

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 874

(Senator Zirkin)

Finance

Health and Government Operations

Natalie M. LaPrade Medical Cannabis Commission – Immunity

This bill extends legal protections to a third-party vendor authorized by the Natalie M. LaPrade Medical Cannabis Commission to test, transport, or dispose of medical cannabis, medical cannabis products, or medical cannabis waste. The bill also clarifies that current legal protections apply to specified entities acting in accordance with the State’s medical cannabis program for the medical use of *or possession of* medical cannabis.

Fiscal Summary

State Effect: The bill does not have a material fiscal or operational impact on the commission or other State agencies. The legal protections for authorized third-party vendors are not anticipated to materially affect State finances or operations.

Local Effect: The legal protections for authorized third-party vendors are not anticipated to materially affect local finances or operations.

Small Business Effect: Meaningful.

Analysis

Current Law:

Maryland's Medical Cannabis Program

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

Protection against Arrest, Prosecution, and Civil or Administrative Penalties

Current law establishes that any of the following persons acting in accordance with the statutory provisions of Maryland's medical cannabis program are not subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, nor may they be denied any right or privilege, for the use of medical cannabis: (1) a qualifying patient who is in possession of a 30-day supply of medical cannabis, or a greater amount if authorized by the qualifying patient's written certification; (2) a grower or grower agent; (3) a certifying provider; (4) a caregiver; (5) a dispensary or dispensary agent; (6) a processor or processor agent; or (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

Secure Transportation Companies

Statute is silent with regard to secure transportation companies in relation to the State's medical cannabis program. State regulations define a "secure transportation company" as a business that is licensed, whose employees are bonded, and that provides highly secure vehicles for the transportation of valuables and can assure that medical cannabis is secured at all times during transport. Either a secure transportation company or a shipping licensee must transport products containing medical cannabis. Further, a shipping licensee must use one transportation agent, who must carry commission-approved identification, to (1) accompany a shipment of products containing medical cannabis and (2) ensure the product is secured at all times during transport.

A medical cannabis transport vehicle must have and display current registration from the State, be insured as required by law, and may not display any sign or illustration related to medical cannabis or a licensee. A transportation agent driving a medical cannabis transport vehicle must have a current driver's license, and while on duty, cannot wear any identifying clothing or objects that indicate ownership or possession of cannabis.

There is no inspection, registration, or licensing process in place to enforce these regulations.

Independent Testing Laboratories

An independent testing laboratory is a facility, entity, or site that offers or performs tests of medical cannabis and products containing medical cannabis. Only registered independent testing laboratories may handle, test, or analyze cannabis or cannabis products. Independent testing laboratories must be accredited as operating to specified accreditation standards and be registered by the commission. Registrations are valid for two years. Additionally, independent testing laboratories must submit registration information for each employee. Regulations establish required standards of care related to the testing of medical cannabis and medical cannabis products.

By year-end 2017, the commission had approved one-year provisional registrations for four independent testing laboratories.

Current 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.

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 MDH; 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.

Small Business Effect: Under current law and practice, secure transportation companies and independent testing laboratories are the main beneficiaries of the legal protections established under the bill. Since secure transportation companies are not licensed under Maryland's medical cannabis program, and neither independent testing laboratories nor secure transportation companies are specifically protected from legal action, absent the bill, these entities may be subject to current criminal law provisions related to marijuana.

Since the bill applies broadly to authorized third-party vendors, the bill's legal protections may allow new small businesses, such as green waste disposal and recycling companies, to enter the industry.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2018
nb/jc Third Reader - March 30, 2018
Revised - Amendment(s) - March 30, 2018

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510