



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 57
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Hill and S. Huffman

Helena Volzer, Attorney

Summary

- Decriminalizes hemp and hemp products by excluding them from the definition of marijuana that is used to enforce controlled substance laws.
- Prohibits the State Board of Pharmacy from listing hemp or hemp products as controlled substances.
- Requires the Director of Agriculture, in consultation with the Governor and Attorney General, to submit a plan to regulate hemp cultivation to the Secretary of the U.S. Department of Agriculture (USDA) for approval, in accordance with federal law.
- Requires the Director of Agriculture to establish a Hemp Cultivation Program to monitor and regulate hemp cultivation and to issue hemp cultivation licenses.
- Requires the Director, in consultation with the Governor and the Attorney General, to adopt rules establishing standards and procedures for the Program that comply with federal law.
- Establishes prohibitions, procedures, and criminal penalties to enforce violations of the Hemp Cultivation Program and rules adopted under it.
- Establishes in the state treasury the Hemp Cultivation Fund, which must be used to administer and enforce the Program.

Detailed Analysis

Introduction

Hemp is a variety of the plant *Cannabis sativa L.* (cannabis) that can be used in industrial applications, such as paper, textiles, biofuel, and animal feed. Both hemp and marijuana come from the cannabis plant, but hemp contains a lower concentration of the psychoactive constituent of cannabis, tetrahydrocannabinol (THC). Ohio does not currently have any specific laws in place regarding hemp or hemp products, and hemp and hemp products are prohibited

in Ohio because hemp comes from the same plant as marijuana – cannabis. Thus, hemp is considered a Schedule I controlled substance under Ohio law.¹

Until recently, federal law also made no distinction between hemp and marijuana. However, the federal Agriculture Improvement Act of 2018 both: (1) exempts hemp grown in accordance with the Act from the federal Controlled Substances Act (CSA), and (2) authorizes states to regulate hemp under specific conditions. The federal Act was signed into law on December 20, 2018.

Controlled substances and decriminalization of hemp

The bill prohibits the State Board of Pharmacy (Pharmacy Board) from listing hemp or hemp products as a controlled substance and decriminalizes hemp and hemp products by excluding them from the definition of marijuana that is used to enforce laws governing controlled substances.

Under the federal CSA, drugs are classified into one of five schedules (I through V) depending on the drug's acceptable medical use and its abuse or dependency potential. Generally, marijuana is a Schedule I controlled substance under the CSA, meaning it is prohibited and no prescription can be written for it. However, the federal Agriculture Improvement Act of 2018 specifies that hemp (and THC found in hemp) grown in accordance with that Act is not marijuana, and therefore, is not a controlled substance.

Ohio's controlled substance schedules are similar to those established under the federal CSA. Generally, the schedules under Ohio law are automatically updated when certain federal changes occur, subject to rule-making authority granted to the Pharmacy Board. However, in the 132nd General Assembly, S.B. 229 was enacted, which will require the Pharmacy Board to adopt rules establishing Schedules I through V. Ohio's controlled substance schedules will therefore be eliminated from statute when this provision of S.B. 229 becomes effective on March 22, 2020. The Pharmacy Board will have the authority to include in the schedules any substance that was included in the schedules immediately prior to March 22, 2020.²

In light of these changes, the bill therefore prohibits the Pharmacy Board from adopting rules including hemp or a hemp product in any schedule as a controlled substance.³ The bill further decriminalizes hemp and hemp products by excluding them from the Ohio definition of marijuana used for regulating controlled substances and the criminal enforcement of those laws.⁴ For purposes of the bill, hemp is:

The plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not,

¹ R.C. 3719.01(O) and 3719.41(C)(19), amended in Section 1. Note that the bill amends the current versions of R.C. 3719.01 and 3719.41 in Section 1 of the bill and the future versions of those sections in Section 3 of the bill.

² R.C. 3719.41, amended in Section 3.

³ R.C. 3719.41(C) and (D), amended in Section 3.

⁴ R.C. 3719.01(O) and 3719.01(M), amended in Section 3.

with a delta-9 tetrahydrocannabinol concentration of not more than .3% on a dry weight basis.⁵

A hemp product is any product made with hemp and any product containing one or more cannabinoids derived from hemp.⁶

In decriminalizing hemp and hemp products, the bill removes these substances from the current list of Schedule I controlled substances in Ohio law. The bill also specifically removes THC found in hemp from Schedule I in conformity with this change.⁷

Hemp Cultivation Program

Federal Agriculture Improvement Act of 2018 requirements

Under the provisions of the federal Agriculture Improvement Act of 2018, hemp and hemp products may be legally cultivated, produced, and sold⁸ under two circumstances:

1. The state submits a plan for hemp regulation to the U.S. Secretary of Agriculture that complies with the Act's requirements; or
2. If the state does not submit a plan and hemp is not prohibited by that state, the U.S. Secretary of Agriculture establishes a plan to monitor and regulate hemp in that state.

Under the first circumstance, the state's plan must include all of the following:

- A way to keep track of land where hemp is cultivated within the state;
- Methods the state will use to test how much THC is in hemp plants;
- A way to dispose of plants or products that have a higher THC concentration than is legally allowed;
- A procedure for inspecting hemp cultivators;
- Procedures for enforcing the plan;
- A procedure for annual inspections;
- A system for dissemination of a hemp cultivator's information to the USDA; and
- Assurances that the state has the resources to carry out the plan.

Under the second circumstance, a plan established by the Secretary generally must meet the same criteria as a plan submitted by a state, but must also establish a licensing procedure for hemp cultivators. The Act specifically allows a state to outlaw hemp cultivation

⁵ R.C. 928.01(B).

⁶ R.C. 928.01(D).

⁷ R.C. 3719.41(C)(27), amended in Section 1.

⁸ As used in this analysis, the term "cultivate" refers to the act of growing hemp, and "produce" and "process" refer to the processing of hemp into a hemp product.

within its boundaries or to include additional restrictions and requirements in its plan as long as the plan complies with the Act.⁹

In accordance with the Act, the bill requires the Director of Agriculture, in consultation with the Governor and Attorney General, to submit a plan for the regulation of hemp cultivation to the Secretary for approval not later than 180 days after the bill's effective date.¹⁰ The bill further requires the Director to establish a hemp cultivation licensing program that incorporates the elements required for a state plan submitted under the federal Act to be approved by the Secretary, as further explained below.¹¹

Hemp cultivation license

Under the bill, the Director of Agriculture must establish a Hemp Cultivation Program (Program) to monitor and regulate hemp cultivation. Under the Program, the Director must issue hemp cultivation licenses to eligible applicants. A person seeking to cultivate hemp must apply to the Director for a hemp cultivation license, which is valid for five years (unless earlier suspended or revoked by the Director).¹² However, as authorized by the Director, the Department of Agriculture or a university may cultivate hemp without such a license.¹³

The bill specifies that no hemp cultivation license is required to do any of the following:

- Possess, buy, or sell hemp or a hemp product;
- Process hemp into a hemp product;
- Conduct agricultural, academic, or any other research involving hemp or hemp products.¹⁴

In addition, the bill specifies that notwithstanding any other provision of law, the addition of hemp or cannabinoids derived from hemp, including cannabidiol, to any product does not adulterate that product.¹⁵ Under current law, adulteration of a food, device, cosmetic, or drug is criminally prohibited. Thus, the bill exempts the addition of hemp to a product from being prosecuted as "adulteration" under that law.¹⁶

Rules

The bill requires the Director, in consultation with the Governor and the Attorney General, to adopt administrative rules establishing standards and procedures to regulate hemp cultivation. These rules incorporate all of the elements required to be included in a state plan by the federal Agriculture Improvement Act of 2018. The rules must include all of the following:

⁹ Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10113.

¹⁰ Section 5 of the bill.

¹¹ R.C. Chapter 928.

¹² R.C. 928.02(B).

¹³ R.C. 928.02(A).

¹⁴ R.C. 928.02(C).

¹⁵ R.C. 928.02(D).

¹⁶ See *e.g.*, R.C. 3715.52, 3715.99, and R.C. Chapter 3715 generally, not in the bill.

- The form of an application for a hemp cultivation license and information required to be included in the application;
- The amount of the application fee that must be submitted with an application;
- Requirements and procedures for applicant background investigations;
- Procedures and requirements for the issuance, renewal, denial, suspension, and revocation of a license;
- Grounds for the denial, suspension, and revocation of a license;
- A requirement that the Director cannot issue a license to any person who has pleaded guilty to or been convicted of a felony relating to a controlled substance in the ten years immediately prior to submission of an application;
- A requirement that any person that materially falsifies information in an application is ineligible for the license;
- A practice for maintaining relevant information regarding land on which licensees cultivate hemp, including a legal description of the land;
- A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 THC concentration levels of hemp;
- Requirements and procedures for corrective action plans (see “**Negligence: corrective action plan**”);
- A procedure for conducting random annual inspections of hemp cultivators to verify that hemp is being cultivated in accordance with the Program;
- A procedure for complying with enforcement procedures required under federal law;
- A procedure for the effective disposal of both:
 - Hemp plants that violate Program requirements;
 - Products made with hemp derived from plants that violate Program requirements;
- Procedures for sharing information regarding hemp cultivators with the U.S. Department of Agriculture;
- Any other requirements or procedures necessary to administer and enforce the Program.¹⁷

The bill also authorizes the Director to adopt rules establishing standards for testing and labeling hemp and hemp products.¹⁸

¹⁷ R.C. 928.03(A).

¹⁸ R.C. 928.03(B).

Enforcement

The bill establishes enforcement procedures that mirror those required for a state plan to be approved by the Secretary of Agriculture under the federal Agricultural Act of 2018. Generally, a state plan must require violations of a hemp program involving criminal negligence to be addressed through the use of a corrective action plan, and for violations involving a culpable mental state of recklessness (or greater) to be referred for criminal prosecution.

Under current Ohio law, a culpable mental state is the degree of culpability necessary to commit a criminal offense. In descending order, the various degrees of culpability are:

- Purposely (specific intent to cause a certain result);
- Knowingly (with knowledge that a certain result probably will occur);
- Recklessly (heedless indifference to consequences that a known risk may cause a certain result); and
- Negligently (a substantial lapse in due care that an act may cause a certain result).

Each mental state includes the levels of mental states listed after it. For example, if a criminal offense requires a person to have acted recklessly, then a person acting knowingly or purposely would be guilty of that offense.¹⁹

The bill creates general prohibitions, a scheme for issuing corrective action plans, and, criminal penalties and procedures for prosecuting violations committed with a culpable mental state greater than negligence, in accordance with federal law.

Prohibitions

The bill prohibits all of the following:

- Cultivating hemp without a hemp cultivation license;
- Violating any provision of the Hemp Cultivation Program or rules;
- Failing to comply with a corrective action plan issued by the Director.²⁰

The applicable criminal penalty for a violation of the prohibitions depends on the culpable mental state of the offender. However, negligent violations must be addressed by the Director with a corrective action plan, as described below. There is no criminal penalty associated with a negligent violation of any of these prohibitions.

Negligence: corrective action plan

The bill requires the Director to issue a corrective action plan to any person that the Director determines has negligently violated the bill's prohibitions. The Director must include in the corrective action plan both of the following:

- A reasonable date by which the person must correct the violation;

¹⁹ R.C. 2901.22, not in the bill.

²⁰ R.C. 928.04.

- A requirement that the person report to the Director regarding the person's compliance with the Hemp Cultivation Program, rules, and the corrective action plan for two calendar years immediately following the date of the violation.²¹

If the Director determines that a person negligently violated any of the bill's prohibitions three or more times in any five-year period, the Director must revoke the person's hemp cultivation license (if any) and may not issue a hemp cultivation license to that person for a period of five years beginning on the date that the Director determines that the person committed the most recent violation.²²

Recklessness: criminal penalties and prosecution

The bill requires the Director to report a person whom the Director determines has violated the bill's prohibitions with a culpable mental state of recklessness (or greater) to the Attorney General, the U.S. Attorney General, and the applicable county prosecutor.²³ The bill authorizes a county prosecutor or the Attorney General to prosecute such violations.²⁴

In addition, the bill establishes the following criminal penalties that apply to such violations:

- For a first offense, a minor misdemeanor;
- For each subsequent offense, a fourth degree misdemeanor.

The bill specifies that the sentencing court must issue an order prohibiting a repeat offender (a person convicted of or who has pleaded guilty to a third or subsequent offense) from obtaining a hemp cultivation license. The court must provide notice of that order to the Director. The Director must then revoke any license the person holds and refuse to issue the person a license beginning on the date of the court order.²⁵

Hemp Cultivation Fund

The bill establishes in the state treasury the Hemp Cultivation Fund, which must consist of all hemp cultivation license application fees, money appropriated to the Fund, and any other money received from gifts or federal grants. The Fund's investment earnings must be credited to the Fund. The Director must use the Fund to administer and enforce the Hemp Cultivation Program and rules.²⁶

²¹ R.C. 928.05(A).

²² R.C. 928.05(B).

²³ R.C. 928.05(C).

²⁴ R.C. 928.99(B).

²⁵ R.C. 928.99(A).

²⁶ R.C. 928.06.

History

Action	Date
Introduced	02-20-19

S0057-I-133/ar