



COUNTY ADVISORY BULLETIN

CAB

Published by the County Commissioners Association of Ohio

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Bulletin 2023 - 6

November 2023

ISSUE 2: ADULT USE CANNABIS

Earlier this week, Ohio voters passed **Issue 2, To Commercialize, Regulate, Legalize, and Tax the Adult Use of Cannabis** by a vote of 57% to 43%¹. As an initiated statute, the provisions of Issue 2 will be inserted into the Revised Code and take effect 30 days after the election (December 7). This County Advisory Bulletin will explain the provisions of the Issue, with a focus on those that affect counties.

A Note on Initiated Statutes

Issue 2 is an initiated state, which means it affects the Revised Code, not the Ohio Constitution. The provisions of Issue 2 can be legally challenged in the same manner as any other provision of the R.C. and can be amended through the legislative process. Ohio does not have a “cooling off” period for initiated statutes, meaning that the General Assembly can make changes to the provisions enacted by the vote at any time; in theory, the General Assembly could pass legislation today to modify the Issue 2 provisions before it even takes effect.

Definitions

Key definitions throughout the text of Issue 2 (now [R.C. Chapter 3780](#)) and this CAB include:

- “Adult use cannabis operator” means cultivation facilities, processing facilities, and dispensaries. ([R.C. 3780.01](#))
- “Adult use cannabis” means marihuana as defined in [R.C. 3719.01](#).
- Adult use cannabis may be sold in the form of: plant material and seeds, live plants, clones, extracts, drops, lozenges, oils, tinctures, edibles, patches, smoking or combustible product, vaporization of product, beverages, pills, capsules, suppositories, oral pouches, oral strips, oral and topical sprays, salves, lotions or similar cosmetic products, and inhalers. ([R.C. 3780.04](#))

Adult Use Cannabis and Taxation

The most direct impact that Issue 2 will have on counties is the expansion of the sales tax base to adult use cannabis products. [R.C. 3780.22\(C\)](#) specifies that taxes levied under [Chapter 5739](#) of the Revised Code (Sales and Use Taxes) apply to “adult use cannabis sales by adult use dispensaries to adult use consumers.” Counties do not need to take any action for this to take effect; sales will begin to be taxed in the same manner as any other new business. Additionally, revenue generated by sales and use taxation of adult use cannabis is not required to be allocated for any specific purpose.

¹ Based on unofficial results, the final margin may differ.

In addition to the state and permissive sales tax on adult use cannabis, Issue 2 requires an additional 10% tax that will be collected and deposited into a number of new funds ([R.C. 3780.23](#)). The distribution of this revenue is as follows:

- 36% shall go to the Cannabis Social Equity and Jobs Fund;
- 36% shall go to the Host Community Cannabis Fund;
- 25% shall go to the Substance Abuse and Addiction Fund;
- 3% shall go to the Division of Cannabis Control and Tax Commissioner Fund.

These funds are discussed in detail in the “Local Authority Regarding Adult Use Cannabis” and “Other Provisions of Issue 2” sections of this CAB.

Local Authority Regarding Adult Use Cannabis

Counties have no local authority as it pertains to adult use cannabis. [R.C. 3780.25](#) governs the authority of local governments to prohibit or limit the number of adult use cannabis operators but extends this authority only to municipal corporations and boards of township trustees.

Municipalities and townships may either outright prohibit adult use operators or limit the number who may operate within their jurisdictions. Protections exist for operators already in business when the provisions of Issue 2 take effect.

If a dispensary receives a license to begin operations and the municipality or township passes an ordinance or resolution prohibiting the dispensary from operating within 120 days of the license being issued, the dispensary license holder must cease operation within sixty days OR must file a petition signed by the lesser of 100 qualified electors or 5% of the jurisdiction’s qualified electors with the county board of elections. This places the issue on the ballot at the next general election that occurs no sooner than 90 days of the petition’s filing.

As mentioned above, 36% of the revenue generated by the 10% tax on adult use cannabis sales is deposited into the Host Community Cannabis Fund ([R.C. 3780.23\(C\)\(1\)](#)). Money in this fund is distributed to municipalities and townships that have adult use dispensaries, based on a formula that considers the percentage of the adult use tax attributable to each jurisdiction. Municipalities and townships may use their allocations for “any approved purpose,” although it is not immediately clear what those approved purposes include.

Employer Rights

Issue 2 contains [R.C. 3780.35](#), which specifies that the provisions of Issue 2 do not require employers to permit or accommodate an employee’s use, possession, or distribution of adult use cannabis that is otherwise in compliance with [Chapter 3780](#).

Additionally, employers may continue to discipline, fire, refuse to hire, or take adverse employment action against an individual due to that individual’s use, possession, or distribution of adult use cannabis, even if the use was in compliance with the provisions of [Chapter 3780](#). Employers may continue to establish and enforce drug testing policies, drug-free workplace policies, and zero-tolerance drug policies as they pertain to cannabis. County appointing authorities are advised to inform employees in writing that the passage of Issue 2 will not excuse a positive test result for cannabis or marijuana in violation of the employer’s drug free workplace policy.

The law does not affect the authority of the Ohio Bureau of Workers' Compensation to grant premium rebates or discounts for an employer's participation in a drug free workplace program, and the BWC has not announced any changes to its DFSP program as of the date of this Bulletin.

Also, an employee discharged for use of cannabis in violation of an employer's drug-free workplace policy will still be considered to have been discharged for just cause for the purpose of unemployment compensation claims.

Generally speaking, counties as employers will retain the same authority they have to regulate employee drug use as they had before the passage of Issue 2.

It should be noted that marijuana is currently a Schedule I substance under the federal Controlled Substances Act. Accordingly, it is wise to consult the Prosecutor's Office or legal counsel prior to a change in your current employment policy/practice relative to marijuana. However, as a reminder, CCAO does not provide legal advice nor does this County Advisory Bulletin constitute a legal opinion. If you have any questions regarding your rights as an employer, we recommend you contact your county prosecutor or CORSA if you are a member county.

Other Provisions of Issue 2

While, as noted above, counties have little to no authority over adult use cannabis policy, this section will discuss other provisions of Issue 2 included in the new statute.

Facility Location

[R.C. 3780.07](#) governs the placement and characteristics of adult use operators and testing laboratories. With some limited exceptions, these facilities may not be within 500 feet of the boundaries of a parcel of land that has a "prohibited facility" on it. The chapter defines "prohibited facilities" as churches, public libraries, public playgrounds, public parks, and schools. This definition aligns with the prohibition in the medical marijuana law ([R.C. 3796.30](#)).

Operator Licensure

All entities seeking to operate an adult use cannabis operator must obtain proper licenses from the Division of Cannabis Control in the Ohio Department of Commerce, which is created by Issue 2. There are several different types of licenses and requirements for each type. These are covered in [R.C. 3780.11](#) through [R.C. 3780.17](#).

Distribution of Funds (Other than Host Community Cannabis Fund)

As noted above, revenue generated by the 10% tax on adult use cannabis sales is distributed to four different funds, one of which is the Host Community Cannabis Fund. The others are discussed here.

- **Cannabis Social Equity and Jobs Fund (36% of revenue):** Revenue distributed into this fund is to be used by a newly created program in the Department of Development called the Cannabis Social Equity and Jobs Program. The purpose of this program (defined in [R.C. 3780.19](#)) is to facilitate the participation of economically and socially disadvantaged individuals in the adult use cannabis industry.
- **Substance Abuse and Addiction Fund (25% of revenue):** Revenue distributed to this fund is to be used by the Ohio Department of Mental Health and Addiction Services to support addiction services, including the creation of a 24/7, toll-free telephone number that Ohioans can call to obtain basic information regarding addiction services available to individuals ([R.C. 3780.23\(C\)\(3\)](#) & [3780.30](#)).
- **Cannabis Control and Tax Commissioner Fund (3% of revenue):** Revenue distributed to this fund is to be used to support the operations of the Division of Cannabis Control and to defray

the administrative costs to the Department of Taxation to administer the 10% tax ([R.C. 3790.23\(C\)\(4\)](#)).

Home Grow

[R.C. 3780.29](#) allows for limited home growing of up to six cannabis plants at an individual’s primary residence. There are two notable requirements regarding home grow: first, if two or more individuals who are at least 21 years old live at the residence, not more than 12 cannabis plants may be grown, and second, cultivation of home grown plants must take place within a secured area (such as a closet, room, greenhouse, or other area) that prevents access by individuals under the age of 21 years old and which is not visible by unaided vision from a public space.

Landlords may prohibit home growth of cannabis provided that such terms are included in lease agreements.

Individual Conduct Limitations

[R.C. 3780.36](#) outlines the prohibitions regarding adult use cannabis. Individuals are prohibited from possessing more than 2.50 grams of adult use cannabis in any form other than adult use extract and possessing more than 15.00 grams of adult use extract. These same limits apply to the amount of adult use cannabis that an individual may transfer to another without remuneration and the amount an individual may transport.

Individuals are prohibited from operating a vehicle, motor vehicle, bike, watercraft, aircraft, streetcar, or trackless trolley while using adult use cannabis or under the influence of adult use cannabis. Individuals are also prohibited from using any combustible form of adult use cannabis while in the same range of transportation modes. The specific limits and penalties of [R.C. 4511.19](#) apply to violators.

The legal age for purchase and use of adult use cannabis is 21 years old. Generally speaking, the same legal prohibitions against underage alcohol consumption, the sale of alcohol to individuals under the age of 21, and the permitting by parents or guardians of underage drinking apply to adult use cannabis purchasing and consumption.

[R.C. 3780.99](#) outlines the penalties associated with violating individual conduct limitations. The table below shows the penalties.

Adult Use Cannabis Criminal Violations and Penalties in Issue 2		
Violation	Penalty	Code Section
Use of cannabis in public areas	Minor Misdemeanor	3780.99(B)
Use of combustible cannabis product while in a vehicle	Minor Misdemeanor	3780.99(B)
As an individual under the age of 21, knowingly using false information to obtain cannabis	First degree misdemeanor	3780.99(C)(1)
As an individual under the age of 21, knowingly using false information in the form of an ID card purportedly issued by any state, to obtain cannabis for the first time	First degree misdemeanor, with a fine between \$250 and \$1,000 and up to six months imprisonment	3780.99(C)(1)
As an individual under the age of 21, knowingly using false information in the form of an ID card purportedly issued by any state, to obtain cannabis for the second time	First degree misdemeanor, with a fine between \$500 and \$1,000 and up to six months imprisonment. Court may impose a class seven suspension of the offender's driver's or commercial driver's license or require community service	3780.99(C)(2)

Adult Use Cannabis Criminal Violations and Penalties in Issue 2		
Violation	Penalty	Code Section
As an individual under the age of 21, knowingly using false information in the form of an ID card purportedly issued by any state, to obtain cannabis for the third time and any subsequent times	First degree misdemeanor, with a fine between \$500 and \$1,000 and up to six months imprisonment. Court may impose a class six suspension of the offender's driver's or commercial driver's license or require community service.	3780.99(C)(3)
As an individual under the age of 21, soliciting another individual to purchase cannabis for their consumption	First violation: Fourth degree misdemeanor Subsequent violations: Second degree misdemeanor	3780.99(D)
Employee or agent of dispensary who knowingly sells cannabis to an individual under the age of 21	First degree misdemeanor	3780.99(E)
Operating dispensary or testing laboratory without a license	Classified as illegal trafficking in drugs and illegal manufacturer of drugs, see R.C. 2925.03 and 2925.04 .	3780.99(F)
Cultivating or growing more than double the maximum amount of plants permitted under the home grow provisions	Classified as illegal trafficking in drugs and illegal manufacturer of drugs, see R.C. 2925.03 and 2925.04 .	3780.99(F)
Transferring or transporting an amount of cannabis in excess of the amount permitted by R.C. 3780.36	Classified as illegal trafficking in drugs, see R.C. 2925.03 .	3780.99(G)
Operating a dispensary and providing cannabis without remuneration (payment)	Classified as illegal dispensing of drug samples, see R.C. 2925.36 .	3780.99(H)
As a parent or guardian, knowingly permitting their residence, other private property, or vehicle to be used by an invitee of their child or ward in a manner otherwise prohibited by the provisions of Chapter 3780.	First Violation: Third degree misdemeanor Subsequent Violations: First degree misdemeanor	3780.99(I)(1)
As a parent or guardian, knowingly permitting their residence, other private property, or vehicle to be used by an invitee of their child or ward in a manner otherwise prohibited by the provisions of Chapter 3780, in a way that directly or indirectly results in great bodily harm or death to any individual	Fourth degree felony	3780.99(I)(2)