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FISCAL AND POLICY NOTE
First Reader

Senate Bill 928

(Senator Madaleno, *et al.*)

Judicial Proceedings

Criminal Law - Cannabis - Legalization

This bill, among other provisions, (1) removes criminal penalties for the use and possession of cannabis and cannabis paraphernalia by individuals age 21 and older; (2) legalizes the use, possession, sale, transportation, and cultivation of cannabis under specified circumstances; (3) authorizes personal cultivation of cannabis plants in limited quantities; (4) establishes a regulatory framework for cannabis establishments; (5) requires the Comptroller to establish regulations to register cannabis establishments, which includes retailers, cannabis cultivation facilities, cannabis product manufacturers, and safety compliance facilities; and (6) requires the Maryland Department of Agriculture (MDA) to regulate the growth, harvest, processing, and distribution of industrial hemp. The Comptroller must adopt implementing regulations and begin accepting applications for cannabis establishment facilities by March 31, 2018.

Fiscal Summary

State Effect: Assuming robust participation in the State-regulated marijuana market, general fund revenues may increase significantly beginning in FY 2019 from sales 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 \$1,323,600 in FY 2018; and (3) general fund expenditures for enforcement of newly created offenses and requisite testing by the Department State Police (DSP) that increase by \$866,000 in FY 2018. Special fund revenues and expenditures for the Department of Health and Mental Hygiene (DHMH) decrease significantly beginning in FY 2018 due to the elimination of civil penalties for the use or possession of less than 10 grams of marijuana.

Local Effect: Potential significant decrease in local revenues from circuit court monetary penalties. Local expenditures for incarcerations for cannabis-related offenses decrease as a result of the bill’s decriminalization of specified activities.

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

Analysis

Bill Summary: The bill’s provisions do not repeal or modify a law concerning medical use of cannabis 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 or operating a vehicle or vessel while impaired by or under the influence of cannabis; (2) possession of cannabis by a prisoner; (3) smoking in public, as specified; or (4) possessing cannabis in a correctional facility, including a juvenile detention facility.

I. Cannabis – Definition

“Cannabis” means (1) all parts of the genus cannabis, whether growing or not; (2) the seeds or extracted resin of the plant; or (3) every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The definition includes substances defined as “marijuana” under State law; it does not include the mature stalks of the plant or the stalk fibers, the oil or cake made from the plant seeds, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks with specified exceptions, or the sterilized seed of the plant.

II. Criminal Penalties – Persons

Generally: The bill repeals criminal penalties that apply to the use or possession of 10 grams or more of marijuana. The bill also repeals civil penalties that apply to the use or possession of less than 10 grams of marijuana. The bill retains the prohibition against smoking marijuana in a public place and additionally establishes that the vaporization of cannabis in a public place is a civil offense punishable by a fine of up to \$100. 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; it does not include cannabis retailers that are registered to allow on-site consumption, individual dwellings or curtilage, or a private event that is registered to allow on-site consumption. The bill applies civil procedures that apply to the use or possession of less than 10 grams of marijuana to smoking marijuana or vaporization of cannabis in a public place. These provisions apply to existing law or the law as reflected under Chapter 515 of 2016, which takes effect October 1, 2017.

A person who is at least age 21 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 a personal use amount of useable cannabis; (2) controlling the premises or a vehicle where lawful amounts of cannabis are possessed, processed, or stored; (3) selling cannabis seeds to a cannabis establishment or to persons who are at least age 21; and (4) cultivating six or fewer plants, no more than three of which may be mature, flowering plants, and possessing the cannabis produced on the premises where the plants were grown.

A “personal use amount of useable cannabis” means (1) one ounce or less of cannabis; (2) five grams or less of hashish oil, gel, or solid extracts or concentrates made from cannabis intended for smoking or vaporizing; (3) 12 servings of cannabis combined with food products and intended for eating; (4) 12 servings of cannabis combined with beverage products and intended for drinking; (5) 72 ounces of cannabis in a cream, gel, or liquid form when intended for topical application; or (6) any combination of the above.

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

Underage Possession: A person younger than age 21 may not possess cannabis. If a person who is at least age 18 violates this provision, and possesses one ounce or less of cannabis, the person is subject to a civil offense punishable by a fine not exceeding \$100. A police or court record resulting from a citation under this rule must be inaccessible to the public, federal authorities, and authorities from other states or countries.

If a minor violates the possession provisions of the bill, the court may (1) counsel the child or the parent, or both; (2) order the child, for no or minimal cost, to participate in a drug and alcohol education program; or (3) impose a civil fine of no more than \$100.

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

Expungement of Convictions: The bill’s provisions must, by operation of law, expunge the conviction of a person previously convicted of possession, selling, or transferring a personal use amount of useable cannabis, or cultivating six or fewer plants. Further, all State agencies with records pertaining to arrests and convictions for possession of one ounce or less of cannabis, provided that the person was at least age 21 at the time of conviction, must destroy those records by December 31, 2017, and provide specified notice that the records have been destroyed. If a State agency fails to comply with these provisions, a person may file an action in the circuit court where the agency is located to compel compliance; if the person cannot afford an attorney, the person is entitled to

assistance from the Office of the Public Defender (OPD). A State agency may request funding to comply with these provisions from the Comptroller who provides such funding from the collected fees from legalization of cannabis.

III. Growing Cannabis

The bill authorizes an adult who is at least age 21 to cultivate up to six cannabis plants, three of which may be mature, flowering plants. Further, an adult who is at least age 21 may assist in the cultivation of cannabis plants at a location with other adults who are at least age 21 so long as the total number of mature, flowering plants does not exceed 18 per dwelling.

Growing Locations: An adult who is at least age 21 may not grow cannabis:

- in a location where the plants are subject to public view without the use of optical aids, such as binoculars;
- outdoors other than in an enclosed area, such as a fenced-in area;
- 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
- in a location where persons younger than age 21 live or are guests, unless reasonable precautions are taken, which may include growing the cannabis 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.

IV. Cannabis Retailers – Registration and Sales

A person or an entity may apply to the Comptroller to be registered as a cannabis retailer. Registration exempts the retailer from applicable State prosecution and penalties, as long as the retailer operates in accordance with the bill's provisions. A retailer may also apply to the Comptroller for an on-site consumption registration.

Unless otherwise specified, by October 1, 2018, the Comptroller must issue at least one retailer registration for every 20,000 residents of a county or two retailer registrations for each county, whichever is greater. Retailer registration must be distributed within a county based on the population of cities and unincorporated areas. If fewer qualified applicants apply for a registration in a county than the Comptroller is required to register, the Comptroller must issue a registration to each qualified applicant. Medical cannabis registrations may not be included in the minimum number of retailer registrations.

If at any time after October 1, 2019, there are fewer valid retailer registrations than the Comptroller is authorized to issue, the Comptroller must accept and process additional applications. If the Comptroller finds that the number of retailers is inadequate, the Comptroller may issue additional retailer registrations.

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.

On-site Consumption: The application fee for an on-site consumption registration is up to \$500. The initial registration fee is \$1,000 and the annual renewal fee is \$500.

Sales: A retailer must include a safety insert with all cannabis sold that is developed and approved by the Comptroller that includes information regarding (1) methods for use; (2) potential dangers stemming from use; (3) onset time; and (4) how to recognize the problematic usage of cannabis and available services for treatment. Additionally, a retailer must sell cannabis and cannabis products in the original cannabis cultivation facility or cannabis product manufacturer packaging without making changes or repackaging.

A retailer may not (1) sell, give, or otherwise furnish cannabis or cannabis paraphernalia to a person who is younger than age 21; (2) sell, give, or otherwise furnish more than a personal use amount of useable cannabis or more than three plants, seedlings, or cuttings of cannabis to a person in a single transaction; (3) knowingly and willfully sell, give, or otherwise furnish an amount of cannabis to a person that would cause that person to possess more than an individual may possess under State law; (4) purchase cannabis, other than cannabis seeds, from a person other than a retailer, cannabis cultivation facility, or cannabis product manufacturer; or (5) violate the Comptroller's regulations.

V. Cannabis Cultivation Facilities – Registration and Sales

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

By no later than 300 days after October 1, 2017, or July 28, 2018, the Comptroller must issue at least 100 cannabis cultivation facility registrations, as long as there are enough qualified applicants.

If at any time after October 1, 2018, there are fewer valid cannabis cultivation facility registrations than required, the Comptroller must accept and process additional applications for registrations. If the number of cannabis cultivation facility registrations is

unable to meet demand after April 1, 2019, the Comptroller must grant additional registrations.

Cannabis Cultivation 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 cannabis cultivation facility registration is \$10,000. Registrants pay an annual renewal fee of \$5,000.

Growing Cannabis – Requirements: Cannabis cultivation facilities must grow the cannabis 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 age 21.

VI. Craft Cannabis Cultivator

An approved person or an entity may apply to the Comptroller to be registered as a craft cannabis cultivator. Registration exempts the facility from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill’s provisions.

A medical cannabis cultivator may not be registered as a craft cannabis cultivator. An applicant registered or associated with the holder of a license or registration to manufacture, cultivate, process, or sell cannabis in this or any other state may not be registered as a craft cannabis cultivator.

By 300 days after October 1, 2017, or July 28, 2018, the Comptroller must issue initial craft cannabis cultivator registrations to qualified applicants, and must continue to issue registrations on a rolling basis at least once per year.

Craft Cannabis Cultivator Fees: The application fee is determined by the Comptroller but may not exceed \$100. The fee for an initial registration is \$500 and the biennial renewal fee is \$200.

VII. Cannabis Product Manufacturer – Registration

The Comptroller must issue regulations for applications for cannabis product manufacturer registration that (1) establish the maximum amount of THC allowed in a single serving of a cannabis-infused edible product; (2) limit an individual package of an edible product to a single serving; (3) mandate opaque and child-resistant packaging for edible products;

(4) require the dissemination of educational materials to consumers who purchase edible products, including information regarding the length of time it takes the product to take effect; and (5) require that an edible product be clearly identifiable, with a standard symbol indicating that the product contains cannabis.

A person may apply to be registered as a cannabis product manufacturer. Registration exempts the cannabis product manufacturer from applicable State prosecution and penalties, as long as the facility operates in accordance with the bill's provisions.

By July 17, 2018, the Comptroller must issue up to 150 cannabis product manufacturer registrations, provided there are sufficient qualified applicants.

The Comptroller must grant additional registrations at any time after April 1, 2019, if the existing number of cannabis product manufacturer registrations is unable to meet demand.

Cannabis Product Manufacturer Fees: Each applicant must submit the required application materials and a nonrefundable application fee in the amount to be determined by the Comptroller, but not to exceed \$5,000. The fee for the initial issuance of a registration as a cannabis product manufacturer is \$5,000. Registrants pay an annual renewal fee of \$5,000.

VIII. Cannabis Safety Compliance Facilities – Registration

A person may apply to the Comptroller to be registered as a cannabis 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.

If qualified applicants exist, the Comptroller must issue two-year registrations to at least 10 safety compliance facilities by October 1, 2018. If at any time after October 1, 2019, there are fewer than 10 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 \$5,000 renewal fee every two years.

IX. Cannabis Establishments, Generally

Registration Requirements: Within three days, the Comptroller must forward a copy of an application to operate a cannabis establishment or for on-site consumption to the local government where the prospective establishment would operate and seek its input regarding whether the application should be granted.

Licensing for cannabis establishments is subject to the minority business enterprise program. If the county in which a registrant is located has higher minority business participation requirements than the State, the applicant must meet the county's requirements. These provisions terminate July 1, 2021.

If more qualifying applicants for a type of cannabis establishment license apply than the Comptroller may register in the State or in a county or city, the Comptroller must use a competitive scoring process with specified criteria. The Comptroller must award additional points to any application that includes plans to assist the community in specified ways. No applicant may receive more than one registration to operate a cannabis establishment if receiving a subsequent registration would prevent approval of another qualified applicant who has not received registration. Individuals convicted of possession, distribution, or manufacture of a controlled dangerous substance may not be denied a registration solely due to such an offense if their sentence has been completed, but conviction for a felony controlled dangerous substance offense after registration is grounds for revocation or nonrenewal of that registration.

Packaging: A cannabis cultivation facility or a cannabis product manufacturer must create a unique package and label for its facility and identify the facility as the producer. The packaging must include (1) the name or registration number of the cannabis establishment; (2) the name and registration number of the craft cannabis cultivator, if applicable; (3) if a safety compliance facility is operational, the potency of the cannabis as represented by the percentage of tetrahydrocannabinol by mass; (4) a "produced on" date; (5) if the cannabis product is in compliance with organic standards the words "naturally grown"; and (6) warnings that state: "Consumption of cannabis impairs your ability to drive a car or operate machinery," "Keep away from children," and "Transporting this product outside the State of Maryland may subject you to criminal and/or civil penalties under the laws of other states. Possession of cannabis is illegal under federal law."

Registration by Medical Cannabis Registrants: A medical cannabis dispensary, cultivator, or manufacturer may apply for a registration of the equivalent class created by this bill by (1) paying all applicable fees; (2) submitting a document from the Natalie M. LaPrade Medical Cannabis Commission stating that the applicant has not been sanctioned for multiple or serious violations of the program rules and regulations and is currently in compliance, or if the commission fails to respond to a request for documentation within

30 days of the request, by submitting an affidavit from the applicant's chief operating officer or board president stating that the applicant has not been sanctioned for multiple or serious program violations and is in compliance; (3) submitting a plan explaining how the applicant intends to continue to serve patients in the State medical cannabis program; (4) submitting a plan explaining how the applicant will ensure that minors do not have access to the retail section of the facility; and (5) complying with all other retailer registration requirements.

If at any time after April 1, 2018, the Comptroller has failed to issue registrations or has ceased issuing cannabis product registrations, then a medical cannabis registration that otherwise meets requirements may operate as authorized in this bill.

Registration Renewal: A registrant may submit its renewal application up to 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. The Comptroller may adjust the fee amounts annually beginning in fiscal 2020 to adjust for inflation and to offset reasonable costs for regulation.

Transportation Requirements: A cannabis establishment or any person who is acting in a capacity as an owner, employee, or agent of a cannabis establishment when transporting cannabis on behalf of the establishment must have documentation that specifies (1) the amount of cannabis being transported; (2) the registry identification number of the establishment; and (3) the date of transport. If the Comptroller has ceased or failed to begin issuing registrations, the cannabis establishment may use a consistent number of its choosing that is used on relevant documentation.

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

Restrictions on Locations: A cannabis establishment is prohibited from operating in a location within 300 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.

Restrictions, Suspensions, or Terminations of Registrations: A cannabis cultivation facility, cannabis product manufacturer, or safety compliance facility may not (1) purchase, produce, obtain, sell, give, or otherwise furnish cannabis or cannabis products to a person or an entity other than those exempted from State penalties in accordance with the bill or (2) violate the Comptroller's regulations.

The Comptroller may suspend or terminate a cannabis establishment's registration if that establishment commits multiple or serious violations of the bill. Further, if the Comptroller

has ceased issuing registrations or has not yet begun issuing regulations, a city or county where the cannabis establishment is operating may file for an injunction in circuit court if the establishment has committed multiple or serious violations.

Local Ordinances and Regulations: A local government is authorized to enact ordinances and regulations with civil and criminal penalties that are not in conflict with the bill or with rules adopted by the Comptroller regulating the time, place, and manner of retailer, cannabis cultivation facilities, or safety compliance facility operations. However, a local government may not prohibit operations by a cannabis establishment either expressly or through the enactment of ordinances or regulations that make the operations impracticable.

XI. 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.

XII. Miscellaneous Provisions

Employers: Employers are not required to accommodate the use or possession of cannabis or being under the influence of cannabis in a place of employment. For the purposes of State and local government employment, the use of cannabis, or testing positive for cannabis use, may not be grounds for termination, discipline, or a refusal to hire; the State government may not require a contractor to terminate, discipline, or refuse to hire an employee or subcontractor for use of cannabis or testing positive for cannabis use – however, these provisions do not apply if a person’s application could cause a loss of federal funding or license or when the employment or contract is governed by federal requirements.

Landlords and Innkeepers: A landlord may prohibit the cultivation of cannabis on his/her rental premises. A landlord or an innkeeper may prohibit the smoking of cannabis 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 Governor must appoint a 13-member oversight committee. The committee must meet at least four 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.

Fee Waiver: The Comptroller may, at the request of an applicant, waive or reduce that applicant's fees if the applicant is a nonprofit entity and specified conditions are met.

Common Carriers: A common carrier or the common carrier's employee or agent may not be subject to State prosecution (except for specified searches by the Comptroller), seizure, or penalty, including civil penalty or disciplinary action by a court, business licensing board, or entity, or be denied a right or privilege, for transporting or possessing cannabis.

Current Law:

Criminal Law Provisions Related to Marijuana

Controlled dangerous substances (CDS) 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 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 State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana. The use or possession of a CDS other than marijuana is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

In general, a defendant in possession of 10 grams or more 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 Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by DHMH; and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. The law also established that the

use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

However, in a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana 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; (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. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was in possession of more than one ounce of marijuana.

A "bona fide physician-patient relationship" is a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition. A "debilitating medical condition" is a chronic or debilitating disease or medical condition (or the treatment of a chronic or debilitating disease or medical condition) that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician-patient relationship: (1) cachexia or wasting syndrome; (2) severe or chronic pain; (3) severe nausea; (4) seizures; (5) severe and persistent muscle spasms; or (6) any other condition that is severe and resistant to conventional medicine.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant who cannot meet the affirmative defense standard for a not guilty verdict may introduce, and the court must consider as a mitigating factor (with regard to penalties on conviction), any evidence of medical necessity. Pursuant to Chapter 351 of 2015, if a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

Justice Reinvestment Act – Changes Effective October 1, 2017

Effective October 1, 2017, Chapter 515 of 2016 (also known as the "Justice Reinvestment Act") reduces the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months.

Further, before imposing a sentence for this offense, the court is authorized to order DHMH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit

from drug treatment. DHMH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require DHMH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility to facilitate the medically appropriate level of treatment.

Medical Cannabis Commission

Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 and Chapter 474 of 2016 further modified the State's medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries, and the registration of their agents. The program also establishes a framework to certify physicians, qualified patients (including veterans), and their caregivers to provide qualified patients with medical cannabis legally under State law via written certification. Effective June 1, 2017, dentists, podiatrists, nurse practitioners, and nurse midwives are authorized to be certifying providers – along with physicians – under the medical cannabis program. Specifically, a qualified patient who has been provided with a written certification from an authorized certifying health care provider in accordance with a bona fide provider-patient relationship may obtain a 30-day supply of medical cannabis. Medical cannabis is defined in regulation as any product containing usable cannabis or medical cannabis finished product. A 30-day supply is defined as 120 grams of usable cannabis, unless a qualified patient's certifying physician determines that this amount is inadequate to meet the medical needs of the patient. Regulations establish posttraumatic stress disorder as one of several debilitating medical conditions.

Background: According to the National Conference of State Legislatures (NCSL), 28 states, the District of Columbia, Guam, and Puerto Rico have comprehensive public medical cannabis programs. Additionally, another 17 states allow for the use of low THC (delta-9-tetrahydrocannabinol), high CBD (cannabidiol) products for medical reasons in limited situations or as a legal defense. Further, also according to NCSL, 21 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana. Prior to the November 2016 election, recreational use was legal in four states (Alaska, Colorado, Oregon, and Washington) and the District of Columbia. In the November 2016 election, ballot initiatives to legalize recreational use passed in California, Massachusetts, Maine, and Nevada.

Although possession of marijuana remains illegal at the federal level, the U.S. Department of Justice (DOJ) announced in August 2013 that it would focus on eight enforcement priorities when enforcing marijuana provisions of the Controlled Dangerous Substances

Act. The guidelines also state that, although the department expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. Further, in 2014 and 2015, the U.S. Congress passed federal spending measures that contained provisions to effectively terminate federal enforcement against legal *medical* marijuana operations by prohibiting federal spending on actions that impede state *medical* marijuana laws.

In February 2014, the U.S. Treasury Department, in conjunction with DOJ, issued marijuana guidelines for banks that serve “legitimate marijuana businesses.” The February 2014 guidelines reiterated that the provisions of money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. Further, the guidelines state that financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under these provisions. However, the guidelines also establish that prosecutors should apply the eight enforcement priorities listed in the August 2013 guidance document when deciding which cases to prosecute.

Thus, although the federal government appears to have relaxed its position on the enforcement of marijuana laws, marijuana remains a CDS under federal law, and residents of states that have legalized marijuana are not immune from federal prosecution. In addition, DOJ has reserved the right to file a preemption lawsuit against states that have legalized marijuana at some point in the future.

Additionally, the above-mentioned federal policies were adopted under a previous administration and are subject to change under the new administration.

States are not obligated to enforce federal marijuana laws, and the federal government may not require states to recriminalize conduct that has been decriminalized.

Fiscal Implications for Legalization of Cannabis: 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 cannabis in Maryland, it is difficult to determine the level of participation in the State-regulated cannabis market created by the bill, which could vary from negligible to robust.

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

Cannabis Consumption

Given that cannabis is an illegal substance, there is no data on the level of cannabis 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 cannabis consumption under the bill.

According to the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's *2015 National Survey on Drug Use and Health*, approximately 19.8% of adults ages 18 to 25 and 6.5% of adults age 26 and older are current users of cannabis (have used cannabis in the past month). Applying these percentages to the number of Maryland residents who are age 21 to 25 and age 26 and older results in an estimate of 341,887 cannabis users in Maryland.

The United Nations Office on Drug and Crime's *2006 Bulletin on Narcotics, Review of the World Cannabis Situation* reported that cannabis consumption in the United States varied greatly, with 18% of users reporting that they consumed cannabis one to three times per year and 7% of respondents indicating that they consume cannabis on an almost daily basis. Using the pattern of use in this report, and assuming that cannabis users consume 2 grams per use, this estimate assumes that Maryland residents consume 67,125,949 grams of cannabis each year.

Sales Taxes

The bill does not impose a specific excise tax on retail marijuana. However, this analysis assumes that marijuana sales under the bill are subject to the standard 6% State sales and use tax. The retail price of cannabis can vary greatly based on the quality of the product, the location of the sale, and local demand. Data on the retail price of cannabis is typically collected from self-reporters. Assuming a \$12 per gram retail price and that consumers purchase the 67,125,949 grams of cannabis mentioned above from State-regulated retailers beginning in fiscal 2019 (after the Comptroller has issued required registrations in fiscal 2018), general fund sales tax revenues may increase by at least \$49.0 million on an annual basis beginning in fiscal 2019.

Application and Registration Fees

The bill establishes application, registration, and renewal fees for cannabis establishments. The bill also specifies the minimum number of entities the Comptroller must register. **Appendix 1 – Estimated Minimum Number of Registrations and Associated Registration Fee Revenues under the Bill** 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.

Industrial Hemp

General fund revenues increase from sales taxes imposed on industrial hemp and related products and any fees associated with regulations adopted by MDA.

Department of Health and Mental Hygiene

Special fund revenues for DHMH decrease significantly due to the elimination of civil penalties for the use or possession of less than 10 grams of marijuana. These penalties are remitted to the Marijuana Citation Fund for drug education and treatment programs. The projected revenue for the fund in fiscal 2018 is \$475,000.

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

State Expenditures:

Comptroller Administration of Cannabis Program

General fund expenditures increase significantly for the Comptroller to administer and enforce the bill's provisions. Given that cannabis 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. The Comptroller advises that it is unlikely to be able to implement the bill's requirements within the required timeframe.

The Comptroller advises that it needs 29 full-time permanent employees at a cost of \$3.3 million to implement this bill. However, the Comptroller did not provide sufficient justification for this estimate. The Department of Legislative Services (DLS) advises that general fund expenditures for the Comptroller's Office increase by \$1,323,557 in fiscal 2018. This estimate reflects the cost of hiring one assistant director, one management associate, one field enforcement supervisor, four field enforcement agents, three revenue examiners, two revenue specialists, and one programmer to perform the functions required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes programming costs to upgrade the SMART return processing system.

| | |
|---|--------------------|
| Positions | 13 |
| Salaries and Fringe Benefits | \$915,112 |
| Programming Costs | 340,000 |
| Operating Expenses | <u>68,445</u> |
| Total FY 2018 Comptroller Expenditures | \$1,323,557 |

Given the new functions required by the bill and the compliance deadlines, the Comptroller advises that these personnel must start on July 1 of the year the bill is enacted. DLS concurs with this assessment. Thus, this analysis assumes that the Comptroller’s new employees begin on July 1, 2017 (despite the bill’s October 1, 2017 effective date).

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses. To the extent the Comptroller is unable to implement the bill with 13 additional employees, the Comptroller may request additional positions through the annual budget process.

DLS additionally notes that, although the bill authorizes the Comptroller to adjust specified registration fees to cover reasonable costs of regulation, any collected fees under the bill 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.

Department of Health and Mental Hygiene

Special fund expenditures for DHMH decrease significantly due to the elimination of civil penalties for the use or possession of less than 10 grams of marijuana that are currently remitted to the Marijuana Citation Fund for drug education and treatment programs.

Medical Cannabis Programs

Statute dictates that medical cannabis may only be obtained from a grower or dispensary licensed by the Natalie M. LaPrade Medical Cannabis Commission and that the commission may license no more than 15 growers initially. However, beginning June 1, 2018, the commission may issue the number of grower licenses necessary to meet demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. There is no established limit on the number of processor licenses. Additionally, while there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district, or up to 94 dispensary licenses statewide. In August 2016, the commission announced the 15 growers and 15 processors who were awarded stage one license preapprovals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016. The issuance of grower licenses has been subject to

litigation; however, if the program continues without delay, the commission expects to issue final licenses by early 2017.

Although medical cannabis facilities may apply for registration to operate as specified facilities under the bill, it is unclear when these facilities may be fully operational as *medical* cannabis facilities and thus, when such facilities might apply for registration under the bill. Further, it is unclear how many medical cannabis facilities would apply for registration under the bill if given the option. Thus, this analysis does not include estimated fee revenue from medical cannabis facilities registrations (the bill establishes that such registrations do not count toward the bill's specified minimum number of retailers, cultivators, manufacturers, and safety compliance facilities).

Law Enforcement

General fund expenditures increase significantly for DSP to administer and enforce the bill's provisions. **However, DSP failed to provide information regarding the fiscal impact of this bill.** Thus, this analysis is based on information provided by DSP for similar legislation introduced during the 2014 legislative session and that was also used for similar legislation during the 2015 legislative session.

General fund expenditures for DSP increase by \$865,967 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of additional testing equipment and the hiring of six forensic scientists and one office services clerk to administer additional blood tests to detect the presence of a CDS and to determine whether a suspicious substance is industrial hemp or cannabis. The estimate assumes that three scientists are required for the additional blood testing required under the bill and three scientists are required to differentiate between cannabis and industrial hemp to comply with the bill's requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes the one-time cost of four gas chromatography-mass spectrometry instruments and the ongoing purchase of blood sample collection kits.

DSP advised in 2014 that it anticipates handling an additional 200 blood tests for cannabis annually, based on data collected from Colorado after enactment of a similar cannabis legalization framework. Additionally, the bill establishes different laws for industrial hemp and cannabis. Therefore, DSP must be able to differentiate between the two substances. Thus, the estimate reflects the cost to hire additional personnel to operate the instruments in addition to four gas chromatography-mass spectrometry instruments at a cost of \$110,000 each (based on separately provided information from DSP). Additionally, this estimate reflects the cost to purchase 200 blood test kits annually at \$150 per kit (also based on separately provided information from DSP).

DLS notes that although the bill does not alter existing law regarding driving, operating, or being in control of a vehicle or vessel while impaired by cannabis, it is reasonable that the number of driving while impaired incidents may increase as more people use and have access to cannabis. Thus, it is reasonable to assume that DSP needs additional staff, as described above.

| | |
|---|------------------|
| Positions | 7 |
| Salaries and Fringe Benefits | \$367,706 |
| Gas chromatography-mass spectrometers (4) | 440,000 |
| Blood Test Kits | 22,500 |
| Operating Expenses | <u>35,761</u> |
| Total FY 2018 DSP Expenditures | \$865,967 |

Department of Public Safety and Correctional Services

General fund expenditures decrease minimally for DPSCS from reduced incarcerations for cannabis-related offenses.

Office of the Public Defender

OPD advises that the bill’s decriminalization of specified cannabis offenses 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 requirements in the bill. Please see the Additional Comments section for more information.

Maryland Department of Agriculture

This analysis assumes that while MDA develops regulations related to industrial hemp, registration and enforcement are handled by the Comptroller and DSP. Thus, it is assumed that MDA can implement the bill with existing resources.

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 cannabis-related cases in the circuit courts as a result of the bill's decriminalization of specified activities.

Local expenditures for incarcerations for cannabis-related offenses decrease as a result of the bill's decriminalization of specified activities.

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

Small Business Effect: This analysis 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, cannabis establishments under State law are still 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 cannabis market; (2) the lack of federal business tax deductions impedes the profit-making abilities of Maryland cannabis businesses; (3) taxes, overhead, and business-related expenses incurred in operating a public cannabis business prohibit a viable business model for current cannabis entrepreneurs; (4) restricting retailers to suppliers that are State-authorized cannabis cultivation facilities discourages those retailers from participating in the State's cannabis market; and (5) decriminalization of cannabis under State law affects cannabis prices.

Additional Comments: The bill states that its provisions expunge by "operation of law," the conviction of a person previously convicted of possessing one ounce or less of cannabis 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. Further, the bill requires State agencies to destroy records pertaining to arrests and convictions for possession of one ounce or less of cannabis by individuals at least age 21 by December 31, 2017. These requirements may prove problematic for several reasons.

Other than the unique offense created in 2012 for possession of less than 10 grams of cannabis, and the establishment of a civil violation for possession of less than 10 grams of cannabis established in 2014, the Criminal Justice Information System (CJIS) does not have information on the amount of cannabis 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 age 21 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 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. Both the Judiciary and DPSCS advise that expungement of the required records is a manual, labor-intensive process, and that under the bill, staff must review thousands of documents; thus, expungement of the required records is not possible by December 31, 2017. Further, any programming or operational effort to accomplish expungement of qualifying records may require a significant increase in general fund expenditures for DPSCS, the Judiciary, and any other agencies involved. For example, DPSCS advises that it requires 12 additional, full-time positions in order to expunge the required documents and that the process may still take several years.

Additionally, the bill authorizes State agencies to request funding from the Comptroller to comply with the expungement requirements and specifies that this funding must come from collected fees. The bill does not specify which fees must be used for this purpose. Moreover, as noted previously, any collected fees under the bill 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.

In addition, the bill authorizes a person to file an action in circuit court to compel a State agency to comply with the bill's expungement requirements and additionally specifies that if a person cannot afford to hire an attorney, the person is entitled to the assistance of OPD. However, only indigent individuals, as defined in statute, are entitled to representation by OPD; further, OPD handles criminal cases. Therefore, it is unclear whether and to what extent OPD can provide the required representation.

Finally, it should be noted that Senate Bill 927/House Bill 1186 of 2017, as introduced, establishes excise and sales taxes on cannabis, among other things. These bills are contingent upon the taking effect of this bill or its cross file.

Additional Information

Prior Introductions: SB 531 of 2015, a similar bill, was heard in the Senate Judicial Proceedings Committee, but received no further action. Its cross file, HB 911, was heard in the Judiciary Committee, but received no further action. SB 658 of 2014, another similar bill, was heard in the Senate Judicial Proceedings Committee, but received no further action. Its cross file, HB 880, was heard in the House Judiciary Committee, but received no further action. HB 1453 of 2014, another similar bill, was heard in the House Judiciary Committee, but received no further action.

Cross File: HB 1185 (Delegate Anderson, *et al.*) - Judiciary.

Information Source(s): Minority Affairs; Baltimore City; Caroline and Montgomery counties; City of Bowie; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Maryland Department of Agriculture; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Planning; National Conference of State Legislatures; U.S. Department of Health and Human Services; United Nations Office on Drug and Crime; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2017
md/kdm

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**Appendix 1 – Estimated Minimum Number of Registrations
and Associated Registration Fee Revenues under the Bill
Fiscal 2018-2021¹**

| | <u>FY 2018</u> | <u>FY 2019</u> | <u>FY 2020</u> | <u>FY 2021</u> |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| <u>Retailers²</u> | | | | |
| Number of New Registrations | 100 | 204 | - | - |
| Number of Renewal Registrations | - | 100 | 304 | 304 |
| Revenues from Application Fee ³ | \$500,000 | \$1,020,000 | - | - |
| Revenues from New Registrations ³ | 1,000,000 | 2,040,000 | - | - |
| Revenues from Renewal Registrations ³ | 0 | 500,000 | \$1,520,000 | \$1,520,000 |
| Revenues from On-Site Consumption ⁴ Registrations | <u>150,000</u> | <u>356,000</u> | <u>152,000</u> | <u>152,000</u> |
| <i>Revenue Subtotal</i> | <i>1,650,000</i> | <i>3,916,000</i> | <i>1,672,000</i> | <i>1,672,000</i> |
| <u>Cultivation Facilities⁵</u> | | | | |
| Number of New Registrations | 100 | - | - | - |
| Number of Renewal Registrations | - | 100 | 100 | 100 |
| Revenues from Application Fee ³ | \$500,000 | - | - | - |
| Revenues from New Registrations ³ | 1,000,000 | - | - | - |
| Revenues from Renewal Registrations ³ | <u>0</u> | <u>\$500,000</u> | <u>\$500,000</u> | <u>\$500,000</u> |
| <i>Revenue Subtotal</i> | <i>\$1,500,000</i> | <i>\$500,000</i> | <i>\$500,000</i> | <i>\$500,000</i> |
| <u>Manufacturer Facilities⁶</u> | | | | |
| Number of New Registrations | 150 | - | - | - |
| Number of Renewal Registrations | - | 150 | 150 | 150 |
| Revenues from Application Fee ³ | \$750,000 | - | - | - |
| Revenues from New Registrations ³ | 750,000 | - | - | - |
| Revenues from Renewal Registrations ³ | <u>-</u> | <u>\$750,000</u> | <u>\$750,000</u> | <u>\$750,000</u> |
| <i>Revenue Subtotal</i> | <i>\$1,500,000</i> | <i>\$750,000</i> | <i>\$750,000</i> | <i>\$750,000</i> |
| <u>Safety Compliance Facilities⁷</u> | | | | |
| Number of New Registrations | 10 | - | - | - |
| Number of Renewal Registrations | - | - | 10 | - |
| Revenues from Application Fee ³ | \$50,000 | - | - | - |
| Revenues from New Registrations ³ | 50,000 | - | - | - |
| Revenues from Renewal Registrations ³ | <u>-</u> | <u>-</u> | <u>\$50,000</u> | <u>-</u> |
| <i>Revenue Subtotal</i> | <i>\$100,000</i> | <i>-</i> | <i>\$50,000</i> | <i>-</i> |
| Total Anticipated Fee Revenues | \$4,750,000 | \$5,166,000 | \$2,972,000 | \$2,922,000 |

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. Additionally, the estimate does not include registrations of craft cannabis cultivators because there is not enough information regarding the number that apply. This estimate also does not reflect medical cannabis facilities that may apply for registration under the bill.

²Retailers must register by October 1, 2018, and renew on an annual basis.

³Assumes the maximum application, initial registration, and renewal fees authorized under the bill.

⁴Assumes each retailer applies for an on-site consumption registration.

⁵The Comptroller must issue 100 cannabis cultivation facility registrations by July 28, 2018, provided that qualified applicants exist.

⁶The Comptroller must issue 150 manufacturer facility registrations by July 28, 2018, provided that qualified applicants exist.

⁷The Comptroller must grant two-year registrations to at least 10 safety compliance facilities by October 1, 2018, provided that qualified applicants exist.

Source: Department of Legislative Services