

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 426

(Senator West)

Judicial Proceedings

Health and Government Operations

Medical Cannabis – Regulation of Dispensaries, Growers, and Processors

This bill requires the Natalie M. LaPrade Medical Cannabis Commission to allow a person to have an ownership interest in or control of (including the power to manage and operate) as many as four licensed dispensaries. The bill also clarifies the existing limit of one ownership interest for licensed growers and codifies a limit of one ownership interest for licensed processors. Finally, the bill explicitly subjects licensed growers, dispensaries, and processors to the Maryland Antitrust Act and the Maryland Sales Below Cost Act. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: Special fund expenditures increase to process additional requests to transfer ownership for licensed dispensaries beginning in FY 2020. Special fund revenues increase from license transfer fees beginning in FY 2020.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Natalie M. LaPrade Medical Cannabis Commission

Under Maryland regulations (COMAR 10.65.25.02), a person is prohibited from having an interest in more than one medical cannabis license per license category, including dispensaries.

Pursuant to Chapter 598 of 2018, a medical cannabis grower, processor, or dispensary license holder may only transfer ownership of a license if the licensee was physically and actively engaged in cultivating, processing, or dispensing medical cannabis for at least two years immediately preceding the sale or transfer. Regulations require licensed growers, processors, and dispensaries to (1) notify the commission of any proposed transfer of 5% or more of an ownership interest; (2) submit criminal history and audited financial information for the potential owner or transferee; (3) obtain written commission approval of the transfer; and (4) pay a transfer fee of \$7,000. Statute prohibits the commission from issuing more than one medical cannabis grower license to each applicant.

Maryland Antitrust Act

The Maryland Antitrust Act is designed to promote fair and honest competition, free of conspiracies, combinations, or agreements which unreasonably restrain trade or commerce. The State's antitrust laws are complementary to the federal Sherman Antitrust Act, contained in 15 U.S.C. §§ 1, *et seq.* The General Assembly has expressed its intent that, in construing the Maryland Antitrust Act, the courts be guided by the interpretation given by the federal courts to the federal statutes dealing with the same or similar matters. (See Commercial Law Article § 11-202.)

Under the State's antitrust laws, a person is prohibited from unreasonably restraining trade or commerce by contract, combination, or conspiracy. State law specifically prohibits a contract, combination, or conspiracy that establishes a minimum price below which a retailer, wholesaler, or distributor may not sell a commodity or service. A restraint of trade or commerce is interference with the ordinary, usual, and free competitive pricing or distribution of goods or services in an open market. Furthermore, a restraint of trade is unreasonable if it tends to restrict production, raise prices, or otherwise control the market to the detriment of sellers, purchasers, or consumers of goods or services.

In a civil action proceeding, the court must determine whether a violation has been committed and enter any judgment or decree necessary to (1) remove the effects of any violation and (2) prevent continuation or renewal of the violation in the future. In addition to equitable remedies or other authorized relief, the court may assess a civil penalty of up to \$10,000 for each violation; each day that a violation continues is a separate violation. Any person who willfully violates the Maryland Antitrust Act is guilty of a misdemeanor and, on conviction, is subject to maximum penalties of a \$500,000 fine and/or six months imprisonment.

Maryland Sales Below Cost Act

Pursuant to the Maryland Sales Below Cost Act, a retailer or wholesaler may not advertise, offer to sell, or sell at retail sale or wholesale sale any item of merchandise at less than its

cost to the retailer or its cost to the wholesaler, respectively, with intent to injure a competitor or to destroy competition. Specified exceptions apply, including (1) advertised and marked clearance sales; (2) final liquidations; (3) sales of merchandise advertised and marked as imperfect, damaged, or being discontinued; (4) merchandise sold on contract to a department of a government or governmental institution; and (5) motor fuel sold by a retail service station. On complaint from a person who claims to be injured from the action, a circuit court may issue an injunction against a retailer or wholesaler who is found to be engaging in selling merchandise below cost as prohibited.

Background: 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. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

In February 2018, the commission issued a [bulletin](#) highlighting rules related to the sale or transfer of a medical cannabis license. The bulletin also addressed third-party management agreements, which some licensees have entered into to allow third parties to contract to operate the licensee’s business without possessing an ownership stake.

According to the commission, the first medical cannabis dispensaries were licensed and became operational in December 2017. As of February 7, 2019, 71 dispensaries are licensed and 31 additional dispensaries are in Stage One pre-approval. As statute prohibits the transfer of ownership for a period of two years from the date a business is licensed and operational, no dispensary licenses may be transferred until December 1, 2019, at the earliest.

State Fiscal Effect: The commission anticipates that the bill likely triggers an increase in the number of requests to transfer ownership interests for dispensaries. Thus, special fund expenditures increase from administrative costs to evaluate these requests, and special fund revenues increase from ownership transfer fees. Any increase in special fund revenues and expenditures is likely highest in fiscal 2020, when dispensaries first become eligible for transfer of ownership. Future years likely result in a minimal increase in special fund revenues and expenditures.

The commission must approve any ownership transfers. Part of the review process is conducting independent third-party audits of the financial audits and criminal history records checks submitted with the request to transfer ownership interest. The commission advises that these audits cost \$4,500 each. Thus, special fund expenditures likely increase to conduct these audits and process requests to transfer ownership interest. The magnitude of any increase in expenditures depends on the number of requests the commission receives, which is unknown. *For illustrative purposes only*, if there are 30 requests to transfer, special fund expenditures increase by \$135,000 for the audits.

The transfer of ownership fee for a dispensary license is \$7,000. The magnitude of any increase in revenues depends on the number of requests to transfer ownership submitted to the commission. *For illustrative purposes only*, if there are 30 requests to transfer, special fund revenues increase by \$210,000.

Small Business Effect: Small businesses that own or wish to acquire ownership interest in a dispensary may benefit from the ability to have an ownership interest in more than one dispensary.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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