

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 967 (Senator Cassilly)  
 Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission - Advertising

This bill imposes restrictions on advertisements regarding medical cannabis, including (1) prohibiting medical cannabis-related advertisements through specified media unless the advertisements can be targeted to audiences who are at least age 18; (2) prohibiting medical cannabis advertisements from making any statement that is false or misleading in any material way or is otherwise a violation of the Maryland Consumer Protection Act (MCPA); and (3) requiring any advertising for medical cannabis to include a statement that the product is only for use by a qualifying patient and a warning that there may be health risks associated with consumption of the product. However, a certifying provider may advertise their ability to certify a qualifying patient.

Fiscal Summary

**State Effect:** Special fund expenditures increase by \$75,200 in FY 2020 for staff. Out-years reflect annualization and ongoing staff costs. The bill’s imposition of existing penalty provisions does not have a material impact on State finances. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	75,200	62,700	54,100	55,900	57,800
Net Effect	(\$75,200)	(\$62,700)	(\$54,100)	(\$55,900)	(\$57,800)

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** A grower, processor, dispensary, independent testing laboratory, or any third-party vendor may not place or maintain, or cause to be placed or maintained, an advertisement for medical cannabis, medical cannabis products, or medical cannabis-related services on (1) radio, television, or a billboard; (2) a print publication, unless at least 85% of the audience is reasonably expected to be at least age 18; (3) public property; (4) a handbill or other specified printed material that is distributed on public property or on private property (without the consent of the owner); or (5) any website or other specified electronic communication that does not employ a neutral age-screening mechanism to determine the user is at least age 18, as specified.

Any advertisement for a grower, processor, dispensary, independent testing laboratory, certifying provider, or third-party vendor may not make any statement that is false or misleading in any material way or is otherwise a violation of MCPA.

### **Current Law/Background:**

#### *Natalie M. LaPrade Medical Cannabis Commission*

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.

There are no cannabis-specific advertising and marketing restrictions in the State. However, Chapter 598 of 2018, an emergency bill, made a number of significant reforms to Maryland's medical cannabis program, including requiring the commission to submit a report to the General Assembly on potential rules and regulations governing the advertising and marketing of medical cannabis in the State. The commission submitted this [report](#) in December 2018.

Additionally, the commission voted to approve draft regulations that address advertising by medical cannabis entities at its December 6, 2018 meeting. However, upon request of the Senate Judicial Proceedings Committee, the commission has not submitted the

proposed regulations for review by the Joint Committee on Administrative, Executive, and Legislative Review or the Division of State Documents for publication in the *Maryland Register*. Instead, the commission is holding the proposed advertising regulations until the end of the 2019 legislative session. The commission notes that the bill is identical to the draft advertising regulations.

### *Maryland Consumer Protection Act*

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**State Expenditures:** Special fund expenditures for the commission increase by \$75,216 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one full-time permanent enforcement officer to develop regulations, review and approve advertisements, and generally enforce the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- The commission is responsible for enforcing the bill's requirements.
- To enforce the bill, the commission must review advertisements submitted by regulated entities.
- The commission does not have experience with enforcing advertising regulations and cannot absorb the additional responsibilities under the bill with existing budgeted staff and resources.

	<u>FY 2020</u>	<u>FY 2021</u>
New Position	1.0	—*
Salary and Fringe Benefits	\$69,857	\$62,025
Operating Expenses	<u>5,359</u>	<u>625</u>
<b>Total State Expenditures</b>	<b>\$75,216</b>	<b>\$62,650</b>

\*Position transitions to part time.

Future year expenditures reflect a full salary with annual increases and employee turnover and going operating expenses. However, it is assumed that, as medical cannabis entities come into compliance, the enforcement officer is able to transition from a full-time to a part-time position after the first year.

The Department of Legislative Services notes that the need for the commission to hire an enforcement officer is based largely on the assumption that the commission must review at least a portion of the advertisements used by medical cannabis entities regulated by the commission. To the extent that a less robust enforcement effort is implemented, the commission's costs may be less.

OAG can handle enforcement related to unfair, abusive, or deceptive advertising under MCPA with existing resources.

**Small Business Effect:** The bill may meaningfully affect medical cannabis entities' ability to advertise in the State. Many medical cannabis entities are small businesses. Since marijuana remains illegal at the federal level, there are fewer scientific studies regarding the health effects of the use of medical cannabis. The commission notes that MCPA prohibits any medical or therapeutic claim from being made unless the claim is substantiated by at least two adequate, well controlled, double blind clinical studies. Thus, the content of advertisements under the bill is limited. The bill also limits the format of advertisements. These restrictions may negatively affect business operations and finances.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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