

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1147 (Delegate Mangione, *et al.*)

Economic Matters and Health and  
Government Operations

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Public Health - Cannabis Programs - Cannabis-Induced Psychosis and THC  
Concentration Limit

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This bill, subject to a specified contingency, requires the “cannabis oversight agency” to adopt regulations (1) establishing a monitoring and prevention procedure to ensure that individuals diagnosed with cannabis-induced psychosis cannot purchase cannabis or cannabis products through the State’s medical or adult-use cannabis programs and (2) prohibiting any cannabis or cannabis product sold through the State’s adult-use cannabis program from containing a delta-9-tetrahydrocannabinol (THC) concentration greater than 15%. If the contingency is not met, the Maryland Medical Cannabis Commission (MMCC) must adopt regulations to establish a monitoring and prevention procedure to ensure that individuals diagnosed with cannabis-induced psychosis cannot purchase medical cannabis. **The bill’s provisions related to the cannabis oversight agency are contingent on the taking effect of Senate Bill 516 or House Bill 556 of 2023. If the contingency is met, the bill’s provision regarding MMCC is abrogated; if the contingency is not met, the provision related to MMCC takes effect.**

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Fiscal Summary

**State Effect:** Assuming the contingency is met, general and special fund revenues may decrease beginning in FY 2024, as discussed below; special fund expenditures increase by as much as \$3.0 million in FY 2024 only for one-time information technology changes and by \$500,000 annually beginning in FY 2025 for ongoing system maintenance costs. The fiscal impact, should the contingency not be met, is discussed below.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** Section 1 of the bill, related to requirements for the cannabis oversight agency (defined as the State agency that oversees the State’s medical and adult-use cannabis program) is contingent on the enactment of Senate Bill 516 or House Bill 556. If the contingency is met, those provisions take effect October 1, 2023, and the bill’s provision regarding MMCC is abrogated. If neither Senate Bill 516 nor House Bill 556 takes effect (*i.e.*, the contingency is not met), the bill’s provision related to MMCC takes effect October 1, 2023.

Senate Bill 516 and House Bill 556, among other things, would rename the Alcohol and Tobacco Commission as the Alcohol, Tobacco, and Cannabis Commission (ATCC) and establish the Cannabis Regulation and Enforcement Division (the enforcement division) within ATCC, funded by a newly established Cannabis Regulation and Enforcement Fund (CREF). The enforcement division would be tasked with overseeing the regulation of adult-use cannabis and be the designated successor of MMCC in all matters concerning the regulation of medical cannabis. The bills would also establish a graduated sales and use tax applicable to the sale of adult-use cannabis.

### **Current Law:**

#### *Legalization of Cannabis*

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional referendum, as of January 1, 2023, “personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-THC; or (4) beginning July 1, 2023, up to two cannabis plants. “Civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

From January 1, 2023, through June 30, 2023, possession of the personal use amount of cannabis and possession of the civil use amount of cannabis are subject to civil penalties. Possession of more than the civil use amount is subject to a criminal penalty. As of July 1, 2023, (1) a person at least age 21 may use and possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

### *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 MMCC 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 MMCC can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, MMCC can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2022, MMCC had issued 18 final grower licenses, 21 final processor licenses, and 97 final dispensary licenses. In addition, there are three licensed independent testing laboratories. MMCC maintains a list of licensees on its [website](#). Also, at the close of calendar 2022, there were 162,300 certified patients, 8,159 caregivers, and 1,560 certifying providers. MMCC additionally reports a preliminary total of \$674.2 million in retail sales at cannabis dispensaries in the State for calendar 2022.

### *Health Insurance Portability and Accountability Act*

Under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual’s authorization for such purposes as treatment, payment, health care operations, and public interest activities. The HIPAA privacy rule defines “covered entities” as health plans, health care clearinghouses, and health care providers. “Protected health information” is individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, excluding individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, student health records for individuals attending an institution of postsecondary education who are at least age 18, and employment records held by a covered entity in its role as employer.

## *Confidentiality of Medical Records Act*

Maryland's Confidentiality of Medical Records Act requires health care providers and facilities to keep the medical record of a patient confidential and obtain written consent for disclosure, even for purposes of treatment and payment. Generally, a person to whom a medical record is disclosed may not redisclose the medical record unless authorized by the person in interest. Exceptions are made for such purposes as provision of health care services, billing, utilization review, and legal claims.

A health care provider may, under specified circumstances, disclose a medical record without the authorization of the person in interest if (1) the health care provider receives a written assurance from the party or the attorney representing the party that, in all other proceedings, a person in interest has not objected to the disclosure of the designated medical records within 30 days after the notice was sent or (2) a specified notice and other documentation is mailed by certified mail to the person in interest by the person requesting the disclosure at least 30 days before the records are to be disclosed.

Maryland's Confidentiality of Medical Records Act (1) may not be interpreted to be more restrictive than the federal privacy regulations adopted under HIPAA; (2) is not intended to be in conflict with HIPAA; and (3) is to be interpreted in a way that is consistent with any federal regulations adopted under HIPAA, federal policy guidance on HIPAA, and any judicial decisions relating to HIPAA.

**State Revenues:** Senate Bill 516 and House Bill 556 would impose a sales and use tax on cannabis sold in the adult-use market. Thus, any impact on adult-use sales likely has an impact on cannabis sales tax revenues, which are credited to multiple special funds and the general fund pursuant to Senate Bill 516 and House Bill 556.

*Assuming the contingency is met,* general and special fund revenues may decrease beginning in fiscal 2024 due to the bill's prohibition on the sale of any cannabis or cannabis product sold containing a delta-9-THC concentration greater than 15% to the extent that the restriction reduces overall adult-use cannabis sales.

*If the specified contingency is not met,* revenues are not materially affected.

**State Expenditures:** *Assuming the contingency is met,* special fund expenditures for the cannabis oversight agency (ATCC and attributable to CREF administered by the Comptroller) increase by approximately \$3.0 million in fiscal 2024 only. This estimate includes programming modifications to the existing MMCC seed-to-sale tracking system and provider-facing software, as detailed below. Special fund expenditures increase by \$500,000 annually beginning in fiscal 2025 for ongoing maintenance.

*Seed-to-sale Tracking System:* MMCC advises that its seed-to-sale tracking system currently includes all of the approximately 160,000 registered medical cannabis patients in the State. In order to restrict sales to anyone in the State who has a specified diagnosis, significant programming modifications must be made to this system. MMCC estimates that this change costs approximately \$2.0 million in fiscal 2024 only. MMCC further advises that additional modifications are necessary to restrict adult-use sales to cannabis products with a 15% or lower delta-9-THC concentration. MMCC estimates it will cost approximately \$500,000 in fiscal 2024 only to make this change. In addition, ongoing annual costs of approximately \$500,000 are necessary to maintain these modifications to the seed-to-sale tracking system.

*Provider-facing Software:* MMCC advises that its current software only includes health care providers who are registered to certify qualifying patients to receive medical cannabis. However, the bill would necessitate allowing any health care provider in the State to report to MMCC in a secure and confidential manner an individual with a diagnosis of cannabis-induced psychosis (assuming this reporting is allowed under health privacy laws). MMCC estimates that it will cost approximately \$500,000 in fiscal 2024 only to modify its provider-facing software for this purpose.

*If the Contingency Is Not Met:* While this analysis assumes that the contingency is met, costs to modify systems to prohibit the sale of cannabis to individuals who have been diagnosed with cannabis-induced psychosis are incurred regardless of whether the contingency is met. *Should the contingency not be met*, special fund expenditures for MMCC increase by approximately \$2.5 million in fiscal 2024 only for modifications to the seed-to-sale tracking system and provider-facing software noted above and by \$400,000 annually beginning in fiscal 2025 for maintenance of these modifications. This estimate includes the costs associated with modifications related to prohibiting the sale of cannabis to individuals who have been diagnosed with cannabis-induced psychosis and modifications to provider-facing software to allow any health care provider in the State to report a diagnosis of cannabis-induced psychosis.

**Small Business Effect:** MMCC advises that restricting the concentration of delta-9-THC in cannabis to 15% for adult-use cannabis products likely reduces the variety of cannabis products available for sale in the State. Additionally, many of the cannabis products in the State currently exceed the established limit of 15%.

Thus, *assuming the contingency is met*, cannabis businesses that may be licensed to operate in the adult-use cannabis industry beginning July 1, 2023, under Senate Bill 516 and House Bill 556, would likely be significantly impacted in the short term with respect to products currently in the supply chain that exceed the 15% threshold and for which the market would be reduced (*i.e.*, such products would only be available in the medical cannabis market). Such businesses would also be impacted in the long term due to a

significant reduction in the variety of cannabis products that would be eligible for sale in the adult-use market.

*If the contingency is not met*, there may be a minimal operational impact on small businesses operating in the medical cannabis market to ensure that no individual diagnosed with cannabis-induced psychosis may purchase medical cannabis.

**Additional Comments:** MMCC advises that cannabis-induced psychosis is not a recognized mental disorder within the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. Nevertheless, any individual health care provider who diagnoses a patient with cannabis-induced psychosis is likely prohibited by current medical record privacy laws from disclosing that diagnosis to MMCC without written authorization or consent.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

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

**Fiscal Note History:** First Reader - March 2, 2023  
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