



February 16, 2021

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Room 101, House Office Building
Annapolis, Maryland 21401

RE: HB 32 – Cannabis – Legalization and Regulation – Letter of Information

Dear Chair Clippinger:

The Maryland Medical Cannabis Commission (the Commission) is submitting this letter of information for House Bill 32 entitled “Cannabis – Legalization and Regulation.” HB 32 establishes an extensive framework for the legalization, taxation, and regulation of cannabis for personal adult-use in Maryland.

Notably and admirably, House Bill 32 seeks to establish an equitable adult-use industry and ensure that small, minority, and women businesses, and minority and women entrepreneurs, have adequate access to capital and opportunities to thrive in this new industry. Specifically, the bill would establish several funds and a licensing structure aimed at ensuring inclusion and participation among minority groups and women, as well as addressing the critical issue of expungements for individuals with cannabis- or marijuana-related charges. As demonstrated by the 2018 disparity analysis ordered by Governor Hogan, as well as arrest data and cannabis ownership data collected in Maryland and across the country, the minority groups who have been disproportionately impacted by the criminalization of cannabis by and large have not benefited from the legalization of the same. The Commission commends the bill’s sponsor for his efforts in crafting legislation that seeks to address the significant issues of social justice and equity.

Fifteen states and the District of Columbia have legalized adult-use cannabis. In addition, legislative proposals are currently under consideration in the nearby states of New York, Pennsylvania, and Virginia. The Commission requested information from these jurisdictions through the Cannabis Regulators Association (CANNRA) – a nonpartisan national organization of cannabis regulators that provides policy makers and regulatory agencies with the resources to make informed decisions when considering whether and how to legalize and regulate cannabis – to assist the General Assembly as it considers the complex issue of cannabis legalization.

Based on information provided by states allowing adult-use cannabis and lessons learned over the past seven years developing, implementing, and administering the State’s medical cannabis program, the Commission has identified the following concerns with the bill:

1. Competing and redundant regulatory structures.

HB 32 places regulatory oversight of the program under the Alcohol and Tobacco

Commission within the Health-General Article, while regulatory oversight of medical cannabis would remain with the Commission. Establishing two agencies to perform substantially the same work would significantly increase operational costs to the State. In addition, businesses that hold both adult-use and medical licenses (permitted under the bill), would be subject to two sets of regulators and two sets of laws. If the bill were to pass in its current form, Maryland would be the first state to regulate medical and adult-use cannabis under entirely separate agencies.

2. No funding to cover initial operational costs.

While the Alcohol and Tobacco Commission is authorized to assess license fees to operate the program, expenditures in excess of several million dollars must occur prior to the solicitation of license applications or award of licenses in order to get the adult-use program up and running (e.g. seed-to-sale tracking system, agent and business licensing system). In other jurisdictions, the state legislature either (1) appropriates start-up funds or (2) where the medical and adult-use programs are jointly administered, authorizes the regulator to use existing funds from the medical program to cover the necessary start-up costs of the adult-use program.

3. Lack of expertise among commission members and staff.

While the Alcohol and Tobacco Commission membership currently is required to have alcohol, fiduciary or public health expertise, there are no amendments to require any cannabis experience or expertise among the members who will be adopting regulations for the program and making licensing and other critical decisions. The bill would make Maryland the first state to adopt adult-use and not leverage existing staff expertise and resources.

Staffing is a vital concern for a nascent adult-use program. Cannabis is a unique subject matter – it is an agricultural crop, a drug, a dietary supplement, and a food product, that is currently illegal under federal law. The conflict with federal law coupled with the fact that each jurisdiction has chosen a different path to legalization creates sizable challenges for the agency tasked with developing, implementing, and enforcing regulations to administer an adult-use program. Given that the industry as a whole is relatively novel and differs vastly from state-to-state, it is often the existing medical programs that have the most expansive subject matter expertise.

In Maryland, the Commission – including its staff and Commissioners – have developed cannabis-specific regulatory expertise over seven years. Rather than leveraging this expertise, HB 32 forces a new regulatory body and staff, who do not have any cannabis experience, to start from scratch. Absent continuity in administration, the implementation of an adult-use cannabis market will almost certainly be significantly delayed. The bill includes an aggressive timeline for developing regulations and implementing the program – based on the experience of the Commission, this timeline will not be possible to meet if a new regulatory body is required to build the adult-use program from the ground up. In line with this, the hiring of staff for a new agency can take years. This is why HB 1052 (2019), which created the Alcohol and Tobacco Commission, included specific provisions to transition existing staff to the new agency. HB 32 contains no such analogous provisions

and would make Maryland the first state to transition from medical-only to adult-use and medical without also transitioning existing staff and expertise.

4. **Separate regulatory body from social equity fund administration.**

HB 32 would require the Alcohol and Tobacco Commission to oversee licensing, regulations, and compliance for adult-use, as well as establish the Office of Social Equity and administer several new funds (e.g. cannabis education, community reinvestment, and social equity start-up funds). These funds are critical to the program's success and Maryland achieving its goal of a truly equitable cannabis industry, and the scope of responsibilities to administer each fund are incredibly broad.

The Office of Social Equity should not be established within the Alcohol and Tobacco Commission. The Alcohol and Tobacco Commission and the State are best served by separating these functions for the following reasons:

- *Subject matter experts should be in charge of each aspect of the program.* Adult use jurisdictions have shared that establishing certain program functions in other agencies helps ensure that (i) subject matter experts are in charge of each aspect of the program and ii) the cannabis program can become operational and successful more quickly, because its focus can be on regulations, licensing, and compliance.
- *Conflict of interest or the appearance of a conflict of interest.* Beyond not being a subject matter expert in administering social equity programs, or business loans or grants, placing the cannabis regulatory body in charge of administering special funds earmarked for certain businesses that they regulate within the cannabis program may create conflicts of interest or make the regulatory body vulnerable to claims of favoritism or impropriety.

5. **Requiring adoption of all new regulations.**

The Commission developed its current regulations over a seven-year period. These regulations represent best practices across medical and adult-use programs in terms of laboratory testing, product safety, product requirements, and security, and were developed following consultation with the cannabis industry, law enforcement, public health, and the General Assembly. Yet, the bill requires the Alcohol and Tobacco Commission to develop *new* regulations, rather than utilize existing statutes and regulations that can readily apply to medical or adult-use cannabis.

The process of adopting regulations could be significantly streamlined if instead of developing entirely new regulations, existing medical cannabis regulations were supplemented to address a limited number of issues specific to an adult-use market (e.g. ID verification, advertising, sales to minors, application/award of adult-use licenses). Requiring the adoption of entirely new regulations will significantly delay the adult-use industry from becoming operational.

6. **Failing to protect medical cannabis patients or the medical cannabis program.**

HB 32 currently provides no protections for the medical cannabis program or medical cannabis patients, and while the bill does provide an avenue for existing medical businesses to obtain adult-use licenses, the fees associated with obtaining a dual-license are prohibitively high, and there is no requirement for these businesses to maintain their medical cannabis licenses or continue to manufacture or dispense medically-focused products. The likely effect of this is that many licensees may decide to leave the medical cannabis program all together, in favor of a more robust and profitable adult-use program, rather than seeking dual licensure. While it is difficult to ascertain the exact number of licensees that may not seek renewal of their medical license, it is likely to be a significant number. The combined decrease in the number of patients and licensees, coupled with a loss of funding under the FY 2022 budget, would almost certainly render the Commission unable to cover its budget obligations by 2024.

Without medically focused businesses or products, patients must look to adult-use dispensaries, where specialty medical products are either not for sale or are prohibitively expensive. As witnessed in other jurisdictions, the Commission anticipates the number of medical licenses and medical patients will plummet absent additional protections. In Oregon, medical users have dropped by nearly 66% since the legalization of adult-use in 2015. Alaska, Nevada, and Colorado also experienced significant drops in their patient populations with the advent of adult-use legalization (63%, 40%, and 19% respectively).

To address the concerns detailed above, the Commission offers the following technical changes to the bill:

1. Rename the Maryland Medical Cannabis Commission as the Maryland Cannabis Commission;
2. Authorize the Maryland Cannabis Commission to regulate medical and adult-use cannabis;
3. Repeal the existing 13 member, part-time, volunteer Commission and replace it with a five member, full-time (e.g. salaried), group that has expertise in cannabis, law, law enforcement, public health, or other relevant disciplines.
4. Repeal the medical cannabis statutes in 13-3301-13-3316 and place in Subtitle 1 of Title 23 – Cannabis;
5. Move definitions currently in Subtitle 1 to Subtitle 3 of Title 23 – Cannabis;
6. Move administration of the social equity fund and other funds to the Governor’s Office on Small, Minority and Women Businesses (GOSBA) or establish as an independent unit of the State;
7. Clarify that the Maryland Cannabis Commission must promulgate amendments to its regulations to meet the requirements of a new adult-use program;
8. Authorize use of existing medical program funds and staff to operationalize adult-use program; and,
9. Require the Maryland Cannabis Commission to submit a report in December 2021 recommending any necessary conforming amendments between the medical and adult use programs.

The Commission appreciates the work the General Assembly has done over the past seven years to advance the medical cannabis program, and it is with the future of the program and its patients in mind that I am providing this information to you today. I hope you find it useful. If you would like to discuss this further, please contact Taylor Kasky, Director, Policy and Government Affairs, at (443) 915-5297 or at taylors.kasky@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "William Tilburg". The signature is written in a cursive style and is followed by a long, horizontal flourish.

William Tilburg, JD, MPH
Executive Director
Maryland Medical Cannabis Commission

cc: Members of the House Judiciary Committee