

Understanding Medical Marijuana in Ohio and the Effects on Commercial Real Estate

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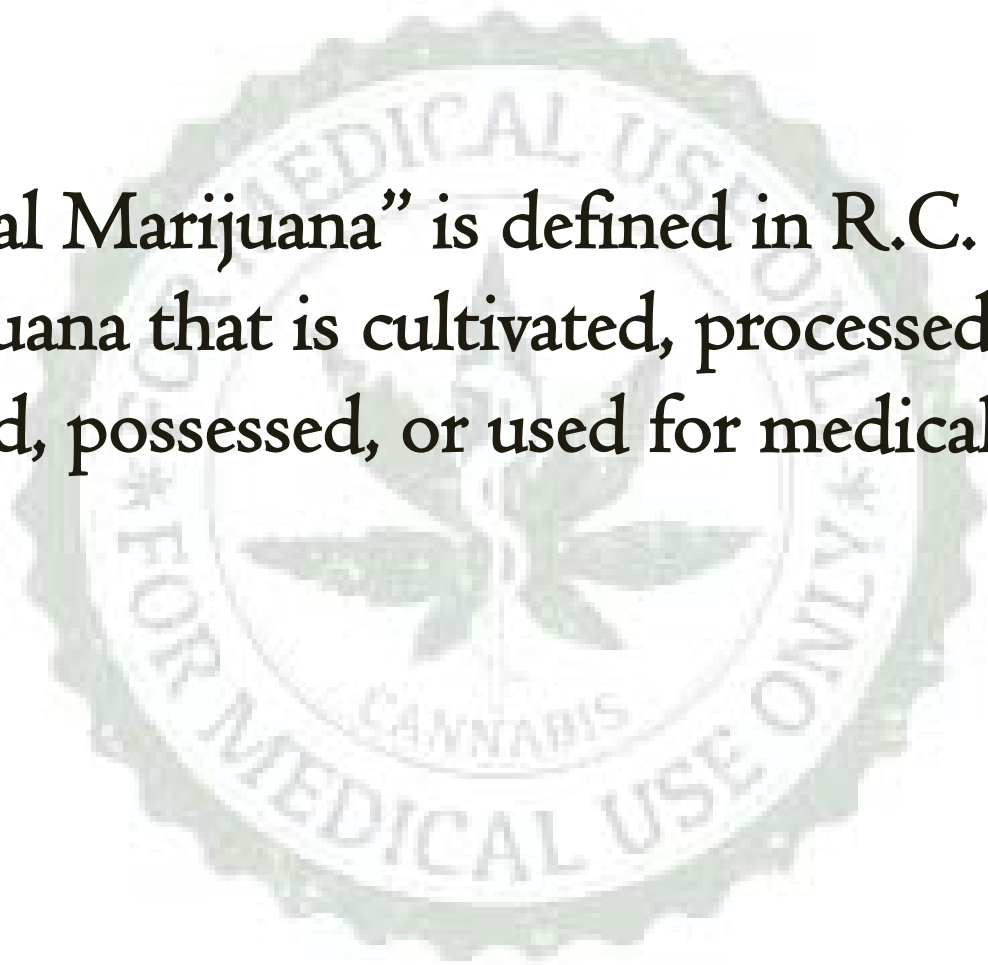


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BACKGROUND—DEFINITION

“Medical Marijuana” is defined in R.C. §3796.01 as:
Marijuana that is cultivated, processed, dispensed,
tested, possessed, or used for medical purposes.



BACKGROUND—SCHEDULE I

In August 2016, the DEA refused to remove marijuana as a Schedule I drug.

- Schedule I is the most tightly restricted category for drugs that have “no currently accepted medical use” and “a high potential for abuse.”
- The DEA said it is not a safe and effective medicine.

Since 1972, there have been multiple attempts to reclassify marijuana.



BACKGROUND—SCHEDULE II

Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence.

These drugs are also considered dangerous.



THE MEDICAL MARIJUANA ADVISORY COMMITTEE

- Coordinated by the Board of Pharmacy
- Responsible for developing and submitting to the Department of Commerce, Board of Pharmacy and Medical Board any recommendations related to the Medical Marijuana Control Program
- Membership is appointed by the Governor, Senate President and Minority Leader of the Ohio Senate, and Speaker and Minority Leader of the Ohio House of Representatives.

<http://medicalmarijuana.ohio.gov/advisory-committee>



ADVISORY COMMITTEE

- Curtis L. Passafume, Jr., R.Ph. (Chair), practicing pharmacist and member of the State of Ohio Board of Pharmacy.
- Stephanie M. Abel, Pharm.D., practicing pharmacist.
- James “Ted” Bibart, representing patients.
- Tony E. Coder, Jr., representing persons involved in the treatment of drug and alcohol addiction.
- Michael G. Hirsch, representing agriculture.
- Sheriff John Lenhart, representing local law enforcement.
- Jason Kaseman, representing labor.
- Martin McCarthy, Jr., representing caregivers.
- Dr. Jerry W. Mitchell, Jr., practicing physician.
- Nancy Walsh Mosca, CNP, practicing nurse.
- Marcie Seidel, representing persons involved in mental health treatment.
- Dr. Amol Soin, practicing physician and member of the State Medical Board of Ohio.
- Michael E. Stanek, representing employers.
- Gary L. Wenk, engages in academic research.



TIMELINE

September 8, 2016

HB 523 established the basic framework for Ohio's Medical Marijuana Control Program.

May 6, 2017

Ohio Dept. of Commerce adopted cultivator rules.

<http://medicalmarijuana.ohio.gov/Timeline>



September 8, 2017

Ohio law requires Ohio Dept. of Commerce to adopt processor rules.

Ohio law requires Ohio Dept. of Commerce to adopt testing laboratory rules.

Ohio law requires State of Ohio Bd. of Pharmacy to adopt dispensary rules.



September 8, 2017

Ohio law requires the State Medical Board of Ohio to adopt rules for physicians certified to recommend medical marijuana.

Ohio law requires the State of Ohio Bd. of Pharmacy to adopt patient/caregiver rules.

September 8, 2018

Ohio law requires the Ohio Medical Marijuana Control Program to be fully operational.



NUMBER OF CULTIVATOR PROVISIONAL LICENSES

OAC 3796:2-I-01

- A. Until September 8, 2018, the director of the department of commerce or the director's designee may issue **up to 12 Level I and 12 Level II cultivator provisional licenses**, in consideration of the ranking of the applicants with criteria listed in R.C. 3796.09 and this chapter.
- B. Beginning September 9, 2018, the director or the director's designee may issue **additional provisional licenses**, if the population of this state and the number of patients seeking to use medical marijuana support additional licenses, at the discretion of the director.
- C. In the event additional provisional licenses are deemed necessary, the department will follow the application procedures outlined in OAC Rule 3796:2-I-02.



SIZE OF CULTIVATION FACILITIES

- Level I cultivator: a cultivator permitted to operate up to 25,000 sq. footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under OAC Rule 3796:2-1-09.
- Level II cultivator: a cultivator permitted to operate up to 3,000 sq. footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under OAC Rule 3796:2-1-09.



CULTIVATOR APPLICATIONS

- Licensing fees are **non-refundable**
- Level 1
 - Application fee: \$20,000
 - Initial License fee: \$180,000
 - Annual License Renewal fee: \$200,000
- Level 2
 - Application fee: \$2,000
 - Initial License fee: \$18,000
 - Annual License Renewal fee: \$20,000





CULTIVATOR MARIJUANA CULTIVATION AREA EXPANSION

OAC 3796:2-1-09

Beginning September 9, 2018, the director or the director's designee may approve a **one-time, marijuana cultivation area expansion** of an existing cultivator's facility, such that the approval of the initial expansion shall not result in a total marijuana cultivation area that **exceeds 50,000 sq. feet for Level I cultivators and 6,000 sq. feet for Level II cultivators**, if the population of this state and the number of patients seeking to use medical marijuana support such expansion.



CULTIVATOR SECURITY

At a minimum, the cultivator shall do the following:

1. Install an adequate security alarm system
2. Maintain or construct fencing
3. Utilize a department-approved video surveillance recording system
4. Maintain all security system equipment and video surveillance systems in a secure location
5. Keep all approved safes, vaults, or other equipment securely locked
6. Ensure the outside perimeter of the cultivator is well-lit
7. Restrict access to any area within a cultivator containing medical marijuana
8. Limit the use of combination numbers, passwords, or electronic or biometric security systems to registered, authorized employees



BOARD OF PHARMACY – Dispensary Proposed Rules



HIGHLIGHTS:

- **License Quota (until September 8, 2018):** The Board of Pharmacy may issue **up to 60 dispensary licenses**. The rules permit the Board to issue additional licenses based upon state population, patient population and geographic distribution of dispensary sites to ensure patient access. Board of Pharmacy will consider these factors at least once each biennial.
- **Licensing Fees:** The biennial licensing fee (i.e. once every two years) for a dispensary will be \$70,000. The fee ensures a well-regulated, sustainable program and falls within the fee range set by other states operating medical marijuana programs.
- **Financial Responsibility:** Dispensaries must demonstrate adequate capital to meet facility plans and operational needs.
- **Reporting to OARRS:** Dispensaries will be required to report dispensing information to the Ohio Automated Rx Reporting System in real-time (within 5 minutes of dispensing) to prevent medical marijuana diversion.



HIGHLIGHTS (cont'd):

- **Employee ID Cards:** All dispensary employees and owners are required to be licensed by the Board. Owners/employees must wear a state-issued medical marijuana owner/employee ID card while on dispensary premises.
 - At least two employees “physically present” at dispensary locations.
- **Security, Control and Storage of Medical Marijuana:** Dispensaries will be required to maintain records and implement specific security measures, including surveillance cameras, to prevent diversion.
- **Patient Education:** Requires dispensaries to have a policy in place for the education of patients and caregivers and establishes medical marijuana- related educational materials that must be made available to patients and caregivers.
- **Inspections and Enforcement:** The Board of Pharmacy has the authority to conduct inspections of dispensaries and bring enforcement actions against dispensaries and licensed employees/owners.
- **Hours of Operation:** 7:00am-9:00pm EST. At least 35 hours/week.



OAC 3796:6-2-06

Final inspection and certificate of operation for medical marijuana dispensaries.

- A. A dispensary with a provisional license shall notify the Board once it is capable of operating in accordance with R.C. Chapter 3796 and this division, and before dispensing any medical marijuana. A dispensary must name a designated representative in compliance with OAC 3796:6-3-05, and attest fingerprint impressions for a criminal background check pursuant to OAC 3796:6-2-07 have been submitted, before such notification.



- B. Within 14 calendar days of notification an inspection of the dispensary shall be conducted in order to confirm the dispensary is capable of operating in accordance with R.C. 3796 and this division.
- C. After receiving notice of satisfactory final inspection from the State Board of Pharmacy, the dispensary shall submit to the State Board of Pharmacy:
 - 1. An intent to operate form in accordance with R.C. 3796.04;
 - 2. A copy of the dispensary's final inspection; and
 - 3. Payment of the fee for a two-year certificate of operation.



- D. A dispensary may begin dispensing medical marijuana only after receipt of a medical marijuana dispensary license issued by the State Board of Pharmacy.
- E. If a satisfactory final inspection is not issued by the State Board of Pharmacy, the dispensary will be notified of necessary corrective action(s). Such correction(s) must be made within 30 calendar days of receipt of notification of necessary correction.

Failure to correct within 30 calendar days may result in forfeiture of a provisional license.



- F. A certificate of operation shall allow the licensed dispensary to operate at a single location. No license shall be issued more than five dispensary certificates of operation at any time unless authorized by the State Board of Pharmacy after an analysis supporting the licensing of greater than 40 dispensaries pursuant to OAC 3796:6-2-05.

- G. A dispensary certificate of operation is valid only for the owner, premises, and name designated on the certificate of operation and location for which it is issued.



PROCESSOR PROVISIONAL LICENSES

OAC 3796:3-1-01

- The Department may issue **up to 40** provisional licenses prior to September 8, 2018
- Limits persons to one processor license in Ohio.



MISCELLANEOUS

Fees:

- Processor application: \$10,000
- License fee: \$90,000
- Renewal fee: \$100,000

Advertising: Same requirements as cultivators regarding department approval and registration fee.

Product registration: Same procedure and fee for processors to register products as for cultivators to register strains.



QUALIFYING MEDICAL CONDITIONS

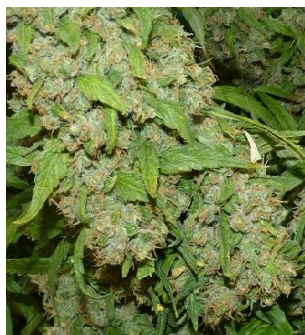
Under Ohio law, all of the following are qualifying medical conditions (*R.C. 3796.01(A)(6)*):

- Acquired Immune Deficiency Syndrome (AIDS)
- Alzheimer's Disease
- Amyotrophic Lateral Sclerosis (ALS)
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn's Disease
- Epilepsy (or another seizure disorder)
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowel Disease (IBD)
- Multiple Sclerosis (MS)
- Chronic and severe or intractable pain
- Parkinson's Disease
- HIV+
- Post-Traumatic Stress Disorder (PTSD)
- Sickle Cell Anemia
- Spinal cord disease or injury
- Tourette's Syndrome
- Traumatic brain injury
- Ulcerative Colitis



PERMISSIBLE FORMS/METHODS OF USE

Medical Marijuana may be dispensed only in these forms
(R.C. 3796.06):



Oils
Tinctures
Plant material
Edibles
Patches




The law prohibits the use of medical marijuana by smoking or combustion, but does allow for vaporization (vaping).

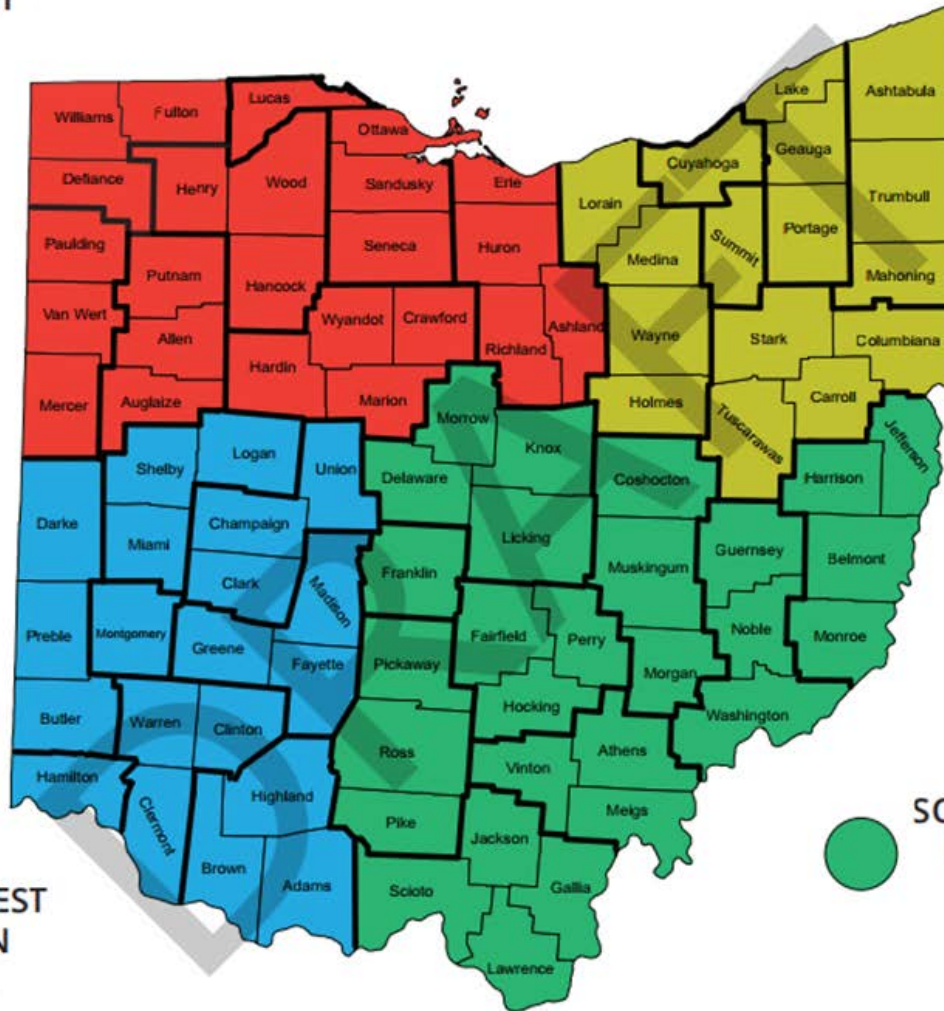



Proposed Dispensary Districts

- The Board of Pharmacy has been tasked with determining where medical marijuana dispensaries will be located throughout Ohio.
- The draft district map includes 4 regions, each divided into multiple districts with a certain number of dispensaries within them.



 **NORTHWEST
REGION**
Page 3



 **NORTHEAST
REGION**
Page 4

 **SOUTHWEST
REGION**
Page 6

 **SOUTHEAST
REGION**
Page 5





SOUTHEAST

17 Total Dispensaries

- SE DISTRICT 1
- 1 Dispensary
- SE DISTRICT 2
- 1 Dispensary
- SE DISTRICT 3
- 5 Dispensaries
- SE DISTRICT 4
- 3 Dispensaries
- SE DISTRICT 5
- 2 Dispensaries
- SE DISTRICT 6
- 1 Dispensary
- SE DISTRICT 7
- 1 Dispensary
- SE DISTRICT 8
- 1 Dispensary
- SE DISTRICT 9
- 2 Dispensaries



ZONING MATTERS

R.C. 5713.30(A)(5)

- "Land devoted exclusively to agricultural use" includes tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise twenty-five per cent or less of the total of the tracts, lots, or parcels of land that satisfy the criteria established in division (A)(1), (2), (4), or (5) of this section together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices.
- Notwithstanding any other provision of law to the contrary, the existence of agritourism on a tract, lot, or parcel of land that otherwise meets the definition of "land devoted exclusively to agricultural use" as defined in this division does not disqualify that tract, lot, or parcel from valuation under sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.
- A tract, lot, parcel, or portion thereof on which medical marijuana, as defined by section 3796.01 of the Revised Code, is cultivated or processed is not land devoted exclusively to agricultural use.



PROXIMITY



- Except as provided in division (B) of this section, no medical marijuana cultivator, processor, retail dispensary, or laboratory that tests medical marijuana shall be located within five hundred feet of the boundaries of a parcel of real estate having situated on it a school, church, public library, public playground, or public park.
- If the relocation of a cultivator, processor, retail dispensary, or laboratory licensed under this chapter results in the cultivator, processor, retail dispensary, or laboratory being located within five hundred feet of the boundaries of a parcel of real estate having situated on it a school, church, public library, public playground, or public park, **the Department of Commerce or State Board of Pharmacy shall revoke the license** it previously issued to the cultivator, processor, retail dispensary, or laboratory.



LOCATION REGULATION

R.C. 519.21(D)

Nothing in this Section prohibits a township zoning commission, board of township trustees, or board of zoning appeals from regulating the location of medical marijuana cultivators, processors, or retail dispensaries or from prohibiting such cultivators, processors, or dispensaries from being located in the unincorporated territory of the township.



R.C. 3796.29

- The legislative authority of a municipal corporation may adopt an ordinance, or a board of township trustees may adopt a resolution, to prohibit, or limit the number of cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation or within the unincorporated territory of the township, respectively.
- This section does not authorize the legislative authority of a municipal corporation or a board of township trustees to adopt an ordinance or resolution limiting research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.



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To date, the following have prohibited medical marijuana:

- City of Hamilton
- Lakewood
- Lancaster
- Oakwood
- Tipp City
- Village of Sheffield
- Upper Arlington
- Brewster
- Barnhill
- City of Columbiana
- Middletown
- Village of Shawnee Hills
- Dublin
- Powell
- Canton Township (Stark)
- Plain Township (Stark)
- Jackson Township (Stark)
- Lake Township (Stark)
- Bath Township (Summit)
- Sandusky Township (Erie)
- Vermilion Township (Erie)
- Perkins Township (Erie)
- Miami Township (Montgomery)
- Louisville
- Loveland
- Russell Township (Geauga)
- Village of Kirkersville
- Washington Township (Montgomery)



EMPLOYMENT

R.C. 3796.28(A)(I)

Nothing in this chapter requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana.



R.C. 3796.28(A)(2)

Nothing in this chapter prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana.



R.C. 3796.28(A)(3)

Nothing in this chapter prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.



R.C. 3796.28(A)(5)

Nothing in this chapter permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.



R.C. 3796.28(B)

A person who is discharged from employment because of that person's use of medical marijuana shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the person's use of medical marijuana was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.



FEDERAL AND STATE LAW

- Though marijuana is still a Schedule I drug, there has been guidance from various federal agencies regarding state legalization of marijuana
- This guidance suggests that enforcement of federal marijuana law is **not a priority**
- However, these sources do not change the federal legal status of marijuana as a Schedule I drug and do not prevent federal enforcement of the laws against marijuana against states and individuals



Rohrabacher-Blumenauer (previously Rohrabacher-Farr) Amendment

- A Justice Department budget amendment that **stops the agency from using federal funds to block states from implementing their own marijuana legalization bills**, both medical and recreational
- DOJ is effectively precluded from criminally prosecuting organizations, dispensaries, and individuals **that comply with state marijuana regulations.**
- Does not change the federal legal status of marijuana and must be actively renewed each year



Memo by Previous Deputy Attorney General James M. Cole

- Makes clear that marijuana remains an illegal drug under the Controlled Substances Act and that federal prosecutors will continue to aggressively enforce this statute
- Identifies eight (8) enforcement areas that federal prosecutors should prioritize, including trafficking, drugged driving, and other such areas
 - Outside of these enforcement priorities, however, the federal government has traditionally relied on state and local authorities to address marijuana activity through enforcement of their own narcotics laws
- Acts to **encourage federal prosecutors not to prosecute those who distribute marijuana for medical purposes in accordance with state law**



Jeff Sessions & President Trump

- Attorney General Jeff Sessions is a firm opponent of federal and state legalization of marijuana. He often struggles between his anti-marijuana views and his belief in states' rights.
- President Trump advocated for marijuana during his campaign, but in a signing statement added to the Rohrabacher-Blumenauer Amendment, he reserved the right to ignore the Amendment and enforce federal law



Jeff Sessions on Marijuana

- Called marijuana reform a “**tragic mistake**” and criticized FBI Director James Comey and Attorneys General Eric Holder and Loretta Lynch for not vigorously enforcing a the federal prohibition.
- In a Senate drug hearing in April 2016, Sessions said that “we need grown-ups in charge in Washington to say **marijuana is not the kind of thing that ought to be legalized, it ought not to be minimized, that it’s in fact a very real danger.**”
- Said marijuana legalization **wouldn't be “good for us.”**
- “We’re gonna see more marijuana use—**it’s not good.**”
- “I don't think that America's going to be a better place if they sell marijuana at every corner grocery store.”

INSURANCE MATTERS

- The conflict between state and federal law regarding the legal status of marijuana has made most insurers reluctant to enter the market for fear they will be found complicit in the violation of federal criminal law.
- Those insurers that remain usually provide policies that tend to be more costly than for comparable non-marijuana businesses

- Insurance agents and companies must first be authorized or approved to sell insurance in Ohio; after that, they can decide if they will provide policies to the marijuana industry despite the illegality at the federal level



Insurance and Ohio Marijuana Businesses

- Companies operate as a broker between insurance carriers and marijuana and ancillary businesses
- Services include covering properties with marijuana landlord insurance; building insurance; general, professional, and product liability (for edibles, vaping devices, etc.) insurance; umbrella insurance; equipment insurance; and employment practice liability insurance

Importantly, insurance companies **still face the risk of being found complicit in the violation of federal criminal law** for acting in the marijuana industry.

Because of this, policies often come at a much higher price than other, legal industries.

TITLE INSURANCE

- Many title companies **will not provide insurance** to Ohio marijuana or ancillary businesses.
- Those title companies that have issued policies for marijuana-related transactions in states like Colorado and Washington usually **mitigate the risk involved by not facilitating the exchange of funds.**
- These companies will issue these policies often on the rationale that **the insurance product relates to land ownership, rather than to the activities taking place thereon.**
- If a policy is issued, it will often expressly **exclude coverage for governmental actions**, including civil and criminal forfeiture under the federal Controlled Substance Act



BANKING & LENDING



- Since possession or distribution of marijuana violates federal law, banks that provide support for those activities risk prosecution and assorted sanctions
- Federal regulation is pervasive and controlling, and federal financial regulators have significant power to punish state institutions that do not comply with federal law
- Handling money from marijuana businesses could be considered money laundering
- Chartered lenders are unwilling to finance the purchase of an asset that could be seized at any moment under the federal Controlled Substances Act

Ohio's Safe Harbor for Banks and Lenders

Ohio H.B. 523 “[e]xempts a financial institution that provides financial services to a licensed cultivator, processor, retail dispensary, or laboratory from any Ohio criminal law an element of which may be proven by substantiating that a person provides financial services to a person who possesses, delivers, or manufactures marijuana or marijuana derived products, if the cultivator, processor, retail dispensary, or laboratory is in compliance with the bill and the applicable Ohio tax laws

H.B. 523 defines “financial institution” as any bank, trust company, savings and loan association, savings bank, or credit union or any affiliate, agent, or employee of such an institution and any money transmitter licensed under Ohio law or any affiliate, agent, or employee of a money transmitter.

This provision only saves banks and financial institutions under state law; any of these actors could be subject to penalties under federal law if they interact with marijuana businesses.

QUESTIONS?



THANK YOU



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