

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 863 (Senator Zirkin)
 Judicial Proceedings

Labor and Employment - Screening for Use of Marijuana or Cannabis

This bill generally prohibits an employer with at least 15 full-time employees from requiring an applicant or an employee to disclose his or her use of marijuana or cannabis or otherwise inquiring of the applicant, employee, or others about the applicant’s or employee’s use of marijuana or cannabis. The bill does not apply to an employer that provides programs, services, or direct care to minors or to vulnerable adults. 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 \$156,600 in FY 2020 for DLLR; out-year expenditures reflect annualization and elimination of one-time start-up costs. The State is not subject to the bill as an employer. Potential minimal increase in general fund revenues due to the bill’s penalty provisions.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	156,600	129,900	133,700	137,900	142,300
Net Effect	(\$156,600)	(\$129,900)	(\$133,700)	(\$137,900)	(\$142,300)

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 apply to local governments as employers.

Small Business Effect: Minimal.

Analysis

Bill Summary: An employer is not prohibited from making an inquiry or taking other action that the employer is required to take or is expressly authorized to take by another applicable federal, State, or local law. An employer is not prohibited from making an inquiry or taking other action if the applicant or employee used, possessed, or was impaired by marijuana or cannabis on the premises of the place of employment during the hours of employment. Employment is any work for pay or any form of vocational or educational training with or without pay, and it includes contractual, temporary, seasonal, or contingent work and work through the services of a temporary or other employment agency.

The Commissioner of Labor and Industry may conduct an investigation to determine whether provisions of the bill have been violated on receipt of a written complaint by an applicant or employee. Whenever the commissioner determines that an employer has violated the bill, the commissioner may try to resolve the matter informally or ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

An employer may not take or refuse to take a personnel action or otherwise retaliate or discriminate against an applicant or employee as a reprisal for the applicant or employee having claimed a violation under the bill.

An employer who violates the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500 and/or imprisonment for up to 90 days for each violation.

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, qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. As of January 9, 2019, there were 79,427 registered patients, 54,236 certified patients, 4,890 caregivers, and 1,243 certifying providers.

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 generally 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.

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

State Expenditures: DLLR is unsure of how many complaints it will need to investigate under the bill, as DLLR is unfamiliar with enforcing laws related to marijuana or cannabis usage. However, DLLR anticipates additional workload that cannot be absorbed within existing resources.

Thus, general fund expenditures increase by \$156,575 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring one part-time assistant Attorney General, one part-time wage and hour investigator, and one part-time discrimination officer to develop regulations, investigate alleged employer violations and retaliation 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 program.

Positions (Full-time Equivalent)	1.5
Salaries and Fringe Benefits	\$86,574
One-time IT Upgrade	44,900
Operating Expenses	<u>25,101</u>
Total FY 2020 State Expenditures	\$156,575

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

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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