

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 859

(Senator Zirkin)

Judicial Proceedings

Rules and Executive Nominations

Natalie M. LaPrade Medical Cannabis Commission - Advertisements

This bill imposes a number of restrictions on advertisements regarding medical cannabis, including restrictions on content, where the advertisements can be placed, and age limits for online advertising. The bill also requires advertising for medical cannabis or medical cannabis products to include a statement that the product is only for use by a qualifying patient. Additionally, any website owned, managed, or operated by a certifying provider, dispensary, grower, or processor must employ a neutral age-screening mechanism to verify users are at least age 18. The commission must adopt specified implementing regulations. An advertisement that makes a false or misleading statement is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: Special fund expenditures increase by \$87,400 in FY 2020 for staff and training. Out-years reflect annualization and ongoing staff costs. The bill’s imposition of existing penalty provisions does not have a material impact on State finances.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	87,400	62,700	54,100	55,900	57,800
Net Effect	(\$87,400)	(\$62,700)	(\$54,100)	(\$55,900)	(\$57,800)

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

Local Effect: Local government finances and operations are not materially affected by the imposition of existing penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: All advertisements for medical cannabis, medical cannabis products, or medical cannabis-related services that make therapeutic or medical claims must be supported by specified clinical evidence and include information on significant side effects or risks associated with use.

Any advertisement for a grower, processor, dispensary, independent testing laboratory, certifying provider, or third-party vendor may not (1) make any statement that is false or misleading in any material way or is otherwise a violation of MCPA or (2) contain a design, an illustration, a picture, or a representation that encourages the recreational use of cannabis, targets or is attractive to minors, displays the use of cannabis, encourages or promotes cannabis for use as an intoxicant, or is obscene or indecent.

Any advertisement placed on social media or a mobile application must include a notification that (1) a person must be at least age 18 to view the content and (2) medical cannabis is only for use by certified patients.

Any advertisement for medical cannabis, medical cannabis products, or medical cannabis-related services cannot be placed within 500 feet of (1) a substance abuse or treatment facility; (2) a primary or secondary school in the State or a licensed child care center or a registered family child care home; or (3) a playground, recreation center, library, or public park.

The commission must adopt regulations that establish enforcement procedures and a process for an individual to voluntarily submit an advertisement to the commission for an advisory opinion on whether the advertisement complies with the bill's advertising restrictions.

Current Law/Background:

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. 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.

There are no cannabis-specific advertising and marketing restrictions in the State. However, Chapter 598 of 2018, an emergency bill, made a number of significant reforms to Maryland's medical cannabis program, including requiring the commission to submit a report to the General Assembly on potential rules and regulations governing the advertising and marketing of medical cannabis in the State. The commission submitted this [report](#) in December 2018.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division of the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Fiscal Effect: Special fund expenditures for the commission increase by \$87,416 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one full-time permanent enforcement officer to develop regulations, review and give advisory opinions on advertisements, and generally enforce the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs (including attending a training course for four commission employees), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- The commission is responsible for enforcing the bill's requirements.
- The commission does not have experience with enforcing advertising regulations and cannot absorb the additional responsibilities under the bill with existing budgeted staff and resources.

	<u>FY 2020</u>	<u>FY 2021</u>
Position	1.0	-0.5
Salary and Fringe Benefits	\$69,857	\$62,005
Training Expenses	12,200	-
Operating Expenses	<u>5,359</u>	<u>625</u>
Total State Expenditures	\$87,416	\$62,650

Future year expenditures reflect a full salary with annual increases and employee turnover and going operating expenses. However, it is assumed that, as medical cannabis entities become more familiar with the bill's prohibitions and requirements, the enforcement officer will need to provide fewer advisory opinions. Thus, the enforcement officer can likely transition from a full-time to a part-time position after the first year; the costs for fiscal 2021 above reflect this assumption. Any further staffing requirements depend on the enforcement procedures developed in the regulations.

OAG can handle enforcement related to unfair, abusive, or deceptive advertising under MCPA with existing resources.

Small Business Effect: The bill may meaningfully affect medical cannabis entities' ability to advertise in the State. Many medical cannabis entities are small businesses. Additionally, since marijuana remains illegal at the federal level, there are fewer scientific studies regarding the health effects of the use of medical cannabis. Thus, the content of advertisements under the bill is limited. The bill also limits the format and placement of advertisements. These restrictions may negatively affect business operations and finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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