

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1366
Judiciary

(Delegate Wilson)

Schedule I Controlled Dangerous Substances - Advertisement - Prohibited

This bill prohibits a person from advertising, allowing to be advertised, or calling to public attention a Schedule I controlled dangerous substance (CDS). The Office of the Attorney General (OAG) may initiate a civil action against any person who violates the bill's prohibition to recover for the State a penalty of up to \$500 per violation. The bill does not apply to (1) a governmental unit; (2) a health or medical agency approved by the Secretary of Health; (3) a medical, pharmaceutical, or other professional publication not publicly distributed; or (4) a news item or article published in a newspaper, magazine, or book.

Fiscal Summary

State Effect: General fund revenues increase, potentially significantly, due to the bill's penalty provisions, under the assumptions discussed below. Enforcement can likely be handled with existing resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: State law does not specifically prohibit the advertisement of CDS.

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the

following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. Schedule I CDS include heroin and marijuana.

According to a 2017 *Boston Globe* article, most social media sites, online advertising networks, broadcasters, and print publications impose partial or full bans on marijuana content due to concerns about promoting illicit products under federal law; states that have legalized marijuana usually limit advertising by licensed dispensaries, such as by prohibiting advertising on billboards or running commercials on outlets where children may see them.

State Fiscal Effect: The bill exempts “a health or medical agency approved by the Secretary of Health” from the prohibitions against advertising Schedule I CDS but does not establish a corresponding definition, nor is a definition provided elsewhere in statute. Thus, it is unclear what entities are exempt under the bill. This analysis assumes, however, that medical cannabis entities are not exempt and are instead subject to the bill’s prohibitions and penalty provisions.

Therefore, general fund revenues increase, potentially significantly, to the extent the bill results in the collection of civil penalties from medical cannabis entities for advertising in violation of the bill’s requirements. This analysis assumes that enforcement of the bill is complaint based and that, as the bill authorizes rather than requires OAG to initiate civil actions, enforcement of the bill can be handled with existing resources. Again, it is unclear what types of entities are exempt under the bill. Should the bill extend to other entities, revenues from civil penalties and expenditures related to enforcement may further increase.

Small Business Effect: The bill prohibits advertising of Schedule 1 CDS, including marijuana, which meaningfully affects medical cannabis entities’ ability to advertise in the State. Many medical cannabis entities are small businesses.

Additional Comments: House Bill 1348 and Senate Bill 1078 of 2018 would institute various restrictions relating to the advertisement of medical cannabis and medical cannabis products and require the Natalie M. LaPrade Medical Cannabis Commission to review proposed advertisements for medical cannabis and medical cannabis products.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mm/jc

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