

**Department of Legislative Services**  
 Maryland General Assembly  
 2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 771 (Senator Smith)  
 Judicial Proceedings

**Cannabis - Legalization, Taxation, and Regulation**

This bill generally legalizes marijuana (which is renamed cannabis by the bill) for individuals age 21 and older. The bill establishes a regulatory and taxation framework for cannabis establishments and establishes a process for expungement and resentencing for marijuana-related offenses.

**Fiscal Summary**

**State Effect:** General fund revenues likely decrease in FY 2020 but likely increase significantly beginning in FY 2021. Special fund revenues may increase significantly beginning in FY 2021 due to registration fees. General fund expenditures increase, primarily to establish a regulatory framework and implement expungement provisions, by \$5.6 million in FY 2020. Thereafter, a combination of general and special fund expenditures covers those costs.

| (in dollars)   | FY 2020     | FY 2021     | FY 2022     | FY 2023     | FY 2024     |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue     | (-)         | -           | -           | -           | -           |
| SF Revenue     | \$0         | -           | -           | -           | -           |
| GF Expenditure | \$5,599,800 | \$0         | \$0         | \$0         | \$0         |
| GF/SF Exp.     | \$0         | \$1,662,800 | \$1,044,600 | \$1,070,100 | \$1,116,800 |
| Net Effect     | (-)         | -           | -           | -           | -           |

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

**Local Effect:** Local revenues may increase, likely in FY 2021 and 2022, as discussed below. Local expenditures for incarcerations for cannabis-related offenses may decrease minimally.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** Among other things, the bill (1) renames marijuana as “cannabis”; (2) generally legalizes a “personal use amount” of cannabis for individuals age 21 or older; (3) requires expungement, and authorizes resentencing, for individuals convicted of marijuana-related offenses under specified circumstances; (4) establishes the Cannabis Regulation Division within the Office of the Comptroller; (5) establishes several requirements for the new division, including conducting a disparity study, establishing regulations, and developing a safety label; (6) establishes a Cannabis Regulation Fund consisting of specified fees and civil penalties to be administered by the Comptroller; (7) establishes a regulatory framework for annual registrations to operate a cannabis establishment; (8) authorizes a locality to establish its own ordinances and regulations with specified limitations; and (9) establishes a tax framework relating to cannabis, including an excise tax and a sales and use tax.

### *Cannabis – Definition*

“Cannabis” means all parts of the plant of the genus *cannabis*; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. The definition includes substances defined as “marijuana” or “hashish” under State law; it does not include (1) hemp with specified exceptions or (2) fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of another ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.

### *Legal Acts Related to Cannabis*

The bill establishes that it is not a criminal or civil offense in the State nor a basis for seizure or forfeiture of assets for a person who is age 21 or older to:

- possess, consume, grow, use, process, manufacture, purchase, or transport the personal use amount of cannabis (with specified exceptions related to processing and manufacturing cannabis);
- transfer the personal use amount of cannabis to another person age 21 or older without remuneration;
- control property where any of these actions occur; and
- assist another person who is age 21 or older with any of these actions.

“Personal use amount” means (1) one ounce or less of cannabis; (2) five grams or less of concentrated cannabis; (3) 500 milligrams or less of a cannabis product containing

tetrahydrocannabinol (THC); (4) four or fewer cannabis plants; or (5) any additional cannabis produced by the person's cannabis plants, as long as any amounts of cannabis in excess of what is otherwise allowed is kept in the same secure facility where the plants were cultivated.

Likewise, a person age 21 or older may manufacture, possess, and purchase cannabis accessories and may distribute or sell cannabis accessories to another person age 21 or older.

#### *Civil and Criminal Penalties – Generally*

*Possession of Cannabis More than the Personal Use Amount:* A person age 21 or older who possesses more than, but at most double, the personal use amount is subject to a maximum civil fine of \$250 and at most 20 hours of community service. It is a misdemeanor for a person age 21 or older to possess more than double the personal use amount of cannabis. Upon conviction, a person is subject to maximum penalties of six months imprisonment and/or a \$1,000 fine.

The bill repeals requirements that a court, under specified circumstances, order a person age 21 or older to attend a drug education class approved by the Maryland Department of Health (MDH) or summon for trial a person age 21 or older who has received a civil citation. Additionally, the bill repeals the authority of the court to impose the maximum fine on a person age 21 or older who has received a civil citation, failed to prepay the fine or requested a trial, and failed to appear for the trial.

*Underage Possession:* The bill changes the threshold associated with underage possession penalties. Possession of less than the personal use amount of cannabis by an individual between the ages of 18 and 21 is a civil offense (rather than less than 10 grams under current law). Violators are subject to maximum penalties of (1) a \$100 fine for a first offense; (2) a \$250 fine for a second offense; and (3) a \$500 fine for a third offense.

Possession of more than the personal use amount of cannabis by an individual between the ages of 18 and 21 is a misdemeanor (rather than less than 10 grams). Upon conviction, violators are subject to maximum penalties of six months imprisonment and/or a \$1,000 fine.

*False Representation of Age:* A person younger than age 21 may not use false proof of age to purchase or procure or attempt to purchase or procure cannabis, or gain access to a cannabis establishment. A violation is a civil offense subject to a maximum fine of \$150 and/or at most 10 hours of community service.

*Persons on Parole or Probation:* It is not a violation of parole or probation to engage in any of the specified lawful acts pertaining to cannabis or to test positive for cannabis ingestion unless the court or the Maryland Parole Commission makes a specific finding that the individual's use could create a danger to self or others.

*Prohibitions Pertaining to Vehicles:* It is a misdemeanor for a person to (1) consume cannabis while operating or driving a motor vehicle, boat, vessel, aircraft, or other motorized device and (2) smoke cannabis in an enclosed area of a motor vehicle, boat, vessel, aircraft, or any other motorized device while the device is being operated or driven, unless the device is a hired vehicle and there is a physical divider between the driver and the person.

For a first conviction, a person is subject maximum penalties of 90 days imprisonment and/or a \$1,000 fine. Additionally, the Motor Vehicle Administration (MVA) may suspend the person's driver's license for up to six months.

For subsequent convictions, a person is subject to maximum penalties of 180 days imprisonment and/or a \$2,000 fine. MVA may suspend the person's driver's license for up to one year.

*Cannabis Cultivation:* Cannabis plants may be cultivated by a person age 21 or older if the cultivation is done in a location outside of public view on property lawfully in possession of the cultivator or with the consent of the person lawfully in possession of the property. The cultivator must also take reasonable precautions, as specified, to ensure the cannabis plants are secure from unauthorized access and access by a person younger than age 21. Any violation related to these requirements is a civil offense, punishable by a maximum fine of \$750 and/or at most 50 hours of community service.

#### *Expungement and Resentencing Provisions*

*Persons Eligible for Expungement:* A person convicted of specified marijuana-related offenses that occurred before October 1, 2019, and involved an amount of cannabis at or below the personal use amount, may apply to expunge the record of the conviction. The application must be granted.

Additionally, a person previously convicted of an offense involving the possession, cultivation, processing, or sale of marijuana, as specified, who is not incarcerated or under supervision on October 1, 2019, may present an application for expungement. The court must consider the application and decide, pursuant to specified considerations, to (1) expunge the applicant's record; (2) expunge the applicant's record after the applicant remains in compliance with the law for an additional period of time; or (3) not expunge the applicant's record.

The bill specifies that the Judiciary may not charge any fees or court costs for expungements granted under the bill's provisions.

*Court Requirements:* The courts in each county and Baltimore City must review case records dating back to October 1, 1972; notify all individuals eligible for expungement; and expunge those records in which a person would be entitled to expungement upon application. If eligibility cannot be determined from the records, the court must still notify those individuals that they are potentially eligible and inform them of their rights to apply for expungement.

*Resentencing Provisions:* A person incarcerated or under supervision on the effective date of the bill (October 1, 2019) for an offense involving the possession, cultivation, processing, or sale of marijuana may present an application for resentencing to the court that sentenced the person, regardless of whether the person has previously filed a petition for resentencing. The court must consider the individual circumstances of each case. The court must reduce the applicant's sentence if the court makes specified findings, but the court may not increase the applicant's sentence.

*Public Defender Representation:* Indigent individuals petitioning for expungement or resentencing pursuant to the bill are eligible for representation by a public defender.

*Notice to Prosecutors:* In a proceeding for expungement or resentencing pursuant to the bill, the State's Attorney must receive notice and have the opportunity to be heard. Under circumstances where there is a factual dispute, the State's Attorney bears the burden of proof by a preponderance of the evidence; however, if the State's Attorney does not request to be heard, the court must make a determination based on a preponderance of the evidence.

*Noncitizens:* Within 30 days of a noncitizen making a request for immigration purposes in writing to the clerk's office regarding records related to those the court is required to expunge under the bill, the court must provide the records; if the records are not available, the court must provide a statement that no records can be found.

### *Cannabis Regulation Division*

The bill establishes a Cannabis Regulation Division within the Office of the Comptroller and authorizes the Comptroller to employ officers and employees of the division as provided in the State budget.

*Regulations:* The division must complete a disparity study before issuing required regulations. However, the bill specifies a number of regulations that the division must adopt within six months of the bill's effective date (thus, by April 1, 2020). The specified regulations include, but are not limited to, the following:

- procedures to allow existing dispensaries, processors, laboratories, or cultivators licensed in accordance with the Health-General Article to apply for an expedited dual license and procedures to suspend a dual license if a medical cannabis business has failed to maintain reasonable prices and product availability;
- rules establishing and governing a separate category of vertically integrated cannabis microbusinesses, including specified requirements and a least three tiers of cultivation facilities, the smallest of which must be a cannabis microbusiness;
- a schedule of reasonable application, registration, and renewal fees, with application fees capped at \$5,000 unless the division determines a greater fee is necessary to implement the bill;
- specified requirements and restrictions for cannabis establishments regarding transporting, labeling, packaging, and marketing;
- health and safety regulations and standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cannabis establishment, including restrictions on the use of pesticides and other additives;
- a definition of the amount of THC that constitutes a single serving in a cannabis product;
- civil penalties for the failure to comply with regulations; and
- procedures for collecting taxes levied on cannabis cultivation facilities.

*Registrations:* The division must start accepting and processing applications to operate cannabis establishments by October 1, 2020. Upon receipt of an application, the division must immediately forward a copy of the application and one-half of the application fee to the locality in which the applicant is applying to operate the cannabis establishment.

Within 60 days of receiving an application, the division must determine if an applicant is qualified pursuant to specified procedures that the division must adopt. If the division determines an applicant is not qualified, the division must notify the applicant of the specified reason in writing. This notice constitutes a final agency decision.

Within 120 days after receiving an application, the division must issue an annual registration unless (1) the applicant is not in compliance with enacted regulations or (2) the relevant locality informs the division the applicant is not in compliance with local ordinances or regulations.

Registrations for cannabis establishments must specify the location of operation for a cannabis establishment, and a separate registration is required for each location. However, a cannabis establishment may change locations within the same locality without submitting a new application if (1) the new location complies with all relevant laws and ordinances and (2) the specific location was not a factor in granting the initial registration due to enacted regulations. Otherwise, the division must give permission before a change of location.

Registrations must be renewed on an annual basis. Renewal applications may be submitted to the division up to 90 days before the expiration of the current registration.

*Transferring Registrations:* The division must establish reasonable rules governing the transfer of registrations, which may include (1) time limits before a transfer is initiated and (2) additional restrictions on the transfers of cannabis microbusinesses.

*Local Site Limits:* For localities that have enacted limits on the number of cannabis establishments, if a greater number of qualified applicants seeks registration, the division must set up a lottery to select the cannabis establishments, including microbusinesses, to register.

*Information Privacy:* To ensure that individual privacy is protected, the division may not require (1) a consumer to provide personal information other than a government-issued identification to a retail cannabis store and (2) a retail cannabis store to acquire and record personal information about consumers.

*Safety Information Label:* The division must (1) consult with researchers knowledgeable about the risks and benefits of cannabis; (2) develop a scientifically accurate safety label or handout that includes specified information; (3) make the label or handout available to each cannabis consumer; and (4) review and update the safety information label or handout at least once every two years to ensure scientific accuracy.

### *Cannabis Regulation Fund*

The bill establishes the Cannabis Regulation Fund. The division must administer the fund, which consists of fees and civil penalties as specified, and is continuously appropriated.

The Comptroller must retain sufficient money in the fund to defray the entire cost of administering the bill. Revenues generated in excess of this amount must be distributed as follows: (1) 10% to MDH for use in evidence-based, voluntary programs for the prevention or treatment of substance abuse; (2) 10% to make State roads safer by combatting driving under the influence through specified means; (3) 20% to supporting communities and individuals harmed by cannabis prohibitions as specified; and (4) 60% to the Education Trust Fund. The bill expresses legislative intent that the agencies receiving such funding endeavor to use the funds to help individuals from communities that have had above-average marijuana arrest rates.

## *Regulation of Cannabis Establishments*

A “cannabis establishment” means a retail cannabis store, an on-site consumption establishment, a cannabis cultivation facility, a cannabis product manufacturing facility, a cannabis testing facility, or a cannabis transporter.

*Lawful Acts:* A cannabis establishment or a person age 21 or older acting as an owner, employee, or agent of a cannabis establishment, with a valid registration, may legally participate in a number of specified activities particular to each type of cannabis establishment. However, all cannabis establishments may possess, store, and transport cannabis.

*Prohibition on Sales to Underage Persons:* A cannabis establishment or an agent or staffer of a cannabis establishment may not sell, deliver, give, transfer, or otherwise furnish cannabis to a person younger than age 21. If a person is prosecuted for violating this prohibition, it is a defense that the person worked at a retail cannabis store or an on-site consumption establishment and was shown specified documentation indicating the underage person was at least age 21. This defense does not apply under specified circumstances.

*Other Provisions:* Cannabis establishments and their books or records are subject to inspection by the division. Additionally, it is the public policy of the State that contracts related to the operation of a registered cannabis establishment are enforceable and may not be deemed unenforceable based solely on federal law prohibitions related to cannabis.

## *Local Ordinances*

A “locality” means a county, municipal corporation, or political subdivision of the State. Under the bill, a locality may enact ordinances or regulations that (1) do not conflict with State laws or regulations and (2) govern the time, place, manner, and number of cannabis establishments operating in the locality. Additionally, a locality may enact an ordinance banning the operation of cannabis retail stores or on-site consumption establishments but may not prohibit transportation through the locality or deliveries in the locality by cannabis establishments located in other jurisdictions. Furthermore, a locality may establish civil penalties for violations of its local ordinances.

## *Cannabis Sales and Cannabis Taxation*

The bill specifies that sales of licensed cannabis are subject to the 6% State sales and use tax. In addition, an excise tax is imposed on the sale or transfer of cannabis from a cannabis cultivation facility to a retail cannabis store, an on-site consumption establishment, or a cannabis product manufacturing facility. The excise tax is equal to (1) \$50 per ounce on all



cannabis flowers; (2) \$25 per immature plant; and (3) \$15 per ounce on all other parts of cannabis.

The taxes imposed do not apply to cannabis sold under the State medical cannabis program pursuant to the Natalie M. LaPrade Medical Cannabis Commission. The Comptroller must adopt regulations establishing the procedures for the collection of taxes imposed on cannabis cultivation facilities. The revenues generated from these taxes are distributed to the State's general fund.

The bill also establishes that, notwithstanding any federal tax law to the contrary, cannabis establishments may deduct from State taxes all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business as a cannabis establishment. These ordinary necessary expenses include a reasonable allowance for salaries or other compensation for personal services rendered.

#### *Miscellaneous Provisions*

The bill establishes various provisions related to professional or occupational licensing, employer drug policies, property owners and landlords, and law enforcement agencies.

The bill's provisions do not repeal or modify a law concerning medical use of cannabis or consumption of THC in other forms. Additionally, the bill does not repeal or modify any law concerning the possession or use of marijuana by individuals younger than age 18 who remain subject to the jurisdiction of the juvenile court system. 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.

#### **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.

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.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months (but retained the maximum \$1,000 fine).

Further, pursuant to Chapter 515 of 2016, before imposing a sentence for these offenses, the court is authorized to order MDH, 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. MDH 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 MDH 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.

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.

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.

Chapter 801 of 2017 expands eligibility for expungements to include a conviction for possession of marijuana under § 5-601 of the Criminal Law Article. A petition for expungement under this law may not be filed within four years after the conviction or satisfactory completion of the sentence, including probation, that was imposed for the conviction, whichever is later.

### *Maryland's Medical Cannabis Program*

The Natalie M. LaPrade Medical Cannabis Commission administers the State's medical cannabis program, which makes medical cannabis available to qualifying patients and their caregivers legally under State law via written certification. The commission comprises 16 members, including the Secretary of Health, but commission membership is reduced to 13 effective October 1, 2019.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is generally defined as 120 grams of usable cannabis. The first medical cannabis was available for sale in the State in late 2017. 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. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

### *State Sales and Use Tax*

No State or local tax is currently imposed on the sale of cannabis.

The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which are taxed at a rate of 9%.

**Background:** Authorization for the medicinal and recreational use of marijuana, as well as decriminalization of small amounts of marijuana, has gained momentum across the country. However, possession of marijuana remains illegal at the federal level, although states are not obligated to enforce federal marijuana laws and the federal government may not require states to recriminalize conduct that has been decriminalized.

### *State Marijuana Laws*

According to the National Conference of State Legislatures, 33 states (including Maryland), the District of Columbia, Guam, and Puerto Rico have comprehensive public medical cannabis programs. Additionally, another 13 states allow for the use of low THC, high CBD (cannabidiol) products for medical reasons in limited situations or as a legal defense. Further, 22 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana.

As of January 2019, 10 states (Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Washington, and Vermont) and the District of Columbia have legalized the recreational use of marijuana. Four of these states (California, Massachusetts, Maine, and Nevada) passed ballot initiatives to legalize recreational use in the November 2016 election. In January 2018, Vermont became the first state to legalize recreational use of marijuana through the legislature (rather than through ballot initiative).

### *Federal Guidance*

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. Then, on January 4, 2018, in a memorandum to all U.S. attorneys, former Attorney General Jefferson B. Sessions III announced that the aforementioned guidance regarding federal marijuana prosecutions was rescinded, effective immediately.

In February 2014, the U.S. Treasury Department, in conjunction with DOJ, issued separate 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. The U.S. Treasury Department has not revised

this guidance in response to DOJ's revocation of the August 2013 guidelines in January 2018.

**State Fiscal Effect:** 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 robust participation in the cannabis market, beginning in fiscal 2021, general fund revenues increase, likely significantly, from taxes and special fund revenues increase, likely significantly, from registration fees and newly established civil penalties.

#### *Cannabis and Cannabis Business Taxation*

The bill specifies that sales of licensed cannabis are subject to the State sales and use tax. In addition, the bill imposes an excise tax on the sale or transfer of cannabis from a cannabis cultivation facility. As a result, general fund revenues increase, potentially significantly, due to the imposition of these taxes; this impact has not been quantified but is assumed to begin in fiscal 2021.

#### *Application and Registration Fees*

Special fund revenues increase, potentially significantly, beginning in fiscal 2021 to the extent that cannabis establishments apply for registration, become registered, and renew their registrations annually. The bill establishes the Cannabis Regulation Fund consisting of fees from cannabis establishments and specified civil penalties. Further, the division must establish a schedule of reasonable application, registration, and renewal fees and begin accepting applications by October 1, 2020. However, the *application* fee cannot exceed \$5,000 per applicant unless the division determines a greater fee is necessary to carry out its responsibilities.

*For illustrative purposes only*, special fund revenues could increase by \$2.9 million in fiscal 2021, based on the following assumptions: (1) each type of fee is set at \$5,000 (application, registration, and renewal) – regardless of type or size of the establishment; (2) the market stabilizes at a total of 770 cannabis establishments (500 retail cannabis stores and/or on-site consumption establishments, 100 cannabis cultivation facilities, 150 cannabis product manufacturing facilities, 10 cannabis testing facilities, and 10 cannabis transporters); (3) the timeline for registration under the bill is feasible with rapid uptake and expeditious registration so that one-half of the establishments apply and

are able to register in fiscal 2021 (the earliest possible timeframe under the bill) and the other half apply and register the following year; (4) all cannabis establishments renew annually (as required by the bill); and (5) one-half of application fee revenues is shared with the appropriate localities, as required by the bill. This scenario assumes the application fee is set at the maximum authorized in the bill (although the Comptroller may determine that a greater fee is necessary and the amount may be adjusted annually for inflation). As noted above, the illustrative estimate assumes all registration and renewal fees are set at the same level as the application fee, which is capped, even though the bill does not restrict the other fees except that they must be “reasonable.” As fees for medical cannabis are much higher, fees for cannabis establishments could also be much higher. **Exhibit 1** below shows the estimated revenues based on these assumptions from fiscal 2021 through 2024.

---

**Exhibit 1**  
**Estimated Registrations and Associated Registration Fee Revenues**  
**Under One Scenario**  
**Fiscal 2021-2024**

|                                       | <u><b>FY 2021</b></u> | <u><b>FY 2022</b></u> | <u><b>FY 2023</b></u> | <u><b>FY 2024</b></u> |
|---------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| New Cannabis Establishments           | 385                   | 385                   | -                     | -                     |
| Renewal Registrations                 | -                     | 385                   | 770                   | 770                   |
| <b>Revenues</b>                       |                       |                       |                       |                       |
| From Application Fees                 | \$1,925,000           | \$1,925,000           | -                     | -                     |
| From New Registrations                | 1,925,000             | 1,925,000             | -                     | -                     |
| From Renewal Registrations            | 0                     | 1,925,000             | \$3,850,000           | \$3,850,000           |
| <b>Subtotal</b>                       | <b>3,850,000</b>      | <b>5,775,000</b>      | <b>3,850,000</b>      | <b>3,850,000</b>      |
| <b>Total Retained by the State*</b>   | <b>\$2,887,500</b>    | <b>\$4,812,500</b>    | <b>\$3,850,000</b>    | <b>\$3,850,000</b>    |
| <b>Total Forwarded to Localities*</b> | <b>\$962,500</b>      | <b>\$962,500</b>      | -                     | -                     |

\*Reflects one-half of the *application* fees being forwarded to the affected localities.

Source: Department of Legislative Services

---

*Newly Established Civil Penalties*

Special fund revenues to the Cannabis Regulation Fund also increase beginning in fiscal 2021 to the extent that civil penalties are imposed as a result of violating the bill’s cannabis subtitle (which generally assumes cannabis establishments must be operational before the relevant civil penalties may be imposed; however, penalties may be assessed for cultivation as early as fiscal 2020).

### *Excess Revenues from the Cannabis Regulation Fund*

The bill specifies a number of different entities entitled to a percentage of funds from the Cannabis Regulation Fund, if revenues are generated in excess of the amount required to defray the *entire* cost of the bill. This analysis assumes that there will not be excess funds – at least in the five-year period covered by this fiscal and policy note, as the bill’s cost will likely exceed its revenues.

### *Maryland Department of Health*

Civil penalties imposed for cannabis-related offenses under § 5-601 of the Criminal Law Article are currently remitted to the Marijuana Citation Fund for drug education and treatment programs. Therefore, special fund revenues for MDH decrease significantly due to fewer individuals being subject to civil penalties.

### *Judiciary*

The impact on general fund revenues due to imposition of civil and criminal fines cannot be readily ascertained, in part because distribution of civil fines to the Marijuana Citation Fund remains tied to a threshold of 10 grams versus the higher personal use amount and it is not clear that citations and the courts will differentiate between those thresholds. General fund revenues likely decrease minimally beginning in fiscal 2020 due to the higher threshold for misdemeanor penalties to be imposed under the bill.

Although the Judiciary typically collects a \$30 filing fee for petition for expungement of guilty dispositions, the bill prohibits the Judiciary from charging fees or court costs for expungements granted under the bill. Thus, this analysis does not reflect any revenues due to expungements.

### ***State Expenditures:***

#### *Comptroller – Division of Cannabis Regulation and Administration of Tax Provisions*

General fund expenditures increase significantly in fiscal 2020. 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 deadlines for compliance under the bill. The Comptroller advises, and the Department of Legislative Services (DLS) agrees, that it is unlikely to be able to implement the bill’s requirements within the required timeframe. Nevertheless, this analysis assumes it is feasible to do so.

The Comptroller advises that it needs 35 full-time permanent employees and other contractual services at a cost of \$5.9 million in fiscal 2020 to implement this bill. DLS advises that certain costs must be incurred, regardless of how many entities apply to be cannabis establishments. For example, the bill mandates that a disparity study be conducted, regulations be promulgated, and a scientifically accurate safety information label or handout be made available – after consultation with researchers knowledgeable about the risks and benefits of cannabis. In addition, the Comptroller must establish the Cannabis Regulation Division, with a base level of staff, to register and otherwise oversee cannabis establishments; the Comptroller must also administer the excise and sales tax provisions of the bill, which will require modifications to its Compass system. Additional staffing requirements will depend on how many applications to register as cannabis establishments are received and the timing of those applications. Therefore, this analysis is based on minimal initial staffing by the Comptroller and reflects 15 new employees and significant contractual support. To the extent the Comptroller is unable to maintain operations with that level of staffing, the Comptroller may request additional positions through the annual budget process.

Because special fund revenues will not be available to the Comptroller in fiscal 2020, general funds are necessary for the first year. Thereafter, at least some costs may be covered with special funds. Accordingly, Comptroller general fund expenditures increase by *at least* \$4,463,710 in fiscal 2020. This estimate reflects the cost of hiring one assistant director, one management associate, three revenue examiners, three revenue specialists, one accountant, one programmer, four field enforcement agents, and one field enforcement supervisor 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 the cost of conducting a full disparity study; hiring consultants to assist in the crafting of specified regulations and drafting of an information label (updated every two years); and programming costs to create a new tax type in Compass. Given the new division created 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, 2019 (despite the bill’s October 1, 2019 effective date).

|   |                    |
|---|--------------------|
| Positions                                     | 15                 |
| Full Disparity Study                          | \$2,000,000        |
| Consulting Services                           | 1,050,000          |
| Salaries and Fringe Benefits                  | 990,985            |
| Operating Expenses                            | 82,725             |
| Programming Costs                             | <u>340,000</u>     |
| <b>Total FY 2020 Comptroller Expenditures</b> | <b>\$4,463,710</b> |



Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, an additional \$80,000 in programming costs in fiscal 2021, and \$10,000 in additional consulting fees every two years to update the information label. In future years, a portion of these costs is expected to be covered with special funds.

### *Judiciary*

General fund expenditures increase significantly in fiscal 2020. The Judiciary advises that for fiscal 2018 there were 1,867 violations in the District Court and 1,486 violations in the circuit courts for the possession of 10 grams or more of marijuana. Additionally, there were 17,584 civil citations filed in the District Court for possession of less than 10 grams of marijuana. Under the bill, the Judiciary is required to review records going back to October 1, 1972, notify all individuals who are eligible for expungement, and expunge those cases. Additionally, the Judiciary must notify all those who are *potentially* eligible for expungement under the bill. Given the number of cases that will qualify or potentially qualify for expungement under the bill's provisions and the deadline of April 1, 2021, to complete the process of reviewing, notifying, and expunging, the Judiciary will need a significant increase in staff to implement the bill.

General fund expenditures increase by \$986,086 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. The Judiciary has determined that 20 regular full-time positions are needed to implement this bill. However, DLS advises that the added responsibilities incurred by this legislation are not permanent and, thus, may be performed by contractual employees. This estimate reflects the cost of hiring a total of 20 contractual staff (for the District Court and the circuit courts) to perform the functions related to the expungement provisions of the bill that must be completed by April 1, 2021. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, programming costs, and reprinting costs to change the language on civil citations from less than 10 grams to an amount for personal use.

|   |                  |
|---|------------------|
| Contractual Positions                       | 20               |
| Salaries and Fringe Benefits                | \$609,481        |
| Programming Costs                           | 229,430          |
| Operating Expenses                          | <u>147,175</u>   |
| <b>Total FY 2020 Judiciary Expenditures</b> | <b>\$986,086</b> |

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, and termination of the positions on April 1, 2021. As the bill requires these costs to be covered with revenues from the registration of cannabis establishments, this analysis assumes some portion of the costs may be covered with special funds in fiscal 2021, but as noted above, special funds will not be available for this purpose in fiscal 2020.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

#### *Maryland State Archives*

The Maryland State Archives advises that it processes between 300 and 400 expungement orders every month and that a significant increase in this number requires additional staff. The bill likely significantly increases their workload in fiscal 2020 and 2021, necessitating contractual assistance. Any such costs have not been quantified.

#### *Office of the Public Defender*

The Office of the Public Defender (OPD) advises that the bill's decriminalization of specified cannabis offenses reduces OPD caseloads. Further, the bill's expansion of public defender eligibility to indigent persons filing for expungement or resentencing under the bill increases OPD caseloads. Given the caseloads and resources of OPD, it is assumed that the reduction in caseloads from the bill's decriminalization provisions is offset by the increase in caseloads from the bill's expungement and resentencing provisions. Thus, expenditures are not materially affected.

#### *Maryland Department of Health*

Although not quantified, special fund expenditures from the Marijuana Citation Fund decrease beginning in fiscal 2020 as fewer individuals will be required to attend drug education and treatment programs approved by MDH.

#### *Law Enforcement*

General fund expenditures increase in fiscal 2020 only. The Department of State Police (DSP) expects a decrease in criminal and civil citations for cannabis but an increase in arrests for driving under the influence and driving while impaired by cannabis. These cases usually involve blood evidence. All blood draw kits from across the State are sent to DSP for analysis. Therefore, DSP advises it will need a new gas chromatograph mass spectrometer at a cost of \$150,000 in order to ensure timely testing of blood kits, but that the increase in workloads can be absorbed within existing resources.

The Department of Natural Resources (DNR) advises that, due to an expected increase in the instances of persons driving under the influence and driving while impaired by cannabis, DNR police officers will need to undergo additional training to become certified Drug Recognition Experts. However, this training is offered by DSP at no charge.

*Department of Public Safety and Correctional Services*

General fund expenditures decrease minimally for DPSCS from reduced incarcerations for cannabis-related offenses. DPSCS advises that, in fiscal 2018, there were 24 inmates in its custody for offenses affected by the bill; however, 20 of the inmates were also incarcerated for other offenses not affected by the bill.

**Local Fiscal Effect:** Local revenues increase, potentially significantly, from application fees as half of every application fee received by the Division of Cannabis Regulation must be sent to the locality in which the applicant desires to operate that cannabis establishment. This impact is primarily realized in fiscal 2021 and 2022.

Local revenues also increase to the extent local jurisdictions use the authorization to establish and impose civil penalties for violations of ordinances relating to cannabis establishment operations.

Costs associated with increased contractual staffing for expungements in the circuit courts are addressed above in the Judiciary discussion. Any effect on local circuit court expenditures is assumed to be minimal.

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

**Small Business Effect:** The bill 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; and (4) decriminalization of cannabis under State law affects cannabis prices.

**Additional Comments:** The bill requires that the Division of Cannabis Regulation complete a disparity study, which could take anywhere from six months to five years depending on whether a survey study can be done or a full study is required. However, the bill requires that regulations be adopted within six months but *after* the disparity study. It is unclear whether it is possible to meet this timeline, but the analysis presented assumes it is feasible.

This analysis does not address other impacts related to legalization such as forfeitures.

## Additional Information

**Prior Introductions:** Similar legislation has been considered in prior legislative sessions. SB 928 of 2017 and its cross file, HB 1185, received hearings in the Senate Judicial Proceedings and House Judiciary committees, respectively, but no further action was taken on either bill. SB 531 of 2015 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. In addition, bills were introduced in the 2014 session.

**Cross File:** HB 656 (Delegate Luedtke, *et al.*) - Judiciary and Ways and Means.

**Information Source(s):** Montgomery County; Maryland Association of Counties; City of Takoma Park; Maryland Municipal League; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; University System of Maryland; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; National Conference of State Legislatures; U.S. Department of Justice; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2019  
mag/kdm

---

Analysis by: Amber R. Gundlach

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