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Seeing Through the Smoke: Ohio's Legalization of Recreational Marijuana – Key Issues for Townships

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Ohio Issue 2 – the Basics

On November 7th, Ohio became the 24th state to legalize recreational use of marijuana, creating a new chapter 3780 of the Ohio Revised Code.

As approved by Ohio voters, the law permits adults to possess up to 2.5 ounces of marijuana or 15 grams of marijuana extract

Individuals can purchase marijuana from retail locations or grow up to 12 plants in a private residence where at least two adults reside.

Individuals are not allowed to purchase marijuana in other states and bring it into Ohio.

(Federal law prohibits traveling across state lines with marijuana.)

Effective December 7, 2023, individuals aged twenty-one and older will be able to possess and use marijuana in Ohio. The parameters of the law will be further defined by Ohio's legislative and regulatory processes.

A “Budding” Trend:

Moving toward Decriminalization and Legalization

- Marijuana remains a “Schedule I” drug under the Controlled Substances Act (“CSA”), 21 U.S.C. § 812..... *for now!*
 - High potential for abuse, no currently accepted medical use in treatment in the U.S., and a lack of accepted safety for use under medical supervision.
 - For decades, the Food & Drug Administration (FDA) recognized **no known medical benefits** – despite approving multiple *synthetic* forms of THC as valid prescription drugs.
- As of today, marijuana remains **illegal** under federal law, even in states that have conflicting laws legalizing the use of medical or recreational marijuana. *Gonzalez v. Raich*, 545 U.S. 1 (2005).

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Federal CSA Status – an agency shell game



- October 2022: President Biden directed his administration to review the federal prohibition of cannabis.
- August 2023: HHS recommended to the DEA to change marijuana from Schedule I to Schedule III
- **January 2024:** HHS releases a 252-page review that explains the FDA’s rationale for rescheduling marijuana under Schedule III of the CSA.

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A Patchwork of State Laws

- **Twenty four states**, two territories, and the District of Columbia have legalized small amounts of cannabis (marijuana) for adult recreational use.
 - With Issue 2, Ohio became the 24th state to legalize recreational marijuana in December 2023.
- **Twenty-seven states** and the District of Columbia have decriminalized small amounts of marijuana. This generally means certain small, personal-consumption amounts are a civil or local infraction, not a state crime (or are a lowest misdemeanor with no possibility of jail time).

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Purple Haze: Ohio's Med Marijuana Law

- **RECAP:** Ohio HB 523 (2016) authorized the use of marijuana for medical purposes. HB 523 became effective 9/8/2016.
 - Codified at R.C. Chapter 3796
 - Establishes a “medical marijuana control program” in the Department of Commerce and the State Board of Pharmacy
 - Licensure of medical marijuana cultivators and processors, laboratories for testing, and retail dispensaries
 - Registration of patients and their caregivers



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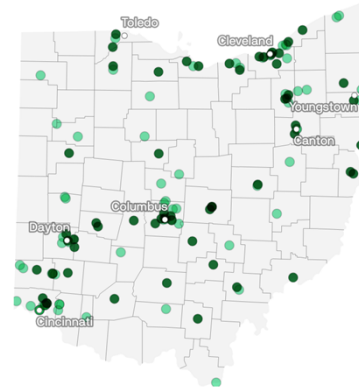
Purple Haze: Ohio's Med Marijuana Law

- Patients may
 - Possess and use medical marijuana and paraphernalia
 - Up to a 90 day supply
 - Be protected from criminal prosecution for lawful use
 - Consume marijuana as edible, oil, tincture, and patches; patients may also “vape” marijuana.
- Patients may not
 - Smoke or grow marijuana
 - Operate vehicles while under the influence

Medical marijuana dispensaries in Ohio, by status

As of June 1, 2022

■ Open ■ Pending



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Reefer Madness: Ohio's Issue 2

- In November 2023, voters overwhelmingly passed Issue 2, enacting an **Act to Control and Regulate Adult Use Cannabis**, which went into effect on Dec. 7, 2023. Codified at Revised Code Chapter 3780.
 - Issue 2 legalized growing, use, and possession of marijuana for individuals over the age of 21 starting December 7, 2023
 - Related to medical marijuana (Chapter 3796) but also distinct
 - New Division of Cannabis Control to implement rules and oversee programs
- There still may be changes to come through legislative review and amendment. It is unlikely that a **full-out repeal** of the law will occur given the comfortable margin by which the ballot initiative passed.

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From Medical to Recreational

Ohio's recreational marijuana program will operate alongside the state's medical marijuana program, which was legalized in 2016



Recreational laws are modeled similarly to existing medical use laws

Nothing in the law requires an **employer** to accommodate an employee's use of medical or recreational usage of marijuana;

The law does NOT prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical or recreational marijuana;

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Governance Impact



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Township Authority under RC Chapter 3780

- RC 3780.25 allows township trustees to adopt resolutions by majority vote that prohibit or limit the number of **new** adult-use cannabis operators permitted within the unincorporated area of the township.
 - OTA has advised this applies to all townships whether they have zoning or not
- Importantly, this does not allow townships to prohibit at-home growing of marijuana – **up to six plants per adult**.
- A township that elects **not** to pass such a resolution may have adult use cannabis operators siting in their township; but it preserves its access to community cannabis funding.

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Township Authority under RC Chapter 3780

- A legislative authority of a municipal corporation or a board of township trustees is prohibited from:
 - (1) Adopting an ordinance or resolution **limiting research** related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity;
 - (2) **Levying any tax, fee, or charge on adult use cannabis operators, their owners or their property which is not generally charged on other businesses** in the municipal corporation or township;
 - (3) Prohibiting or limiting **home grow** otherwise authorized under this chapter; and
 - (4) Prohibiting or restricting an **activity that is authorized** by this chapter.

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Workplace Impact



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R.C. Chapter 3780 – for Employers

- **Townships will encounter recreational marijuana-related issues with their applicants and employees.**
- Ohio townships do not have to allow or accommodate an **employee's** use, possession or distribution of recreational marijuana.
- Many employers are evaluating whether to make policy changes about marijuana use, adjusting standards of conduct, establishing drug free workplaces, or implementing (or keeping) drug testing for prospective or current employees.
 - Ohio's new marijuana law **does not** interfere with these lawful prerogatives

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R.C. Chapter 3780 – for Employers

- Ohio employers can be expected to be impacted in various ways:
 - Employers may **get requests** from employees and supervisors on how to navigate the landscape of medical and recreational marijuana
 - Employers who regularly **test for marijuana** are likely to see an increase in positive drug test results.
 - Employers may see an increase in workplace **accidents, performance issues, and workplace conduct violations**, as more employees may report to work under the influence of recreational marijuana.
 - As public opinion and political dynamics shift in favor of legalization and decriminalization, employers who maintain zero-tolerance policies may encounter **barriers to recruiting and retaining talent**.

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Employer Rights – O.R.C. §3780.35

This new chapter explicitly does not require employers to allow cannabis use or accommodation in compliance.

Employers are allowed to take adverse employment actions based on cannabis use in compliance.

Employers can establish and enforce drug testing, drug-free workplace, or zero-tolerance drug policies.

Federal employment restrictions, including Department of Transportation regulations, are not interfered with.

No legal action permitted against employers for employment actions related to an individual's cannabis use.

The chapter does not impact the workers' compensation administrator's authority to grant rebates for participation in drug-free workplace programs.

Discharge due to cannabis use is considered just cause if it violates an employer's drug policies.

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Hashing it Out: Action Items

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Key Action Items for Township Employers

- **Review drug policies.** Employers should make sure their policies clearly state the employer's standards of conduct for medical and recreational marijuana use, and any procedures related to drug use, possession and distribution.
- **Determine drug testing procedures.** Employers should evaluate their testing protocols, cutoffs, and their post-testing procedures. Consider "zero tolerance" versus "last chance" programs.
- **Deploy Training.** Train HR professionals, managers, and supervisors for conversations with employees regarding both medical and recreational use of marijuana. Make sure your supervisory employees have a clear understanding of the Township's policies relating to marijuana use at the workplace and outside of the workplace, an understanding of reasonable suspicion and testing protocols, and disciplinary processes.

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Key Action Items for Township Employers

- **Communicate.** Issue policies, e-mails or memoranda as needed, or schedule a meeting to update employees on the Township's rules and expectations relative to cannabis use.
- **Watch for Developments.** Significant changes in federal law are expected in the next 1 to 10 years, as the trend shifts toward legalization and decriminalization of marijuana. Significant changes in workforce composition and prevalence of marijuana will affect hiring practices.

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Key Materials

Analysis by OAG:
[BALLOT-ISSUE-2-FINAL.aspx \(ohioattorneygeneral.gov\)](https://www.ohioattorneygeneral.gov/BALLOT-ISSUE-2-FINAL.aspx)

Full text of the proposed law:
<https://www.ohiosos.gov/globalassets/ballotboard/2022/petitionfull-textandsummary.pdf>

RC Chapter 3780, as codified:
<https://codes.ohio.gov/ohio-revised-code/chapter-3780>

Division of Cannabis Control FAQs:
<https://com.ohio.gov/divisions-and-programs/cannabis-control/licensee-resources/what-we-do/non-medical-cannabis-faq>

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Summary

Act becomes effective 30 days after the election, starting December 7, 2023.

As a citizen-initiated statute, the law is subject to potential changes.

Ohio General Assembly has the authority to modify and enhance the law as needed; Division of Cannabis Control will regulate dispensaries.

Employers are not obligated to allow or accommodate employees' marijuana use, possession, or distribution.

Employers have the authority to take adverse employment actions, such as discharge or discipline, based on an individual's marijuana use, possession, or distribution.

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Questions? Thank you!



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