

## Ohio Issue 2 Passes: Analysis of Impact on Schools

By Lisa Burleson

With the passage of Issue 2 in the November 7, 2023, general election, a new chapter of the Ohio Revised Code will be created: Chapter 3780, Adult Use Cannabis Control. While the new law in Ohio authorizes what is referred to as allowable forms of “adult use cannabis” (also referred to under the new law as “adult use consumer,” defined as any individual who is at least 21 years of age), the new law has various provisions that apply to “adult use consumers,” both individually as well as from an employment standpoint. This alert examines both as applied to public school operations in Ohio.

First, under the new law “adult use cannabis” may be sold in the following forms: 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. This means that “adult use consumers” may use adult use cannabis in Ohio in any of these forms. The new law establishes a Division of Cannabis Control within the Ohio Department of Commerce, and this new Division is specifically charged with establishing rules under Ohio Revised Code Chapter 119 with respect to several aspects of Chapter 3780, including but not limited to establishing THC content limits for “adult use cannabis” that is sold in Ohio under the new law.

### “Adult Use Consumer” - Individual Use Restrictions

Under R.C. 3780.36, Limitations on Conduct by Individuals, “adult use consumers” are permitted to possess, transfer without remuneration, and transport “adult use cannabis” in various specified amounts by form. However, under this section of the new law, individuals are specifically prohibited from operating a vehicle, motor vehicle, streetcar, trackless trolley, bike, watercraft, or aircraft while using “adult use cannabis” or while under the influence of “adult use cannabis.” The provisions of Ohio’s OVI laws will specifically apply in this context. Also, under this section of the new law, individuals are prohibited from smoking, vaporizing, or using any other combustible “adult use cannabis” product while in a vehicle, motor vehicle, streetcar, trackless trolley, bike, watercraft, or aircraft, and the provisions of Ohio’s OVI laws will apply to this as well.

Under R.C. 3780.33, Liabilities and Immunities, the new law provides that nothing in the Adult Use Cannabis Control Chapter permits the use of “adult use cannabis” on federal, state, or locally owned land located in the State of Ohio (including school property), and nothing in the Adult Use Cannabis Control Chapter requires any public place to accommodate an individual’s use of “adult use cannabis” within or on the public place.

Certain provisions of the new law also specifically address individuals who are parents/guardians. Specifically, these provisions of the new law state that it is unlawful for any parent or guardian to knowingly authorize or permit their residence, private property under their control, or vehicle under their control to be used by an invitee of the parent’s child, who is under the age of 21, for any purpose which violates the

Adult Use Cannabis Control Chapter, which includes consumption of cannabis. This provision could certainly apply to vehicles under a parent’s control, which are on school property for any reason.

## **Employment Provisions**

Section 3780.35, Rights of Employer, provides that nothing in the new Adult Use Cannabis Control law requires an employer to permit or accommodate an employee’s use, possession, or distribution of “adult use cannabis.” Further, this section of the new law provides that nothing in the Adult Use Cannabis Control law prohibits an employer from refusing to hire, discharge, discipline, or otherwise take an adverse employment action with respect to hire, tenure, terms, conditions, or privileges of employment because of that individual’s use, possession, or distribution of “adult use cannabis.” Most significantly for schools is the provision in this section of the new law that states that nothing prohibits an employer from establishing and enforcing a drug testing policy, a drug-free workplace policy, or a zero-tolerance drug policy. For schools, this means business as usual from the standpoint of enforcing drug testing and drug-free workplace policies. From a student transportation standpoint, this section of the new law also provides that all of the restrictions on employment under federal law, including regulations under the United States Department of Transportation, continue to apply.

## **Adult Use Cannabis Control as Applied to Students**

As we might expect, the provisions of the new Adult Use Cannabis Control Chapter in the Revised Code specifically prohibit the use of cannabis by any individual under the age of 21. The new law also prohibits individuals under the age of 21 from knowingly showing or giving false information concerning the individual’s name, age, or other identification for the purpose of purchasing adult use cannabis from an adult use dispensary. The new law further prohibits the transfer or sale of “adult use cannabis” (with or without remuneration) to an individual who is under the age of 21.

Finally, stay tuned, as we anticipate new rules, yet to be developed by the newly created Division of Cannabis Control under the Ohio Department of Commerce, to be further informative on all of these issues. The attorneys of the Roetzel Education Law Practice are at the ready to provide timely, practical advice on these issues now, and as they evolve.

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