



HB 86 Sub 1954-4 Summary

On December 6, 2023, the eve of Ohio's voter-enacted legalization law taking effect, the Ohio Senate passed a gut-and-replace bill ([HB 86-sub](#)) to rewrite the initiative. HB 86 now heads to the Ohio House of Representatives, which reconvenes on December 13.

As originally proposed, the Senate's rewrite of Issue 2 removed home cultivation, slashed personal possession limits, more than doubled taxes, added harsh criminal penalties, and banned possession except for cannabis purchased from a legal store — which couldn't open for a year. Two hours before the full Senate voted on HB 86, authors unveiled a new version, claiming it respected the will of voters. It includes two positive features — limited expungement and earlier sales — and removes the ban on home cultivation and the dramatic reduction in possession limits.

But the Senate-passed version of HB 86 still ramps up criminalization — including with new mandatory minimums. It also increases taxes, caps extracts at 50%, bans vaping or smoking cannabis anywhere except some homes, eliminates social equity, makes the sale of flower cannabis impossible, and does away with non-discrimination protections for child custody, organ transplants, and benefits. It also appears to ban sharing cannabis and to re-criminalize any cannabis not obtained from an Ohio-licensed cannabis store, other than one's own home-cultivated cannabis.

Here's a summary of the Senate-passed bill:

New Prohibitions and Limits

- Bans smoking or vaping adult-use cannabis anywhere except in some private homes.
 - In most cases, the penalty is a minor misdemeanor, with a fine of up to \$150.
 - Smoking and vaping are also forbidden in childcare homes and rented homes where the landlord prohibits smoking or vaping.
 - Under Issue 2, using cannabis in public areas was forbidden, but private property owners could allow cannabis use in locations such as hotel rooms.
 - Prohibits adults from sharing cannabis. Issue 2 allowed sharing, as long as there was no remuneration.
 - Cannabis must be stored in its original packaging at all times.
 - Requires cannabis and paraphernalia to be transported in "its original, unopened packaging or in the trunk" if there is one, or in a similar location in vehicles with no trunk. Imposes a minor misdemeanor, with a fine of up to \$150.
 - Appears to ban cannabis that was not purchased from an Ohio retailer or cultivated at home.
 - Keeps Issue 2's limits of 2.5 ounces, 15 grams of concentrate, and six plants.
 - Caps the number of plants per residence at six. Issue 2's cap was 12.
 - Requires home-grown cannabis to be transported in one's trunk.
 - Imposes a three-day mandatory minimum in jail — plus a fine of at least \$375 — for passengers smoking or vaping cannabis in a vehicle or boat. Imposes longer mandatory minimums for subsequent offenses, with a fourth offense being a felony. Issue 2's penalty

was a \$150 fine.

Repeals Non-Discrimination Protections

- Repeals all non-discrimination provisions that are in Issue 2. Removes provisions that adults' responsible use of cannabis is not grounds for:
 - adjudicating their child abused or neglected,
 - making a negative determination about a parent's rights or parenting time,
 - denying a person medical care, including organ transplants,
 - suspending one's driver's license,
 - rejecting an applicant as a tenant (unless mandated by federal law), or
 - disqualifying a person from public benefits.
- Specifies a person fired for marijuana use is ineligible for unemployment benefits if the cannabis use violated their employers' policies.

Limited Petition-Based Expungement

- Individuals may apply to have prior records expunged for up to 2.5 ounces and up to 15 grams of hashish. To apply, the applicant must submit evidence that:
 - the amount was under the threshold
 - the person did not violate a community control sanction
 - Creates process to reimburse for applications and for legal aid providing expungement assistance.

Earlier First Sales

- Allows existing medical cannabis dispensaries to sell to adult-use consumers if/when the bill takes effect, which would be 90 days after enactment.
 - This provision would end at a time determined by regulators, which must be within a year.

Raising Taxes

- Increases the retail excise tax from 10% to 15%.
 - This excise tax appears to apply to medical cannabis.
 - This is in addition to standard state and local sales taxes.
 - Allows counties to impose a 3% tax to fund entertainment, arts, and culture.
 - County commissioners would refer the tax question to county voters.

Tax Allocation

- Removes Issue 2's allocations to a social equity and jobs fund and to communities hosting cannabis businesses. Reduces the allocation to substance abuse treatment.
- Allocates funding as follows:
 - up to 28% for county jail construction and renovation
 - up to 16-19% to the Department of Public Safety for law enforcement training
 - up to 14% to the Attorney General for law enforcement training
 - up to 9-11% to substance abuse treatment and prevention
 - up to 9% for a 9-8-8 suicide prevention and mental health crisis hotline
 - up to 5% to a marijuana expungement fund, while it lasts (after that, those funds go to substance abuse treatment and prevention and law enforcement training)

- up to 5% to a marijuana receipts drug law enforcement fund
- up to 5% to the safe driver training fund
- up to 4% to the Ohio investigative unit operations fund
- up to 3% to the division of marijuana control operations fund
- up to 2% to a marijuana poison control fund

▫ If funds hit individual caps, excess funds go to the General Fund.

Licensing and Social Equity

- Revises medical cannabis licensing to generally apply those provisions to adult-use businesses and to add language on how applicants will be assessed.
- Removes Issue 2's social equity and jobs program, which required regulators to prioritize certified applicants in new licensing and which provided financial and technical assistance.
- Replaces the licensing provisions from Issue 2, which allowed many dispensaries to open a second location and which allowed some cultivators to open retail locations.
- Provides the Division of Marijuana Control will determine the number of cultivator licenses allowed at any time.
- Caps the total number of retailers at 350.
 - This is similar to the number that would be licensed under Issue 2. However, Issue 2 allowed regulators to reassess needs every two years and to increase the number.
 - Requires a half-mile buffer between dispensaries.
 - Requires applicants to demonstrate they have "sufficient liquid capital and ability to meet financial responsibility requirements" and that there is no local ban or similar prohibition on their operation.
 - Ranks applications based on factors including business, operations, security, and financial plans; proposed location; plans for generating jobs and economic development; and environmental and employment practices plans.
 - Provides if the division uses a lottery, it must group applicants into the following categories for their proposals: highly exceeds, exceeds, meets, and does not meet.
 - Applicants have increased odds of being chosen if they get higher ratings. They are not considered if they are classified as "does not meet."

THC Cap for Adult-Use Sales

- Caps THC at 35% in flower and 50% in extracts. Issue 2 allowed regulators to impose caps of no lower than 35% in plant material and 90% in extracts.
 - Regulators may impose a higher limit for vaporized products.
 - Limits servings to 10 milligrams of THC and packages to 100 milligrams, other than cannabis intended for vaporization.
 - This seemingly makes sales of flower impossible. A gram of cannabis at 35% THC would have 350 milligrams of THC and be more than triple the limit.

Regulation

- Removes Issue 2's provision allowing petitions for additional product types.
- Prohibits cannabis products from being sold in a form that "bears the likeness or contains the

characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.”

- Creates “the Ohio investigative unit” — an investigative unit maintained by the Department of Public Safety that can inspect licenses (including their records).
- Revises caps on canopies for cultivators:
 - Level 1 cultivators could grow up to 25,000 square feet, and could get expansions to total up to 75,000 square feet
 - Level 2 cultivators could grow up to 3,000 square feet, and could get approval to expand to up to 9,000 square feet (Issue 2 allowed no more than 5,000 square feet, but provided could be authorized with no numerical cap.)
 - Imposes trafficking penalties if retailers knowingly sell any customer more adult-use cannabis than they are allowed to possess in a day.
 - Requires dispensaries to prominently display “Information about the addictive qualities of marijuana and the potential negative health consequences associated with its use.”
 - Tasks the Department of Public Safety and its enforcement agents with assisting the Division of Marijuana Control with enforcing the law.

Medical Cannabis

- It appears all cannabis businesses would be dual-use, medical and adult-use.
- Retailers must:
 - “Maintain an adequate supply of medical marijuana products to meet typical patient demand for those products.”
 - “Ensure medical marijuana products are kept separate from adult-use marijuana, properly demarcated as medical marijuana, and prominently displayed in the dispensary.”

Advertising Regulations

- Provides the advertising standards for cannabis businesses, “shall be at least as stringent as those that apply to tobacco and alcohol advertisements under state and federal law.”
- Provides adult-use cannabis cannot be marketed, advertised, or packaged “using any graphic, picture, or drawing that bears any resemblance to a cartoon character, or any fictional character or popular culture figure whose target audience is children or youth.”