SB 383

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FISCAL AND POLICY NOTE
First Reader

Senate Bill 383 (Senator Kagan)
Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission - Law Enforcement and Dispensaries

This bill (1) authorizes a "law enforcement representative" to obtain medical cannabis for training purposes, as specified and (2) establishes the Law Enforcement Purchases Account within the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund to fund such medical cannabis purchases. The Natalie M. LaPrade Medical Cannabis Commission must reimburse a licensed dispensary for medical cannabis or medical cannabis products dispensed to a law enforcement representative, as specified. The bill also requires dispensaries to affix a new warning label to all medical cannabis and medical cannabis products at the point of sale that warns against operating an automobile or heavy machinery while using the product.

Fiscal Summary

State Effect: Special fund expenditures for the commission increase beginning as early as FY 2020, potentially significantly, to reimburse dispensaries for medical cannabis obtained by law enforcement representatives and implement the bill, as discussed below. Revenues are not currently available for this purpose and are not otherwise affected by the bill.

Local Effect: Local law enforcement agencies may benefit from having the authority to obtain medical cannabis for training purposes, and training costs may decrease. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A "law enforcement representative" is an individual who is (1) employed in a management position by a law enforcement agency in the State; (2) sworn into the position; and (3) designated to be a representative of the law enforcement agency for the purposes of the bill.

Each month, a law enforcement representative may obtain either as much as 120 grams of medical cannabis or as much as 36 grams of medical cannabis concentrate from a licensed dispensary at no cost for use during a law enforcement officer training program on the detection of cannabis intoxication as it relates to impaired driving. The commission must reimburse a licensed dispensary for the cost of the medical cannabis or medical cannabis concentrate dispensed to a law enforcement representative from the Law Enforcement Purchases Account.

Accordingly, the bill authorizes law enforcement representatives to obtain medical cannabis and related products for the purposes specified from licensed growers and dually licensed growers and dispensaries. The bill also establishes protections such that law enforcement representatives cannot be disciplined, arrested, prosecuted, or otherwise penalized for obtaining medical cannabis for a training program under the bill. Likewise, licensed dispensaries and their registered agents as well as licensed processors and their registered agents may not be penalized or arrested for providing or dispensing cannabis for use by law enforcement representatives in accordance with the bill. Other existing protections extend to licensed growers and dually licensed growers and dispensaries for distributing medical cannabis to law enforcement representatives under the bill.

The Law Enforcement Purchases Account consists of any money received from fees collected by the Maryland Department of Health (MDH), any State appropriations, and any other grants or contributions from public or private entities received by MDH for use in the account. MDH must administer the account and set fees in an amount necessary to provide revenues for the purposes of the account. MDH may adopt implementing regulations.

Current Law:

Natalie M. LaPrade Medical Cannabis Commission

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.

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 medical use or possession 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; (7) a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment; or (8) an authorized third-party vendor.

A "30-day supply" is defined in regulations as 120 grams of usable cannabis, or in the case of a medical cannabis-infused product, 36 grams of tetrahydrocannabinol, unless a physician determines these amounts are inadequate.

Chapter 598 of 2018 established the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund, a special nonlapsing fund administered by MDH. The purpose of the fund is to establish a program to allow eligible individuals enrolled in Medicaid or in the Veterans Administration Maryland Health Care System to obtain medical cannabis from a licensed dispensary free of charge or at a reduced cost. Accordingly, the fund is intended to be used to reimburse a licensed dispensary for the cost of the medical cannabis dispensed to an eligible individual. MDH must set fees in an amount necessary to fund the program but cannot impose fees on a licensee during the two years immediately following pre-approval. MDH must adopt implementing regulations for this program and the fund.

Drugged Driving and Testing for Evidence of Drugs and Alcohol

A test for drug or controlled dangerous substance (CDS) content relating to an alcohol- and/or drug-related driving offense (1) may not be requested unless the law enforcement agency of which the officer is a member has the capacity to have such tests conducted *and* (2) may only be requested by a police officer who is a trainee, has been trained, or is participating directly or indirectly in a program of training, as specified. That training program has to be designed to train and certify police officers as drug recognition experts and be conducted by a law enforcement agency of the State or other law enforcement agency, as specified – either in conjunction with the National Highway Traffic Safety Administration (NHTSA) or as a program of training that is substantially equivalent to the requirements of the Drug Recognition Training Program developed by NHTSA.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test of breath or blood, or both, if the person is detained by a police officer on suspicion of committing an alcohol- and/or drug-related driving offense. A police officer must direct a person to submit to a test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person due to a reasonable belief that the person was driving or attempting to drive while:

- under the influence of alcohol or under the influence of alcohol *per se*;
- impaired by alcohol;
- impaired by drugs and/or drugs and alcohol; or
- impaired by a CDS.

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

As noted, a person may not be directed to submit to a test of blood or breath to determine the level of alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person. The administration of a blood test is further limited, however. In a 2016 case, the U.S. Supreme Court ruled that a blood test cannot be administered to a person suspected of a drunk and/or drugged driving offense, unless the person consents, or a search warrant is obtained, absent exigent circumstances.

A police officer who stops a driver with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures.

A test for drugs or CDS is admissible as evidence. However, there are no evidentiary presumptions for impairment based on specific levels of drug or CDS content.

Background:

Testing for Drugged Driving

Few studies have examined the impairing effects of marijuana use on driving-related skills. One of these studies shows that marijuana has the potential to impair critical abilities

necessary for safe driving: reaction time, road tracking, cognitive performance, target recognition, and attention maintenance. However, these potential impairments have not been shown to have any correlation with measured cannabis (THC) levels. Additionally, while THC can be detected in the blood long after ingestion, the acute psychoactive effects of marijuana ingestion last for mere hours, not days or weeks. In fact, very low THC levels may persist in the blood for more than six hours from a single administration. Even less is known about these effects due in part to the typical differences in research methods, tasks, subjects, and dosing that are used. All of these variables make testing for marijuana impaired driving particularly difficult.

NHTSA considers Standardized Field Sobriety Tests to be the foundation for all impaired driving detection training. The first evidence of drug use is typically obtained roadside by the investigating law enforcement officer who is trained to detect drug impairment. The next step is toxicological testing, which has several limitations. First, the use of laboratory testing can be both time consuming and expensive. Furthermore, while these toxicological tests can confirm the presence of a drug that does not necessarily indicate driver impairment at the time the specimen was collected. Additionally, the level of a drug or metabolite in the blood does not necessarily correspond to the amount of impairment. Finally, the collection of a blood sample has been ruled by the U.S. Supreme Court to be an invasive procedure that requires either permission or a search warrant and the availability of a nurse or licensed phlebotomist to collect the sample. Nevertheless, blood testing is considered the most specific and reliable when conducting toxicological testing for the presence of drugs in impaired driving cases.

Compassionate Use Fund and Report

Chapter 598 of 2018 required the commission to submit a report to the General Assembly on the revenues needed to fund the Compassionate Use Fund, potential funding mechanisms, and any anticipated savings in prescription drug costs for the State's Medicaid Program. The commission submitted the required report in December 2018. Among other things, the report concluded that the revenues necessary to provide eligible qualifying patients with even modest price reductions is substantial. The fund would need at least $5.6 million in fiscal 2020 to provide a 15% discount, and $7.5 million to provide a 20% discount. The commission further noted that, due to current licensing fees and the heavy federal tax burden carried by medical cannabis businesses, it may be difficult for license holders to fund the Compassionate Use Fund without significantly increasing retail prices.

The commission's report also noted that there is no mandated funding for the fund. MDH is required to (1) establish the program and (2) set any fees that may be necessary to provide medical cannabis at "no cost or a reduced cost" to eligible Maryland Medicaid and Veterans Administration Maryland Health Care System enrollees.

Statute prohibits any fees from being assessed on a medical cannabis business until at least two years following the issuance of a Stage One pre-approval of a license. In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals, and in December 2016, 102 dispensary Stage One licensee pre-approvals were announced (some of which hold a combination license and thereby fall within the limits on each type of license). Thus, these licensees are now eligible to be assessed fees for the purposes of the Compassionate Use Fund. However, to date, MDH has not promulgated any regulations to assess fees. It is unknown whether MDH has plans to establish fees for this purpose. Additionally, there have been no appropriations to the fund from the State budget; thus, there is currently no available funding in the fund.

Costs to Purchase Medical Cannabis

According to the commission's report, in Maryland, the price of medical cannabis is not set by statute or regulation. Prices vary significantly based on content (*i.e.*, THC or cannabinoid concentration) or location, but 1 gram of flower typically ranges between $5 and $20. A patient is permitted to purchase up to 120 grams of medical cannabis in a rolling 30-day period, which means a patient purchasing the maximum allowable amount of flower product could spend $600 to $2,400 per 30-day period. The costs of medical cannabis concentrates and medical cannabis-infused products also vary significantly based on content and location and are generally more expensive than flower products.

State Expenditures: Although the bill directs dispensary reimbursements to be funded by the Law Enforcement Purchases Account, the Compassionate Use Fund has not been capitalized and there are no proposed regulations to establish fees to do so. Thus, there is no funding available for the Law Enforcement Purchases Account. The timing and amount of any capitalization are unknown and depend on any fees assessed and outside sources of funding. Even so, this analysis assumes that special fund expenditures for the commission may increase to reimburse dispensaries that provide medical cannabis to eligible law enforcement representatives under the bill as early as fiscal 2020. Reimbursement costs could vary greatly depending on how many law enforcement representatives obtain medical cannabis as authorized by the bill, how often medical cannabis is obtained, the type and quantity of cannabis obtained, and where the cannabis is obtained.

According to the commission's report, 120 grams of medical cannabis can cost between $600 and $2,400. *For illustrative purposes only*, if 12 law enforcement representatives obtain 120 grams of medical cannabis each month for a year, special fund expenditures to reimburse dispensaries increase by between $86,400 and $345,600 annually.

Expenditures also increase to develop regulations and implement the bill. However, it is unclear whether these are general fund expenditures for MDH or special fund expenditures for the commission. As mentioned, MDH has not promulgated implementing regulations

for the Compassionate Use Fund. Thus, there are no model policies or methods in place to reimburse dispensaries or ensure transactions between dispensaries and law enforcement representatives are eligible for reimbursement.

The Department of State Police (DSP) may benefit from being able to obtain medical cannabis from a safe, secure, and highly regulated source for training purposes. Having access to free medical cannabis for training results in lower training costs for DSP to the extent DSP chooses to pursue medical cannabis recognition training under its Drug Recognition Program. The Maryland Department of Transportation (MDOT) funds the Drug Recognition Program, so this would result in a reduction in Transportation Trust Fund expenditures, albeit minimal, for MDOT.

Local Fiscal Effect: Local law enforcement agencies benefit from being able to obtain medical cannabis from a safe, secure, and highly regulated source for training purposes. Having access to free medical cannabis for training results in lower training costs for local law enforcement in any jurisdiction that chooses to take advantage of the bill's authorization.

The Montgomery County Police Department advises that it has conducted cannabis training to teach officers how to recognize the impaired effects of cannabis use. The department was able to utilize grant funding for past training. Having access to free medical cannabis results in lower expenditures for future training.

Small Business Effect: Although dispensaries are eligible for reimbursement, the bill has at least an operational impact on any dispensary that must provide free medical cannabis to a law enforcement representative under the bill. Since there is no current program for this type of dispensing and reimbursement, it is unclear how this will take place, but it likely requires additional administrative oversight from the commission. To the extent that dispensaries are not reimbursed for products that are dispensed to law enforcement representatives for free, the bill has a potentially significant negative fiscal impact on dispensaries that are small businesses.

It is assumed that dispensaries can affix the required warning with minimal impact.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; City of Bowie; Governor's Office of Crime Control and Prevention; Maryland Department of Health; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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mag/jc

Analysis by: Kathleen P. Kennedy

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