

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. Senate Bill 1182

PRINTER'S NO. 2324

AMOUNT
No Adverse Fiscal Impact

FUND
General Fund

DATE INTRODUCED
January 15, 2014

PRIME SPONSOR
Senator Folmer

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 1182 creates the Medical Cannabis Act which provides a mechanism to allow health care providers to recommend the use of marijuana for medical purposes.

State Board of Medical Cannabis Licensing:

SB 1182 establishes the State Board of Medical Cannabis Licensing within the Department of State. The board consists of the Secretary of Health, the Commissioner of the Bureau of Professional and Occupational Affairs, the Secretary of Public Welfare, two public members, one representative of a hospital, two members who are physicians representing specialties that utilize medical marijuana, two members who are registered nurses and a nurse practitioner. Each public and professional member must be appointed by the Governor with consent of the Senate. The board must meet at least once per month for the first 12 months of the board's existence. After the first year, the board must meet at least six times per year but may meet more frequently.

The board has these powers and duties:

- To license medical cannabis growers, processors, and dispensers.
- To issue occupation permits to employees of growers, processors and dispensers of medical cannabis (MC).
- To issue certificates to laboratories which test MC.
- To issue, deny, renew, reinstate or refuse to renew, suspend and revoke licenses, certifications of testing laboratories and occupation permits.
- To implement procedures to allow the expansion of qualified medical conditions for which a patient may obtain MC.
- To administer and enforce the provisions of this act.
- To conduct background checks and otherwise investigate applicants for licenses or occupation permits.
- To establish fees for licenses and occupation permits.
- To keep minutes and records of each transaction and proceeding.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- To provide standards for dispensaries of MC so a professional appearance is maintained.
- To develop or utilize a prescription monitoring program for use by a health care practitioner to review patient's pharmaceutical history.
- To develop a system to ensure MC dispensers are able to verify MC access cards.
- To establish a MC registry to ensure adequate availability of different strains and concentration of MC.
- To develop regular inspection schedules, unannounced inspections, procedures and other enforcement measures to regulate all MC growers, processors and dispensers.
- To inspect premises occupied for the production, preparation, testing, packaging, processing, storage, sale, distribution and transport of MC.
- To develop standards and requirements for the implementation, use and maintenance of security systems.
- To submit annually to the Department an estimate of financial requirements.
- To develop a system for mandatory and voluntary recall of defective products or MC.
- To develop an inventory tracking system to be used by all licensees.
- To promulgate regulations, including:
 - Allowing institutions of higher education to conduct studies on the health benefits of MC.
 - Determination of required quality and safe clinical strength of MC.
 - Advertising and marketing of MC.
 - Containers, tracking and testing.
 - Packaging and labeling.
 - Develop a process to expand eligible medical conditions.
 - Consult information published by the American Herbal Pharmacopeia.
 - Enforce regulations.
 - Submit annual report.

In addition to promulgating regulations, the board must adopt a schedule of civil penalties for operating without a current license or occupation permit or for other violations of the act. The board has the power to revoke licenses for violations of the act, for refusing to adhere to an order of the board, or for conviction of a criminal offense. The board may also issue cease and desist orders, order restitution, or issue a letter of reprimand or censure.

The board may levy a civil penalty of not more than \$25,000 for a violation of the act, or impose a civil penalty of not more than \$15,000 if a person aids the unlicensed growing, processing, distribution or dispensing of MC. The board may also assess the cost of the investigation against the person.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

The board has the ability to set the fees to ensure that all of the fees, fines and civil penalties are sufficient to at least cover the board and enforcement projected expenses.

Licensing of Growers of MC:

Growers of MC are licensed to supply MC for distribution to processors and dispensers and are limited to no more than 65 licenses. The cost of a license for a grower of MC is \$50,000. The license must be renewed annually. The cost of renewal is \$5,000. The licensure fees are deposited in the General Fund and the renewal fees are deposited in the Professional Licensure Augmentation Account.

There is no restriction on the strains of MC that may be grown. However, genetically modified organisms may not be used by growers.

Growers may only grow MC using conventional methods in an indoor, enclosed secure facility. Further, growers must test MC and submit to random tests of the board, must package and label MC in accordance with regulations promulgated by the board, must only sell or deliver MC to a processor, a laboratory, or a dispenser, and must keep accurate records.

Licensing of Processors of MC:

SB 1182 provides for the licensure of processors of MC. Licensees process the MC into "oil-based medical cannabis products" and are limited to no more than 65 licenses. The licensure fee is \$50,000. The cost of renewal of a license is \$5,000.

A processor of MC must:

- Only use extraction and processing methods approved by the board.
- Conduct quality testing utilizing a laboratory approved by the board.
- Only sell, transport or deliver MC to either a laboratory or a dispenser.
- Maintain accurate records.

Licensing of Dispensers of MC:

Under SB 1182, the board licenses up to 130 dispensers of MC. The dispensers shall accept MC access cards and dispense MC to patients with qualifying medical conditions in accordance with a health care practitioner's instructions. The fee for a license is \$50,000. The fee for renewal of a license is \$5,000.

A dispenser of MC must:

- Maintain a system to verify MC access cards.
- Maintain a record of all MC dispensed. The records shall include the name of the patient, the amount dispensed, and the date the MC was dispensed.
- Maintain premises that meet the approval of the board. The MC may not be visible from the entry way to an individual who is not an employee or owner or operator of the premises.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- Maintain a security system as required by the board.
- Provide that a registered nurse supervise the dispensing of MC.
- Maintain accurate records.

Licensing of Owner or Operator:

SB 1182 requires that an "owner or operator" be licensed. The application for a license must have verification of status as an owner or operator from a medical cannabis dispenser, grower or processor. The bill defines the term "owner or operator" as an officer, principal, owner or director of the MC grower, processor or dispenser licensed under section 505; or a person who directly holds a beneficial interest in or has controlling interest in an applicant or licensee; or a person who has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee.

Occupation Permit for Employees and Certain Authorized Providers:

SB 1182 requires each MC employee, and each authorized provider who is not a parent or guardian of a patient to obtain an occupation permit from the board.

Location:

SB 1182 specifies that each license for a grower, processor or dispenser is valid only for the specific location for which the license is granted. A person may not distribute MC other than from a licensed facility. The zoning of MC shall be classified as a normal agricultural operation under the Right-to-Farm Law. Facilities for the manufacturing, preparation and production of MC shall meet the same zoning and land use requirements as other manufacturing, preparation and production facilities. Facilities for the dispensing of MC shall meet the same zoning and land use requirements as other commercial facilities. An owner may petition the board to move the facility.

Disposal and donation:

In addition, SB 1182 provides that an MC dispenser, grower or processor may donate MC that has been purchased or produced and tested in this Commonwealth in accordance with this act and is in new and unopened condition and can only be donated for researching purpose to an accredited research institution, university or college within this Commonwealth and recognized by the Commonwealth.

Testing Laboratories:

The board may certify laboratories to test MC. A grower and processor of MC must utilize a certified laboratory before they may sell MC.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Access Card:

SB 1182 provides that a person with a qualified medical condition may apply to the Department of Health (DOH) for an MC access card.

Applications for an MC card shall be developed by DOH. Renewal is required on an annual basis. A patient representative may obtain an MC access card on behalf of a patient. The application must include a certification that the patient has a qualified medical condition. DOH must approve or deny the application within 90 business days. An application fee of no more than \$100 shall be charged and an annual renewal fee of not more than \$50.

The bill provides that a person must reside within the Commonwealth to obtain a card. However, the bill allows for reciprocity among other states that issue MC access cards. Upon the approval of DOH, a person registered in another state will be issued an MC access card authorizing the person to use MC within the Commonwealth.

If an authorized provider is no longer employed with a recognized health care facility, the authorized provider's access card is null and void. A health facility shall notify DOH if the authorized provider is no longer employed.

Freedom from Arrest:

SB 1182 provides the following with respect to persons who use MC or who are authorized providers of MC:

- Freedom from arrest for use of MC in accordance with the act. Law enforcement may not unreasonably detain, question or arrest a person with an MC card.
- A rebuttable presumption that a person is engaged in MC use if the person possesses a MC card. The presumption may be rebutted by evidence that the conduct related to MC was not related to a patient's qualified medical condition.
- Use of MC is an affirmative defense to a prosecution involving MC unless the person is in violation of the act.
- Possession or application for an MC access card may not alone constitute probable cause to search a person or a person's property.
- Law enforcement may not destroy, damage or alter a person's supply of MC if the person is in possession of an MC card.

Health Insurance:

SB 1182 provides that nothing in this act shall be construed to require medical assistance or private health insurer to reimburse a person for the costs associated with MC.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Protection, Prohibitions and Enforcement:

SB 1182 provides:

- For the purposes of medical care, including transplantation of organs, a person's authorized use of MC shall be considered the equivalent of the use of other medicine used under the direction of a health care provider. MC may not be considered an illicit substance or otherwise disqualify a patient from medical care.
- A person may not be denied child custody due to use of MC.
- A person may not be presumed to neglect or endanger a minor child due to use of MC, unless the person's behavior creates an unreasonable danger to the safety of the minor by clear and convincing evidence.
- A landlord may not refuse to lease or otherwise penalize a person because of possession of an MC card or for using MC, unless the landlord would lose a monetary or licensing-related benefit under federal law or regulation.
- A school may not refuse to enroll or penalize a person because of a possession of an MC card or for using MC, unless the school would lose a monetary or licensing-related benefit under federal law or regulation.
- An employer may not discriminate against a person in the hiring or termination of a person due to possession of an MC card. However, the employer can take the possession of an MC card into account if the employer can prove the person is abusing or misusing MC on the premises of the place of employment during ordinary hours of employment or if failure to do so would cause an employer to lose licensing benefit under federal law or regulation. A positive test for marijuana may not be considered by an employer unless the person unlawfully used, possessed or was impaired by the MC while on the premises of the place of employment or during the hours of employment.

Prohibitions and Use:

SB 1182 provides the following:

- No individual may operate or drive a motor vehicle, an aircraft, a motor boat, or heavy machinery with more than 10 nanograms of THC in their system
- No individual may undertake any task under the influence when doing so would constitute negligence or professional malpractice.
- No individual may smoke MC.
- MC may be used in any public place, including public transportation, on school grounds, in a correctional institution or a public park or beach.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Unlawful Activities:

SB 1182 provides that it is a criminal offense to (1) grow, process, or dispense MC without a license; (2) transport MC from or between an unlicensed grower, processor, or dispenser; (3) grow, process or dispense MC in violation of the act; (4) fail to pay a fee under the act; or (5) violate a regulation of the board. The penalties of false swearing apply.

Enforcement:

SB 1182 provides that in order to enforce the act, the following is permitted:

- Uniformed law enforcement officers may arrest on view, but not in private homes, or arrest with a warrant a person who is engaged in: (1) unlawful distribution or sale of MC; (2) unlawful importation of MC; (3) unlawful manufacture of MC; (4) unlawful possession of MC; or (5) unlawful growing of MC.
- Uniformed law enforcement officers may arrest on view, except in private homes or with a warrant, a person whom the officer, "while in the performance of assigned duties under the act and regulations promulgated under this act," observes to be in violation of a number of provisions of the Crimes Code, including causing or risking catastrophe, criminal mischief, forgery, disorderly conduct, or carrying a false identification card.
- Uniformed law enforcement officers may, upon "reasonable and probable cause with a warrant, except in private home," search and seize: (1) MC which is unlawfully possessed; or (2) equipment or vehicles used in the unlawful manufacture, sale or transportation of MC. Unlawful material seized shall be as provided in the act and as set forth in regulations promulgated by the board.
- A uniformed law enforcement officer may arrest a person engaged in any of the following offenses when the offenses are committed against the officer while the officer is performing assigned duties under this act and the regulations promulgated under this act: (1) simple assault; (2); aggravated assault; (3) recklessly endangering another person; (4) terroristic threats; (5) harassment; (6) resisting arrest; and (7) causing a riot.
- Uniformed law enforcement officers may serve and execute warrants and subpoenas.
- Uniformed law enforcement officers may arrange for the testing of blood or urine.
- Uniformed law enforcement officers may issue citations for a violation of the act, a violation of a regulation of the board; or violation of another law of this Commonwealth.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

Criminal Penalties and Fines:

A grower, processor or dispenser that provides MC to anyone other than a person with an MC card commits a felony of the third degree. A person who falsifies an application or certification commits a misdemeanor of the first degree. Otherwise, a violation of the act is graded as a misdemeanor of the second degree. A second or subsequent offense is graded as a felony of the third degree.

Surcharge on the purchase price of MC:

SB 1182 imposes a six percent surcharge on the purchase price of medical cannabis at the time the medical cannabis is first sold to a medical cannabis dispenser. If the surcharge is not collected by the seller from the medical cannabis dispenser, the surcharge is imposed on the medical cannabis dispenser at the time of purchase. Only one sale shall be surcharged and used in computing the amount of surcharge due.

The Department of Revenue will collect and administer the medical cannabis surcharge, and collections from the surcharge will be deposited into the General Fund. Senate Bill 1182 establishes an administration and enforcement system with regard to surcharge collections, reporting and recordkeeping, filing deadlines, appeals, penalties, etc. A medical cannabis purveyor is required to obtain an annual license from the Department of Revenue and pay a seventy-five dollar licensing fee in order to sell medical cannabis to a dispenser.

Miscellaneous Provisions:

SB 1182 provides that:

- The board shall promulgate regulations.
- The board shall promulgate temporary regulations, which shall expire within two years of promulgation. The temporary regulations shall not be subject to the Regulatory Review Act, the Commonwealth Documents Law, or the Commonwealth Attorneys Act. The board must begin publishing temporary regulations within six months of the effective date of the act.

This act shall take effect in 60 days.

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

FISCAL IMPACT:

SB 1182 will have no adverse impact on the Commonwealth's General Fund. In Fiscal Year 2014-2015, the Commonwealth is estimated to collect a total of \$38.52 million from \$13.00 million in license fees under the Department of State and \$25.52 million in MC access card application fees under the Department of Health. In the following Fiscal Years, the Commonwealth is estimated to collect a total range of \$19.06 million to \$44.06 million from \$1.30 million in license renewal fees under the Department of State, \$5.00 million to \$30 million in surcharge collected by Department of Revenue and \$12.76 million in MC access card renewal fees under the Department of Health. This revenue will be used to cover all of the cost to implement this act.

Department of State License:

The limited number of licenses for MC growers is 65, processors is 65 and dispensers is 130. Based upon a license fee of \$50,000 each, the Commonwealth will collect \$3.25 million for growers, \$3.25 million for processors and \$6.50 million for dispensers for a total of \$13.00 million. Based upon the annual renewal fee of \$5,000, the Commonwealth will collect \$0.325 million for growers, \$0.325 million for processors and \$0.650 million for dispensers for a total of \$1.30 million annually.

Department of Health MC Access Card:

Assuming 2% (comparable to Colorado's MC patients) of Pennsylvania's population (12.76 million), Department of Health would receive 255,200 applications. The initial application fee of \$100 will generate \$25.52 million and the renewal fee of \$50 will generate \$12.76 million. This revenue assumption is based upon the 2% participation rate in Pennsylvania.

Department of Revenue Surcharge:

The implementation of Senate Bill 1182 likely will not take effect in time to have substantial medical cannabis sales subject to a surcharge during fiscal year 2014-15. Therefore, the General Fund fiscal impact for FY 2014-15 is expected to be minimal. For fiscal years 2015-16 and thereafter, the medical cannabis surcharge is expected to generate General Fund revenue in an amount between \$5 million and \$30 million per year.

The revenue estimate is based upon revenue collections received from the sales of medical cannabis in other states such as Colorado and Arizona. Colorado has the largest state-regulated dispensary program in the nation, and the state has approximately 110,000 registered medical cannabis patients. Even though Arizona's overall population exceeds the population of Colorado by more than one million residents, Arizona has approximately 29,000 patients, or only 26.4% of the amount of patients in Colorado. The significant discrepancy in state-by-state medical cannabis revenue collection statistics makes it difficult to arrive at a more precise revenue estimate.