



## Maryland Cannabis Omnibus: Legal, Regulated Sales HB 556 and SB 516 Detailed Summary

Twin bills HB 556 (sponsored by Delegates CT Wilson and Vanessa Atterbeary) and SB 516 (sponsored by Sens. Brian Feldman and Antonio Hayes) would legalize and regulate the sales of cannabis in Maryland to adults 21 and older. Simple possession and home cultivation by adults 21 and older were already legalized, effective July 1, 2023.

Starting on July 1, 2023, sales would begin exclusively from existing medical cannabis licenses who pay a conversion fee. Other licenses would begin being issued to social equity applicants in early 2024.

### Regulatory Authority and Advisory Board

- The Alcohol and Tobacco Commission would be renamed the “Alcohol, Tobacco, and Cannabis Commission” and a new Division of Cannabis Regulation and Enforcement within it would be charged with licensing and regulating cannabis businesses.
  - The Division’s director would serve at the governor’s pleasure and must have knowledge of the state cannabis industry and regulatory system.
  - Staff from the medical cannabis commission would move to the Division.
- The governor would appoint two new members of the ATC, bringing the total to seven. Both must be “knowledgeable and experienced in the cannabis industry.”
  - Commissioners couldn’t have a financial interest in the industry while serving.
- Creates a 15-member advisory board chaired by the director of the Division to make recommendations. Members would be Maryland registered voters and would include seven cannabis business licensees, a health or social equity researcher, a medical cannabis advocate, a practitioner who certifies patients for medical cannabis, and three members with experience in public health or health care, agriculture, finance, addiction treatment, and/or cannabis law, science or policy.
- The Division would:
  - adopt emergency regulations by July 1, 2023, including for security (including lighting, physical security, video, and alarm), package and labeling (including child resistant packaging), and health and safety standards.
  - adopt non-emergency regulations by July 1, 2024.
  - ensure regulations “to the extent practicable, regulate medical and adult-use cannabis in the same manner.”
  - “set production, processing, sales, and other limitations and requirements for all license types”
  - conduct financial and criminal background investigations into applicants
  - evaluate and grant or deny licenses and registrations
  - inspect licensees
  - implement an inventory management and tracking system
  - establish a state cannabis testing laboratory — or, if it would be more efficient, enter an MOU with the Department of Agriculture or Department of Health — including to establish SOPs for independent testing labs, conduct

proficiency testing on independent labs, conduct compliance testing on cannabis samples, and maintain a reference library for testing methodologies.

- license at least one independent testing laboratory
- report each year on the amount of cannabis cultivated and on if supply is adequate. (There is no requirement that it survey patients, consumers, processors, and/or dispensaries about their opinion on if there is an adequate supply, or that find the supply is inadequate if patients are unable to find the type of cannabis and cannabis products they need, if prices are not affordable, if independent dispensaries are unable to get an affordable supply of a diversity of products, or if independent processors cannot get supply at a competitive price.)

### **Converting Existing Medical Cannabis Businesses**

- The Division must pre-approve existing medical cannabis businesses to also serve adult consumers if they pay a conversion fee. (It is unclear what would happen if they chose not to pay the fee.)
  - Up to the entire value of the conversion fee may be granted back to the dual use business as a Social Equity Partnership grant.
  - Existing medical cannabis businesses will be required to “reserve a specified amount of cannabis for social equity licensees.”
  - Existing medical cannabis dispensaries (but not the growers or processors who supply them) are required to ensure they have an adequate supply for patients. (There is no provision to ensure prices do not skyrocket, or to limit purchases statewide by adults or non-residents in times of shortages.)
  - Medical cannabis dispensaries that convert must set aside operating hours to serve only medical patients.
- For growers, processors, and dispensaries that were operational before October 1, 2022, the one-time conversion fees vary based on gross revenue in 2022, ranging from:
  - \$100,000 if their gross revenue was under \$1 million in 2022 to
  - \$2.5 million for growers and processors if their gross revenue was more than \$20 million and
  - \$2 million for dispensaries with gross revenue exceeding \$20 million
- Creates a formula for the amount by which cannabis businesses licensed by October 2022 may expand, which is intended to preserve canopy for new licensees. In most cases, allows their canopy to expand by 25% of their self-reported canopy as of December 1, 2022.
  - In some cases, the bill appears to allow existing cannabis businesses to exceed 300,000 square feet.
- For medical licensees that were pre-approved, but not operational, sets conversion fees at \$50,000 for growers or processors and \$25,000 for dispensaries.
- Labs, security companies, and waste disposal companies that are registered to serve medical cannabis will convert to also apply to adult-use cannabis.

## **Cannabis Business Licensing**

- The Division will license dispensaries, growers, processors, transporters, onsite consumption facilities, and delivery services. All licenses apply to both adult-use and medical cannabis.
  - The Division will issue standard licenses, micro-licenses, and incubator space licenses.
    - Some of the standard licenses must be reserved to enable micro licenses to expand.
  - Licenses and renewals are valid for five years.
  - Limits the total number of licenses, including medical conversions, that are allowed to:
    - Growers: 75 standard (up to 300,000 square feet of canopy indoors or 1.2 million square feet outdoors, except that some existing medical growers may be larger) and 100 micro-licenses (under 10,000 square feet indoors or under 40,000 square feet outdoors)
    - Processors: 100 standard 100 micro-licenses (<1,000 pounds/year)
    - Dispensaries: 300 standard licenses, with storefronts
    - Delivery: 200 micro-licenses (called dispensaries, appears to have no storefront and 10 or fewer workers)
    - 10 incubator spaces
    - 50 onsite consumption facilities
  - ⇒ Although there is a limited market demand study each year, the bill does not ever allow licenses to exceed the above numbers, even in event of shortages and prices that keep the illicit market active.
  - The Division will ensure balanced distribution of dispensary licenses based on geography, population, and “cross-jurisdictional market demand.”
- Applicants may not be required to possess or own property before applying.
- The Division will set minimum criteria for applicants, all of which must be social equity applicants in the first round. All that pass the threshold will be entered into a lottery. These applications will include a detailed operational plan, a business plan, and a detailed diversity plan.
- Security companies, waste disposal companies, and any other plant- or product-touching cannabis business will also have to register with the department.
- Limits a person to having an ownership interest in or controlling one grower, one processor, two dispensaries (or delivery services), two incubator licenses, and two on-site consumption facilities.
- Applicants may only file two total applications, and one per license type, per round.
- Licenses can only be transferred if they apply and are approved by the department. Transfers can only occur after at least five years of licensure.
- Legislators cannot own, work at, or have an official relationship with cannabis businesses during their terms in office and for one year afterwards.

## **Licensing Timeline and Numbers Per Round**

- Sales from existing medical businesses begin on July 1, 2023.
- The first licenses for new applicants would be issued by January 1, 2024.

- In the first round, the Division would license no more than the following number of licenses for social equity licensees:
  - 20 standard grows and 30 micro-grows
  - 40 standard processors and 30 microprocessors
  - 80 standard dispensaries and 75 micro-dispensaries (which appears to be delivery only), and
  - 10 incubators.
- *There is no minimum number of licenses that must be issued, only a maximum.*
- The second round licenses for new applicants, after the state Attorney General reviews on diversity in the industry, would be issued by May 1, 2024.
  - In the second round, the Division would license no more than the following number of licenses:
    - 25 standard grow licenses and 70 micro-grows
    - 25 standard processors and 70 microprocessors
    - 125 standard dispensaries and 125 micro-dispensaries (which appears to be delivery only)
    - 10 incubators
    - 15 on-site consumption facilities.
  - In the second round, micro-licenses will be limited to social equity applicants.
  - The department would determine if some or all of the other license types would be limited to social equity applicants and/or minority business applicants, based on the results of the disparity study.
  - *There is no minimum number of licenses that must be issued, only a maximum.*
- In subsequent rounds, licensing will be based on a market demand studies, but the total number of licenses issued can never exceed the caps established in the bill.
- For each application period, the Division will give notice at least 60 days prior to accepting applications and then it will accept applications for at least 30 days.

### **Social Equity and Diversity**

- As soon as possible after the law passes, the Division would license one grower who is a recognized class member in the *Pigford v. Glickman* or *In Re Black Farmers* case (Black farmers who the USDA discriminated against in farm loans).
- The Division is required to “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 applications, and to connect potential social equity applicants with the Office of Social Equity.
- Between the first and second round of applications, the state Attorney General will evaluate whether the licenses are diverse, and whether there is the legal basis for remedial measures to assist minorities and women in the cannabis industry.
- Social equity applicants must have 65% ownership and control by individuals who:
  - lived in disproportionately impacted area for at least five of the prior 10 years,
  - attended a public school in a disproportionately impacted area for at least five years, or

- meet other criteria based on a disparity study
- Requires every cannabis business to report on the number of minority and women owners and employees, and the owners' ownership interest. (Does not require any reporting on the number of minority or women employees in management or their pay relative to other workers.)
- Requires new applicants — but not medical businesses that convert — to have a diversity plan that passes muster.
- Creates a Capital Access Program to stimulate opportunities for social equity applicants and to establish low-cost loans. The loans will be no more than 10-years and will not exceed \$500,000. Does not appear to include an allocation for the program.
- Requires cannabis licensees to establish a clear plan for setting reasonable and appropriate minority business enterprise participation goals for procurement.

### **“Social Equity Partnership” Grants**

- The governor will appropriate \$5 million per year for a grant program for ATC-approved “meaningful partnerships” whereby cannabis businesses (typically medical businesses that converted) provide social equity licensees mentorship, training, and/or shared space or equipment.
  - The ATC may approve the cannabis licensee charging social equity licensees costs or fees, if the charges are “substantially reduced” from market rate.
- The ATC will develop rules, issue grants, and administer the program.
  - The ATC will award grants to operational licenses that have partnerships with social equity licenses.

### **Office of Social Equity**

- Creates an Office of Social Equity within the commission.
  - The governor will appoint a director who must have at least five years of experience in civil rights advocacy, litigation, or another area of social justice. The office will have staff and contractors.
- The Office of Social Equity’s duties include:
  - promoting the full participation in the legal, regulated cannabis industry from those most harmed by the War on Drugs
  - consulting and assisting with administering the Community Reinvestment and Repair Fund, soliciting input on how to use the funds. (However, the bill specifies the formula for dispensing funds, which go directly to counties based on residents’ past cannabis arrests, so the office’s role appears limited to a ministerial role of working with the AG to identify the proportion of arrests by each county’s residents)
  - consulting and assisting the Department of Commerce with administering the Cannabis Business Assistance Fund, including soliciting input on how to use the funds, determining who will get loans and grants from it
  - producing reports on how the funds were used, and on community input.

- identifying and opposing regulations that unnecessarily burden or undermine the legislative intent, including those imposing undue restrictions or financial requirements
- making recommendations to the commission on regulations related to diversity and social equity applications
- working with the commission to implement free technical assistance for social equity and minority cannabis business applicants
- producing reports and recommendations on diversity and equity in ownership, management, and employment in the legal cannabis economy
- assisting businesses with obtaining financing through Maryland's Capital Access Program
- The Office of Social Equity is not given a role in approving relationships between social equity applicants and converted medical businesses, or in the grants to those converted business.
- The Office of Social Equity has no authority in determining how many licenses will be issued in rounds one, two, or subsequent rounds, or in determining whether some or all of the standard licenses issued in the second round will be limited to social equity applicants and/or MBEs.

### **On-Site Consumption**

- On-site consumption businesses are only allowed if expressly permitted and licensed by their locality. They must be restricted to adults 21 and older.
- Vaping, smoking, and consumption of infused products is allowed, unless the municipality that authorizes the business does not allow them.
- On-site licensees cannot make cannabis-infused preparations or products themselves.
- On-site licensees cannot serve or allow the consumption of alcohol or tobacco products. They can serve food if they are licensed to do so.
- On-site licensees must require staff to complete a responsible vendor training program. They also must provide informational materials developed by the Cannabis Public Health Advisory Council on the safe consumption of cannabis.

### **Local Control**

- Localities may establish reasonable zoning requirements.
- They could not impose a local tax, prohibit transportation or deliveries, or prohibit medical cannabis businesses within their jurisdictions from converting to serve adults.
- On-site facilities could only operate if it is expressly allowed by the locality, and if the business has a local permit or license to do so.

### **Fees**

- The Division will charge application fees of \$1,000 for micro-licenses and \$5,000 for all other business types.
- The Division will set licensing fees, which last for five years, and cannot exceed 10% of the business' annual revenue.

- The Division may also charge registration and other fees to defray administrative costs, which would go to the Cannabis Regulation and Enforcement Fund.

### **Taxes**

- Taxes for retail sales of adult-use cannabis begin at 6% from July 1, 2023, until June 30, 2024, and increases the rate by 1% each year until it gets to 10% in July 2028.
- Standard sales tax of 6% would also appear to apply.
- This would be one of the lowest cannabis tax rates in the nation.

### **Revenue**

- In addition to covering costs of administration, the revenue will be distributed as follows:
  - 30% to the Community Reinvestment and Repair Fund, until fiscal year 2033, at which point the allocation stops
  - 1.5% to the Cannabis Business Assistance Fund until 2028 at which point the allocation stops
  - 1.5% to counties and municipalities, based on the percent of cannabis revenue generated from them
  - 1.5% to the Cannabis Public Health Fund; and
  - the remainder to the General Fund.

### **Community Reinvestment and Repair Fund**

- Revises language enacted in 2022 slightly.
- Provides that the Comptroller shall distribute the funds to each county proportionate to individuals residing in the county that were charged with a cannabis crime the 20 years prior to January 1, 2023, compared to total individuals charged in the state.
- Each county will enact a law on how to use the funds. Funds may only be used to fund administrative expenses and community-based initiatives that are either intended to benefit low-income communities or that serves an area identified by the office of social equity as a disproportionately impacted area. They may not be used to fund law enforcement.
- Allocates dual-use conversion fees to the fund.

### **Specific Regulations**

- Cannabis advertising cannot include false or misleading statements, include designs that are attractive to minors (including cartoon characters), display cannabis use, promote cannabis use as an intoxicant, or be obscene.
- Electronic or print ads must be limited to where 85% or more of the viewers are 21 or older.
- Billboards and other outdoors signs are prohibited.
- Cannabis workers must be registered with the Division, be at least 21, and undergo a criminal records check. They cannot be rejected for a pre-2023 cannabis conviction.

- Anyone wishing to hold a 5% or greater ownership interest in a dispensary must apply to the department and undergo a criminal records check.
- Workers and investors must not have a conviction for a crime involving moral turpitude.

### **Medical Cannabis Patients**

- Allows patients who are 21 or older to grow four cannabis plants (compared to two allowed for other adults), with a four plant per household cap.
- Patients would be allowed to possess up to 120 grams (just over 4 ounces) of cannabis or 36 grams of THC in infused products.
- Patients could purchase tax-free medical cannabis from any dispensary.
  - Caregivers must purchase cannabis for patients under 18. Patients 18 and older could purchase cannabis themselves.
- A Compassionate Use Fund would provide cannabis at a reduced cost to low-income patients, including veterans. The Division could impose fees on medical cannabis businesses for this fund starting in mid-2025.

### **Cannabis Research and Development**

- Allows universities, colleges, and affiliated medical and biomedical research facilities to register to purchase cannabis from dispensaries for research, including on the efficacy and safety of medical cannabis and genomic research.

### **Legal Protections**

- Provides protections for patients, caregivers, cannabis businesses and their workers, research facilities, and school personnel from arrest, prosecution, parole and probation revocation, civil or criminal penalty or disciplinary action, and denial of any right or privilege. (These protections do not extend to adult consumers.)
- Protects patients and adult-use cannabis consumers from being denied a driver's license, professional license, entitlement, social services, or benefits including housing assistance for lawfully using or testing positive for cannabinoids in urine.
- Protects cannabis consumers from discrimination in child custody unless the person's action endangered the minor.
- Protects cannabis consumers from discrimination in medical care, including organ transplants. Cannabis use can only be considered with evidence-based clinical criteria.
- Protects state and local government employers from being denied employment or a contract based on a prior non-violent cannabis offense that doesn't include distribution to minors.
- Explicitly continues to allow employers to drug test and to fire or otherwise punish those who test positive for metabolites, which can stay in one's system for a month.
- Prevents professional and occupational licenses from being denied for past employment for and providing services to legal cannabis businesses.

### **Limitations**

- Provides that the law does not authorize anyone to:



- use cannabis in a public place or in a motor vehicle
- operate a vehicle, plane, or boat while under the influence
- smoke cannabis in one's own rental home if the landlord, condominium board, or homeowners association prohibits smoking or
- possess cannabis in a detention facility.

### **Prohibits Synthetically Produced Cannabinoids**

- No one who isn't licensed could sell any product with more than 2.5 milligrams of THC per package, and 0.5 grams per serving, unless they are licensed as a cannabis business and comply with regulations on packaging, labeling, and testing.
- Prohibits the sale and distribution of "a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents."

### **Miscellaneous**

- Provides that cannabis contracts are enforceable.
- Prohibits the state banking regulators from penalizing banks and similar institutions for serving cannabis businesses.
- Prohibits the state from cooperating with federal law enforcement in attempts to prosecute financial institutions that serve cannabis businesses.
- The bill would take effect immediately, and as such, would need 3/5 in each chamber.