

The Long and Winding Road to Adult-Use Cannabis in Ohio: An Update

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While the Ohio Legislature's May 3, 2023, deadline to put forth adult-use legislation to avoid a ballot initiative went up in smoke, Ohioans have continued pushing forward in their attempt to legalize adult-use cannabis. And, perhaps reading the tea leaves, a bipartisan bill was just introduced in the Ohio House to legalize recreational marijuana, while the Ohio Senate opted to move forward with additional legislation for Ohio's existing medical marijuana program.

House Bill 168 – Ohio Adult Use Act

In mid-May 2023, a bipartisan bill known as the Ohio Adult Use Act ([HB 168](#)) was introduced in the Ohio House. The legislation would not only legalize cannabis use for adults 21 years and older but also includes numerous social justice reforms that many cannabis reformers desire. Some of the highlights of the proposed legislation include:

- Establishes the Division of Marijuana Control (DMC) within the Department of Commerce (DOC), which would replace the current Medical Marijuana Control Program (MMCP). The DMC would regulate both adult-use and medical marijuana, as well as marijuana cultivators, processors, and marijuana testing labs. Presently, the MMCP is regulated by the DOC, the Ohio Board of Pharmacy, and the Medical Board of Ohio.
- The bill would allow adults aged 21 and over to possess up to 50 grams (or just under 2 ounces) of flower and up to 8 grams of marijuana concentrate. Interestingly, the bill also would allow possession of hashish, specifically allowing possession of less than 8 grams of solid form hashish and 2 grams or less of liquid concentrate, liquid extract, or liquid distillate form. The bill would also legalize home cultivation, permitting adults to possess up to six plants in their own homes.
- No more than one license per 60,000 residents of the state would be permitted to be issued prior to January 1, 2027 (based on the state's 2021 population of 11.78 million, that translates to no more than 196 licenses statewide). After January 1, 2027, the DOC would be required to review the number of licensed retail dispensaries on at least a biennial basis to determine whether additional licenses should be issued.
- The DOC would be required to provide for the licensure of marijuana cultivators, processors, retail dispensaries, and marijuana testing labs not later than eight months after the bill's effective date.
- The bill would limit THC content to 35% in plants and 90% in extracts.

- While a city or township would be permitted to prohibit or limit the number of licensed cultivators, processors, or retail dispensaries within its territory, they may not limit, prohibit, or criminalize activities authorized by the bill.

Like most adult-use bills, HB 168 also proposes significant taxes on adult-use cannabis products. The bill would put a 10% sales tax on adult-use products, which, according to researchers at The Ohio State University, could generate potential tax revenue between \$276 million to \$374 million within five years. The tax would be apportioned among the state's general revenue fund (25%) and the following newly created funds: the marijuana profits education fund (25%) to cities and counties that include at least one marijuana retail dispensary within their territories (12.5% each to applicable cities and counties), to the illegal drug trafficking enforcement fund (12.5%), and to the chemical dependency rehabilitation fund (12.5%).

One of the main impetuses behind HB 168 is the sponsors' realization and understanding that Ohio is falling behind its neighboring states when it comes to adult-use cannabis. As representative Casey Weinstein (D-Hudson), one of the primary sponsors of the bill, noted, "[i]t's time for Ohio to act on this before we fall too much further behind our neighbors."

HB 168 does more than just legalize adult-use cannabis, however. It also contains various social justice components. For instance, the bill would allow conviction records for prior cultivation and possession offenses to be expunged. Similarly, the bill would prevent arrests and convictions for possessing marijuana paraphernalia from appearing on an individual's criminal record.

As with previously introduced adult-use legislation, HB 168 will almost certainly fail, as a Republican-dominated statehouse continues to show little interest (and, at times, downright hostility) towards adult-use cannabis.

Senate Bill 9

Recently introduced Senate Bill 9 would expand Ohio's medical marijuana program by adding more permissible forms of medical marijuana and authorizing medical marijuana for additional medical uses. The bill would also create a new 13-member oversight commission to oversee the existing Division of Marijuana Control that currently oversees Ohio's medical marijuana program.

Notably, Senate Bill 9 does nothing to change the status quo in Ohio, meaning if the legislation is passed, adult-use marijuana would still not be legal.

Coalition to Regulate Marijuana Like Alcohol

At the same time HB 168 was introduced, the Coalition to Regulate Marijuana Like Alcohol (the Coalition) is busy proceeding with a ballot initiative, which remains Ohio's best bet for the legalization of adult-use cannabis.

[As previously discussed](#), the ballot initiative would legalize and regulate the cultivation, manufacturing, and sale of cannabis for Ohioans 21 years and older. Like HB 168, the Coalition's ballot initiative would impose a 10% sales tax on cannabis products. However, it would have higher possession limits – 2.5 ounces per person compared to HB 168's just under 2 ounces.

The Coalition has until July 5 to obtain approximately 124,000 valid signatures from 44 of Ohio's 88 counties. Assuming it meets that signature threshold, adult-use marijuana will be on the Ohio ballot come November.

Of note, under Ohio law, if the Coalition's ballot initiative were to pass, it could conceivably be reversed by the Ohio legislature. While there are no explicit signs the Republican-dominated legislature would do so, it is also no secret that many of the top legislators, including Senate President Matt Huffman and Governor Mike DeWine, are against adult-use cannabis in Ohio.

The Takeaway

The question of when and how Ohioans will legalize adult-use cannabis may be answered by ballot this fall. Yet, despite whether or not the Coalition's ballot initiative – or, more unlikely, HB 168 – is ultimately successful in bringing adult-use cannabis to Ohio in 2023, there is no doubt that Ohio has begun to lay the groundwork to legalize adult-use cannabis in the near future.

New prospective marijuana licensees in the state of Ohio, cannabis-industry participants looking to expand to Ohio, and non-cannabis-related businesses who may be affected by these new laws – including, but not limited to, businesses that employ residents of the state, operate within other highly or federally regulated industries, and more – are well advised to keep abreast of the progress of these initiatives and begin preparing their new business entities, existing business organization and operations, and relevant policies and procedures to rapidly adapt to the changes that may be coming to Ohio this fall.

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