

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 531 (Senator Raskin, *et al.*)
Judicial Proceedings and Budget and Taxation

Marijuana Control and Revenue Act of 2015

This bill (1) removes criminal penalties for the use and possession of marijuana and marijuana paraphernalia by individuals age 21 and older; (2) legalizes the use, possession, sale, transportation, and cultivation of marijuana under specified circumstances; (3) authorizes personal cultivation of marijuana plants in limited quantities; (4) establishes a regulatory framework for marijuana establishments; (5) requires the Comptroller to establish regulations to register marijuana establishments, which includes retailers, marijuana cultivation facilities, marijuana product manufacturers, and safety compliance facilities; (6) requires the Maryland Department of Agriculture (MDA) to regulate the growth, harvest, processing, and distribution of industrial hemp; (7) imposes an excise tax of \$50 per ounce for marijuana flowers and \$10 per ounce for marijuana leaves; and (8) directs the revenues from excise tax collections to specified programs.

Fiscal Summary

State Effect: Assuming robust participation in the State-regulated marijuana market, general fund revenues may increase significantly beginning in FY 2016 from taxes on marijuana and registration fees, partially offset by (1) a potentially significant reduction in general fund revenues from fines imposed in marijuana-related cases in the District Court; (2) general fund expenditures for administration/regulation by the Comptroller that increase by at least \$1,277,300 in FY 2016; (3) general fund expenditures for enforcement by the Department State Police (DSP) that increase by at least \$784,400 in FY 2016; and (4) an increase in general fund expenditures for the Department of Health and Mental Hygiene (DHMH) for substance abuse treatment programs and medical marijuana research.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	-	-	-	-	-
GF Expenditure	\$2,061,700	\$1,425,500	\$1,492,700	\$1,563,200	\$1,637,100
Net Effect	(\$2,061,700)	(\$1,425,500)	(\$1,492,700)	(\$1,563,200)	(\$1,637,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential significant decrease in local revenues from circuit court monetary penalties. Increase in local revenues from tax proceeds and expenditures for substance abuse programs.

Small Business Effect: Meaningful impact on marijuana and industrial hemp businesses.

Analysis

Bill Summary: The bill’s provisions do not repeal or modify a law concerning medical use of marijuana or tetrahydrocannabinol (THC) in other forms. The bill does not exempt a person from arrest, existing civil or criminal penalties, seizure or forfeiture of assets, discipline by a State or local licensing board, or State prosecution for (1) driving, operating, or being in control of a vehicle or vessel while impaired by marijuana; (2) possession of marijuana by a prisoner; or (3) possessing marijuana in a correctional facility, including a juvenile detention facility.

I. Criminal Penalties – Generally

Persons: A person who is at least age 21 is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including (1) using, possessing, obtaining, purchasing, or transporting a personal use amount of useable marijuana; (2) controlling the premises or a vehicle where lawful amounts of marijuana are possessed, processed, or stored; (3) using, obtaining, manufacturing, possessing, purchasing, or transporting marijuana paraphernalia; (4) selling marijuana seeds or paraphernalia to a marijuana establishment or to persons who are at least age 21; (5) transferring an authorized amount of marijuana or marijuana products to a safety compliance facility; and (6) cultivating six or fewer plants, no more than three of which may be mature, flowering plants, and possessing the marijuana produced on the premises where the plants were grown.

A “personal use amount of useable marijuana” means (1) one ounce or less of marijuana; (2) five grams or less of hashish; (3) 16 ounces of marijuana products (which includes a marijuana-infused edible product) other than hashish in solid form; or (4) 72 ounces of marijuana in liquid form.

A person who engages in these activities but does not comply with the bill's requirements is subject to specified criminal penalties.

Retailers: A compliant retailer, or a person older than 21 acting as an owner, employee, or agent of a compliant retailer, is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including (1) transporting, possessing, obtaining, or purchasing marijuana or marijuana products from a marijuana cultivation facility or another retailer and (2) selling, transferring, or delivering marijuana paraphernalia or marijuana/marijuana plants or products to a person who is at least age 21, a safety compliance facility, or to another marijuana retailer.

A retailer may not (1) sell, give, or otherwise furnish marijuana or marijuana paraphernalia to a person who is younger than 21; (2) sell, give, or otherwise furnish more than a personal use amount of useable marijuana or more than three plants, seedlings, or cuttings of marijuana to a person in a single transaction; (3) knowingly and willfully sell, give, or otherwise furnish an amount of marijuana to a person that would cause that person to possess more than an individual may possess under State law; (4) purchase marijuana, other than marijuana seeds, from a person other than a retailer, marijuana cultivation facility, or marijuana product manufacturer; or (5) violate the Comptroller's regulations.

Marijuana Cultivation Facility: A marijuana cultivation facility, or a person older than age 21 acting as an owner, a principal officer, a partner, a board member, an employee, or an agent of a marijuana cultivation facility is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including (1) cultivating, packing, processing, transporting, or manufacturing marijuana; (2) possessing, transporting, selling, or producing marijuana paraphernalia; (3) selling, transporting, or delivering marijuana to a retailer, product manufacturer, or cultivation facility; (4) transferring or delivering marijuana to a safety compliance facility; (5) purchasing marijuana from a marijuana cultivation facility; and (6) purchasing marijuana seeds from a person older than 21.

Marijuana Product Manufacturer: A marijuana product manufacturer, or a person who is at least age 21 and is acting as an owner, a principal officer, a partner, a board member, an employee, or an agent of a marijuana product manager, is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, or State prosecution for several specified acts, including (1) packing, possessing, processing, or transporting marijuana and marijuana products; (2) manufacturing marijuana products; (3) possessing, transporting, selling, or producing marijuana paraphernalia; (4) selling, transferring, or delivering marijuana products to a retailer or a marijuana product manufacturer; (5) transferring or delivering marijuana or marijuana

products to a safety compliance facility; or (6) purchasing or obtaining marijuana from a marijuana cultivation facility or a marijuana product manufacturer.

Safety Compliance Facilities: A safety compliance facility, or a person who is at least age 21 and acting as an owner, employee or agent of a compliant safety compliance facility, may not be subject to State prosecution, search (except for specified searches by the Comptroller), seizure, or penalty, or be denied a right or privilege for specified acts, including (1) acquiring, transporting, or possessing marijuana or marijuana products; (2) returning marijuana to marijuana establishments; or (3) receiving compensation for testing marijuana and marijuana products.

Age Requirements Within a Marijuana Establishment: A marijuana establishment (which means a retailer, marijuana cultivation facility, marijuana product manufacturer, or safety compliance facility), may not allow a person younger than 21 to be present in a room where marijuana is sold or stored, with limited exceptions. Violators are guilty of a misdemeanor, punishable by a maximum fine of \$1,000. The bill establishes a complete defense under specified circumstances if the offense involved a document that appeared to have been issued by a governmental entity indicating that the underage person was at least age 21.

In a prosecution for selling, transferring, delivering, giving, or otherwise furnishing marijuana or marijuana paraphernalia to a person who is younger than 21, it is a complete defense if (1) the person selling or otherwise providing marijuana or marijuana paraphernalia to the underage individual was a retailer or acting in the capacity as an owner, employee, or agent of a retailer at the time of the transaction and (2) the offense involved a document that reasonably appeared to have been issued by a government entity indicating that the underage person was at least age 21. The defense is not available if the document was counterfeit or misleading and a reasonable person should have known or suspected that the document was counterfeit.

Underage Possession: A person younger than 21 may not possess marijuana. If a person who is at least age 18 violates this provision, and possesses one ounce or less of marijuana, the person is subject to a civil offense punishable by a fine not exceeding \$100. A police or court record resulting from a citation under this rule must be inaccessible to the public, federal authorities, and authorities from other states or countries.

If a minor violates the possession provisions of the bill, the court may (1) counsel the child or the parent, or both; (2) order the child, for no or minimal cost, to participate in a drug and alcohol education program; or (3) impose a civil fine of no more than \$100.

False Representation of Age: A person may not falsely represent that he/she is at least age 21 to obtain marijuana, marijuana products, or marijuana paraphernalia. Violators are

guilty of a misdemeanor, punishable by imprisonment for up to 10 days and/or a \$250 maximum fine.

Smoking Marijuana in Public Places: The bill prohibits a person from smoking marijuana in an indoor or outdoor “public place.” A “public place” is defined as a street, an alley, a park, a sidewalk, or a public building other than an individual dwelling, or a place of business or assembly open to or frequented by the public, or any other place to which the public has access. A person who smokes in a public place is guilty of a civil infraction and is subject to a civil fine up to \$100.

Expungement of Convictions: The bill’s provisions must, by operation of law, expunge the conviction of a person previously convicted of possession, selling, or transferring a personal use amount of useable marijuana, or cultivating six or fewer plants. Further, all State agencies with records pertaining to arrests and convictions for possession of one ounce or less of marijuana or possession of marijuana paraphernalia, provided that the person was at least age 21 at the time of conviction, must destroy those records.

II. Growing Marijuana

The bill authorizes an adult who is at least age 21 to grow or manufacture up to six marijuana plants, only three of which may be mature, flowering plants. Further, an adult who is at least age 21 may assist in the cultivation of marijuana plants at a location with other adults who are at least age 21 so long as the total number of mature, flowering plants does not exceed 18 per dwelling.

Growing Locations: An adult who is at least age 21 may not:

- manufacture or grow marijuana plants in a location where the plants are subject to public view without the use of optical aids, such as binoculars;
- grow marijuana outdoors other than in an enclosed area, such as a fenced-in area;
- grow marijuana on property that is not lawfully in possession of the grower or without the consent of the person in lawful possession of the property; or
- allow one or more persons younger than 21 to live in or be guests at the property where the marijuana is being grown without taking reasonable precautions, which may include growing the marijuana in a locked closet, room, or fully enclosed area to which the underage person does not possess a key.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 days and/or a maximum fine of \$1,000.

III. Marijuana Retailers – Registration and Sales

A person or an entity may apply to the Comptroller to be registered as a marijuana retailer. Registration exempts the retailer from applicable State prosecution and penalties, as long as the retailer operates in accordance with the bill's provisions.

By October 1, 2016, the Comptroller must issue at least one retailer registration for every 20,000 residents of a county or two retailer registrations for each county, whichever is greater. Retailer registration must be distributed within a county based on the population of cities and unincorporated areas within that city, and each city may have approximately one registration for each 20,000 residents. If at any time after October 1, 2017, there are not enough valid and outstanding retailer registrations than the Comptroller is authorized to issue, the Comptroller must accept and process applications for retailer registrations. After October 1, 2017, the Comptroller has discretion to grant additional retailer registrations.

If at any time after April 1, 2017, the Comptroller has ceased issuing registrations or has failed to begin issuing retailer registrations or renewals, then a retailer may operate without a registration if (1) the retailer operates in a location zoned for retail use and (2) the retailer satisfies the applicable requirements as specified.

Retailer Fees: Each applicant must submit the required application materials and a nonrefundable application fee in an amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a retailer registration is \$10,000. Registrants pay an annual renewal fee of \$5,000.

A retailer may submit his/her renewal application up to 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

Sales: A retailer must include a safety insert with all marijuana sold that is developed and approved by the Comptroller that includes information regarding methods for use, potential dangers stemming from use, and how to recognize the problematic usage of marijuana and available services for treatment. Additionally, a retailer must sell marijuana and marijuana products in the original marijuana cultivation facility or marijuana product manufacturer packaging without making changes or repackaging.

IV. Marijuana Cultivation Facilities – Registration and Sales

A person or an entity may apply to the Comptroller to be registered as a marijuana cultivation facility. Registration exempts the facility from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill's provisions.

By July 27, 2016, the Comptroller must issue at least 100 marijuana cultivation facility registrations, as long as there are enough qualified applicants. If the Comptroller has not issued 100 marijuana cultivation facility registrations by October 1, 2016, the Comptroller must accept and process applications for marijuana cultivation facility registrations. After April 1, 2017, the Comptroller has the discretion to grant additional marijuana cultivation facility registrations if the registered marijuana cultivation facilities are unable to meet demand.

If at any time after April 1, 2016, the Comptroller has failed to issue registrations or has ceased issuing marijuana cultivation facility registrations, then a marijuana cultivation facility may operate without a registration if the cultivation facility operates in a location zoned for agricultural or industrial use that satisfies the requirements established in the bill and regulations adopted pursuant to the bill.

Marijuana Cultivation Facility Fees: Each applicant must submit the required application materials and a nonrefundable application fee in amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a marijuana cultivation facility registration is \$10,000. Registrants pay an annual renewal fee of \$5,000.

An application for renewal of registration of a marijuana cultivation facility may be submitted up to 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

Growing Marijuana – Requirements: Marijuana cultivation facilities must grow the marijuana in one or multiple enclosed locked facilities, and each facility must be registered with the Comptroller. As noted above, the registration requirement does not apply if the Comptroller has ceased issuing or has failed to begin issuing regulations by the deadlines specified in the bill. An “enclosed locked facility” may include a building, room, greenhouse, fully enclosed fenced-in area, or any other location enclosed on all sides and equipped with locks or other security devices with access limited to specified individuals, most of whom must be at least age 21.

V. Marijuana Product Manufacturer – Registration

The Comptroller must issue regulations for applications for marijuana product manufacturer registration that (1) establish the maximum amount of delta-9 tetrahydrocannabinol allowed in a single serving of a marijuana-infused edible product; (2) limit an individual package of an edible product to a single serving; (3) mandate opaque and child-resistant packaging for edible products; (4) require the dissemination of educational materials to consumers who purchase edible products, including information regarding the length of time it takes the product to take effect; and (5) require that an edible

product be clearly identifiable, with a standard symbol indicating that the product contains marijuana.

A person may apply to be registered as a marijuana product manufacturer. Registration exempts the marijuana product manufacturer from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill's provisions. By October 1, 2016, the Comptroller must begin issuing registrations to qualified applicants.

If at any time after April 1, 2016, the Comptroller has failed to issue registrations or has ceased issuing marijuana product manufacturer registrations, then a marijuana product manufacturer may operate without a registration if the manufacturer operates in a location zoned for agricultural or industrial use that satisfies the applicable requirements as specified.

Marijuana Product Manufacturer Fees: Each applicant must submit the required application materials and a nonrefundable application fee in the amount to be determined by the Comptroller, but not to exceed \$5,000. The fee for the initial issuance of a registration as a marijuana product manufacturer is \$5,000. Registrants pay an annual renewal fee of \$5,000.

A marijuana product manufacturer may submit his/her renewal application up to 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

VI. Marijuana Safety Compliance Facilities – Registration

An entity may apply to the Comptroller to be registered as a marijuana safety compliance facility. Registration exempts the safety compliance facility from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill's provisions.

If qualified applicants exist, the Comptroller must issue two-year registrations to at least 10 safety compliance facilities by October 1, 2016. If at any time after October 1, 2017, there are fewer than 10 valid safety compliance facility registrations, the Comptroller must accept and process applications for safety compliance facility registrations. The Comptroller is authorized to grant additional registrations at the Comptroller's discretion.

Safety Compliance Facility Fees: Each applicant must submit the required application materials and a nonrefundable application fee in amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a safety compliance facility

registration is \$5,000. A safety compliance facility registration is valid for two years. Safety compliance facility registrants pay a \$5,000 renewal fee every two years.

A safety compliance facility may submit its renewal application up to 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

VII. Marijuana Establishments Generally – Registration – Packaging Requirements

Registration Requirements: Within three days, the Comptroller must forward a copy of an application to operate a marijuana establishment to the local government where the prospective establishment would operate and seek its input regarding whether the application should be granted. Licensing for marijuana establishments is subject to the minority business enterprise program.

If more qualifying applicants for a type of marijuana establishment license apply than the Comptroller may register in the State or in a county or city, the Comptroller must use a competitive scoring process with specified criteria. No applicant may receive more than one registration to operate a marijuana establishment if receiving a subsequent registration would prevent approval of another qualified applicant who has not received registration. Individuals convicted before October 1, 2015, of a nonviolent marijuana offense are not precluded from obtaining a marijuana establishment license.

Packaging: A marijuana cultivation facility or a marijuana product manufacturer must create a unique package and label for its facility and identify the facility as the producer. The packaging must include (1) the name or registration number of the marijuana establishment; (2) if a safety compliance facility is operational, the potency of the marijuana as represented by the percentage of tetrahydrocannabinol by mass; (3) a “produced on” date; and (4) warnings that state: “Consumption of marijuana impairs your ability to drive a car or operate machinery,” “Keep away from children,” and “Transporting this product outside the State of Maryland may subject you to criminal and/or civil penalties under the laws of other states. Possession of marijuana is illegal under federal law.”

Transportation Requirements: A marijuana establishment or any person who is acting in a capacity as an owner, employee, or agent of a marijuana establishment when transporting marijuana on behalf of the establishment must have documentation that specifies (1) the amount of marijuana being transported; (2) the registry identification number of the establishment; and (3) the date of transport. If the Comptroller has ceased or failed to begin issuing registrations, the marijuana establishment may use a consistent number of its choosing that is used on relevant documentation.

Restrictions, Suspensions, or Terminations of Registrations: A marijuana cultivation facility, marijuana product manufacturer, or safety compliance facility may not (1) purchase, produce, obtain, sell, give, or otherwise furnish marijuana or marijuana products to a person or an entity other than those exempted from State penalties in accordance with the bill or (2) violate the Comptroller's regulations.

The Comptroller may suspend or terminate a marijuana establishment's registration if that establishment commits multiple or serious violations of the bill. Further, if the Comptroller has ceased issuing registrations or has not yet begun issuing regulations, a city or county where the marijuana establishment is operating may file for an injunction in circuit court if the establishment has committed multiple or serious violations.

VIII. Location Restrictions, Suspension or Termination of Registrations, and Local Ordinances

Restrictions on Locations: A marijuana establishment is prohibited from operating in a location within 1,000 feet of the property line of a preexisting public or private school or at a location on which the entity sells alcohol for on-site consumption. The same location restrictions apply to a prospective registration applicant.

Local Ordinances and Regulations: A local government is authorized to enact ordinances and regulations with civil and criminal penalties that are not in conflict with the bill or with rules adopted by the Comptroller regulating the time, place, and manner of retailer, marijuana cultivation facilities, or safety compliance facility operations. However, a local government may not prohibit operations by a marijuana establishment either expressly or through the enactment of ordinances or regulations that make the operations impracticable.

IX. Industrial Hemp

MDA must adopt regulations necessary to register a person to plant, grow, harvest, possess, process, sell, or purchase industrial hemp, and set reasonable fees. It is not a violation of State or local law for a person to plant, grow, harvest, possess, process, sell, or buy industrial hemp in compliance with those regulations. The bill also legalizes the purchase or possession of material or products made totally or partially with industrial hemp.

X. Marijuana Taxes

An excise tax must be collected on all marijuana sold to retailers at an initial rate of (1) \$50 per ounce or proportionate part of an ounce for marijuana flowers; (2) \$10 per ounce or proportionate part of an ounce for marijuana leaves; or (3) an amount set by the Comptroller that adjusts this initial rate for inflation or deflation based on the Consumer Price Index.

Money remitted to the Comptroller from the excise tax and registration fees is apportioned as follows:

- the Comptroller must retain sufficient money to defray the entire cost of administering these provisions; and
- the remaining funds are distributed to the general fund, and then distributed as follows:
 - \$5,000,000 to DHMH for use in voluntary programs for the prevention or treatment of the abuse of alcohol, tobacco, or controlled dangerous substances.

The Comptroller (1) is responsible for administering and carrying out the bill's tax provisions; (2) must adopt regulations on several specified topics; and (3) may adopt regulations that are necessary and convenient to fulfill those duties.

The Comptroller must adopt regulations to implement the tax provisions of the bill and must begin accepting applications for marijuana establishments within 180 days after October 1, 2015. If the Comptroller fails to fulfill this requirement within this timeframe, a citizen may commence an action in a court of competent jurisdiction to compel the Comptroller to perform these actions in accordance with the bill.

Notwithstanding any federal tax law to the contrary, a business exempted from criminal penalties under State law pursuant to the bill is allowed to deduct from its State taxes all the ordinary and necessary expenses the business incurred during the taxable year in carrying on a trade or business as a marijuana retailer, marijuana cultivation facility, or safety compliance facility, including reasonable allowance for salaries and other compensation for personal services actually rendered.

XI. Miscellaneous Provisions

Employers: Employers are not required to accommodate the use or possession of marijuana or being under the influence of marijuana in a place of employment.

Landlords and Innkeepers: A landlord may prohibit the cultivation of marijuana on his/her rental premises. A landlord or an innkeeper may prohibit the smoking of marijuana on a rented property or in a rented room, as long as the landlord or innkeeper posts a notice to that effect.

Oversight Committee: The bill requires the Governor to appoint a 12-member oversight committee. The committee must meet at least four times per year to collect information about and evaluate the effects of the bill's provisions, and to report and make recommendations to the Comptroller on specified issues.

Reporting Requirements: The Comptroller must submit an annual report containing specified information to the Governor and the General Assembly.

Common Carriers: A common carrier or their employee or agent may not be subject to State prosecution (except for specified searches by the Comptroller), seizure, or penalty, including civil penalty or disciplinary action by a court, business licensing board, or entity, or be denied a right or privilege, for transporting or possessing marijuana.

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in State law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana.

In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. If a person commits a third or subsequent violation, or is younger than age 21, the court must summon the person for trial upon issuance of a citation. Additionally, the court must order a person who (1) commits a third or subsequent violation or (2) is younger than age 21 and commits a violation, to attend a DHMH-approved drug education program and refer the person to an assessment for a substance abuse disorder. After the assessment, the court must refer the person to substance abuse treatment, if necessary.

A citation for a violation for possession of less than 10 grams of marijuana, and the related public court record, are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary. Existing criminal penalties continue to apply to the use or possession of 10 grams or more of marijuana and for related paraphernalia violations (including for use or possession of less than 10 grams). An affirmative defense is available to defendants for use or possession of marijuana or related

paraphernalia due to a debilitating medical condition. Pursuant to Chapters 61 and 62 of 2013, as of June 1, 2013, an affirmative defense is available to defendants for the possession of marijuana if the defendant possessed marijuana because the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition.

Chapter 403 of 2013 established, and Chapter 256 of 2014 expanded, the Natalie M. LaPrade Medical Marijuana Commission and Fund to implement and administer a medical marijuana program in Maryland. The program allows for licensing and registration of participating academic medical centers, growers, dispensaries, and grower- and dispenser-agents. The program establishes a framework to certify physicians and qualifying patients to provide qualifying patients with medical marijuana legally under State law. The commission proposed regulations in late 2014, but the program is not yet operational. Although medical marijuana may be ready for distribution by the end of fiscal 2016, it is more likely that medical marijuana will be available for patients the following year.

Background: According to the National Conference of State Legislatures, in 2014, voters in Alaska, the District of Columbia, and Oregon joined Colorado and Washington by legalizing limited amounts of marijuana for adult recreational use. Alaska's Measure 2 authorizes the legalization, taxation, and regulation of marijuana for individuals 21 years of age or older. Oregon's Measure 91 allows for the possession, licensing, taxation, and regulation of marijuana by adults, while maintaining medical marijuana laws. Voters in the District of Columbia approved Initiative 71 to make it lawful for individuals 21 years of age or older to possess marijuana, but Congressional proposals to limit or repeal the initiative are under consideration.

Retail stores in Colorado opened in January of 2014. Individuals older than age 21 may purchase up to one ounce of marijuana from licensed retailers. Unlicensed sales of marijuana, purchasing marijuana from an unlicensed retailer, and public use of marijuana remain illegal. Under Amendment 64, Colorado residents may grow up to six marijuana plants each, and groups of individuals may also collectively grow plants under specified conditions. Residents may give up to one ounce at a time to others, as long as they do not accept remuneration. In November 2013, Colorado voters approved a 15% excise tax on wholesale marijuana sales and a 10% special sales tax on the retail sale of marijuana. In addition, all marijuana (including both medical and retail) is taxed at the regular state sales tax rate of 2.9%. In calendar 2014, the Colorado Department of Revenue reported that tax revenue from retail marijuana totaled almost \$44 million and that State revenues increased by almost \$53 million from all retail marijuana taxes, licenses, and fees.

In 2012, Washington's Initiative 502 decriminalized possession of up to one ounce of marijuana by anyone who is at least age 21, as long as the marijuana is obtained from a

licensed retailer. Marijuana or cannabis-infused goods are also authorized within certain parameters. However, Initiative 502 does not permit individuals to grow marijuana at home for their personal use. The state's liquor board started processing applications for marijuana producers, processors, and retailers on November 20, 2013, and retail stores began opening in July 2014. Marijuana is taxed at 25% at the cultivation, processing, and all sales stages. Initiative 502 also establishes five nanograms of tetrahydrocannabinol (THC) per milliliter of blood as the new standard for driving under the influence of marijuana for persons age 21 and older. Persons younger than 21 may not drive with any level of THC in their blood.

Although possession of marijuana remains illegal at the federal level, the U.S. Department of Justice (DOJ) announced in August 2013 that it would focus on eight enforcement priorities when enforcing marijuana provisions of the Controlled Dangerous Substances Act. The guidelines also state that, although the department expects states with legalization laws like Washington and Colorado to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. Further, in 2014, the U.S. Congress passed a federal spending measure that contained provisions to effectively terminate federal enforcement against legal *medical* marijuana operations by prohibiting federal spending on actions that impede state *medical* marijuana laws.

In February 2014 the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve "legitimate marijuana businesses." The February 2014 guidelines reiterated that the provisions of money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. Further, the guidelines state that financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under these provisions. However, the guidelines also establish that prosecutors should apply the eight enforcement priorities listed in the August 2013 guidance document when deciding which cases to prosecute. Thus, although the federal government appears to have relaxed its position on the implementation of marijuana laws, marijuana remains a controlled dangerous substance under federal law, and residents of states that have legalized marijuana are not immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against Colorado and Washington at some point in the future.

States are not obligated to enforce federal marijuana laws, and the federal government may not require states to recriminalize conduct that has been decriminalized.

Fiscal Implications for Legalization of Marijuana: The continued vulnerability of participants to federal prosecution may affect participation levels in ways that cannot be reliably predicted. Given this vulnerability to federal prosecution, the unavailability of

business-related deductions on federal taxes, and limited information on the demand for marijuana in Maryland, it is difficult to determine the level of participation in the State-regulated marijuana market created by the bill, which could vary from negligible to robust.

State Revenues: Assuming that there are sufficient registrants to fulfill the requirements of the bill and assuming sales consistent with existing data, general fund revenues could increase significantly from excise taxes, sales taxes, and regulatory fees.

Marijuana Consumption

Given that marijuana is an illegal substance, there is no data on the current level of marijuana consumption in Maryland or the projected level of consumption under the bill. However, *for illustrative purposes only*, this fiscal and policy note makes the following assumptions in determining marijuana consumption under the bill.

According to the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's *2013 National Survey on Drug Use and Health*, approximately 19.1% of adults ages 18 to 25 and 5.6% of adults age 26 and older have used marijuana. Applying these percentages to the number of Maryland residents who are age 21 to 25 and age 26 and older results in an estimate of 302,353 marijuana users in Maryland.

The United Nations Office on Drug and Crime's, *2006 Bulletin on Narcotics, Review of the World Cannabis Situation* reported that marijuana consumption in the United States varied greatly, with 18% of users reporting that they consumed marijuana one to three times per year and 7% of respondents indicating that they consume marijuana on an almost daily basis. Using the pattern of use in this report, and assuming that marijuana users consume two grams per use, this estimate assumes that Maryland residents consume 60,125,949 grams of marijuana each year.

Excise Taxes

The bill imposes an excise tax of \$50 per ounce for marijuana flowers and \$10 per ounce for marijuana leaves. Assuming that the 60,125,949 grams of marijuana (approximately 2.1 million ounces) mentioned above is produced by State-regulated marijuana cultivation facilities, and using the higher tax level of \$50 per ounce *for illustrative purposes*, general fund revenues from excise taxes may increase by approximately \$79.5 million in fiscal 2016, given the bill's effective date, and by \$106.0 million on an annual basis.

Sales Taxes

The retail price of marijuana can vary greatly, based on the quality of the product, the location of the sale, and local demand. Data on the retail price of marijuana is typically collected from self-reporters. Assuming a \$12 per gram retail price and that consumers purchase the 60,125,949 grams of marijuana mentioned above from State-regulated retailers, general fund sales tax revenues may increase by \$32.5 million in fiscal 2015 and \$43.3 million on an annual basis.

Application and Registration Fees

The bill establishes application, registration, and renewal fees for marijuana establishments. The bill also specifies the minimum number of entities the Comptroller must register. **Appendix 1 – Estimated Minimum Number of Registrations and Associated Registration Fee Revenues under the Bill** contains information on projected general fund revenues from these fees, assuming that (1) the Comptroller receives enough applications to meet the minimum registration requirements; (2) the number of applicants does not exceed the number of registrants; (3) each applicant is approved for registration; and (4) the Comptroller does not register more entities than the minimum levels under the bill. Appendix 1 uses the bill's deadlines for minimum registration levels when attributing projected revenues to a specific fiscal year.

Industrial Hemp

General fund revenues increase from sales taxes imposed on industrial hemp and related products and any fees associated with regulations adopted by MDA.

Department of Health and Mental Hygiene

General fund revenues increase for DHMH as a result of the bill's revenue distribution requirements.

The bill requires \$5,000,000 of the net revenues from the excise taxes and registration fees (after defrayal of the Comptroller's costs to administer the bill's provisions) to be distributed to and used by DHMH for voluntary programs for the prevention of treatment of the abuse of alcohol, tobacco, or controlled dangerous substances. The Governor's proposed fiscal 2016 State budget includes \$245.4 million for community services in the Behavioral Health Administration (BHA). The former Alcohol and Drug Abuse Administration is housed within BHA.

This analysis does not reflect any additional State income tax revenues that are generated under the bill.

State Expenditures:

Comptroller Administration of Marijuana Program

General fund expenditures increase significantly for the Comptroller to administer and enforce the bill's provisions. Given that marijuana has heretofore been an illegal and unregulated product, the estimate assumes that the Comptroller needs significant resources and expertise to comply with the bill's provisions, especially given the tight deadlines for compliance under the bill. **However, the Comptroller failed to provide information regarding the fiscal impact of this bill.** Thus, this analysis is based on information provided by the Comptroller for substantially similar legislation introduced during the 2014 legislative session.

In 2014, the Comptroller's Office advised that it needed 22 full-time permanent employees at a cost of approximately \$1.5 million to implement similar legislation. However, the Comptroller's Office did not provide sufficient justification for that estimate. The Department of Legislative Services (DLS) advises that general fund expenditures for the Comptroller's Office likely increase by approximately \$1,277,261 in fiscal 2016. This estimate reflects the cost of hiring one regulator, one administrative assistant, one supervisor, four field enforcement agents, three revenue administrators, two revenue specialists, and one programmer analyst to perform the functions required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes programming costs to upgrade the SMART return processing system to process the new tax provisions under the bill.

Positions	13
Salaries and Fringe Benefits	\$913,951
Programming Costs	300,000
Operating Expenses	<u>63,310</u>
Total FY 2016 Comptroller Expenditures	\$1,277,261

Given the new functions required by the bill and the compliance deadlines, the Comptroller advised previously that these personnel must start on July 1 of the year the bill is enacted (despite the bill's October 1, 2015 effective date). DLS assumes that this is still the case and concurs with this assessment. Thus, this analysis assumes that the Comptroller's new employees begin on July 1, 2015.

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Department of Health and Mental Hygiene

General fund expenditures increase (1) for BHA within DHMH to provide grants for treatment and recovery programs from revenues received under the bill and (2) for administration of medical marijuana clinical research grants.

Law Enforcement

General fund expenditures increase significantly for the Department of State Police (DSP) to administer and enforce the bill's provisions. **However, DSP failed to provide information regarding the fiscal impact of this bill.** Thus, this analysis is based on information provided by DSP for substantially similar legislation introduced during the 2014 legislative session.

General fund expenditures for DSP increase by \$784,395 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of additional testing equipment and the hiring of six forensic scientists and one office services clerk to administer additional blood tests to detect the presence of a controlled dangerous substance and to determine whether a suspicious substance is industrial hemp or marijuana. The estimate assumes that three scientists are required for the additional blood testing required under the bill and three scientists are required to differentiate between marijuana and industrial hemp to comply with the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes the one-time cost of four gas chromatography-mass spectrometry instruments and the ongoing purchase of blood sample collection kits.

DSP advised in 2014 that it anticipates handling an additional 200 blood tests for marijuana annually, based on data collected from Colorado after enactment of a similar marijuana legalization framework. Additionally, the bill establishes different laws for industrial hemp and marijuana. Therefore, DSP must be able to differentiate between the two substances. In 2014, DSP advised that it may need to purchase more sensitive gas chromatography-mass spectrometry instruments, but did not provide specific costs for this instrument. Thus, the estimate reflects the cost to hire additional personnel to operate the instruments, but does not include additional expenditures for these additional, more sensitive instruments.

DLS notes that although the bill does not alter existing law regarding driving, operating, or being in control of a vehicle or vessel while impaired by marijuana, it is reasonable that the number of driving while impaired incidents may increase as more people use and have access to marijuana. Therefore, DLS concurs that DSP general fund expenditures and staff increase.

Positions	7
Salaries and Fringe Benefits	\$350,429
Gas chromatography-mass spectrometers (4)	400,000
Operating Expenses	<u>33,966</u>
Total FY 2016 DSP Expenditures	\$784,395

Department of Public Safety and Correctional Services

General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services (DPSCS) from reduced incarcerations for marijuana-related offenses.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill's decriminalization of specified marijuana offenses reduces OPD caseloads. However, OPD did not provide data on the number of cases affected by the bill. Given the caseloads and resources of OPD, it is unlikely that the bill has a material effect on OPD expenditures, and it is assumed that any OPD resources spent on these cases are simply shifted to other OPD cases and duties.

Expenditures for Expungement

This fiscal analysis does not include the impact that results from compliance with the expungement requirement in the bill. Please see the Additional Comments section for more information.

Maryland Department of Agriculture

This analysis assumes that while MDA develops regulations related to industrial hemp, registration and enforcement are handled by the Comptroller and DSP. Thus, it is assumed that MDA can implement the bill with existing resources.

Oversight Committee

It is assumed that the establishment and operation of the oversight committee can be handled with existing budgeted resources.

Local Fiscal Effect: Local revenues decrease from fewer monetary penalties imposed in marijuana-related cases in the circuit courts as a result of the bill's decriminalization of specified activities. Local revenues increase to the extent that BHA funds local substance abuse programs with revenues from the bill.

Local expenditures for incarcerations for marijuana-related offenses decrease as a result of the bill's decriminalization of specified activities. Local expenditures increase for substance abuse programs due to increased BHA funding.

This analysis does not reflect any additional local income tax revenues that are generated under the bill.

Small Business Effect: This analysis assumes that the bill has a meaningful impact on small businesses in that it presents a State-authorized business opportunity to individuals currently engaged in illegal activity. Notwithstanding this bill, marijuana establishments under State law will still be violating federal law. Thus, the impact of the bill on small businesses depends on the extent to which (1) the risk of federal prosecution deters individuals from engaging in the State-regulated marijuana market; (2) the lack of federal business tax deductions impedes the profit-making abilities of Maryland marijuana businesses; (3) taxes, overhead, and business-related expenses incurred in operating a public marijuana business prohibit a viable business model for current marijuana entrepreneurs; (4) restricting retailers to suppliers that are State-authorized marijuana cultivation facilities discourages those retailers from participating in the State's marijuana market; and (5) decriminalization of marijuana under State law affects marijuana prices.

Additional Comments: The bill requires revenues from registration fees and taxes to be directed toward specified endeavors and entities. However, these revenues are general fund revenues, and the bill does not create a special fund into which these revenues must be deposited. Absent the creation of a special fund, it is unclear whether revenues can be distributed in the ways prescribed by the bill.

The bill also states that its provisions expunge by "operation of law," the conviction of a person previously convicted of possessing one ounce or less of marijuana or possession of marijuana paraphernalia if the person was age 21 or older at the time of conviction. This language implies the automatic expungement of applicable convictions for eligible individuals, which may prove problematic. Other than the unique offense created in 2012 for possession of less than 10 grams of marijuana, and the establishment of a civil violation for possession of less than 10 grams of marijuana established in 2014, the Criminal Justice Information System (CJIS) does not have information on the amount of marijuana possessed in these cases. Furthermore, CJIS advises that it has information on arrest dates, but not the date of conviction, which is the date by which a person must be at least age 21 in order to be eligible for the automatic expungement required under the bill.

While the necessary information may be contained in other records, those records need to be linked with CJIS's system in order for the bill's expungement requirement to be met. It is unclear if this linkage is even possible, especially with respect to convictions contained in legacy systems. To the extent that it is possible, any programming or operational effort

to accomplish it may require a significant increase in general fund expenditures for DPSCS, the Judiciary, and any other agencies involved.

Additional Information

Prior Introductions: HB 880 of 2014 received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 658, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 1453 of 2013, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 911 (Delegate Anderson, *et al.*) - Judiciary and Ways and Means.

Information Source(s): Baltimore, Dorchester, and Montgomery counties; Maryland Department of Agriculture; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Maryland Association of County Health Officers; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2015
min/kdm

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

**Appendix 1 – Estimated Minimum Number of Registrations
and Associated Registration Fee Revenues under the Bill
Fiscal 2016-2019¹**

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
<u>Retailers²</u>				
Number of New Registrations	100	202	-	-
Number of Renewal Registrations	-	100	302	302
Revenues from Application Fee ³	\$500,000	\$1,010,000	-	-
Revenues from New Registrations ³	1,000,000	2,020,000	-	-
Revenues from Renewal Registrations ³	<u>0</u>	<u>500,000</u>	<u>\$1,510,000</u>	<u>\$1,510,000</u>
<i>Revenue Subtotal</i>	<i>\$1,500,000</i>	<i>\$3,530,000</i>	<i>\$1,510,000</i>	<i>\$1,510,000</i>
<u>Cultivation Facilities⁴</u>				
Number of New Registrations	100	-	-	-
Number of Renewal Registrations	-	100	100	100
Revenues from Application Fee ³	\$500,000	-	-	-
Revenues from New Registrations ³	1,000,000	-	-	-
Revenues from Renewal Registrations ³	<u>0</u>	<u>\$500,000</u>	<u>\$500,000</u>	<u>\$500,000</u>
<i>Revenue Subtotal</i>	<i>\$1,500,000</i>	<i>\$500,000</i>	<i>\$500,000</i>	<i>\$500,000</i>
<u>Safety Compliance Facilities⁵</u>				
Number of New Registrations	10	-	-	-
Number of Renewal Registrations	-	-	10	-
Revenues from Application Fee ³	\$50,000	-	-	-
Revenues from New Registrations ³	50,000	-	-	-
Revenues from Renewal Registrations ³	<u>-</u>	<u>-</u>	<u>\$50,000</u>	<u>-</u>
<i>Revenue Subtotal</i>	<i>\$100,000</i>	<i>-</i>	<i>\$50,000</i>	<i>-</i>
Total Anticipated Fee Revenues	\$3,100,000	\$4,030,000	\$2,060,000	\$2,010,000

¹This estimate assumes that (1) the Comptroller receives enough applications to meet the minimum registration requirements; (2) the number of applicants does not exceed the number of registrants; (3) each applicant is approved for registration; and (4) the Comptroller does not register more entities than the minimum levels under the bill. This estimate uses the bill's deadlines for minimum registration levels when attributing projected revenues to a specific fiscal year. Additionally, the estimate does not include registrations of marijuana product manufacturers because there is not enough information regarding the number that apply.

²Retailers must register by October 1, 2016, and renew on an annual basis.

³Assumes the maximum application, initial registration, and renewal fees authorized under the bill.

⁴The Comptroller must issue 100 marijuana cultivation facility registrations by July 27, 2016, provided that qualified applicants exist.

⁵The Comptroller must grant two-year registrations to at least 10 safety compliance facilities by October 1, 2016, provided that qualified applicants exist.

Source: Department of Legislative Services