2022 SESSION
POSITION PAPER

BILL NO: HB 837
COMMITTEE: Judiciary
POSITION: Support with Amendments

TITLE: Cannabis Reform

BILL ANALYSIS: House Bill (HB) 837 would legalize the use and possession of 1.5 ounces or less of cannabis if voters ratify the proposed Constitutional Amendment in House Bill 1 (2022). The bill's provisions that directly impact the Maryland Medical Cannabis Commission (the Commission) would (1) require the Commission to conduct a baseline study on the use of cannabis in Maryland, (2) establish a Cannabis Public Health Advisory Council and require the Executive Director of the Commission to serve on the Council, (3) require licensed and preapproved medical cannabis growers, processors, and dispensaries to provide certain confidential financial data to the Commission by July 1, 2022, contingent upon whether the data is determined to be necessary to assess the need for remedial measures in the cannabis industry, and (4) require the Commission to conduct a study and make recommendations to the General Assembly on authorizing qualifying patients to grow medical cannabis at home for personal use.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission supports House Bill 837, with the proposed amendments outlined below.

The Commission commends Chair Clippinger for prioritizing health alongside racial and socioeconomic equity, and pursuing a data-driven approach to adult-use cannabis legalization. Eighteen (18) states and the District of Columbia have legalized the use or possession of cannabis by a person 21 years of age or older, and HB 837 incorporates several best practices from these jurisdictions, including (1) conducting a baseline study on cannabis use in the State, (2) establishing an advisory council to make health and safety recommendations, and (3) evaluating the impact of certain policy decisions, such as home grow, prior to implementation. These are detailed below.

1. Conducting a comprehensive baseline study of cannabis use in Maryland. The Commission's 2020 analysis of the health and safety impacts of legalization concluded that pre-legalization data is often insufficient or is not collected/reported in the same manner as post-legalization data, which makes conducting a true comparative analysis of pre- and post-legalization impossible. A comprehensive baseline study, combined with biennial follow-up surveys using the same factors and methodology, will allow the State to accurately monitor and assess the impact of cannabis use in Maryland, and better inform policy decisions. The Commission strongly supports the comprehensive baseline study proposed in HB 837, and is actively working to recruit additional research staff and develop a scope of work to conduct the study.

2. Establishing a Cannabis Public Health Cannabis Advisory Council. Cannabis contains substances that affect the brain and body, and cannabis use is associated with adverse health effects and harms, particularly for youth. While data do not reflect major changes in youth use, heavy use, or cannabis use disorder as a result of passage of adult-use cannabis laws in other states, education and prevention efforts are critical to limiting adverse impacts. Canada and several U.S. jurisdictions have successfully used advisory bodies to inform health, safety, and regulatory efforts. The Commission supports the Cannabis Public Health Advisory Council and appreciates the sponsor's efforts to bring together a wide-range of subject matter experts to advise the State on the implementation and regulation of adult-use cannabis.

3. Home Grow Study. The Commission understands that home cultivation of cannabis for personal use is strongly supported by cannabis consumers, but may raise certain health, safety, and diversion concerns for policymakers. The Commission is committed to evaluating the laws adopted in other jurisdictions and presenting the General Assembly with recommendations on home cultivation and best practices for implementation.

HB 837 presents a measured, evidence-based incremental approach to a dramatic policy change for the State. The Commission proposes to further strengthen the bill with three amendments. These amendments are based on information provided to the Commission by regulator colleagues in other jurisdictions and lessons learned over the past eight years developing, implementing, and administering Maryland's Medical Cannabis Program.

Recommendations

1. Amend the definition of cannabis to include other types of tetrahydrocannabinols. HB 837 defines cannabis as the *Cannabis sativa L.* plant with a delta-9 tetrahydrocannabinol (THC) concentration greater than 0.3% on a dry weight basis. This definition exempts other THC isomers (delta-8, delta-10, etc.), which provide a similar psychoactive effect or "high" to delta-9. Due to a gap in federal and state law, manufacturers are producing psychoactive THC products that contain these THC isomers that are similar to delta-9 THC yet are legal and are widely available across Maryland, most commonly without any laboratory testing or age restrictions. These products are entirely unregulated and can pose serious health risks. Since 2019, at least 21 states have quickly mobilized to regulate or ban delta-8 and similar psychoactive THC products. To that end, the Commission urges the General Assembly to amend the definition of cannabis to include these other intoxicating types of THC. By amending the definition of cannabis, the State will additionally be able to regulate these THC isomers.

2. Mandate data collection and specify the information required from medical cannabis businesses for the disparity study. Section 7(c)(1) requires the Commission to collect "any information determined to be necessary [by the certification agency] to continue to assess the need for remedial measures in the cannabis industry and market" that ***may*** include certain specified data. The Commission understands the importance of a disparity analysis to adult-use licensing, and wants to support the data collection efforts, but has the following concerns about Section 7(c)(1), as drafted:

    i. Data collection is contingent on "the certification agency" determining existing data and analyses are insufficient. This creates significant uncertainty for the

Commission and medical cannabis licensees as to whether data will be needed, and if so, the exact data being requested.

ii. Section 7 takes effect on June 1, 2022 giving the Commission and medical cannabis businesses a maximum of 30 days to collect six years' worth of financial data. Medical cannabis businesses, particularly small, independent operators, have expressed concerns about their ability to identify, compile, and submit these data in such a short time period. Likewise, the Commission does not believe it is feasible for the Commission to ensure compliance of more than 150 medical cannabis businesses within a maximum of 30 days.

iii. The scope of the data request is undefined in the bill. Neither the Commission nor medical cannabis businesses can prepare for the data collection in advance of the bill taking effect because the scope of the data request is not defined in Section 7.

The Commission proposes that Section 7 be amended to (1) mandate data collection for medical cannabis businesses (rather than making it contingent on a determination by the certification agency), (2) specify the exact information required to allow the Commission and medical cannabis businesses the opportunity to prepare in advance of the June 1 effective date, and (3) provide the Commission and medical cannabis businesses with 90 to 180 days to comply with such a large records request. The General Assembly may also wish to establish penalties for medical cannabis businesses that fail to comply with Section 7(c).

3. Authorize regulatory change triggered by referendum. Several sections of the bill are contingent on the passage of HB 1 and its ratification by the voters of the State. The Commission recommends identifying the agency that will be tasked with the regulation of adult-use cannabis so that the Commission or another state agency is able to better prepare if HB 1 is ratified by the voters.

   Because HB 837 is silent as to which regulatory agency would provide oversight of the adult-use cannabis program, it will result in unnecessary delays and thereby impede implementation. Transitioning from a medical-only market to a medical and adult-use market requires significant and lengthy administrative changes, including substantially expanding staff, developing tax collection software, and modifying the State's seed-to-sale system to accommodate adult-use businesses. Each of these activities will require 12 months or longer to complete. The sooner the Commission or another agency is able to begin preparing for an adult-use market, the better equipped it will be to implement the statutory framework the General Assembly puts into place in 2023. Moreover, if Commission staff are transferred to the Alcohol and Tobacco Commission, as was contemplated in legalization bills in 2020 and 2021, the transition will also require establishing unified human resources, information technology, and procurement processes and systems, and securing office space for the combined staffs. The median length of time across states from passage of legislation to licensing 21 months. The State can reduce this timeframe by identifying the regulatory oversight agency so that the Commission may begin preparing for the regulation of adult-use cannabis or transferring staff to the Alcohol and Tobacco Commission, if HB 1 is ratified by the voters.

The Commission would appreciate a favorable report on HB 837, with the proposed amendments. For more information, please contact Will Tilburg, Executive Director at (410) 487-8069 or william.tilburg@maryland.gov.

This position does not necessarily reflect the position of the Maryland Department of Health or Office of the Governor.