

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 253

(Chair, Economic Matters Committee)(By Request -
 Maryland Cannabis Administration)

Economic Matters

Finance

Cannabis Reform - Alterations

This emergency departmental bill makes various alterations to provisions that govern the cannabis industry in the State.

Fiscal Summary

State Effect: General fund revenues increase by \$180,000 in FY 2024, \$1.5 million in FY 2025, and \$3.5 million by FY 2028 due to the redirection of interest earnings from the Community Reinvestment and Repair Fund (CRRF) to the general fund; CRRF revenues and expenditures decrease correspondingly. General fund expenditures for Commerce decrease by \$59,000 in FY 2024; future year savings are annualized and reflect inflation and ongoing costs.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF Revenue	\$180,000	\$1,462,400	\$2,236,700	\$2,932,200	\$3,481,000
SF Revenue	(\$180,000)	(\$1,462,400)	(\$2,236,700)	(\$2,932,200)	(\$3,481,000)
GF Expenditure	(\$59,000)	(\$225,700)	(\$235,100)	(\$245,500)	(\$256,200)
SF Expenditure	(\$180,000)	(\$1,462,400)	(\$2,236,700)	(\$2,932,200)	(\$3,481,000)
Net Effect	\$239,000	\$1,688,100	\$2,471,800	\$3,177,700	\$3,737,300

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: County revenues from CRRF decrease by a total of \$180,000 in FY 2024, \$1.5 million in FY 2025, and \$3.5 million by FY 2028; county expenditures decrease correspondingly.

Small Business Effect: The Maryland Cannabis Administration (MCA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services disagrees with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: The bill makes various alterations to provisions that govern the cannabis industry in the State, including (1) clarifying the meaning of “cannabis”; (2) generally codifying existing practice regarding the amount of cannabis a qualifying patient may possess; (3) removing members from and repealing specified requirements for the Alcohol Tobacco and Cannabis Commission (ATCC); (4) extending by one year the authorization for specified licensees to continue delivering medical cannabis; (5) altering provisions related to the membership, staffing, and duties of the Advisory Board on Medical and Adult-use Cannabis; (6) altering the reporting requirements related to CRRF and redirecting any interest earnings of CRRF to the general fund; (7) reestablishing a temporary exemption from specified procurement requirements for MCA; (8) explicitly authorizing MCA to issue specified penalties after exercising its hearing authority under current law; (9) altering provisions relating to cannabis processors and growers; (10) clarifying the definition of “ownership interest”; (11) extending cannabis registration requirements to “cannabis nurseries”; (12) authorizing MCA to issue a temporary cannabis agent registration under specified conditions; (13) altering provisions relating to advertising; (14) transferring the administration of the Cannabis Regulation and Enforcement Fund (CREF) from the Comptroller to MCA; (15) authorizing the Cannabis Business Assistance Fund (CBAF) to be used for administrative costs; (16) authorizing MCA to access tax information; (17) updating an existing income tax subtraction modification related to cannabis establishments; (18) specifying new prevailing law provisions; and (19) making other technical, clarifying, and conforming changes.

Definition of “Cannabis”

Under current law, “cannabis” means the plant *Cannabis sativa L.* and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (delta-9-THC) concentration greater than 0.3% on a dry weight basis. “Cannabis” includes cannabis products but does not include hemp or hemp products as defined in § 14-101 of the Agriculture Article.

Under the bill, “cannabis” also includes seeds, seedlings, immature plants, and clones.

Cannabis Reform

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State following the enactment of Chapter 26 of 2022 and the passage of the associated constitutional amendment by (1) creating MCA as an independent unit of State government that is responsible for the regulation of medical and adult-use cannabis; (2) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it ATCC; (3) developing a licensing framework for the regulated sale of cannabis; (4) requiring all

existing medical cannabis licensees to convert to adult-use cannabis businesses; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; and (6) creating the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program in OSE. The sale of adult-use cannabis began on July 1, 2023.

Medical Cannabis

Pursuant to Chapters 254 and 255 of 2023, MCA – rather than the Natalie M. LaPrade Medical Cannabis Commission (MMCC) – is responsible for the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. There is a framework to certify health care providers (including physicians, physician assistants, 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. While generally prohibited for a cannabis licensee to deliver cannabis, an MMCC licensee that converted to a cannabis business license under the Acts may continue to deliver medical cannabis to qualifying patients until July 1, 2024. The bill extends this authorization by one year – to July 1, 2025.

Under current law, in general, a qualifying patient must comply with the cannabis cultivation requirements established under Chapter 26 2022. However, a qualifying patient who is at least age 21 may cultivate up to four cannabis plants, although if two or more qualifying patients who are at least age 21 reside at the same residence, no more than four cannabis plants may be cultivated at that residence. A qualifying patient may possess (1) up to 120 grams of usable cannabis or (2) cannabis-infused products containing up to 36 grams of delta-9-THC. However, pursuant to current practice and emergency regulations, a written certification may contain, if applicable, a written statement certifying that, in the provider’s professional opinion, a 30-day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

The bill repeals the specific amounts of usable cannabis or THC in cannabis-infused products that a qualifying patient may possess. Instead, under the bill, a qualifying patient is prohibited from possessing more than the amount of cannabis or cannabis-infused product that is authorized in the patient’s written certification.

Alcohol Tobacco and Cannabis Commission

Chapters 254 and 255 of 2023 added two members to ATCC – one with expertise in cannabis research and policy and one with expertise in alcohol and tobacco policy. The Acts also require ATCC to develop best practices for, among other things, (1) regulating the cannabis industry; (2) implementing public health measures related to cannabis; and (3) regulating, to the extent possible, medical and adult-use cannabis in a similar manner.

The bill removes the two members added by Chapters 254 and 255 from ATCC and repeals the requirement for ATCC to develop best practices for the items specified above.

Advisory Board on Medical and Adult-use Cannabis

Under current law, the advisory board consists of members who meet specified criteria and are appointed by the Governor with the advice and consent of the Senate. The director of MCA serves as chair of the advisory board. The advisory board must (1) consider all matters submitted to it by ATCC, the Governor, MCA, or the General Assembly; (2) on its own initiative, provide recommendations to ATCC and MCA regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration by ATCC or MCA; and (3) establish at least two subcommittees to focus on medical and adult-use cannabis.

The bill removes the Director of MCA from the advisory board (and repeals the requirement that the director serve as the chair of the advisory board) and instead requires the advisory board to elect a chair from among its members. The bill also requires MCA to provide staff for the advisory board.

The bill also (1) clarifies that the advisory board must consider all matters submitted to it by *OSE* (rather than ATCC) and (2) repeals the requirement that the advisory board, on its own initiative, provide recommendations to ATCC and MCA regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration by ATCC or MCA. Instead, the advisory board must study and make recommendations on:

- the impact on the legal medical and adult-use cannabis industry in the State if the federal government reschedules cannabis under the federal Controlled Substances Act, as specified, or removes cannabis from the list of controlled substances under the federal Controlled Substances Act;
- measures to protect and promote the legal medical and adult-use cannabis industry in the State if cannabis is rescheduled as specified or removed from the federal Controlled Substances Act;
- measures to enable standard and micro cannabis licensees and small businesses to compete in interstate commerce, as specified;
- methods to ensure that there is an adequate supply of affordable cannabis and cannabis products for qualifying patients, as specified; and
- methods to assist social equity applicants, social equity licensees, and small, minority, and women-owned businesses to (1) access funds for operating or capital expenses, as specified; (2) obtain financing from a lender, as specified; and (3) partner with operational cannabis licensees in specified ways.

Office of Social Equity

Chapters 254 and 255 established OSE as an independent office that functions within MCA. OSE is headed by an executive director who meets specified criteria and is appointed by the Governor. Among other things, OSE must (1) provide recommendations to ATCC on regulations related to diversity and social equity applications; (2) produce and make publicly available a report by March 1 each year on how the funds in CRRF were allocated during the immediately preceding calendar year (and also submit the report to the General Assembly); (3) solicit public input on the use of CRRF by November 1 each year; and (4) publish a review of the input received by December 15 each year.

Under the bill, OSE must solicit public input on the use of CRRF and publish a review of the input received every two years (rather than every year). The review must include information on how CRRF funds were spent during the immediately preceding two calendar years. The bill also (1) authorizes OSE to request information from political subdivisions and entities that receive CRRF distributions to assist with the completion of the report due March 1 each year; (2) repeals the requirement that, beginning in 2024, each political subdivision that receives funds from CRRF report to the Governor and specified committees of the General Assembly by December 1 every two years; and (3) clarifies that OSE must provide recommendations to *MCA* (rather than ATCC).

Maryland Cannabis Administration

Chapters 254 and 255 established MCA as an independent unit of State government that is headed by a director who meets specified criteria and is appointed by the Governor. MCA is responsible for administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article, including through the adoption of regulations. MCA must:

- develop and maintain a seed-to-sale tracking system, as specified;
- conduct financial and criminal background investigations of any cannabis license applicants and licensees, as specified and required;
- develop a process for consumers to purchase clones and seeds, seedlings, stalks, roots, and stems of the cannabis plant for cultivation in compliance with current law;
- solicit, evaluate, and issue or deny applications for cannabis licenses and registrations, as specified;
- award or deny cannabis licenses and registrations and give notice and hold hearings on contested license denials, as specified;
- conduct announced and unannounced inspections of any licensed or registered cannabis business to ensure compliance;

- after determining that a violation has occurred, impose any authorized penalty after giving notice and holding a hearing in accordance with the Administrative Procedure Act;
- adopt regulations necessary to carry out its duties; and
- perform any other power authorized or duty required under State law.

Exemption from Procurement Requirements: Chapters 254 and 255 temporarily exempted (through December 31, 2023) MCA from State procurement requirements if the procurement was for establishing a State cannabis laboratory at a preexisting site, specified consultants, specified banking services, or communication services for specified public and consumer education campaigns. The bill reestablishes this procurement exemption through December 31, 2024.

Violations and Hearing Authority: Under current law, after determining that a violation of Title 36 of the Alcoholic Beverages and Cannabis Article (Medical and Adult-Use Cannabis) or a regulation adopted under the title has occurred, MCA must suspend, fine, restrict, or revoke cannabis licenses and cannabis registrations, whether active, expired, or surrendered, or impose any authorized penalty. For any violation, MCA must give notice and hold a hearing in accordance with the Administrative Procedure Act.

Under current law, MCA may issue a subpoena for a witness or evidence in connection with any disciplinary action or any investigation or proceeding initiated for an alleged violation of Title 36. MCA is authorized to delegate its hearing authority to an employee within the administration and hold a hearing in absentia when the person against whom action is contemplated fails to appear after due notice.

Current regulations set forth procedures that apply to all hearings that MCA must conduct pursuant to statute or regulation (unless specific procedural regulations have otherwise been promulgated).

The bill retains the statutory provisions described above and explicitly authorizes MCA, after a hearing, to fine a cannabis licensee or suspend, restrict, or revoke a cannabis license or a cannabis registration for a violation of (1) Title 36 of the Alcoholic Beverages and Cannabis Article (Medical and Adult-Use Cannabis) or regulations adopted under the title or (2) any other State law or regulation related to cannabis or the operations of a cannabis business or registrant.

Cannabis Licenses: Under current law, a person must obtain a cannabis license from MCA to operate a cannabis business in the State. A cannabis license, which is valid for five years on initial licensure and renewal, authorizes the licensee to operate a medical *and* adult-use cannabis business. MCA may (1) conditionally award licenses; (2) inspect cannabis licensees to ensure compliance; (3) suspend, fine, restrict, or revoke a cannabis license, as

specified; and (4) impose penalties or rescind the license of a cannabis licensee that does not meet specified licensure standards. Each license type (standard grower, processor, and dispensary licenses; micro grower, processor, and dispensary licenses; incubator space licenses; and on-site consumption licenses) has authorizations specific to its license.

Under current law, in general, a person may hold an “ownership interest” in up to one grower, one processor, two incubator spaces, two on-site consumption establishments, and four dispensaries (unless the ownership interest is held as a passive investment). However, a person who holds an ownership interest in an incubator space or on-site consumption establishment may not hold an ownership interest in any other cannabis licensee. “Ownership interest” means a direct or indirect equity interest in a cannabis licensee, including in its shares or stock.

Under the bill, the term “ownership interest” is clarified to also include *profits* and *revenues*. The bill also clarifies that a person who holds an ownership interest in an incubator space or on-site consumption establishment may not hold an ownership interest in any standard or micro grower, processor, or dispensary licensee (rather than any *other cannabis licensee* under current law).

Under current law, on or before January 1, 2026, an operational business that holds a grower license issued before December 31, 2022, may expand the canopy of its operations as it existed on December 31, 2022, and based on facility square footage of indoor canopy space or its equivalent, as calculated by MCA, as specified. The bill extends this authorization by one year (to January 1, 2027).

Under current law, a “processor” is defined as a licensed entity that (1) transforms cannabis into another product or an extract and packages and labels the cannabis product and (2) is authorized by MCA to provide cannabis to *licensed dispensaries* and registered independent testing laboratories. A standard processor is authorized to process more than 1,000 pounds of cannabis per year (as calculated by MCA), and a micro-processor is authorized to process up to 1,000 pounds of cannabis per year (as calculated by MCA).

Under the bill, a processor is authorized by MCA to provide cannabis to a *cannabis licensee* (rather than only a licensed dispensary). In addition, under the bill, a standard processor is authorized to process more than 2,000 pounds of cannabis per year (as calculated by MCA), while a micro-processor with a micro license is authorized to process up to 2,000 pounds of cannabis per year (as calculated by MCA).

Cannabis Registrations: Pursuant to Chapters 254 and 255, before providing services to a cannabis licensee, the following businesses must register with MCA: (1) a transporter; (2) a security guard agency; (3) a waste disposal company; and (4) any other type of

cannabis business that is authorized by MCA to provide plant or product-touching services to cannabis licensees.

The bill extends this registration requirement to a “cannabis nursery,” which is defined under the bill as a business that provides cannabis seeds, seedlings, immature plants, or clones to a cannabis business. As such, MCA must solicit, evaluate, and issue or deny applications for and award or deny registrations to cannabis nurseries. Other provisions that currently apply to registered cannabis businesses also apply to registered cannabis nurseries under the bill.

Under current law, before an agent may volunteer or work for a cannabis business licensee or registrant, the agent must register with MCA. An agent registration is valid for two years. To register as a cannabis agent, an individual must (1) be at least age 21 and (2) if the records are legally accessible, obtain a criminal history records check in accordance with specified procedures (which generally involve submitting fingerprints and specified fees, but may involve an alternate method as permitted by the Director of the Central Repository and the Director of the Federal Bureau of Investigation). MCA may not register as a cannabis agent an individual who fails to meet these criteria or has been convicted of or pleaded *nolo contendere* to a crime involving moral turpitude. MCA may not deny a cannabis agent registration based on any cannabis-related offenses that occurred before July 1, 2023. Each cannabis licensee must require each registered cannabis agent to complete an annual responsible vendor training program.

Under the bill, MCA is authorized (rather than required) to disqualify an individual from registering as a cannabis agent if the individual has been convicted or pleaded *nolo contendere* to a crime involving moral turpitude.

The bill also authorizes MCA to issue a temporary cannabis agent registration that is valid for up to 90 calendar days if (1) a pre-employment background check completed by a third-party vendor is submitted to and approved by MCA and (2) the applicant has submitted an application to the Central Repository as required under current law.

Cannabis Advertising

Under current law, “advertisement” means the publication, dissemination, or circulation of any auditory, visual, digital, oral, or written matter which is directly or indirectly calculated to induce the sale of cannabis or any cannabis-related product or service. “Advertisement” does not include packaging or labeling. An advertisement for cannabis, cannabis products, or cannabis-related services that makes therapeutic or medical claims must (1) be supported by competent and reliable scientific evidence and (2) include information on the most serious and common side effects or risks associated with the use of cannabis. An advertisement for a cannabis licensee, cannabis product, or cannabis-related services,

excluding those placed on property owned or leased by a dispensary, grower, or processor, may not:

- violate Title 13, Subtitle 3 of the Commercial Law Article (Consumer Protection Act – Unfair, Abusive, or Deceptive Trade Practices);
- directly or indirectly target individuals younger than age 21;
- contain specified representations that target minors, display the use of cannabis, promote cannabis for use as an intoxicant, or are obscene;
- engage in advertising through specified forms of media unless at least 85% of the audience is reasonably expected to be at least age 21, as specified; or
- engage in advertising by means of placing an advertisement on the side of a building or another publicly visible location of any form, including a sign, a poster, a placard, a device, a graphic display, an outdoor billboard, or a freestanding signboard.

Under the bill, property owned or leased by a cannabis licensee is subject to (rather than exempt from) the specified prohibitions related to the location and content of cannabis-related advertisements (as listed above). The bill also prohibits advertising by means of event sponsorship (in addition to the prohibitions under current law), unless at least 85% of the audience is reasonably expected to be at least age 21, as specified.

The bill also authorizes a cannabis business to place exterior signage on the premises of the business for the limited purpose of identifying the business to the public.

Special Funds Altered by the Bill

Cannabis Regulation and Enforcement Fund: Chapters 254 and 255 established CREF, administered by the Comptroller (at the direction of MCA), with the purpose of covering the costs of (1) operating the administration and (2) administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article. The fund is subject to audit by the Office of Legislative Audits and generally consists of fees that MCA may impose (including registration fees) and tax revenues from the sale of adult-use cannabis sufficient to defray the entire cost of MCA operations and administrative expenses. By March 15 each year, the Comptroller must publish on its website a specified report of the fund’s revenues and expenditures. The report must also be submitted to the General Assembly.

Under the bill, MCA (rather than the Comptroller) must administer CREF and publish the specified report on its website by March 15 each year.

Community Reinvestment and Repair Fund: Chapter 26 of 2022, as amended by Chapters 254 and 255 of 2023, established CRRF, a special, nonlapsing fund administered

by the Comptroller, for the purpose of providing funds to community-based organizations that serve communities determined to have been the most impacted by the disproportionate enforcement of the cannabis prohibition before July 1, 2022. For fiscal 2024 through 2033, the fund receives a distribution of 35% of the sales and use tax collected from the sale of adult-use cannabis after required distributions to CREF. The fund also consists of one-time medical cannabis license conversion fees, which must be paid in full by affected licensees by January 1, 2025, as well as any other money from any other source accepted for the benefit of the fund.

Statute requires the Comptroller to distribute funds from CRRF to each county in an amount that, for the period from July 1, 2022, to January 1, 2023, both inclusive, is proportionate to the total number of cannabis possession charges in the county compared to the total number in the State (as determined by OSE).

Pursuant to current law, the State Treasurer must invest the money of the special fund in the same manner as other State money may be invested. Statute also specifies that no part of the fund may revert or be credited to the general fund or any other special fund of the State. Although § 1-322 of the Alcoholic Beverages and Cannabis Article (the provision of law in which CRRF is established) does not explicitly address where interest earnings are credited, § 6-226 of the State Finance and Procurement Article explicitly lists CRRF as one of several special funds that is exempt from the general requirement for interest on special funds to accrue to the general fund. Accordingly, interest earnings are retained by the fund.

The bill alters § 1-322 of the Alcoholic Beverages and Cannabis Article to require any interest earnings of the fund to be credited to the general fund.

Cannabis Business Assistance Fund: Chapter 26 (and the subsequent passage of the associated constitutional amendment) established CBAF, administered by Commerce with the purpose of assisting small, minority-owned, and women-owned businesses to enter the adult-use cannabis industry. The fund may be used only for (1) grants or loans to small, minority-owned, or women-owned businesses, as specified and (2) grants to the State's Historically Black Colleges and Universities for cannabis-related programs and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed to participate in the adult-use cannabis industry.

The bill expands the authorized uses of CBAF so that it may also be used for the administrative costs of the fund.

Tax Provisions

In general, a current or former officer or employee of the State or of a political subdivision may not disclose, in any manner, any tax information. However, tax information may be disclosed to specified excepted entities, including ATCC (formerly the Alcohol and Tobacco Commission).

The bill adds MCA to the list of excepted entities, thereby authorizing tax information to be disclosed to MCA. The bill also corrects a reference to ATCC under the list of excepted entities.

Chapter 26 of 2022 established a subtraction modification against the State individual and corporate income tax for the amount of ordinary and necessary expenses (including a reasonable allowance for salaries or compensation for personal services actually rendered during the taxable year) paid or incurred during the taxable year in carrying on a trade or a business as a medical cannabis grower, processor, dispensary, or any other cannabis establishment licensed by the State. The subtraction modification may be claimed if the deduction for ordinary and necessary expenses is disallowed under Section 280E of the Internal Revenue Code.

The bill updates the income tax subtraction modification provision – and a related cross reference – so that it applies to cannabis establishments that are licensed or *registered* in the State (rather than just *licensed medical* cannabis establishments).

Prevailing Law

Under current law, a provision under Division III (Cannabis) within the Alcoholic Beverages and Cannabis Article prevails over any conflicting or inconsistent provision in Division I of the Alcoholic Beverages and Cannabis Article or the Tax – General Article relating to cannabis.

The bill further specifies that a provision under Division III also prevails over any conflicting or inconsistent provision in Division II of the Alcoholic Beverages and Cannabis Article.

Background: For additional information on cannabis reform in the State, see the **Appendix – Medical and Adult-use Cannabis Reform.**

State Fiscal Effect: As the bill is an emergency measure, this analysis assumes an effective date of April 1, 2024. Certain provisions of the bill affect State finances, which are described below. The bill's other changes can be implemented with existing resources or are not anticipated to materially affect State finances. The bill's changes are also not

anticipated to materially affect the sale of adult-use cannabis in the State or the amount of sales and use tax collected from the sale of adult-use cannabis in the State. The bill's update of the subtraction modification is assumed to be largely clarifying.

Community Reinvestment and Repair Fund

Under the bill, any interest earnings of CRRF must be credited to the general fund (rather than to CRRF). This provision may conflict with a current law provision that prohibits any part of CRRF from reverting or being credited to the general fund or any other special fund. Moreover, as noted earlier, § 6-226 of the State Finance and Procurement Article explicitly exempts CRRF from the general requirement that interest on special funds accrues to the general fund, and the bill does not modify that provision. Nevertheless, this analysis assumes that the interest earnings of CRRF are credited to the general fund as a result of the bill.

As noted earlier, CRRF receives 35% of the revenues generated from the sales and use tax on adult-use cannabis sales in the State through fiscal 2033 (after required distributions to CREF). The State Treasurer advises that approximately \$60,000 in interest earnings accrued to CRRF in each of January and February 2024. While interest earnings depend largely on the CRRF fund balance and market interest rates, this analysis assumes that:

- beginning April 1, 2024 (due to the bill's emergency status), any interest earnings of CRRF are credited to the general fund;
- interest earnings of CRRF for the final quarter of fiscal 2024 are similar to interest earnings realized in January and February of 2024; and
- interest earnings of CRRF increase year-over-year at a similar rate as that assumed by the Board of Revenue Estimates for revenue estimates relating to the sales and use tax on adult-use cannabis sales.

Based on those assumptions, general fund revenues increase by an estimated \$180,000 in fiscal 2024, \$1.5 million in fiscal 2025, and \$3.5 million by fiscal 2028 due to the redirection of interest earnings of CRFF to the general fund. Special fund revenues to and expenditures from CRRF decrease correspondingly.

Cannabis Business Assistance Fund

Currently, Commerce uses general funds to cover the costs of administering CBAF; however, the bill authorizes Commerce to use special funds from CBAF to cover such costs. Thus, general fund expenditures for Commerce decrease by an estimated \$58,967 in fiscal 2024 (accounting for an assumed effective date of April 1, 2024, due to the bill's emergency status) and by \$225,731 in fiscal 2025; by fiscal 2029, the decrease in general fund expenditures totals an estimated \$267,434. This estimate reflects the shift in

expenditures (from general funds to special funds) for two finance specialists that are currently involved with administering CBAF. Commerce advises that it has three staff that assist with administering the fund but also have other duties; accordingly, the actual administrative costs that are ultimately covered by CBAF rather than the general fund could vary from this estimate.

Overall special fund expenditures from CBAF are not expected to be materially affected. Commerce advises that any special funds used to cover administrative costs merely reduce special funds available for other authorized purposes.

Cannabis Regulation and Enforcement Fund

The bill shifts the administration of CREF from the Comptroller to MCA. Thus, special fund revenues and expenditures for the Comptroller decrease, and special fund revenues and expenditures for MCA increase by corresponding amounts. *For context*, the fiscal 2025 budget as introduced includes \$27.1 million in CREF special funds for the Comptroller.

Overall CREF revenues and expenditures are not anticipated to be materially affected by the bill. Even though the bill requires cannabis nurseries to be registered, MCA advises that it does not anticipate issuing any such registrations in the near term. Accordingly, this requirement is not anticipated to materially affect registration fee revenues collected by MCA in the near term. To the extent MCA registers cannabis nurseries in the future, however, CREF revenues increase from any registration fees established for those businesses in regulation. For context, current regulations set an annual registration fee of \$1,000 for ancillary businesses.

Local Fiscal Effect: Pursuant to current law, the Comptroller must distribute CRRF funds to each county, as specified. Each county is required to adopt a law establishing the purpose for which money received from CRRF may be used, subject to statutory provisions that specify that the fund may only be used for (1) funding community-based initiatives intended to benefit low-income communities; (2) funding community-based initiatives that serve disproportionately impacted areas; and (3) any related administrative expenses.

Due to the redirection of interest earnings of CRRF to the general fund, as discussed above, county revenues from CRRF decrease by a total of \$180,000 in fiscal 2024, \$1.5 million in fiscal 2025, and \$3.5 million by fiscal 2028. County expenditures decrease correspondingly.

Small Business Effect: The bill may have a meaningful impact on small businesses by (1) creating a pathway for businesses to enter the State's cannabis industry as registered cannabis nurseries; (2) expanding the operating capacity for micro-processors; and

(3) decreasing the onboarding time for cannabis agents by authorizing temporary agent registrations (which may avoid delays experienced in processing fingerprints for the required criminal history background checks).

To the extent any community-based organizations that receive CRRF funding from counties are considered small businesses, they may be negatively affected due to the decrease in available funding from CRRF as a result of the redirection of interest earnings of CRRF to the general fund.

Additional Information

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

Designated Cross File: None.

Information Source(s): Department of Commerce; Alcohol, Tobacco, and Cannabis Commission; Maryland Cannabis Administration; Comptroller's Office; Governor's Office; Department of General Services; Department of Public Safety and Correctional Services; State Treasurer's Office; Department of Legislative Services

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Appendix – Medical and Adult-use Cannabis Reform

Chapters 254 and 255 of 2023 established the adult-use cannabis industry in the State by, among other things, (1) attributing cannabis-related duties to the Alcohol and Tobacco Commission and renaming it the Alcohol, Tobacco, and Cannabis Commission (ATCC); (2) establishing the Maryland Cannabis Administration (MCA) as an independent unit of State government that is responsible for the regulation of adult-use and medical cannabis; (3) creating a licensing framework for the regulated sale of cannabis; (4) requiring all existing medical cannabis licensees to either convert to adult-use cannabis businesses or cease operating by July 1, 2023; (5) establishing a 9% sales and use tax on the sale of adult-use cannabis; (6) creating the Office of Social Equity (OSE) in MCA and the Social Equity Partnership Grant Program within OSE; (7) establishing an advisory board on medical and adult-use cannabis; and (8) creating the Maryland Incubator Program. Additionally, ATCC and MCA must enter a memorandum of understanding providing that both parties agree to collaborate on enforcing provisions regarding unlicensed cannabis operations in the State. Multiple special funds (discussed below) were also established to hold specified revenues and cover specified expenses related to the cannabis industry.

Maryland Cannabis Administration

MCA is an independent unit of State government established to administer and enforce the Medical and Adult-use Cannabis Title of the Alcoholic Beverages Article (including being the successor to the MMCC in matters concerning medical cannabis). MCA's responsibilities generally include promulgating cannabis industry regulations, licensing and registering cannabis businesses in the State, and enforcing the statutes and regulations related to the cannabis industry.

Adult-use Cannabis

The sale of adult-use cannabis began on July 1, 2023. Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional amendment, a person at least age 21 may use and possess the personal use amount of cannabis, while the possession of the personal use amount of cannabis by a person younger than age 21, as well as the possession of the civil use amount of cannabis, are subject to civil penalties. Possession of more than the civil use amount of cannabis by anyone is subject to a criminal penalty.

“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-tetrahydrocannabinol (THC); or (4) 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.

Medical Cannabis

Pursuant to Chapters 254 and 255, MCA – rather than MMCC – is responsible for the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. There is a framework to certify health care providers (including physicians, physician assistants, 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. Qualifying patients may possess (1) up to 120 grams of usable cannabis; (2) cannabis-infused products containing up to 36 grams of delta-9-THC; or (3) for a qualifying patient who is at least age 21, no more than four cannabis plants.

Cannabis Industry Regulations

MCA proposed emergency regulations that took effect July 1, 2023; the emergency regulations are supplemental to the existing medical cannabis regulations. The emergency regulations (1) carry out the requirements for licensure of cannabis businesses, including implementing procedures related to applications, licenses, and registrations; (2) assist the Comptroller in the collection of taxes imposed on the sale of adult-use cannabis; (3) implement inventory management and tracking; (4) establish operating requirements for cannabis licensees or cannabis registrants; (5) establish limits on the maximum potency of cannabis products sold in the State; and (6) establish child protections, including child-resistant packaging and prohibitions on advertising to children.

Chapters 254 and 255 require that the July 1, 2023 emergency regulations be followed by nonemergency regulations adopted by MCA by July 1, 2024. These regulations must govern Internet sales of cannabis; implement and supplement packaging and labeling requirements for cannabis products; establish procedures for the use of point-of-sale technologies by dispensaries for all transactions that verify a consumer’s age using a driver’s license or other valid identification; and establish health, safety, security, and tracking requirements for the packaging and repackaging of cannabis by a dispensary. Additionally, MCA must adopt minimum standards for licensed growers to protect the rights of growers and employees.

Social Equity in the Cannabis Industry

MCA must (1) conduct extensive outreach to small, minority, and women business owners and entrepreneurs who may have an interest in applying for a cannabis license before

accepting and processing cannabis license applications and (2) connect potential social equity applicants with OSE. MCA began to implement this requirement in 2023 by attending fairs and festivals, visiting Maryland colleges and universities, and conducting technical assistance seminars.

Chapters 254 and 255 established OSE as an independent office functioning within MCA, with the general purpose of promoting and encouraging full participation in the regulated cannabis industry by people from communities that have been disproportionately impacted by the war on drugs in order to positively impact those communities. OSE has several responsibilities in furtherance of its purpose, including consulting with other agencies, providing recommendations to and working with MCA, assisting businesses to obtain financing through the Capital Access Program, and managing the Social Equity Partnership Grant Program (established to promote qualifying partnerships between operational licensees and social equity licensees).

Cannabis Licensing

To operate a cannabis business in the State, a person must obtain a cannabis license from MCA. A license is valid for five years on initial licensure and five years upon renewal. MCA must issue licenses for growers, processors, dispensaries, incubator spaces, and on-site consumption. Additional licenses include micro licenses for growers, processors, and dispensaries. Licensing and renewal fees are established by MCA and range from \$5,000 for social equity applicants for certain licenses to \$50,000 for standard grower licenses. Existing medical licensees (growers, processors, and dispensaries) were required to pay a conversion fee based on the licensee's gross revenues for calendar 2022 to convert to medical and adult-use cannabis business licensees of the same type. Essentially all medical licensees (18 grower, 23 processor, and 96 dispensary licensees) entered payment installment agreements to convert into cannabis business licensees.

First Round Social Equity Licenses: Social equity applicants are those with at least 65% ownership and control held by one or more individuals who meet certain criteria, such as living in or attending a public school in a disproportionately impacted area (*i.e.*, determined to have had above 150% of the State's 10-year average for cannabis possession charges). As announced by MCA, the available standard licenses for social equity applicants in round one total 16 grower licenses, 32 processor licenses, and 75 dispensary licenses. The available micro licenses for such applicants total 24 grower licenses, 24 processor licenses, and 8 dispensary licenses. MCA accepted 1,708 on-time applications for first round social equity licenses from November 13 through December 12, 2023.

While first round licenses were expected to be awarded through a public lottery prior to January 1, 2024, MCA was forced to delay the lottery. Before the lottery can take place, MCA must review each of the 1,708 applications (1,400 of which were received within

72 hours of the application deadline) to ensure that it meets the minimum requirements for licensure before being entered into the lottery. If selected during the lottery, an additional review of the application materials will commence before a conditional license is awarded. During the conditional period (18 to 24 months), a licensee must complete a supplemental license application to undergo a criminal and financial history background check and take additional actions, including demonstrating legal control and local zoning and planning approval of the proposed site for the cannabis business. An unconditional license is issued to applicants who satisfy the supplemental application requirements and pay a license fee.

Additional Grower License Awards for Specified Class Members: Chapters 254 and 255 also required MCA to establish a process for issuing up to five additional grower licenses to recognized class members of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) that also meet other specified criteria. As of January 1, 2024, MCA reports awarding four conditional grower licenses to qualifying class members in the State.

Second Round Licenses: Beginning May 1, 2024, MCA must begin issuing a second round of licenses. The licenses may be limited to social equity applicants or opened to applicants from the general public, dependent on the outcome of a disparity study.

Subsequent Licenses: MCA may issue additional cannabis licenses up to the maximum limit authorized per statute based on the results of a market demand study. Future applications for licenses may be limited to social equity applicants and employ remedial measures based on the results of the disparity study.

Advisory Board on Medical and Adult-use Cannabis

Chapters 254 and 255 also established the Advisory Board on Medical and Adult-use Cannabis. The advisory board must (1) consider all matters submitted to it by ATCC, the Governor, MCA, or the General Assembly; (2) on its own initiative, provide recommendations to ATCC and MCA regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration; and (3) establish at least two subcommittees to focus on medical and adult-use cannabis. As of January 1, 2024, the advisory board has not yet convened.

Cannabis Sales and Tax Revenues

The fiscal and policy note for Chapters 254 and 255 estimated adult-use sales revenues of \$400.0 million in the first fiscal year, and MCA estimated sales of \$600.0 million in the first fiscal year. However, adult-use cannabis sales from July through December 2023 totaled \$331.8 million. With six months remaining to be counted during the first fiscal year of adult-use cannabis sales, revenues will likely exceed the fiscal and policy note estimate

and possibly MCA's estimate. At the established tax rate of 9%, approximately \$29.9 million in tax revenues have already been generated during the first six months of adult-use cannabis sales.

Local Authority to Regulate Cannabis

A "political subdivision" – defined as a county or municipality – may (1) establish reasonable zoning requirements for cannabis businesses that do not "unduly burden" licensees; (2) decide how to distribute its allocation of tax revenues; and (3) adopt an ordinance to *reduce* the statutory requirements for how far a dispensary may be located from specified locations (*e.g.*, schools, child care centers, playgrounds, libraries, etc.).

A political subdivision may not (1) prohibit transportation through or deliveries within the political subdivision of cannabis; (2) prevent the conversion of an existing medical cannabis licensee to a cannabis business license; (3) impose fees or requirements on cannabis businesses that are disproportionately greater than or more burdensome than other businesses; and (4) impose a tax on cannabis.

Additionally, an on-site consumption establishment may not operate in a location unless the political subdivision affirmatively authorizes the operation by issuing a permit or license. The political subdivision may also place restrictions on or prohibit the operation of on-site consumption establishments.

Public Health Actions Related to Adult-use Cannabis

Chapter 26 (and the subsequent passage of the associated constitutional amendment) established the Cannabis Public Health Advisory Council to study and report its findings and recommendations by December 1 each year on specified public health impacts of cannabis legalization. The council convened its first meeting in August 2023, forming data collection and youth mitigation workgroups. The Cannabis Public Health Fund was also established to (1) support the advisory council; (2) support data collection and research on the effects of cannabis legalization in the State; (3) provide funding for education and public awareness campaigns related to cannabis use, including funding for educational programs to be used in schools; (4) support substance use disorder counseling and treatment for individuals; (5) provide training and equipment for law enforcement to recognize impairments due to cannabis; and (6) purchase technology proven to be effective at measuring cannabis levels in drivers. The Maryland Department of Health must administer the fund, which consists of revenues distributed to the fund based on tax revenues from the sale of adult-use cannabis (5% of those revenues), money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The fiscal 2023 budget included \$5.0 million for initial capitalization of the fund.

Cannabis-related Special Funds

Cannabis Regulation and Enforcement Funds: Chapters 254 and 255 established the CREF, administered by the Comptroller at the direction of MCA, to cover the costs of (1) operating MCA and (2) administering and enforcing the Medical and Adult-use Cannabis Title of the Alcoholic Beverages Article. The fund generally consists of fees the administration may impose (including application and registration fees) and tax revenues from the sale of adult-use cannabis sufficient to defray the entire cost of operating the administration. In addition, the balance of the Natalie M. LaPrade Medical Cannabis Fund, approximately \$12.3 million, was credited to the fund to cover the costs of implementing the Acts and regulating the cannabis industry in Maryland.

Community Reinvestment and Repair Fund: Chapter 26 also established the CRRF, to be administered by the Comptroller, with the stated purpose of providing funds to community-based organizations that serve communities determined by OSE (in consultation with the Office of the Attorney General) to have been the most impacted by disproportionate enforcement of the cannabis prohibition before July 1, 2022. The fund consists of conversion fees paid by medical licensees totaling approximately \$60.9 million. The fund also receives 35% of the tax revenues from the sale of adult-use cannabis, distributed on a quarterly basis.

Cannabis Business Assistance Fund: Chapter 26 (and the subsequent passage of the associated constitutional amendment) established the CBAF to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. The Department of Commerce (in consultation with OSE) must administer the fund and must prioritize awarding grants and loans to (1) populations that have been historically disproportionately impacted by the enforcement of cannabis laws and (2) individuals who have been convicted of cannabis offenses. Commerce may not award grants or loans to small, minority, and women business owners and entrepreneurs with a personal net worth exceeding \$1.7 million. The fiscal 2023 budget included \$40.0 million for initial capitalization of the fund, and the fiscal 2024 budget includes \$40.0 million for the fund. The fund also receives 5% of the tax revenues from the sale of adult-use cannabis, distributed on a quarterly basis.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Cannabis Reform – Alterations

BILL NUMBER: HB0253

PREPARED BY:

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS