

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 504

(Senator Smith)

Judicial Proceedings

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**Discrimination in Employment – Use of Medical Cannabis – Prohibition**

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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.

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**Fiscal Summary**

**State Effect:** General fund expenditures likely increase at least minimally for the Maryland Commission on Civil Rights (MCCR), as discussed below. The bill does not materially impact the workload of the Judiciary or the Office of Administrative Hearings. Revenues are not materially affected.

**Local Effect:** The bill is not anticipated to materially impact local finances or operations.

**Small Business Effect:** Minimal, as discussed below.

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**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 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 these prohibitions 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 bill's prohibitions do not prevent an employer from adopting policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis.

### **Current Law:**

#### *Discrimination in Employment*

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 or because of an individual's refusal to submit to or make available the results of a genetic test, 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 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. Additional prohibitions are also specified in statute.

MCCR is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. An individual alleging employment discrimination may file a complaint with MCCR within specified timeframes. If a complaint is filed with MCCR and an agreement to remedy and eliminate the discrimination cannot be reached, the matter may be heard before an administrative law judge. Remedies available on a finding that the respondent is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the

complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the court may provide the remedies specified above. A complainant may also file a private civil action against the respondent under specified circumstances. In addition to the remedies specified above, the court may award punitive damages in specified circumstances. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

### *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 (including physicians, dentists, podiatrists, nurse practitioners, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

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 qualifying patient with a written certification can generally obtain a 30-day supply of medical cannabis.

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, on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises, or on private property that is subject to a policy that prohibits smoking marijuana or cannabis on the property of an attached dwelling, as adopted by specified entities of a condominium regime or homeowners

association (however, the law establishes an exception for vaporizing medical cannabis on private property).

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.

**State Fiscal Effect:** General fund expenditure likely increase at least minimally for MCCR. MCCR advises that it does not currently investigate this type of discrimination. Although MCCR receives federal reimbursement for investigating complaints related to employment discrimination from the Equal Employment Opportunity Commission, MCCR advises that it would not be able to receive federal reimbursement for any expenses incurred relating to investigating medical cannabis complaints. Accordingly, MCCR needs to ensure that investigating any additional cases regarding medical cannabis does not negatively impact its case closure rate, which may impact federal funding. Although existing staff can investigate a small number of additional cases, an additional investigator may be required to the extent that MCCR receives a large number of complaints. *For illustrative purposes only*, if an additional investigator is required, general fund expenditures increase by approximately \$80,000 annually. Additional expenditures may also be incurred for costs associated with training and education.

The Department of Budget and Management indicates that the State, as an employer, already complies with the bill's provisions.

**Local Fiscal Effect:** To the extent that local government employers do not already comply with the bill's provisions, changes to employment discrimination policies may be required. Though local government employers may be subject to additional employment discrimination complaints under the bill, these operational impacts can likely be managed with existing resources.

**Small Business Effect:** Small business owners may be subject to monetary penalties based on employment discrimination complaints under the bill. Employers with at least 15 employees may need to adopt policies and procedures in order to ensure that employees do not perform their duties while impaired by medical cannabis.

## **Additional Information**

**Prior Introductions:** HB 1239 of 2019, a similar bill, was withdrawn prior to receiving a hearing in the House Economic Matters Committee.

**Designated Cross File:** None.

**Information Source(s):** Maryland Commission on Civil Rights; Baltimore City; Harford and Montgomery counties; City of College Park; Department of Budget and Management; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2021  
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