

# Department of Legislative Services

Maryland General Assembly

2001 Session

## FISCAL NOTE

Senate Bill 705 (Senator Currie, *et al.*)

Judicial Proceedings

### Marijuana - Exceptions for Medical Use

This bill provides medical use exceptions to prohibitions against the use of marijuana.

### Fiscal Summary

**State Effect:** General fund revenue increase of \$46,700 and general fund expenditure increase of \$53,900 in FY 2002 attributable to the Department of Health and Mental Hygiene. Out-years reflect annualization and inflation. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provision. The extent to which this bill could obviate State law enforcement arrests, District Court trials, and imprisonment in Division of Correction facilities for crimes related to the possession and use of marijuana and its paraphernalia that would otherwise occur cannot be reliably predicted.

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
GF Revenue	\$46,700	\$49,000	\$51,500	\$54,100	\$56,800
GF Expenditure	53,900	67,700	71,000	74,400	78,000
Net Effect	(\$7,200)	(\$18,700)	(\$19,500)	(\$20,300)	(\$21,200)

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

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's penalty provisions. The extent to which this bill could obviate local law enforcement arrests, circuit court trials, and imprisonment in local facilities for crimes related to the possession and use of marijuana and its paraphernalia that would otherwise occur cannot be reliably predicted.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** This bill allows a person with a “debilitating medical condition” and with a “written certification” or a “registry identification card” to possess and use marijuana and related drug paraphernalia. The bill also provides the circumstances under which a caregiver for such a person is extended the same legal protections. The bill allows physicians to recommend marijuana, and provides a certain immunity to physicians with eligible patients. The bill establishes certain immunities, affirmative defenses, and presumptions.

The bill prohibits accommodation for marijuana use from being required in places of employment. Insurance coverage is not required for its medical use. Persons are prohibited from making fraudulent representations to law enforcement officers, to avoid arrest or prosecution, regarding medical marijuana use.

Violators of these provisions are guilty of a misdemeanor and subject to maximum penalties of a fine of \$1,000 and/or imprisonment for one year.

In addition, the bill requires the Department of Health and Mental Hygiene (DHMH) to adopt regulations for the issuance and annual renewal of registry identification cards by January 1, 2002. DHMH is required to issue registry identification cards to qualifying patients and their caregivers who: (1) provide a written certification; (2) pay a registration fee not exceeding \$25; (3) provide the name, address, and date of birth of the qualifying patient; (4) provide the name, address, and telephone number of the qualifying patient’s physician; and (5) provide the name, address, and date of birth of any caregiver of the qualifying patient. DHMH is required to verify the information submitted and approve or deny the application within 30 days of receipt of the application. An application may be denied only if the required information was not submitted or was submitted falsely. If an application is denied, the applicant may not reapply for six months, unless authorized by DHMH or a court of competent jurisdiction.

Cards must be issued within five days of approval. If there is a change in information applicable to the cardholder, the cardholder must give DHMH notice within ten days of the occurrence of the change. If notice is not given, the card is void.

DHMH is required to maintain a confidential list of the individuals who have been issued cards. The possession of, or application for, a registry identification card may not by itself constitute probable cause for a personal or property search or otherwise subject the person or property of a cardholder to inspection by a government agency.

By December 30, 2001, DHMH must adopt regulations governing how it will consider petitions submitted by physicians or patients to add debilitating conditions to those qualifying for certification under the bill. The regulations must require that, in considering a petition, DHMH provide public notice of, and an opportunity to comment

at, a public hearing on a petition. DHMH must approve or deny a petition within 180 days. The approval or denial is subject to judicial review.

The bill's provisions are severable.

**Current Law:** Marijuana has been a Schedule I controlled dangerous substance under both State and federal drug prohibitions since 1970. Schedule I drugs are considered to have the highest potential for abuse and offenses involving these drugs are generally treated as more serious than those involving substances on the other four schedules. However, violators of prohibitions against simple possession or use of marijuana are subject to maximum misdemeanor penalties of a fine of \$1,000 and/or imprisonment for one year. Violations of provisions relating to the manufacture, sale, or distribution of Schedule I drugs are subject to more severe penalties.

An oral form of marijuana's principal active ingredient, delta-9-tetrahydrocannabinol (THC), called dronabinol, is approved as a treatment for nausea and vomiting related to cancer chemotherapy. Dronabinol also is used to stimulate the appetite of AIDS patients.

The District of Columbia had a medical marijuana use initiative on the ballot in November, 1998, but a Congressional amendment on the appropriations bill for the District kept the results of the vote from being counted or announced by the Board of Elections until recently. A federal judge ordered the results to be counted, certified, and released. The initiative was approved by 69% of the voters.

Seven states have passed medical marijuana laws. They are Alaska, Arizona, California, Nevada, Oregon, and Washington. Arizona and California voters approved medical marijuana laws in 1996. Voters in Alaska, Nevada, Oregon, and Washington approved laws in 1998. Arizona voters reaffirmed their medical marijuana law in 1998. Nevada voters must re-approve their proposal in the year 2000 before it can officially become law.

In all, twenty-three states have some current statute relating to the medical use of marijuana. Virginia, Connecticut, Vermont, and New Hampshire are among the states that have authorized doctors to prescribe marijuana.

All of these laws are now dormant because they conflict with federal law, or are reliant on the federal government to supply the state with marijuana, and federal officials are no longer supplying marijuana to states.

The statutes passed in Alaska, Oregon, Nevada, and Washington exempt patients from criminal penalties when they use marijuana under the supervision of a physician. In 1999, voters in Arizona reaffirmed a medical marijuana initiative passed two years ago, and rejected a legislative requirement banning physicians from prescribing marijuana until the drug receives approval from the Food and Drug Administration.

The laws passed in Alaska and Oregon legalize the possession of specified amounts of medical marijuana to patients enrolled in a state identification program. Patients not enrolled in the program, but who possess marijuana under their doctor's supervision, may raise an affirmative defense of medical necessity against state criminal marijuana charges. State law in Nevada requires voters to re-approve medical marijuana again in the year 2000 before the measure can officially become law.

Washington state's new medical marijuana law allows patients to possess up to a 60-day supply of marijuana if they have authorization from their physician. The medical marijuana law for the District of Columbia is similar to that of Washington State.

**State Revenues:** Based on information from Alaska where a similar program was operated, DHMH expects approximately 1,868 successful applications for registry identification cards in fiscal 2002. Assuming a fee of \$25 per card, this would generate \$46,700 in additional general fund revenue in fiscal 2002. With an anticipated growth rate of 5% annually (due in part to the prospect of adding additional qualifying debilitating conditions), general fund revenue is estimated to grow to \$56,775 by fiscal 2006.

General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures could increase by an estimated \$53,912 in fiscal 2002, which accounts for the bill's October 1, 2001 effective date. This estimate reflects the cost of hiring an administrative officer to operate and manage the registry identification card program. It includes a salary, fringe benefits, one-time start-up costs, printing costs for the identification cards, and ongoing operating expenses.

Salary and Fringe Benefits	\$42,586
Printing	4,500
Other Operating Expenses	<u>6,826</u>
<b>Total FY 2002 State Expenditures</b>	<b>\$53,912</b>

Future year expenditures reflect: (1) full salaries with a 6.5% increase in fiscal 2003 and a 4.5% increase each year thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses including annual printing costs.

The drafting of regulations for both the registry identification card program as well as the review of petitions to consider adding debilitating conditions to those qualifying for certification under the bill would be handled by existing DHMH staff. DHMH advises that staffing contributions from the Alcohol and Drug Abuse Administration, the AIDS

Administration, and the Community and Public Health Administration would be used to form an agency unit to review applications and petitions submitted pursuant to the regulations.

The criminal penalty provisions of this bill are not expected to significantly affect State expenditures.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** The bill's criminal penalty provisions are not expected to significantly affect local expenditures.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 940 (Delegate Murphy, *et al.*) – Judiciary.

**Information Source(s):** Department of Health and Mental Hygiene (Alcohol and Drug Abuse Administration, Community Public Health Administration), Department of Public Safety and Correctional Services (Division of Correction), Office of State's Attorneys' Coordinator, Department of Legislative Services

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