

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1288 (Delegate Rey, *et al.*)
Health and Government Operations

Medical Cannabis - Identification and Registration Cards and Law Enforcement

This bill requires qualifying patients and their caregivers, under the State's medical cannabis program, to obtain an identification card, carry that card when in possession of medical cannabis or a medical cannabis product, and manually surrender the card to any law enforcement officer who demands the card. Additionally, grower, dispensary, and processor agents who are issued a registration card must carry that card when in possession of medical cannabis or a medical cannabis product or when they are on the premises of a licensed medical cannabis business; they too must manually surrender the registration card to any law enforcement officer who demands the card. The bill also establishes legal protections for a law enforcement officer under specified circumstances related to medical cannabis, and it makes changes to statutory language stating what the medical cannabis statute does and does not authorize.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations, as discussed below.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary/Current Law:

Maryland's Medical Cannabis Program

Under current law, the Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

Current law requires the commission to develop identification cards for qualifying patients and caregivers. The Maryland Department of Health (MDH) is responsible for adopting regulations that establish identification card requirements, including information that must be on the cards, the method for distribution, and the method for tracking the cards. Additionally, a certifying provider must provide each written certification to the commission, at which point, the commission *must* issue an identification card to each qualifying patient or caregiver named in the certification.

However, Maryland regulations *authorize* qualifying patients to apply for an identification card, but qualifying patients are not required to do so. To obtain a card, qualifying patients must apply on a form provided by the commission and include a clear current photograph, a specified proof of identity, and a \$50 fee. Regulations require identification cards to contain specified identifying information, the expiration date, and a current photograph.

Licensed growers, dispensaries, and processors are required to apply to the commission for a registration card for each of their agents by submitting the agent's name, address, and date of birth. The fee for an agent registration card is \$200.

Regulations establish a \$100 fee for replacement cards for qualifying patients and caregivers and all agents.

Protection Against Arrest, Prosecution, and Civil or Administrative Penalties

Current law establishes that any of the following persons acting in accordance with the statutory provisions of Maryland's medical cannabis program are not subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary

action by a professional licensing board, nor may they be denied any right or privilege, for the use of medical cannabis: (1) a qualifying patient who is in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower or grower agent; (3) a certifying provider; (4) a caregiver; (5) a dispensary or dispensary agent; (6) a processor or processor agent; or (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

The bill establishes that a law enforcement officer may not be held liable in any cause of action if the officer, acting in good faith, (1) detains, arrests, charges, or applies for charges against one of the persons listed above, for the use or possession of medical cannabis, or (2) seizes medical cannabis.

Activities that Are Not Exempted from Civil, Criminal, or other Penalties

Current law establishes that the State's medical cannabis program statute cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

- undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
- operating, navigating, or being in control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or
- smoking marijuana or cannabis in any public place, in a motor vehicle, or on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises.

The bill adds:

- *vaporizing* marijuana or cannabis in a public place or in a motor vehicle;
- removing medical cannabis from the original packaging provided by a dispensary and storing the product in any other container except as necessary to lawfully use the medical cannabis; and
- possessing marijuana or cannabis on the grounds of a correctional facility.

Relevant Correctional Services Current Law

A "correctional facility" is a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility, which also falls under the definition of “correctional facility.” Inmates are to be fed, kept safe, and provided with medical care and treatment while incarcerated. However, prescriptions that are obtained prior to incarceration are not necessarily given to an inmate while incarcerated.

A person is prohibited from knowingly possessing contraband (any item, material, or substance not authorized for inmate possession by the managing official or that is brought into the correctional facility in a manner prohibited by the managing official) in a place of confinement. Additionally, a person who is detained or confined in a place of confinement may not knowingly possess or receive a controlled dangerous substance (CDS). A person who possesses CDS in confinement is guilty of a misdemeanor and is subject to imprisonment for up to three years and/or a fine up to \$1,000.

Current Criminal Law Provisions Related to Marijuana

CDS 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 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 CDS, regardless of which schedule it is on, with the exception of marijuana.

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. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by MDH; and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. The law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

Background:

Federal Guidance

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 Substances Act. The guidelines also state that, although the department expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws.

On January 4, 2018, in a memorandum to all U.S. Attorneys, Attorney General Jefferson B. Sessions III announced that the aforementioned guidance regarding federal marijuana prosecutions was rescinded, effective immediately. Citing the U.S. Congress' determination (through the Controlled Substances Act) that marijuana "is a dangerous drug and that marijuana activity is a serious crime," the memorandum declared previous DOJ guidance specific to marijuana enforcement "unnecessary" and instead instructed prosecutors to follow the principles that govern all federal prosecutions, including "federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community," when deciding which cases to prosecute.

State Fiscal Effect: The commission advises that special fund expenditures increase by approximately \$2.6 million in fiscal 2019 to issue additional identification cards to qualifying patients and caregivers under the bill. This estimate assumes that there are 17,738 current patients and 756 current caregivers without identification cards and that approximately 81,000 new patients and 4,050 caregivers register with the program by the end of calendar 2018. The commission estimates the cost to print each new card is \$25. The commission also estimates that special fund revenues increase by \$5.2 million from the additional cards issued to qualifying patients and caregivers under the bill.

The Department of Legislative Services (DLS) disagrees that there is any material fiscal impact on the commission since the commission is currently statutorily required to issue an identification card to each qualifying patient or caregiver named in a written certification. Thus, the bill does not establish any new requirements for the commission. Costs to issue identification cards to qualifying patients and caregivers have already been accounted for in previous fiscal and policy notes and analyses of regulations. DLS notes that the commission's current per card cost estimate is significantly higher than previous estimates. In 2014, the commission estimated the per card cost was approximately \$4. The commission also previously expressed intent to only charge qualifying patients and caregivers for replacement cards.

The bill's changes related to surrendering identification cards, legal protections for law enforcement officers, and authorized actions under the medical cannabis statute are not anticipated to have a material fiscal or operational impact on enforcement or legal actions, including for the Department of State Police and the Judiciary (Administrative Office of the Courts).

Small Business Effect: Since grower, dispensary, and processor agents already receive registration cards as part of the required registration process, the bill's changes related to cards for these individuals are not expected to have a material fiscal or operational impact.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of State Police; Department of Legislative Services

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