

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 628  
Economic Matters

(Delegate K. Young, *et al.*)

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Employment – Workers’ Compensation and Workplace Discrimination – Use of  
Medical Cannabis

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This bill (1) prohibits an employer from discriminating against an individual who is legally authorized to use medical cannabis or tests positive for specified cannabis components or metabolites if the individual is legally authorized to use medical cannabis, as specified and (2) expressly authorizes the Workers’ Compensation Commission (WCC) to require an employer or its insurer to provide medical cannabis to an injured employee receiving workers’ compensation benefits as part of the injured employee’s medical treatment. The bill also establishes related exceptions. Provisions of the bill related to workers’ compensation apply prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from events occurring before October 1, 2022.

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Fiscal Summary

**State Effect:** General fund expenditures likely increase at least minimally for the Maryland Commission on Civil Rights (MCCR), as discussed below. State expenditures for workers’ compensation benefits may be affected, as discussed below. Revenues are not materially affected.

**Chesapeake Employers’ Insurance Company (Chesapeake) Effect:** Chesapeake revenues and expenditures may be affected, as discussed below.

**Local Effect:** Local expenditures for workers’ compensation benefits may be affected, as discussed below. Revenues are not affected.

**Small Business Effect:** Minimal, as discussed below.

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## Analysis

### Bill Summary:

#### *Discrimination in Employment*

If an individual has received a written certification for the use of medical cannabis under the Health-General Article or has tested positive for cannabis components or metabolites and holds a written certification for the use of medical cannabis under the Health-General Article, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against the individual with respect to the individual's compensation, terms, conditions, or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive the individual of employment opportunities or otherwise adversely affect the individual's status as an employee. However, an employer does not violate these prohibitions if an employer's failure to account for an individual's use of medical cannabis would violate federal law or regulations or cause the employer to lose a monetary or licensing related benefit under federal law or regulations.

The bill's prohibitions (1) do not prevent an employer from adopting policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis and (2) may not be construed to require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol in excess of 50 nanograms per milliliter for a urine test or 10 picograms per milligram for a hair test.

#### *Workers' Compensation*

WCC is expressly authorized to require an employer or its insurer to provide medical cannabis to an injured employee receiving workers' compensation benefits as part of the injured employee's medical treatment. The bill also clarifies that, related to medical cannabis, an injured employee may be denied compensation benefits if the cannabis was taken, but not under the written certification of a certifying provider or the written instructions of a physician.

### Current Law:

#### *Discrimination in Employment*

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion,

ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. Additional prohibitions are also specified in statute.

MCCR is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. An individual alleging employment discrimination may file a complaint with MCCR within specified timeframes. If a complaint is filed with MCCR and an agreement to remedy and eliminate the discrimination cannot be reached, the matter may be heard before an administrative law judge. Remedies available on a finding that the respondent is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the court may provide the remedies specified above. A complainant may also file a private civil action against the respondent under specified circumstances. In addition to the remedies specified above, the court may award punitive damages in specified circumstances. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

### *Workers' Compensation Medical Benefits*

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits include

wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses.

An employer or its insurer has to pay for specified medical care and treatment for an injured employee who experiences a compensable injury or occupational disease. This includes (1) medical, surgical, or other attendance or treatment; (2) hospital and nursing services; (3) medicine; (4) crutches and other apparatus; and (5) artificial arms, feet, hands, and legs and other prosthetic appliances. This medical care and treatment must be provided for an appropriate time period, depending on the nature and type of personal injury, compensable hernia, or occupational disease.

#### *Maryland's Medical Cannabis Program – Generally*

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, 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.

A “qualifying patient” is an individual who has been provided a written certification by a certifying provider in accordance with a *bona fide* provider-patient relationship. Additionally, if younger than age 18, a qualifying patient must have a caregiver. A qualifying patient with a written certification can generally obtain a 30-day supply of medical cannabis.

#### *Medical Cannabis – Protections and Limitations*

A qualifying patient who is in possession of a 30-day supply of medical cannabis (or more if the patient's certifying provider stated in the written certification that a 30-day supply is inadequate) is not subject to arrest, prosecution, or any civil or administrative penalty and may not be denied any right or privilege for the medical use or possession of cannabis. Although it is not explicitly stated, these protections likely already apply to an injured employee's right to seek workers' compensation benefits while using medical cannabis.

Maryland's medical cannabis program statute cannot be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

- undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;
- operating, navigating, or being in control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or
- smoking marijuana or cannabis in any public place, in a motor vehicle, on private property that is rented and subject to a policy that prohibits smoking marijuana or cannabis on the premises, or on private property that is subject to a policy that prohibits smoking marijuana or cannabis on the property of an attached dwelling, as adopted by specified entities of a condominium regime or homeowners association (however, the law establishes an exception for vaporizing medical cannabis on private property).

Further, there is no immunity from criminal prosecution for a person who violates medical cannabis laws that regulate or prohibit the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

### **State Expenditures:**

#### *Employment Discrimination*

General fund expenditure likely increase at least minimally for MCCR. MCCR advises that it does not currently investigate this type of discrimination. Although MCCR receives federal reimbursement for investigating complaints related to employment discrimination from the Equal Employment Opportunity Commission, MCCR advises that it will not be able to receive federal reimbursement for any expenses incurred relating to investigating medical cannabis complaints. Accordingly, MCCR needs to ensure that investigating any additional cases regarding medical cannabis does not negatively impact its case closure rate, which may impact federal funding. Although existing staff can investigate a small number of additional cases, an additional investigator may be required to the extent that MCCR receives a large number of complaints. *For illustrative purposes only*, if an additional investigator is required, general fund expenditures increase by approximately \$80,000 annually. Additional expenditures may also be incurred for costs associated with training and education.

The bill's provisions regarding employment discrimination do not materially impact the workload of the Judiciary or the Office of Administrative Hearings.

The Department of Budget and Management has previously indicated that the State, as an employer, already complies with the bill's provisions regarding employment discrimination.

### *Workers' Compensation*

Currently available information suggests that employers and workers' compensation insurers in the State are infrequently required to pay for medical cannabis for covered employees receiving workers' compensation benefits; WCC advises that it has previously approved seven claims for medical cannabis and denied five claims.

As such, the express authority granted by the bill may affect State, Chesapeake, local government, and small business expenditures; however, the direction and magnitude of the effect depends on numerous unknown factors. For example, if the use of medical cannabis is in addition to any other medications and treatments provided to an injured employee, expenditures increase. Conversely, if medical cannabis is prescribed instead of a more expensive medication or treatment, total expenditures decrease.

**Chesapeake Fiscal Effect:** Similar to the effect discussed above for the State, Chesapeake expenditures may be affected; however, the direction and magnitude of the effect depends on numerous unknown factors. In addition, as a workers' compensation insurer, Chesapeake may increase or decrease premiums for its policyholders, thereby increasing or decreasing its revenues, based on the effect that paying for medical cannabis has on its total expenditures.

**Local Expenditures:** To the extent that local government employers do not already comply with the bill's provisions, changes to employment discrimination policies may be required. Though local government employers may be subject to additional employment discrimination complaints under the bill, any impact is not anticipated to materially affect local operations or finances.

Similar to the effect discussed above for the State and Chesapeake, local government expenditures related to workers' compensation may be affected; however, the direction and magnitude of the effect depends on numerous unknown factors.

**Small Business Effect:** Small business owners may be subject to penalties based on employment discrimination complaints under the bill. Employers may need to adopt specific policies and procedures in order to ensure that employees do not perform their duties while impaired by medical cannabis.

Similar to the effect discussed above for the State, Chesapeake, and local governments, small business expenses related to workers' compensation may be affected; however, the direction and magnitude of the effect depends on numerous unknown factors.

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### **Additional Information**

**Prior Introductions:** The bill reflects a combination of similar bills that have been introduced during previous legislative sessions. With respect to the employment discrimination provisions, SB 504 of 2021 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 1239 of 2019 was withdrawn prior to a hearing. With respect to the workers' compensation provisions, HB 683 of 2021 was heard in the House Economic Matters Committee but was subsequently withdrawn. Its cross file, SB 461, received an unfavorable report from the Senate Finance Committee. SB 854 of 2019, as amended, passed the Senate and received a hearing in the House Economic Matters Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Maryland Commission on Civil Rights; Workers' Compensation Commission; Maryland Department of Health; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Budget and Management; Department of Legislative Services

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