

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 513  
Finance

(Senator A. Washington)

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**Employment Discrimination - Use of Cannabis Products**

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This bill generally prohibits an employer from discriminating against an individual because of the individual's use of cannabis products. The bill also requires an employer who conducts drug testing to provide the updated drug policy to all employees before the effective date of the policy.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** Unless the employer has established by a preponderance of the evidence that an unlawful use of cannabis has impaired an individual's ability to perform the individual's job responsibilities, an employer may not take "adverse action" against the individual because of (1) the individual's use of cannabis products that is lawful under the laws in the State that occurs off the employer's premises during nonwork hours; (2) the individual's positive drug test for cannabinoids or cannabis metabolites, unless the individual used, possessed, or was under the influence of cannabis on the premises of the place of employment; or (3) the individual's prior arrest or conviction for a nonviolent cannabis offense that does not involve distribution to a minor.

An employer may prohibit and take adverse employment action against employees possessing or using intoxicating substances during work hours (or testing positive for intoxicating substances during work hours). An employer may determine that an individual's ability to perform the individual's job responsibilities is impaired if the individual manifests specific articulable symptoms while working, that decrease or lessen the individual's performance of the duties or tasks of their job.

The bill does not authorize an employee to be impaired by, use, or possess cannabis products during work hours. Employers are not required to commit an act that would cause the employer to violate federal law or result in the loss of a federal contract or federal funding. Furthermore, the bill does not preempt federal law requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

The bill explicitly defines "adverse employment action" as refusing to hire or employ an individual, requiring an individual to retire from employment, or discriminating against an individual in the compensation or the terms, conditions, or privileges of the employment.

**Current Law:** For information on employment discrimination in the State, see the **Appendix – Employment Discrimination**.

### *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 referendum by (1) creating the Maryland Cannabis Administration (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 the Alcohol, Tobacco, and Cannabis Commission; (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.

### *Adult-use Cannabis*

Pursuant to Chapter 26 and the passage of the associated constitutional amendment, a person at least age 21 may use and possess the personal use amount of cannabis. Possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis by anyone are subject to civil penalties. Possession of

more than the civil use amount of cannabis by anyone is subject to a criminal penalty of imprisonment for up to six months and/or a \$1,000 maximum fine.

“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.

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### **Additional Information**

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

**Designated Cross File:** HB 525 (Delegate Wilkins, *et al.*) - Economic Matters.

**Information Source(s):** Maryland Commission on Civil Rights; Anne Arundel, Baltimore, and Charles counties; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Labor; Department of State Police; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2024  
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## **Appendix – Employment Discrimination**

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### *Discrimination in Employment – Generally*

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, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

Subject to limited exceptions, 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. An employer is also prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; however, State law does not require an employer to reasonably accommodate a disability if the accommodation would cause undue hardship on the conduct of the employer's business. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, and labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees (based on the number of employees working in each of 20 or more calendar weeks in the current or preceding calendar year). Provisions relating to harassment allegations apply to employers with one or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

*Employment Discrimination Complaints – Initial Process, Administrative Proceedings, and Civil Actions*

*Initial Process:* The Maryland Commission on Civil Rights (MCCR) is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

*Administrative Proceedings:* At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) 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 (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint if the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

*Civil Actions:* 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 circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation), however, these time limitations are tolled while an administrative charge or complaint is pending. The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages in a private civil action if the respondent is not a governmental unit or political subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages (as shown above). If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

### *Employment Discrimination Caseloads*

MCCR reports that since 2017, retaliation has been the primary employment-related inquiry received, followed by inquiries related to disability, harassment, and race. According to the most recent MCCR Annual Report, nearly 70% of the 661 overall cases ultimately referred for investigation in fiscal 2023 were for employment discrimination.