issued under R.C. Chapter 4730.

"Primary caregiver" means an individual who has agreed to assist with a registered qualifying patient's medical use of cannabis.

"Qualifying patient" means a person who has been diagnosed by a practitioner acting within the practitioner's scope of practice as having a debilitating medical condition.

"Registered cultivation sites" are the locations, if any, at which a cardholder may cultivate cannabis as specified in the cardholder's application for a registry identification card.

"Registry identification card" means a document issued by the Department of Health under the provisions described above in **"Issuance of card"** under **"Registry identification cards--issuance, revocation, and replacement"** that identifies a person as a registered qualifying patient or registered primary caregiver.

"Registered primary caregiver" means a primary caregiver who holds a valid registry identification card.

"Registered qualifying patient" means a qualifying patient who holds a valid registry identification card.

"Usable cannabis" means the dried flowers of the female cannabis plant and any mixture, tincture, oil, reduction, compound, or preparation thereof. **"Usable cannabis"** does not include the leaves, seeds, stalks, or roots of the female cannabis plant.

"Visiting qualifying patient" means a qualifying patient who is not a resident of Ohio or who has been a resident of Ohio for less than 30 days.

"Written certification" means a document signed by a practitioner under the provisions described above in **"Certification by practitioner as to benefit to qualifying patient"** stating that in the practitioner's professional opinion and scope of practice a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis.

Criminal investigations, prosecutions, and punishments--generally no linkage to activities authorized under the medical use of cannabis mechanism

The bill enacts several provisions in the Drug Offenses Law (R.C. Chapter 2925.) that pertain to criminal investigations, prosecutions, punishments, and related matters and the linkage of those matters to activities authorized under its medical use of cannabis mechanism. As used in those provisions, described in the following portions of this part of this analysis, "cannabis," "cardholder," "medical use of cannabis," "practitioner," "registered primary caregiver," and "registered qualifying patient" have the same meanings as are described above in **"Definitions."** (R.C. 2925.41(A).)

Specified persons acting in accordance with the mechanism are not subject to arrest, prosecution, or criminal or civil penalty; presumptions of authorized conduct

The bill provides that the following persons are not subject to arrest, prosecution, or any criminal or civil penalty and cannot be denied any right or privilege for engaging in any of the following specified activities: (1) a registered

qualifying patient for engaging in the medical use of cannabis, (2) a registered primary caregiver for engaging in an activity authorized by R.C. 3728.03, (3) a cardholder for engaging in an activity authorized by R.C. 3728.06, (4) any person for engaging in an activity authorized by R.C. 3728.07, or (5) a practitioner for engaging in an activity authorized by R.C. 3728.08 of the Revised Code. The provisions of R.C. 3728.03, 3728.06, 3728.07, and 3728.08 are described above in "Registered primary caregivers," "Delivery, transport, transfer, or other provision of cannabis or paraphernalia to a registered qualifying patient or a registered primary caregiver," and "Certification by practitioner as to benefit to qualifying patient" under "Regulation and authorization of the medical use of cannabis."

The bill provides that there is a presumption that a registered qualifying patient is engaged in the medical use of cannabis if the patient 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 limit established by the bill or rules adopted under the bill. The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating the registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

It also provides that there is a presumption that a registered primary caregiver is engaging in an activity authorized by R.C. 3728.03 if the registered primary 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 limit established as described in the preceding paragraph. The 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 symptoms associated with the debilitating medical condition of a registered qualifying patient for whom the registered primary caregiver serves as a registered primary caregiver. (R.C. 2925.41(B) and (C).)

Possession of registry identification card, being in the presence or vicinity of cardholder, and seizure of items

The bill provides that (R.C. 2925.43):

(1) Possession of or application for a registry identification card does not constitute probable cause or reasonable suspicion to search or seize the person or property of the person possessing or applying for the card.

(2) No person may be subject to arrest, prosecution, or any criminal or civil penalty or be denied any right or privilege solely for being in the presence or vicinity of a registered primary caregiver engaging in the medical use of cannabis

or for assisting a registered qualifying patient's use or administration of cannabis, regardless of whether the person is a registered primary caregiver.

(3) No law enforcement officer or law enforcement agency may seize any cannabis, cannabis paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with a registered qualifying patient's medical use of cannabis or in connection with acts incidental to a registered qualifying patient's medical use of cannabis.

(4) No court may order the forfeiture of any cannabis, cannabis paraphernalia, licit property, or interest in licit property that is so possessed, owned, or used.

(5) If a law enforcement officer seizes and does not return cannabis that is possessed by a cardholder in accordance with the bill's medical use of cannabis mechanism, the agency that employs the officer is liable to the cardholder for the value of the cannabis.

Use of medical use of cannabis as a defense, by person who is not a registered qualifying patient

The bill specifies that, except as described in the second succeeding paragraph, a person who is not a registered qualifying patient may assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis, and this defense is to be presumed valid if the evidence shows that all of the following apply: (1) a practitioner has stated that in the practitioner's professional opinion and scope of practice and after having completed a full assessment of the person's medical history and current medical condition made in the course of a *bona fide* practitioner-patient relationship the person is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the person's serious or debilitating medical condition or symptoms associated with the person's serious or debilitating medical condition, (2) the person was in possession of a quantity of cannabis that was not more than was reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of treating or alleviating the person's serious or debilitating medical condition or symptoms associated with the person's serious or debilitating medical condition, and (3) the person was engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate the serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition.

If a person who is not a registered qualifying patient demonstrates the person's medical purpose for using cannabis as described in the preceding

paragraph, the person is not subject to disciplinary action by a business or licensing agency or to forfeiture of any interest in or right to property.

The bill refers to R.C. 3728.02(B) as an "exception" to the provision described in the second preceding paragraph. R.C. 3728.02(B) specifies that a registered qualifying patient's possession of a valid registry identification card does not authorize the patient to do any of the following: (1) except as provided in rules adopted under the bill's provision described above in "Medical Cannabis Advisory Council," possess more than 200 grams of usable cannabis or more than 12 mature cannabis plants, (2) undertake any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice, (3) possess cannabis or otherwise engage in the medical use of cannabis in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility, (4) smoke cannabis on any form of public transportation or in any public place, (5) operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while impaired (for purposes of this provision, a registered qualifying patient is not to be considered to be impaired solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment), or (6) transport cannabis into Ohio from outside Ohio. (R.C. 2925.45.)

Limitation on law enforcement sharing of information

The bill provides that, if an individual being investigated by a law enforcement officer employed by a state-funded or locally funded law enforcement agency credibly asserts during the course of the investigation that he or she is a registered qualifying patient or registered primary caregiver, neither the law enforcement officer nor the law enforcement agency may provide any information, except as required by federal law or the United States Constitution, from any cannabis-related investigation of the person to any law enforcement authority that does not recognize the protections of R.C. 2925.41 to 2925.44 (the provisions described in the four portions of this part of this analysis). Any prosecution of the individual for a violation of the Drug Offenses Law must be conducted pursuant to the laws of Ohio. (R.C. 2925.44.)

Corrupting another with drugs

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) by force, threat, or deception, administering to another or inducing or causing another to use a controlled substance, (2) by any means, administering or furnishing to another or inducing or causing another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to

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

The prohibitions set forth in clauses (1), (3), (4), and (5) of the preceding paragraph do not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. A violation of any of the prohibitions set forth in the preceding paragraph is the offense of "corrupting another with drugs." The penalty for the offense is a felony of the first, second, third, or fourth degree, depending upon the prohibition violated, the controlled substance involved, and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense. (R.C. 2925.02.)

Operation of the bill

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

Drug trafficking offenses

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) selling or offering to sell a controlled substance, or (2) preparing for shipment,

shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

The prohibitions do not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration (the FDA), or (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act (the FFDC Act) and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

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

Operation of the bill

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

Illegal manufacture of drugs or cultivation of marihuana

Existing law

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

The prohibition does not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the FDA, or (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the FFDCa and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

A violation of the prohibition is the offense of "illegal manufacture of drugs" or, if the violation involves marihuana, "illegal cultivation of marihuana." The penalty for a violation is a felony of the first, second, third, fourth, or fifth degree, a misdemeanor of the third or fourth degree, or a minor misdemeanor, depending upon the type and amount of controlled substance involved and the circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense.

Existing law provides that it is an affirmative defense to a charge of a violation of the prohibition involving the cultivation of marihuana that would be a fifth degree felony that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances indicating that the marihuana was solely for personal use. But, notwithstanding the preceding sentence, if a person charged with a violation of the prohibition involving the cultivation of marihuana that would be a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in that sentence, the person may be prosecuted for and convicted of a misdemeanor violation of illegal cultivation of marihuana. Existing law provides that arrest or conviction for a minor misdemeanor violation of the prohibition (the only minor

misdemeanor violation is one involving a specified small amount of marihuana--see **COMMENT 1**) does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness. (R.C. 2925.04.)

Operation of the bill

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

Drug possession offenses

Existing law

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

The prohibition does not apply to any of the following: (1) manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741., (2) if the offense involves an anabolic steroid, any person conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the FDA, (3) any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the FFDCA and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act, or (4) any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

A violation of any of the prohibitions is the offense of "aggravated possession of drugs," "possession of drugs," "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish," depending upon the controlled substance involved. The penalty for a violation is a felony of the first, second, third, fourth, or fifth degree, a misdemeanor of the second, third, or fourth degree, or a minor misdemeanor, depending upon the type and amount of controlled substance involved and the

circumstances of the violation (see **COMMENT 1** for the penalties regarding violations involving marihuana). Additionally, special fine, driver's license suspension, and professional license sanction provisions apply to persons convicted of the offense.

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

Operation of the bill

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

Drug paraphernalia offenses

Existing law

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

The prohibitions do not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741., and are not to be construed to prohibit the possession or use of a hypodermic as authorized by R.C. 3719.172. A violation of the prohibition set forth in clause (1) of the preceding paragraph is the offense of "illegal use or possession of drug paraphernalia" (a misdemeanor of the

fourth degree), a violation of the prohibition set forth in clause (2) of that paragraph is the offense of "dealing in drug paraphernalia" (a misdemeanor of the second degree) or, if the paraphernalia is sold to a juvenile, "selling drug paraphernalia to juveniles" (a misdemeanor of the first degree), and a violation of the prohibition set forth in clause (3) of that paragraph is the offense of "illegal advertising of drug paraphernalia" (a misdemeanor of the second degree). (R.C. 2925.14.)

Operation of the bill

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

Correction of mistaken cross-reference

Existing R.C. 3781.25 to 3781.32 provide for one-call underground utility protection services. Existing R.C. 3781.32(C) states that "nothing in sections 3728.25 to 3728.32 of the Revised Code" may be construed to require a utility to relocate its underground utility facilities located at an excavation site. R.C. 3728.25 to 3728.32 currently do not exist, though, so the reference to that range of sections is in error. The bill changes the reference to R.C. 3781.25 to 3781.32, so that the provision states that "nothing in sections 3781.25 to 3781.32 of the Revised Code," the correct reference to the range of sections that provide for one-call underground utility protection services, may be construed to require a utility to relocate its underground utility facilities located at an excavation site. (R.C. 3781.32(C).)

COMMENT

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

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

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

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

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

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

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

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

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

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

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

HISTORY

ACTION	DATE
Introduced	05-22-08

S0343-I-127.doc/jc