

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 12

(Chair, Economic Matters Committee)(By Request -
Departmental - Alcohol, Tobacco, and Cannabis
Commission)

Economic Matters

Finance

Cannabis - Sale and Distribution - Tetrahydrocannabinol Offenses

This departmental bill prohibits the sale or distribution of a product that (1) contains tetrahydrocannabinol (THC) if the product violates specified existing statutory and regulatory requirements or (2) is advertised as containing an amount of THC that exceeds an existing specified threshold. A cannabis licensee that violates these restrictions is subject to disciplinary action by the Maryland Cannabis Administration (MCA); any other violator is guilty of a misdemeanor and, on conviction, is subject to a \$5,000 maximum fine. Among its other provisions, the bill (1) authorizes the Executive Director of the Alcohol, Tobacco, and Cannabis Commission (ATCC) to seize, destroy, or confiscate certain illegal products; (2) grants authority to ATCC's Field Enforcement Division to issue citations for specified violations involving THC; and (3) specifies that, in a prosecution for selling THC without an appropriate license, the display or offering of certain THC products for sale is *prima facie* evidence of selling THC. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues beginning in FY 2026 due to the bill's penalty provisions and application of existing penalties. ATCC and MCA can implement the bill with existing budgeted resources. The District Court can address any increase in caseload with existing resources.

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

Small Business Effect: ATCC has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: Unless otherwise specified, “THC” has the meaning stated in § 36-1102 of the Alcoholic Beverages and Cannabis Article. Section 36-1102 defines “THC” as (1) any THC, including delta-8-THC, delta-9-THC, and delta-10-THC, regardless of how derived; (2) any other cannabinoid, except cannabidiol that MCA determines to cause intoxication; and (3) any other chemically similar compound, substance, derivative, or isomer of THC, as identified by MCA.

Prohibitions on the Sale or Distribution of Products Containing (or Advertised as Containing) Tetrahydrocannabinol and Associated Penalties

A person may not sell or distribute a product containing THC that violates the potency, packaging, or labeling requirements prescribed under § 36-203 or § 36-203.1 of the Alcoholic Beverages and Cannabis Article (or any regulations adopted under those sections). A person is also prohibited from selling or distributing a product that is advertised as containing an amount of THC that violates § 36-1102 of the Alcoholic Beverages and Cannabis Article (more than 0.5 milligrams of THC per serving or more than 2.5 milligrams of THC per package). Advertising includes packaging, labeling, or electronic communication.

A cannabis licensee that violates either of these prohibitions is subject to disciplinary action (as specified in § 36-202 of the Alcoholic Beverages and Cannabis Article) by MCA. If a person who is not a cannabis licensee violates one of these prohibitions, the person may be charged by a citation and is guilty of a misdemeanor. On conviction, a violator is subject to a maximum fine of \$5,000.

Expanded Enforcement Authority – Alcohol, Tobacco, and Cannabis Commission

The bill grants additional enforcement powers to the Executive Director and Field Enforcement Division of ATCC.

The Executive Director is authorized to seize, destroy, or confiscate a product that is (1) offered or displayed for sale to a consumer in a location that is not appropriately licensed under Title 36, Subtitle 4 of the Alcoholic Beverages and Cannabis Article (Cannabis Licensing) and (2) contains THC and is sold or distributed in violation of the potency, packaging, and labeling requirements under § 36-203 or § 36-203.1 or is advertised as containing an amount of THC that exceeds 0.5 milligrams per serving or 2.5 milligrams per package.

The Field Enforcement Division is authorized to issue a citation or other charging document to a person who violates § 10-108 of the Criminal Law Article, which prohibits

a person who distributes products containing delta-8-THC or delta-10-THC from distributing, purchasing for sale, or selling such a product to someone younger than age 21.

Evidentiary Presumptions Regarding the Sale of Tetrahydrocannabinol

In a prosecution for selling THC without an appropriate license, proof that a defendant displayed or offered THC for sale, or kept a place of business where THC was displayed or offered for sale, is *prima facie* evidence that the defendant sold THC.

Current Law:

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. Among other things, the Acts (1) created MCA as an independent unit of State government that is responsible for the regulation of medical and adult-use cannabis; (2) attributed cannabis-related duties to the Alcohol and Tobacco Commission and renamed it ATCC; (3) developed a licensing framework for the regulated sale of cannabis; and (4) established a 9% sales and use tax on the sale of adult-use cannabis. The sale of adult-use cannabis began on July 1, 2023.

Cannabis Licensees

Licenses and Renewals: 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. 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.

Violations and Disciplinary Actions: A cannabis licensee is subject to announced and unannounced inspections by MCA to verify the licensee's compliance with Title 36 of the Alcoholic Beverages and Cannabis Article. If it is determined that a violation of Title 36 (or a regulation adopted under the title) has occurred, MCA is required to suspend, fine, restrict, or revoke the licensee's licenses and registrations, whether active, expired, or surrendered, or impose any authorized penalty.

Restrictions on Selling or Distributing Cannabis

Packaging and Labeling Requirements: A package of cannabis for distribution to a consumer or qualifying patient must conform to child-resistant packaging requirements

established under federal regulations and tamper-evident packaging. The packaging and labeling must include:

- a finished product lot number and expiration date, if applicable;
- a statement (1) that consumption of cannabis may impair your ability to drive a car or operate machinery, use extreme caution; (2) of potential risks associated with cannabis use, especially during pregnancy or breast feeding; and (3) that this package contains cannabis, keep out of the reach of children and animals;
- the name, address, and phone number of the dispensary that sold the product to report an adverse event;
- any allergen warning required by law;
- a listing of noncannabis ingredients; and
- an itemization, including weight, of all cannabinoid and terpene ingredients specified for the product and concentrations of any cannabinoid of less than 1% printed with a leading zero before the decimal point.

Cannabis labeling and packaging may not include:

- any image that may appeal to children, including images of food, candy, baked goods, cereal, fruit, and beverages and a resemblance to the trademarked characteristic product-specialized packaging of any commercially available candy, snack, baked good, cereal, or beverage;
- any image that is designed or likely to appeal to minors, including cartoons, toys, animals, children, or any likeness to images, characters, or phrases that are popularly used to advertise to children;
- a statement, artwork, or design that could reasonably mislead any individual to believe that the packaging contains anything other than a finished cannabis product; and;
- any image of a seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any individual to believe that the product has been endorsed, manufactured, or used by any agency of a state or political subdivision.

Current regulations specify that all items must be individually packaged by a licensed grower or processor prior to distribution to any licensed dispensary for retail sale and specify various requirements for this packaging. Current regulations also prohibit any product labeled and sold in accordance with MCA regulations from bearing specified visual properties, claims regarding health or physical benefits to the consumer, and false or misleading statements. Labels, marketing layers, or any other aspect of the product package are prohibited from obscuring any warnings, statements, or information required under the regulations. In addition, products are prohibited from targeting or being designed to appeal to any individuals younger than age 21.

Limitations on Tetrahydrocannabinol Potency: A person may not sell or distribute a product intended for human consumption or inhalation that contains more than 0.5 milligrams of THC per serving or more than 2.5 milligrams of THC per package unless the person is a cannabis licensee and the product complies with specified manufacturing, testing, packaging, and labeling standards. Even if licensed, a person may not sell or distribute the THC products specified above to an individual younger than age 21. A violator may be charged by citation and is guilty of a misdemeanor, punishable by a fine of up to \$5,000.

Age Restrictions: Section 10-108 of the Criminal Law Article prohibits a person who distributes products containing delta-8-THC or delta-10-THC from distributing, purchasing for sale, or selling such a product to any individual younger than age 21. In a prosecution for a violation, it is a defense that the defendant examined the purchaser's driver's license or other valid government-issued identification that positively identified the purchaser or recipient as being at least age 21. A violator is guilty of a misdemeanor and, on conviction, is subject to a fine up to \$300 for a first violation, \$1,000 for a second violation that occurs within two years of the first violation, and \$3,000 for each subsequent violation that occurs within two years of the preceding violation.

Evidentiary Presumptions Regarding the Sale of Alcoholic Beverages (Extended to Apply to Tetrahydrocannabinol under the Bill)

In a prosecution for selling alcoholic beverages without an appropriate license, proof that a defendant displayed or offered alcoholic beverages for sale, or kept a place of business where alcoholic beverages were displayed or offered for sale, is *prima facie* evidence that the defendant sold alcoholic beverages.

Charging by Citation

In addition to any other law allowing a crime to be charged by citation, a police officer (which is defined to include an authorized member of the Field Enforcement Division of ATCC) *must* charge by citation for (1) any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment; (2) any other misdemeanor or local ordinance violation not involving serious injury or an immediate health risk for which the maximum penalty of imprisonment is 90 days or less, except for failure to comply with a peace order or protective order, violation of a condition of pretrial or posttrial release, possession of an electronic control device after conviction of a drug felony or a crime of violence, violation of an out-of-state domestic violence order, or abuse or neglect of an animal; or (3) possession of cannabis.

In addition to any other law allowing a crime to be charged by citation, a police officer *may* also charge by citation, as specified, for (1) sale of an alcoholic beverage to an underage

drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; (3) misdemeanor theft of property or services with a value of at least \$100 but less than \$1,500; (4) possession of a controlled dangerous substance other than cannabis; (5) possession with intent to distribute cannabis; or (6) growing or manufacturing cannabis or a cannabis product.

A police officer may charge a defendant by citation *only if* (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for an alleged misdemeanor involving serious injury or immediate health risk or an alleged felony arising out of the same incident; (5) the defendant is not subject to arrest based on an outstanding arrest warrant; and (6) the defendant complies with all lawful orders by the officer.

A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Alcohol, Tobacco, and Cannabis Commission

Chapters 254 and 255 reconstituted the Alcohol and Tobacco Commission as ATCC and clarified the powers and duties of ATCC. The Acts established cannabis-related duties for ATCC, including developing best practices for regulating the cannabis industry; implementing public health measures related to cannabis; and regulating, to the extent possible, medical and adult-use cannabis in a similar manner.

The Field Enforcement Division within the Office of the Executive Director of ATCC is charged with enforcing the Alcoholic Beverages and Cannabis Article. The officers and employees of the Field Enforcement Division, who must be sworn police officers, are vested with the powers, duties, and responsibilities of peace officers to enforce provisions of the Alcohol Beverages and Cannabis Article relating to, among other things, the unlawful importation of alcoholic beverages, tobacco, and cannabis into the State and the unlawful manufacture of those products in the State.

As required under Chapters 254 and 255, in June 2023, ATCC and MCA entered into a memorandum of understanding providing that both entities agreed to collaborate on enforcing laws and regulations regarding unlicensed cannabis operations in the State.

Background: ATCC advises that the intent of the bill is to reduce the volume of illicit cannabis products that are currently available to Maryland consumers. Specifically, ATCC advises that the bill's provisions related to labeling requirements, potency restrictions, and

the authorization for ATCC to charge specified violations via citation will assist in this effort.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from fines imposed in cases heard in the District Court and from fines imposed in the District Court for violations of an existing prohibition that are charged by citation as a result of the bill.

The bill is not anticipated to materially affect cannabis-related sales and use tax revenues.

Additional Information

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

Designated Cross File: SB 214 (Chair, Finance Committee)(By Request - Departmental - Alcohol, Tobacco, and Cannabis Commission) - Finance.

Information Source(s): Anne Arundel, Baltimore, Charles, Dorchester, Garrett, and Howard counties; Maryland Association of Counties; Alcohol, Tobacco, and Cannabis Commission; Maryland Cannabis Administration; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2025
js/aad Third Reader - March 7, 2025
Revised - Correction - March 19, 2025

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Cannabis - Sale and Distribution - Tetrahydrocannabinol Offenses
BILL NUMBER: HB 12
PREPARED BY: Jeffrey Hann, ATCC, Assistant Director of the Legal and Legislative Division

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

Businesses that operate in the illegal market may incur revenue loss related to the sales of illicit cannabis products. However, it was the intent of the legislature that cannabis sales occur only within the commercial market that the General Assembly created via the Cannabis Reform Act. This bill supports Maryland's small business owners, specifically businesses that are engaged in Maryland's commercial cannabis market by seizing cannabis products in the illicit market.