

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1317 (Delegate Ivey, *et al.*)
 Health and Government Operations

Medical Cannabis - Dispensary Grower-Processor License

This bill establishes a new dispensary grower-processor license category within the State’s medical cannabis program that authorizes a licensee to grow, process, and dispense medical cannabis on the same premises. The bill establishes procedures for applying for, evaluating, and issuing the licenses, as well as reporting requirements for licensees, and makes conforming changes to the current statutory framework for the State’s medical cannabis program. Among other things, only licensed dispensaries are eligible for the new license and the Natalie M. LaPrade Medical Cannabis Commission must grant Stage One preapproval to all applications that score within the top 50th percentile of the license application evaluation process.

Fiscal Summary

State Effect: Special fund expenditures for the commission increase by almost \$1.2 million in FY 2021 for staff and contractual expenses to evaluate license applications; out-years primarily reflect annualization and elimination of one-time costs. Special fund revenues increase significantly beginning in FY 2021 from application and licensing fees.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	-	-	-	-	-
SF Expenditure	\$1,157,300	\$599,000	\$513,300	\$496,400	\$513,600
Net Effect	(-)	-	-	-	-

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Relevant Definitions

A “dispensary grower-processor” is an entity licensed under the State’s medical cannabis program to act as a grower, processor, and dispensary. A “dispensary grower-processor agent” is an owner, member, employee, volunteer, officer, or director of a dispensary grower-processor.

Dispensary Grower-processor Licensing Requirements

To be licensed as a dispensary grower-processor, an applicant must (1) hold a medical cannabis dispensary license; (2) meet local zoning and planning requirements; and (3) submit various application materials and an application fee to the commission. An applicant may not have been subject to specified disciplinary actions from the commission or have failed to meet any deadline imposed by the commission in relation to the applicant’s dispensary license.

A person holding a dispensary grower-processor license may not have an ownership interest in or control of more than one dispensary.

Application Evaluation Requirements for the Commission

The commission must issue a determination on a dispensary grower-processor application within 90 days of receiving the application. The commission must (1) provide the blank grower and processor application forms that were available in 2016 on the commission’s website; (2) use the Stage One scoring criteria that the Regional Economic Studies Institute (RESI) of Towson University used to evaluate processor and grower applications in 2016; and (3) grant Stage One preapproval to all applications that score within the top 50th percentile. When evaluating applications for Stage Two review criteria, the commission must use the criteria used to evaluate processor and grower applications. Finally, the commission must establish and implement criteria to review, evaluate, and rank applications under the bill.

The commission must, to the extent authorized by federal and State law, actively seek to achieve racial, ethnic, gender, and geographic diversity when licensing dispensary grower-processors, and must encourage applicants who qualify as a minority business enterprise or who are small, minority, or women-owned business entities to apply for licensure.

Administrative Requirements for the Commission

The commission must establish security and manufacturing process requirements that a dispensary grower-processor licensee must meet to obtain a license, as specified. The commission is authorized to inspect a licensed dispensary grower-processor to ensure compliance with the bill's requirements. In consultation with the Maryland Department of Health, the commission must adopt regulations (1) regarding the packaging, labeling, marketing, and appearance of edible cannabis products to ensure the safety of minors and (2) that require dispensary grower-processors to meet any additional requirements the commission deems necessary, including requiring for a permit to dispense edible cannabis products. The commission may impose penalties or rescind the license of a dispensary grower-processor that does not meet licensure standards.

Dispensary Grower-processor Agents

The bill establishes minimum requirements for dispensary grower-processor agents, requires a dispensary grower-processor licensee to register dispensary grower-processor agents, and establishes procedures that must be followed when an agent ceases to be associated with the licensee. The bill also establishes legal protections for a dispensary grower-processor agent acting in conformance with related statutory provisions.

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, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

The commission is authorized to set fees to cover its operating costs; these fees were established by regulations promulgated in September 2015. **Exhibit 1** shows the current application and licensing fees by license type.

Exhibit 1
Application and License Fees by License Type

	Application Fee	Stage One License Fee	Stage Two License Fee	Annual License Fee
Grower	\$6,000	\$2,000	\$4,000	\$125,000
Grower-Dispensary	11,000	3,000	8,000	165,000
Processor	6,000	2,000	4,000	40,000
Dispensary	5,000	1,000	4,000	40,000

Source: *Code of Maryland Regulations*; Department of Legislative Services

Initial Issuance of Licenses and Controversy Over Geographic, Racial, and Ethnic Diversity

In 2016, the commission announced the award of 15 grower, 15 processor, and 102 dispensary Stage One license preapprovals. Following the award announcements, significant controversy arose surrounding two main issues: the commission’s decision to include geographic diversity as a final factor in choosing the grower finalists; and the absence of any minority-led grower among the 15 Stage One approved grower finalists. Consequently, Chapter 598 of 2018, an emergency bill, made a number of significant reforms, including (1) requiring outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners; (2) requiring the commission to promulgate emergency remedial regulations based on the results of a disparity study and delay reviewing, ranking, or evaluating license applications until the regulations were adopted; (3) raising the statutory cap on grower licenses from 15 to 22; and (4) establishing a new license cap of 28 for processors.

The disparity study conducted in accordance with Chapter 598 concluded that the State has a compelling interest in implementing remedial measures to facilitate participation in the medical cannabis industry by minorities and women. Based on these findings, the commission adopted emergency regulations in November 2018 altering the application review process for medical cannabis grower, processor, and dispensary licenses to incorporate remedial measures to assist minorities and women in the medical cannabis industry. The regulations also altered the weighted criteria used to rank license applicants to include certain race-neutral and race-conscious provisions intended to address the needs of women and minority applicants. The new criteria account for 15% of the total points on the license application.

The commission was scheduled to announce the final preapprovals for the new grower and processor licenses on September 26, 2019. However, the announcement was delayed because (1) the Legislative Black Caucus of Maryland sent an official request to the commission asking for a delay in the award of any Stage One preapprovals until the commission completed the verification process for all applicants and (2) a temporary restraining order was issued by a judge delaying the issuance of any Stage One preapprovals until October 7, 2019, pursuant to litigation brought against the commission by a potential applicant.

Status of Medical Cannabis Implementation

As of January 2020, the commission had issued 17 final grower licenses and 18 final processor licenses. Additionally, the commission had registered six independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 37,363 registered patients, 88,594 certified patients, 8,003 caregivers, and 1,705 certifying providers. The commission reported that between December 2018 and December 2019 there were \$268.3 million in retail sales at medical cannabis dispensaries in the State.

The commission advises that there are currently 90 licensed dispensaries in Maryland, and an additional 11 dispensaries are likely to finalize their licenses in the next six months. Thus, there will likely be 101 licensed dispensaries by the time the bill goes into effect.

State Revenues: Special fund revenues increase significantly, beginning in fiscal 2021 from application fees, and in out-years from application and annual licensing fees, from the new dispensary grower-processor licenses. The commission advises that it plans to charge \$4,000 for the Stage One application fee, \$8,000 for the Stage Two application fee, and \$205,000 for annual license fees. Based on the timing to issue past licenses, it is likely that applicants begin applying in fiscal 2021, and Stage Two and annual license fees begin to be collected in fiscal 2022.

For illustrative purposes only, if all 101 licensed dispensaries were to apply for the new license in fiscal 2021, and the top 50 were to pay the Stage Two application fee and the first-year annual license fee of \$205,000 when approved in fiscal 2022, special fund revenues would increase by \$404,000 in fiscal 2021 and by \$10.65 million in fiscal 2022. Annually thereafter, these 50 licensees would continue to pay the \$205,000 annual license fee, resulting in special fund revenues of \$10.25 million annually. Because the bill requires a dispensary grower-processor licensee to hold a dispensary license, all new licensees would continue to pay their annual dispensary license fees.

This illustrative example does not reflect any special fund revenues attributable to dispensary grower-processor agents as the Department of Legislative Services (DLS) does

not have a reliable estimate for the number of agents hired by each licensee. Growers, dispensaries, and processors pay a \$200 registration fee for each agent.

State Expenditures: Special fund expenditures increase by \$1,157,341 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring six full-time permanent employees (four policy analysts and two enforcement officers) and two full-time contractual enforcement officers (for two years) to (1) issue new licenses; (2) establish new policies and procedures related to the new license category; (3) conduct inspections of new facilities; (4) issue grants and conduct outreach to small, minority, and women business owners and entrepreneurs who have an interest in applying for the new license; and (5) generally implement the bill. It includes salaries, fringe benefits, one-time start-up costs (including grant funding and contractual costs for an outside entity to evaluate the dispensary grower-processor license applications), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- Establishing a new license category and issuing new licenses triggers current law requirements for the commission to make grants to appropriate educational and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed.
- The contractual cost to hire a third party to evaluate license applications is based on actual contractual costs to evaluate license applications during past license cycles.
- Based on the number of currently licensed dispensaries and dispensaries that will obtain final licensure in the near future, the commission receives as many as 101 applications for licensure and issues as many as 50 grower dispensary-processor licenses under the bill.
- Issuing as many as 50 additional combined grower dispensary-processor licenses significantly expands the commission’s workload, and the commission cannot implement the bill without additional staff.

Permanent Positions	6
Contractual Positions	2
Salaries and Fringe Benefits	\$467,411
Third Party Contractor Costs	500,000
Grants	135,000
Other Operating Expenses	<u>54,930</u>
Total FY 2021 State Expenditures	\$1,157,341

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, and termination of the two contractual enforcement officers in fiscal 2023 after the initial licensure cycle is complete.

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.

Small Business Effect: Small businesses may become licensed as dispensary grower-processors, which gives increased access to the medical cannabis market since individual grower and processor licenses are capped at significantly lower rates under current law. However, any small business growers and processors already licensed may be negatively affected due to the additional competition for market share. It is unknown whether any applicants under the bill, or currently licensed dispensaries, would be or are small businesses.

Additional Comments: DLS notes that requiring the commission to use the Stage One scoring criteria that RESI used to evaluate processor and grower applications in 2016 runs contrary to current law and policy. New evaluation criteria that were adopted after the disparity study evaluation concluded that the State has a compelling interest in implementing remedial measures to facilitate participation in the medical cannabis industry by minorities and women. The 2016 criteria do not include any such remedial measures.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 953 (Senator Benson, *et al.*) - Finance.

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

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