

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1239 (Delegate Smith)
Economic Matters

Discrimination in Employment for Use of Medical Cannabis - Prohibition

This bill prohibits an employer from discriminating in employment against an individual who has received a written certification for the use of medical cannabis under the Health-General Article or who has tested positive for cannabis components or metabolites if the individual holds a written certification for the use of medical cannabis under the Health-General Article, with exceptions as specified.

Fiscal Summary

State Effect: The bill's requirements can be handled within existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: The bill may have an operational impact on local governments that can be managed with existing resources, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: If an individual has received a written certification for the use of medical cannabis under the Health-General Article or has tested positive for cannabis components or metabolites and the individual holds a written certification for the use of medical cannabis under the Health-General Article, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against the individual with respect to the individual's compensation, terms, conditions, or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive the individual of employment opportunities or otherwise adversely affect the individual's

status as an employee. However, an employer does not violate this prohibition if an employer's failure to discriminate in employment for the use of medical cannabis would violate federal law or regulations or cause the employer to lose a monetary or licensing related benefit under federal law or regulations.

The prohibitions against discrimination in the bill do not apply to an individual who used, possessed, or was impaired by medical cannabis on an employer's premises or during employment hours. As such, the bill does not require an employer to allow the use of medical cannabis on the employer's premises or during the hours of employment.

An employer is also not required to make a reasonable accommodation for the medical needs of an employee who is authorized to use medical cannabis if the accommodation would (1) pose a threat of harm or danger to person or property or impose an undue hardship on the employer or (2) impair the ability of the employee to fulfill any or all of the employee's job responsibilities.

The bill's prohibitions also do not apply to law enforcement agencies which may adopt policies or procedures that prohibit an employee from engaging in the use of medical cannabis.

Current Law/Background:

Discrimination in Employment

Under § 20-601 of the State Government Article, "employer" means a person, including an agent of a person, that is engaged in an industry or business; and has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. "Employer" includes the State to the extent specified but does not include a bona fide private membership club that is exempt from federal taxation, as specified. "Employer" also includes a labor organization.

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges on any of the above bases or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives

or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. Additionally, an employer may not (1) request or require genetic tests or genetic information as a condition of hiring or determining benefits or (2) fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee. Additionally, acts of harassment and retaliation against an employee by an employer are prohibited.

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.

Maryland's medical cannabis program statute cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

- undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
- operating, navigating, or being in control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or
- smoking marijuana or cannabis in any public place, in a motor vehicle, or on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises (however, the law establishes an exception for vaporizing medical cannabis on private property that is rented).

Further, there is no immunity from criminal prosecution for a person who violates medical cannabis laws that regulate or prohibit the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

However, among other specified individuals, a qualifying patient or caregiver acting in accordance with State law may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of or possession of medical cannabis.

Employee Protections in Other States

Other states have attempted to address the treatment of employees due to their status as a qualifying patient or caregiver in ways similar to the bill. For example, in Connecticut, no employer may refuse to hire a person or may discharge, penalize, or threaten an employee solely on the basis of the person's or employee's status as a qualifying patient. However, an employer may prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours. The Connecticut law also has a federal "safe harbor" exception if discrimination is required by federal law or required to obtain federal funding.

Maryland Commission on Civil Rights

The Maryland Commission on Civil Rights (MCCR) is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. MCCR works to ensure equal opportunity to all citizens of Maryland by engaging in the investigation, mediation, and litigation of discrimination complaints in administrative and State court proceedings. In its 2018 annual report, MCCR reported that employment discrimination complaints accounted for 81% of the total complaints received by MCCR for fiscal 2018.

State Fiscal Effect: The Maryland Commission on Civil Rights indicates that any impact on employment discrimination caseloads can be absorbed within existing budgeted resources. The Department of Budget and Management indicates that the State, as an employer, already complies with the bill's provisions. The State may be subject to additional employment discrimination complaints under the bill, but any impact from additional complaints is expected to be minimal and can be managed with existing resources. The Judiciary advises that the bill is likely to have an operational impact to the extent that administrative hearings and circuit court trials increase under the bill. However,

the Department of Legislative Services advises that the Judiciary can implement the bill with existing resources.

Local Fiscal Effect: To the extent that local government employers do not comply with the bill's provisions, changes to employment discrimination policies may be required. Additionally, to the extent that local government employers have security-sensitive positions outside the traditional role of law enforcement, their ability to implement policies against medical cannabis use for those positions may be impacted. Further, local government employers may be subject to additional employment discrimination complaints under the bill, however, these operational impacts can likely be managed with existing resources.

Small Business Effect: To the extent that employers with at least 15 employees have drug policies prohibiting the use of cannabis, those policies may need to be modified to comply with the bill's provisions related to the use of medical cannabis. Additionally, small business owners may be subject to monetary penalties based on employment discrimination complaints under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Calvert and Montgomery counties; Maryland Association of Counties; City of Takoma Park; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Health; Maryland Department of Transportation; General Statutes of Connecticut; Department of Legislative Services

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