

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1453
 Judiciary

(Delegate Anderson, *et al.*)

Criminal Law - Marijuana - Regulation, Penalties, and Taxation

This bill (1) removes criminal penalties for the use and possession of marijuana and marijuana paraphernalia by individuals age 21 and older; (2) legalizes the use, possession, sale, and cultivation of marijuana under specified circumstances; (3) authorizes personal cultivation of marijuana plants in limited quantities; (4) establishes a regulatory framework for wholesalers, retailers, and safety compliance facilities; (5) requires the Comptroller to register marijuana retailers, wholesalers, and safety compliance facilities; (6) requires the Maryland Department of Agriculture (MDA) to regulate the growth, processing, and distribution of industrial hemp; (7) imposes an excise tax of \$50 per ounce on wholesale sales of marijuana; and (8) directs the revenues from excise tax collections to specified programs.

Fiscal Summary

State Effect: Assuming robust participation in the State-regulated marijuana market, general fund revenues may increase significantly beginning in FY 2015 from taxes on marijuana and registration fees, partially offset by (1) a potentially significant reduction in general fund revenues from fines imposed in marijuana-related cases in the District Court; (2) general fund expenditures for administration/regulation by the Comptroller that increase by at least \$864,500 in FY 2015 and by at least \$980,000 by FY 2018; and (3) increase in general fund expenditures for the Department of Health and Mental Hygiene (DHMH) for substance abuse treatment programs and medical marijuana research. MDA can fulfill the bill’s requirements with existing budgeted resources.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	\$0
GF Expenditure	\$864,500	\$853,700	\$893,800	\$935,900	\$980,000
Net Effect	(\$864,500)	(\$853,700)	(\$893,800)	(\$935,900)	(\$980,000)

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

Local Effect: Potential significant decrease in local revenues from circuit court monetary penalties. Increase in local revenues from tax proceeds and expenditures for substance abuse programs.

Small Business Effect: Meaningful impact on marijuana and industrial hemp businesses.

Analysis

Bill Summary: The bill's provisions do not repeal or modify a law concerning medical use of marijuana or tetrahydrocannabinol (THC) in other forms. The bill does not exempt a person from arrest, existing civil or criminal penalties, seizure or forfeiture of assets, discipline by a State or local licensing board, or State prosecution for (1) driving, operating, or being in control of a vehicle or vessel while impaired by marijuana; (2) possession of marijuana by a prisoner; or (3) possessing marijuana in a correctional facility, including a juvenile detention facility.

I. Criminal Penalties – Generally

Persons: A person who is at least 21 years old who complies with the bill's provisions is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including (1) using, possessing, obtaining, purchasing, or transporting one ounce (28 grams) or less of marijuana and no more than three marijuana plants or cuttings; (2) growing up to three marijuana plants; and (3) using, possessing, purchasing, or manufacturing marijuana paraphernalia.

A person who is at least 21 years old may (1) manufacture, produce, use, obtain, purchase, transport, or possess marijuana paraphernalia and (2) sell or distribute marijuana paraphernalia to retailers, wholesalers, or persons who are at least 21 years old.

A person who engages in these activities but does not comply with the bill's requirements is subject to specified criminal penalties.

Retailers: A compliant retailer, or a person older than age 21 acting as an owner, employee, or agent of a compliant retailer, is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including: (1) obtaining or purchasing marijuana from a wholesaler; and (2) selling, transferring, or delivering marijuana paraphernalia or marijuana/ marijuana plants obtained from a wholesaler to a person who is at least 21 years old.

A retailer may not (1) sell, give, or otherwise furnish marijuana or marijuana paraphernalia to a person who is younger than age 21; (2) allow a person younger than 21 to be present in a room where marijuana is sold or stored, with limited exceptions; (3) sell, give, or otherwise furnish more than one ounce or three marijuana plants, seedlings, or cuttings to a person in a single transaction; (4) knowingly and willfully sell, give, or otherwise furnish an amount of marijuana to a person that would cause that person to possess more than those specified amounts/quantities; (5) purchase marijuana, other than marijuana seeds, from a person other than a wholesaler; or (6) violate the Comptroller's regulations. In addition to penalties provided by law, violators are guilty of a misdemeanor, punishable by a maximum fine of \$1,000. The bill establishes a complete defense under specified circumstances if the offense involved a document that appeared to have been issued by a governmental entity indicating that the underage person was at least 21 years old.

Wholesalers: A compliant wholesaler, or a person older than age 21 acting as an owner, employee, or agent of a compliant wholesaler, is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by a State or local licensing board, and State prosecution for several specified acts, including (1) growing, packing, processing, transporting, or manufacturing marijuana; (2) possessing, transporting, selling, or producing marijuana paraphernalia; (3) selling marijuana to a retailer or wholesaler; (4) purchasing marijuana from a wholesaler; and (5) purchasing marijuana seeds from a person older than age 21.

A wholesaler may not (1) allow a person younger than age 21 to be present on the premises of an enclosed, locked facility where marijuana is grown or in a room where marijuana is sold or processed, with limited exceptions; (2) sell, give, or otherwise furnish marijuana to a person other than a retailer, a wholesaler, a safety compliance facility, or employees/agents acting on their behalf; (3) purchase marijuana, other than marijuana seeds, from a person other than a wholesaler; or (4) purchase, sell, give, or otherwise furnish marijuana in a manner outside of the bill's provisions and regulations adopted pursuant to the bill. Violators are guilty of a misdemeanor, punishable by a maximum fine of \$1,000. The bill establishes a complete defense under specified circumstances if the offense involved a document that appeared to have been issued by a governmental entity indicating that the underage person was at least 21 years old.

Safety Compliance Facilities: A safety compliance facility, or a person who is at least 21 years old and acting as an owner, employee or agent of a compliant safety compliance facility, may not be subject to State prosecution, search (except for specified searches by the Comptroller), seizure, or penalty, or be denied a right or privilege for specified acts, including: (1) receiving compensation for analytical testing, including for contaminants or potency; and (2) acquiring, possessing, or transporting marijuana obtained from wholesalers or retailers or, if the quantity does not exceed one ounce per person, an adult who is at least 21 years old.

Underage Possession: A person younger than age 21 may not possess marijuana. A violation is a civil offense, subject to forfeiture of the marijuana and completion of up to four hours of instruction in a drug awareness program. The parents or legal guardians of an offender who is younger than age 18 must be notified of the offense and of available drug awareness programs, which must be established by the Department of Health and Mental Hygiene (DHMH). DHMH must set fees for the program that are sufficient to cover all costs of administering the program, but not in excess of \$300. An offender who fails to complete a drug awareness program within one year of notice of the offense and available programs is subject to a civil penalty of up to \$300 and/or up to 20 hours of community service.

False Representation of Age: A person may not falsely represent that he/she is at least 21 years old to obtain marijuana or marijuana paraphernalia. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 days and/or a \$250 maximum fine.

Smoking Marijuana in Public Places: The bill prohibits a person from smoking marijuana in an indoor or outdoor “public place.” A “public place” is defined as a street, an alley, a park, a sidewalk, or a public building other than an individual dwelling, or a place of business or assembly open to or frequented by the public, or any other place to which the public has access. An indoor violation is a misdemeanor, punishable by imprisonment for up to 10 days and/or a \$250 maximum fine for a first violation or imprisonment for up to 30 days and/or a \$500 maximum fine for a second or subsequent violation. An outdoor violation is a civil offense, punishable by a \$150 fine. Municipalities can impose additional fines equivalent to local fines for the consumption of alcohol in an outdoor public place.

Expungements of Convictions: The bill’s provisions must, by operation of law, expunge the conviction of a person previously convicted of possession of one ounce (28 grams) or less of marijuana or possession of marijuana paraphernalia, provided that the person was at least 21 years old at the time of conviction.

II. Growing Marijuana

The bill authorizes an adult who is at least 21 years old to grow or manufacture up to three marijuana plants. However, a person may not grow or manufacture a marijuana plant without a zip tie, which is a fastener capable of being attached to the plant that is produced by or at the direction of the Comptroller.

Zip Tie Requirement: A zip tie must be attached to or within 12 inches of each plant. Failure to comply with this provision is a civil violation punishable by a \$500 maximum fine for one plant without a zip tie, or a \$1,000 maximum fine for two or three plants

without a zip tie. However, the penalty does not apply if (1) on any day within the 30 days preceding the day when law enforcement encountered the plant without a zip tie, the Comptroller's website did not list an official location to anonymously procure zip ties in the same county where the person resides and (2) the adult age 21 or older or a person acting on the adult's behalf attempted to purchase a zip tie from a location on the Comptroller's website during that time period, but the location did not have a sufficient number of zip ties available, was not open during the posted hours, or did not meet the statutory requirements for a zip tie location.

Growing Locations: An adult who is at least 21 years old may not:

- manufacture or grow marijuana plants in a location where the plants are subject to public view without the use of optical aids, such as binoculars;
- grow marijuana outdoors other than in an enclosed area, such as a fenced-in area;
- grow marijuana on property that is not lawfully in possession of the grower or without the consent of the person in lawful possession of the property; or
- allow one or more persons younger than age 21 to live in or be guests at the property where the marijuana is being grown without taking reasonable precautions, which may include growing the marijuana in a locked closet, room, or fully enclosed area to which the underage person does not possess a key.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 days and/or a maximum fine of \$1,000.

Zip Tie Locations: Within 120 days of the bill's October 1, 2013 effective date, the Comptroller must establish procedures for (1) State residents to anonymously purchase zip ties for a \$100 annual fee per plant and (2) online purchases of zip ties.

- **Brick and Mortar Locations:** The Comptroller must ensure that there is at least one indoor zip tie location in each county that is open 40 hours per week during weekdays and 10 hours per week during weekends. Zip tie locations may be operated by State or local government agencies or private businesses. The Comptroller must post a list of zip tie locations and the hours of operation for these locations on its website. A person purchasing a zip tie may not be subject to surveillance by video cameras or still photography.
- **Online Purchases:** The Comptroller is required to establish a means for State residents to make online purchases of zip ties within 120 days of the bill's October 1, 2013 effective date. Zip ties must be mailed to an online purchaser within 15 days of the purchase.

A zip tie purchaser must provide his/her date of birth and attest to his/her State residency at the time of purchase. The Comptroller and the zip tie vendor or machine may not require the purchaser to disclose additional identifying information to obtain a zip tie. Each zip tie must include a random identification number and an expiration date, which is one year after its date of issuance.

Within 120 days after the effective date of the bill, the Comptroller must establish a telephone or Internet-based verification system that is available 24 hours a day and allows law enforcement personnel to verify the validity of zip ties.

III. Marijuana Retailers – Registration

A person or an entity may apply to the Comptroller to be registered as a marijuana retailer. Registration exempts the retailer from applicable State prosecution and penalties, as long as the retailer operates in accordance with the bill's provisions.

By October 1, 2014, the Comptroller must issue at least one retailer registration per county. By October 1, 2015, the Comptroller must issue at least one valid and outstanding retailer registration for every 25,000 residents of each county, if there are a sufficient number of qualified applicants. If there are more qualifying applicants than the Comptroller will register, the Comptroller must use a competitive scoring process with specified criteria. If at any time after October 1, 2015, there are not enough valid and outstanding retailer registrations to meet the 25,000 per capita requirement, the Comptroller must accept and process applications for retailer registrations.

If at any time after April 1, 2015, the Comptroller has failed to issue registrations or has ceased issuing retailer registrations or renewals, then a retailer may operate without a registration if (1) the retailer operates in a location zoned for retail use and (2) the retailer satisfies the requirements established in the bill and regulations adopted pursuant to the bill.

Retailer Fees: Each applicant must submit the required application materials and a nonrefundable application fee in an amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a retailer registration is \$10,000. Registrants pay an annual renewal fee of \$5,000.

A retailer must submit his/her renewal application at least 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

IV. Marijuana Wholesalers – Registration

A person or an entity may apply to the Comptroller to be registered as a marijuana wholesaler. Registration exempts the retailer from applicable State prosecution and penalties, as long as the retailer operates in accordance with the bill's provisions.

By July 28, 2014, the Comptroller must issue at least five wholesaler registrations, as long as there are enough qualified applicants. By October 1, 2015, the Comptroller must issue at least five wholesaler registrations for every 500,000 residents of the State. If there are more qualifying applicants than the Comptroller will register, the Comptroller must use a competitive scoring process with specified criteria. If at any time after October 1, 2015, there are not enough valid wholesaler registrations to meet the 500,000 per capita requirement, the Comptroller must accept and process applications for retailer registrations. The Comptroller has the discretion to grant additional wholesaler registrations.

If at any time after April 1, 2015, the Comptroller has failed to issue registrations or has ceased issuing wholesaler registrations, then a wholesaler may operate without a registration if the wholesaler operates in a location zoned for agricultural or industrial use that satisfies the requirements established in the bill and regulations adopted pursuant to the bill.

Wholesaler Fees: Each applicant must submit the required application materials and a nonrefundable application fee in amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a wholesaler registration is \$10,000. Registrants pay an annual renewal fee of \$5,000.

A wholesaler must submit his/her renewal application at least 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

Growing Marijuana – Requirements: Wholesalers must grow their marijuana in one or multiple enclosed locked facilities, and each facility must be registered with the Comptroller. As noted above, the registration requirement does not apply if the Comptroller has ceased issuing or has failed to begin issuing regulations by the deadlines specified in the bill. An “enclosed locked facility” may include a building, room, greenhouse, fully enclosed fenced-in area, or any other location enclosed on all sides and equipped with locks or other security devices with access limited to specified individuals, most of whom must be at least 21 years old.

V. Marijuana Safety Compliance Facilities – Registration

An entity may apply to the Comptroller to be registered as a marijuana safety compliance facility. Registration exempts the safety compliance facility from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill's provisions.

By October 1, 2014, the Comptroller must issue at least two safety compliance facility registrations, as long as there are enough qualified applicants. If there are more qualifying applicants than the Comptroller will register, the Comptroller must use a competitive scoring process with specified criteria. If at any time after October 1, 2015, there are fewer than two valid safety compliance facility registrations, the Comptroller must accept and process applications for safety compliance facility registrations. The Comptroller is authorized to grant additional registrations at the Comptroller's discretion.

Safety Compliance Facility Fees: Each applicant must submit the required application materials and a nonrefundable application fee in amount to be determined by the Comptroller but not to exceed \$5,000. The initial fee for a safety compliance facility registration is \$5,000. A safety compliance facility registration is valid for two years. Safety compliance facility registrants pay a renewal fee of \$5,000 every two years.

A safety compliance facility may submit its renewal application at least 120 days before the registration expires. If the Comptroller fails to approve a valid renewal application within 60 days after the application was submitted, the application is deemed to have been granted.

VI. Location Restrictions, Suspension or Termination of Registrations, and Local Ordinances

Restrictions on Locations: A retailer, wholesaler, or safety compliance facility is prohibited from operating in a location within 1,000 feet of the property line of a preexisting public or private school or at a location on which the entity sells alcohol for on-site consumption. The same location restrictions apply to a prospective registration applicant.

Suspension or Termination of Registration: The bill authorizes the Comptroller to suspend the registration of a retailer, wholesaler, or safety compliance facility if the entity commits multiple or serious violations of the bill's provisions or regulations issued pursuant to the bill. If an entity is operating as a retailer, wholesaler, or safety compliance facility without a registration because the Comptroller has ceased or has not commenced issuing registrations, a city or county where the entity is operating may file for an injunction in circuit court if the entity has committed multiple or serious violations.

Local Ordinances and Regulations: A local government is authorized to enact ordinances or regulations that are not in conflict with the bill or with rules adopted by the Comptroller regulating the time, place, and manner of retailer, wholesaler, or safety compliance facility operations.

VII. Industrial Hemp

MDA must adopt regulations necessary to register a person to plant, grow, harvest, possess, process, sell, or purchase industrial hemp, and set reasonable fees. It is not a violation of State or local law for a person to plant, grow, harvest, possess, process, sell, or buy industrial hemp in compliance with those regulations. The bill also legalizes the purchase or possession of material or products made totally or partially with industrial hemp.

VIII. Marijuana Taxes

An excise tax must be collected on all marijuana sold to retailers at an initial rate of \$50 per ounce or proportionate part of an ounce or an amount set by the Comptroller that adjusts this initial rate for inflation or deflation based on the Consumer Price Index.

Money remitted to the Comptroller from the excise tax and registration fees is apportioned as follows:

- The Comptroller must retain sufficient money to defray the entire cost of administering these provisions;
- The remaining funds are distributed to the general fund, and then distributed as follows:
 - 40% to DHMH for use in voluntary programs for the prevention or treatment of the abuse of alcohol, tobacco, or controlled dangerous substances; and
 - 10% to clinical research into the medical efficacy of marijuana.

The Comptroller (1) is responsible for administering and carrying out the bill's tax provisions; (2) must adopt regulations on several specified topics; and (3) may adopt regulations that are necessary and convenient to fulfill those duties.

The Comptroller must adopt regulations to implement the tax provisions of the bill and must begin accepting applications for retailers, wholesalers, and safety compliance facilities within 180 days after October 1, 2013. If the Comptroller fails to fulfill this

requirement within this timeframe, a citizen may commence an action in a court of competent jurisdiction to compel the Comptroller to perform these actions in accordance with the bill.

Notwithstanding any federal tax law to the contrary, a business exempted from criminal penalties under State law pursuant to the bill is allowed to deduct from its State taxes all the ordinary and necessary expenses the business incurred during the taxable year in carrying on a trade or business as a marijuana retailer, wholesaler, or safety compliance facility, including reasonable allowance for salaries and other compensation for personal services actually rendered.

IX. Miscellaneous Provisions

Landlords and Innkeepers: A landlord may prohibit the cultivation of marijuana on his/her rental premises. A landlord or an innkeeper may prohibit the smoking of marijuana on a rented property or in a rented room, as long as the landlord or innkeeper posts a notice to that effect.

Oversight Committee: The bill (1) requires the Governor to appoint an oversight committee; (2) establishes the membership of the committee; (3) requires the committee to meet at least two times per year to collect information about and evaluate the effects of the bill's provisions, and to report and make recommendations to the Comptroller on specified issues.

Reporting Requirements: The Comptroller must submit an annual report containing specified information to the Governor and the General Assembly.

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana.

In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than

10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

Pursuant to Chapters 504 and 505 of 2012 (SB 422 and HB 261), as of January 1, 2013, a police officer must issue a citation for possession of marijuana if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

A person who distributes or dispenses marijuana or possesses marijuana in sufficient quantities to reasonably indicate an intent to distribute or dispense marijuana is guilty of a felony and subject to imprisonment for up to five years and/or a \$15,000 maximum fine. Repeat offenders are subject to the same maximum penalties, but face a mandatory minimum sentence of two years. A person who manufactures, distributes, dispenses, or possesses 50 pounds or more of marijuana in the aggregate during a 90-day period is considered a volume dealer and faces a mandatory minimum sentence of five years and a maximum fine of \$100,000.

A person may not (1) obtain or attempt to obtain controlled paraphernalia through specified means, including fraud and deceit or (2) possess or distribute controlled paraphernalia under circumstances which reasonably indicate an intention to use the controlled dangerous paraphernalia for purposes of illegally administering a controlled dangerous substance. A person who violates these prohibitions with respect to the use and possession of marijuana is subject to imprisonment for up to one year and/or a \$1,000 maximum fine.

Unless authorized under law, a person may not use or possess with the intent to use drug paraphernalia to:

- plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or
- inject, ingest, inhale, or otherwise introduce a controlled dangerous substance into the human body.

Unless authorized under law, a person is also prohibited from delivering or selling, or manufacturing or possessing with the intent to deliver or sell, drug paraphernalia, knowing or under circumstances where a person reasonably should know that the drug paraphernalia will be used to engage in the activities listed above.

Exhibit 1 contains information on penalties for offenses involving the delivery or sale of drug paraphernalia.

Exhibit 1	
Penalties for Use, Possession, Delivery, or Sale of Drug Paraphernalia	
<u>Violation</u>	<u>Penalty</u>
First-time violation	Misdemeanor \$500 maximum fine
Subsequent violation	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
First-time violation – violator has a prior conviction for delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to two years imprisonment and/or a maximum fine of \$2,000
Delivery of drug paraphernalia by an adult to a minor who is at least three years younger	Misdemeanor Up to eight years imprisonment and/or a maximum fine of \$15,000
Drug paraphernalia related to marijuana	Misdemeanor Same penalties as above apply, except in cases of medical necessity for which there is a \$100 maximum fine (see below)

Source: Department of Legislative Services

If the drug paraphernalia is related to marijuana, the defendant may introduce and the court must consider as a mitigating factor any evidence of medical necessity. If the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction, the maximum penalty that the court may impose is a \$100 fine.

Pursuant to Chapter 215 of 2011 (SB 308), in a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. The affirmative defense may not be used if the defendant was either using marijuana in a public place or in possession of more than one ounce of marijuana.

Background: During the November 2012 elections, voters in Colorado and Washington approved ballot measures to decriminalize marijuana use and possession and create a state-regulated marijuana market.

Colorado's Amendment 64 allows a person older than age 21 to purchase up to one ounce of marijuana from licensed retailers. Unlicensed sales of marijuana, purchasing marijuana from an unlicensed retailer, and public use of marijuana remain illegal.

Under Amendment 64, Colorado residents may grow up to six marijuana plants each and groups of individuals may also collectively grow plants under specified conditions. Residents can give up to one ounce at a time to others, as long as they do not accept remuneration. Amendment 64 requires the Colorado Department of Revenue to create regulations for retailers by July 1, 2013, and begin processing license applications by January 2014. Colorado voters will be asked to approve a 15% excise tax on wholesale marijuana sales, with the first \$40 million of annual excise tax revenue dedicated to public school construction.

Washington's Initiative 502 decriminalizes possession of up to one ounce of marijuana by anyone who is at least 21 years old, as long as the marijuana was obtained from a licensed retailer. Marijuana or cannabis-infused goods are also authorized within certain parameters. However, Initiative 502 does not permit individuals to grow marijuana at home for their personal use. The state's liquor control board must establish a licensing and regulatory system for growers, processors, and retail stores by the end of 2013. Marijuana will be taxed at 25% at the cultivation, processing, and (all) sales stages.

Initiative 502 also establishes five nanograms of THC per milliliter of blood as the new standard for driving under the influence of marijuana for persons age 21 and older. Persons younger than 21 may not drive with any level of THC in their blood.

Marijuana remains a controlled dangerous substance under federal law, and residents of Colorado and Washington are not immune from federal prosecution. Though states are not obligated to enforce federal marijuana laws, and the federal government cannot force Colorado and Washington to recriminalize conduct that has been decriminalized in these states, the federal government can try to block the implementation of these laws. The U.S. Department of Justice is currently reviewing the Colorado and Washington statutes and is considering its approach.

According to the Judiciary, during fiscal 2012, there were 31,854 use and possession violations and 110 controlled drug paraphernalia violations filed in District Court relating to marijuana only.

Fiscal Implications for Legalization of Marijuana: The continued vulnerability of participants to federal prosecution may affect participation levels in ways that cannot be reliably predicted. Given this vulnerability to federal prosecution, the unavailability of business-related deductions on federal taxes, and limited information on the demand for marijuana in Maryland, it is difficult to determine the level of participation in the State-regulated marijuana market created by the bill, which could vary from negligible to robust.

State Revenues: Assuming that there will be sufficient registrants to fulfill the requirements of the bill and assuming sales consistent with existing data, general fund revenues could increase significantly from excise taxes, sales taxes, and regulatory fees.

Marijuana Consumption

Given that marijuana is an illegal substance, there is no data on the current level of marijuana consumption in Maryland or the projected level of consumption under the bill. However, *for illustrative purposes only*, this fiscal and policy note makes the following assumptions in determining marijuana consumption under the bill.

According to the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's *2011 National Survey on Drug Use and Health*, 19.0% of adults ages 18-25 and 4.8% of adults age 26 and older are marijuana users. Applying these percentages to the number of Maryland residents who are 21 to 25 years old and age 26 and older results in an estimate of 260,438 marijuana users in Maryland each calendar year.

The United Nations Office on Drug and Crime's, *2006 Bulletin on Narcotics, Review of the World Cannabis Situation* reported that marijuana consumption in the United States varied greatly, with 18% of users reporting that they consumed marijuana one to three times per year and 7% of respondents indicating that they consume marijuana on an almost daily basis. Using the pattern of use in this report, and assuming that marijuana users consume two grams per use, this estimate assumes that Maryland residents consume 51,790,701 grams of marijuana each year.

Excise Taxes

The bill imposes an excise tax of \$50 per ounce. Assuming that the 51,790,701 grams of marijuana (approximately 1.8 million ounces) mentioned above is produced by State-regulated wholesalers, general fund revenues from excise taxes may increase by approximately \$91.3 million each year.

Sales Taxes

The retail price of marijuana can vary greatly, based on the quality of the product, the location of the sale, and local demand. Data on the retail price of marijuana is typically collected from self-reporters. Assuming a \$12 per gram retail price and that consumers purchase the 51,790,701 grams of marijuana mentioned above from State-regulated retailers, general fund sales tax revenues may increase by \$37.3 million each year.

Application and Registration Fees

The bill establishes application, registration, and renewal fees for wholesalers, retailers, and safety compliance facilities. The bill also specifies the minimum number of entities the Comptroller must register. **Appendix 1** contains information on projected general fund revenues from these fees assuming that: (1) the Comptroller receives enough applications to meet the minimum registration requirements; (2) the number of applicants does not exceed the number of registrants; (3) each applicant is approved for registration; and (4) the Comptroller does not register more entities than the minimum levels under the bill. Appendix 1 uses the bill's deadlines for minimum registration levels when attributing projected revenues to a specific fiscal year.

Zip Tie Revenues

General fund revenues may also increase, potentially significantly, from zip tie fees to the extent they are sold by the State and not local or private entities. The extent of the increase depends on the number of zip ties purchased. The bill authorizes a person age 21 or older to grow up to three marijuana plants as long as a State-issued zip tie is attached to each plant. Zip ties are purchased for an annual fee of \$100 per plant.

Marijuana Criminal Penalties

General fund revenues decrease, potentially significantly, from fewer monetary penalties imposed in marijuana-related cases in the District Court as a result of the bill's decriminalization of specified activities. However, this reduction is somewhat offset by the additional fines that may be imposed due to the new civil offenses and misdemeanors created by the bill.

Industrial Hemp

General fund revenues increase from sales taxes imposed on industrial hemp and related products.

Department of Health and Mental Hygiene

General fund revenues increase for DHMH as a result of the bill's revenue distribution requirements.

The bill requires 40% of the net revenues from the excise taxes and registration fees (after defrayal of the Comptroller's costs to administer the bill's provisions) to be used by DHMH for voluntary programs for the prevention of treatment of the abuse of alcohol, tobacco, or controlled dangerous substances. The Alcohol and Drug Abuse Administration's (ADAA) fiscal 2014 budget is \$154 million, which is approximately \$4.5 million below the fiscal 2013 budget.

The bill also requires 10% of the net general fund revenues to be directed towards clinical research into the medical efficacy of marijuana. Although the bill does not specify who is to administer grants for this research, this estimate assumes that DHMH bears this responsibility.

This analysis does not reflect any additional State income tax revenues that are generated under the bill.

State Expenditures:

Comptroller Administration of Marijuana Program

General fund expenditures increase significantly for the Comptroller to administer and enforce the bill's provisions. Given that marijuana has heretofore been an illegal and unregulated product, the estimate assumes that the Comptroller needs significant resources and expertise to comply with the bill's provisions, especially given the tight deadlines for compliance under the bill.

As a result, general fund expenditures for the Comptroller increase by \$864,456 in fiscal 2014. This estimate reflects the cost of hiring one regulator, one administrative assistant, one supervisor, four field enforcement agents, three revenue administrators, and two revenue specialists to perform the functions required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate does not reflect any costs that could be incurred by the Comptroller to establish zip tie sales locations or purchase zip ties, as it is unknown if these facilities would be operated by the State, local governments, or private entities. It also does not include any programming costs that might be necessary.

Positions	12
Salaries and Fringe Benefits	\$611,691
Operating Expenses	<u>52,765</u>
Total FY 2014 Comptroller Expenditures	\$864,456

Given the new functions required by the bill and the compliance deadlines, the Comptroller advises that these personnel must start on July 1, 2013 (despite the bill's October 1, 2013 effective date). The Department of Legislative Services concurs with this assessment.

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

Department of Health and Mental Hygiene

General fund expenditures increase (1) for the Alcohol and Drug Abuse Administration (ADAA) within DHMH to provide grants for treatment and recovery programs from revenues received under the bill and (2) for administration of medical marijuana clinical research grants.

Law Enforcement

- Department of State Police (DSP): General fund expenditures decrease minimally for DSP to enforce marijuana-related offenses. This decrease includes a reduction in operational expenditures for the Forensic Sciences Division to test drug samples in preparation for prosecution. DSP advises that it has never conducted a study on the cost of each marijuana test, since that cost includes salaries for employees who test for other controlled dangerous substances that remain illegal. It is assumed that any savings realized under the bill are redirected to other duties.

- Department of Public Safety and Correctional Services (DPSCS): General fund expenditures decrease minimally for DPSCS from reduced incarcerations for marijuana-related offenses.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill's decriminalization of specified marijuana offenses significantly reduces OPD caseloads. However, OPD did not provide data on the number of cases affected by the bill. Given the caseloads and resources of OPD, it is unlikely that the bill has a material effect on OPD expenditures, and it is assumed that any OPD resources spent on these cases are simply shifted to other OPD cases and duties.

Expenditures for Expungement

This fiscal analysis does not include the impact that results from compliance with the expungement requirement in the bill. Please see the Additional Comments section for more information.

Oversight Committee

It is assumed that the establishment and operation of the oversight committee can be handled with existing budgeted resources.

Local Fiscal Effect: Local revenues decrease from fewer monetary penalties imposed in marijuana-related cases in the circuit courts as a result of the bill's decriminalization of specified activities. Local revenues increase to the extent that ADAA funds local substance abuse programs with revenues from the bill.

Local expenditures for incarcerations for marijuana-related offenses decrease as a result of the bill's decriminalization of specified activities. Local expenditures increase for substance abuse programs due to increased ADAA funding.

Local expenditures and revenues may also increase to the extent local jurisdictions choose to establish zip tie sales locations and sell zip ties in accordance with the bill's authority.

This analysis does not reflect any additional local income tax revenues that are generated under the bill.

Small Business Effect: This estimate assumes that the bill has a meaningful impact on small businesses in that it presents a State-authorized business opportunity to individuals currently engaged in illegal activity. Notwithstanding this bill, small businesses operating as marijuana wholesalers and marijuana retailers under State law will still be violating federal law. Thus, the impact of the bill on small businesses depends on the extent to which (1) the risk of federal prosecution deters individuals from engaging in the State-regulated marijuana market; (2) the lack of federal business tax deductions impedes the profit-making abilities of Maryland marijuana businesses; (3) taxes, overhead, and business-related expenses incurred in operating a public marijuana business prohibit a viable business model for current marijuana entrepreneurs; (4) restricting retailers to suppliers that are State-authorized marijuana wholesalers discourages those retailers from participating in the State's marijuana market; and (5) decriminalization of marijuana under State law affects marijuana prices.

Small businesses may also benefit to the extent they choose to establish zip tie sales locations and sell zip ties in accordance with the bill.

Additional Comments: The bill requires revenues from registration fees and taxes to be directed towards specified endeavors and entities. However, these revenues are general fund revenues, and the bill does not create a special fund into which these revenues must be deposited. Absent the creation of a special fund, it is unclear whether revenues can be distributed in the ways prescribed by the bill.

The bill also states that its provisions expunge by "operation of law," the conviction of a person previously convicted of possessing one ounce or less of marijuana or possession of marijuana paraphernalia if the person was age 21 or older at the time of conviction. This language implies the automatic expungement of applicable convictions for eligible individuals, which may prove problematic. Other than the unique offense created in 2012 for possession of less than 10 grams of marijuana, the Criminal Justice Information System (CJIS) does not have information on the amount of marijuana possessed in these cases. Furthermore, CJIS advises that it has information on arrest dates, but not the date of conviction, which is the date by which a person must be at least 21 years old in order to be eligible for the automatic expungement required under the bill.

While the necessary information may be contained in other records, those records would need to be linked with CJIS's system in order for the bill's expungement requirement to be met. It is unclear if this linkage is even possible, especially with respect to convictions contained in legacy systems. To the extent that it is possible, any programming or operational effort to accomplish it may require a significant increase in general fund expenditures for DPSCS, the Judiciary, and any other agencies involved.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Governor's Office on Crime Control and Prevention; Department of Public Safety and Correctional Services; Montgomery County; Washington State, I-502 Fiscal Impact Statement; CNBC.com; National Conference of State Legislatures; United Nations Office on Drugs and Crime; CNNMoney.com; Colorado Amendment 64 Implementation Task Force; Maryland Department of Planning; U.S. Department of Health and Human Services – Substance Abuse and Mental Health Administration; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2013
mc/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

**Appendix 1 – Estimated Minimum Number of Registrations
and Associated Registration Revenues under the Bill
Fiscal 2015-2018¹**

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
<u>Retailers²</u>				
Number of New Registrations	24	209	-	-
Number of Renewal Registrations	-	24	233	233
Revenues from Application Fee ³	\$120,000	\$1,045,000	-	-
Revenues from New Registrations ³	240,000	2,090,000	-	-
Revenues from Renewal Registrations ³	<u>0</u>	<u>120,000</u>	<u>1,165,000</u>	<u>1,165,000</u>
<i>Revenue Subtotal</i>	<i>\$360,000</i>	<i>\$3,255,000</i>	<i>\$1,165,000</i>	<i>\$1,165,000</i>
<u>Wholesalers⁴</u>				
Number of New Registrations	5	7	-	-
Number of Renewal Registrations	-	5	12	12
Revenues from Application Fee ³	25,000	35,000	-	-
Revenues from New Registrations ³	50,000	70,000	-	-
Revenues from Renewal Registrations ³	<u>0</u>	<u>25,000</u>	<u>60,000</u>	<u>60,000</u>
<i>Revenue Subtotal</i>	<i>\$75,000</i>	<i>\$130,000</i>	<i>\$60,000</i>	<i>\$60,000</i>
<u>Safety Compliance Facilities⁵</u>				
Number of New Registrations	2	-	-	-
Number of Renewal Registrations	-	-	2	-
Revenues from Application Fee ³	10,000	-	-	-
Revenues from New Registrations ³	10,000	-	-	-
Revenues from Renewal Registrations ³	<u>-</u>	<u>=</u>	<u>10,000</u>	<u>=</u>
<i>Revenue Subtotal</i>	<i>\$20,000</i>	<i>-</i>	<i>\$10,000</i>	<i>-</i>
Total Anticipated Revenues	\$455,000	\$3,385,000	\$1,235,000	\$1,225,000

¹This estimate assumes that (1) the Comptroller receives enough applications to meet the minimum registration requirements; (2) the number of applicants does not exceed the number of registrants; (3) each applicant is approved for registration; and (4) the Comptroller does not register more entities than the minimum levels under the bill. This estimate uses the bill's deadlines for minimum registration levels when attributing projected revenues to a specific fiscal year.

²Retailers must register by October 1, 2014, and renew on an annual basis.

³Assumes a nonrefundable application fee of \$5,000, an initial registration fee of \$10,000, and a renewal fee of \$5,000 for all registrants.

⁴Wholesalers must register by July 28, 2014 (300 days from the bill's effective date), and renew on an annual basis.

⁵Safety compliance facilities must register by October 1, 2014, and renew on a biennial basis.

Source: Department of Legislative Services