

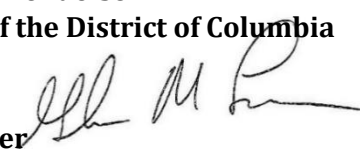
Government of the District of Columbia  
Office of the Chief Financial Officer



**Glen Lee**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Glen Lee  
Chief Financial Officer 

**DATE:** December 6, 2022

**SUBJECT:** Fiscal Impact Statement – Medical Cannabis Amendment Act of 2022

**REFERENCE:** Bill 24-113, Draft Committee Print as provided to the Office of Revenue  
Analysis on December 1, 2022

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**Conclusion**

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$706,000 in fiscal year 2023 and \$8.8 million over the four-year financial plan period. These costs are related to the bill's provisions to issue grants and loans, enforce against businesses that continue to operate illegally, enhance a Department of Health (DOH) behavioral health survey, and tax changes allowing increased business deductions and an annual sales tax holiday. These provisions are subject to the inclusion of these costs in an approved budget and financial plan.

The Board and ABCA will implement the bill's changes directly related to the administration of the medical cannabis program with the agencies' existing budgeted resources, and these provisions can be implemented upon the bill's approval.

**Background**

The District has administered and regulated a medical marijuana program since 2010. In fiscal year 2021, the District transferred administration and regulation of the program from the Department of Health to the Alcoholic Beverage Control Board and the Alcoholic Beverage Regulation Administration (ABRA).<sup>1</sup>

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<sup>1</sup> Medical Marijuana Program Administration Amendment Act of 2020, effective December 3, 2020 (D.C. Law 23-149; D.C. Official Code 25-204.02).

The bill changes the name of the Alcoholic Beverage Control Board to the Alcoholic Beverage and Cannabis Board (Board) and changes the name of the ABRA to the Alcoholic Beverage and Cannabis Administration (ABCA). It also renames the medical marijuana program the medical cannabis program. The bill expands the definition of a qualifying medical marijuana patient to allow a patient to self-certify<sup>2</sup> that they have a qualifying medical or dental condition and expands the length of registration or licensing for individuals and entities<sup>3</sup> from one year to two years, while giving ABCA the authority to set some registration terms at one, two, or three years if established in rules. The bill provides a new non-resident, 30-day registration card for non-resident qualified patients to temporarily access the District's medical cannabis market. The bill enhances the disclosures that a testing laboratory must make to cultivation centers and manufacturers to include the presence of mold, mildew, pests, mycotoxin, pesticides, or heavy metals and requires manufacturers to send processed medical cannabis products to a testing laboratory prior to selling them to qualifying patients and caregivers. The bill requires ABCA to include information about harm reduction strategies in its medical cannabis-related educational materials. The bill maintains that retailers and internet retailers should offer medical cannabis to approved lower income patients on a sliding scale, but repeals a requirement that they dedicate a certain percentage of their gross revenues to the program. The bill enhances the relevant Councilmember and Advisory Neighborhood Commissions (ANC) notification of new cultivation centers, manufacturers, retailers, internet retailers, or testing laboratory requirements by expanding notice from 30 days to 45 days and establishing procedures for ANC protests and settlements. The bill expands the annual ABCA reporting requirement to Council to include the number of qualified patients, the location of registered establishments, the amount of cannabis harvested, the dollar amount of medical cannabis sold, and data on violations of the law or related rules.

The bill ensures that a qualifying patient, including a minor,<sup>4</sup> can purchase or obtain medical cannabis and related paraphernalia in addition to possessing and using these products and items. The bill also ensures a caregiver can obtain and administer medical cannabis and paraphernalia in caring for a qualifying patient. The bill prohibits ABCA from requiring a background check when registering a caregiver. The bill provides a reprieve to continue participating in the medical cannabis program to any qualifying patient or caregiver whose ABCA registration expired between March 1, 2020 and March 31, 2023 and has not been renewed. A qualifying patient or caregiver must be properly registered after April 1, 2023 and the bill authorizes the Board to provide alternative and additional methods of temporary or permanent registration in order to obtain medical cannabis from a registered retailer or internet retailer.

The bill increases the amount of dried medical cannabis that a qualified patient or caregiver can possess at any given time from two ounces to eight ounces. The bill expands the locations where a qualified patient can administer medical cannabis to include newly established safe use treatment facilities and a school in which they are enrolled. The bill eases the ability for an authorized practitioner to recommend medical cannabis by eliminating requirements that the practitioner have a bona fide relationship with the qualifying patient, review approved alternatives to medical

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<sup>2</sup> A patient self-certifying with ABCA must be 21 years of age or older and fill out an ABCA form with the bill's prescribed attestation.

<sup>3</sup> Entities include cultivation centers, manufacturers, retailers, internet retailers, couriers, testing laboratories, and any related officers, employees, directors, agents, incorporators, and members.

<sup>4</sup> Minor patients must receive a recommendation from an authorized practitioner, be registered with ABCA, and provide a signed statement from their parent or guardian.

cannabis, and includes an explicit statement that medical cannabis is necessary to treat the qualifying condition.

The bill redirects all gross receipts tax<sup>5</sup> revenues from the sale of medical cannabis from the Healthy DC and Health Care Expansion Fund<sup>6</sup> to the Medical Cannabis Social Equity Fund<sup>7</sup> beginning October 1, 2026. The bill establishes an annual cannabis sales tax holiday called the "4/20 Medical Cannabis Sales Tax Holiday Week," from April 15th through April 24<sup>th</sup>. The bill also authorizes medical cannabis businesses to deduct ordinary and necessary expenses from District income taxes where they are not authorized to do so under federal income tax rules.<sup>8</sup> The bill authorizes a retailer or internet retailer to deduct as losses sales to reduced fee qualified patients from District income taxes. A retailer or internet retailer can only deduct these losses if they exceed twelve percent of their sales to all qualified patients and only up to a maximum of a twenty percent loss.

The bill authorizes the Department of Small and Local Business Development (DSLBD) to provide equity, grants, and loans to social equity applicants and medical cannabis certified business enterprises seeking to enter and operate in the District's medical cannabis industry. DSLBD can fund these financial supports from the Medical Cannabis Social Equity Fund. The bill requires DSLBD to annually report to the Mayor and the Council detailing the financial assistance provided and the recipients of the assistance.

The bill updates the various establishment license categories: cultivation centers,<sup>9</sup> manufacturers, retailers, internet retailers, and testing laboratories; including making each license valid for three years. The bill establishes the respective legal authority to possess, grow, purchase, distribute, or manufacture medical cannabis and related products for each of the license categories. The bill establishes the prohibitions and allowances for a licensee to hold an interest in other licensees within their own or other categories; limits on the number of licenses held; the parameters for transferring ownership; and how ABCA should treat criminal convictions of a director, officer, member, or incorporator of a licensed establishment. Consistent with the bill's change to possession limit, the bill increases the amount of medical cannabis a retailer or internet retailer can dispense from two ounces to eight ounces. The bill also eliminates a 1,000 plant limit for a cultivation center. The bill enumerates the information that a social equity or medical cannabis certified business enterprise must affirm when applying for any medical cannabis license and establishes penalties for straw ownership<sup>10</sup> of up to \$30,000. The bill sets aside at least 50 percent of any new retailer, courier, internet retailer, and manufacturer's licenses for social equity applicants and requires ABCA to waive 75 percent of any ABCA annual or renewal license fees for these applicants for the first three years of their operation. The bill creates a one-year conditional license for any social equity applicant or medical cannabis certified business enterprise that does not yet have a proposed location and enumerates the information that the applicant must submit to ABCA during the conditional license

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<sup>5</sup> D.C. Official Code § 47-2002(a)(7).

<sup>6</sup> Hospital and Medical Services Corporation Regulatory Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-192; D.C. Official Code § 31-3514.02).

<sup>7</sup> Medical Cannabis Social Equity Fund Establishment Amendment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 7-1671.08b).

<sup>8</sup> D.C. Official Code § 47-1803.03(a).

<sup>9</sup> The bill allows a cultivation center licensed as of the bill's effective date to automatically receive a manufacturer's license as long as it pays the applicable licensing fees.

<sup>10</sup> A straw owner is one that, without the benefits or risks of true ownership, allows themselves to be named an owner for a fee to satisfy a government regulatory requirement.

period.<sup>11</sup> After one year from the bill's effective date, the Board can limit the number of retailers or internet retailers in any Ward, Advisory Neighborhood Commission (ANC), or ANC single member district. The bill also ensures that ABCA can issue rules to regulate all license categories.

The bill establishes a new courier license for any third-party seeking to deliver medical cannabis and medical cannabis products or paraphernalia on behalf of a retailer or internet retailer directly to a qualifying patient or caregiver. The bill sets the operational guidelines for a courier licensee including that a courier must affirm that the recipient of medical cannabis is the registered recipient, how cash and cannabis must be stored or controlled in the courier's vehicle, and the types of locations where a courier can deliver products. The bill makes a courier's license valid for three years and sets the license application fee at \$1,000 and annual registration fee at \$2,000.

The bill establishes a safe use treatment facility endorsement for a retailer's license that allows a retailer to host on-site treatment (use). A licensed retailer must establish a separate and secure location on the premises and restrict access and consumption only to qualified patients and caregivers. Qualified patients and caregivers can only consume or administer cannabis purchased at retailers holding the endorsement, and they must be able to securely take home any unconsumed cannabis. The safe use treatment facility must be properly ventilated<sup>12</sup> and provide a separate, smoke-free location for employees to monitor the facility. The bill also allows the holder of a retailer's license with a safe use treatment facility to offer or sell food that does not contain cannabis and offer recorded or background music. The bill sets a minimum initial application fee for this endorsement at \$1,000 and a minimum annual endorsement fee of \$2,000.

The bill establishes an education tasting endorsement, which allows a retailer to offer on-site cooking classes, how-to classes, and tastings for educational purposes to qualified patients and caregivers. The bill allows a licensed retailer with this endorsement to offer activities anywhere on the licensed premises, unless the activity involves smoking cannabis in which case the activity must occur in a safe use treatment facility. The bill prohibits participants in an educational event from taking home any of the tasting products and the dispensary must destroy any unconsumed tasting products. The bill establishes time of day restrictions for educational activities and sets a minimum initial application fee for this endorsement at \$130 and a minimum annual endorsement fee of \$130.

The bill establishes a delivery endorsement for retailers<sup>13</sup> to offer both curbside pickup and delivery to qualified patients and caregivers at residences and non-government commercial locations in the District. The bill requires the delivering retailer to only use its own employees or a licensed courier for delivery and verify recipient identities for all deliveries, similar to a courier licensee. The Board can limit the number of delivery vehicles and set delivery frequency restrictions by regulation. The bill also establishes the parameters for curbside pickup, including a requirement that all curbside transactions take place in view of the dispensary's video surveillance system. The bill sets a minimum initial application fee for this endorsement at \$300 and an annual minimum endorsement fee of \$300.

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<sup>11</sup> A business issued a conditional license is unable to transfer the permanent license for two years unless it is to another social equity applicant or medical cannabis equity enterprise.

<sup>12</sup> An applicant's application must include a detailed ventilation proposal.

<sup>13</sup> Internet retailers are not required to get a delivery endorsement.

The bill establishes a summer garden endorsement for a licensed retailer that also has a safe use treatment facility endorsement. The summer garden endorsement allows a retailer to sell, serve, or allow the consumption of medical cannabis on outdoor private space. The bill establishes operational hours for a summer garden endorsement and sets a minimum application fee of \$300 and a minimum annual license fee of \$300.

The bill creates a process for unlicensed retail or internet retail establishments currently operating to become licensed during a 60-day application period. An unlicensed retailer must not be in a residential district, close to a school, or within 400 feet of an existing retailer. The unlicensed retailer must have an active business license and certificate of occupancy as of April 5, 2022 and qualify as a social equity applicant. An unlicensed internet retailer must also show that it is up to date with paying its business taxes and not open to the public. ABCA should publicly post a list of unlicensed retailers that apply for licenses and notify the relevant Councilmember and ANC; allowing an ANC to file a protest and receive a hearing. Unlicensed retailers do not need to comply with the bill's other requirements and they are not eligible for a conditional license while their application is pending. If an application submitted by an unlicensed retailer is denied, then the retailer must close within 30 days.

After ABCA licenses businesses under the 60-day application period for unlicensed businesses, the bill establishes a fine, property sealing, remediation, and adjudication process for any business that continues to sell cannabis without a proper license. The bill requires these businesses to submit a remediation plan to the Department of Licensing and Consumer Protection (DLCP) that outlines how the business will prevent future occurrences of illegal cannabis sales. The fees are \$10,000 for a first offense and \$20,000 for any subsequent offense. The bill also requires the Mayor to send a notice to the commercial property owner to alert them of the illegal activities and their liability for those activities. If a business on the property owner's property has a subsequent violation, the property owner is subject to a fine of \$10,000 and must submit a remediation plan to DLCP. The bill dedicates the first \$100,000 of both the business and property owner fines to the Office of the Attorney General's (OAG) Litigation Support Fund<sup>14</sup> and any additional fine revenues to the Medical Cannabis Social Equity Fund.

The bill makes several additional changes related to the enforcement of cannabis laws and regulations. The bill ensures that all cannabis activities are subject to criminal fine for fraudulent representation to law enforcement. The bill requires the Board to submit to Council for 90-day review a schedule of civil fines, penalties, and fees and makes the Board responsible for adjudicating cannabis related civil fines. The bill authorizes the Board and the Mayor to issue cease and desist orders to anyone violating medical cannabis industry laws or regulations in a way that caused or could cause immediate harm to the public. The bill establishes the process around the issuance and adjudication of a cease and desist order.

The bill repeals an authorization for the Boards of Medicine, Nursing, and Dentistry to review the written authorizations for medical cannabis use by an authorized practitioner.

The bill requires the DOH to include questions about cannabis use and medical cannabis use in the Behavioral Risk Factor Surveillance System (BRFSS).

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<sup>14</sup> Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code 1-301.86b).

## **Financial Plan Impact**

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$706,000 in fiscal year 2023 and \$8.8 million over the four-year financial plan period.

The Board and ABCA will implement the bill's changes directly related to the administration of the medical cannabis program. These changes include renaming the relevant agencies and programs, expanding participation and access to the medical cannabis program, licensing currently illegal businesses, and establishing new license categories and endorsements. The Board and ABCA can absorb these program changes within their existing budgeted resources.

The bill will create additional application, license, and endorsement fee revenue, however given the uncertainty of demand for the new dispensaries and endorsement categories, the Office of Revenue Analysis will not certify revenue at this time. All fees are deposited in the special purpose Medical Cannabis Administration Fund,<sup>15</sup> which is restricted for costs of administering the medical cannabis program.

The bill's allowance for medical cannabis businesses to deduct certain expenses or losses on their District income tax will reduce business income tax receipts. The bill's changes will apply to tax year 2023 and will reduce receipts by \$1.9 million in fiscal year 2024 and \$5.9 million over the four-year financial plan period. The annual sales tax holiday will reduce sales taxes by \$76,000 annually.

The bill expands DSLBD's social equity applicant and medical cannabis certified business enterprise medical cannabis industry support programs. DSLBD requires an additional staff member to support the expanded efforts at a cost of \$124,000 in fiscal year 2023 and \$512,000 over the four-year financial plan. The funding for the programs will come out of the Medical Cannabis Social Equity Fund. During the financial plan, the Medical Cannabis Social Equity Fund will receive any fine revenues from enforcing laws and rules against unlicensed cannabis establishments and property owners after the first \$100,000 for each category, however ORA is not certifying any fine revenue at this time. The District will also direct all medical cannabis sales tax revenue to the Medical Cannabis Social Equity Fund, beginning in fiscal year 2027, which DSLBD will have to further support the industry support programs.<sup>16</sup>

The bill establishes a 60-day process for unlicensed businesses to comply with medical cannabis laws and rules. When businesses fail to comply, the bill provides for enforcement against those businesses that include sealing the premises and punishing the property owners. The business must submit a remediation plan to DLCP outlining how they will cease sales of illegal cannabis. DLCP needs to establish an enforcement team of four new staffers to work with ABCA, investigate businesses, review remediation plans from businesses and property owners, and ensure continued compliance with those plans. These staffers will cost \$496,000 in fiscal year 2023 and \$2 million over the four year financial plan period. The District can issue fines of \$10,000 or \$20,000 against both businesses and property owners. The bill dedicates the first \$100,000 of fines against businesses and the first

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<sup>15</sup> D.C. Official Code § 7-1671.08a.

<sup>16</sup> The Healthy DC Fund is projected to receive approximately \$2.2 million in fiscal year 2023 from medical cannabis sales.

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FIS: Bill 24-113, "Medical Cannabis Amendment Act of 2022," Draft Committee Print as provided to the Office of Revenue Analysis on December 1, 2022

\$100,000 of fines against property owners to the OAG's Litigation Support Fund. Businesses are expected to comply with the new rules and there are no revenues projected from enforcement actions against businesses and property owners.

DOH must include additional questions in the BRFSS regarding cannabis and medical cannabis use. The first year that cannabis use questions can be included in the survey will be the 2024 survey. DOH requires at least \$10,000 annually for its survey testing and validation processes if it includes one question each for general cannabis and medical cannabis use.

<b>Medical Cannabis Amendment Act of 2022</b>					
<b>Bill 24-113</b>					
<b>Implementation Costs</b>					
<b>Fiscal Year 2023 – Fiscal Year 2026</b>					
<b>(\$ thousands)</b>					
	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Final</b>
<b>Reduced Revenues</b>					
Income Tax Deductions	\$0	\$1,869	\$1,962	\$2,060	\$5,891
Sales Tax Holiday	\$76	\$76	\$76	\$76	\$304
<b>Total Tax Loss</b>	<b>\$76</b>	<b>\$1,945</b>	<b>\$2,038</b>	<b>\$2,136</b>	<b>\$6,195</b>
<b>Agency Costs</b>					
DSLBD Social Equity Staff	\$124	\$127	\$129	\$132	\$512
DCRA Enforcement Staff	\$496	\$507	\$518	\$528	\$2,048
DOH BRFSS Costs	\$20	\$20	\$20	\$20	\$80
<b>Total Agency Costs</b>	<b>\$630</b>	<b>\$644</b>	<b>\$657</b>	<b>\$670</b>	<b>\$2,600</b>
<b>TOTAL IMPLEMENTATION COSTS</b>	<b>\$706</b>	<b>\$2,589</b>	<b>\$2,695</b>	<b>\$2,806</b>	<b>\$8,795</b>