

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

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DEPUTY DIRECTOR

July 31, 2017

Chairman Duffey called the meeting to order at 1:34 p.m.

Deputy Director Fouche called the roll. Representatives Duffey, Gavarone, Manning, Boggs, Ramos and Senators Hackett, Balderson, Hottinger, Thomas and Skindell were in attendance. Senator Uecker and Senator Kunze were excused from the meeting. Deputy Director Fouche stated a quorum was present. Chairman Duffey asked the Committee members to review the July 17, 2017 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Duffey called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Item 10 was put in "To Be Refined" status at 11:59 a.m. Item 18 was moved to the review portion of the agenda. Chairman Duffey called for questions or comments on the Regular Agenda. There were no questions from the Committee or public.

Chairman Duffey called Cameron McNamee, State Board of Pharmacy, to provide comments to the Committee regarding agenda item 36. Mr. McNamee stated the compromise reached between the Governor's office, State Medical Board, Ohio State Medical Association, Ohio Hospital Association and the State Board of Pharmacy was to delay the implementation of the ICD-10 code for non-opioid analgesic controlled substances to June 1, 2018 and the ICD-10 code on a prescription for an opioid analgesic to December 29, 2017. There were no questions for the witness.

Chairman Duffey called Renea Murnahan-Turner, Cannabis for Cures, to provide opponent testimony on item 18. Ms. Murnahan-Turner spoke to several policy concerns within the rules. Chairman Duffey asked Ms. Murnahan-Turner to direct her testimony to the six JCARR prongs. Ms. Murnahan-Turner asked for a couple minutes to look over the JCARR prongs. Chairman Duffey temporarily recessed the Committee at 1:45 p.m.

Chairman Duffey called the Committee back to order at 1:48 p.m. to further discuss the review portion of the agenda. Chairman Duffey called John M. Cachat for proponent testimony. Mr. Cachat asked for clarification to rules listed in agenda item 19. Chairman Duffey stated the questions were outside the scope of the Committee. Chairman Duffey asked if Mr. Cachat had asked these questions at the agency's public hearing. Mr. Cachat stated "yes." Chairman Duffey asked if Mr. Cachat's questions were answered at that time. Mr. Cachat stated there was no discussion. There were no further questions for the witness.

Chairman Duffey called Justin Hunt, Ohio Department of Commerce- Medical Marijuana Control Program, to offer comments to the Committee. Mr. Hunt stated the Department's rule making process had additional opportunities to comment and provide feedback on the proposed rules. Mr. Hunt stated the proposed rules were initially released on the Department's website and the rules also had a comment period with the Common Sense Initiative Office (CSIO). Mr. Hunt addressed Mr. Cachat's questions and stated the Department would also answer questions throughout the process. There were no questions for the witness.

Chairman Duffey once again called Renea Murnahan-Turner to offer opponent testimony. Ms. Murnahan-Turner stated she had provided comments to the Department and had received no response. On behalf of the Committee, Chairman Duffey applauded Ms. Murnahan-Turner's efforts. Chairman Duffey stated the primary purpose of the Committee was to make sure the Executive branch's proposed rules did not conflict with the intent of the legislature. Chairman Duffey stated the secondary purpose of the Committee was to make sure Ms. Murnahan-Turner's comments were addressed by the Department. Chairman Duffey asked Ms. Murnahan-Turner to write a letter to the Committee itemizing her concerns so there could be a follow-up with the Department for answers.

Chairman Duffey asked if Ms. Murnahan-Turner would like to assert a JCARR prong violation. Ms. Murnahan-Turner expressed concerns with non-residents of Ohio not being able to comply with the state tax law. Chairman Duffey restated Ms. Murnahan-Turner's question for clarification. Chairman Duffey asked if it was correct that non-residents could do business with the State of Ohio and be compliant with state tax law. Ms. Murnahan-Turner stated not according to HB 523.

Chairman Duffey called Mr. Hunt to respond to whether or not a non-resident could do business with the State of Ohio and be compliant with state tax law. Mr. Hunt stated if non-residents have not operated in the state and they cannot show tax compliance they will not be able to move forward. Chairman Duffey stated failure to have a record of compliance for not having done business in the state of Ohio is not a record of non-compliance. Mr. Hunt stated Chairman Duffey was correct. There were no further questions from the Committee.

Chairman Duffey called Ms. Murnahan-Turner to provide further testimony. Ms. Murnahan-Turner stated the intent of HB 523 was for dispensaries to be an Ohio resident. Chairman Duffey stated because of interstate commerce laws at the federal level the legislature cannot regulate commerce between states. Chairman Duffey stated Ohio residency was potentially stricken from the final bill because of the potential of non-compliance with federal law. Ms. Murnahan-Turner stated Ohio residency was in HB 523 under the economically disadvantaged section. Representative Ramos asked for the O.R.C. section Ms. Murnahan-Turner was referring to. Ms. Murnahan-Turner stated she was referring to O.R.C. 3796.10 and O.R.C. 3796.11.

Representative Ramos stated he was involved with writing HB 523. Representative Ramos stated his intent for the economically disadvantaged provision was to make sure that it was not a Caucasian-only business. Representative Ramos asked if the rules prevented minority groups from participating in this program in any way. Ms. Murnahan-Turner believes the amount of money it takes in application fees eliminates minorities from the business. Ms. Murnahan-Turner stated the minority group could be the Ohio resident for an outside source to invest. Chairman Duffey stated for the benefit of the Committee the citation is O.R.C. 3796.10 (C). Chairman Duffey read the paragraph to the Committee. Chairman Duffey stated that answered Ms. Murnahan-Turner's point about the secondary provision including the residency requirement. Chairman Duffey stated Ms. Murnahan-Turner's original assertion was that there should be a residency requirement on all applicants not just the disadvantaged. Ms. Murnahan-Turner stated that was correct. There were no further questions for the witness.

Chairman Duffey called Mr. Hunt to provide comments to the Committee. Mr. Hunt stated the Department's duty was to implement HB 523 as codified in O.R.C. 3796. Representative Ramos stated the rules or statute does not preclude economically disadvantaged persons from other states from doing business in Ohio. Mr. Hunt stated Representative Ramos was correct. There were no further questions from the Committee.

Chairman Duffey called Ms. Murnahan-Turner to provide further testimony. Ms. Murnahan-Turner believes the scoring system for licenses work against Ohioans because the Department gives points to applicants already within the field. Ms. Murnahan-Turner stated anyone who lives in Ohio would not have the experience. Chairman Duffey asked if Ms. Murnahan-Turner was asserting that it is somehow in conflict with the statute. Ms. Murnahan-Turner stated she did. Chairman Duffey asked what part of the statute conflicted with legislative intent. Ms. Murnahan-Turner stated the bill was to be written for Ohioans only.

Senator Hackett believes giving credit for experience makes sense. Senator Hackett stated in his county the number one corporations were Japanese-owned. Senator Hackett stated they bring in the people with expertise and then hire hundreds of people. Senator Hackett stated that was the American way. Ms. Murnahan-Turner stated she understood what Senator Hackett stated but the scoring system is still not fair between residents of Ohio and non-residents. Chairman Duffey stated it was not uncommon after a bill passes the legislature for the General Assembly to revisit the topic and revise or change the statute within a year or two after. Chairman Duffey stated JCARR has a narrow focus statutorily. Chairman Duffey asked Ms. Murnahan-Turner if she had a JCARR prong violation for the Committee. Ms. Murnahan-Turner stated if someone is economically disadvantaged they have to be an Ohio resident to participate in the process. There were no further questions for the witness.

Chairman Duffey reminded the public of the next JCARR meeting on Monday, August 21, 2017 at 1:30 p.m. in the William McKinley Hearing Room.

Chairman Duffey adjourned the meeting at 2:25 p.m.



Mike Duffey, Chair



Larry Wolpert, Director