

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 439
 Finance

(Senator Jackson)

Economic Matters

Employment Discrimination - Fire and Rescue Public Safety Employees - Use of Medical Cannabis

This bill prohibits an employer of a fire and rescue public safety employee, on the basis of the employee’s possession of a valid written certification for medical cannabis or a positive test for cannabis components or metabolites while holding a valid written certification, from (1) disciplining, discharging, or otherwise discriminating against the employee with respect to the employee’s compensation, terms, conditions, or privileges of employment or (2) limiting, segregating, or classifying its employees in any way that would deprive or tend to deprive the employee of employment opportunities or otherwise adversely affect the employee’s status as an employee. The bill’s prohibitions are subject to additional restrictions on applicability.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Commission on Civil Rights (MCCR) increase by \$67,800 in fiscal 2027; future years reflect annualization and inflation. In addition to operational impacts, State expenditures may also increase further based on the State’s role as an employer, as discussed below. No anticipated effect on revenues.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	67,800	78,200	81,900	85,700	89,400
GF/SF Exp.	-	-	-	-	-
Net Effect	(\$67,800)	(\$78,200)	(\$81,900)	(\$85,700)	(\$89,400)

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

Local Effect: Potential fiscal and operational impact on local governments, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill does not require an employer to commit an act that would violate federal law or regulations or cause the employer to lose a monetary or licensing-related benefit under federal law or regulations. The bill also does not prohibit an employer from adopting policies and procedures that prohibit the employee from performing the employee's duties while impaired by cannabis, or prohibiting an employee's use of cannabis while on duty. If an employee reports for work while impaired by cannabis, the employer must report the incident to the State Emergency Medical Services Board.

"Fire and rescue public safety employee" means a firefighter, an emergency medical technician, a cardiac rescue technician, or a paramedic employed by (1) a municipal corporation; (2) a county; (3) the State; (4) the State Airport Authority; or (5) a fire control district.

Current Law:

Discrimination in Employment – Generally

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, military status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

Subject to limited exceptions, on any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. An employer is also prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; however, State law does not require an employer to reasonably accommodate a disability if the accommodation would cause undue hardship on the conduct of the employer's business. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the

employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, and labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees (based on the number of employees working in each of 20 or more calendar weeks in the current or preceding calendar year). Provisions relating to harassment allegations apply to employers with 1 or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

Employment Discrimination Complaints – Initial Process, Administrative Proceedings, and Civil Actions

Initial Process: MCCR is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

Administrative Proceedings: At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint if the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

Civil Actions: A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation), however, these time limitations are tolled while an administrative charge or complaint is pending. The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages in a private civil action if the respondent is not a governmental unit or political

subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages (as shown above). If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney’s fees, expert witness fees, and costs.

Medical Cannabis Use

Chapter 403 of 2013 authorized use of cannabis for medical purposes. For more information on legal cannabis use in the State, see the **Appendix – Medical and Adult-Use Cannabis**.

“Written certification” means a certification that (1) is issued by a certifying provider to a qualifying patient with whom the provider has a *bona fide* provider-patient relationship; (2) includes a written statement certifying that, in the certifying provider’s professional opinion, after having completed an assessment of the patient’s medical history and current medical condition, the patient has a condition that meets the inclusion criteria and for which potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient, as specified; and (3) may include a written statement certifying that, in the certifying provider’s professional opinion, a 30-day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

State and Local Expenditures:

Maryland Commission on Civil Rights

General fund expenditures for MCCR increase by \$67,766 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring one civil rights officer to investigate an anticipated increase in complaints due to the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.0
Salary and Fringe Benefits	\$58,625
Operating Expenses	<u>9,141</u>
Total FY 2027 State Expenditures	\$67,766

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

MCCR advises that current staff are already working at capacity and unable to absorb additional complaints expected under the bill. MCCR further notes that it receives federal reimbursements for investigating complaints related to employment discrimination from the U.S. Equal Employment Opportunity Commission (EEOC), but that any employment discrimination complaints filed under the scope of the bill are not eligible for reimbursement under MCCR's contractual relationship with EEOC, because federal statute does not afford the same protection as the bill. Accordingly, MCCR needs to ensure that investigating any additional cases under the bill does not negatively impact its case closure rate and potentially impact federal funding.

State and Local Governments as Employers

The Department of Budget and Management (DBM) reports an indeterminate fiscal and operational impact based on the State's role as an employer. According to DBM, even with the bill's exclusions permitting employers to continue prohibiting impairment at work, the bill presents challenges for the employing entity to determine when the use of cannabis occurred and the level of any impairment of an employee on the job. The State may experience increased costs to the extent that employees challenge disciplinary or other adverse actions based on alleged violations of the protections afforded under the bill. DBM further notes that there may be an increase in litigation against the State (and enhanced exposure to liability) if a public safety employee is found to be impaired during the provision of services. Local governments experience similar impacts; the Maryland Association of Counties reports that the bill significantly expands counties' exposure to liability and the Maryland Municipal League advises of the potential for administrative and legal challenges. Harford County also anticipates minor costs associated with updating existing drug-testing and human resources policies to align with the new protections.

In addition, Baltimore City advises of the potential loss of significant federal grant funding, noting generally that grantees are required to maintain a drug free work environment (including the use of cannabis, even when medically prescribed). However, the bill explicitly includes the following: (1) employers are *not* prohibited from adopting policies that ban employees from performing duties while impaired; (2) employers are *not* prohibited from banning employees from using cannabis while on duty; (3) employers *are* required to report employees who report to work while impaired to the EMS board; and (4) employers are *not* required to commit acts that would violate federal law or cause the employer to lose monetary or other benefits under federal law.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 1023 and HB 1408 of 2025.

Designated Cross File: HB 797 (Delegate Boaf0) - Economic Matters.

Information Source(s): Maryland Commission on Civil Rights; Maryland Institute for Emergency Medical Services Systems; Baltimore City; Harford and Montgomery counties; Maryland Association of Counties; City of Annapolis; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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Appendix – Adult-use Cannabis Sales and Use Tax and Revenues

Cannabis Sales and Use Tax Revenues

Chapters 254 and 255 of 2023 established a 9% sales and use tax on the retail sale of adult-use cannabis, and the Budget Reconciliation and Financing Act (BRFA) of 2025 (Chapter 604) increased the tax rate to 12% beginning in fiscal 2026. In the second year of adult-use cannabis sales (July 1, 2024, through June 30, 2025), retail sales generated approximately \$71.8 million in sales and use tax revenues. Adult-use cannabis sales and use tax collections for the first quarter of fiscal 2026, when the 12% sales and use tax rate went into effect, totaled \$26.9 million; collections are on track to exceed \$100.0 million in fiscal 2026.

Distribution of Cannabis Sales and Tax Revenues

Per statute, as amended by the BRFA of 2025, the Comptroller must distribute the first 25% of sales and use tax revenues from the sale of adult-use cannabis to the general fund. Of the remaining 75% of the sales and use tax revenues, the Comptroller must *first* distribute to the Cannabis Regulation and Enforcement Fund (CREF) and the Department of Social and Economic Mobility (DoSEM) Fund an amount sufficient to defray the operating and administrative costs of the Maryland Cannabis Administration and the Office of Social Equity, respectively. Revenues remaining after those distributions to CREF and DoSEM are *then* distributed as follows: 50% to the State's general fund (through fiscal 2028, after which the general fund distribution increases to 55%); 35% to Community Reinvestment and Repair Fund (through fiscal 2033 only), which is administered by the Comptroller's Office with oversight assistance from the Office of Social Equity; 5% to the Cannabis Public Health Fund, which is administered by the Maryland Department of Health; 5% to the Cannabis Business Assistance Fund (through fiscal 2028 only), which is administered by the Department of Commerce; and 5% as a separate direct allocation to counties.