Ohio Cannabis Legalization: Understanding the Basics, Business, and Legal Implications

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*__Note:__ *Stakeholder feedback on the proposed rules requested by March 20, 2024*

Last November, Ohio voters said yes to the ballot proposal to legalize the adult use of cannabis for non-medicinal purposes.[1] Ohio is the twenty-fourth state to legalize the recreational use of cannabis for adult-use consumers, following Missouri's similar measure enacted in February 2023. The ballot initiative approved the state to authorize and regulate the cultivation, processing, sale, purchase, possession, home growing, and use of cannabis by adults ages 21 and over.

The fundamental provisions of Section 3780 of the Ohio Revised Code were effective as of December 7, 2023. The legislation aimed to address the following objectives:

- Reduce illegal marijuana sales
- Supply a safer cannabis product
- Limit out-of-state cannabis that gets transported into Ohio
- Provide key funding to support social equity, job creation and cannabis research
- Host communities that have adult-use dispensaries[2]

Notably, the state also recognized a "compelling interest" to redress the past and present effects of discrimination and economic disadvantage for individuals in Ohio.[3]

While the provisions regarding home-grow consumption and possession have already gone into effect, the rollout of legal cannabis sales will take longer to implement. The new law lays out a process for what the state is referring to as "non-medical cannabis" licensure that requires initial applications be made available by June 7, 2024, and provisional licenses be issued by September 7, 2024.

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The new legislation allows for consumers aged 21 and over to buy and possess up to two and a half ounces of cannabis, or fifteen grams of cannabis extract, and the cultivation of up to six plants at home for personal use (up to 12 plants if two or more adults live in the household).[4] Future legal sales will be subject to a 10% excise tax, along with other local and state taxes. The tax proceeds will be distributed to communities with dispensaries, programs supporting small and minority business development, and addiction treatment.[5]

Section 3780.03 establishes a Division of Cannabis Control (the "Division") under the Ohio Department of Commerce to oversee and control the adult-use cannabis industry. The Division is charged with establishing the application, licensing, and renewal standards for cannabis operators and testing laboratories. The legislation will give current medical cannabis businesses a head start by allowing them to convert to non-medical licenses, as the Division is mandated to issue licenses to qualified applicants within nine months of the statute's enactment.[6] The Division is also required to issue 40 recreational cultivator licenses and 50 recreational adult retailer licenses, with a preference towards participants in the state's social equity and jobs program once it is established. Finally, the Division is required to review the status of licensing every two years after the first recreational operator is approved and may authorize additional licenses in the future.[7]

For the time being, cannabis is only available for purchase in medical dispensaries by registered patients or caregivers in the Ohio Medical Marijuana Control Program. However, adults aged 21 and over are permitted to grow marijuana at home and may also transfer up to six plants to a non-medical consumer so long as no payment is received and these transfers are not marketed to the public.

Once the recreational licenses are issued, a wide range of cannabis products will be permitted for sale, including plant material and seeds, live plants, smoking or combustible products, extracts, drops, oils, lotions and similar cosmetic products, and more. Several of the finer points of the law's provisions are still up for debate in the Ohio House and Senate, including the business structure of the

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dispensary licenses and tax revenue implications for the state.[8]

While the new law permits the possession and use of recreational cannabis, it does not provide adult-use consumers with protection against adverse employment actions. Currently, employees do not have a cause of action against employers for adverse employment actions related to cannabis use.[9] Additionally, the new law does not intrude onto any federal restrictions on employment, and employers will not be required to permit an employee's cannabis use or distribution. Employers will be free to continue the enforcement of drug testing policies and drug-free workplaces.[10]

Regulators have moved forward with the rulemaking process and issued proposed rules to which they are currently seeking stakeholder feedback. Any comments to the proposed rules must be submitted to DCCRules@com.ohio.gov by Wednesday, March 20, 2024.[11]

The proposed rules tackle ownership, dispensary security and operations. For instance, a 500-foot buffer zone between plant-touching cannabis businesses and facilities such as schools, churches and playgrounds is proposed, as well as insurance requirements and limitations on how many license types can be issued to one person. Requirements and logistics for disclosure of ownership, finances and control are covered, in addition to change of ownership rules and a requirement that all entities and trade names be pre-approved by the Division. The proposed rules also address waste disposal, facility visitors and requirements for dispensary operations and dispensary security and surveillance.

With an increasing number of states enacting legislation to allow recreational cannabis use, the national and regulatory landscape will continue to change.

If you would like assistance drafting comments to the proposed rules or have any questions about cannabis-related legal developments around the country, please contact Andrea Steel or any other member of the firm's Consumable Goods Team.

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[1] Ohio Rev. Code §3780.

[2] *Id.* at §3780.01.

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[3] *Id*.

[4] Non-Medical Cannabis FAQ | Ohio Department of Commerce.

[5] Understanding Ohio's New Recreational Marijuana Law: What Employers Need To Know (forbes.com) and Ohio Regulators Unveil Marijuana Legalization Guide As They Prepare To Create Rules For Voter-Approved Market – Marijuana Moment.

[6] Non-Medical Cannabis FAQ | Ohio Department of Commerce.

[7] *Id*; Ohio just legalized cannabis. Now comes the hard part | CNN Business.

[8] Legislation trying to tweak Ohio's new adult-use marijuana law continues to be at a standstill.

[9] Ohio Rev. Code Section 3780.35.

[10] Employers may need to consider and separately address in their policies the recreational use of cannabis versus medical cannabis use under Ohio laws.

[11] Proposed Rules – Early Stakeholder Outreach | Ohio Department of Commerce

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