

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 749 (Delegate Grammer, *et al.*)
Judiciary and Health and Government
Operations

**Firearms - Right to Purchase, Own, Possess, and Carry - Medical Cannabis
(Patients' Rights Act)**

This bill specifies that a person may not be denied the right to purchase, own, possess, or carry a firearm solely on the basis that the person is a qualifying patient authorized to use medical cannabis. In addition, the bill prohibits a State agency, for the purpose of approving or disapproving a person from purchasing, owning, possessing, or carrying a firearm, from (1) accessing or using information gathered from a database containing the identities of qualifying patients and (2) inquiring about a person's status as a qualifying patient. Any form used for the purpose of approving or disapproving a person from purchasing, owning, possessing, or carrying a firearm that inquires about the applicant's use of controlled dangerous substances must specifically authorize a qualifying patient to refrain from reporting the use of medical cannabis. The bill states that it is the intent of the General Assembly that medical cannabis should be treated as legal for purposes of State law and that the State should not penalize a qualifying patient for using the drug legally.

Fiscal Summary

State Effect: The Department of State Police (DSP) can implement the bill with existing resources. However, the bill's changes are inconsistent with provisions of State law and may result in a violation of federal law.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Maryland's Medical Cannabis Program

The Natalie M. LaPrade Medical Cannabis Commission 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, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is defined as 120 grams of usable cannabis. Medical cannabis became available for sale in the State in late 2017.

Possession of marijuana remains illegal under federal law.

Firearm – Disqualification

Under State law, a person may not possess a regulated firearm, a rifle, or a shotgun if the person:

- has been convicted of a disqualifying crime;
- has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than two years;
- is a fugitive from justice;
- is a habitual drunkard;
- *is addicted to a controlled dangerous substance or is a habitual user;*
- suffers from a mental disorder and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial;
- has been found not criminally responsible;
- has been voluntarily admitted for more than 30 consecutive days to a facility that provides treatment or other services for mental disorders;
- has been involuntarily committed to a facility that provides treatment or other services for mental disorders;

- is under the protection of a guardian of the person or property of a disabled person appointed by a court, except for cases in which the appointment of a guardian is solely a result of a physical disability;
- is a respondent against whom a current non ex parte civil protective order has been entered in this State or an order for protection has been issued by a court of another state or a Native American tribe and is in effect; or
- if younger than age 30 at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

In addition, a person is prohibited from possessing a regulated firearm, a rifle, or a shotgun if the person was previously convicted of (1) a crime of violence; (2) a violation of specified controlled dangerous substances laws; or (3) an offense under the laws of another state or the United States that would constitute one of these crimes if committed in this State.

Generally, a violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or \$10,000 fine.

Under federal law, a person is prohibited from possession of a firearm if the person:

- has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (this does not include a State offense classified as a misdemeanor that is punishable by a term of imprisonment of less than two years);
- is a fugitive from justice;
- *is an unlawful user of or addicted to any controlled dangerous substance;*
- has been adjudicated as a mental defective or has been committed to a mental institution;
- is an alien that is illegally or unlawfully in the United States, or has been admitted to the United States under a nonimmigrant visa (with exceptions);
- has been dishonorably discharged from the U.S. Armed Forces;
- has, as a citizen of the United States, renounced citizenship;
- is, after a hearing, subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner or child; or
- has been convicted in any court of a misdemeanor crime of domestic violence.

On conviction, a prohibited person that possesses a firearm is subject to imprisonment not exceeding 10 years or a \$250,000 fine or both.

Handgun Permit

Generally, with certain exceptions, to be issued a handgun permit by the Secretary of State Police, an applicant (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) must not have been convicted of a controlled dangerous substance violation and *must not presently be an addict, a habitual user of a controlled dangerous substance*, or an alcoholic; (4) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; (5) must have successfully completed, prior to application and each renewal, a specified firearms training course approved by the Secretary; (6) if younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; and (7) must have a good and substantial reason to wear, carry, or transport a handgun. "Good and substantial reason" includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

Background: DSP advises that the firearm application includes a question regarding the use of medical cannabis. In fiscal 2018, DSP denied 24 applications due to responses to that question on the application.

Additional Information

Prior Introductions: HB 534 of 2018 received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2019
mm/lgc

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510