

## FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article XV of the Ohio Constitution is hereby amended to add the following Section:

### **Section 12. Personal use and regulation of marijuana.**

#### **(A) Purpose and findings.**

- (1) In the interest of allowing for the efficient use of law enforcement resources; enhancing revenue for public purposes; reducing marijuana arrests, which have had a racially disparate impact; and protecting individual freedom, the people of the state of Ohio find and declare that the use of marijuana should be legal for persons twenty-one years of age or older.
- (2) In the interest of the health and public safety of our citizenry, the people of the state of Ohio further find and declare that the production and sale of marijuana should be regulated so that:
  - (a) Individuals will have to show proof of age before purchasing marijuana;
  - (b) Selling, distributing, or transferring marijuana to minors and other individuals under the age of twenty-one will remain illegal, unless authorized by the Ohio General Assembly or the Department;
  - (c) Driving under the influence of marijuana will remain illegal;
  - (d) Legitimate, taxpaying businesspeople will conduct sales of marijuana, likely generating thousands of new jobs in the state; and
  - (e) Marijuana sold in this state will be labeled and subject to additional regulations to ensure that consumers are informed and protected.
- (3) The people of the state of Ohio further find and declare that it is necessary to ensure consistency and fairness in the application of this Section 12 throughout the state and that, therefore, the matters addressed by this Section 12 are, except as specified herein, matters of statewide concern.

#### **(B) Definitions.** As used in this Section 12, unless the context otherwise requires,

- (1) “Consumer” means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.
- (2) “Cultivation area” means the boundaries of the enclosed areas in which marijuana is cultivated during the vegetative stage and flowering stage of the cultivation process. For purposes of calculating the marijuana cultivation area square footage, enclosed areas used solely for the storage and maintenance of mother plants, clones, or seedlings shall not be included.
- (3) “Department” means the Ohio Department of Commerce or its successor agency.
- (4) “Hemp” shall have the meaning provided in Chapter 928 of the Ohio Revised Code or any successor provision.

- (5) "Hemp product" shall have the meaning provided in Chapter 928 of the Ohio Revised Code or any successor provision.
- (6) "Locality" means a county, municipal corporation, or township.
- (7) "Marijuana" or "marihuana" means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hashish or marihuana concentrate. "Marijuana" or "marihuana" does not include hemp or hemp products, nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.
- (8) "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (9) "Marijuana concentrate" means the resin extracted from any part of the plant of the genus *cannabis* and every compound, manufacture, salt, derivative, mixture, or preparation of that resin but shall not include the weight of any other ingredient combined with marijuana concentrate to prepare marijuana products.
- (10) "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana processing facilities, and to other marijuana cultivation facilities, but not to consumers.
- (11) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana processing facility, or a retail marijuana store.
- (12) "Marijuana processing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- (13) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- (14) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.
- (15) "Ohio Medical Marijuana Control Program" means the program established under Section 3796.02 of the Ohio Revised Code.
- (16) "Openly and publicly" means the use of marijuana in a venue, area, or space that is open to the public without restriction, including age restrictions.
- (17) "Person" or "persons" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association.

- (18) “Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana processing facilities and to sell and deliver marijuana and marijuana products to consumers.
- (19) “Unreasonably impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

**(C) Personal use of marijuana.** Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Ohio law or the law of any locality within Ohio or be a basis for seizure or forfeiture of assets under Ohio law for persons twenty-one years of age or older:

- (1) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana, with no more than eight grams of that one ounce being in the form of marijuana concentrate.
- (2) Possessing, growing, processing, or transporting no more than six marijuana plants per household, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.
- (3) Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older.
- (4) Consumption of marijuana, including without limitation by combustion or smoking, provided that nothing in this Section 12 shall permit consumption that is conducted openly and publicly or in a manner that endangers others.
- (5) Assisting another person who is twenty-one years of age or older in any of the acts described in paragraphs (1) through (4) of this subsection (C).

**(D) Lawful operation of marijuana-related facilities.** Notwithstanding any conflicting provision of the Ohio Revised Code, or the law of any locality:

- (1) Any person twenty-one years of age or older may manufacture, purchase, store, and transport marijuana accessories and sell marijuana accessories to a person who is twenty-one years of age or older, provided that a person eighteen years of age or older may be employed by a business engaged in the manufacture or sale of marijuana accessories.
- (2) The holder of a current, valid license to operate a retail marijuana store license may:
  - (a) Possess, display, or transport marijuana or marijuana products;
  - (b) Purchase marijuana from a marijuana cultivation facility;
  - (c) Purchase marijuana or marijuana products from a marijuana processing facility;
  - (d) Sell marijuana or marijuana products to consumers;

- (e) Transfer inventory between retail marijuana stores with identical ownership; and
  - (f) Deliver marijuana, marijuana products, or marijuana accessories to a consumer's residence.
- (3) The holder of a current, valid license to operate a marijuana cultivation facility may:
- (a) Cultivate, harvest, process, package, transport, display, and possess marijuana;
  - (b) Deliver or transfer marijuana to a marijuana testing facility;
  - (c) Sell marijuana to another marijuana cultivation facility;
  - (d) Sell marijuana to a marijuana processing facility;
  - (e) Sell marijuana to a retail marijuana store; and
  - (f) Purchase marijuana from a marijuana cultivation facility.
- (4) The holder of a current, valid license to operate a marijuana processing facility may:
- (a) Package, process, transport, manufacture, display, and possess marijuana or marijuana products;
  - (b) Deliver or transfer marijuana or marijuana products to a marijuana testing facility;
  - (c) Sell marijuana or marijuana products to a retail marijuana store;
  - (d) Sell marijuana or marijuana products to a marijuana processing facility;
  - (e) Purchase marijuana from a marijuana cultivation facility; and
  - (f) Purchase marijuana or marijuana products from a marijuana processing facility.
- (5) The holder of a current, valid license to operate a marijuana testing facility may possess, cultivate, process, repackage, store, transport, display, and transfer marijuana or marijuana products.
- (6) Where the "holder of a current, valid license" is used in this subsection (D), that phrase includes those persons acting in their capacity as an owner, employee, or agent of the respective licensed marijuana cultivation facility, retail marijuana store, marijuana processing facility, or marijuana testing facility.
- (7) Any person may lease or allow the use of property owned, occupied, or controlled by any person, corporation, or other entity for any of the activities conducted lawfully in accordance with paragraphs (1) through (5) of this subsection (D).
- (8) The activities described in paragraphs (1) through (5) of this subsection (D) shall not be unlawful and are not an offense under Ohio law, and shall not be a basis for seizure or forfeiture of assets under Ohio law for persons twenty-one years of age or older.

**(E) Regulation of marijuana.**

- (1) The Department shall adopt regulations necessary for implementation of this Section 12. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:
  - (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment, which may include limitations on the total number of licenses issued, with such procedures subject to all requirements of Chapter 119 of the Ohio Revised Code or any successor provision;
  - (b) A schedule of application, licensing, and renewal fees, provided, application fees shall not exceed five thousand dollars, with this upper limit adjusted annually for inflation, unless the Department determines and demonstrates that a greater fee is necessary to carry out its responsibilities under this Section 12;
  - (c) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
  - (d) Security requirements for marijuana establishments;
  - (e) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the legal age of use;
  - (f) Packaging and labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;
  - (g) Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;
  - (h) Equivalency standards between marijuana and marijuana products, based on delta-9 tetrahydrocannabinol content, for the purpose of ensuring that sales do not exceed marijuana possession limits;
  - (i) Testing standards for marijuana and marijuana products;
  - (j) Restrictions on the advertising and display of marijuana and marijuana products, including regulations to ensure that advertising and marketing is not targeted to minors; and
  - (k) Civil penalties for the failure to comply with regulations made pursuant to this Section 12.
- (2) When issuing licenses in accordance with paragraph (1)(a) of this subsection (E), the Department shall, in the interest of preventing an excess supply of marijuana:
  - (a) Prior to January 1, 2026, not issue more than one retail marijuana store license for every sixty thousand residents in the state; and

- (b) Limit the total cultivation area collectively among marijuana cultivation facilities that were not granted the ability to cultivate marijuana in accordance with paragraph (3)(a) of this subsection (E) to one million five hundred thousand square feet of cultivation area.
- (3) In order to most efficiently and effectively initiate the process of eliminating the illicit market for marijuana and marijuana products in Ohio, while protecting the rights of medical marijuana patients under Ohio law:
  - (a) Beginning on July 1, 2021, all entities that have received a license to cultivate, process, dispense, or test medical marijuana under Chapter 3796 of the Ohio Revised Code and are operating under those licenses as of July 1, 2021, being similarly situated and having been previously vetted and approved to operate by the state, may conduct those activities for the benefit of all individuals twenty-one years of age or older, subject to the regulations issued pursuant to paragraph (3)(b)(i) of this subsection (E), and shall be treated as if issued a license under regulations promulgated pursuant to paragraph (1)(a) of this subsection (E), provided that a locality may prohibit a retail dispensary from selling marijuana and marijuana products to individuals who are not registered patients or caregivers under the Ohio Medical Marijuana Control Program; and
  - (b) Prior to July 1, 2021, the Department shall:
    - (i) Issue regulations necessary for the implementation of paragraph (3)(a) of this subsection (E), ensuring that the regulations do not prohibit the activities for the benefit of all individuals twenty-one years of age or older, either expressly or through regulations that make conducting the activities unreasonably impracticable; and
    - (ii) Take steps to ensure that an adequate supply of medical marijuana and marijuana can be produced to serve medical marijuana patients under the Ohio Medical Marijuana Control Program and individuals twenty-one years of age or older subsequent to July 1, 2021.
- (4) In order to ensure that individual privacy is protected, notwithstanding paragraph (1) of this subsection (E), the Department shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers other than information typically required in a financial transaction conducted at a retail liquor store.
- (5) The General Assembly may enact a special sales tax to be levied upon marijuana and marijuana products sold at retail marijuana stores or other entities that may be authorized to sell marijuana or marijuana products to consumers and, if such a sales tax is enacted, shall direct the Department to establish procedures for the collection of all taxes levied. Provided, at least one-quarter of the revenue raised from any such sales tax shall be placed in a special fund and used to establish a Commission on Expungement, Criminal Justice, Community Investment, and Cannabis Industry Equity and Diversity, which shall provide recommendations regarding the allocation of the remaining revenue in the fund; at least one-half of the revenue raised from any such sales tax shall be allocated to the State Local Government Fund or any successor fund dedicated to a similar purpose; and at least one-tenth of the revenue raised from any such sales tax shall be returned to the municipal corporations or townships in which the retail sales occurred in proportional amounts based upon the sales taxes remitted.

- (6) A locality may enact ordinances or regulations, not in conflict with this Section 12 or with regulations or legislation enacted pursuant to this Section 12, governing the time, place, manner, and number of marijuana establishment operations; establishing a schedule of annual operating fees for marijuana establishments; and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality. A locality may prohibit the operation of marijuana cultivation facilities, marijuana processing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year.
- (7) On matters related to zoning for marijuana establishments and the operation of marijuana establishments as it specifically relates to zoning established by local ordinances, localities shall have sole and exclusive authority.
- (8) Prior to issuing marijuana establishment licenses under this Section 12, the Department shall:
- (a) Conduct a study to determine whether there has been prior discrimination in the issuance of marijuana-related licenses in Ohio, including whether the effects of marijuana prohibition have contributed to a lack of participation by racial minorities in Ohio's medical marijuana industry; and
  - (b) Take necessary and appropriate steps to address any identified discrimination when issuing marijuana establishment licenses.
- (9) Each application for an annual license to operate a marijuana establishment shall be submitted to the Department. The Department shall:
- (a) Begin accepting and processing applications following the adoption of regulations described in paragraph (1) of this subsection (E);
  - (b) Immediately forward a copy of each application to the locality in which the applicant desires to operate the marijuana establishment;
  - (c) Issue an annual license to the applicant unless the Department finds the applicant is not in compliance with regulations enacted pursuant to paragraph (1), the applicant has not been selected to operate based on a selection process established in accordance with paragraph (1) of this subsection (E), or the Department is notified by the relevant locality that the applicant is not in compliance with ordinances and regulations made pursuant to paragraph (6) of this subsection (E) and in effect at the time of application; and
  - (d) Upon denial of an application, notify the applicant in writing of the specific reason for its denial.
- (10) The Department may issue retail marijuana store licenses in excess of the number permissible under paragraph (2)(a) of this subsection (E) and may permit any marijuana cultivation facility to add additional cultivation area notwithstanding paragraph (2)(b) of this subsection (E):
- (a) If licensed marijuana establishments in Ohio are able to engage in interstate commerce;  
or

- (b) If the Department determines, based on articulable economic data and after considering existing and anticipated future consumer demand, that increasing the limitations will not result in a significant excess supply of marijuana in Ohio.

**(F) Employers, driving, minors, and property rights.**

- (1) Nothing in this Section 12 is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.
- (2) Nothing in this Section 12 is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede statutory laws related to driving under the influence of marijuana or driving while impaired by marijuana, nor shall this Section 12 prevent the state from enacting and imposing penalties for driving under the influence of or while impaired by marijuana.
- (3) Nothing in this Section 12 is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.
- (4) Nothing in this Section 12 shall prohibit a person, employer, school, hospital, detention facility, corporation, or any other entity who occupies, owns, or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.
- (5) Nothing in this Section 12 shall prevent a state or local administrative agency from regulating or prohibiting the use or consumption of marijuana on a commercial property as a condition for commercial licensure at that property.
- (6) A person charged with the well-being of a minor shall not be denied custody, visitation, or any other parental right or responsibility for conduct that is permitted by this Section 12, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

**(G) Medical marijuana provisions unaffected.** Nothing in this Section 12 shall be construed to limit any privilege or right of a medical marijuana patient or caregiver as provided under the Ohio Medical Marijuana Control program.

**(H) Self-executing, severability, conflicting provisions.** All provisions of this Section 12 are self-executing except as specified herein, are severable, and, except where otherwise indicated in the text, shall supersede conflicting state statutory, local charter, ordinance, or resolution, and other state and local provisions.