

State Preemption Law

The battle for local control of democracy

By Matthew Porter

This past July the Takoma Park, Maryland City Council unanimously passed the *Safe Grow Act of 2013*, which generally restricts the use of cosmetic lawn pesticides on both private and public property within the city's jurisdiction. This landmark victory was the first time that a local jurisdiction of this size in the U.S. has used its authority to restrict pesticide use. While this type of local law has taken hold in provinces across Canada over the last seven years,¹ its adoption in the U.S. is a watershed moment for public health and environmental advocates, raising the larger question as to why it hasn't happened sooner and more widely across the country. The answer – state laws that preempt, or take away, local authority to restrict pesticide use. Currently, 43 states have some form of state law that preempts local governments' ability to regulate the use of pesticides. In fact, state environmental preemption law often applies more broadly to local restrictions on genetically engineered crops and the use of synthetic fertilizers.

What is State Preemption?

Preemption is the ability of one level of government to override laws of a lower level. While local governments once had the ability to restrict the use of pesticides on all land within their jurisdictions, pressure from the chemical industry led many states to pass legislation that prohibits municipalities from adopting local pesticide ordinances affecting the use of pesticides on private property that are more restrictive than state policy.

A U.S. Supreme Court decision in 1991 upheld the rights of localities to restrict pesticides under federal

pesticide law. Chemlawn Services Corporation, now TruGreen, went to bat that same year, lobbying state legislatures with the argument, "The lawn care industry is besieged by misinformation regarding industry's use of pesticides and fertilizers and the effect these chemicals have on the environment and the public health." According to Allen James, former president of the Responsible Industry for a Sound Environment (RISE), a pro-pesticide trade group, "Local communities generally do not have the expertise on issues about pesticides to make responsible decisions."² Beyond Pesticides argued that the basic rights of local governments to protect public health and the environment must be preserved, especially in a climate where federal and state government are not adequately protective. Local grassroots organizations have effectively mobilized against the use of lawn pesticides, armed with the knowledge of the hazards and the viability of management practices that, without pesticides, focus on building a soil environment rich in microbiology that will produce strong, healthy turf that is able to withstand many of the stresses that affect turfgrass.

State preemption laws effectively deny local residents and decision makers their democratic right to better protection when a community decides that minimum standards set by state and federal law are insufficient. Given this restriction, local jurisdictions nationwide have passed ordinances that restrict pesticide use on the towns public property, or school districts have limited pesticides on its land. As pesticide pollution and concerns over the effects of GE foods on human and environmental

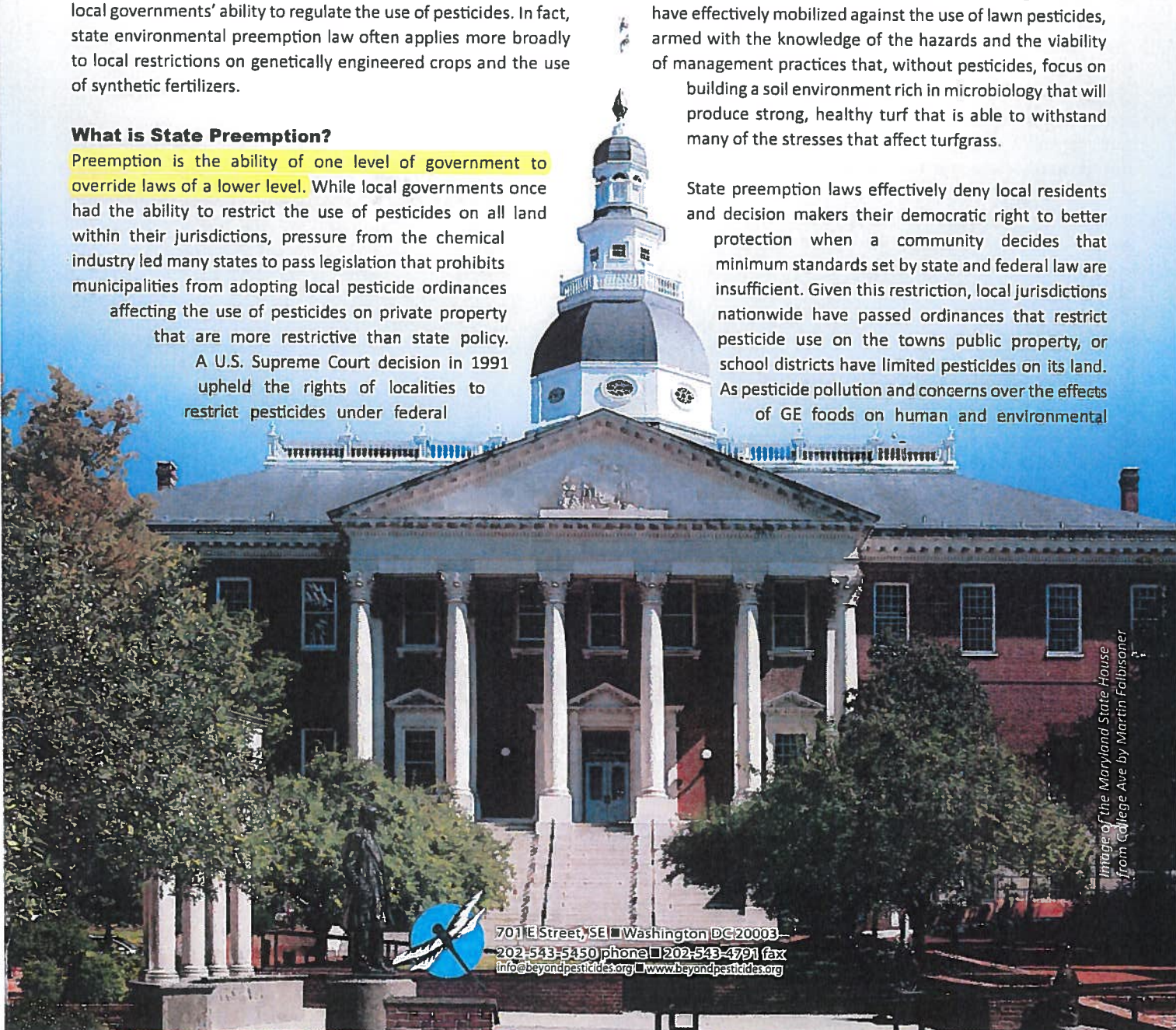


Image of the Maryland State House from College Ave by Martin Falbisoner



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health mount, many are fighting to overturn preemption laws and return the power back to localities, enabling them to adopt more stringent protective standards throughout their communities.

History of Preemption

In 1979, Mendocino County, California was one of the first local jurisdictions in the country to pass a pesticide ordinance, in this case prohibiting the aerial application of phenoxy herbicides, such as 2,4,5-T. The measure was passed after an incident in 1977 that resulted in herbicide drift on school buses nearly three miles away from the application site. A California State Supreme Court decision upheld the right of citizens to adopt more protective standards than the state and federal government. (*The People v. County of Mendocino, 1984*) The California legislature then adopted legislation to preempt that right. The issue of federal preemption of local ordinances made its way to the U.S. Supreme Court, which ruled in 1991 that federal law (the *Federal Insecticide, Fungicide and Rodenticide Act, FIFRA*) does not preempt local jurisdictions from restricting the use of pesticides more stringently than the federal government. (*Wisconsin Public Intervenor v. Ralph Mortier*) However, the ability of states to take away local authority was left in place. The pesticide lobby immediately formed a coalition, called the Coalition for Sensible Pesticide Policy, and developed model legislation that would restrict local municipalities from passing ordinances regarding the use or sale of pesticides on private property. The Coalition lobbyists descended upon states across the country, seeking and passing, in most cases, preemption legislation that was often identical to the Coalition’s wording.

Variations in Pesticide Preemption Language

Explicit Preemption. Twenty-nine states have nearly identical preemption language that explicitly preempts localities from adopting stricter legislation that would regulate the use of pesticides. Most states’ preemption clauses read similar to the American Legislative Exchange Council’s (ALEC) *Model State Pesticide Preemption Act*, which states,

“Nocity, town, county, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.”

Limited preemption. Fourteen states do not have explicit preemption language. However, they delegate all of the authority to regulate pesticide law to a commissioner or pesticide board. This implies

that localities seeking more restrictive pesticide regulations could petition the commissioner for a variance from the states pesticide law. For example, in New York, “Jurisdiction in all matters pertaining to the distribution, sale, use, and transportation of pesticide, is by this article vested exclusively in the commissioner.” (33-0303)

Five states that vest exclusive regulatory authority in their commissioner specify that localities can petition the commissioner for exemptions to these pesticide regulations. For example, in Louisiana, “The governing authorities of parishes and municipalities may request that the rules applicable to the distribution, sale or application of pesticides be amended to provide for specific problems encountered in the parish or municipality.” (R.S 3:224B)

No preemption. Seven states do not preempt local authorities’ ability to restrict the use of pesticides on any land within their jurisdiction. Some of these states have no regulations that would preempt local authority and others have specific language written in that reaffirms localities’ authority, such as in Maine, which states, “These regulations are minimum standards and are not meant to preempt any local ordinances which may be more stringent.” (01-026 Chapter 24. Section 6)

Explicit Preemption

Alabama	Arizona	Arkansas	California	Colorado
Florida	Georgia	Idaho	Illinois*	Iowa
Kansas	Kentucky	Minnesota	Missouri	Montana
Nebraska	New Hampshire	New Mexico	North Carolina	North Dakota
Ohio	Oklahoma	Oregon	Pennsylvania	South Dakota
Tennessee	Texas	West Virginia	Wisconsin	Wyoming

*Except Chicago

Exclusive Authority

Connecticut	Delaware	Massachusetts	Mississippi	New York
		Rhode Island	South Carolina	Virginia

Explicit Right to Petition

Indiana	Louisiana	Michigan	New Jersey	Washington
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Not Preempted

Alaska	Hawaii	Maine	Maryland	Nevada
			Utah	Vermont

Preemption of Local Laws on GE Crops

In 2005, agricultural lobby groups worked to pass state preemption legislation that prevents towns, counties, or cities from passing any ordinance, regulation, or resolution to restrict GE crops or any other plants. These laws seek to stop laws that have been adopted by nearly 100 towns in New England³ that limit the growing of genetically modified seeds and livestock.⁴ So far, 16 states have passed legislation that limits the ability of localities to regulate GE crops. These preemption regulations often amend state seed law. For example, in Arizona, “The regulation and use of seeds are of statewide concern. The regulation of seeds pursuant to this article and their use is not subject to further regulation by a county, city, town, or other political subdivision of this state.” (3-243)

Oregon recently joined this list of 16 states after Gov. John Kitzhaber signed Senate Bill 863 into law on October 8, 2013. The bill, which preempts localities’ ability to regulate seeds used for commercial agriculture, contains an emergency clause that allows it to take immediate effect. The law however, does not affect measures in Benton and Lane counties that already restrict GE planting.⁵ This legislation comes after unapproved GE wheat was found growing in an Oregon wheat field, which led to Japan temporarily halting its importation of U.S. western white wheat

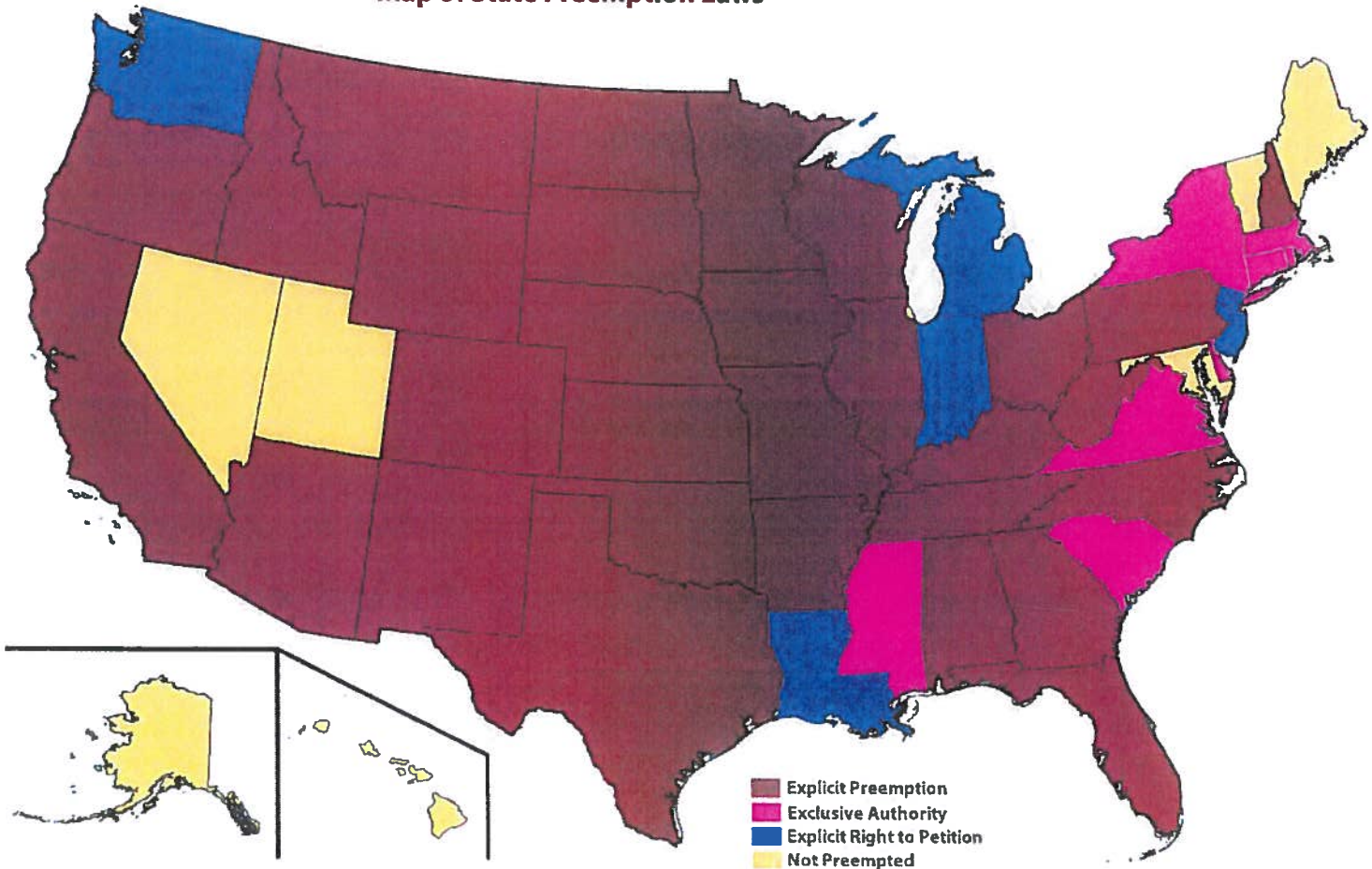
from the Pacific Northwest.⁶

Even more troubling, an amendment added to the House of Representatives version of the 2013 Farm Bill by Rep. Steven King (R-IA) would set a federal standard that preempts any state’s or locality’s ability to impose conditions on the production of any agricultural product offered for sale in interstate commerce. This amendment would prohibit locality’s from restricting the sale or use of GE seeds. This amendment would also undo state laws in Maine and Connecticut, regarding the labeling of GE ingredients.⁷

Recent Preemption Struggles and Victories

On April 15, 2004, Dane County, Wisconsin officials, who oversee 61 municipalities including Madison, passed a local county-wide ban on the use of synthetic lawn fertilizers that contain phosphorus due to its pollution of local lakes. This directly restricted the use of ‘weed and feed’ products that combine synthetic fertilizers and herbicides. The chemical industry trade group RISE sued the County citing preemption law. The U.S. 6th Circuit Court of Appeals upheld Dane County’s ordinance in December 2005, finding that the law does not preempt local authority to regulate fertilizers. Jurisdictions in states that preempt local authority to restrict pesticides can in most cases institute synthetic fertilizer

Map of State Preemption Laws



restrictions that limit ‘weed and feed’ products with pesticides.

State activists have worked to overturn preemption law. In 2008, California State Assemblywomen Fiona Ma introduced AB977 to overturn the California state law that prohibits the restriction of pesticides by local jurisdictions. In 2011, Connecticut State Senator Edward Meyer introduced S.B. 244, which would have overturned Connecticut’s preemption law. In 2012, a similar bill, HB 5121, was introduced in the State House and passed through the Joint Committee on Environment, however the bill was not brought to the floor for a vote.

Bill 2491, which would establish provisions governing the use of pesticides and GE crops in Kauai, Hawaii, was introduced by county council member Gary Hoosier in 2013 over concerns about the use of pesticides on GE test fields and genetic drift. The bill calls for buffer zones between fields where pesticides are applied and areas that are used by sensitive populations, such as schools and hospitals. The bill would also force seed companies to conduct an Environmental and Public Health Impact Study (EPHIS) as a prerequisite for the further planting of GE seed. As this fight over GE regulation in Hawaii has grown, Gov. Neil Abercrombie argued that regulation of GE crops should come from the state and promised that the state will increase oversight of seed companies’ use of pesticides. Despite these efforts by the Governor, the Kauai county council passed the bill by a 6-1 margin. After the bill was vetoed by Kauai Mayor Bernard Carvalho,⁸ the County Council overturned the veto by a vote of 5-2.⁹

The most important achievement under state law that upholds local authority to restrict pesticides has been the passage of the *Safe Grow Act of 2013*, which generally restricts the use of cosmetic lawn pesticides on both private and public property throughout Takoma Park, Maryland. This landmark legislation stops involuntary poisoning and non-target contamination from pesticide drift and volatility that occurs, resulting in these toxic chemicals moving off of treated private yards. The new law fits into the city’s strategic plan to lead community efforts in environmental sustainability, protection, and restoration, and secures Takoma Park’s role as a leader in sustainability in the state of Maryland and the nation.

What Can I Do?

Residents in one of seven states (Alaska, Hawaii, Maine, Maryland, Nevada, Utah, and Vermont) without preemption, can consider

using local authority to adopt pesticide restrictions that are protective of health and the environment.

Residents in 14 states (Connecticut, Delaware, Indiana, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, South Carolina, Rhode Island, Virginia, and Washington) with limited preemption, can petition the state to authorize the adoption of local pesticide restrictions. Within the five states that explicitly provide for local petitions (Indiana, Louisiana, Michigan, New Jersey, and Washington), this mechanism can be used to move a policy recommendation forward.

Those who live in states that explicitly preempt local authority can mount an effort in the state legislature to reverse preemption and advance principles of local democratic governance.

The *Federal Insecticide, Fungicide and Rodenticide Act* (FIFRA) has established a partnership between local state, and federal governments. This partnership has resulted in a variety of important solutions to pesticide problems. When the Supreme Court ruled in 1991 to uphold the historic FIFRA partnership, it affirmed an authority that has been a part of FIFRA since its original enactment. Preemption denies citizens the right to protect health and the environment. Numerous studies by the U.S. Government Accountability Office and scientific studies indicate that federal and state governments alone are not adequately protective of health and the environment. There is no evidence

that the prospect of local democratic decision making is a threat to agriculture or other business interest in local communities. In fact, those closely aligned with these interest are well-represented in local decision making bodies.

Finally, local legislators know that restricting pesticides is no different from other environmental and neighborhood stewardship laws, including restrictions on littering, recycling, noise, picking up after pets, and smoking. These local laws

all act on values associated with living in a community where contaminant-free air, water, and land are shared resources.

Beyond Pesticides has available on its website model ordinances that you can use to begin discussion in your community on local policies that restrict pesticides and advance sustainable land practices. See www.beyondpesticides.org for more information.

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Endnotes

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Lawn Care Local Ordinance Examples

Mayfield Village

763.02 NOTICE OF USE OF PESTICIDES.

All users of pesticides shall give notice to abutting property owners of the application of pesticides to any property within the Municipality. The notice required herein shall be in writing and shall be left in a conspicuous place upon such abutting properties at least twenty-four hours prior to any application of pesticides. The notice required herein shall also include the name of any pesticide to be used.

(Ord. 87-35. Passed 12-21-87.)

City of Stow:

541.10 NOTICE OF USE OF PESTICIDES AND HERBICIDES.

(a) All home applicators within the Municipality shall be required to post notice. The required posting of notice shall be in the written form of a sign measuring not less than four inches by five inches containing the words "Lawn Chemicals In Use" attached to a supporting device. Such posting shall be in a conspicuous place upon the lawn of the home applicator.

(b) All home applicators within the Municipality shall give notice to a requesting property owner. The request to be notified shall be in writing providing the requesting property owner's name, address, telephone number and indicating that they wish to receive prior **notification** of lawn **pesticide** and/or herbicide use. After such request is made, no home applicator shall apply any **pesticide** and/or herbicide unless twenty-four hours prior to the time of application, a reasonable attempt has been made to provide the approximate date and time of the **pesticide** and/or herbicide application in writing or orally through in-person or telephone communication to the requesting property owner.

(c) Whoever violates any provision of this section shall be guilty of a minor misdemeanor. Any subsequent violation shall be a misdemeanor of the fourth degree.

City of Warren:

673.02 NOTICE AND DUTIES TO OCCUPANTS OF ABUTTING PROPERTY.

(a) No person licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 shall apply any lawn chemical to residential or commercial lawns in the City unless twenty-four hours prior to the time of application, a reasonable attempt has been made to provide the following information set forth in this section in writing or orally, through in-person or telephone communication to persons residing on property that are located within 300 feet of the property on which the lawn chemical is to be applied:

- (1) The date and approximate time of lawn chemical application.

- (2) The name and telephone number of the employer of the applicator;
- (3) The chemical type (fertilizer, **pesticide** or defoliant) of each lawn chemical to be applied.

(b) In the event that an applicator is unable to provide twenty-four hour prior **notification** to persons residing on property that are located within 300 feet of the property on which the lawn chemical is to be applied due to the absence or inaccessibility of such persons, the applicator shall leave a written notice at the residence prior to the time of application which shall provide the information specified in subsections (a)(1), (2) and (3) hereof.

(c) No person who is licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 or any employee of any person so licensed shall fail to remove from any public sidewalk or the driveway of an abutting property any lawn care chemical which may have been placed thereon during the application of the lawn chemical. (Ord. 1992-1. Passed 2-11-92.)

Independence, Ohio:

673.02 NOTICE AND DUTIES TO OCCUPANTS OF ABUTTING PROPERTY.

(a) No person licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 shall apply any lawn chemical to residential or commercial lawns in the City unless twenty-four hours prior to the time of application, a reasonable attempt has been made to provide the following information set forth in this section in writing or orally, through in-person or telephone communication to persons residing on property that are located within 300 feet of the property on which the lawn chemical is to be applied:

- (1) The date and approximate time of lawn chemical application.
- (2) The name and telephone number of the employer of the applicator;
- (3) The chemical type (fertilizer, pesticide or defoliant) of each lawn chemical to be applied.

(b) In the event that an applicator is unable to provide twenty-four hour prior notification to persons residing on property that are located within 300 feet of the property on which the lawn chemical is to be applied due to the absence or inaccessibility of such persons, the applicator shall leave a written notice at the residence prior to the time of application which shall provide the information specified in subsections (a)(1), (2) and (3) hereof.

(c) No person who is licensed under Ohio R.C. 921.06, 921.07, 921.08 or 921.12 or any employee of any person so licensed shall fail to remove from any public sidewalk or the driveway of an abutting property any lawn care chemical which may have been placed thereon during the application of the lawn chemical. (Ord. 1992-1. Passed 2-11-92.)

State of Ohio, sections 901 and 921

901:5-11-09 Notification requirements for lawn pesticide applicators.

(A) No commercial applicator or trained serviceperson working under the direct supervision of a commercial applicator shall:

(1) Apply any lawn pesticides to residential lawns in any municipal corporation or subdivided area of a township unless:

(a) They provide the following information in writing to the person on whose property the chemical is being applied. This information shall be provided prior to or at the time of application:

(i) The brand or common name of each lawn pesticide applied;

(ii) The chemical type (fungicide, herbicide, or insecticide);

(iii) Any special instruction on the label of the lawn care pesticide product applicable to the customer;

(iv) The company name and telephone number of the applicator's employer;

(v) The date and time of the application;

(vi) Any other pertinent information as required by the label.

(vii) A written statement regarding lawn signs posted in accordance with paragraph (A)(1)(c) of this rule which reads as follows: "Lawn posting signs must remain in place for twenty-four hours following lawn application."; and

(b) The pesticide business has attempted the notification required by paragraph (B)(1) of this rule.

(c) They have placed at conspicuous points, including, but not limited to, common access points on the property to which lawn pesticides have been applied, one or more signs:

(i) The sign shall measure at least five inches by four inches on adjacent sides and be attached to the upper portion of a dowel or other supporting device. The bottom edge of the sign must be at least fourteen inches from the ground and the sign must be weatherproof for twenty-four hours.

The sign shall be in the form and carry the wording and warning symbol illustrated:



The required warning symbol and lettering on the sign shall be in the same proportion as the wording and warning symbol illustrated herein and in proportion to the actual size of the sign. No company logos or other advertising graphics may appear on the face of the sign. The signs posted at access points must be within five feet of the access point.

(ii) No other signs may be posted on the treated property by the pesticide business within thirty feet of the above sign.

(iii) After January 1, 2016, no additional information may appear on the reverse side of the sign unless it is identical to the face of the sign.

(2) Apply any lawn pesticides to commercial lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application with the individual on site who is responsible for administration of the property on which the lawn pesticide is applied.

(b) They have posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein.

(3) Apply any lawn pesticides to public lawns in any municipal corporation or subdivided area of a township unless:

(a) They have provided the information required in paragraph (A)(1)(a) of this rule and the date and approximate time of application to the individual on site who is responsible for administration of the property on which the lawn pesticide is applied. The information required under paragraph (A)(1)(a)(vii) of this rule may be omitted if signs have been permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(b) They have either posted the signs required under paragraph (A)(1)(c) of this rule in the manner prescribed therein or they have permanently placed at common access points to the property a sign no less than eight inches by ten inches with the legend: "PERIODIC APPLICATION OF LAWN PESTICIDES - INQUIRE AT: (location where information may be obtained)." The designated location shall be a site which is accessible to the public during normal hours of operation.

(c) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be made available to the public upon request when signs are posted in accordance with paragraph (A)(1)(c) of this rule.

(d) The information in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule must be obtainable at the location designated on signs which are permanently placed in accordance with paragraph (A)(3)(b) of this rule.

(B) The pesticide business shall, for applications made under paragraph (A)(1) of this rule:

(1) Make a reasonable attempt to provide, on or before the business day preceding the applications, the date and approximate time of application, and the name and telephone number of the pesticide business, to any occupant of a residence whose property abuts the treated property and who has notified the pesticide business in a writing that includes the occupant's name, mailing address, and telephone number, that they wish to receive prior notice of pesticide applications;

(2) Make available to in writing all the information listed in paragraphs (A)(1)(a)(i) to (A)(1)(a)(vi) of this rule to an occupant of a residence whose property abuts the treated property and who contacts the pesticide business following an application made under this rule requesting information about that application; and

(3) Retain for a period of three years the name, address and telephone number of each person who has requested notification under this paragraph. These records shall be complete, current and in a form that accommodates inspection by the director. Prior to deleting these records at the end of three years, the pesticide business shall notify the person that their record is going to be deleted. The pesticide business shall not delete the record for any person who indicates in writing that that they wish to continue receiving notification under this paragraph.

For the purposes of this paragraph, properties which are completely separated from the treated property by a right-of-way, or which share with the treated property a single common point along the perimeters of the properties are not considered abutting properties.

(C) No pesticide business or employee of a pesticide business shall bear liability for the removal by unauthorized persons of the signs required by this rule except that no employee of the pesticide business shall remove the signs prior to twenty-four hours following lawn pesticide application.

(D) Any information required to be provided under paragraph (A) of this rule may, if the person to whom the information is to be given is absent or inaccessible at the time the attempt is made, be left at that person's place of residence or business.

(E) Paragraphs (A)(1), (A)(2) and (A)(3) of this rule do not apply to any commercial applicator while making the following pesticide applications:

(1) Any application to any property that is an agricultural district or that would meet the eligibility requirements established for an agricultural district under Chapter 929. of the Revised Code, on which agricultural commodities are or will be produced;

(2) Any application for the purpose of the maintenance, operation or construction of a public utility;

(3) Any treatment for the eradication or control of pests declared to be a nuisance by the director of the Ohio department of agriculture, director of the Ohio department of health or local health districts, and for which immediate application is necessary to prevent significant human, environmental, or economic harm.

Effective: 10/15/2015

Five Year Review (FYR) Dates: 07/29/2015 and 10/15/2020

Promulgated Under: 119.03

Statutory Authority: 921.16

Rule Amplifies: 921.16

Prior Effective Dates: 6-5-89; 6-25-99; 7-1-04

Chapter 921: PESTICIDES

921.01 Pesticide definitions.

As used in this chapter:

(A) "Active ingredient" means any ingredient that will prevent, destroy, kill, repel, control, or mitigate any pest, or that will act as a plant regulator, defoliant, or desiccant.

(B) "Adulterated" shall apply to any pesticide if its strength or purity is less than or greater than the professed standard or quality as expressed on its labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(C) "Agricultural commodity" means any plant or part thereof or animal or animal product, produced for commercial use by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons, primarily for the sale, consumption, propagation, or other use, by humans or animals.

(D) "Aircraft" means any device used or designed for navigation or flight in the air, except a parachute or other device used primarily as safety equipment.

(E) "Animal" means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish.

(F) "Authorized diagnostic inspection" means a diagnostic inspection conducted by a commercial applicator in the pesticide-use category in which the commercial applicator is licensed under this chapter.

(G) "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(H) "Brand" means any word, name, symbol, device, or combination thereof, that serves to distinguish the pesticide manufactured or distributed by one person from that manufactured or distributed by any other person.

(I) "Pesticide applicator" means a commercial applicator or a private applicator.

(J) "Private applicator" means an individual who is licensed under section 921.11 of the Revised Code .

(K) "Commercial applicator" means an individual who is licensed under section 921.06 of the Revised Code to apply pesticides or to conduct authorized diagnostic inspections.

(L) "Competent" means properly qualified as evidenced by passing the general examination and each applicable pesticide-use category examination for the pesticide-use categories in which a person applies pesticides and, in the case of a person who is a commercial applicator, conducts diagnostic inspections and by meeting any other criteria established by rule.

(M) "Federal act" means the "Federal Insecticide, Fungicide and Rodenticide Act," 61 Stat. 163 (1947), 7 U.S.C.A. 136, as amended.

(N) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(O) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(P) "Device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human beings and other than bacteria, virus, or other microorganism on or in living human beings or other living animals. "Device" does not include equipment used for the application of pesticides when sold separately therefrom.

(Q) "Direct supervision" means either of the following, as applicable:

(1) Unless otherwise prescribed by its labeling, a pesticide is considered to be applied under the direct supervision of a commercial applicator, if it is applied by a trained serviceperson acting under the instructions and control of a commercial applicator .

(2) Unless otherwise prescribed by its labeling, a restricted use pesticide is considered to be applied under the direct supervision of a private applicator, if it is applied by an immediate family member or a subordinate employee of that private applicator acting under the instructions and control of the private applicator, who is responsible for the actions of that immediate family member or subordinate employee and who is available when needed, even though the private applicator is not physically present at the time and place the restricted use pesticide application is occurring.

(R) "Directly supervise" means providing direct supervision under division (Q)(1) or (2) or both of those divisions of this section, as applicable.

(S) "Distribute" means to offer or hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, to deliver or offer to deliver, pesticides in this state. "Distribute" does not mean to hold for use, apply, or use pesticides or dilutions of pesticides, except when a pesticide dealer holds for use, applies, or uses pesticides or dilutions of pesticides in the course of business with a commercial applicator who is employed by that pesticide dealer.

(T) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(U) "Fungus" means any nonchlorophyll-bearing thallophyte, which is any nonchlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living human beings or other animals, or processed food, beverages, or pharmaceuticals.

(V) "General use pesticide" means a pesticide that is classified for general use under the federal act.

(W) "Ground equipment" means any device, other than aircraft, used on land or water to apply pesticides in any form.

(X) "Immediate family" means a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, children, including adopted children, parents, and grandparents.

(Y) "Incidental use" or "incidentally use" means the application of a general use pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm. "Incidental use" or "incidentally use" does not mean regular, routine, or maintenance application of a general use pesticide.

(Z) "Inert ingredient" means an ingredient that is not active.

(AA) "Ingredient statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of inert ingredients. When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(BB) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, including, but not limited to, beetles, bugs, bees, and flies, and to other allied classes of arthropods, including, but not limited to, spiders, mites, ticks, centipedes, and wood lice.

(CC) "Integrated pest management" means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

(DD) "Label" means the written, printed, or graphic matter on, or attached to the pesticide or device, or any of its containers or wrappers.

(EE) "Labeling" means all labels and other written, printed, or graphic matter:

(1) Accompanying the pesticide product or device at any time;

(2) To which reference is made on the label or in literature accompanying the pesticide product or device, except when accurate, nonmisleading reference is made to current official publications of

the United States environmental protection agency, the United States department of agriculture or interior, the United States department of health and human services, state experiment stations, state agricultural colleges, or other similar federal or state institutions or official agencies, authorized by law to conduct research in the field of pesticides;

(3) Including all brochures, technical and sales bulletins, and all advertising material.

(FF) "Licensure" includes certification as used in the federal act.

(GG) "Misbranded" applies, if the conditions of either division (GG)(1) or (2) of this section are satisfied as follows:

(1) To any pesticide or device, if at least one of the following occurs:

(a) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients that is false or misleading in any particular.

(b) It is an imitation of or is distributed under the name of another pesticide or device.

(c) Any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(2) To any pesticide, if at least one of the following occurs:

(a) The labeling of a restricted use pesticide does not contain a statement that it is a restricted use pesticide.

(b) The labeling accompanying it does not contain directions for use that are necessary for effecting the purpose for which the pesticide is intended and, if complied with, together with any requirements imposed by the federal act, that are adequate to protect the environment.

(c) The label does not bear all of the following:

(i) The name, brand, or trademark under which the pesticide is distributed;

(ii) An ingredient statement on the part of the immediate container and on the outside container and wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, provided that the ingredient statement may appear prominently on another part of the container as permitted by the amended federal act or by the director;

(iii) A warning or caution statement that may be necessary and that, if complied with together with any requirement imposed under the federal act, would be adequate to protect the environment;

(iv) The net weight or measure of the contents, subject to such reasonable variations as the administrator of the United States environmental protection agency or the director of agriculture may permit;

(v) The name and address of the manufacturer, registrant, or person for whom manufactured;

(vi) The United States environmental protection agency registration number assigned to each establishment in which the pesticide was produced and the agency registration number assigned to it, as required by regulations under the federal act.

(d) The pesticide contains any substance or substances in quantities highly toxic to human beings unless the label bears, in addition to other label requirements, all of the following:

(i) The skull and crossbones;

(ii) The word "poison" in red prominently displayed on a background of distinctly contrasting color;

(iii) A statement of an antidote or a practical or emergency medical treatment, first aid or otherwise, in case of poisoning by the pesticide.

(e) It is contained in a package or other container or wrapping that does not conform to the standard established by the administrator of the United States environmental protection agency.

(HH) "Nematodes" means invertebrate animals of the phylum nemathelminthes and class nematoda, which are unsegmented, round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and that inhabit soil, water, plants, or plant parts and also may be called nema or eel-worms.

(II) "Pest" means a harmful, destructive, or nuisance insect, fungus, rodent, nematode, bacterium, bird, snail, weed, or parasitic plant or a harmful or destructive form of plant or animal life or virus, or any plant or animal species that the director declares to be a pest, except viruses, bacteria, or other microorganisms on or in living animals, including human beings.

(JJ) "Pesticide" means any substance or mixture of substances intended for either of the following:

(1) Preventing, destroying, repelling, or mitigating any pest;

(2) Use as a plant regulator, defoliant, or desiccant.

"Pesticide" includes a pest monitoring system designated by rule.

(KK) "Pesticide dealer" means any person who distributes restricted use pesticides or pesticides whose uses or distribution are further restricted by the director to the ultimate user or to a commercial applicator who is employed by that pesticide dealer.

(LL) "Pesticide business" means a person who performs pesticide business activities.

(MM) "Pesticide business activities" means any of the following:

(1) The application of pesticides to the property of another for hire;

(2) The solicitation to apply pesticides;

(3) The conducting of authorized diagnostic inspections.

(NN) "Pesticide business registered location" means a location at which pesticide business activities are conducted and that is registered through the issuance of a license to a pesticide business under section 921.09 of the Revised Code.

(OO) "Pesticide-use category" means a specialized field of pesticide application or of diagnostic inspection as defined by rule.

(PP) "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(QQ) "Product name" means a coined or specific designation applied to an individual pesticide of a fixed combination and derivation.

(RR) "Registrant" means a person who has registered a pesticide under this chapter.

(SS) "Restricted use pesticide" means any pesticide or pesticide use classified by the administrator of the United States environmental protection agency for use only by a pesticide applicator or by an individual working under the direct supervision of a pesticide applicator.

(TT) "Rule" means a rule adopted under section 921.16 of the Revised Code.

(UU) "Sell or sale" means exchange of ownership or transfer of custody.

(VV) "State restricted use pesticide" means any pesticide or pesticides classified by the director subsequent to a hearing held in accordance with Chapter 119. of the Revised Code for use only by pesticide applicators or individuals working under their direct supervision.

(WW) "Unreasonable adverse effects on the environment" means any unreasonable risk to human beings or the environment taking into account the economic, social, and environmental benefits and costs of the use of any pesticide.

(XX) "Trained serviceperson" means an employee of a pesticide business, other business, agency of the United States government, state agency, or political subdivision who has been trained to apply pesticides while under the direct supervision of a commercial applicator.

(YY) "Weed" means any plant that grows where not wanted.

(ZZ) "Wildlife" means all living things that are neither human, domesticated, or pests, including, but not limited to, mammals, birds, and aquatic life.

(AAA) "Trade secret" and "confidential business information" mean any formula, plan, pattern, process, tool, mechanism, compound, procedure, production date, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Effective Date: 07-01-2004

921.02 Pesticide registration.

(A) No person shall distribute a pesticide within this state unless the pesticide is registered with the director of agriculture under this chapter. Registrations shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. Registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under this chapter, or if the pesticide is distributed under the provisions of an experimental use permit issued under section 921.03 of the Revised Code or an experimental use permit issued by the United States environmental protection agency.

(B) The applicant for registration of a pesticide shall file a statement with the director on a form provided by the director, which shall include all of the following:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;
- (2) The brand and product name of the pesticide;
- (3) Any necessary information required for completion of the department of agriculture's application for registration, including the agency registration number;

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in the federal act.

(C) The director, when the director considers it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

(D) The director may require a full description of the tests made and the results thereof upon which the claims are based for any pesticide. The director shall not consider any data submitted in support of an application, without permission of the applicant, in support of any other application for registration unless the other applicant first has offered to pay reasonable compensation for producing the test data to be relied upon and the data are not protected from disclosure by section 921.04 of the Revised Code. In the case of a renewal of registration, a statement shall be required only with respect to information that is different from that furnished when the pesticide was registered or last registered.

(E) The director may require any other information to be submitted with an application.

Any applicant may designate any portion of the required registration information as a trade secret or confidential business information. Upon receipt of any required registration information designated as a trade secret or confidential business information, the director shall consider the designated information as confidential and shall not reveal or cause to be revealed any such designated information without the consent of the applicants, except to persons directly involved in the registration process described in this section or as required by law.

(F) Beginning January 1, 2007, each applicant shall pay a registration and inspection fee of one hundred fifty dollars for each product name and brand registered for the company whose name appears on the label. If an applicant files for a renewal of registration after the deadline established by rule, the applicant shall pay a penalty fee of seventy-five dollars for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee and paid before the renewal registration is issued. In addition to any other remedy available under this chapter, if a pesticide that is not registered pursuant to this section is distributed within this state, the person required to register the pesticide shall do so and shall pay a penalty fee of seventy-five dollars for each product name and brand registered for the applicant. The penalty fee shall be added to the original fee of one hundred fifty dollars and paid before the registration is issued.

(G) Provided that the state is authorized by the administrator of the United States environmental protection agency to register pesticides to meet special local needs, the director shall require the information set forth under divisions (B), (C), (D), and (E) of this section and shall register any such pesticide after determining that all of the following conditions are met:

(1) Its composition is such as to warrant the proposed claims for it.

(2) Its labeling and other material required to be submitted comply with the requirements of the federal act and of this chapter, and rules adopted thereunder.

(3) It will perform its intended function without unreasonable adverse effects on the environment.

(4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment.

(5) The classification for general or restricted use is in conformity with the federal act.

The director shall not make any lack of essentiality a criterion for denying the registration of any pesticide. When two pesticides meet the requirements of division (G) of this section, the director shall not register one in preference to the other.

(H)

(1) The director may refuse to register a pesticide if the application for registration fails to comply with this section.

(2) The director may suspend or revoke a pesticide registration after a hearing in accordance with Chapter 119. of the Revised Code for a pesticide that fails to meet the claims made for it on its label.

(3) The director may immediately suspend a pesticide registration, prior to a hearing, when the director believes that the pesticide poses an immediate hazard to human or animal health or a hazard to the environment. Not later than fifteen days after suspending the registration, the director shall determine whether the pesticide poses such a hazard. If the director determines that no hazard exists, the director shall lift the suspension of the registration. If the director determines that a hazard exists, the director shall revoke the registration in accordance with Chapter 119. of the Revised Code.

(I) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004; 06-30-2005

921.021 Amended and Renumbered RC 921.09.

Effective Date: 07-01-2004

921.03 Experimental use permits.

Provided the state is authorized by the administrator of the United States environmental protection agency to issue experimental use permits, the director of agriculture may:

(A) Issue an experimental use permit to any applicant if he determines that such a permit is necessary in order to accumulate information necessary to register a pesticide;

(B) Refuse to issue an experimental permit if he determines that the pesticide applications, to be made under the proposed terms and conditions, may cause unreasonable adverse effects on the environment;

(C) Prescribe terms, conditions, and period of time for the experimental use permit which shall be under the supervision of the director;

(D) Revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

Effective Date: 09-01-1976

921.04 Protection of trade secrets or commercial or financial information.

(A) In submitting data required for product registration under this chapter, the applicant may:

(1) Clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information;

(2) Submit such marked material separately from other material required to be submitted under this chapter.

(B) Notwithstanding any other provision of this chapter, the director of agriculture shall not make public privileged or confidential information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person, except that, when necessary to carry out the provisions of this chapter, information relating to formulae of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted.

(C) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under division (B) of this section, he shall notify the applicant or registrant, in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether such information is subject to protection under division (B) of this section.

Effective Date: 09-01-1976

921.05 Refusal, cancellation or suspension of registration.

(A) If it appears to the director of agriculture that:

(1) The pesticide does not warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with this chapter or rules adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request an adjudication hearing as provided for in Chapter 119. of the Revised Code.

(2) A pesticide or its labeling does not comply with this chapter or the rules adopted thereunder, he may cancel the registration of a pesticide after a hearing in accordance with Chapter 119. of the Revised Code.

(B) When the director determines that there is an imminent hazard to the public or environment, he may, on his own order, suspend the registration of a pesticide and thereafter provide for a hearing in compliance with Chapter 119. of the Revised Code.

Effective Date: 09-01-1976

921.06 Commercial applicator license.

(A)

(1) No individual shall do any of the following without having a commercial applicator license issued by the director of agriculture:

(a) Apply pesticides for a pesticide business without direct supervision;

(b) Apply pesticides as part of the individual's duties while acting as an employee of the United States government, a state, county, township, or municipal corporation, or a park district, port authority, or sanitary district created under Chapter 1545., 4582., or 6115. of the Revised Code, respectively;

(c) Apply restricted use pesticides. Division (A)(1)(c) of this section does not apply to a private applicator or an immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator.

(d) If the individual is the owner of a business other than a pesticide business or an employee of such an owner, apply pesticides at any of the following publicly accessible sites that are located on the property:

(i) Food service operations that are licensed under Chapter 3717. of the Revised Code;

(ii) Retail food establishments that are licensed under Chapter 3717. of the Revised Code;

(iii) Golf courses;

(iv) Rental properties of more than four apartment units at one location;

(v) Hospitals or medical facilities as defined in section 3701.01 of the Revised Code;

(vi) Child day-care centers or school child day-care centers as defined in section 5104.01 of the Revised Code;

(vii) Facilities owned or operated by a school district established under Chapter 3311. of the Revised Code, including an educational service center, a community school established under Chapter 3314. of the Revised Code, or a chartered or nonchartered nonpublic school that meets minimum standards established by the state board of education;

(viii) State institutions of higher education as defined in section 3345.011 of the Revised Code, nonprofit institutions holding a certificate of authorization pursuant to Chapter 1713. of the Revised Code, institutions holding a certificate of registration from the state board of career colleges and schools and program authorization for an associate or bachelor's degree program issued under section 3332.05 of the Revised Code, and private institutions exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code;

(ix) Food processing establishments as defined in section 3715.021 of the Revised Code;

(x) Any other site designated by rule.

(e) Conduct authorized diagnostic inspections.

(2) Divisions (A)(1)(a) to (d) of this section do not apply to an individual who is acting as a trained serviceperson under the direct supervision of a commercial applicator.

(3) Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. The fee for each such license shall be established by rule. If a license is not issued or renewed, the application fee shall be retained by the state as payment for the reasonable expense of processing the application. The director shall by rule classify by pesticide-use category licenses to be issued under this section. A single license may include more than one pesticide-use category. No individual shall be required to pay an additional license fee if the individual is licensed for more than one category.

The fee for each license or renewal does not apply to an applicant who is an employee of the department of agriculture whose job duties require licensure as a commercial applicator as a condition of employment.

(B) Application for a commercial applicator license shall be made on a form prescribed by the director. Each application for a license shall state the pesticide-use category or categories of license for which the applicant is applying and other information that the director determines essential to the administration of this chapter.

(C) If the director finds that the applicant is competent to apply pesticides and conduct diagnostic inspections and that the applicant has passed both the general examination and each applicable pesticide-use category examination as required under division (A) of section 921.12 of the Revised Code, the director shall issue a commercial applicator license limited to the pesticide-use category or categories for which the applicant is found to be competent. If the director rejects an application, the director may explain why the application was rejected, describe the additional requirements necessary for the applicant to obtain a license, and return the application. The applicant may resubmit the application without payment of any additional fee.

(D)

(1) A person who is a commercial applicator shall be deemed to hold a private applicator's license for purposes of applying pesticides on agricultural commodities that are produced by the commercial applicator.

(2) A commercial applicator shall apply pesticides only in the pesticide-use category or categories in which the applicator is licensed under this chapter.

(E) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 130th General Assembly File No. TBD, HB 487, §1, eff. 9/17/2014.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004; 04-15-2005

921.07 [Repealed].

Effective Date: 07-01-2004

921.08 Licensing of nonresident applicators and operators.

Nonresident commercial applicators and nonresident private applicators who are licensed in another state having a state plan approved by the United States environmental protection agency to operate in certain pesticide-use categories may be issued a license by the director of agriculture covering the same categories in this state without a pesticide-use category examination. However, such nonresidents may be required to demonstrate their knowledge of this chapter and rules adopted under it by submitting themselves to an examination covering this chapter and those rules . Licenses issued pursuant to this section may be suspended or revoked in the same manner as

other licenses issued pursuant to this chapter, or upon suspension or revocation of the license of another state or the federal government supporting the issuance of a license issued under this section.

Effective Date: 07-01-2004

921.09 Pesticide business license.

(A)

(1) No person shall own or operate a pesticide business without obtaining a license from the director of agriculture. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule.

(2) A person applying for a pesticide business license shall register each location that is owned by the person and used for the purpose of engaging in the pesticide business.

(B) Any person who owns or operates a pesticide business outside of this state, but engages in the business of applying pesticides to properties of another for hire in this state, shall obtain a license for the person's principal out-of-state location from the director. In addition, the person shall register each location that is owned by the person in this state and used for the purpose of engaging in the pesticide business.

(C)

(1) The person applying for a pesticide business license shall file a statement with the director, on a form provided by the director, that shall include all of the following:

(a) The address of the principal place of business of the pesticide business;

(b) The address of each location that the person intends to register under division (A)(2) or (B) of this section;

(c) Any other information that the director determines necessary and that the director requires by rule.

(2) Each applicant shall pay a license fee established by rule for the pesticide business plus an additional fee established by rule for each pesticide business registered location specified in the application. The license may be renewed upon payment of a renewal fee established by rule plus an additional fee established by rule for each pesticide business registered location. A copy of the license shall be maintained and conspicuously displayed at each such location.

(3) The issuance of a pesticide business license constitutes registration of any pesticide business location identified in the application under division (C)(1) of this section.

(4) The owner or operator of a pesticide business shall notify the director not later than fifteen days after any change occurs in the information required under division (C)(1)(a) or (b) of this section.

(D) The owner or operator of a pesticide business shall employ at least one commercial applicator for each pesticide business registered location the owner or operator owns or operates.

(E) The owner or operator of a pesticide business is responsible for the acts of each employee in the handling, application, and use of pesticides and in the conducting of diagnostic inspections. The pesticide business license is subject to denial, modification, suspension, or revocation after a hearing for any violation of this chapter or any rule adopted or order issued under it. The director may levy against the owner or operator any civil penalties authorized by division (B) of section 921.16 of the Revised Code for any violation of this chapter or any rule adopted or order issued under it that is committed by the owner or operator or by the owner's or operator's officer, employee, or agent.

(F) The director may modify a license issued under this section by one of the following methods:

(1) Revoking a licensee's authority to operate out of a particular pesticide business registered location listed under division (C)(1)(b) of this section ;

(2) Preventing a licensee from operating within a specific pesticide-use category.

(G) The director may deny a pesticide business license to any person whose pesticide business license has been revoked within the previous thirty-six months.

(H) Each pesticide business registered location that is owned by a pesticide business is subject to inspection by the director.

(I) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.10 Effective liability insurance policy or other evidence of financial responsibility.

(A) The director of agriculture shall not issue a pesticide business license until the applicant has submitted to the director an effective liability insurance policy or such other evidence of financial responsibility as the director determines necessary. The director shall establish by rule, in accordance with Chapter 119. of the Revised Code, the amount and condition of such liability insurance or other evidence of financial responsibility required. Such requirements shall be based

upon the pesticide-use categories in which commercial applicators are licensed to apply pesticides for the pesticide business.

(B) Should the evidence of financial responsibility furnished become unsatisfactory, the pesticide business shall upon notice immediately execute evidence of financial responsibility meeting the requirements of this section or applicable rules, and should the pesticide business fail to do so, the director shall suspend the pesticide business's license and give the business notice of such suspension.

(C) The licensee to whom a suspension order is issued shall be afforded a hearing in accordance with Chapter 119. of the Revised Code, after which the director shall reinstate or revoke the suspended license.

(D) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules.

Effective Date: 07-01-2004

921.11 Applying restricted use pesticides.

(A)

(1) No individual shall apply restricted use pesticides unless the individual is one of the following:

(a) Licensed under section 921.06 of the Revised Code;

(b) Licensed under division (B) of this section;

(c) A trained serviceperson who is acting under the direct supervision of a commercial applicator;

(d) An immediate family member or a subordinate employee of a private applicator who is acting under the direct supervision of that private applicator.

(2) No individual shall directly supervise the application of a restricted use pesticide unless the individual is one of the following:

(a) Licensed under section 921.06 of the Revised Code;

(b) Licensed under division (B) of this section.

(B) The director of agriculture shall adopt rules to establish standards and procedures for the licensure of private applicators. An individual shall apply for a private applicator license to the director, on forms prescribed by the director. The individual shall include in the application the pesticide-use category or categories of the license for which the individual is applying and any

other information that the director determines is essential to the administration of this chapter. The fee for each license shall be established by rule. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. If a license is not issued or renewed, the state shall retain any fee submitted as payment for reasonable expenses of processing the application.

(C) An individual who is licensed under this section shall use or directly supervise the use of a restricted use pesticide only for the purpose of producing agricultural commodities on property that is owned or rented by the individual or the individual's employer.

(D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.12 Examinations.

(A) The director of agriculture shall require each applicant for a license under section 921.06 or 921.11 of the Revised Code to be examined on the applicant's knowledge and competency in each of the following:

(1) This chapter and rules adopted under it;

(2) The proper use, handling, and application of pesticides and, if the applicant is applying for a license under section 921.06 of the Revised Code, in the conducting of diagnostic inspections in the pesticide-use categories for which the applicant has applied.

(B) Each application for renewal of a license provided for in section 921.06 of the Revised Code shall be filed prior to the deadline established by rule. If filed after the deadline, a penalty of fifty per cent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. However, if a license issued under section 921.06 or 921.11 of the Revised Code is not renewed within one hundred eighty days after the date of expiration, the licensee shall be required to take another examination on this chapter and rules adopted under it and on the proper use, handling, and application of pesticides and, if applicable, the proper conducting of diagnostic inspections in the pesticide-use categories for which the licensee has been licensed.

(C) A person who fails to pass an examination under division (A) or (B) of this section is not entitled to an adjudication under Chapter 119. of the Revised Code for that failure.

(D) The holder of a commercial applicator license may renew the license within one hundred eighty days after the date of expiration without re-examination unless the director determines that a new examination is necessary to insure that the holder continues to meet the requirements of changing

technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(E) The holder of a private applicator license may renew the license within one hundred eighty days after the date of expiration without re-examination unless the director determines that a new examination is necessary to insure that the holder continues to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(F) Instead of requiring a commercial applicator or private applicator to complete re-examination successfully under division (D) or (E) of this section, the director may require, in accordance with criteria established by rule, the commercial applicator or private applicator to participate in training programs that are designed to foster knowledge of new technology and to ensure a continuing level of competence and ability to use pesticides safely and properly. The director or the director's representative may provide the training or may authorize a third party to do so. In order for such authorization to occur, the third party and its training program shall comply with standards and requirements established by rule.

Amended by 131st General Assembly File No. TBD, HB 131, §1, eff. 3/23/2016.

Effective Date: 07-01-2004

921.13 Pesticide dealer license.

(A) Any person who is acting in the capacity of a pesticide dealer or who advertises or assumes to act as a pesticide dealer at any time shall obtain a pesticide dealer license from the director of agriculture. Licenses shall be issued for a period of time established by rule and shall be renewed in accordance with deadlines established by rule. A license is required for each location or outlet within this state from which the person distributes pesticides.

Any pesticide dealer who has no pesticide dealer outlets in this state and who distributes restricted use pesticides directly into this state shall obtain a pesticide dealer license from the director for the pesticide dealer's principal out-of-state location or outlet and for each sales person operating in the state.

The applicant shall include a license fee established by rule with the application for a license. The application shall be made on a form prescribed by the director.

Each pesticide dealer shall submit records to the director of all of the restricted use pesticides the pesticide dealer has distributed, as specified by the director, and duplicate records shall be retained by the pesticide dealer for a period of time established by rules.

(B) This section does not apply to any federal, state, county, or municipal agency that provides pesticides for its own programs.

(C) Each licensed pesticide dealer is responsible for the acts of each employee in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The pesticide dealer's license is subject to denial, suspension, or revocation after a hearing for any violation of this chapter whether committed by the pesticide dealer or by the pesticide dealer's officer, agent, or employee.

(D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.14 Records.

(A) Each commercial applicator shall keep a record of both of the following:

(1) All diagnostic inspections conducted to determine infestations of pests as required by rules adopted under division (C) of section 921.16 of the Revised Code;

(2) All pesticide applications made by the applicator and by any trained serviceperson acting under the applicator's direct supervision as required by rules adopted under division (C) of section 921.16 of the Revised Code .

Each commercial applicator shall submit copies of the records required under division

(A) of this section to the pesticide business, other business, state agency, or political subdivision that employs the commercial applicator.

(B) Each pesticide business, other business, state agency, or political subdivision that receives copies of records under division (A) of this section shall retain them for a period of time established by rule.

(C) Each private applicator shall keep a record of all restricted use pesticide applications made by the applicator or under the applicator's direct supervision as required by rules adopted under division (C) of section 921.16 of the Revised Code . In addition, each private applicator shall maintain the record for a period of three years from the date of the restricted use pesticide application to which that record refers or for any longer period that the director of agriculture determines necessary.

Effective Date: 07-01-2004

921.15 Pesticides having unreasonable adverse effects on environment prohibited.

No person shall transport, store, dispose of, display, or distribute any pesticide or pesticide container in such a manner as to have unreasonable adverse effects on the environment. The director of agriculture may adopt and enforce rules in accordance with this section and Chapter 119. of the Revised Code governing the disposal and storage of such pesticide or pesticide containers. Such rules shall be in conformity with the guidelines and rules established by the Ohio environmental protection agency.

Effective Date: 09-01-1976

921.151 Amended and Renumbered RC 921.151.

Effective Date: 07-01-2004

921.16 Administrative rules.

(A) The director of agriculture shall adopt rules the director determines necessary for the effective enforcement and administration of this chapter. The rules may relate to, but are not limited to, the time, place, manner, and methods of application, materials, and amounts and concentrations of application of pesticides, may restrict or prohibit the use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors that the director determines necessary to minimize or prevent damage to the environment. In addition, the rules shall establish the deadlines and time periods for registration, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code; the fees for registration, registration renewal, late registration renewal, and failure to register under section 921.02 of the Revised Code that shall apply until the fees that are established under that section take effect on January 1, 2007; and the fees, deadlines, and time periods for licensure and license renewal under sections 921.06, 921.09, 921.11, and 921.13 of the Revised Code.

(B) The director shall adopt rules that establish a schedule of civil penalties for violations of this chapter, or any rule or order adopted or issued under it, provided that the civil penalty for a first violation shall not exceed five thousand dollars and the civil penalty for each subsequent violation shall not exceed ten thousand dollars. In determining the amount of a civil penalty for a violation, the director shall consider factors relevant to the severity of the violation, including past violations and the amount of actual or potential damage to the environment or to human beings. All money collected under this division shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

(C) The director shall adopt rules that set forth the conditions under which the director:

- (1) Requires that notice or posting be given of a proposed application of a pesticide;
- (2) Requires inspection, condemnation, or repair of equipment used to apply a pesticide;
- (3) Will suspend, revoke, or refuse to issue any pesticide registration for a violation of this chapter;

(4) Requires safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(5) Ensures the protection of the health and safety of agricultural workers storing, handling, or applying pesticides, and all residents of agricultural labor camps, as that term is defined in section 3733.41 of the Revised Code, who are living or working in the vicinity of pesticide-treated areas;

(6) Requires a record to be kept of all pesticide applications made by each commercial applicator and by any trained serviceperson acting under the commercial applicator's direct supervision and of all restricted use pesticide applications made by each private applicator and by any immediate family member or subordinate employee of that private applicator who is acting under the private applicator's direct supervision as required under section 921.14 of the Revised Code;

(7) Determines the pesticide-use categories of diagnostic inspections that must be conducted by a commercial applicator;

(8) Requires a record to be kept of all diagnostic inspections conducted by each commercial applicator and by any trained service person.

(D) The director shall prescribe standards for the licensure of applicators of pesticides consistent with those prescribed by the federal act and the regulations adopted under it or prescribe standards that are more restrictive than those prescribed by the federal act and the regulations adopted under it. The standards may relate to the use of a pesticide or to an individual's pesticide-use category.

The director shall take into consideration standards of the United States environmental protection agency.

(E) The director may adopt rules setting forth the conditions under which the director will:

(1) Collect and examine samples of pesticides or devices;

(2) Specify classes of devices that shall be subject to this chapter;

(3) Prescribe other necessary registration information.

(F) The director may adopt rules that do either or both of the following:

(1) Designate, in addition to those restricted uses so classified by the administrator of the United States environmental protection agency, restricted uses of pesticides for the state or for designated areas within the state and, if the director considers it necessary, to further restrict such use;

(2) Define what constitutes "acting under the instructions and control of a commercial applicator" as used in the definition of "direct supervision" in division (Q)(1) of section 921.01 of the Revised

Code. In adopting a rule under division (F)(2) of this section, the director shall consider the factors associated with the use of pesticide in the various pesticide-use categories. Based on consideration of the factors, the director may define "acting under the instructions and control of a commercial applicator" to include communications between a commercial applicator and a trained serviceperson that are conducted via landline telephone or a means of wireless communication. Any rules adopted under division (F)(2) of this section shall be drafted in consultation with representatives of the pesticide industry.

(G) Except as provided in division (D) of this section, the director shall not adopt any rule under this chapter that is inconsistent with the requirements of the federal act and regulations adopted thereunder.

(H) The director, after notice and opportunity for hearing, may declare as a pest any form of plant or animal life, other than human beings and other than bacteria, viruses, and other microorganisms on or in living human beings or other living animals, that is injurious to health or the environment.

(I) The director may make reports to the United States environmental protection agency, in the form and containing the information the agency may require.

(J) The director shall adopt rules for the application, use, storage, and disposal of pesticides if, in the director's judgment, existing programs of the United States environmental protection agency necessitate such rules or pesticide labels do not sufficiently address issues or situations identified by the department of agriculture or interested state agencies.

(K) The director shall adopt rules establishing all of the following:

(1) Standards, requirements, and procedures for the examination and re-examination of commercial applicators and private applicators;

(2) With respect to training programs that the director may require commercial applicators and private applicators to complete:

(a) Standards and requirements that a training program must satisfy in order to be offered by the director or the director's representative or in order to be approved by the director if a third party wishes to offer it;

(b) Eligibility standards and requirements that must be satisfied by third parties who wish to provide the training programs;

(c) Procedures that third parties must follow in order to submit a proposed training program to the director for approval;

(d) Criteria that the director must consider when determining whether to authorize a commercial applicator or private applicator to participate in a training program instead of being required to pass a re-examination.

(3) Training requirements for a trained serviceperson.

(L) The director shall adopt all rules under this chapter in accordance with Chapter 119. of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004; 06-30-2005

921.17 Director may delegate authority.

All authority vested in the director of agriculture by virtue of sections 921.01 to 921.29 of the Revised Code may with like force and effect be executed by such employees of the department of agriculture as the director may designate for said purpose.

Effective Date: 07-27-1990

921.18 Director of agriculture - powers and duties.

(A) The director of agriculture may:

(1) In order to determine compliance with this chapter and rules adopted under it, enter any public or private premises or transport vehicles during regular business hours to do any or all of the following:

(a) Inspect and copy books, pesticide application records, contracts related to pesticide business activities, and financial responsibility documents;

(b) Inspect the storage or disposal of pesticides;

(c) Inspect and sample pesticides in storage or in use;

(d) Inspect equipment or devices used to apply pesticides;

(e) Inspect storage facilities and sites;

(f) Inspect production areas of persons that manufacture pesticides for commercial purposes.

(2) Enter upon any public or private premises at any time, when or where pesticides are being applied to determine if the applicator is or should be licensed or if proper notice has been given before pesticide application, and to collect samples of pesticides being applied or available for use;

(3) Enter upon any public or private premises at reasonable hours to inspect any property thereon or to collect samples of vegetation or animal life, water, soil, or other matter, in order to determine residue levels, efficacy of application, or adverse effects of application, drift, or spillage;

(4) Should the director be denied access to any premises where such access is sought for the purposes set forth in this section, apply to any court of competent jurisdiction for a search warrant authorizing access to such land for those purposes. The court may, upon such application, issue the search warrant for the purposes requested.

(B) When the director or the director's authorized agent observes, or has reasonable cause to believe that a piece of equipment used by a commercial applicator, a private applicator, or any other individual requires calibration, adjustment, or repair to enable it to perform satisfactorily, the director may require such adjustment to be made immediately or issue a "stop operation" order pending repair to the equipment and the director may require a demonstration of it before cancellation or withdrawal of the stop operation order.

(C) The director or the director's authorized agent may:

(1) Issue an order to the owner or custodian of any lot of pesticide or a device requiring it to be held at a designated place when the director or the director's authorized agent has reasonable cause to believe that the pesticide or device has been distributed, stored, transported, or used in violation of this chapter, or any rule adopted thereunder. The pesticide or device shall be held until a release in writing is issued by the director, the director's authorized agent, or a court order. No release shall be issued until this chapter and the rules adopted thereunder are complied with.

(2) If the owner or custodian is not available for service of the order upon the owner or custodian, attach the order to the pesticide or device and notify the owner or custodian, and the registrant.

(D)

(1) The director shall establish standards governing the development and implementation of integrated pest management practices that are designed to prevent unreasonable adverse effects on human health and the environment.

(2) The director may enter into cooperative agreements with other state agencies for the implementation of voluntary or mandatory integrated pest management practices.

Effective Date: 07-01-2004

921.19 Government use of pesticides.

Every state agency, municipal corporation, and other governmental agency and political subdivision is subject to this chapter and the rules adopted thereunder with respect to the application, handling, and use of pesticides.

Each state agency, municipal corporation, and other governmental agency and political subdivision is responsible for the acts of each of its employees in the application, handling, and use of pesticides.

Effective Date: 07-01-2004

921.20 [Repealed].

Effective Date: 01-01-1995

921.21 Director may cooperate with federal and state agencies - agreements.

The director of agriculture may cooperate with, and enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or with any agency of another state and may enter into and receive grants-in-aid from them for the purpose of carrying out sections 921.01 to 921.29 of the Revised Code.

Effective Date: 07-27-1990

921.22 Pesticide program fund.

The pesticide, fertilizer, and lime program fund is hereby created in the state treasury. The fund shall consist of money credited to it under this chapter and Chapter 905. of the Revised Code and rules adopted under them and all fines, penalties, costs, and damages, except court costs, that are collected by either the director of agriculture or the attorney general in consequence of any violation of those chapters or rules adopted under them. The director shall use money in the fund to administer and enforce those chapters and rules adopted under them.

The director shall keep accurate records of all receipts into and disbursements from the fund and shall prepare, and provide upon request, an annual report classifying the receipts and disbursements that pertain to pesticides, fertilizers, or lime.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.23 Disciplinary actions.

The director of agriculture may suspend, prior to a hearing, for not longer than ten days, and after the opportunity for a hearing may deny, suspend, revoke, refuse to renew, or modify any provision of any license, permit, or registration issued pursuant to this chapter if the director finds that the applicant or the holder of a license, permit, or registration is no longer qualified, has violated any provision of this chapter or rules adopted under it, has been found guilty of violating the federal act, or has been convicted of a misdemeanor involving moral turpitude or of a felony.

Effective Date: 07-01-2004; 04-15-2005

921.24 Prohibited acts.

No person shall do any of the following:

- (A) Apply, use, directly supervise such application or use, or recommend a pesticide for use inconsistent with the pesticide's labeling, treatment standards, or other restrictions imposed by the director of agriculture;
- (B) Act as a commercial applicator without being licensed to do so ;
- (C) Use any restricted use pesticide, unless the person is licensed to do so, is a trained serviceperson acting under the direct supervision of a commercial applicator, or is an immediate family member or a subordinate employee of a private applicator under the direct supervision of that private applicator;
- (D) Refuse or fail to keep or maintain records required by the director in rules adopted under this chapter, or to make reports when and as required by the director in rules adopted under this chapter;
- (E) Falsely or fraudulently represent the effect of pesticides or methods to be utilized;
- (F) Apply known ineffective or improper materials;
- (G) Operate in a negligent manner, which includes the operation of faulty or unsafe equipment;
- (H) Impersonate any federal, state, county, or municipal official;
- (I) Make false or fraudulent records, invoices, or reports;
- (J) Fail to provide training to trained servicepersons in the application of pesticides;
- (K) Fail to provide direct supervision as specified in rules adopted under division (C) of section 921.16 of the Revised Code;
- (L) Distribute a misbranded or adulterated pesticide;
- (M) Use fraud or misrepresentation in making application for a license or registration or renewal of a license or registration;
- (N) Refuse, fail, or neglect to comply with any limitation or restriction of a license or registration issued under this chapter or rules adopted thereunder;
- (O) Aid or abet a licensee or another person in violating this chapter or rules adopted thereunder;
- (P) Make a false or misleading statement in an inspection concerning any infestation of pests or the use of pesticides;

(Q) Refuse or fail to comply with this chapter, the rules adopted thereunder, or any lawful order of the director;

(R) Distribute restricted use pesticides to the ultimate user without a pesticide dealer's license ;

(S) Except as provided in division (F) of section 921.26 of the Revised Code, distribute restricted use pesticides to an ultimate user who is not licensed under section 921.06, 921.08, or 921.11 of the Revised Code and rules adopted under this chapter;

(T) Use any pesticide that is under an experimental use permit contrary to the provisions of the permit;

(U) Engage in fraudulent business practices ;

(V) Dispose of any pesticide product or container in such a manner as to have unreasonable adverse effects on the environment;

(W) Display any pesticide in any manner to produce unreasonable adverse effects on the environment, or to contaminate adjacent food, feed, or other products;

(X) Apply any pesticide by aircraft without being licensed as a commercial applicator;

(Y) Distribute a pesticide that is not registered with the director;

(Z) Fail to properly supervise a trained serviceperson.

Effective Date: 07-01-2004

921.25 Civil penalties.

(A)

(1) Whenever the director of agriculture has cause to believe that any person has violated, or is violating, this chapter or any rule or order adopted or issued under it, the director may conduct a hearing in accordance with Chapter 119. of the Revised Code to determine whether a violation has occurred. Except as otherwise provided in division (A)(3) of this section, the director shall assess a civil penalty against any person who violates this chapter or any rule or order adopted or issued under it in accordance with the schedule of civil penalties established in rules adopted under division (B) of section 921.16 of the Revised Code. Each day a violation continues constitutes a separate and distinct violation.

(2) In addition to assessing a civil penalty under division (A)(1) of this section, the director may deny, modify, suspend, revoke, or refuse to renew a license, permit, or registration issued under this chapter.

(3) The civil penalty authorized under division (A)(1) of this section may be assessed against the employer of a person who violates this chapter or any rule adopted or order issued under it rather than against the person.

Divisions (A)(1), (2), and (3) of this section do not affect, and shall not be construed as affecting, any other civil or criminal liability of the employee or the employer that may arise in consequence of the employer's or the employee's violation of this chapter or any other law.

(4) If the person or employer does not pay a civil penalty within a reasonable time after its assessment, the attorney general, upon the request of the director, shall bring a civil action to recover the amount of the penalty.

(B)

(1) In lieu of conducting a hearing under division (A) of this section, the director may refer the violation to the attorney general who, except as otherwise provided in division (B)(2) of this section, may bring a civil action against any person who violates this chapter or any rule or order adopted or issued under it. If the court determines that a violation has occurred, the court shall order the person to pay a civil penalty for each violation, not to exceed five thousand dollars for a first violation and not to exceed ten thousand dollars for each subsequent violation. Each day a violation continues constitutes a separate and distinct violation.

(2) The civil action authorized under division (B)(1) of this section may be brought against the employer of a person who violates this chapter or any rule adopted or order issued under it rather than against the person.

Divisions (B) (1) and (2) of this section do not affect, and shall not be construed as affecting, any other civil or criminal liability of the employee or the employer that may arise in consequence of the employer's or employee's violation of this chapter or any other law.

(C) In addition to the remedies provided and irrespective of whether or not there exists an adequate remedy at law, the director may apply to the court of common pleas for a temporary or permanent injunction or other appropriate relief against continued violation of this chapter.

(D) The remedies available to the director and to the attorney general under this chapter are cumulative and concurrent, and the exercise of one remedy by either the director or the attorney general, or by both, does not preclude or require the exercise of any other remedy by the director, the attorney general, or a prosecutor as defined in section 2935.01 of the Revised Code, except that no person shall pay both a civil penalty under division (A) of this section and a civil penalty under division (B) of this section for the same violation.

(E) If a person violates this chapter or rules adopted under it, both of the following apply:

(1) The person is liable for the violation.

(2) The employer of the person is liable for and may be convicted of the violation if the person was acting on behalf of the employer and was acting within the scope of the person's employment.

Effective Date: 07-01-2004

921.26 Exceptions.

(A) The penalties provided for violations of this chapter do not apply to any of the following:

(1) Any carrier while lawfully engaged in transporting a pesticide or device within this state, if that carrier, upon request, permits the director of agriculture to copy all records showing the transactions in the movement of the pesticides or devices;

(2) Public officials of this state and the federal government, other than commercial applicators employed by the federal government, the state, or a political subdivision, while engaged in the performance of their official duties in administering state or federal pesticide laws or rules, or while engaged in pesticide research;

(3) The manufacturer or shipper of a pesticide for experimental use only by or under supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, provided that the manufacturer or shipper is not required to obtain an experimental use permit from the United States environmental protection agency;

(4) The manufacturer or shipper of a substance being tested in which its purpose only is to determine its value for pesticide purposes or to determine its toxicity or other properties, and from which the user does not expect to receive any benefit in pest control from its use;

(5) Persons conducting laboratory research involving pesticides;

(6) Persons who incidentally use pesticides. The incidental use shall involve only the application of general use pesticides. If a person incidentally uses a pesticide, the pesticide shall be applied in strict accordance with the manufacturer's label for general use purposes. If further applications are necessary following the incidental use application, a pesticide applicator shall apply the pesticide.

(B) No pesticide or device shall be considered in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If the pesticide or device is not so exported, this chapter applies.

(C) No person who is licensed, regulated, or registered under section 921.02, 921.03, 921.06, 921.08, 921.09, 921.11, or 921.13 of the Revised Code shall be required to obtain a license or permit to operate or to be otherwise regulated in such capacity by any local ordinance, or to meet any other condition except as otherwise provided by statute or rule of the United States or of this state.

(D) Section 921.09 of the Revised Code does not apply to an individual who uses only ground equipment for the individual or for the individual's neighbors, provided that the individual meets all of the following requirements:

- (1) Is licensed under section 921.11 of the Revised Code;
- (2) Operates farm property and operates and maintains pesticide application equipment primarily for the individual's own use;
- (3) Is not regularly engaged in the business of applying pesticides for hire or does not publicly hold oneself out as a pesticide applicator;
- (4) Meets any other requirement established by rule.

(E) Section 921.06 of the Revised Code relating to licenses and requirements for their issuance does not apply to licensed physicians or veterinarians applying pesticides to human beings or other animals during the normal course of their practice, provided that they are not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or do not publicly hold themselves out as commercial applicators.

(F) Division (S) of section 921.24 of the Revised Code does not apply to a pesticide dealer who distributes restricted use pesticides to a nonresident who is licensed in another state having a state plan approved by the United States environmental protection agency.

Effective Date: 07-01-2004

921.27 Seizing illegal pesticides.

(A) If the director of agriculture has reasonable cause to believe that a pesticide or device is being distributed, stored, transported, or used in violation of this chapter or of any rules, it shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the locality in which the pesticide or device is located.

(B) If the article is condemned, it shall, after entry or decree, be disposed of by destruction or sale as the court may direct and the proceeds, if the article is sold, less legal costs, shall be paid to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code. The article shall not be sold contrary to this section. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.28 Statement of alleged damages.

A person who claims damages from a pesticide application shall notify the director of agriculture and the pesticide applicator by submitting an oral or written statement of alleged damages. The statement shall contain all of the following:

- (A) The name of the person responsible for the application of the pesticide;
- (B) The name of the owner or operator of the land on which the crop is grown and for which damages are claimed;
- (C) The date on which the alleged damage occurred;
- (D) Such other information the director requires.

Upon receipt of the statement, the director may institute proceedings in accordance with sections 921.01 to 921.29 of the Revised Code and the rules he adopts thereunder.

Effective Date: 06-20-1994

921.29 Fines, penalties, costs, and damages are lien of state.

Fines, penalties, costs, and damages assessed against a person in consequence of violations of this chapter, as provided in this chapter or any other section of the Revised Code, shall be a lien in favor of the state upon the real and personal property of the person, upon the filing of a judgment or an order of the director of agriculture with the county in which the real and personal property is located. The real and personal property of the person shall be liable to execution for the fines, penalties, costs, and damages by the attorney general, who shall deposit any proceeds from an execution upon the property in the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 07-01-2004

921.30 Discretion of director.

Nothing in this chapter or any rule adopted under it shall be construed to require the director of agriculture to report any findings to the appropriate prosecuting authority for proceedings in prosecution of, or issue any order or institute any enforcement procedure for, a violation of this chapter or a rule adopted under it whenever the director believes that the public interest will be best served by a suitable written notice of warning. A person who receives a written notice of warning may respond in writing to the notice.

Effective Date: 07-01-2004

921.31 Child support default.

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of agriculture shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license, registration, or permit issued pursuant to this chapter.

Effective Date: 07-01-2004

921.41 to 921.53 [Repealed].

Effective Date: 09-01-1976

921.60 Pest control compact - pest control insurance fund.

The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form as follows:

"PEST CONTROL COMPACT

Article I Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately ten billion dollars from the depredation of pests is virtually certain to continue, if not to increase.

(b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

(f) "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested an them by this compact.

(g) "Executive Committee" means the committee established pursuant to Article V (e) of this compact.

Article III The Insurance Fund

There is hereby established a Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

Article IV The Insurance Fund, Internal Operations and Management

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and the Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote on such board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the service of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and to rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

Article V Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

Article VI Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.
3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.
5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.
6. Such other information as the Governing Board may require consistent with the provisions of this compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given

to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states, and any other entities concerned.

Article VII Advisory and Technical Committees

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the Governing Board or Executive Committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: Provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to

Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

Article VIII Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

Article IX Finance

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for a presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The request for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall

consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of the claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV (g) of this compact, provided that the Governing Board take specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

Article X Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the

remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Effective Date: 11-21-1973

921.61 Cooperation with insurance fund.

Consistent with the law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the insurance fund established by the pest control compact.

Effective Date: 11-21-1973

921.62 Copies of bylaws and amendments to be filed with secretary of state.

Pursuant to Article IV (h) of the pest control compact, copies of bylaws and amendments thereto shall be filed with the secretary of state.

Effective Date: 11-21-1973

921.63 Director of agriculture to serve as pest control compact administrator.

The director of agriculture shall serve as the pest control compact administrator for this state and expenses he incurs in so serving shall be paid from the appropriations from ordinary contingent expenses of the department of agriculture.

Effective Date: 11-21-1973

921.64 Director may request or apply for assistance from insurance fund.

The director of agriculture, with the approval of the governor, may make a request or application for assistance from the insurance fund under Article IV (b) or Article VIII (a) of the pest control compact, whenever the director of agriculture believes that conditions exist which qualify the state for such assistance and that it would be in the best interest of the state to make the request.

Effective Date: 11-21-1973

921.65 Executive head means the governor.

As used in the pest control compact, with reference to this state, "executive head" means the governor.

Effective Date: 11-21-1973

921.99 Penalty.

(A) Whoever violates this chapter or rules adopted under it, except division (G) or (P) of section 921.24 of the Revised Code, is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on a subsequent offense.

(B) Whoever violates division (G) or (P) of section 921.24 of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.

(C) No recovery of damages shall be allowed from administrative action taken or for "stop sale, use, or removal" if the court finds that there was probable cause for that action.

Effective Date: 07-01-2004

Medical Marijuana Soon to be Allowed in Ohio

Jonathan Downes, Zashin & Rich



Ohio recently became the 25th state to legalize medical marijuana. Effective September 8, 2016, doctors may prescribe medical marijuana to individuals diagnosed with HIV/AIDS, Alzheimer's, cancer, epilepsy, glaucoma, and other specified qualifying medical conditions or diseases.

Ohio's legalization of medical marijuana does not come without restrictions. Under the law, House Bill 523, the Department of Commerce and State Board of Pharmacy will administer a medical marijuana control program. Collectively, these agencies will regulate retail dispensaries, medical marijuana growers, and doctor registration.

In addition, the law provides a number of specific protections for employers to enable them to

maintain safe workplaces and enforce reasonable human resources policies, including:

- Employers do not have to permit or accommodate an employee's use, possession, or distribution of medical marijuana;
- Employers may refuse to hire or may discharge, discipline, or otherwise take an adverse action against an applicant or employee because of that person's use, possession, or distribution of medical marijuana;
- Employers may establish and enforce drug testing policies, drug-free workplace policies, or zero-tolerance drug policies;
- Employees discharged for violating formal drug-free programs or policies are considered discharged for just cause under Ohio's unemployment compensation laws (rendering those employees ineligible for unemployment compensation);
- Medical marijuana use cannot interfere with any federal restrictions on employment (e.g., CDL license regulations); and

- Employers still may defend against workers' compensation claims on the basis that marijuana use contributed to or resulted in an injury.

The law prohibits applicants or employees from bringing a cause of action against an employer based on the employer's failure to hire, discharge, discipline, discriminate, retaliate, or for taking an adverse action against the applicant or employee for reasons related to their medical marijuana use. Nonetheless, employee use of medical marijuana likely will raise questions and complicate employment decisions under state and federal disability discrimination laws. For example, an employee's use of medical marijuana may signal that the employee has a serious health condition, which may require an employer to take action. In addition, employees suffering or recovering from cancer (or other allowed reasons) who are disciplined for medical marijuana use could raise a retaliation claim.

With the law's effective date fast approaching, employers should

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The Quill Award Winner Sharon Cassler



Sharon K. Cassler (on the left), MMC, Clerk of Council for the City of Cambridge, received The Quill Award from the International Institute of Municipal Clerks (IIMC). The Quill Award was established in 1987 and is a prestigious award established by IIMC to recognize Municipal Clerks who have distinguished

themselves by making significant and exemplary contributions to their community, state, municipality or province, and in particular IIMC and their peers.

Sharon was chosen for her strong support of IIMC's goals and philosophies as outlined in IIMC's Code of Ethics and as set forth in the IIMC Constitution. The criteria includes length of service, strength and extent of participation in IIMC, service in teaching fellow Municipal Clerks, involvement with the initiation or administration of an IIMC-approved training Institute or program or any activity that enhances the professionalism of IIMC members. Sharon received her award at the opening ceremonies at the 70th Annual IIMC Conference in Omaha, Nebraska from IIMC President Monica Simmons, Seattle, Washington City Clerk.

Medical from page 9

determine how to best manage employee medical marijuana use now. Considerations will vary based on the nature of the employer and positions affected. Employers with policies referencing drug use should review and consider amending those policies

to include provisions specific to Ohio's new law, which expressly addresses medical marijuana use.

Jonathan Downes, an OSBA Certified Specialist in Employment and Labor Law and a Best Lawyer in America, has over 30 years of experience advising

public sector clients. He represents cities, townships, counties, school districts, and public officials throughout the State of Ohio. If you have any questions about Ohio's legalization of medical marijuana use, please contact Jonathan (jjd@zrlaw.com) at 614.224.4441.



Ohio Legislative Service Commission

Bill Analysis

Elizabeth Molnar and other LSC staff

H.B. 523

131st General Assembly

(As Introduced)

Reps. Huffman, Schuring, Ramos

BILL SUMMARY

Medical Marijuana Control Program

- Establishes the Medical Marijuana Control Commission and Medical Marijuana Control Program and requires the Commission to adopt rules governing the operation of the Program.
- Requires that the Commission establish and maintain an electronic database to monitor medical marijuana from its seed source through dispensing.
- Permits patients to use marijuana for medical purposes.
- Provides for the licensure of medical marijuana cultivators, processors, retail dispensaries, and testing laboratories and the registration of physicians that recommend treatment with medical marijuana.
- Prohibits the cultivation of marijuana for personal, family, or household use.

Zoning

- Authorizes the legislative authority of a municipal corporation or a board of township trustees to adopt regulations to prohibit, or limit the number of, retail dispensaries of medical marijuana licensed under the Medical Marijuana Control Program.
- Provides that agricultural use zoning limitations that apply to counties and townships do not prohibit a county or township from regulating the location of retail dispensaries of medical marijuana or prohibiting such dispensaries from being located in the unincorporated territory of the county or township.

- Prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, public library, public playground, or public park.
- Requires the Commission to revoke the license of a cultivator, processor, retail dispensary, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park.
- Requires the Commission to specify if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or public park became established within 500 feet may remain in operation or must relocate or have its license revoked.

Employment laws

- Provides that nothing in the bill requires an employer to accommodate an employee's use of medical marijuana or prohibits an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana.
- Considers a person who is discharged from employment because of the person's use of medical marijuana to have been discharged for just cause under the Unemployment Compensation Law and thus ineligible for unemployment benefits, which appears to be similar to current law.
- Maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

Banking Services

- Exempts 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.

OARRS

- Requires that a retail dispensary report to the Ohio Automated Rx Reporting System when dispensing medical marijuana to a patient.



Legislative intent

- Specifies the General Assembly's intent to enact an excise tax, to recommend that marijuana be reclassified as a schedule II controlled substance and to establish a program providing incentives for academic and medical research relating to medical marijuana.

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CONTENT AND OPERATION

Medical marijuana background

Current Ohio and federal law classify marijuana as a schedule I controlled substance, making its distribution, including by prescription, illegal. However, according to the National Conference of State Legislatures, 24 states allow for comprehensive public medical marijuana and cannabis programs.¹ Since 2009, the United States Department of Justice (DOJ) has encouraged federal prosecutors not to prosecute those who distribute marijuana for medical purposes in accordance with state law. In 2013, the DOJ updated its policy, noting that it will defer the right to challenge state laws legalizing marijuana for medical purposes so long as the states strongly enforce their own laws.²

Definition

Under the bill, medical marijuana means marihuana, as defined under existing Ohio law, that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.³ Current law defines "marihuana" as 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.⁴ "Marihuana" 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

¹ National Conference of State Legislatures, *State Medical Marijuana Laws*, available at <<http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>>.

² See <<https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>>.

³ R.C. 3796.01.

⁴ R.C. 3719.01.



stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.⁵

Medical Marijuana Control Commission

The bill creates the Medical Marijuana Control Commission in the Ohio Department of Health.⁶ The Commission consists of the following nine members:

- (1) A practicing physician;
- (2) A representative of the law enforcement community;
- (3) A representative of employers;
- (4) A representative of labor;
- (5) A representative of persons involved in the treatment of alcohol and drug addiction;
- (6) A representative of persons involved in mental health treatment;
- (7) A pharmacist;
- (8) A representative of persons supporting the legalization of marijuana use for medical purposes;
- (9) A representative of the general public.

Appointments

The Governor, with the advice and consent of the Senate, appoints all members of the Commission. Appointments must be made not later than 30 days after the bill's effective date. The Governor appoints the following members directly – the practicing physician and the representatives of law enforcement and employers. For the remaining members, the Governor must consider nominations made as follows:

- (1) The Senate President nominates individuals to serve as the pharmacist member and the members representing labor and the general public;
- (2) The Speaker of the House of Representatives nominates individuals to serve as the representative of persons involved in the treatment of alcohol and drug

⁵ *Id.*

⁶ R.C. 3796.02.



addiction, the representative of persons involved in mental health treatment, and the representative of persons supporting the legalization of marijuana use for medical purposes.

Under the bill, the Governor may reject a nomination submitted by the Senate President or the Speaker of the House. If the Governor rejects a nomination, he or she must request that another nomination be submitted. The Senate President or the Speaker must then submit another nomination.

Terms of membership

Of the Commission's initial members, those appointed directly by the Governor serve five-year terms, while members nominated by the Speaker and the Senate President serve four-year and three-year terms respectively. Thereafter, all terms are for three years.

Each member holds office from the date of appointment until the end of the term for which the member was appointed, except that members serve at the pleasure of the Governor. A member who is appointed to fill a vacancy that occurs before the expiration date of the predecessor's term holds office for the remainder of that term. A member continues in office after the expiration of the member's term until a successor takes office, or until a period of 60 days has elapsed, whichever occurs first. There is no limit on the number of terms that a member may serve.

Chairperson, compensation, and meetings

The Governor is to select a member of the Commission to serve as its chairperson. Each member, including the chairperson, receives a salary fixed in accordance with a schedule set by the Director of the Ohio Department of Administrative Services.⁷ In addition to that salary, each member receives actual and necessary travel expenses in connection with commission hearings and business.

Under the bill, the Commission must hold its initial meeting not later than 30 days after the last member of the Commission is appointed and must adopt internal management rules in accordance with current law.⁸ The bill specifies that the Commission is not subject to the law governing the sunset review of agencies.⁹

⁷ R.C. 124.15.

⁸ R.C. 111.15.

⁹ See R.C. 101.82 to 101.87.



Medical Marijuana Control Program

The bill requires that the Medical Marijuana Control Commission establish a Medical Marijuana Control Program to provide for the following:¹⁰

(1) The licensure of medical marijuana cultivators, processors, and retail dispensaries;

(2) The registration of physicians that recommend treatment with medical marijuana;

(3) The licensure of laboratories that test medical marijuana;

(4) The regulation of other activities relating to medical marijuana.

The Commission is charged with administering the Program and is authorized to take any action necessary to implement and enforce the bill's provisions.

Timeline

The bill requires that the Commission take all actions necessary to ensure that the Program is fully operational not later than two years after the bill's effective date.¹¹

Program rules

Not later than one year after its initial meeting, the Commission must adopt rules establishing standards and procedures for the Program.¹² The rules must be adopted in accordance with the Administrative Procedure Act¹³ and do all of the following:

(1) Establish application procedures and fees for licenses issued by the Commission;

(2) Specify the criminal offenses for which an applicant will be disqualified from licensure;

(3) Specify the conditions that must be met to be eligible for licensure;

¹⁰ R.C. 3796.03.

¹¹ Section 3.

¹² R.C. 3796.04.

¹³ R.C. Chapter 119.



(4) Establish the number of cultivator and retail dispensary licenses that will be permitted at any one time;

(5) Establish a license renewal schedule, renewal procedures, and renewal fees;

(6) Specify reasons for which a license may be suspended or revoked;

(7) Establish standards under which a license suspension may be lifted;

(8) Establish procedures for the registration of physicians seeking to recommend medical marijuana for treatment and requirements that must be met to be eligible for registration with the commission;

(9) Specify the forms in which medical marijuana may be dispensed and the methods by which it may be used;

(10) Establish tamper-resistant standards for medical marijuana packaging;

(11) Establish labeling requirements for medical marijuana packages;

(12) Establish training requirements for employees of retail dispensaries;

(13) Specify when testing of medical marijuana must be conducted by licensed laboratories;

(14) Determine whether a licensed cultivator, processor, retail dispensary, or laboratory may remain in operation, must relocate, or have its license revoked if a school, church, public library, public playground, or public park is established within five hundred feet of the cultivator, processor, retail dispensary, or laboratory.

The bill also authorizes the Commission to adopt any other rules it considers necessary to administer and implement the Program. When adopting rules, the Commission must consider standards and procedures that have been found to be best practices relative to the use and regulation of medical marijuana.

Maximum number of cultivator and dispensary licenses

When adopting rules establishing the maximum number of cultivator and retail dispensary licenses that will be permitted at any one time, the Commission must consider the population of Ohio and the number of patients seeking to use medical marijuana. In the case of retail dispensary licenses, the Commission also must consider



the geographic distribution of dispensary sites in an effort to ensure patient access to medical marijuana.¹⁴

Permissible forms and methods of medical marijuana

When adopting rules specifying the forms in which medical marijuana may be dispensed and the methods by which it may be used, the Commission may include edibles, patches, plant materials, and oils. The bill requires that the Commission exclude any form or method that is considered attractive to children.¹⁵

Medical marijuana registry

Under the bill, the Commission must establish and maintain a medical marijuana registry containing the following information:

- The number of patients for whom treatment with medical marijuana has been recommended;
- The types of medical conditions for which treatment with medical marijuana has been recommended.¹⁶

Database to monitor medical marijuana

The bill also requires that the Commission establish and maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing. The Commission may contract with a separate entity to establish and maintain the database on its behalf.

The database must allow for information regarding medical marijuana to be updated instantaneously. All persons designated by the Commission must submit to the Commission any information it determines is necessary for maintaining the database.¹⁷

¹⁴ R.C. 3796.05.

¹⁵ R.C. 3796.06.

¹⁶ R.C. 3796.07.

¹⁷ *Id.*

Registration as a qualifying physician

A physician seeking to recommend treatment with medical marijuana must apply to the Commission for registration as a qualifying physician.¹⁸ An application must be submitted in a manner established in rules adopted by the Commission. If an application is complete and meets the requirements established in rules, the Commission must register the applicant as a qualifying physician.

Authority to recommend medical marijuana treatment

A qualifying physician may recommend that a patient be treated with medical marijuana if a physician-patient relationship has been established through all of the following:

- (1) A physical examination of the patient by the physician;
- (2) A review of the patient's medical history by the physician;
- (3) An expectation of providing care and receiving care on an ongoing basis.

In the case of a patient who is a minor, the qualifying physician may recommend treatment only after obtaining the consent of a parent or another person responsible for providing consent to treatment.¹⁹

Requirements when recommending medical marijuana treatment

When issuing a recommendation to a patient, the qualifying physician must specify both of the following:

- The one or more forms of medical marijuana that may be dispensed to the patient;
- The one or more methods by which the patient may use medical marijuana.

A recommendation issued in accordance with the bill's provisions is valid for a period of not more than 90 days. A physician may renew a recommendation for an additional period of not more than 90 days upon an examination of or follow-up

¹⁸ R.C. 3796.10.

¹⁹ R.C. 3796.10(B).

consultation with the patient. There is no limit on the number of times a recommendation may be renewed.²⁰

Physician record-keeping requirements

When recommending treatment with medical marijuana, a qualifying physician shall maintain a record for each patient that includes the following:

(1) The disease or condition for which treatment with medical marijuana has been recommended;

(2) The one or more reasons that treatment with medical marijuana was recommended for the patient rather than recommending another form of treatment;

(3) The one or more forms of or methods of using medical marijuana recommended for the patient.²¹

Physician reporting requirements

At intervals not exceeding 90 days, each qualifying physician must submit to the Commission a report containing all of the following information:

(1) The number of patients for whom the physician has recommended treatment with medical marijuana;

(2) The diseases or conditions for which the treatment has been recommended;

(3) The reasons that treatment with medical marijuana was recommended rather than recommending other forms of treatment. Information submitted in a report is limited to the 90-day period covered by the report.

Annually, each qualifying physician must submit to the Commission a report that describes the physician's observations regarding the effectiveness of medical marijuana in treating his or her patients. The report is limited to observations concerning patients treated during the year covered by the report.²²

²⁰ R.C. 3796.10(C).

²¹ R.C. 3796.10(D).

²² R.C. 3796.10(E).



Prohibition on physician furnishing medical marijuana

The bill prohibits a qualifying physician from personally furnishing or otherwise dispensing medical marijuana.²³

Patients authorized to possess and use medical marijuana

The bill provides that a patient who obtains medical marijuana from a licensed retail dispensary (see "**Licensed retail dispensaries**" below) may possess and use the marijuana.²⁴ The bill does not provide for the registration of patients.

Smoking

If the Commission specifies in rules that smoking is a method by which medical marijuana may be used, the bill prohibits a patient from smoking medical marijuana in any place of public accommodation.²⁵ A place of public accommodation includes any inn, restaurant, eating house, barbershop, public transportation, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public.²⁶

Licensure of cultivators, processors, retail dispensaries, and laboratories

An entity that seeks a license to cultivate, process, or dispense at retail medical marijuana or to conduct laboratory testing of medical marijuana must file an application for licensure with the Commission. The application must be submitted in accordance with rules adopted by the Commission.²⁷

Conditions on eligibility for licensure

The Commission will issue a license to an applicant if all of the following conditions are met:

(1) The applicant demonstrates that it does not have an ownership or investment interest in, or compensation arrangement with, a cultivator, processor, retail dispensary, or laboratory licensed by the Commission or with another applicant for licensure;

²³ R.C. 3796.10(F).

²⁴ R.C. 3796.22.

²⁵ See R.C. 4112.01.

²⁶ R.C. 3796.22(B).

²⁷ R.C. 3796.11.



(2) The applicant demonstrates that it will not be located within 500 feet of a school, church, public library, public playground, or public park;

(3) The report of each criminal records check conducted demonstrates that the person subject to the check has not been convicted of or pleaded guilty to any disqualifying offense specified in rules adopted by the Commission;

(4) The applicant meets all other licensure eligibility conditions established in rules adopted by the Commission.²⁸

Criminal records check requirements

As part of the application process, each of the following individuals associated with an entity seeking licensure must complete a criminal records check:

(1) An administrator or other person responsible for the daily operation of the entity;

(2) An owner or prospective owner, officer or prospective officer, or board member or prospective board member of the entity.²⁹

The process for completing a criminal records check provided for in the bill is the same process that applies to certain professionals under existing law.³⁰ The Commission is required to specify by rule the offenses that disqualify an applicant from licensure (see "**Program rules**" above). If an individual subject to the criminal records check requirement fails to complete the check, the Commission must deny the entity's application for licensure.

Authority to suspend or revoke a license

The bill authorizes the Commission to suspend or revoke a license for any reason specified in rules adopted by the Commission.³¹ An action to suspend or revoke a license must be taken in accordance with the Administrative Procedure Act.³²

²⁸ *Id.*

²⁹ R.C. 3796.12.

³⁰ R.C. 109.572.

³¹ R.C. 3796.13.

³² R.C. Chapter 119.



Licensed cultivators

The bill authorizes the holder of a cultivator license to cultivate medical marijuana and deliver it to a processor.³³

Prohibition on personal, family, or household use

The bill prohibits a cultivator license holder from cultivating medical marijuana for personal, family, or household use.

Licensed processors

The holder of a processor license may do any of the following:

(1) Obtain medical marijuana from one or more licensed cultivators;

(2) Process medical marijuana obtained from a cultivator into a form that may be dispensed, as those forms are specified in rules adopted by the Commission;

(3) Deliver processed medical marijuana to one or more licensed retail dispensaries.³⁴

When processing medical marijuana, a licensed processor must package it according to the tamper-resistant standards specified in rules adopted by the Commission. The processor also must label the packaging with the product's tetrahydrocannabinol and cannabidiol³⁵ content in accordance with labeling requirements specified in rules adopted by the Commission.

Licensed retail dispensaries

The holder of a retail dispensary license may obtain medical marijuana from one or more processors and may dispense it to patients. When dispensing medical marijuana, the dispensary must do all of the following:

³³ R.C. 3796.18.

³⁴ R.C. 3796.19.

³⁵ The marijuana plant contains more than 80 active cannabinoid chemicals, including tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the main psychoactive cannabinoid in marijuana. Unlike THC, CBD does not produce euphoria or intoxication. See National Institutes of Health, National Institute on Drug Abuse, *The Biology and Potential Therapeutic Effects of Cannabidiol*, available at <<https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/biology-potential-therapeutic-effects-cannabidiol>>.

(1) Dispense only in accordance with a recommendation issued by a qualifying physician registered with the Commission;

(2) Report to the drug database maintained by the State Board of Pharmacy that medical marijuana was dispensed to a patient (see "**OARRS**" below);

(3) Use only employees who have met the training requirements established in rules adopted by the Commission.³⁶

Licensed laboratories

The holder of a laboratory license may obtain medical marijuana from licensed cultivators, processors, and retail dispensaries and may conduct testing on the marijuana. When testing, a licensed laboratory must test for potency, homogeneity, and contamination and prepare a report of test results.³⁷

Township or municipal corporation may prohibit or limit number of retail dispensaries

The bill authorizes the legislative authority of a municipal corporation to adopt an ordinance, and a board of township trustees to adopt a resolution, to prohibit, or limit the number of, licensed retail dispensaries of medical marijuana within the municipal corporation or within the unincorporated territory of the township.³⁸

Zoning of retail dispensaries

The legislative authority of a municipal corporation has authority under constitutionally granted home rule authority³⁹ and under continuing law⁴⁰ to adopt zoning ordinances regulating land and buildings within municipal boundaries. And, along with various other zoning powers, townships have authority under continuing law to regulate, by resolution, the location and use of buildings and other structures and the uses of land for trade or industry in the unincorporated area of the township.⁴¹

³⁶ R.C. 3796.20.

³⁷ R.C. 3796.21.

³⁸ R.C. 3796.29.

³⁹ Ohio Const., art. XVIII, sec. 3; *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259 (1980).

⁴⁰ R.C. 713.07 to 713.10.

⁴¹ R.C. 519.02, not in the bill.



Counties have similar zoning authority,⁴² but county zoning regulations may apply only in the unincorporated area of the county not covered by township zoning regulations.⁴³

Current law limits the power of counties and townships to zone land used for agricultural purposes. The bill provides that these existing limitations do not prohibit a county, through its rural zoning commission, board of county commissioners, or board of zoning appeals,⁴⁴ or a township, through its zoning commission, board of township trustees, or board of zoning appeals,⁴⁵ from regulating the location of retail dispensaries of medical marijuana or from prohibiting such dispensaries from being located in the unincorporated territory of the county or of the township, respectively.

Proximity to school, church, or certain public places

The bill prohibits a cultivator, processor, retail dispensary, or laboratory from being located within 500 feet of a school, church, public library, public playground, or public park.⁴⁶

The bill requires an entity seeking a license to cultivate, process, or dispense at retail medical marijuana, or to conduct laboratory testing of medical marijuana, to demonstrate the entity will not be located within 500 feet of a school, church, public library, public playground, or public park in order to receive a license from the Medical Marijuana Control Commission.⁴⁷ The Commission must revoke the license of a cultivator, processor, retail dispensary, or laboratory that relocates to within 500 feet of a school, church, public library, public playground, or public park.⁴⁸

Finally, the bill requires the Commission to specify, by ruled adopted under the Administrative Procedure Act, if a licensed cultivator, processor, retail dispensary, or laboratory that existed before a school, church, public library, public playground, or

⁴² R.C. 303.02, not in the bill.

⁴³ R.C. 303.22, except county zoning regulations will apply in an area covered by township zoning regulations upon vote of the majority of voters in the area.

⁴⁴ R.C. 303.21(D).

⁴⁵ R.C. 519.21(D).

⁴⁶ R.C. 3796.30(A).

⁴⁷ R.C. 3796.11(B)(4).

⁴⁸ R.C. 3796.30(A).



public park became established within 500 feet may remain in operation or must relocate or have its license revoked.⁴⁹

The bill defines the following terms for purposes of these provisions:⁵⁰

- "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.
- "Public library" means a library provided for under Ohio Public Libraries Law.
- "Public park" means a park established by the state or a political subdivision of the state including a county, township, municipal corporation, or park district.
- "Public playground" means a playground established by the state or a political subdivision of the state including a county, township, municipal corporation, or park district.
- "School" means:
 - A public or nonpublic primary school or secondary school;
 - A preschool, meaning any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children.
- A child day-care center, meaning any place in which child care or publicly funded child care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child care or publicly funded child care is provided for seven to twelve children at one time. In counting children, any children under six

⁴⁹ R.C. 3796.04(B)(14).

⁵⁰ R.C. 3796.30(B).



years of age who are related to a licensee, administrator, or employee and who are on the premises of the center are counted. "Child day-care center" does not include any of the following:

- A child day camp;
- A place located in and operated by a hospital that administers the needs of ill or injured children who are monitored under the on-site supervision of a licensed physician or licensed registered nurse;
- A place where an organized religious body provides child care that is not publicly funded to preschool-age and school-age children for not more than 30 days a year and a parent, custodian, or guardian of at least one child receiving child care is on the premises and readily accessible at all times.

Employment laws

Employment – generally

The bill provides that nothing in the bill concerning medical marijuana does any of the following:

(1) Requires an employer to accommodate an employee's use of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, 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 of medical marijuana;

(3) Affects the authority of the Administrator of Workers' Compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the Administrator.⁵¹

Under continuing law, the Bureau of Workers' Compensation's Drug-Free Safety Program offers eligible employers a premium rebate for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and drugs. In addition to satisfying other requirements, the employer's program must include alcohol and drug testing, including (1) pre-employment and new-hire drug testing, (2) post-

⁵¹ R.C. 3796.28(A).



accident alcohol and drug testing, (3) reasonable suspicion alcohol and drug testing, and (4) return-to-duty and follow-up alcohol and other drug testing.⁵²

Unemployment eligibility

Under the bill, a person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause under the Unemployment Compensation Law.⁵³ If a person has been discharged for just cause in connection with the person's work, for purposes of that Law that person is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment. Under current law, failure of a drug test could be "just cause" for purposes of this provision.⁵⁴

Workers' compensation – rebuttable presumption

Eligibility

The Workers' Compensation Law compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. Under continuing law, an employee or dependent is ineligible if the employee's injury or occupational disease is purposely self-inflicted or is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance was the proximate cause of the injury.⁵⁵

The bill maintains an employee's or dependent's ineligibility for compensation and benefits if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury. This applies regardless of whether the marijuana use is recommended by a physician.⁵⁶

Rebuttable presumption – current law

Under continuing law, a rebuttable presumption is established if an employee is intoxicated or under the influence of a controlled substance not prescribed by a

⁵² Ohio Administrative Code 4123-17-58.

⁵³ R.C. 3796.28(B).

⁵⁴ R.C. 4141.29(D), not in the bill.

⁵⁵ R.C. 4123.54(A).

⁵⁶ R.C. 4123.54(A) to (F).



physician and being intoxicated or under the influence of that controlled substance proximately caused an injury if either of the following applies:

--A qualifying chemical test is administered and the employee tests above certain levels for alcohol or certain controlled substances, including cannabinoids.

--The employee refuses to submit to a chemical test on the condition that the employee is given notice that refusal to submit to a qualifying chemical test may affect the employee's eligibility for compensation and benefits.⁵⁷

Under current law, a chemical test is considered a "qualifying chemical test" if it is administered to an employee after an injury under at least one of the following conditions: (1) when the employee's employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician, (2) at a police officer's request because the officer has reasonable grounds to believe that the employee was operating a vehicle while intoxicated or under the influence of a controlled substance, or (3) at a physician's request.⁵⁸

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on, but are not limited to, any of the following:

--Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance;

--A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

--The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

--A report of use of alcohol or a controlled substance provided by a reliable and credible source;

⁵⁷ R.C. 4123.54(B).

⁵⁸ R.C. 4123.54(B) and (C).



--Repeated or flagrant violations of the safety or work rules of the employee's employer that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.⁵⁹

"Safe harbor" for the provision of banking services

Under the bill, a financial institution that provides financial services to any cultivator, processor, retail dispensary, or laboratory licensed under the bill is exempt 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.⁶⁰ The bill 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;

--Any money transmitter licensed under Ohio law or any affiliate, agent, or employee of a money transmitter.⁶¹

For purposes of this exemption, a financial institution may request the Medical Marijuana Control Commission to provide the following information:

(1) Whether a person with whom the financial institution is seeking to do business is a cultivator, processor, retail dispensary, or laboratory licensed under the bill;

(2) The name of any other business or individual affiliated with the person;

(3) A copy of the application for a license under the bill, and any supporting documentation, that was submitted by the person;

(4) If applicable, information relating to sales and volume of product sold by the person;

⁵⁹ R.C. 4123.55(C)(2).

⁶⁰ R.C. 3796.27(B). The criminal laws referred to by the bill include offenses relating to the funding of drug or marihuana trafficking and, as they apply to violations of the Drug Offenses Law, the offenses of conspiracy and complicity.

⁶¹ R.C. 3796.27(A)(1).



(5) Whether the person is in compliance with the bill;

(6) Any past or pending violation of the bill by the person, and any penalty imposed on the person for the violation.

Notwithstanding the Public Records Law, the Commission must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.⁶²

Likewise, a financial institution may request the Department of Taxation to provide the following information:

(1) Whether a cultivator, processor, retail dispensary, or laboratory licensed under the bill with whom the financial institution is seeking to do business is in compliance with the applicable Ohio tax laws;

(2) Any past or pending violation by the person of those tax laws, and any penalty imposed on the person for the violation.

Notwithstanding the Public Records Law or any law relating to the confidentiality of tax return information, the Department must provide the information requested by a financial institution. It may charge the financial institution a reasonable fee to cover the administrative cost of doing so.⁶³

Information received by a financial institution under the bill is confidential. Except as otherwise permitted by other state law or federal law, a financial institution is prohibited from making the information available to any person other than the customer to whom the information applies and any trustee, conservator, guardian, personal representative, or agent of that customer.⁶⁴

OARRS

The Ohio Automated Rx Reporting System, or OARRS, is the drug database established and maintained by the State Board of Pharmacy to monitor the misuse and diversion of controlled substances.⁶⁵ Existing law requires that when a controlled substance is dispensed by a pharmacy or personally furnished by a health care

⁶² R.C. 3796.27(C).

⁶³ R.C. 3796.27(D).

⁶⁴ R.C. 3796.27(E).

⁶⁵ R.C. 4729.75.



professional to an outpatient, this information must be reported to OARRS. Health care professionals and pharmacists also may access patient information in the database.⁶⁶

Reporting to OARRS

The bill authorizes the Board of Pharmacy to monitor medical marijuana through OARRS, by requiring that a retail dispensary or its delegate report to OARRS when dispensing medical marijuana in accordance with the bill's provisions.⁶⁷ Under the bill, a dispensary must report all of the following to the database:

- (1) Retail dispensary identification;
- (2) Patient identification;
- (3) Recommending physician identification;
- (4) Date of physician recommendation;
- (5) Date marijuana was dispensed;
- (6) Form, quality, and clinical strength of marijuana dispensed;
- (7) Quantity of marijuana dispensed;
- (8) Number of days' supply of marijuana dispensed.

Access to patient information

The bill also permits the Board to provide to a delegate of a retail dispensary a report of information from OARRS relating to a patient, if the delegate requests the report and certifies in a form specified by the Board that the information requested is for the purpose of distributing medical marijuana for use in accordance with the bill's provisions and if the delegate or retail dispensary has not been denied access to OARRS. While it permits retail dispensaries to access OARRS, the bill does not require them to do so.

Board of Pharmacy reports

Under existing law, the Board must report biennially to the standing committees of the General Assembly primarily responsible for considering health issues information from the Board, prescribers, and pharmacies regarding the Board's

⁶⁶ R.C. 4729.80.

⁶⁷ R.C. 4729.75 and 4729.771.



effectiveness in providing information from OARRS. The bill requires that this report also include information from retail dispensaries licensed to dispense medical marijuana.

Current law also requires that the Board submit a semiannual report to the Governor, General Assembly, and various agencies or departments of state government that includes an aggregate of information regarding prescriptions for controlled substances containing opioids, as well as opioids personally furnished by prescribers. Under the bill, the Medical Marijuana Control Commission is to receive a copy of the report. The bill also requires that the report contain an aggregate of information relating to medical marijuana, including the following:

- (1) The number of retail dispensaries that dispensed marijuana;
- (2) The number of patients to whom marijuana was dispensed;
- (3) The average supply of marijuana dispensed at one time;
- (4) The average daily dose of marijuana dispensed.⁶⁸

Conforming changes

Because the bill authorizes the Pharmacy Board to monitor medical marijuana through its database and requires that retail dispensaries report to OARRS, it makes several conforming changes to the law governing the OARRS Program.⁶⁹

Legislative intent

Excise tax

The bill provides that the General Assembly intends to enact law levying an excise tax on each transaction by which medical marijuana is dispensed to a patient in accordance with the bill's provisions. In addition to levying the tax, the General Assembly intends for the law to subject persons dispensing medical marijuana to all customary nondiscriminatory fees, taxes, and other charges that are applied to, levied against, or otherwise imposed generally upon Ohio businesses, their gross or net revenues, their operations, their owners, and their property.⁷⁰

⁶⁸ R.C. 4729.85.

⁶⁹ R.C. 4729.81, 4729.82, 4729.83, 4729.84, and 4729.86.

⁷⁰ Section 4.



Marijuana drug abuse prevention programs

The bill requires that the Commission determine for each fiscal year an amount it considers necessary to fund marijuana drug abuse prevention programs. The amount determined by the Commission must be appropriated for that purpose from excise tax revenues and from license application and renewal fees established in rules adopted by the Commission.⁷¹

Reclassification as schedule II controlled substance

The bill specifies that the General Assembly declares its intent to recommend that the United States Congress, the Attorney General of the United States, and the United States Drug Enforcement Agency take actions as necessary to classify marijuana as a schedule II controlled substance in an effort to ease the regulatory burdens associated with research on the potential medical benefits of marijuana.⁷²

Incentives for academic and medical research

The bill provides that the General Assembly declares its intent to establish a program to provide incentives or otherwise encourage institutions of higher education and medical facilities within Ohio to conduct academic and medical research relating to medical marijuana.⁷³

HISTORY

ACTION	DATE
Introduced	04-14-16

H0523-I-131.docx/emr

⁷¹ *Id.*

⁷² Section 5.

⁷³ Section 6.



Lakewood, other Ohio cities block medical marijuana business licenses months before any will be awarded



Ohio cities and townships are enacting temporary bans on medical marijuana businesses but licenses aren't likely to be issued before the bans end. *(Andy Nelson, The Register-Guard)*



By [Jackie Borchardt, cleveland.com](#)

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COLUMBUS, Ohio -- Ohio's medical marijuana law is a month away from taking effect and awarding marijuana business licenses is even further down the road, but Lakewood and other communities across the state are already making moves to block marijuana businesses from starting in their communities.

A handful of Ohio cities have put a six-month moratorium on licensing marijuana cultivators, processors and retailers. Several others are considering similar temporary bans ahead of the new law, which takes effect Sept. 8.

But it's not likely that any marijuana businesses will be licensed in Ohio in the next six months. The new law tasks three government agencies with setting up the regulations and licensing processes, and the first deadline is in May 2017.

Officials in these communities say they're not necessarily planning to ban marijuana businesses but want more time to decide what if any additional laws need to be in place.

OHIO MEDICAL MARIJUANA

Unprepared for a new law

Ohio's medical marijuana law allows people with about 20 qualifying medical conditions to buy and use marijuana if they have a recommendation from their doctor. The law allows retail stores to sell marijuana plant material, patches, tinctures and oils.

It also allows cities and townships to restrict or prohibit medical marijuana businesses but not use.



Ohio legalized medical marijuana: Here's what you need to know

Lakewood, other Ohio cities block medical marijuana business licenses months before any will be awarded

Ohio seeks expert on marijuana cultivation but wants a drug-free firm

Ohio medical marijuana amendment backers had little cash, campaign finance report shows

Cashless payment system proposed for Ohio medical marijuana program

Small businesses prepare for Ohio medical marijuana market months before regulations announced

Lakewood, **Beavercreek**, **Troy** and **Piqua** recently passed six-month moratoriums on licensing businesses and **Rocky River**, **Lancaster**, **Lima** and **Liberty Township** in Southwest Ohio are working on similar temporary bans.

Kent Scarrett, executive director of the Ohio Municipal League, said communities are grateful lawmakers gave local government a say but would have preferred they involved city leaders more while drafting the bill.

"There's a lot of unknowns when this gets rolled out," Scarrett said. "The state made this change but this change is coming to communities."

Scot Crow, a Dickinson Wright attorney who has worked with legal marijuana businesses, said a moratorium is an overreaction and shows a lack of understanding of what actually will occur on the law's effective date.

"Really Sept. 8 starts the clock ticking on when the pharmacy board and commerce department start working on regulations," Crow said. "Beyond that, the day is going to be pretty quiet."

Crow said cities and townships should be following what's going on in the legislature and with the application process so they're prepared when licenses are issued. That likely won't happen for another year, Crow said.

What the law says

The law prohibits a cultivator, processor, retail dispensary or testing laboratory from being located within 500 feet of a school, church, public library, public playground or public park.

Municipal corporations and townships may limit or prohibit the number of medical marijuana businesses within their borders but can't limit research done at a state university, medical center or private research facility.

Townships can also regulate the location of medical marijuana businesses in unincorporated areas of the township, but counties cannot.

What medical marijuana advocates are saying

The Ohio Department of Commerce, Board of Pharmacy and Medical Board will begin drafting rules and regulations this fall, with help from a yet-to-be named 14-member advisory panel.

Cultivator regulations and license application process details from the commerce department are due first, in May 2017. The earlier deadline was intended to give growers a head start.

In some medical marijuana states, the time from when license applications are available to when they're awarded has spanned years. Ohio's law requires the system to be "fully operational" by September 2018.

So seeing cities move quickly to enact temporary bans is concerning to medical marijuana advocates.

National organization Marijuana Policy Project, which pushed an Ohio medical marijuana ballot measure earlier this year, plans to help educate local governments about medical marijuana and show them best practices through its Ohio organization, Ohioans for Medical Marijuana.

Spokesman Aaron Marshall said it's understandable that city officials want to do their due diligence, but outright bans limit patients' access to medical marijuana.

"With so many details to be worked out in the future we'd prefer folks take a deep breath and not act on this issue right now," Marshall said.

Only one city has outright banned all legal marijuana operations. Hamilton, in Butler County, passed its ban in February 2015 - months before that year's recreational marijuana measure qualified for the ballot. **New Philadelphia city council plans to vote on an outright ban soon.**

Lakewood wants to get it right

Lakewood's moratorium goes a step further than just banning marijuana business licenses that won't likely be awarded anyway. It also blocks the zoning commission from issuing occupancy or change of use permits for would-be marijuana business sites during the next six months.

So someone who wants to secure a location in preparation for the license application process wouldn't be able to do so.

In the coming months, city officials will review zoning laws and decide whether any additional restrictions need to be made, said Jennifer Swallow, chief assistant law director. The moratorium could save those business owners trouble down the road, if the city were to enact restrictions affecting already-chosen locations.

Swallow said the city will also need to update its criminal code to allow for medical marijuana.

"It's important to make sure we take our time to look at this and how it's going to affect the community as a whole and make sure the right regulations are in place from the beginning and to be able to plan," Swallow said.

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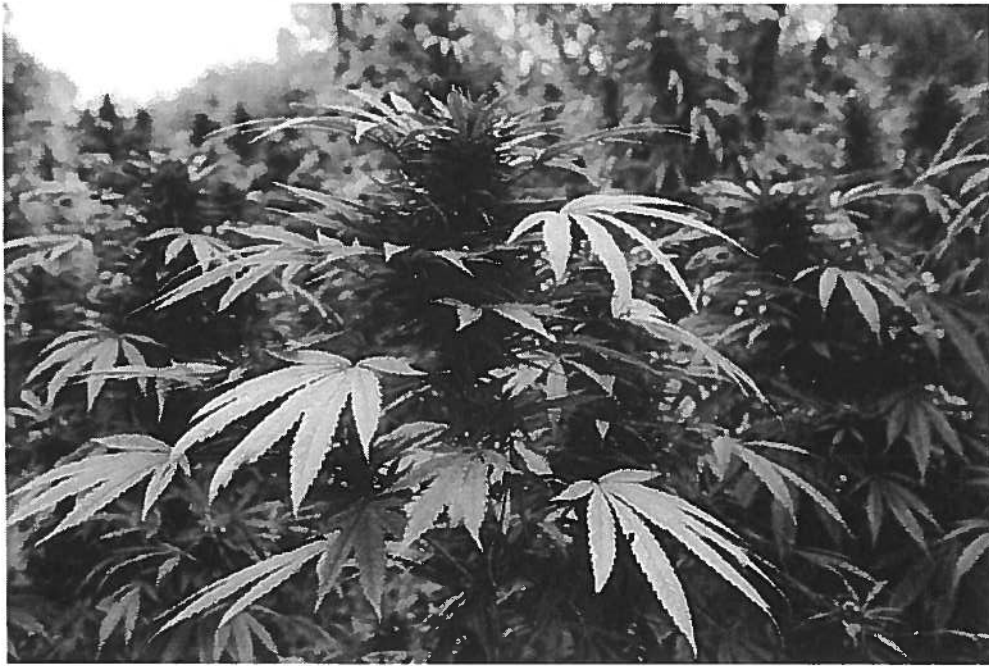
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Ohio legalized medical marijuana: Here's what you need to know



Ohio legalized medical marijuana but it could be two years before the program is fully operational. *(Teresa Crawford, Associated Press)*



By [Jackie Borchardt, cleveland.com](#)

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on June 09, 2016 at 11:45 AM, updated July 27, 2016 at 9:03 PM

COLUMBUS, Ohio -- Ohio legalized medical marijuana, but that doesn't mean anyone can light up a joint whenever they please -- far from it.

Legislation signed Wednesday by Gov. John Kasich creates a regulated program controlled by three government agencies that won't be set up for at least a year. And the law explicitly prohibits smoking marijuana or growing it at home.

The law leaves much of the details of the program up to the Ohio Department of Commerce, State Pharmacy Board, State Medical Board and a yet to be appointed bipartisan advisory committee.

But here are answers to some of readers' most frequently asked questions about the law.

What are the qualifying medical conditions?

OHIO MEDICAL MARIJUANA

Patients qualify if they have the following conditions: HIV/AIDS; Alzheimer's disease; Amyotrophic lateral sclerosis (ALS); cancer; chronic traumatic encephalopathy (CTE); Crohn's disease; epilepsy or another seizure disorder; fibromyalgia; glaucoma; hepatitis C; inflammatory bowel disease; multiple sclerosis; pain that is chronic, severe, and intractable; Parkinson's disease; post traumatic stress disorder; sickle cell anemia; spinal cord disease or injury; Tourette's syndrome; traumatic brain injury; and ulcerative colitis. Individuals can petition the state medical board to add conditions.

Lakewood, other Ohio cities blc medical marijuana business licenses months before any will awarded

Ohio seeks expert on marijuana cultivation but wants a drug-free firm

Doctors must register with the state, which will require completing some type of continuing education about cannabis, before being able to recommend marijuana to patients with whom they have bona fide relationships. The patient registration process would be determined by the Ohio State Pharmacy Board.

Ohio medical marijuana amendment backers had little cash, campaign finance report shows

When can I use marijuana?

Cashless payment system proposed for Ohio medical marijuana program

If you would qualify under the law's conditions (see below) and have written permission from your doctor, then you could use marijuana without going to jail in early September. The exact date will be 90 days from when the secretary of state officially files the law. The law doesn't say where patients would get their marijuana before dispensaries are set up, but it's assumed they would get it from another state or Ohio's existing black market.

Small businesses prepare for C medical marijuana market mor before regulations announced

Dispensaries won't be set up for a least a year, maybe longer. The law requires the whole program to be operational within two years.

Can registered patients get fired for using medical marijuana?

Yes. Despite changing state laws, marijuana remains illegal federally. Courts have consistently upheld employers' right to fire employees for marijuana use, even when it didn't happen on the job.

Ohio is an at-will state where employees can be fired for any reason. Additionally, the law specifies that employees can be fired for marijuana use even if it was recommended to them by a doctor if the employer has a drug-free workplace or zero tolerance policy in place. Employees fired for medical marijuana use are not eligible for unemployment compensation.

I want to own a marijuana business. How can I get a business license?

Details about license requirements and applications are not yet known.

The Department of Commerce, in conjunction with a 14-member bipartisan advisory committee, has until May 2017 to figure it out for cultivators. Lawmakers expect seeds to be in the ground next summer.

The rules and regulations for dispensaries, testing labs and marijuana processors, which will make marijuana-infused products and package everything for sale, must be determined by September 2017.

Will there be a dispensary in my neighborhood?

Maybe. The law requires 500 feet between any marijuana business and a school, church, public library or public playground. Local governments can restrict where cultivators, processors and dispensaries can be located or ban them altogether.

The state pharmacy board will decide how many dispensary licenses to issue, and the law requires it take into account the state population, patient demand and ensuring dispensaries are not just concentrated in certain parts of the state.

Why no smoking or home grow?

Patients and/or their caregivers can grow their own marijuana in 15 of the 25 medical marijuana states. Four of the 25 states prohibit smoking marijuana, and an additional 17 states allow use of marijuana products that are low in THC, the compound that generates a "high."

Lawmakers said smoking marijuana or growing it outside of a strictly regulated program were off the table from the beginning.

Both aspects ventured into the realm of recreational use, lawmakers said, and would have been deal breakers for legislators whose votes were crucial to the bill's passage. Also, lawmakers said the idea that people would "smoke their medicine" went against common sense and prevalent public health messages against cigarette smoking.

The law does allow patients to inhale vaporized marijuana.

To read text of the new law, [click here](#).

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Lawyers can't help set up new medical marijuana businesses, Ohio Supreme Court board says



Attorneys may not help clients establish, operate, or do business with a medical marijuana business in Ohio, according to an Ohio Supreme Court board, even though medical pot is about to become legal in the Buckeye State. (Glen Stubbe, *Minneapolis Star Tribune*)



By [Jeremy Pelzer, cleveland.com](#)

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on August 11, 2016 at 1:17 PM, updated August 12, 2016 at 8:38 AM

COLUMBUS, OHIO—Lawyers cannot provide legal services to establish, operate, or help someone do business with a medical marijuana business in Ohio, even though the state is about to legalize its use, according to an Ohio Supreme Court board.

That's because marijuana is still banned under federal law, according to **an advisory opinion** released last week by the Supreme Court's Board of Professional Conduct.

The board also asserted that any lawyer who uses medical marijuana personally or owns or is employed by a dispensary may face possible federal prosecution, and such activity "may adversely reflect on a lawyer's honesty, trustworthiness, and overall fitness to practice law."

Attorneys are allowed to explain Ohio's medical marijuana law and give advice about the legality and consequences of operating under it and federal law, according to the advisory opinion.

The board's opinion conflicts with Ohio's medical marijuana law, which grants immunity to attorneys doing business with the medical marijuana industry. While the opinion is non-binding, it asserts the Supreme Court's power to discipline lawyers who become involved with medical marijuana businesses.

Westlake attorney Thomas Haren said he believes the board's opinion leaves lawyers in a quandary, as it prevents them from providing basic services that they can provide for any other business in Ohio.

Haren said he expects the Supreme Court will have to amend its rules to address the issue.

If it doesn't, he said, the advisory opinion will become a significant hindrance to anyone who wants to be involved in the medical marijuana industry -- such as opening a dispensary business -- or anyone who wants to do business with someone associated with the industry -- such as a landlord leasing space to a business.

"It's disappointing -- to lawyers and to clients who want to be involved in the medical marijuana industry," Haren said.

Ethics panels in most of the other 24 states to legalize medical marijuana **have permitted attorney involvement in the marijuana industry**, including Connecticut and Washington state.

Hawaii's disciplinary board, however, issued an opinion last year stating that attorneys could not provide counsel to help establish a marijuana business, as they would be considered to be assisting a federal crime.

Cleveland.com reporter Robert Higgs contributed to this story.

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By **Mark Williams**

The Columbus Dispatch • Saturday August 13, 2016 6:05 AM

118 10 138

With the state's medical-marijuana law taking effect Sept. 8, small business owner Andy Joseph figures there will be need for new businesses to grow and cultivate, test, process and do research on marijuana.

And he thinks Johnstown is the perfect spot.

Joseph is owner of Apeks Supercritical, a Johnstown-based plant-oil extraction company that is focused on the marijuana industry. He wants to turn the 300-acre, 17-year-old Johnstown Business Park on the village's east side, where his firm is located, into a \$500 million medical-marijuana campus.

About the only thing that wouldn't be done on the site is dispensing marijuana.

"One of the major constraints in our business is a place to do business," Joseph said.

Village Council is expected to consider a resolution Tuesday that could be the first step in starting that process. It would prevent the village from rejecting marijuana-related businesses as long as they comply with state and local laws and zoning requirements.

If adopted, Joseph believes Johnstown would be the first municipality in Ohio to pass that kind of legislation.

Some other municipalities — 13 or 14 by Joseph's estimates — have passed legislation to reject marijuana-related businesses, primarily out of safety concerns, he said. Many other cities probably would be hesitant as well to invite marijuana-related companies to set up shop, he said.

Starting up any new business is tough, but the marijuana industry comes with additional burdens.

The state law establishes business operations for cultivators, processors, testing laboratories and dispensaries. Each will operate under rules to be set by one of three state agencies.

But the federal government has refused to reclassify marijuana as a legal drug, and an advisory opinion issued this week by the Board of Professional Conduct, a panel appointed by the Ohio Supreme Court, said lawyers who provide legal services for marijuana businesses could violate federal law and that could make them vulnerable to ethics violations.

There also are worries about safety and security.

Joseph said his history in the village and his relationship with village officials will help lessen those concerns.

"They can rely on me, my expertise in the marijuana industry, to give an understanding of what a real fear is and what is not a real fear," said Joseph, whose company makes equipment that uses liquid carbon dioxide to extract oils from plant materials

Having all aspects of an industry in one centralized location has advantages. It makes security easier and mitigates transportation risks. Further, related businesses working together can make the operations more efficient, he said.

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"I think it's going to be a huge economic driver for the village, especially with Andy being such a huge player in the industry," he said.

At this point, the village is not ready to make a major financial commitment to the idea, but it does have options to help businesses, including tax incentives, Lenner said.

He and Joseph view the Johnstown business park as ripe for development for the marijuana industry in the same way that the New Albany beauty park has come together.

Right now, several business are using about a third of the site. The rest is being used by farmers.

By Joseph's estimate, the site would be big enough to serve about half of the potential medical marijuana market in Ohio.

"To be able to come here and operate stress-free, this is a huge deal," Joseph said.

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