

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 399 (Senator West)
 Finance

Cannabis - Advertising - Prohibited Locations

This bill authorizes a cannabis licensee to submit an advertisement to the Maryland Cannabis Administration (MCA) for an advisory opinion on whether an advertisement complies with the applicable law. MCA must review the advertisement and provide the licensee with an advisory opinion within 30 days of receipt. The bill also prohibits an advertisement for a cannabis licensee, cannabis product, or cannabis-related service from being placed within 500 feet of specified locations and repeals an existing prohibition against engaging in advertising by means of placing an advertisement on the side of a building or another publicly visible location of any form, as specified.

Fiscal Summary

State Effect: Special fund expenditures for MCA increase by \$155,900 in FY 2025; future years reflect annualization, inflation, and ongoing costs. As a result of this increase, special fund revenues for MCA increase correspondingly to cover those costs, and the amount of sales and use tax revenue remaining for distribution to the general fund and various other special funds (in accordance with current law) decreases, as discussed below. (The net effect on special fund revenues is shown below.)

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	(\$77,900)	(\$92,700)	(\$96,800)	(\$101,100)	(\$105,500)
SF Revenue	\$85,700	\$102,000	\$106,500	\$111,200	\$116,000
SF Expenditure	\$155,900	\$185,400	\$193,700	\$202,100	\$211,000
Net Effect	(\$148,100)	(\$176,100)	(\$184,000)	(\$192,000)	(\$200,400)

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

Local Effect: County revenues decrease minimally, as discussed below. Expenditures are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An advertisement is prohibited from being placed with 500 feet of a (1) substance use treatment facility; (2) primary or secondary school; (3) licensed child care center or registered family child care home; or (4) playground, recreational center, library, or public park.

Current Law:

Cannabis Reform

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State following the enactment of Chapter 26 of 2022 and the passage of the associated constitutional referendum by (1) creating MCA as an independent unit of State government that is responsible for the regulation of medical and adult-use cannabis; (2) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it the Alcohol, Tobacco, and Cannabis Commission; (3) developing a licensing framework for the regulated sale of cannabis; (4) requiring all existing medical cannabis licensees to convert to adult-use cannabis businesses; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; and (6) creating the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program in OSE. The sale of adult-use cannabis began on July 1, 2023.

Cannabis Advertising

“Advertisement” means the publication, dissemination, or circulation of any auditory, visual, digital, oral, or written matter which is directly or indirectly calculated to induce the sale of cannabis or any cannabis-related product or service. “Advertisement” does not include packaging or labeling. An advertisement for cannabis, cannabis products, or cannabis-related services that make therapeutic or medical claims must (1) be supported by competent and reliable scientific evidence and (2) include information on the most serious and common side effects or risks associated with the use of cannabis. An advertisement for a cannabis licensee, cannabis product, or cannabis-related services, excluding those placed on property owned or leased by a dispensary, grower, or processor, may not:

- violate Title 13, Subtitle 3 of the Commercial Law Article (Consumer Protection Act – Unfair, Abusive, or Deceptive Trade Practices);
- directly or indirectly target individuals younger than age 21;
- contain specified representations that target minors, display the use of cannabis, promote cannabis for use as an intoxicant, or are obscene;

- engage in advertising through specified forms of media unless at least 85% of the audience is reasonably expected to be at least age 21, as specified; or
- engage in advertising by means of placing an advertisement on the side of a building or another publicly visible location of any form, including a sign, a poster, a placard, a device, a graphic display, an outdoor billboard, or a freestanding signboard.

A cannabis-related website must employ a neutral age-screening mechanism verifying the user is at least age 21 before the user may access or view any content and before the website may collect any contact information to disseminate advertisements. Similarly, if an advertisement is placed on social media or a mobile application, it must include a notification that an individual must be at least age 21 to view the content. If a website is appropriate for a qualifying patient who is younger than age 21, the website must provide an alternative screening mechanism for the qualifying patient.

Pursuant to the Code of Maryland Regulations (COMAR 14.17.14.06), all advertisements must comply with the statutory provisions specified above. A standard licensee, registrant, agent, or employee who violates any of those provisions is subject to a maximum fine of (1) for a first violation, \$1,000; (2) for a second violation occurring within 24 months of the first violation, \$5,000; and (3) for each subsequent violation occurring within 24 months of the most recent preceding violation, \$10,000. A violator may elect to pay the imposed fine or request a hearing within 30 days of receiving the fine. In accordance with specified hearing provisions, MCA may also deny, suspend, or revoke the license or registration of a licensee, registrant, agent, or employee who violates the statutory provisions related to advertising.

For further information on cannabis reform in the State see the **Appendix – Medical and Adult-use Cannabis Reform**.

State/Local Fiscal Effect:

Maryland Cannabis Administration Administrative Expenditures

MCA advises that the Natalie M. LaPrade Medical Cannabis Commission (for which MCA is the successor agency) previously issued advisory opinions on proposed advertisements to medical licensees. However, the number of cannabis businesses expected to be licensed in the adult-use and medical cannabis industry will completely eclipse the number of businesses licensed by that commission in the medical-only cannabis industry. Therefore, MCA needs additional staff to implement the bill's changes.

Thus, special fund expenditures for MCA increase by \$155,866 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring two administrators to review proposed advertisements that are submitted to MCA

and provide advisory opinions within 30 days, as required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$141,354
Operating Expenses	<u>14,512</u>
Total FY 2025 State Expenditures	\$155,866

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

Special fund revenues to the Cannabis Regulation and Enforcement Fund (CREF) for MCA increase correspondingly to cover the increase in costs, as current law requires that revenues from the sales and use tax on the sale of adult-use cannabis must first be distributed to CREF to defray the entire cost of the operations and administrative expenses of MCA.

Effect on Distribution of Sales and Use Tax Revenues

This analysis does not reflect any impact on overall sales of adult-use cannabis – and, therefore, the total amount of sales and use tax revenue collected each year – due to the bill’s changes. Any such impact would be speculative. However, the bill does affect the *distribution* of sales and use tax revenues, as discussed below.

As noted above, current law requires that revenues from the sales and use tax on the sale of adult-use cannabis must first be distributed to CREF to defray MCA’s operating and administrative costs. Remaining tax revenues are then distributed as follows: 50% to the State’s general fund; 35% to the Community Reinvestment and Repair Fund administered by the Comptroller’s Office; 5% to the Cannabis Public Health Fund administered by the Maryland Department of Health; 5% to the Cannabis Business Assistance Fund administered by Commerce; and 5% to counties. Accordingly, any increase in costs for MCA results in a decrease in the amount of tax revenue remaining for distribution under these provisions.

Thus, because the bill results in an increase in MCA’s administrative costs, the bill also results in a decrease in general fund revenues, special fund revenues for affected special funds, and county revenues, as shown in **Exhibit 1**.

Exhibit 1
Effect on Distribution of Sales and Use Tax Revenue

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
Funds Available for Distribution	(\$155,866)	(\$185,404)	(\$193,652)	(\$202,126)	(\$210,991)
State Revenues					
General Fund	(\$77,933)	(\$92,702)	(\$96,826)	(\$101,063)	(\$105,496)
CRRF	(54,553)	(64,891)	(67,778)	(70,744)	(73,847)
CPHF	(7,793)	(9,270)	(9,683)	(10,106)	(10,550)
CBAF	(7,793)	(9,270)	(9,683)	(10,106)	(10,550)
County Revenues	(\$7,793)	(\$9,270)	(\$9,683)	(\$10,106)	(\$10,550)

CBAF: Cannabis Business Assistance Fund
 CPHF: Cannabis Public Health Fund
 CRRF: Community Reinvestment and Repair Fund

Source: Department of Legislative Services

Small Business Effect: Many cannabis licensees, particularly those that will be awarded licenses in the first upcoming lottery under MCA, are considered small businesses. Such licensees likely benefit from the ability to submit a proposed advertisement to MCA for an advisory opinion and the assurance that the advertisement complies with current law before expending resources on the advertisement. Such licensees may also benefit from being able to advertise through the use of outdoor signs.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Alcohol, Tobacco, and Cannabis Commission; Maryland Cannabis Administration; Department of Legislative Services

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rh/lgc

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Appendix – Medical and Adult-use Cannabis Reform

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State by, among other things, (1) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it the Alcohol, Tobacco, and Cannabis Commission (ATCC); (2) establishing the Maryland Cannabis Administration (MCA) as an independent unit of State government that is responsible for the regulation of adult-use and medical cannabis; (3) creating a licensing framework for the regulated sale of cannabis; (4) requiring all existing medical cannabis licensees to either convert to adult-use cannabis businesses or cease operating by July 1, 2023; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; (6) creating the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program within OSE; (7) establishing an advisory board on medical and adult-use cannabis; and (8) creating the Maryland Incubator Program. Additionally, ATCC and MCA must enter a memorandum of understanding providing that both parties agree to collaborate on enforcing provisions regarding unlicensed cannabis operations in the State. Multiple special funds (discussed below) were also established to hold specified revenues and cover specified expenses related to the cannabis industry.

Maryland Cannabis Administration

MCA is an independent unit of State government established to administer and enforce the Medical and Adult-use Cannabis Title of the Alcoholic Beverages Article (including being the successor to the Natalie M. LaPrade Medical Cannabis Commission (MMCC) in matters concerning medical cannabis). MCA's responsibilities generally include promulgating cannabis industry regulations, licensing and registering cannabis businesses in the State, and enforcing the statutes and regulations related to the cannabis industry.

Adult-use Cannabis

The sale of adult-use cannabis began on July 1, 2023. Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional amendment, a person at least age 21 may use and possess the personal use amount of cannabis, while the possession of the personal use amount of cannabis by a person younger than age 21, as well as the possession of the civil use amount of cannabis, are subject to civil penalties. Possession of more than the civil use amount of cannabis by anyone is subject to a criminal penalty.

“Personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-tetrahydrocannabinol (THC); or (4) up to two cannabis plants. “Civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more

than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

Medical Cannabis

Pursuant to Chapters 254 and 255, MCA – rather than MMCC – is responsible for the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. There is a framework to certify health care providers (including physicians, physician assistants, 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. Qualifying patients may possess (1) up to 120 grams of usable cannabis; (2) cannabis-infused products containing up to 36 grams of delta-9-THC; or (3) for a qualifying patient who is at least age 21, no more than four cannabis plants.

Cannabis Industry Regulations

MCA proposed emergency regulations that took effect July 1, 2023; the emergency regulations are supplemental to the existing medical cannabis regulations. The emergency regulations (1) carry out the requirements for licensure of cannabis businesses, including implementing procedures related to applications, licenses, and registrations; (2) assist the Comptroller in the collection of taxes imposed on the sale of adult-use cannabis; (3) implement inventory management and tracking; (4) establish operating requirements for cannabis licensees or cannabis registrants; (5) establish limits on the maximum potency of cannabis products sold in the State; and (6) establish child protections, including child-resistant packaging and prohibitions on advertising to children.

Chapters 254 and 255 require that the July 1, 2023 emergency regulations be followed by nonemergency regulations adopted by MCA by July 1, 2024. These regulations must govern Internet sales of cannabis; implement and supplement packaging and labeling requirements for cannabis products; establish procedures for the use of point-of-sale technologies by dispensaries for all transactions that verify a consumer’s age using a driver’s license or other valid identification; and establish health, safety, security, and tracking requirements for the packaging and repackaging of cannabis by a dispensary. Additionally, MCA must adopt minimum standards for licensed growers to protect the rights of growers and employees.

Social Equity in the Cannabis Industry

MCA must (1) conduct extensive outreach to small, minority, and women business owners and entrepreneurs who may have an interest in applying for a cannabis license before

accepting and processing cannabis license applications and (2) connect potential social equity applicants with OSE. MCA began to implement this requirement in 2023 by attending fairs and festivals, visiting Maryland colleges and universities, and conducting technical assistance seminars.

Chapters 254 and 255 established OSE as an independent office functioning within MCA, with the general purpose of promoting and encouraging full participation in the regulated cannabis industry by people from communities that have been disproportionately impacted by the war on drugs in order to positively impact those communities. OSE has several responsibilities in furtherance of its purpose, including consulting with other agencies, providing recommendations to and working with MCA, assisting businesses to obtain financing through the Capital Access Program, and managing the Social Equity Partnership Grant Program (established to promote qualifying partnerships between operational licensees and social equity licensees).

Cannabis Licensing

To operate a cannabis business in the State, a person must obtain a cannabis license from MCA. A license is valid for five years on initial licensure and five years upon renewal. MCA must issue licenses for growers, processors, dispensaries, incubator spaces, and on-site consumption. Additional licenses include micro licenses for growers, processors, and dispensaries. Licensing and renewal fees are established by MCA and range from \$5,000 for social equity applicants for certain licenses to \$50,000 for standard grower licenses. Existing medical licensees (growers, processors, and dispensaries) were required to pay a conversion fee based on the licensee's gross revenues for calendar 2022 to convert to medical and adult-use cannabis business licensees of the same type. Essentially all medical licensees (18 grower, 23 processor, and 96 dispensary licensees) entered payment installment agreements to convert into cannabis business licensees.

First Round Social Equity Licenses: Social equity applicants are those with at least 65% ownership and control held by one or more individuals who meet certain criteria, such as living in or attending a public school in a disproportionately impacted area (*i.e.*, determined to have had above 150% of the State's 10-year average for cannabis possession charges). As announced by MCA, the available standard licenses for social equity applicants in round one total 16 grower licenses, 32 processor licenses, and 75 dispensary licenses. The available micro licenses for such applicants total 24 grower licenses, 24 processor licenses, and 8 dispensary licenses. MCA accepted 1,708 on-time applications for first round social equity licenses from November 13 through December 12, 2023.

While first round licenses were expected to be awarded through a public lottery prior to January 1, 2024, MCA was forced to delay the lottery. Before the lottery can take place, MCA must review each of the 1,708 applications (1,400 of which were received within

72 hours of the application deadline) to ensure that it meets the minimum requirements for licensure before being entered into the lottery. If selected during the lottery, an additional review of the application materials will commence before a conditional license is awarded. During the conditional period (18 to 24 months), a licensee must complete a supplemental license application to undergo a criminal and financial history background check and take additional actions, including demonstrating legal control and local zoning and planning approval of the proposed site for the cannabis business. An unconditional license is issued to applicants who satisfy the supplemental application requirements and pay a license fee.

Additional Grower License Awards for Specified Class Members: Chapters 254 and 255 also required MCA to establish a process for issuing up to five additional grower licenses to recognized class members of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) that also meet other specified criteria. As of January 1, 2024, MCA reports awarding four conditional grower licenses to qualifying class members in the State.

Second Round Licenses: Beginning May 1, 2024, MCA must begin issuing a second round of licenses. The licenses may be limited to social equity applicants or opened to applicants from the general public, dependent on the outcome of a disparity study.

Subsequent Licenses: MCA may issue additional cannabis licenses up to the maximum limit authorized per statute based on the results of a market demand study. Future applications for licenses may be limited to social equity applicants and employ remedial measures based on the results of the disparity study.

Advisory Board on Medical and Adult-use Cannabis

Chapters 254 and 255 also established the Advisory Board on Medical and Adult-use Cannabis. The advisory board must (1) consider all matters submitted to it by ATCC, the Governor, MCA, or the General Assembly; (2) on its own initiative, provide recommendations to ATCC and MCA regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration; and (3) establish at least two subcommittees to focus on medical and adult-use cannabis. As of January 1, 2024, the advisory board has not yet convened.

Cannabis Sales and Tax Revenues

The fiscal and policy note for Chapters 254 and 255 estimated adult-use sales revenues of \$400.0 million in the first fiscal year, and MCA estimated sales of \$600.0 million in the first fiscal year. However, adult-use cannabis sales from July through December 2023 totaled \$331.8 million. With six months remaining to be counted during the first fiscal year of adult-use cannabis sales, revenues will likely exceed the fiscal and policy note estimate

and possibly MCA's estimate. At the established tax rate of 9%, approximately \$29.9 million in tax revenues have already been generated during the first six months of adult-use cannabis sales.

Local Authority to Regulate Cannabis

A "political subdivision" – defined as a county or municipality – may (1) establish reasonable zoning requirements for cannabis businesses that do not "unduly burden" licensees; (2) decide how to distribute its allocation of tax revenues; and (3) adopt an ordinance to *reduce* the statutory requirements for how far a dispensary may be located from specified locations (*e.g.*, schools, child care centers, playgrounds, libraries, etc.).

A political subdivision may not (1) prohibit transportation through or deliveries within the political subdivision of cannabis; (2) prevent the conversion of an existing medical cannabis licensee to a cannabis business license; (3) impose fees or requirements on cannabis businesses that are disproportionately greater than or more burdensome than other businesses; and (4) impose a tax on cannabis.

Additionally, an on-site consumption establishment may not operate in a location unless the political subdivision affirmatively authorizes the operation by issuing a permit or license. The political subdivision may also place restrictions on or prohibit the operation of on-site consumption establishments.

Public Health Actions Related to Adult-use Cannabis

Chapter 26 (and the subsequent passage of the associated constitutional amendment) established the Cannabis Public Health Advisory Council to study and report its findings and recommendations by December 1 each year on specified public health impacts of cannabis legalization. The council convened its first meeting in August 2023, forming data collection and youth mitigation workgroups. The Cannabis Public Health Fund was also established to (1) support the advisory council; (2) support data collection and research on the effects of cannabis legalization in the State; (3) provide funding for education and public awareness campaigns related to cannabis use, including funding for educational programs to be used in schools; (4) support substance use disorder counseling and treatment for individuals; (5) provide training and equipment for law enforcement to recognize impairments due to cannabis; and (6) purchase technology proven to be effective at measuring cannabis levels in drivers. The Maryland Department of Health must administer the fund, which consists of revenues distributed to the fund based on tax revenues from the sale of adult-use cannabis (5% of those revenues), money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The fiscal 2023 budget included \$5.0 million for initial capitalization of the fund.

Cannabis-related Special Funds

Cannabis Regulation and Enforcement Funds: Chapters 254 and 255 established the Cannabis Regulation and Enforcement Fund, administered by the Comptroller at the direction of MCA, to cover the costs of (1) operating MCA and (2) administering and enforcing the Medical and Adult-use Cannabis Title of the Alcoholic Beverages Article. The fund generally consists of fees the administration may impose (including application and registration fees) and tax revenues from the sale of adult-use cannabis sufficient to defray the entire cost of operating the administration. In addition, the balance of the Natalie M. LaPrade Medical Cannabis Fund, approximately \$12.3 million, was credited to the fund to cover the costs of implementing the Acts and regulating the cannabis industry in Maryland.

Community Reinvestment and Repair Fund: Chapter 26 also established the Community Reinvestment and Repair Fund, to be administered by the Comptroller, with the stated purpose of providing funds to community-based organizations that serve communities determined by OSE (in consultation with the Office of the Attorney General) to have been the most impacted by disproportionate enforcement of the cannabis prohibition before July 1, 2022. The fund consists of conversion fees paid by medical licensees totaling approximately \$60.9 million. The fund also receives 35% of the tax revenues from the sale of adult-use cannabis, distributed on a quarterly basis.

Cannabis Business Assistance Fund: Chapter 26 (and the subsequent passage of the associated constitutional amendment) established the Cannabis Business Assistance Fund to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. The Department of Commerce (in consultation with OSE) must administer the fund and must prioritize awarding grants and loans to (1) populations that have been historically disproportionately impacted by the enforcement of cannabis laws and (2) individuals who have been convicted of cannabis offenses. Commerce may not award grants or loans to small, minority, and women business owners and entrepreneurs with a personal net worth exceeding \$1.7 million. The fiscal 2023 budget included \$40.0 million for initial capitalization of the fund, and the fiscal 2024 budget includes \$40.0 million for the fund. The fund also receives 5% of the tax revenues from the sale of adult-use cannabis, distributed on a quarterly basis.