

Department of Legislative Services  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 708

(Senator Feldman, *et al.*)

Finance and Budget and Taxation

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**Cannabis – Legalization and Regulation**

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This bill generally legalizes marijuana (which is renamed cannabis) for individuals at least age 21. Among other things, the bill (1) establishes a regulatory and taxation framework for cannabis establishments within the Alcohol and Tobacco Commission; (2) establishes provisions related to social equity in the legal cannabis industry; and (3) establishes a process for dismissal of or postconviction relief for marijuana-related offenses and expungement of the dispositions of marijuana-related charges. The commission, in consultation with specified entities, must complete two disparity studies by April 1, 2022, and by January 1, 2024, respectively.

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**Fiscal Summary**

**State Effect:** General fund and special fund revenues increase significantly in FY 2022, 2023, and 2025 from dual license fees. Special fund revenues increase further beginning in FY 2023 from taxes, other license fees, and civil penalties for noncompliance by licensees. General fund revenues also (1) increase beginning in FY 2023 from a required distribution from the Cannabis Regulation Fund and (2) decrease minimally beginning in FY 2022 from the bill's changes to existing penalties and expungement-related filings. General/special fund expenditures increase significantly in FY 2022 for multiple agencies to implement the bill; future year expenditures are generally assumed to be covered with special funds. Other effects on general fund and special fund finances are described below.

**Local Effect:** Potential significant increase in local revenues and expenditures to implement the bill's requirements. Potential minimal decrease in local incarceration and prosecution-related expenditures.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** Among other things, the bill (1) renames marijuana as “cannabis”; (2) generally legalizes a “personal use amount” of cannabis for individuals at least age 21; (3) requires expungement, dismissal, or release in specified circumstances and authorizes expungement or resentencing in other specified circumstances for marijuana-related offenses; (4) requires the Alcohol and Tobacco Commission to adopt regulations to implement the bill, conduct an annual evaluation of the cannabis market beginning in 2024, report and make specified recommendations based on this annual evaluation, and complete two disparity studies in consultation with specified entities; (5) establishes the Office of Social Equity within the commission with specified responsibilities; (6) establishes multiple special funds for the purpose of promoting inclusion in the legal cannabis industry; (7) establishes a licensing framework; (8) authorizes a “locality” to establish its own ordinances, with specified limitations; (9) establishes the Cannabis Regulation Fund, a special fund consisting of specified fees and taxes, administered by the commission and distributed as specified; and (10) establishes an excise tax applicable to the legal cannabis industry.

### *Cannabis – Definition*

The bill repeals the definition of “marijuana” and replaces the term marijuana with “cannabis” throughout. “Cannabis” is defined as the plant *Cannabis Sativa L.* and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration greater than 0.3% on a dry weight basis. “Cannabis” does not include hemp as defined in the Agriculture Article.

### *Lawful Acts – Generally*

Generally, actions related to cannabis are lawful in the State, as long as they are in accordance with the bill. Specifically, individuals who are at least age 21 may:

- possess, consume, grow, use, process, manufacture, purchase, or transport up to the personal use amount of cannabis;
- transfer up to the personal use amount of cannabis to an individual person at least age 21;
- control property where lawful actions related to cannabis take place;
- assist an individual who is at least age 21 with any lawful actions related to cannabis; or
- manufacture, possess, purchase, distribute, or sell cannabis accessories to an individual who is at least age 21.

“Personal use amount” means (1) up to four ounces of cannabis; (2) up to 15 grams of concentrated cannabis; (3) cannabis products containing up to 1,500 milligrams of THC; (4) up to six cannabis plants; or (5) the amount of cannabis produced by a person’s cannabis plants, as long as any amounts of cannabis in excess of what is otherwise allowed is processed and stored in a secure location, as specified.

*Civil and Criminal Penalties*

The bill repeals and alters several existing penalty provisions applicable to the illegal use of marijuana. **Exhibit 1** contains information on the maximum penalties established by the bill for the possession of more than the personal use amount of cannabis by individuals at least age 21 and possession of cannabis for individuals who are underage (at least age 18, but younger than age 21).

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**Exhibit 1**  
**Civil and Criminal Penalties for Possession of Cannabis under the Bill**

<u>Offense</u>	<u>Offense Type</u>	<u>Maximum Penalty</u>
Possession of more than the personal use amount and up to double the personal use amount for individuals at least age 21	Civil	\$250 fine or 16 hours of community service*
Possession of more than double the personal use amount for individuals at least age 21	Criminal misdemeanor	Six months imprisonment and/or \$1,000 fine
First offense for possession of up to the personal use amount for underage individuals	Civil	\$100 fine or 6 hours of community service*
Second offense for possession of up to the personal use amount for underage individuals	Civil	\$250 fine or 16 hours of community service*
Third or subsequent offense for possession of up to the personal use amount for underage individuals	Civil	\$500 fine or 32 hours of community service*
Possession of more than the personal use amount for underage individuals	Criminal misdemeanor	Six months imprisonment and/or \$1,000 fine

\* A person may request, and the court must grant, community service in lieu of the fine.

*Smoking in Public:* It is a civil offense for a person to smoke cannabis in a public place, as defined in the Health-General Article. Violators are subject to a maximum penalty of a \$50 fine or five hours of community service (rather than a \$500 fine under current law for smoking marijuana in a public place). A person at least age 21 may prepay the fine, while an underage person must be summoned for trial.

*Cannabis Cultivation:* A person who cultivates cannabis must (1) cultivate cannabis in a location outside of public view; (2) take reasonable precautions, as specified, to ensure the plants are secure from unauthorized access and access by an underage person; and (3) only cultivate cannabis on property the cultivator lawfully possesses or with the consent of the property's lawful possessor. An underage person may not cultivate cannabis. A person may not cultivate more than 6 cannabis plants. In addition, if two or more individuals at least age 21 reside at the same residence, no more than 12 cannabis plants may be cultivated at the residence. A person who violates these provisions by cultivating more than 6 plants and less than 12 plants is guilty of a civil offense and subject to a maximum penalty of a \$250 fine or 50 hours of community service. Otherwise, an individual who violates these provisions is guilty of a civil offense and subject to a maximum penalty of a \$750 fine or 50 hours of community service. A person at least age 21 may prepay the fine, while an underage person must be summoned for trial.

*Cannabis – Obtaining for or Furnishing Underage Consumption:* As under current law for alcoholic beverages, individuals may not (1) knowingly obtain or attempt to obtain cannabis, including through misrepresentation of a person's age or (2) furnish cannabis or cannabis accessories or allow consumption of cannabis by an underage person, with the existing limited exceptions for immediate family members and religious ceremonies. Penalties are as specified under current law for such offenses related to alcoholic beverages.

*Community Service in Lieu of Fines:* For specified civil offenses, a person may request, and the court must grant, community service in lieu of a fine. The Chief Judge of the District Court must establish procedures for individuals to request and be granted community service in lieu of a fine.

*Marijuana Paraphernalia Repeal:* The definition of "drug paraphernalia" is altered to specifically exclude cannabis from the specified items that when used with other controlled dangerous substances (CDS) would constitute paraphernalia. "Cannabis accessories," as defined under the bill, are also excluded from the definition of "drug paraphernalia." As such, the bill repeals the penalty provisions for possession of drug paraphernalia related to the use or possession of marijuana (a maximum of imprisonment for one year and/or a \$1,000 fine under current law). The bill also repeals the list of drug paraphernalia examples that can be used to ingest or inhale a CDS into the human body.

*Pretrial Release, Parole, and Probation:* It is not a violation of pretrial release, parole, or probation to engage in any of the specified lawful acts pertaining to cannabis or to test positive for cannabis ingestion unless the court or the Maryland Parole Commission makes a specific finding that an individual's use could create a danger to self or others.

#### *Dismissal of Pending Charges and Postconviction Proceedings*

*Automatic Expungement:* "Automatic expungement" is defined as an expungement that occurs without the filing of a petition or payment of a fee by the person who is the subject of the records to be expunged. All court and police records related to any disposition of a charge for possession of cannabis that does not exceed the personal use amount entered before the bill's effective date must be automatically expunged. Cases where possession of cannabis is the only charge must be expunged within one year of the bill's effective date, while cases where the charge for possession of cannabis involves one or more other crimes must be expunged within two years of the bill's effective date. Automatic expungements also apply to dispositions entered on or after the bill's effective date for (1) criminal charges of possession involving an amount of cannabis that does not exceed the personal use amount; (2) civil charges for possession of cannabis; and (3) civil charges for smoking cannabis in public. Such ongoing automatic expungements must be initiated within one year of the disposition and completed within one year and 90 days of the disposition.

*Expungement Applications:* An individual previously convicted for the possession, cultivation, processing, or sale of cannabis who is not entitled to automatic expungement who is not incarcerated or under supervision may present an application for expungement that the court must grant if doing so would be in the interest of justice. Any individual petitioning for this type of expungement as of January 1, 2023, is eligible for representation by the Office of the Public Defender (OPD).

*Retroactive Legalization:* The bill establishes that the possession and cultivation of a personal use amount of cannabis by persons at least age 21, as specified in the bill, is retroactive.

*Dismissal of Pending Charges:* All charges pending on the bill's effective date related to the cultivation or possession of a personal use amount of cannabis by a person at least age 21 must be dismissed.

*Release from Incarceration or Supervision and Resentencing:* A person who is incarcerated or under supervision on the bill's effective date for the possession or cultivation of a personal use amount of cannabis may present an application for release and the sentencing court must grant the petition and vacate the conviction. In addition, a person who is incarcerated or under supervision on the bill's effective date for any case involving possession, cultivation, processing, or sale of cannabis may present an application for

resentencing to the sentencing court. The court must, after considering the individual circumstances, reduce the sentence if doing so would be in the interest of justice; however, the court may not increase the sentence. An individual petitioning for release or resentencing is eligible for OPD representation.

*Funding for Expungements and Related Functions:* The Office of Social Equity must allocate funds from the Community Reinvestment and Repair Fund to cover the cost to OPD, State's Attorney's offices, and the courts, as part of administering Title 23 of the Health-General Article, as established by the bill.

### *Alcohol and Tobacco Commission*

By October 1, 2022, the commission, in consultation with the Office of Social Equity, must adopt regulations to implement the bill's provisions, including, but not limited to:

- procedures for the issuance, renewal, suspension, and revocation of a license to operate a cannabis establishment;
- qualifications for licensure;
- rules, procedures, and policies to encourage participation in the regulated cannabis industry by people from communities that have been disproportionately harmed by cannabis prohibition and enforcement;
- an application review process for granting licenses;
- a process to allow cultivators to move to another tier of license, including provisions allowing dual licensees that are initially licensed in a tier above Tier 5 to increase production on demonstrating that additional cultivation supply is needed;
- a schedule of reasonable application, license, and renewal fees, including (1) a \$5,000 cap on application fees; (2) a 50% reduction in all fees for social equity applicants; (3) tier-based application and license fees for cultivators, with substantially lower fees for Tier 1 cultivators than Tier 5 cultivators; and (4) substantially lower application and license fees for Class B processors than Class A processors;
- security requirements;
- health and safety regulations and standards for the manufacture of cannabis products and the cultivation of cannabis;
- creation of a tier-based licensure system for cultivators, as specified;
- civil penalties of up to \$20,000 for failure to comply with adopted regulations; and
- procedures for collecting taxes levied on cannabis establishments.

The regulations may not (1) prohibit the operation of cannabis establishments, either expressly or through the application of the regulations or (2) require a high investment of

risk, money, time, or any other resource or asset that would result in the operation of a cannabis establishment being considered not worthy of being carried out by a reasonably prudent businessperson.

After consulting with researchers knowledgeable about cannabis risks and benefits and providing an opportunity for public comment, the commission must develop a scientifically accurate safety information label and/or handout. The safety materials must be made available to every consumer and updated at least once every two years to ensure accuracy. The safety information materials must include (1) advice about potential risks of cannabis and (2) a warning about the need to safeguard all cannabis from children and pets.

In addition, the commission must develop policies and procedures to govern the approval of license transfers; the policies and procedures may not prohibit the transfer of a license from a social equity applicant to a nonsocial equity applicant.

Beginning in 2024, the commission, in conjunction with the Office of Social Equity must, by January 1 each year, evaluate the cannabis market in the State and solicit input from the public and stakeholders, as specified, and by July 1 each year, report its recommendation to the General Assembly regarding the tax rate and method established by the bill, among other things.

### *Social Equity Provisions*

The bill establishes several provisions for specifically addressing inclusion in the legal cannabis industry of a “social equity applicant” – defined in the bill as an applicant for a cannabis establishment license that meets at least one of the following specified requirements:

- has at least 51% ownership and control by at least one State resident who has resided for at least 5 of the last 10 years in a “disproportionately impacted area”;
- has at least 51% ownership and control by at least one State resident who has been arrested, convicted, or found responsible in a juvenile court for possession offenses that are eligible for expungement under specified provisions of the bill, or are members of impacted families;
- has a minimum of 10 full-time employees, with at least 60% of them residing in a disproportionately impacted area or having a history of being arrested, convicted, or found responsible in a juvenile court for possession offenses that are eligible for expungement under specified provisions of the bill, or are members of impacted families; or
- meets any other criteria established by the commission based on the results of a disparity study.

A “disproportionately impacted area” is defined as a geographic area, as identified by the Office of Social Equity, that has been impacted by high rates of arrest, conviction, and incarceration for cannabis possession and meets three or more of the following specified criteria (1) has a median income that is 80% or less of the average median household income in the State; (2) has an unemployment rate that is at least 150% of the unemployment rate in the State; (3) has a health uninsured rate that is at least 150% of the health uninsured rate in the State; (4) has a food stamp or supplemental nutrition assistance plan (SNAP) rate that is at least 150% of the food stamp or SNAP rate in the State; or (5) has a poverty rate that is at least 150% of the poverty rate in the State.

*Office of Social Equity:* The bill establishes the Office of Social Equity within the commission, headed by an executive director who meets specified criteria. By November 15, 2021, the Speaker of the House of Delegates may submit to the Governor five names of individuals who are qualified and suitable to serve as the executive director. By January 1, 2022, the Governor must select an executive director from this list. The Office of Social Equity may employ staff and retain contractors as necessary to carry out the functions of the office, which include:

- promoting and encouraging participation in the regulated cannabis industry by people from communities that have been disproportionately harmed by cannabis prohibition and enforcement;
- consulting with and assisting the commission in administering the Community Reinvestment and Repair Fund (discussed below);
- consulting with and assisting the commission in administering the Social Equity Start-Up Fund (discussed below);
- consulting with and assisting the commission in administering the Cannabis Education and Training Fund (discussed below);
- advising the commission regarding specified regulations;
- working with the commission to implement free technical assistance for social equity and minority business applicants;
- producing reports and recommendations on diversity and equity in ownership, management, and employment in the legal cannabis economy; and
- determining which individuals and entities are awarded loans or grants from the three specified funds.

The Office of Social Equity must issue a report by March 1 of each year on how specified funds were allocated during the immediately preceding year. The Office of Social Equity also must (1) solicit public input on the uses of each of the specified funds by November 1 each year and (2) publish a review of the input received by December 15 each year.

*Special Funds to Promote Inclusion in the Legal Cannabis Industry:* The bill establishes three special funds with the general purpose of promoting inclusion in the legal cannabis industry, as follows:

- the Social Equity Start-Up Fund, administered by the commission in consultation with and with the assistance of the Office of Social Equity and the Maryland Small Business Development Financing Authority and funded primarily by licensing fees from retailer licenses and dual licenses, the stated purpose of which is to provide no-interest loans and grants as approved and awarded by the Office of Social Equity to support businesses in the legal cannabis industry that are social equity applicants;
- the Community Reinvestment and Repair Fund, administered by the commission in consultation with and with the assistance of the Office of Social Equity and the Department of Commerce and funded by the allocation of funds from the Cannabis Regulation Fund (discussed below) and surplus funds from the Social Equity Start-Up Fund, as specified, beginning June 30, 2025, the stated purpose of which is to improve the well-being of individuals and communities that have experienced a disproportionate negative impact from poverty, unemployment, cannabis prohibition and enforcement, mass incarceration, systemic racism, or a combination thereof; and
- the Cannabis Education and Training Fund, administered by the commission in consultation with and with the assistance of the Office of Social Equity and the Maryland Department of Labor (MDL) and funded by the allocation of funds from the Cannabis Regulation Fund (discussed below) and surplus funds from the Social Equity Start-Up Fund, as specified, beginning June 30, 2025, the stated purpose of which is to provide free or low-cost training and education for all sectors of the cannabis economy in the State, including adult education programs and high school career and technical programs.

The bill establishes provisions governing the distribution of funds from all three special funds. The Comptroller must pay out money from the funds, as specified, and the funds are subject to audit by the Office of Legislative Audits (OLA).

### *Licensing*

Each application or renewal application for a license to operate a “cannabis establishment” must be submitted to the commission. “Cannabis establishment” means a cultivator, a delivery service, a processor, a retailer, an independent testing laboratory, a transporter, a dual license holder, an on-site consumption establishment, or any other type of cannabis business licensed and authorized by the commission.

In general, a license to operate a cannabis establishment is valid for one year on initial licensure and two years on renewal, with the exception of dual licenses. An applicant may

also apply for a conditional license if the applicant has not purchased or leased a property where the cannabis establishment would be located, and the commission must provide conditional approval if the applicant is otherwise qualified for licensure. Once the specific property is identified for the cannabis establishment, the commission must approve or reject the final application within 45 days. If an application is denied, the commission must notify the applicant of the specific reasons for denial. A person is prohibited from holding an interest of 5% or more, directly or indirectly, in more than five retailers or more than one cultivator. With the exception of dual licensees, cultivators, processors, and retailers licensed under the bill may not cultivate, process, or sell medical cannabis.

Each cannabis establishment, including its books and records, is subject to inspection by the commission. The commission may impose penalties or rescind the license of a cannabis establishment that fails to meet licensure standards set by the commission.

*Dual Licenses:* A “dual license” is a license issued by the commission to an entity that is also licensed as a medical cannabis dispensary, processor, independent testing laboratory, or grower. Application and initial renewal fees due to the commission for dual licenses are as specified in the bill and are credited to the Social Equity Start-Up Fund. Subsequent renewal fees must be determined by the commission and credited to the Cannabis Regulation Fund. An independent testing laboratory is not required to pay a fee for a dual license. In addition, the commission must reduce dual license fees for social equity applicants and may reduce dual license fees by at least 50% for an applicant that is a certified minority-owned business. With commission approval, a dual licensee may elect to direct up to 50% of the renewal fee toward the costs associated with hosting a cannabis business incubator program. Each medical cannabis dispensary, processor, independent testing laboratory, and grower is eligible for a single dual license at the same premises as the medical cannabis establishment license, as specified. The commission must determine subsequent renewal fees, which are credited to the Cannabis Regulation Fund.

By March 1, 2022, the commission must adopt specified regulations to issue and regulate dual licenses. The commission must attempt to harmonize the regulations with those issued by the Natalie M. LaPrade Medical Cannabis Commission (MMCC) to minimize hardship to dual licensees. Among other things, the regulations must include (1) procedures for current medical licensees to apply for a dual license, including paying an application and licensing fee set by and payable to the Maryland Department of Health (MDH) in addition to licensing fees paid to the commission and credited to the Social Equity Start-Up Fund and (2) requirements that when the commission needs to hire a person related to cannabis regulation, the commission gives MMCC employees who perform similar duties as the position to be filled a one-time right of first refusal offer of employment with the commission.

By April 1, 2022, the commission must begin accepting and processing applications for dual licenses from medical cannabis dispensaries, processors, independent testing laboratories, and growers. Within 45 days after receiving a complete application and all specified fees, the commission must issue a dual license unless the applicant is not in compliance with specified laws and regulations, as specified. A dual license is valid for 240 days on initial licensure and two years upon renewal.

*Retailer Licenses:* By October 1, 2022, the commission must begin accepting and processing applications for licenses to operate as a retailer from any qualified applicant. Upon receipt of an application or renewal application the commission must forward a copy of the application and half of the application fee to the appropriate local regulatory authority. The commission must award up to 250 points for each application based on specified factors, and may award bonus points for a plan to engage with the community in which the applicant will be located. By April 1, 2023, the commission must issue an initial 47 retailer licenses, excluding dual licenses, in a manner that equitably distributes the licenses throughout the State at a rate of one license per senatorial district. The commission (1) may accept additional applications for retailers beginning February 1, 2026, depending on the results of a market study; (2) may limit some or all of any additional licenses to social equity applicants or minority business applicants; and (3) must issue any additional licenses by scoring all applications and entering all applicants with a sufficient score into a lottery.

*Social Equity Applicants:* By October 1, 2022, the commission must start accepting applications for licenses to operate as a cultivator, delivery service, processor, or transporter from social equity applicants. Upon receipt of an application or renewal application, the commission must forward a copy of the application and half of the application fee to the appropriate local regulatory authority. For applicants to operate as a delivery service, processor, or transporter, the commission must (1) issue a license within 90 days of receiving an application or renewal application unless the applicant is not in compliance with specified laws and regulations and (2) accept and process applications from social equity applicants on an ongoing basis.

For the first six months, processor licenses may only be awarded to social equity applicants. Additionally, only social equity applicants are eligible to apply for licensure as a delivery service or transporter.

*Cultivator Licenses:* By February 1, 2023, the commission must issue 10 Tier 5, 15 Tier 3, and 15 Tier 1 cultivator licenses to social equity applicants only. To determine qualifying applicants for cultivator licenses, the commission must implement a scored process, which may include specified considerations. Applicants that score above a number of points established by the commission must be entered into a lottery to determine which social equity applicants are issued licenses. If there are fewer than 10 qualified social equity

applicants for Tier 5 cultivator licenses, then additional Tier 3 licenses must be issued to ensure that a total of 25 licenses are issued to Tier 3 and Tier 5 cultivators collectively.

The commission *may* accept additional applications for cultivators beginning February 1, 2026, subject to the findings of a study of the cannabis market which must (1) be commissioned by January 1, 2026, and (2) address market supply and demand. Additional licenses may only be awarded if the study determines that additional supply is needed. The commission may limit some or all of any additional cultivator licenses issued to social equity applicants or minority business applicants, as specified. Any additional licenses must be issued by scoring all applications and entering those applications with a sufficient score into a lottery.

*Other License Applicants:* By October 1, 2022, the commission must begin accepting and processing applications from any qualified applicant to operate as an independent testing laboratory. Once six months have elapsed after beginning to issue licenses to social equity applicants, the commission must begin accepting and processing applications for licenses to operate as a processor from any qualified applicant. Upon receipt of an application or renewal application, the commission must forward a copy of the application and half of the application fee to the appropriate local regulatory authority. Within 90 days of receiving an application or renewal application, the commission must issue a license or a conditional license unless the commission finds the applicant is not in compliance with specified laws and regulations.

#### *Local Regulatory Authority*

A “locality” – defined in the bill as a county, a municipal corporation, or another political subdivision of the State – may prohibit the operation of any or all types of cannabis establishments within its jurisdiction through the enactment of an ordinance or an initiated or referred measure on a general election ballot. However, a locality may not (1) prohibit transportation through the locality or deliveries within the locality by cannabis establishments located in other jurisdictions; (2) prohibit or impact a business licensed under MMCC regardless of whether the business is granted a license under the bill; or (3) prevent an entity licensed under MMCC that is in compliance with all relevant medical cannabis regulations from being granted a dual license.

An “on-site consumption establishment” – defined in the bill as an entity licensed by the commission to sell cannabis products for on-site consumption – may operate only if the local regulatory authority in the locality where it is located issues a permit or license that expressly allows its operation. A person seeking licensure as a cannabis establishment must meet local zoning and planning requirements.

### *Tax Provisions*

The bill specifies that the sale or transfer of cannabis from a cannabis establishment licensed under the bill to a consumer is subject to a (1) 10% excise tax until April 1, 2025; (2) 15% excise tax from April 1, 2025, through March 30, 2027; and (3) a 20% excise tax thereafter. The taxes imposed apply only at the point of sale to a consumer, and no taxes apply to sales or transfers of cannabis between cannabis establishments. A county, municipal corporation, special taxing district, or other political subdivision of the State may also impose an additional sales tax of up to 3% on sales of cannabis and cannabis products to consumers within its jurisdiction. The taxes imposed do not apply to cannabis sold under the State medical cannabis program pursuant to MMCC.

The bill also establishes that, notwithstanding any federal tax law to the contrary, a cannabis establishment licensed under the bill or an entity licensed under MMCC may deduct from State taxes all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business as a cannabis establishment. These ordinary necessary expenses include a reasonable allowance for salaries or other compensation for personal services rendered.

### *Cannabis Regulation Fund*

The bill establishes the Cannabis Regulation Fund, a special fund administered by the commission to provide funds for the bill's implementation, as specified. The fund consists of (1) all application and licensing fees paid by cannabis establishments, with specified exceptions for retailer and dual license fees and (2) all excise tax revenue collected under the bill. By March 15 of each year, the commission must publish a detailed report on the revenues and expenditures from the fund. The Comptroller must pay out money from the fund as directed by the commission, and the fund is subject to audit by OLA.

*Cannabis Regulation Fund Distribution:* The commission must retain sufficient money to defray the entire cost of administering specified provisions of the bill. Revenues generated in excess of the amount needed to do so must be distributed as follows:

- 27% to the Community Reinvestment and Repair Fund;
- 10% to the Social Equity Start-Up Fund;
- 3% for technical assistance for social equity and minority business cannabis establishment applicants;
- 3% to the Cannabis Education and Training Fund;
- 7% to MDH for use in evidence-based, voluntary programs for the prevention or treatment of substance abuse;

- 2% to MDH for a scientifically and medically accurate public education campaign educating youth and adults about the health and safety risks of alcohol, tobacco, cannabis, and other substances, including the risks of driving while impaired;
- 2% to MDH to fund diverse scientific, academic, or medical research on cannabis or endocannabinoids, including research exploring the benefits of cannabis that must be made publicly available as specified;
- 1% to the Department of State Police (DSP) for advanced roadside impaired driving enforcement and drug recognition expert training;
- 20% to the endowments of the State’s historically black colleges and universities; and
- 25% to the State’s general fund.

### *Disparity Study*

The commission and the Office of Social Equity must, by April 1, 2022, and again by January 1, 2024, consult with a specified certification agency, the Governor’s Office of Small, Minority, and Women Business Affairs, and the Office of the Attorney General (OAG) to (1) study the cannabis industry and market to determine whether remedial measures are necessary to assist minorities and women in the cannabis industry, as specified; (2) evaluate race-neutral programs or other methods that may be used to address the needs of minority applicants seeking to participate in the cannabis industry; and (3) adopt regulations as necessary to implement any remedial measures based on the findings of the study and evaluation.

The commission may report any information it determines to be necessary to the consideration, development, or implementation of remedial measures to the General Assembly.

### *Miscellaneous Provisions*

The bill establishes various provisions related to professional and occupational licensing, public benefits, parental rights, employer and employee rights, medical care, contract law, property owners and landlords, seizure and forfeiture, and law enforcement agencies.

*Firearms:* To the extent allowable, a person is not considered (1) ineligible to possess a firearm under federal law or (2) an unlawful user of or addicted to a CDS solely because of conduct authorized under the bill. In addition, a person may not be denied a State firearm license or permit, including a concealed carry permit, based solely on conduct authorized under the bill.

*Laws Unaltered by The Bill:* The bill’s provisions do not modify the laws and regulations concerning the use of medical cannabis under MMCC authorization. Additionally, the bill

does not repeal or modify any laws concerning the possession or use of marijuana by individuals younger than age 18 who remain subject to the jurisdiction of the juvenile court system. The bill does not exempt a person from arrest, existing civil or criminal penalties, discipline by a State or local licensing board, or State prosecution for (1) driving or operating a vehicle or vessel while impaired by or under the influence of cannabis; (2) possession of cannabis by a prisoner; or (3) possessing cannabis in a correctional facility, including a juvenile detention facility.

### **Current Law:**

#### *Criminal Law Provisions Related to Marijuana*

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana.

Pursuant to Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by MDH; and (3) refer him or her to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. The law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) reduced the maximum incarceration penalty for the use or possession of 10 grams or more of marijuana from one year to six months (but retained the maximum \$1,000 fine).

Further, pursuant to Chapter 515, before imposing a sentence for these offenses, the court is authorized to order MDH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. MDH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require MDH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility to facilitate the medically appropriate level of treatment.

In a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a *bona fide* physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was in possession of more than one ounce of marijuana.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant who cannot meet the affirmative defense standard for a not guilty verdict may introduce, and the court must consider as a mitigating factor (with regard to penalties on conviction), any evidence of medical necessity. Pursuant to Chapter 351 of 2015, if a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

Chapter 801 of 2017 expands eligibility for expungements to include a conviction for possession of marijuana under § 5-601 of the Criminal Law Article. A petition for expungement under this law may not be filed within four years after the conviction or satisfactory completion of the sentence, including probation that was imposed for the conviction, whichever is later.

## *Natalie M. LaPrade Medical Cannabis Commission*

MMCC 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. 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.

### *Expungements*

The expungement of the disposition of a charge is not automatic. To begin the process of expungement, a petitioner must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article, which establishes eligibility for the expungement of records pertaining to a criminal charge or conviction.

Expungement of a court or police record means removal from public inspection (1) by obliteration; (2) by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or (3) if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit. This “unit rule” applies to expungements under §§ 10-105 and 10-110.

Maryland’s expungement process for removing an eligible record takes a minimum of 90 days. If a State’s Attorney or victim, as applicable, objects, the court must hold a hearing on the petition. If an objection is not filed within 30 days, as specified, the court must pass an order requiring the expungement of all police and court records concerning the charges. After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

### *State Sales and Use Tax*

No State or local tax is currently imposed on the sale of cannabis.

The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which are taxed at a rate of 9%.

**State Fiscal Effect:** The continued vulnerability of participants to federal prosecution may affect participation levels in ways that cannot be reliably predicted. Given this vulnerability to federal prosecution, the unavailability of business-related deductions on federal taxes, and limited information on the demand for cannabis in Maryland, it is difficult to determine the level of participation in the State-regulated cannabis market created by the bill, which could vary from negligible to robust. In November 2020, a *Comprehensive Market Analysis of Medical and Adult-Use Cannabis in Maryland* was completed for MMCC. The report assesses the State’s existing medical cannabis market along with the economic and fiscal implications of a potential future adult-use cannabis market. While the market analysis is not specific to the bill’s provisions, it does provide useful context regarding the potential size of an adult-use market and can be located [here](#).

**State Revenues:** *Assuming robust participation in the cannabis market*, general fund and special fund revenues increase, likely significantly, in fiscal 2022, 2023, and 2025 from dual license fees. Special fund revenues increase further beginning in fiscal 2023 from taxes, other licensing fees, and newly established civil penalties. Special fund revenues also increase for specified agencies due to the required distribution of funds from the Cannabis Regulation Fund; general fund revenues also increase for this reason. Other effects on both general fund and special fund revenues are discussed below.

### *Alcohol and Tobacco Commission*

*Cannabis Taxation:* The bill specifies that the sale of cannabis to a consumer is subject to an excise tax that increases on a graduated basis over a specified timeframe. Under the bill, these tax revenues are directed to the Cannabis Regulation Fund. Thus, special fund revenues increase, potentially significantly, due to the imposition of such taxes; this impact cannot be reliably quantified but is assumed to begin in fiscal 2023.

*Dual License and Retailer Fees:* Special fund revenues increase, potentially significantly, for the Social Equity Start-Up Fund (within the commission) beginning in fiscal 2022 to the extent that existing medical cannabis dispensaries, processors, independent testing laboratories, and growers apply for dual licensure, become licensed, and renew those licenses as required. Currently there are 94 dispensaries, 17 growers, and 18 processors, licensed to operate in the State’s medical cannabis market. *For illustrative purposes only*, special fund revenues for dual licenses may increase by as much as \$22.4 million in fiscal 2022 and \$18.2 million in fiscal 2023, assuming that (1) all existing medical licensees apply for a dual license and renew after the initial eight-month licensure; (2) the average fee paid by dispensaries is \$100,000 for initial licensure and renewal; (3) the average fee for growers is \$500,000 for initial licensure and \$250,000 for renewal; and

(4) the average fee paid by processors is \$250,000 for initial licensure and renewal. This illustrative example does not take into account any reduction in license fees or renewal fees that may be applied to social equity applicants or certified minority-owned businesses or any reduction in renewal fees for licensees that choose to have fees redirected to the cost of hosting a cannabis business incubator program.

Special fund revenues for the Cannabis Regulation Fund from dual licenses are also expected in fiscal 2025 from renewals following the expiration of the initial two-year renewal period expiration. However, as this renewal fee is not set in the bill, it has not been included in this illustrative example.

Special fund revenues for the Social Equity Start-Up Fund increase further in fiscal 2023, 2024, and 2026 from application and licensing fees to operate as a retailer.

*Other License Fees:* Special fund revenues for the Cannabis Regulation Fund increase, likely significantly, beginning in fiscal 2023 from all other license fees. However, the magnitude of this increase cannot be reliably determined without information on (1) the number of applicants for each licensure type and (2) the fees (application, licensure, and renewal) for each type of cannabis establishment set by the commission.

#### *Excess Revenues from the Cannabis Regulation Fund*

The bill specifies a number of different entities and funds (including the new special funds as well as the general fund) entitled to a percentage of funds from the Cannabis Regulation Fund if revenues are generated in excess of the amount required to defray the bill's implementation costs, as specified. Without actual experience under the bill, it is impossible to know the extent to which revenues will be generated in excess of the amount required to defray those costs. Nevertheless, it is assumed that there will be excess funds. Accordingly, special fund revenues increase beginning in fiscal 2023 for the Community Reinvestment and Repair Fund, the Social Equity Start-Up Fund, the Cannabis Education and Training Fund, MDH, DSP, and the State's HBCUs. In addition, general fund revenues also increase beginning in fiscal 2023 due to the bill's requirement that 25% of the excess funds be distributed to the general fund.

#### *Excess Revenues from the Social Equity Start-Up Fund*

The bill specifies that at the end of each fiscal year beginning June 30, 2025, if the Office of Social Equity reports that the Social Equity Start-Up Fund has a surplus of funds and there is no reasonable expectation that the surplus will be needed for loans or grants to social equity applicants, the excess funds *may* be split evenly between the Cannabis Education and Training Fund and the Community Reinvestment and Repair Fund. To the extent that there are excess funds in the Social Equity Start-Up Fund, special fund revenues

are redistributed from that fund to the Cannabis Education and Training Fund and the Community Reinvestment and Repair Fund beginning in fiscal 2026.

### *Maryland Department of Health*

*Distribution from Cannabis Regulation Fund:* As discussed above, MDH receives special fund revenues from the required distribution from the Cannabis Regulation Fund.

*Dual Licensure Fee:* MDH may set an application and licensing fee for dual licenses in addition to the fees set in the bill and credited to the Social Equity Start-Up Fund. The bill does not specify an MDH special fund into which such fees are to be deposited; accordingly, it is assumed that any such fees are paid into the general fund. Thus, general fund revenues increase, potentially significantly, in fiscal 2022, 2023, and 2025 to the extent that MDH sets an additional fee and existing medical licensees apply for dual licensure and renew at specified intervals.

*Medical Cannabis Commission:* Special fund revenues for MMCC decrease, potentially significantly, to the extent that medical cannabis qualifying patients (as early as fiscal 2022, but likely in fiscal 2023) and medical cannabis licensees (likely not until fiscal 2025) shift to the adult-use market.

Qualifying patients must obtain and renew patient identification cards, at a cost of \$50, every three years. In fiscal 2019 and 2020, MMCC revenues from patient identification cards were approximately \$3.8 million and \$4.0 million, respectively. According to MMCC, other states that had medical cannabis markets and later opened adult-use markets saw participation in the medical market drop by between 19% and 66%. *For illustrative purposes only*, if 40% of patients switch to the adult-use market, MMCC special fund revenues decrease by \$1.5 million and \$1.6 million using the fiscal 2019 and 2020 figures, respectively. Special fund revenues continue to decrease on a cyclical basis as patient identification cards come due for renewal every three years. Special fund revenues are reduced further to the extent that fewer patients seek initial certification and pay for identification cards.

In addition, to the extent that medical cannabis licensees (dispensaries, processors, and growers) do not renew licenses to operate in the medical market in favor of holding only a license in the adult-use market, special fund revenues for MMCC decrease further. It is assumed that any reduction in the number of medical cannabis licensees under the bill would not occur until fiscal 2025, following the initial eight-month expiration and the subsequent two-year expiration for dual licenses. Annual license fees are \$125,000 for growers and \$40,000 for processors and dispensaries. As of December 2020, the commission had issued 17 final grower licenses; 18 final processor licenses; and 94 final dispensary licenses. *For illustrative purposes only*, if just 5% of the current licensees were

to drop their medical cannabis licenses, special fund revenues for MMCC decrease by approximately \$365,000 annually beginning in fiscal 2025.

*Marijuana Citation Fund:* Civil penalties imposed for cannabis-related offenses under § 5-601 of the Criminal Law Article are currently remitted to the Marijuana Citation Fund for drug education and treatment programs. Thus, special fund revenues for MDH decrease beginning in fiscal 2022 due to fewer individuals being subject to civil penalties. The Behavioral Health Administration in MDH administers the Marijuana Citation Fund. Special fund revenues totaled \$317,288 in fiscal 2020 and \$546,559 in fiscal 2019. MDH advises that the reduced revenues in fiscal 2020 were a result of the ongoing COVID-19 pandemic.

### *Judiciary*

*Civil and Criminal Fines:* General fund revenues from fines imposed in the District Court decrease minimally beginning in fiscal 2022 due to (1) the legalization of possession of amounts of marijuana subject to criminal fines under existing statute; (2) distribution of civil fines to the Marijuana Citation Fund for possession offenses that would be subject to criminal fines under current law; (3) the alternative fine amounts imposed under the bill; and (4) the opportunity to perform community service in lieu of paying a fine.

*Expungement Fees:* The Judiciary collects a \$30 filing fee for an expungement petition of a guilty disposition. A conviction for possession of marijuana under § 5-601 of the Criminal Law Article is currently eligible for expungement. Thus, general fund revenues may decrease minimally if the bill's expungement and legalization/decriminalization provisions reduce the pool of dispositions subject to an expungement filing fee.

**State Expenditures:** General/special fund expenditures increase significantly in fiscal 2022, primarily to establish the regulatory and taxation framework and to begin implementing the bill's social equity and expungement provisions, as discussed below. General fund expenditures increase further in fiscal 2022 only to complete the first of two required disparity studies. Although certain provisions of the bill are ambiguous regarding the authorized uses of the Cannabis Regulation Fund, for purposes of this fiscal and policy note, it is assumed that the Cannabis Regulation Fund can be used to cover ongoing costs incurred by agencies pursuant to the bill once such special funds are available. Accordingly, beginning as early as fiscal 2023, special fund expenditures from the Cannabis Regulation Fund increase significantly to cover the implementation costs described below. (The commission and the Office of Social Equity are also able to use the funds the commission administers and the Office of Social Equity assists in administering to cover specified administrative costs.) To the extent the Cannabis Regulation Fund may not be used to cover these costs, the increase in general fund expenditures continues beyond fiscal 2022. Also, to the extent special funds are not yet sufficient to cover the significant

initial costs to implement the bill, general funds are needed in fiscal 2023 as well. The Cannabis Education and Training Fund and the Community Reinvestment and Repair Fund may be used to cover other specified costs. Thus, special fund expenditures from these funds increase beginning in fiscal 2023. Other effects of the bill on State expenditures are also described below.

*Alcohol and Tobacco Commission*

*General Implementation:* Based on an analysis of legislation with similar provisions introduced in a prior legislative session, general/special fund expenditures for the commission increase by *at least* \$1.9 million in fiscal 2022 for general implementation of the bill (not including costs to establish the Office of Social Equity or to complete the two disparity studies, both discussed below). This estimate reflects the cost of hiring 11 employees (3 examiners, 1 assistant director, 1 management associate, and 6 field enforcement employees) to perform the various functions required under the bill. It includes salaries, fringe benefits, one-time start-up costs, consulting services, and ongoing operating expenses. This estimate assumes that:

- the commission needs significant resources and expertise to comply with the bill’s provisions, especially given the deadlines for compliance;
- the commission is able to implement the bill’s requirements within the established timeframe under the bill, even though that is unlikely; and
- to do so, despite the bill’s October 1, 2021 effective date, employees need to be hired on July 1, 2021.

Positions	11.0
Consulting Services	\$1,050,000
Salaries and Fringe Benefits	809,351
Operating Expenses	<u>63,195</u>
<b>Minimum FY 2022 Commission Exp.</b>	<b>\$1,922,546</b>

The Department of Legislative Services (DLS) advises that certain costs must be incurred regardless of how many entities apply for licensure. Costs increase further to the extent additional staff are necessary. The need for additional staffing depends on how many license applications are received and the timing of those applications.

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses. Ongoing expenditures are estimated to total \$780,093 in fiscal 2023, increasing to \$862,013 by fiscal 2026. In fiscal 2022, it is assumed that a combination of general and special funds (from the Social Equity Start-Up Fund that the commission administers) are used to cover the commission’s costs. Beginning in fiscal 2023, it is assumed that ongoing costs are covered entirely by a combination of funds

from all four special funds that the commission administers, including the Cannabis Regulation Fund.

*Disparity Study:* The above estimate does not account for a significant increase in general fund expenditures in fiscal 2022, and special fund expenditures in fiscal 2024, for the commission and the Office of Social Equity, in consultation with other specified agencies, to (1) study the cannabis industry and market to determine whether remedial measures are necessary to assist minorities and women in the cannabis industry, as specified; (2) evaluate race-neutral programs or other methods that may be used to address the needs of minority applicants seeking to participate in the cannabis industry; and (3) adopt regulations as necessary to implement any remedial measures based on that study and evaluation. The requirements under the bill are similar to the requirements for completing a disparity study. Based on an analysis of similar legislation requiring the completion of a disparity study, it is estimated that general fund expenditures increase by \$2.0 million in fiscal 2022, and special fund expenditures from the Cannabis Regulation Fund increase by \$2.0 million in fiscal 2024.

*Office of Social Equity:* The above estimate also does not account for the *significant* increase in general/special fund expenditures expected to be incurred in fiscal 2022 for the commission to establish and operate the Office of Social Equity. The office has extensive responsibilities under the bill, conducting public meetings for input, preparing annual reports, and administering grant and loan programs. As such, *significant* staff expenditures are likely necessary beyond what is contemplated above. In fiscal 2022, it is assumed that the office uses a combination of general and special funds (from the Social Equity Start-Up Fund, which it assists in administering) to cover its costs. Beginning in fiscal 2023, it is assumed that the office's costs are covered entirely by a combination of funds from the three special funds it assists in administering as well as the Cannabis Regulation Fund.

*Social Equity Start-Up Fund:* Special fund expenditures for the commission increase, likely significantly, beginning as early as fiscal 2022, but more likely in fiscal 2023, from the Social Equity Start-Up Fund to the extent that social equity applicants apply for and are awarded no-interest loans or grants.

*Community Reinvestment and Repair Fund and Cannabis Education and Training Fund:* As noted above, these two special funds receive a distribution of special fund revenues from (1) the Cannabis Regulation Fund for specified purposes and (2) beginning in fiscal 2026, any excess funds from the Social Equity Start-Up Fund. As a result, special fund expenditures increase for the authorized purposes specified in the bill beginning in fiscal 2023.

### *Comptroller*

General fund expenditures for the Comptroller increase by \$544,232 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one revenue specialist, two accountants, and one information technology (IT) programmer to implement and administer the collection of an excise tax, including ongoing computer system maintenance. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including \$320,000 in fiscal 2022 for computer programming modifications to the Comptroller's Compass system.

Positions	4.0
Computer Programming	\$320,000
Salaries and Fringe Benefits	201,907
Operating Expenses	<u>22,325</u>
<b>Total FY 2022 Comptroller Expenditures</b>	<b>\$544,232</b>

Future year expenditures (\$339,975 in fiscal 2023 and \$287,264 by fiscal 2026) reflect full salaries with annual increases and employee turnover and ongoing operating expenses, including \$80,000 in computer programming costs in fiscal 2023. This analysis assumes that these ongoing costs are covered by the Cannabis Regulation Fund.

### *Office of the Attorney General*

OAG advises that the social equity provisions within the legal cannabis industries of other states are being heavily litigated. To meet this anticipated litigation, OAG advises it needs to hire five assistant attorneys general and one paralegal at a cost of \$652,553 in fiscal 2022. DLS agrees that litigation could range from minimal to significant, but without actual experience under the bill, it is impossible to know. Thus, general fund expenditures increase by *at least* \$221,971 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring two assistant attorneys general (to support the Office of Social Equity and to handle any initial increase in litigation created by the bill) and one paralegal (to support the two attorneys). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$205,227
Operating Expenses	<u>16,744</u>
<b>Total FY 2022 OAG Expenditures</b>	<b>\$221,971</b>

Future year expenditures (\$262,692 in fiscal 2023 and \$290,304 by fiscal 2026) reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Costs increase further to the extent additional assistant attorneys general are necessary. The

need for additional staffing depends on the extent by which litigation actually increases under the bill. This analysis assumes that these ongoing costs are covered by the Cannabis Regulation Fund.

### *Judiciary*

General fund expenditures for the Judiciary increase *significantly* in fiscal 2022 to comply with the bill's expungement provisions, as discussed below. Beginning in fiscal 2023, it is assumed that any costs incurred by the Judiciary are covered by the Community Reinvestment and Repair Fund.

In addition to costs to hire additional personnel in fiscal 2022 and 2023 (and to a lesser extent in fiscal 2024), as discussed below, the Judiciary also incurs an estimated \$208,452 in fiscal 2022 for computer reprogramming related to both the bill's expungement provisions and the authorization of community service in lieu of a fine. The Judiciary advises, however, that even with the aforementioned computer reprogramming, full functionality of the bill's requirements will not be available until the deployment of Case Search 2.0, which is set for implementation during fiscal 2022.

The bill requires automatic expungements of specified dispositions and authorizes the expungement of a charge within a unit of charges (partial expungement). Partial expungements typically involve the removal of part, but not all, of a record, which significantly increases the level of effort needed to process expungements.

According to the Judiciary, hundreds of thousands of cases will be eligible for automatic expungement under the bill. The Judiciary estimates that it takes three hours to process a partial expungement in the District Court, five hours to process a partial expungement in the circuit courts, and one and a half hours to process a traditional expungement in either court. *For illustrative purposes only*, using these time requirements and the assumptions below, the Judiciary may need to hire 417 contractual staff for two years (302 District Court and 115 circuit court) at a cost of \$17.3 million in fiscal 2022, \$18.4 million in fiscal 2023, and \$4.7 million in fiscal 2024. This illustrative example assumes that (1) there are 200,000 marijuana only cases (175,000 District Court and 25,000 circuit court) and 350,000 marijuana with other charges cases (275,000 District Court and 75,000 circuit court); (2) each employee works 1,800 hours per year on expungements only; and (3) staff will initially work on marijuana only cases and then shift to partial expungements to comply with the deadlines under the bill.

The above estimate does not include ongoing automatic expungement requirements under the bill, which are assumed to be less burdensome and absorbable within existing budgeted resources.

The Judiciary also advises that citations need to be recalled and revised and the expungement brochure needs to be revised and restocked at a cost of approximately \$31,000. However, DLS advises that the District Court can implement the changes during routine reprinting of the citations and brochures using existing budgeted resources.

*Department of Public Safety and Correctional Services*

General fund expenditures for DPSCS decrease minimally beginning in fiscal 2022 due to reduced incarcerations and fewer individuals supervised by the Department of Parole and Probation (DPP) for cannabis-related offenses. In fiscal 2020, there were 8 inmates in custody for marijuana-related offenses; of those, 5 were incarcerated for additional offenses not affected by the bill. Also in fiscal 2020, DPP supervised 177 individuals convicted of marijuana-related offenses.

General fund expenditures for DPSCS increase significantly in fiscal 2022. This accounts for a *significant* increase in general fund expenditures for the Criminal Justice Information System (CJIS) to comply with the bill's expungement provisions, as discussed below. Beginning in fiscal 2023, ongoing costs related to expungement are assumed to be covered by the Cannabis Regulation Fund.

In 2019 and 2020, respectively, CJIS received 72,925 and 50,747 orders for expungement. DPSCS advises that expungement orders processed in 2020 were likely affected by the ongoing COVID-19 pandemic and, as such, are not an accurate representation of what to expect in future years. Based on the Judiciary's estimate for the number of cases affected by the bill, including those involving multiple charges, the bill has the potential to significantly increase CJIS's workload. CJIS advises that it requires one additional administrative employee for every 2,500 additional orders for expungement it receives annually. *For illustrative purposes only*, if there are 100,000 additional expungement orders received annually during both fiscal 2022 and 2023 as a result of the bill, DPSCS needs to hire 40 additional contractual staff for two years at a cost of \$1.8 million in fiscal 2022, \$1.9 million in fiscal 2023, and approximately \$493,000 in fiscal 2024.

However, this illustrative example does not address the requirement for marijuana-related partial expungements under the bill. With respect to prior legislation authorizing partial expungements systemwide, CJIS has noted estimated expenditures in the realm of \$462,000 in the first year for computer reprogramming, hardware and software procurement, as well as *significant* expenditures for additional personnel, including the creation of a new unit.

The above estimate also does not include ongoing automatic expungement requirements under the bill, which are assumed to be less burdensome and absorbable within existing budgeted resources.

*Law Enforcement*

*Department of State Police:* General fund expenditures for DSP increase significantly in fiscal 2022 due to the bill’s expungement provisions. DSP advises that the bill’s expungement provisions apply to tens of thousands of records under DSP control in both electronic and paper formats in several locations across the State, including criminal investigation reports, incident reports, civil citations, criminal citations, and laboratory testing records. DSP advises that it needs a *significant* increase in staff resources, including the creation of a new unit with 10 full-time permanent employees, 13 contractual staff, and two cargo vans. DSP further advises that, even with the additional staff resources, it will take *at least* three years to complete the initial backlog of expungements, despite the deadline established by the bill (October 1, 2023). DLS agrees that the bill’s expungement provisions are significant and that the creation of a new unit is necessary but disagrees with the need for two cargo vans and the number of permanent and contractual staff required. To the extent that additional employees are needed, DSP may request additional positions through the annual budget process.

Accordingly, general fund administrative expenditures for DSP increase by *as much as* \$879,469 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring 1 program manager, 1 IT programmer, 3 administrative aides, 1 assistant attorney general, 1 management associate, and 10 contractual employees. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Permanent Positions	7.0
Contractual Positions	10.0
Salaries and Fringe Benefits	\$784,588
Operating Expenses	<u>94,881</u>
<b>Total FY 2022 DSP Admin. Expenditures</b>	<b>\$879,469</b>

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.

Future year administrative expenditures (\$986,200 in fiscal 2023 and \$579,299 by fiscal 2026) reflect (1) full salaries with annual increases and employee turnover; (2) ongoing operating expenses; and (3) termination of the contractual positions at the end of fiscal 2024. This analysis assumes that these ongoing costs are covered by the Cannabis Regulation Fund.

General fund expenditures for DSP are also affected as follows beginning in fiscal 2022. First, general fund expenditures decrease due to issuing fewer criminal and civil citations

(and a corresponding decrease in the need for the State laboratory to test CDS suspected as cannabis for evidence in a criminal case). However, general fund expenditures also increase from more arrests for driving under the influence and driving while impaired by cannabis (and a corresponding increase in the need for the State laboratory to test blood evidence for use in criminal prosecutions). Generally, driving under the influence or driving while impaired by cannabis involve blood evidence; all blood draw kits from across the State are sent to DSP for analysis.

Special fund expenditures for DSP increase beginning in fiscal 2023 as the agency uses the special funds it receives from the Cannabis Regulation Fund to provide specified training.

*Maryland Department of Transportation and Maryland Transportation Authority:* The Maryland Transit Administration Police within the Maryland Department of Transportation and the Maryland Transportation Authority Police require contractual personnel to assist with implementing the bill's expungement provisions and to assist in the creation of training manuals. Expenditures associated with this level of effort are expected to be minimal and last for one year.

*Department of Natural Resources:* The Department of Natural Resources advises that due to an expected increase in the instances of persons driving under the influence and driving while impaired by cannabis, Natural Resources Police officers need to undergo additional training to become certified Drug Recognition Experts. However, this training is offered by DSP at no charge.

#### *Maryland State Archives*

The Maryland State Archives (MSA) is the repository for older court records. MSA has historically advised that it processes between 300 and 400 expungement orders every month and that a significant increase in this number requires additional staff. Based on the Judiciary's estimate for the number of cases affected by the bill, including those involving multiple charges, the bill likely significantly increases MSA's workload in fiscal 2022 and 2023 and, to a lesser extent, in fiscal 2024. Thus, general fund expenditures increase significantly in fiscal 2022 to hire contractual assistance to handle the increase in workload. Ongoing costs in fiscal 2023 and 2024 are assumed to be covered by the Cannabis Regulation Fund. Any such costs cannot be reliably estimated without actual experience under the bill.

### *Maryland Department of Health*

Special fund expenditures for MMCC decrease beginning as early as fiscal 2023 to the extent that medical cannabis patients shift to the adult-use market. MMCC advises that the cost of printing each identification card is \$15 and that qualifying patients must renew identification cards every three years. In fiscal 2019 and 2020, respectively, MMCC issued 75,933 and 80,909 identification cards. *For illustrative purposes only*, if 40% of patients shift to the adult-use market under the bill, MMCC special fund expenditures decrease by approximately \$455,598 in fiscal 2023 and \$485,454 in fiscal 2024. Special fund expenditures continue to decrease on a cyclical basis as patient identification cards come due for renewal every three years. Special fund expenditures decrease further, beginning as early as fiscal 2022, but more likely in fiscal 2023, to the extent that fewer patients enter the medical cannabis market requiring identification cards to be printed.

MMCC advises it can provide documentation within 30 days, upon request, to an applicant for a dual license verifying the applicant's current and historical compliance with MMCC regulations using existing budgeted resources.

In addition, special fund expenditures for the Marijuana Citation Fund within MDH increase, as more underage individuals are referred to drug education programs due to the bill's changes. Any impacts on the costs of substance abuse assessments have not been addressed in this analysis.

MDH special fund expenditures also increase beginning in fiscal 2023 as the agency uses the special funds it receives from the Cannabis Regulation Fund for specified programs, education, and research.

### *Maryland Department of Labor*

MDL expenditures increase minimally (by \$17,481 in fiscal 2022, increasing to \$18,166 by fiscal 2026) for MDL to consult with the commission on the administration of the Cannabis Education and Training Fund. MDL anticipates that the consultative role is likely minor and includes providing guidance related to occupational training and barrier removal best practices; facilitating connections with training providers and local workforce boards; and reviewing grant applications. MDL further advises that the relevant staff from the Division of Workforce Development and Adult Learning who can provide the required input are fully federal-funded positions. As federal funds may not be used to support cannabis-related activities, State funds are required to pay for approximately 3% of the Director of Workforce Development's time. This analysis assumes that costs incurred in fiscal 2022 are borne by the general fund, but that, beginning in fiscal 2023, any ongoing costs are covered by the Cannabis Education and Training Fund.

### *Department of Commerce*

The Department of Commerce advises that while consulting with the commission regarding the administration of the Community Reinvestment and Repair Fund does have an operational impact, if only minor assistance is required (*e.g.*, sharing best practices on establishing grant systems and processing applications), the department can consult as needed within existing budgeted resources. The bill also requires the Maryland Small Business Development Financing Authority (MSBDFFA) to consult with the commission regarding the Social Equity Start-Up Fund. The department uses a contractor to administer MSBDFFA. Assuming minor assistance is required for the contractor to consult with the commission, that requirement can be met within the existing resources of the contract.

### *Office of Legislative Audits*

The Office of Social Equity and the four special funds created by the bill – the Cannabis Regulation Fund, the Community Reinvestment and Repair Fund, the Social Equity Start-Up Fund, and the Cannabis Education and Training Fund – are subject to audit by OLA. OLA advises that the commission is subject to audit at least once every four years under current law. OLA further advises that it can absorb any additional audit requirements within existing resources during regularly scheduled audits of the commission. Thus, OLA expenditures are not materially affected.

### *Office of the Public Defender*

The bill's decriminalization of specified cannabis offenses reduces OPD caseloads. Further, the bill's expansion of OPD eligibility to specified filings for expungement, resentencing, or release increases OPD caseloads. Given the caseloads and resources of OPD, it is assumed that the reduction in caseloads from the bill's decriminalization provisions is offset by the increase in caseloads from the bill's postconviction provisions. Thus, OPD expenditures are not materially affected.

**Local Fiscal Effect:** Local revenues increase, potentially significantly, from application fees, as 50% of every application fee received by the commission to operate a cannabis establishment, with the exception of dual licenses, must be sent to the local regulatory authority for the locality in which the applicant desires to operate the cannabis establishment.

Local revenues increase further to the extent that local jurisdictions exercise the authorization to establish an additional sales tax of up to 3% on the sale of cannabis from a cannabis establishment to a consumer.

In addition, the bill authorizes the use of the Cannabis Education and Training Fund for the purpose of awarding grants to any organization capable of providing training relevant to the legal cannabis industry, which may include units of local government. The bill also authorizes the use of the Community Reinvestment and Repair Fund to provide grants to local governments for specified purposes, including housing assistance programs and reentry services. Thus, local grant revenues may increase.

Local expenditures increase for affected local entities to expunge records or address expungement petitions within the specified timeframes. However, such costs for State's Attorney's offices are covered by the Community Reinvestment and Repair Fund, while such costs for other affected entities appear to be covered with funds from the Cannabis Regulation Fund. The magnitude of the impact will vary by jurisdiction, based on volume and existing staffing.

Local expenditures may also increase to the extent local regulatory authorities conduct any review of proposed cannabis establishments.

Local expenditures decrease minimally due to reduced incarcerations and prosecutions resulting from the bill's decriminalization/legalization of specified offenses.

**Small Business Effect:** The bill creates an opportunity for small businesses to enter the State's legal cannabis market. The bill also establishes the Social Equity Start-Up Fund grant and loan program that allows social equity applicants to apply for grants or no-interest loans. The resources of the Social Equity Start-Up Fund are likely to be *significant*; as such, there is a substantial opportunity for social equity applicants to enter the legal cannabis market as small businesses. Moreover, the bill establishes several types of cannabis establishments, some of which – delivery service or transporter – are likely more accessible to individuals entering the legal cannabis market as small businesses.

In addition, the bill authorizes the use of the Cannabis Education and Training Fund for the purpose of awarding grants to any organization capable of providing training relevant to the legal cannabis industry, which may include small businesses. The bill also authorizes the use of the Community Reinvestment and Repair Fund to provide small business loans to residents of specified communities.

It should be noted that, while the bill presents a State-authorized business opportunity, cannabis establishments operating under the bill are still in violation of federal law. Thus, the bill's impact on small businesses depends upon the extent to which (1) the risk of federal prosecution deters individuals from entering the State's cannabis market and (2) the unavailability of federal business tax deductions restricts the potential profitability of small business cannabis establishments.

**Additional Comments:** Due to conflicting provisions in the bill, this analysis assumes the bill's initial expungement requirements are intended to apply to a disposition entered *before October 1, 2021* (rather than October 1, 2022, as specified in the bill), while the bill's ongoing expungement requirements apply to a disposition entered on or after October 1, 2021. For the sake of clarity, these assumptions/items were not explicitly mentioned in the bill summary.

The bill specifies that the Cannabis Regulation Fund consists of all application and licensing fees paid by cannabis establishments, except for retailer and dual license fees that are payable directly to the Social Equity Start-Up Fund. However, the provisions establishing the Social Equity Start-Up Fund and provisions discussing retailer application and licensing fees do not mention the deposit of those fees into the Social Equity Start-Up Fund. Regardless, this analysis assumes that retailer application and licensing fees are payable directly into the Social Equity Start-Up Fund.

As mentioned above, the bill requires the commission to conduct a disparity study in fiscal 2024 that may cost as much as \$2.0 million. While the Cannabis Restitution Fund is to be used for implementation of Title 12.5 of the Tax-General Article and the requirement for the study is in uncodified language, this analysis assumes that funding for the fiscal 2024 study is an administrative cost of the commission and is funded through the Cannabis Regulation Fund.

It should also be noted that, while the bill authorizes localities to prohibit the operation of cannabis establishments within their jurisdictions, they must do so through an initiated or referred measure on a general election ballot. However, the commission must begin accepting applications prior to the next general election.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Charles, Frederick, and Montgomery counties; City of Havre de Grace; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Housing and Community Development; Department of General Services; Department of Natural Resources; Board of Public Works; Department of Commerce; Office of the Attorney General; Department of Human Services; Maryland Department of

Agriculture; Maryland Department of Health; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2021  
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