

## 2023 Will be a Pivotal Year for Cannabis in Ohio

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Authors: [Robert A. Zimmerman](#), [Kristopher J. Chandler](#), [Cheryl Burchard](#), [Rachel Winder](#), [Holly F. Gross](#)

2023 is just getting started, and already there have been important developments in Ohio involving cannabis with the promise of much more to come. Secretary of State Frank LaRose got things started on January 3 when he submitted a proposal to the Ohio General Assembly from the Coalition to Regulate Marijuana Like Alcohol legalizing the use of marijuana in Ohio. This fulfilled the terms of a court settlement with the Coalition, who tried to get its proposal on the 2022 General Election ballot but ended up in litigation over technicalities. The proposal would legalize the cultivation, processing, sale, purchase, possession, home growth, and use of recreational marijuana for adults 21 years of age and older. Adults would be authorized to possess up to 2.5 ounces of marijuana and 15 grams of concentrates. Persons can grow up to six plants at home or 12 per household. In addition to the existing sales tax, a 10% tax would be levied on adult use sales, the revenues from which would be devoted to various social equity and addiction programs and governmental regulatory functions. Under the terms of the settlement, the legislature has four months to adopt the measure. Once the deadline for legislative passage expires on May 3, the Coalition will be free to collect petition signatures to put the measure before the voters this fall, and per the settlement terms, signatures collected last year will count toward the signature requirements for 2023.

Also introduced in January was Senate Bill 9, sponsored by Senators Steve Huffman and Kirk Schuring. If enacted in current form, the bill would make major changes to Ohio's Medical Marijuana program. The bill creates a new state agency within the Ohio Department of Commerce called the Division of Marijuana Control to regulate the program. In his Executive Budget, currently being deliberated by the Ohio House as House Bill 33, Governor DeWine also proposes to transfer the responsibilities of the Board of Pharmacy relating to medical marijuana dispensaries, dispensary employees, patients, and caregivers to the Department of Commerce. Under SB 9, a 13-member commission would be appointed by the Governor and legislative leaders to oversee the Division and the program. This would consolidate the oversight functions currently fulfilled by Commerce, the Ohio Board of Pharmacy and the State Medical Board of Ohio. SB 9 would also add autism spectrum disorder, arthritis, migraines, chronic muscle spasms and opioid use disorder as qualifying conditions for the use of medical marijuana. The bill further includes a "catch all" that would allow any condition that a physician identifies as qualifying. Many other changes to current law are also proposed, including expanding the permissible forms of medical marijuana that may be dispensed to include pills, capsules and suppositories, oral pouches, oral strips, oral or topical sprays, salves, lotions and inhalers, eliminating the existing lottery in favor of a merit-based system for reviewing new applicants for licensure, and expanding the scope of permissible activity amongst all of the licensing levels. It is expected that the bill will be amended as it progresses through the General Assembly.

Ohio has started to roll out its expanded medical marijuana dispensary program with the winners of RFAI being announced in 2022. Upwards of 70 new dispensary licenses were awarded to a myriad of applicants, drastically expanding the retail footprint of medical marijuana throughout the state. As 2023 has begun, several provisional licensees have earned their certificates of operation, but a number of awardees have yet to open their doors, leaving many to wonder what the state regulators will do in terms of enforcing the requirement to obtain a certificate of operation with 270 days from receiving a provisional license. With February come and gone, that 270-day period has lapsed and unless awardees have received variances from that requirement, we could theoretically see the state regulators decide to rescind license awards (though that would be a significant enforcement action, but one well within the control of the state regulators to do).

Federal legislation under consideration would also impact Ohio if enacted. The Secure and Fair Enforcement Banking Act (SAFE Act) would permit banks to do business with cannabis companies operating legally within states that have legalized marijuana. It has passed the US House seven times, only to die in the Senate, most recently at the end of 2022. This is despite bi-partisan support for the legislation. With support only growing for marijuana legalization and for normalizing banking in the cannabis industry, it's a safe bet that the SAFE Act will re-emerge in this new Congress in some form. Whether it will pass is another question.

The 2018 Farm Bill, which legalized hemp at the federal level, will expire in 2023. The 2018 Farm Bill defined industrial hemp as any derivative of the Cannabis sativa L. plant that contains less than 0.3% delta-9 THC. It's expected that there will be efforts to increase that threshold to 1% as a way to alleviate pressure on hemp producers from unwittingly breaching the low THC limit. Indeed, many hemp advocates are asking that the 1% threshold be applied to all hemp derived cannabinoids including Delta-8 THC. No matter what, the 2023 Farm Bill will no doubt be the subject of intense lobbying by the hemp industry and other stakeholders. The outcome will affect Ohio.

**With so many different proposals pending, it is uncertain exactly how Ohio cannabis law is going to change in 2023. But one thing can be said for sure--the law will change in the new year. Benesch's Government Relations Practice Group and Cannabis Industry Group are actively engaged on behalf of our clients and will be available to consult.**

**Robert A. Zimmerman at [rzimmerman@beneschlaw.com](mailto:rzimmerman@beneschlaw.com) or 216.363.4437.**

**Kristopher J. Chandler at [kchandler@beneschlaw.com](mailto:kchandler@beneschlaw.com) or 614.223.9377.**

**Cheryl Burchard at [cburchard@beneschlaw.com](mailto:cburchard@beneschlaw.com) or 614.223.9315.**

**Rachel Winder at [rwinder@beneschlaw.com](mailto:rwinder@beneschlaw.com) or 614.223.9316.**

**Holly F. Gross at [hgross@beneschlaw.com](mailto:hgross@beneschlaw.com) or 614.223.9392.**