

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1496 (Delegate Glenn, *et al.*)
 Health and Government Operations

Labor and Employment - Discrimination Against Medical Cannabis Patients and
 Caregivers - Prohibition (Medical Cannabis Patient and Caregiver
 Antidiscrimination Act)

This bill prohibits an employer (including the State and local governments) from discriminating, under specified conditions, against a qualifying patient who is using medical cannabis, or against a caregiver of a qualifying patient, under the State’s medical cannabis program, in hiring, terminating, or imposing a term or condition of employment. The bill does not apply to an employer if complying with the bill would cause the employer to lose a monetary or licensing-related benefit under federal or State law. The Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) must enforce the bill.

Fiscal Summary

State Effect: General fund expenditures increase by \$172,800 in FY 2019 to implement and enforce the bill; out-year expenditures reflect annualization, annual salary increases, and elimination of one-time start-up costs. General fund expenditures may further increase in the future to the extent that the need for enforcement expands as the medical cannabis program grows. Potential minimal increase in general fund revenues due to the bill’s penalty provisions.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	172,800	134,100	136,400	139,700	143,100
Net Effect	(\$172,800)	(\$134,100)	(\$136,400)	(\$139,700)	(\$143,100)

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

Local Effect: Potential minimal increase in revenues due to the bill’s penalty provisions for those cases heard in the circuit courts. The bill does not materially affect local

expenditures because the bill does not apply to an employer if it would cause the employer to lose a monetary or licensing-related benefit under federal or State law.

Small Business Effect: Minimal.

Analysis

Bill Summary: An employer may not discriminate against a qualifying patient or caregiver based on (1) the individual's status as a qualifying patient or caregiver or (2) a registered qualifying patient's positive drug test for cannabis components or metabolites unless the qualifying patient used, possessed, or was impaired by cannabis on the premises of the employer or during the hours of employment.

If an employer violates the bill's provisions, the qualifying patient or caregiver may file a written complaint with the Commissioner of Labor and Industry, who must promptly investigate the complaint. If the commissioner determines that the employer has violated the bill, the commissioner must try to resolve the matter informally. If the matter cannot be resolved informally, the commissioner may assess a civil penalty against the employer of up to \$500 for a first offense or up to \$2,500 for any subsequent offenses. If a civil penalty is assessed, the commissioner may send an order to pay the civil penalty to the complainant and the employer.

Within 30 days of receiving the order to pay a civil penalty, the employer may request, and the commissioner must schedule, a *de novo* administrative hearing at the Office of Administrative Hearings. If a hearing is not requested within 30 days, the order to pay the civil penalty becomes a final order. If an employer fails to comply with a final order, the commissioner or the complainant may bring an action to enforce the order in the circuit court in the county where either the employer or the complainant is located.

Current Law:

Maryland's Medical Cannabis Program

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 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.

A “qualifying patient” is an individual who has been provided a written certification by a certifying provider in accordance with a bona fide provider-patient relationship. Additionally, if younger than age 18, a qualifying patient must have a caregiver. A “caregiver” is a person who has agreed to assist with a qualifying patient’s medical use of cannabis and, for a qualifying patient younger than age 18, a parent or legal guardian.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is defined as 120 grams of usable cannabis. The first medical cannabis was available for sale in the State in late calendar 2017.

Possession of marijuana remains illegal under federal law.

Labor Laws

An employer may not require an applicant for employment to answer an oral or written question that relates to a physical, psychiatric, or psychological disability, illness, handicap, or treatment unless the disability, illness, handicap, or treatment has a direct, material, and timely relationship to the capacity or fitness of the applicant to perform the job properly.

Discrimination Laws

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. For the purposes of this prohibition, the State and local governments are considered employers.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

Background: The Drug-Free Workplace Act of 1988 generally requires certain federal contractors and all federal grantees to agree as a precondition of receiving a contract or grant from a federal agency that they will provide a drug-free workplace. The specific conditions necessary to meet the requirements of the Drug-Free Workplace Act vary based on whether the contractor or grantee is an individual or an organization.

Delaware, Minnesota, New York, and Pennsylvania generally prohibit employers from discriminating against employees who are certified or licensed to use medical cannabis.

A number of court cases relating to disability discrimination claims have arisen from the discipline or termination of employees using state-sanctioned medical cannabis. In states with no specific provisions that protect medical cannabis users from employment discrimination, courts have tended to side with the employer, rejecting disability discrimination claims.

State Revenues: General fund revenues may increase minimally under the bill's monetary penalty provisions.

State Expenditures: Medical cannabis in the State was not available for sale until December 2017, so it is unknown how many qualified patients and caregivers are or will be covered under the bill. However, a large percentage of employers perform drug tests on their employees, which could prompt a number of discrimination cases for DLLR to investigate and issue orders.

Thus, general fund expenditures increase by \$172,768 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring one part-time assistant Attorney General and one part-time occupational safety and health compliance officer to develop regulations, investigate discrimination cases, and enforce the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including a one-time upgrade to the commissioner's information technology (IT) system to accommodate the new enforcement program.

Positions (full-time equivalent)	1.0
Salaries and Fringe Benefits	\$62,724
One-time IT Upgrade	96,961
Operating Expenses	<u>13,083</u>
Total FY 2019 State Expenditures	\$172,768

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, and the termination of one-time costs.

To the extent that the workload for the two part-time employees increases as the medical cannabis industry becomes more established and the number of qualifying patients and caregivers increases, the DLLR part-time positions may need to be converted to full-time positions.

The Judiciary advises that it is not possible to determine the fiscal and operational impact of the bill. The Department of Legislative Services assumes the circuit courts can handle the additional workload with existing resources, but to the extent that there are a large number of cases, additional resources may eventually be needed for the Judiciary. The Office of Administrative Hearings can likely conduct hearings resulting from the bill with existing resources.

DLLR advises that, currently, a failed drug test that results in termination could disqualify an employee from receiving unemployment insurance. The bill generally prevents this so the Division of Unemployment Insurance may need to provide training to staff on the matter, which can be done with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne’s, and St. Mary’s counties; cities of Bowie and Takoma Park; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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