



SB 833 — Constitutional Amendment to Legalize Cannabis for Adults 21+ and Implementing Legislation

Sen. Brian Feldman’s SB 833 would refer the following question to Maryland voters on the November 2022 ballot:

“Do you favor the legalization of adult-use cannabis in the State of Maryland that complies with a legal framework established by the legislature to provide for limits on use amounts and the regulation and taxation of the market for the production and sale of cannabis in the State?”

The bill also provides details on establishing a system to tax and regulate cannabis for adults 21 and older, allows for automatic expungement of past cannabis convictions, and establishes a social equity program to ensure diversity and inclusion in the legal cannabis industry from minorities and those hardest hit by the war on cannabis. These details would be contingent on voter approval of the constitutional amendment and would go into effect once the election is certified.

Possession Limits (contingent on voter approval)

- Amends the Maryland Constitution to allow adults 21 and older to use and possess the following amounts of cannabis on or after July 1, 2023.
 - Two ounces of cannabis
 - 15 grams of concentrated cannabis
 - Cannabis products containing no more than 1,500mg of THC
- Home cultivation of up to four plants — and possession of excess cannabis produced by those plants — is allowed outside of public view. Cannabis must be cultivated and stored so that it is secure from unauthorized access and access by those under 21.
 - If two or more adults reside at the same residence, no more than eight plants may be cultivated at the residence.

Criminal Justice Reforms

- First-offense possession of personal-use amounts by those under 21 is a civil offense punishable by up to a \$100 fine, plus a drug education course. Six hours of community service may be requested in lieu of a fine. The fine (or community service alternative) increases for subsequent offenses.
- Possession of double the personal-use amounts is decriminalized, punishable by a civil offense of up to \$250. Sixteen hours of community service may be requested in lieu of a fine.
- Public smoking is a civil offense punishable by up to a \$50 fine. Five hours of community service may be requested in lieu of a fine.
- Allows adults to share personal-use amounts without remuneration.
- Parole, probation, and pretrial release are not violated for testing positive for THC.

Expungement and Release

- Provides for the automatic expungement, on or before October 1, 2023, of cannabis possession records that did not exceed the personal-use amount, occurred on or before October 1, 2023, and in which cannabis possession was the only charge in the case.
- Provides for the automatic expungement, on or before October 1, 2023, of cannabis possession records that did not exceed the personal-use amount, occurred on or before October 1, 2024, and in which there were additional charges.
- Provides that legalization is retroactive. All charges pending on October 1, 2023 for possession or cultivation of a personal-use amount shall be dismissed.
- Allows for release with free representation from the Office of the Public Defender.
 - Provides for release of those incarcerated or under supervision on or after October 1, 2022 for possession or cultivation of a personal-use amount.
 - Allows those incarcerated or under supervision on or after October 1, 2023 to petition for release from any other cannabis charge. The court will grant relief if doing so would be in the interests of justice, considering legalization and racial disparities in enforcement.
- Allows anyone with a past conviction for cannabis to petition for expungement. Starting on January 1, 2024, the bill provides for free representation from the Office of the Public Defender.

Regulatory Authority

- The Alcohol and Tobacco Commission (ATC) would be charged with regulating the adult-use cannabis market.

Boosting Public Health

- Cannabis must be accurately labeled to include:
 - The length of time it typically takes for the product to take effect, ingredients and possible allergens, and a nutritional fact panel.
- Cannabis products must be in opaque, child-resistant packaging.
- Edible cannabis products must be clearly identifiable with a standard symbol indicating that it contains cannabis.
- Requires scientifically accurate safety materials be available to each consumer, to include: advice about the potential risks of cannabis, including risks of driving under the influence and that doing so is illegal; any adverse effects unique to younger adults, including effects related to brain development; risks of using cannabis during pregnancy or breastfeeding; and a warning about the need to safeguard cannabis products from children and pets.

Social Equity and Inclusion

- Defines a “social equity applicant” as:
 - An applicant with 51% or more ownership by individuals who:

- 1) have lived for five of the past 10 years in a “disproportionately impacted area” (with lower median incomes; higher unemployment, poverty, food stamp, and/or uninsured rates; and/or higher rates of cannabis enforcement)
 - 2) have at least 51% ownership by state residents who have a prior cannabis offense or are members of impacted families
 - 3) have a minimum of 10 full-time employees with at least 60% of employees who:
 - Live in a disproportionately impacted area at the time of application
 - Have a previous cannabis conviction
 - 4) meets any other criteria established by the commission based on the results of a disparity study.
- Establishes an Office of Social Equity within the ATC. The Office of Social Equity shall:
 - Consult with and assist the commission in administering the community reinvestment and repair fund, social equity start-up fund, and cannabis education and training fund.
 - Promote and encourage full participation in the legal cannabis industry by people from communities that have been disproportionately harmed by cannabis prohibition and enforcement.
 - Provide recommendations on regulation related to diversity and social equity applications.
 - Work with the commission to implement free technical assistance for social equity and minority business applicants.
 - Establishes a Cannabis Education and Training Fund to provide free or low-cost training and education for all sectors of the adult-use cannabis industry.
 - Twenty-five percent (25%) must be dedicated to training reentering citizens.
 - Twenty-five percent (25%) must be dedicated to training individuals from disproportionately impacted areas.
 - The grants will include cannabis programs at community colleges, high school CTE programs, HBCUs, and adult education programs, along with individual scholarship-style grants.
 - Regulations must allow social equity applicants to be licensed not less than 180 days before other applicants.
 - Delivery and transportation licenses are exclusive to social equity applicants.

Social Equity Start-Up Fund

- Existing medical cannabis businesses could apply for “dual licenses” to serve adult-use consumers starting in spring 2023 if they: 1) maintain supply and access for medical patients, and 2) pay large fees to the Social Equity Start-Up Fund, which will provide capital for social equity businesses. The fees are:
 - Grower:
 - Stage 1: immediate payment of 2.5% of the business’ total sales between January 1, 2021 and January 1, 2022, but no less than \$100,000 and no more than \$500,000; and

- Initial renewal: payment of 5% of the business' total sales from the past six months, but no less than \$100,000 and no more than \$250,000.
 - Dispensary:
 - Stage 1: immediate payment of 2% of the business' total sales between January 1, 2021 and January 1, 2022, but no less than \$50,000 and no more than \$100,000; and
 - Initial renewal: payment of 2% of the business' total sales from the past six months, but no less than \$50,000 and no more than \$150,000.
 - Processor:
 - Stage 1: immediate payment of 2.5% of the business' total sales between January 1, 2021 and January 1, 2022, but no less than \$25,000 and no more than \$250,000; and
 - Initial renewal: payment of 2.5% of the business' total sales from the past six months, but no more than \$250,000.
 - Testing Lab: \$0 for an independent testing laboratory.
 - Dual license fees will be reduced for any entity that qualifies as a social equity applicant or is a certified minority-owned business.
- Incubation Program: If approved by the Commission, dual licensees may elect to provide up to 50% of the second fee in the form of costs associated with hosting a cannabis business incubator program.

Licensing

The state will issue six types of cannabis licenses: retailers, cultivation facilities, product manufacturers, transporters, delivery services, and laboratories. In addition, localities may license on-site consumption facilities, which will have to follow state rules for odor control, ventilation, and health and safety.

On or before March 1, 2023, the ATC will adopt regulations for dual licenses from existing cannabis businesses on an expedited basis. They will begin accepting and processing dual licensees no later than April 1, 2023.

On or before October 1, 2023, the ATC will begin accepting and processing licenses for cultivation, delivery service, processor, or transporter from social equity applicants and begin accepting and processing independent testing lab and retail licenses from all applicants.

On or before February 2024, the following will be issued to social equity applicants:

- 14 tier 5 cultivator licenses (with no more than 50,000 square feet of canopy if they are indoors and no more than 150,000 square feet for outdoor growing)
- 18 tier 3 cultivator licenses (with no more than 20,000 square feet of canopy if they are indoors and no more than 60,000 square feet for outdoor growing)
- 18 tier 1 cultivator licenses (microbusinesses that have no more than 5,000 square feet of canopy if they are indoors and no more than 15,000 square feet for outdoor growing)

On or before April 2024, 47 retail licenses will initially be issued, with one license per senatorial district.

- In the scored application process, twenty percent (20%) of available points will be reserved for social equity applicants. The Commission can create a lottery for all applicants that score above a certain threshold.
- The full list of points is:
 - 50 out of 250 points, or 20%, for ownership by social equity applicants
 - 65 points – security and record keeping
 - 65 points – business plan, financials, operating and floor plan
 - 30 points – knowledge and experience
 - 15 points – suitability of employee training plan
 - 10 points – diversity plan
 - 5 points – labor and employment practices
 - 5 points – environmental plan
 - 5 points – Maryland resident ownership (51% or more of ownership)
 - 5 points – status as a veteran (26% or more of ownership)
 - The Alcohol and Tobacco Commission may award up to two bonus points for a plan to engage with the community the applicant will be located in.

A scored application process will be implemented to determine qualification for a cultivation license. An applicant who scores above a number of points established by the Commission will be entered into a lottery to determine who will be issued licenses.

A person cannot have a legal, equitable, or beneficial interest of 5% or more in more than one cultivator or five retailers.

Local Control

- An entity seeking licensure shall meet reasonable local zoning and planning requirements.
- Localities can prohibit any or all types of cannabis establishments. An initiated or referred measure to ban cannabis businesses must appear on a general election ballot.
- Localities cannot ban delivery.

Non-Discrimination

- Individuals could not be denied medical care (including organ transplants), professional licenses, child custody, housing, state benefits, or state or local employment based on state-legal cannabis activities that do not endanger others or for testing positive for cannabis.
- Employers would not have to accommodate employees who are under the influence or the possession of cannabis at work.
- Landlords cannot prohibit the possession of cannabis or consumption of cannabis by means other than smoking.
 - After a warning, a landlord or property manager may take action against a tenant if their cannabis use creates an odor that disturbs others.

Taxation

There would be an excise tax on cannabis at the point of sale to the consumer, with rates starting lower and increasing over the years. Rates would be:

- Until April 2026, 10% excise tax
- From April 1, 2026 to March 2028, 15% excise tax
- Beginning April 1 2028, 20% excise tax

Counties can also impose a 3% local sales tax.

Revenue Distribution

- All taxes and fees will go to a Cannabis Regulation Fund (except for retailer and dual license fees that are payable to the Social Equity Start-Up Fund). After covering the costs of administration, the remainder of the funds shall be distributed as follows:
 - 25% to the Community Reinvestment and Repair Fund
 - 20% to the Department of Health for substance abuse and mental health treatment
 - 15% to local impact aid
 - 10% to the Social Equity Start-Up Fund
 - 10% to the endowments of the state's HBCUs
 - 7% to the General Fund
 - 5% to the cannabis education and training fund
 - 3% for technical assistance for social equity and minority cannabis business establishment applicants
 - 2% to a public education campaign about the risks of alcohol, tobacco, cannabis, and other substances
 - 2% to fund cannabis research, including regarding its medical benefits
 - 1% for training law enforcement to recognize impaired driving
- A Community Reinvestment and Repair Fund is established to serve communities that have been disproportionately impacted by cannabis prohibition, poverty, unemployment, mass incarceration, systemic racism, or a combination.
- Community Reinvestment and Repair Funds could be used for community needs, including:
 - housing assistance, including to promote home ownership among members of minority groups that are underrepresented in home ownership due to redlining and other discrimination;
 - re-entry services, including job training and placement;
 - scholarship assistance for low-income students;
 - grants to community-based organizations to provide services to prevent violence, support youth development, provide early intervention for youth and families, and promote community stability and safety;
 - small business loans for residents of those communities; and
 - legal or civic aid, including for expungement services.

DUID

The bill establishes a per se DUID limit of having a concentration of five nanograms or more of THC in the blood.

- Driving or attempting to drive while under the influence of cannabis per se is punishable by a year of imprisonment, up to a \$1,000 fine, or both for a first offense. The defendant can raise an affirmative defense — where they have the burden of proof — that they were not actually under the influence of cannabis.