

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 692 (Senator Carter)
Finance and Budget and Taxation

**Cannabis – Legalization and Regulation (Cannabis Legalization and Reparations
for the War on Drugs Act)**

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 special funds for specified purposes; (3) expands the funding for and purposes of the existing Small, Minority, and Women-Owned Business Account (SMWOBA); and (4) establishes a process for dismissal of, expungement for, or postconviction relief for marijuana-related offenses. The commission must evaluate the cannabis market in the State by January 1 each year beginning in 2025 and must commission a study of supply and demand for the cannabis market by January 1, 2027. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Special fund revenues increase significantly beginning in FY 2024 for the Cannabis Regulation Fund from license fees, taxes, and civil penalties for noncompliance. General fund revenues increase significantly beginning in FY 2025 from a required distribution from the Cannabis Regulation Fund. Special fund revenues for the Maryland Department of Health (MDH) decrease minimally beginning in FY 2023 due to the reduced application of marijuana civil citation fines; special fund revenues decrease further as early as FY 2024, but likely in FY 2025, as medical cannabis patients and licensees shift to the adult-use market. General fund expenditures increase significantly in FY 2023 for multiple agencies to implement the bill; FY 2024 expenditures are assumed to be covered by a combination of general and special funds, and future year expenditures are assumed to be covered with special funds only. Other effects are described below.

Local Effect: Potential significant increase in local revenues and expenditures, as discussed below.

Small Business Effect: Meaningful.

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 *vacatur*, dismissal, or release in specified circumstances and authorizes expungement, resentencing, *vacatur*, or a new trial in other specified circumstances for marijuana-related offenses; (4) requires the Alcohol and Tobacco Commission to adopt regulations to implement the bill; (5) establishes a licensing framework; (6) establishes the Community Repair and Reinvestment Fund for the purpose of promoting inclusion in the legal cannabis industry; (7) requires that a county adopt a law specifying how money received from the Community Repair and Reinvestment Fund may be used and issue a report on the use of these funds every two years; (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; (10) requires specified cannabis market studies; (11) expands the funding and purpose of the SMWOBA; and (12) 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 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 without remuneration;
- control property where lawful actions related to cannabis occur;
- assist another 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) an amount of cannabis that does not exceed four ounces; (2) an amount of concentrated cannabis that does not exceed 24 grams; or (3) six or fewer cannabis plants.

Civil and Criminal Penalties

The bill repeals criminal penalty provisions and establishes civil penalty provisions applicable to the use of cannabis. **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). All of the offenses listed below must be charged on a citation. An underage individual must be summoned for trial while an individual at least age 21 may request a trial, prepay the fine, or request community service. In addition, an underage individual who commits a specified violation must be provided with information relating to cannabis use disorder and the dangers of underage use of cannabis (rather than being ordered to attend a drug education program approved by MDH and being referred to an assessment for substance use disorder as under current law).

Exhibit 1
Civil 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 by an individual at least age 21	Civil	\$150 fine or 15 hours of community service*
Possession of up to the personal use amount by an underage individual	Civil	\$50 fine
Possession of more than the personal use amount by an underage individual	Civil	\$150 fine or 15 hours of community service*

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

Source: Department of Legislative Services

Decriminalization of Other Cannabis Offenses: A violation of the following provisions of the Criminal Law Article involving cannabis is a civil offense punishable by a maximum penalty of a \$250 fine or 30 hours of community service: (1) distributing, dispensing, or possessing with the intent to distribute or dispense a controlled dangerous substance (CDS)

under § 5-602; (2) manufacturing CDS or possessing manufacturing equipment under § 5-603; (3) creating, distributing, or possessing with the intent to distribute a counterfeit substance under § 5-604; (4) keeping a common nuisance under § 5-605; and (5) passing, issuing, or possessing a false, counterfeit, or altered prescription for a CDS with the intent to distribute the CDS under § 5-606. A person at least age 21 may prepay the fine or request community service in lieu of the fine, while an underage person must be summoned for trial.

Smoking Cannabis in Public: The bill incorporates cannabis into specified existing prohibitions under the Clean Indoor Air Act (CIAA). Thus, the bill specifically prohibits the smoking of cannabis in specified locations, including an indoor area open to the public. The bill does not alter existing penalty provisions under CIAA.

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. 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, a violator 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 or request community service in lieu of the fine, while an underage person must be summoned for trial.

Possession with the Intent to Distribute Cannabis: There is a presumption that a person in possession of less than the personal use amount of cannabis, in the absence of any other evidence, is not in violation of the prohibitions against (1) distributing or dispensing a CDS or (2) possessing a CDS in sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense a CDS.

Cannabis – Obtaining or Furnishing for Underage Consumption: As under current law for alcoholic beverages, an individual may not (1) knowingly and willfully make a misrepresentation or false statement of age to obtain cannabis; (2) obtain or attempt to obtain cannabis for consumption by an underage individual; or (3) furnish cannabis or cannabis accessories to or allow consumption of cannabis by an underage individual, 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 CDS, 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.

Reasonable Suspicion and Probable Cause

A finding or determination of reasonable suspicion or probable cause relating to the possession of contraband or other criminal activity, with limited exception, may not be based solely on evidence of the (1) odor of cannabis; (2) odor of burnt cannabis; (3) possession (or suspicion of possession) of cannabis; or (4) the presence of money in proximity to cannabis.

When investigating whether a person is driving, operating, or controlling a motor vehicle or vessel while impaired by drugs, a law enforcement officer may use the above specified types of evidence for reasonable suspicion or probable cause. However, the odor of cannabis still may not be used as the basis for finding probable cause for a search of an area of the vehicle or vessel that is not (1) readily accessible to the driver or operator or (2) reasonably likely to contain evidence relevant to the condition of the driver or operator.

Dismissal of Pending Charges and Postconviction Proceedings

Automatic Vacatur: A conviction for possession of cannabis, possession of cannabis paraphernalia, possession with the intent to distribute cannabis, manufacture of cannabis, or distribution of cannabis that is entered before July 1, 2022, (the bill’s effective date) must be automatically vacated by July 1, 2023. A former conviction that is vacated must not be considered a conviction for any purpose.

Requests for Vacatur and New Trial: A person who has been convicted of a crime (or adjudicated delinquent for an offense that would be a crime in adult court) may request that any conviction be vacated or request a new trial, and the court must grant the reconsideration request if the conviction (or delinquent finding) was based in whole or in part on evidence gathered during a search or seizure for which reasonable suspicion or probable cause was based on the (1) odor of cannabis; (2) odor of burnt cannabis; (3) possession (or suspicion of possession) of cannabis; or (4) presence of money in proximity to cannabis. A *vacatur* petition must be filed by December 31, 2025; a court may consider a petition filed after this deadline for good cause shown.

Expungement Applications: An individual previously convicted for the possession, possession with intent to distribute, cultivation, processing, or sale of cannabis who is not entitled to have the conviction vacated and 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. As of January 1, 2024, any individual petitioning for this type of expungement 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 July 1, 2022, (the bill's effective date) for possession, possession with intent to distribute, or cultivation 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 or after July 1, 2022, (the bill's effective date) for an offense involving the possession, possession with intent to distribute, or cultivation of a personal use amount of cannabis may present an application for release to the sentencing court. The sentencing court must grant the petition and vacate the conviction. If the person is not serving a concurrent or consecutive sentence for another crime, the person must be released from incarceration or supervision.

In addition, a person who is incarcerated or under supervision on July 1, 2022, (the bill's effective date) for an offense involving possession, possession with intent to distribute, 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 Post-conviction Proceedings: Funds must be allocated 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, 2023, the commission 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 that are directly and demonstrably related to the operation of a cannabis establishment and do not disqualify applicants for cannabis offenses occurring before July 1, 2022;
- 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;
- a schedule of reasonable application, license, and renewal fees, including (1) a \$5,000 cap on application fees, as specified; (2) tier-based application and license fees for cultivators, with substantially lower fees for Tier 1 cultivators than Tier 5 cultivators; and (3) 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 the potential risks of cannabis and (2) a warning about the need to safeguard all cannabis from children and pets.

In addition, the commission may not require a consumer to provide a retailer with personal information other than government-issued identification to determine the consumer's age and must develop policies and procedures to govern the approval of license transfers.

When awarding licenses, the commission must ensure that at least 30% of the licenses awarded are to applicants that are at least 51% owned by members of a group that has been historically negatively impacted by the enforcement of the cannabis prohibition. If the commission fails to comply, the commission must document the actions taken to achieve compliance and the reason for the failure.

By January 1 each year beginning in 2025, the commission must evaluate the cannabis market in the State, solicit input regarding specified topics, and submit a related report, as discussed in more detail below.

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, 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. 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. An applicant may also apply for conditional approval 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. 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.

Retailer Licenses: By October 1, 2023, the commission must begin accepting and processing applications for licenses to operate as a retailer from qualified applicants. The commission must award up to 250 points for each application based on specified factors. By April 1, 2024, the commission must issue an initial 47 retailer licenses in a manner that equitably distributes the licenses throughout the State at a rate of one license per senatorial district. The commission may accept additional applications for retailers beginning February 1, 2027. Additional licenses must be issued by scoring all applications and entering all applicants with a sufficient score into a lottery.

Cultivator Licenses: 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 applicants are issued licenses.

The commission *may* accept additional applications for cultivators beginning February 1, 2027. However, additional cultivator licenses may only be issued if a market study (which must be commissioned by January 1, 2027) indicates that additional supply is needed. Any additional licenses must be issued by scoring all applications and entering those applications with a sufficient score into a lottery.

Processor Licenses: By August 1, 2024, the commission must begin accepting and processing applications for licenses to operate as a Class A or Class B processor. If the applicant is qualified, the commission must issue a license or conditional license within 90 days.

Independent Testing Laboratory: By October 1, 2023, the commission must begin accepting and processing applications, on an ongoing basis, for licenses to operate as an independent testing laboratory. If the applicant is qualified, the commission must issue a license or conditional license within 90 days, except as specified.

Special Fund Purposes and Distributions

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; (2) all excise tax revenue collected under the bill; and (3) any other money the commission accepts for the benefit of the fund, as specified. 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 the Office of Legislative Audits (OLA).

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: (1) 60% to the Community Reinvestment and Repair Fund; (2) 2% to the SMWOBA; and (3) the remainder (38%) to the State's general fund.

Community Reinvestment and Repair Fund: The bill establishes the Community Reinvestment and Repair Fund, a special fund administered by the Comptroller, with the stated purpose of providing funds to community-based organizations that service communities determined by the Office of the Attorney General (OAG) to have been the most impacted by disproportionate enforcement of the cannabis prohibition before July 1, 2022. The fund consists of the money allocated to it from the Cannabis Regulation Fund pursuant to the bill and money from any other source accepted for the benefit of the fund by the Comptroller, as specified.

The fund may be used only for (1) funding community-based initiatives intended to benefit low-income communities; (2) funding community-based initiatives that serve communities disproportionately harmed by the cannabis prohibition and enforcement; and (3) any related administrative expenses. Money may not be expended from the fund for law enforcement agencies or activities. Money expended from the fund is supplemental to and may not supplant funding that would otherwise be appropriated for preexisting local government programs.

The Comptroller must distribute funds to the counties in an amount that is proportionate to the total number of marijuana arrests in each county compared to the total number of arrests in the State between July 1, 2002, and June 30, 2022. Subject to the authorized uses of funds specified above, each county must adopt a law establishing the purpose for which money received from the fund may be used. Beginning in 2024, each local jurisdiction must submit a report by December 1 every two years on how the funds received were spent during the immediately preceding two fiscal years.

Small, Minority, and Women-Owned Businesses Account: The money that must be distributed to the SMWOBA (which is under the authority of the Department of Commerce) from the Cannabis Regulation Fund must be used to benefit small, minority, women-owned, and veteran-owned businesses in the cannabis industry in the State. Commerce must make grants to eligible fund managers to provide investment capital, including direct equity investments and similar investments and loans to small, minority, women-owned, and veteran-owned businesses in the cannabis industry in the State.

Cannabis Market Studies

Annual Market Study: By January 1 each year beginning in 2025, the commission must evaluate the cannabis market in the State and solicit input from the public and stakeholders regarding (1) diversity within the State’s cannabis industry; (2) whether the tax rate and revenues are meeting the goals of displacing the illicit market and generating revenue for reinvestment in communities, cannabis training, and other needs, including a review of tax rates in other states; and (3) any anticipated or actual changes to federal law or other factors that warrant statutory revisions. By July 1 each year, the commission must report any recommendations for changes to cannabis regulation and taxation, including changes to the tax rate and method and whether and under what conditions to allow the import and export of cannabis to other states.

Supply and Demand Market Study: By January 1, 2027, the commission must commission a study of the cannabis market in the State that addresses (1) the extent to which consumers have safe, convenient access to legal cannabis at prices that are lower than in the illicit market; (2) whether cannabis cultivators, processors, and retailers are meeting demand without creating a surplus; and (3) whether additional supply is needed.

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 the Natalie M. LaPrade Medical Cannabis Commission (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 license under the bill.

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 (1) a 10% excise tax until April 1, 2026;

(2) a 15% excise tax from April 1, 2026, through March 30, 2028; 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 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 actually rendered.

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 prevent the imposition of any civil, criminal, or other penalties for (1) operating a vehicle, aircraft, or boat while under the influence of cannabis (or affect the laws relating to operating a vehicle or vessel while under the influence or impaired by a CDS); (2) possessing cannabis in a correctional facility, including a juvenile detention facility; or (3) undertaking a task while under the influence of cannabis, when doing so would constitute negligence or professional malpractice.

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. Marijuana is listed

on Schedule I. 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.

Possession of *10 grams or more* of marijuana is a misdemeanor, punishable by imprisonment for up to six months imprisonment and/or a fine of up to \$1,000.

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 the individual 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.

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 assisting the person for whom the defendant is a caregiver in 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 may introduce, and the court must consider as

a mitigating factor (with regard to penalties on conviction), any evidence of medical necessity. If a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

Petition-based Expungement of a Court or Police Record

Other than specified dispositions eligible for automatic expungement under Chapter 680 of 2021, 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:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- 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.

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.

Status of Medical Cannabis Implementation

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2021, the commission had issued 19 final grower licenses, 20 final processor licenses, and 95 final dispensary licenses. In addition, there are three licensed independent testing laboratories. The commission maintains a list of licensees on its [website](#). Also, at the close of calendar 2021, there were 148,129 certified patients, 12,939 caregivers, and 1,511 certifying providers. The commission additionally reports a preliminary total of \$564.8 million in retail sales at cannabis dispensaries in the State for calendar 2021.

Clean Indoor Air Act

Pursuant to CIAA, except as otherwise specified, a person may not smoke in (1) an indoor area open to the public; (2) an indoor place in which meetings are open to the public; (3) a government-owned or -operated means of mass transportation; (4) an indoor place of employment; (5) a private home used by a licensed child care provider; or (6) a private vehicle used for public transportation of children or as part of health care or day care transportation. The prohibition includes bars, clubs, restaurants, pubs, taverns, retail establishments, theaters, concert halls, athletic facilities, financial service institutions, government buildings, educational institutions, museums, and libraries.

However, the prohibition does not apply to (1) private homes or residences; (2) private vehicles; (3) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (4) specified tobacco facilities and retail businesses; or (5) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke. CIAA defines “smoking” as the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

CIAA required MDH to adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public. A person who violates the MDH regulations is subject to a written reprimand for a first violation, a civil penalty of \$100 for a second violation, a civil penalty of \$500 for a third violation, and a civil penalty of \$1,000 for each subsequent violation, unless otherwise waived by MDH after the department considers the seriousness of the violation and good faith measures. (Statute requires that the civil penalty for third and subsequent violations be at least \$250.) However, an employer who takes certain retaliatory actions against an employee (who has complained or taken other actions related to violations) is subject to a civil penalty of at least \$2,000 but no more than \$10,000 for each violation. All civil penalty revenue is paid to the Cigarette Restitution Fund.

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. 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 there is robust participation in the cannabis market,* special fund revenues increase, likely significantly, beginning in fiscal 2024 from license fees, taxes, and newly established civil penalties for noncompliance with regulations. Beginning in fiscal 2025, special fund revenues for SMWOBA and the Community Repair and Reinvestment Fund increase due to the required distribution of funds from the Cannabis Regulation Fund; general fund revenues also increase for this reason. Special fund revenues for MDH decrease minimally beginning in FY 2023 due to the reduced application of marijuana civil citation fines and decrease further beginning as early as fiscal 2024, but likely in fiscal 2025, as MMCC patients and licensees shift to the adult-use market. 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 as early as fiscal 2024.

Licensing Fees: Special fund revenues for the Cannabis Regulation Fund increase, likely significantly, beginning in fiscal 2024 from all 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.

Excess Revenues from the Cannabis Regulation Fund

The bill specifies that the new Community Reinvestment and Repair Fund, the existing SMWOBA, and the general fund must receive specified percentages of funds from the Cannabis Regulation Fund if revenues are generated in excess of the amount required to defray the bill's implementation costs. 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 beginning in fiscal 2025. Accordingly, beginning in fiscal 2025, special fund revenues increase for the Community Reinvestment and Repair Fund (60%) and the SMWOBA (2%); general fund revenues (38%) also increase beginning in fiscal 2025.

Maryland Department of Health

Medical Cannabis Commission: Special fund revenues for MMCC decrease, potentially significantly, to the extent that medical cannabis qualifying patients (as early as fiscal 2024, but likely in fiscal 2025) and medical cannabis licensees (as early as fiscal 2024, but likely fiscal 2025) shift to the adult-use market. MMCC advises that it is funded entirely with special funds and that 91% of its budget comes from patient and licensee fees.

Qualifying patients must obtain and renew patient identification cards, at a cost of \$50, every three years. In fiscal 2019, 2020, and 2021, MMCC revenues from patient identification cards were approximately \$3.8 million, \$4.0 million, and \$3.4 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 beginning in fiscal 2024, MMCC special fund revenues decrease by \$1.5 million, \$1.6 million, and \$1.4 million using the fiscal 2019, 2020, and 2021 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 a license in the adult-use market, special fund revenues for MMCC decrease further. It is assumed that a reduction in the number of medical cannabis licensees under the bill could begin as early as fiscal 2024, but likely in fiscal 2025. However, it is unclear from the bill's provisions whether a medical licensee could also become an adult-use cannabis establishment licensee. This analysis assumes that a licensee would have to choose to hold

either a license in the medical market or the adult-use market. Thus, special fund revenues decrease, likely significantly, as medical licensees stop renewing in favor of entering the more lucrative adult-use market. Annual MMCC license fees are \$125,000 for growers and \$40,000 for processors and dispensaries. As of December 2021, the commission had issued 19 final grower licenses; 20 final processor licenses; and 95 final dispensary licenses. *For illustrative purposes only*, if 50% of the current licensees were to drop their MMCC licenses, special fund revenues for MMCC decrease by approximately \$3.6 million 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 2023 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: There is an indeterminate impact on general fund revenues from fines imposed in the District Court beginning in fiscal 2023. Revenues decrease minimally due to (1) the legalization of possession of amounts of marijuana subject to criminal fines under current law; (2) the decriminalization of all possession of marijuana offenses subject to criminal fines under current law; (3) the distribution of civil fines to the Marijuana Citation Fund for possession offenses that would be subject to criminal fines under current law; and (4) the opportunity to perform community service in lieu of paying a fine. However, general fund revenues increase from the decriminalization and shifting to District Court of several marijuana-related offenses that are subject to criminal penalties and within the jurisdiction of the circuit court under current law.

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 automatic *vacatur* and legalization/decriminalization provisions reduce the pool of dispositions subject to an expungement filing fee.

State Expenditures: General fund expenditures increase significantly in fiscal 2023, primarily to establish the regulatory and taxation framework and to begin implementing the bill's post-conviction provisions, as discussed below. 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 2024, special fund expenditures from the Cannabis Regulation Fund increase significantly to cover the implementation costs described below. To the extent the Cannabis Regulation Fund may not be used to cover these costs, the increase in general fund expenditures continues beyond fiscal 2023. 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 2024 as well. The Community Reinvestment and Repair Fund may be used to cover other specified costs, while the SMWOBA may be used for loans and grants. Thus, special fund expenditures from these funds increase beginning in fiscal 2025. General fund expenditures decrease beginning in fiscal 2023 for the Department of Public Safety and Correctional Services (DPSCS) due to fewer people incarcerated or supervised by parole or probation. Special fund expenditures for MDH decrease beginning in fiscal 2023 due to individuals no longer being ordered to drug education for specific possession of marijuana offenses and from MMCC no longer printing identification cards for patients that shift to the adult-use market. Other effects on State expenditures are also described below.

Alcohol and Tobacco Commission

General Implementation: General fund expenditures for the commission increase by *at least* \$1.2 million in fiscal 2023 for general implementation of the bill. 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 starting July 1, 2022. It includes salaries, fringe benefits, one-time start-up costs, 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; and
- the commission is able to implement the bill’s requirements within the established timeframe under the bill, even though that is unlikely.

Positions	11.0
Salaries and Fringe Benefits	\$1,120,178
Operating Expenses	<u>83,688</u>
Minimum FY 2023 Commission Expenditures	\$1,203,866

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 as well as annual increases in ongoing operating expenses. Ongoing expenditures are estimated to total \$1.1 million in fiscal 2024, increasing to \$1.2 million by fiscal 2027. In fiscal 2023, it is assumed that only general funds are used to cover the commission's costs, as revenues from licensing and taxation will not be available until fiscal 2024. In fiscal 2024, it is assumed that ongoing costs are covered by a combination of general and special funds from the Cannabis Regulation Fund. Beginning in fiscal 2025, it is assumed that all ongoing costs are covered by special funds from the Cannabis Regulation Fund.

Comptroller

The Comptroller advises that it needs a total of 30 full-time employees across multiple divisions, at a cost of \$2.6 million in fiscal 2023 based on a July 1, 2022 start date (with future year expenditures of \$2.4 million in fiscal 2024 and \$2.5 million by fiscal 2027) in order to implement the bill's tax provisions. However, it is unclear what the responsibilities of each new employee would be based on the Comptroller's response, which did not adequately explain the justification for this level of additional personnel. The Comptroller further advises the need to modify its current information technology (IT) contract, at an additional cost of \$4.0 million in fiscal 2023 only.

However, for a bill in a prior legislative session with identical tax provisions for the adult-use cannabis market, the Comptroller advised the need to hire four full-time employees to implement and administer the collection of an excise tax, including ongoing computer system maintenance. The Comptroller further advised the need to implement computer programming modifications to its Compass system at a total cost of \$400,000 over the initial two years of implementation. DLS has not been able to obtain additional information to reconcile the substantial differences between the two estimates from the Comptroller.

DLS concurs with the Comptroller's initial assessment as an indication of the minimum resources needed for implementation and compliance with the bill's provisions. Thus, general fund expenditures for the Comptroller increase by *at least* \$626,538 in fiscal 2023 for implementation of the bill's tax provisions (not including the costs for the Comptroller to administer the Community Reinvestment and Repair Fund). This estimate, which accounts for the bill's July 1, 2022 effective date, reflects the cost of hiring one revenue specialist, two accountants, and one 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 for computer programming modifications to the Comptroller's Compass system.

Positions	4.0
Computer Programming	\$320,000
Salaries and Fringe Benefits	276,106
Operating Expenses	<u>30,432</u>
Minimum FY 2023 Comptroller Expenditures	\$626,538

Future year expenditures (\$356,124 in fiscal 2024, \$284,061 in fiscal 2025, \$291,577 in fiscal 2026, and \$299,595 in fiscal 2027) reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including \$80,000 in computer programming costs in fiscal 2024. Expenditures increase further to the extent that additional resources are needed. In fiscal 2023, it is assumed that general funds are used to cover the commission’s costs as revenues from licensing and taxation will not be available until fiscal 2024. In fiscal 2024, it is assumed that ongoing costs are covered by a combination of general and special funds from the Cannabis Regulation Fund. Beginning in fiscal 2025, it is assumed all ongoing costs are covered by special funds from the Cannabis Regulation Fund.

The Comptroller advises that additional resources are required to administer the Community Reinvestment and Repair Fund; however, no other specifics were provided. DLS advises that without additional information or actual experience under the bill, the extent of any such expenditure increase cannot be reliably estimated. Thus, special fund expenditures for the Comptroller increase further beginning in fiscal 2025 to administer the Community Reinvestment and Repair Fund, including the potential need for additional staff.

Community Reinvestment and Repair Fund: As noted above, this special fund receives a distribution from the Cannabis Regulation Fund as early as fiscal 2025. As a result, special fund expenditures increase beginning in fiscal 2025.

Office of the Attorney General

General fund expenditures for OAG increase in fiscal 2023 to outsource a community impact study. The bill requires OAG to determine which communities have been the most impacted by disproportionate enforcement of the cannabis prohibition in effect prior to the bill’s effective date. The Community Reinvestment and Repair Fund must use OAG’s determinations when making funding decisions. OAG advises that it does not have the resources to conduct the study required to make these determinations. Therefore, OAG needs to outsource the community impact study, the cost of which is unknown at this time.

The extent to which the bill increases OAG workloads or litigation is unknown at this time. Should OAG require additional personnel, the cost associated with hiring one assistant

Attorney General is approximately \$163,200 in fiscal 2023 (based on a July 1, 2022 start date), \$151,500 in fiscal 2024, and increases to \$163,800 by fiscal 2027.

Department of Commerce

Special fund expenditures increase by \$88,788 in fiscal 2025, which accounts for a two-year start-up delay from the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring one accountant to administer a grant program with the additional funds the SMWOBA receives from the Cannabis Regulation Fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the Cannabis Regulation Fund does not begin receiving licensing fee and tax revenues until fiscal 2024;
- there are no excess funds to distribute from the Cannabis Regulation Fund for the SMWOBA to administer as specified until fiscal 2025; and
- the new position required for administering the grant program does not start until July 1, 2024, despite the bill’s July 1, 2022 effective date.

Position	1.0
Salary and Fringe Benefits	\$81,169
Operating Expenses	<u>7,619</u>
Total FY 2025 Commerce Expenditures	\$88,788

Future year expenditures (\$84,412 in fiscal 2026 and \$86,687 in fiscal 2027) reflect a salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. This analysis assumes that costs associated with administering the specified grant program are covered entirely with special funds from the Cannabis Regulation Fund beginning in fiscal 2025.

Small, Minority, and Women-Owned Businesses Account: As noted above, this special fund receives a distribution from the Cannabis Regulation Fund as early as fiscal 2025. As a result, special fund expenditures increase for the authorized purposes specified in the bill beginning in fiscal 2025.

Office of Legislative Audits

The two new special funds created by the bill (the Cannabis Regulation Fund and the Community Reinvestment and Repair Fund) are subject to audit by OLA. Under current law, OLA is required to perform an audit of the commission (which administers the Cannabis Regulation Fund) and the Comptroller (which administers the Community Reinvestment and Repair Fund) at least once every four years as a unit of State government.

OLA advises it can absorb any additional audit requirements for the funds within existing resources during the regularly scheduled audits. Thus, OLA expenditures are not materially affected.

Judiciary

General fund expenditures for the Judiciary increase *significantly* in fiscal 2023 to comply with the bill's post-conviction provisions, including provisions relating to the automatic *vacatur* of cases, expanded expungements through petition, and authorization to petition for *vacatur* or a new trial, as discussed below; general funds continue to be necessary for implementation in fiscal 2024. Beginning in fiscal 2025, 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 2023, as discussed below, the Judiciary also incurs an estimated \$283,319 in computer reprogramming costs in fiscal 2023 related to the change in the amount of cannabis that is considered a civil violation, the authorization to perform community service in lieu of a fine, and the authorization for an individual to apply for resentencing, *vacatur*, or expungement for specified offenses.

While the bill requires automatic *vacatur* of convictions for specified marijuana-related offenses, there is currently no method used by the court to vacate convictions of specified offenses collectively. Thus, additional programming beyond what is contemplated above is necessary.

Once a conviction is vacated, the case is reopened as an active case without a disposition. Before a disposition can be entered and the case can be closed, a hearing must be held, requiring increased judicial and clerical work and resulting in increased docket sizes statewide.

The bill also authorizes petitions to vacate or request a new trial in specified circumstances. Upon receipt of a petition, a clerk must first locate the case; older case files may not be located on site due to file retention policies. Once located, the case is set for a hearing to determine if the petition will be granted. If granted, additional hearing dates and trial dates are necessary to reach a final disposition of the case.

While data on the number of convictions affected is not readily available, it is likely that there are tens of thousands of convictions eligible for automatic *vacatur* and additional individuals who qualify to petition to vacate or request a new trial following a conviction. The Judiciary estimates that the time to adjudicate reopened cases following a petition to vacate or a petition for a new trial is one hour per case. The Judiciary advises that (1) additional courtroom space may be necessary to meet the bill's requirements at an

unknown cost; (2) the salary for one clerk in either the circuit court or the District Court is \$44,059 in fiscal 2023; and (3) the increased workload results in the need to hire *at least* 29 clerks in the circuit courts and 29 clerks in the District Court. The Judiciary estimates the costs of additional personnel at approximately \$4.0 million annually. DLS concurs that there is likely a significant need for programming costs, courtroom space, and additional personnel; however, without access to additional data on eligible convictions and/or actual experience under the bill, it is impossible to determine the extent to which additional resources are necessary. Thus, general fund expenditures increase *significantly* for the Judiciary in fiscal 2023. In fiscal 2024, it is assumed that ongoing costs are covered by a combination of general and special funds from the Cannabis Regulation Fund. Beginning in fiscal 2025, it is assumed all ongoing costs are covered by special funds from the Cannabis Reinvestment and Repair Fund.

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.

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. While the bill's expungement provisions are not extensive, MSA advises that each time expungement provisions are expanded, their workloads increase. Thus, general fund expenditures increase to the extent that a significant number of additional expungement orders are received in fiscal 2023. To the extent they are incurred, ongoing costs in fiscal 2024 are covered by a combination of general and special funds, while costs in fiscal 2025 and beyond 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 in fiscal 2024, 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, 2020, and 2021, respectively, MMCC issued 75,933, 80,909, and 68,164 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, \$485,454, and \$408,987 using the fiscal 2019, 2020, and 2021 figures. 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 in fiscal 2024, to the extent that fewer patients enter the medical cannabis market requiring identification cards to be printed.

In addition, special fund expenditures for the Marijuana Citation Fund within MDH decrease significantly, as underage individuals are no longer referred to drug education programs and are instead provided with information relating to cannabis use disorder and the dangers of underage use of cannabis. Any impacts on the costs of substance abuse assessments have not been addressed in this analysis.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS decrease beginning in fiscal 2023 due to reduced incarcerations and fewer individuals supervised by the Division 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.

Law Enforcement

Department of State Police: The overall impact on general fund expenditures for the Department of State Police (DSP) is indeterminate beginning in fiscal 2023. 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 for the State laboratory to test blood evidence for use in driving-related 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.

Maryland Department of Transportation: The Maryland Department of Transportation advises that any additional training for its police officers regarding policy changes for the legalization of cannabis under the bill can be accomplished within existing budgeted resources.

Department of Natural Resources: The Department of Natural Resources advises that Natural Resources Police officers need to undergo additional training to become certified Drug Recognition Experts as a result of the bill. However, this training is offered by DSP at no charge.

Office of the Public Defender

The bill's decriminalization of specified cannabis offenses reduces OPD caseloads. Further, the bill's expansion of eligibility for OPD representation to specified filings for expungement, resentencing, or release and the expanded authorization for individuals to request a new trial or vacate a conviction in certain circumstances 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 post-conviction 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 must be sent to the local regulatory authority for the locality in which the applicant desires to operate the cannabis establishment.

The bill requires that money from the Community Reinvestment and Repair Fund be distributed to counties in proportion to the total number of marijuana arrests over a specified period in the county compared to the total number in the State. Thus, local revenues increase, potentially significantly, beginning in fiscal 2025. However, expenditures likely increase for each county to (1) adopt a law establishing the purpose for which money received from the Community Reinvestment and Repair Fund may be used; (2) use the funds received subject to the authorized purposes under the bill; and (3) issue a report on how these funds were spent every two years beginning in fiscal 2024.

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.

Local revenues from fines imposed in the circuit courts decrease due to the bill's decriminalization and shifting from circuit courts to the District Court of several marijuana-related offenses. Local expenditures also decrease minimally due to reduced incarcerations and prosecutions resulting from the bill's decriminalization/legalization of specified offenses.

Local expenditures increase for affected local entities to address expungement, *vacatur*, new trial, and resentencing petitions pursuant to the bill. However, such costs for affected agencies are covered by special funds beginning in fiscal 2024. 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.

Small Business Effect: The bill creates an opportunity for small businesses to enter the State’s legal cannabis market. The bill further 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 requires that money distributed to the SMWOBA from the Cannabis Regulation Fund be used to benefit small, minority, women-owned, and veteran-owned businesses in the cannabis industry by providing investment capital, including direct equity investments and similar investments and loans.

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: While the bill authorizes the Office of Social Equity to allocate funds from the Community Reinvestment and Repair Fund to cover specified costs to OPD, State’s Attorneys’ offices, and courts to administer Title 23 of the Health-General Article, (1) there is no Office of Social Equity explicitly established under the bill; (2) the Comptroller (not the Office of Social Equity) is tasked with administering the Community Reinvestment and Repair Fund; and (3) the costs of specified agencies for administering Title 23 of the Health-General Article are not included as an authorized use under § 23-201 of the Health-General Article, which establishes the Community Reinvestment and Repair Fund. Nevertheless, this analysis still assumes that the Community Reinvestment and Repair Fund can be used to cover those specified costs.

This analysis does not reflect any impact from changes in driving patterns due to the legalization of cannabis and increased cannabis use. However, any increase in driving under the influence of CDS or driving while impaired by CDS that results from the bill is likely to have an effect on numerous State and local entities/agencies that handle these offenses.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Baltimore, Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Alcohol and Tobacco Commission; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; Morgan State University; Department of Budget and Management; Maryland Department of Health; Department of Human Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Department of Legislative Services

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