

SENATE BILL 1039

E1, C2, Q4
SB 891/17 – JPR

CONSTITUTIONAL AMENDMENT

8lr3555
CF 8lr0405

By: **Senators Smith, Currie, Feldman, Guzzone, Madaleno, and Young**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Constitutional Amendment – Cannabis – Use, Possession, Cultivation, and Sale**

3 FOR the purpose of proposing an amendment to the Maryland Constitution to establish
4 that, subject to certain exceptions, an individual in the State who is at least a certain
5 age may under State law use, possess in a certain amount, cultivate to a certain
6 extent, and share under certain circumstances cannabis; providing that this
7 amendment does not require or prohibit certain employment policies, authorize
8 certain driving conduct, or change certain existing laws, with a certain exception;
9 providing that this amendment does not prohibit a person who owns, occupies, or
10 controls a property from enforcing certain prohibitions or regulations, with a certain
11 exception; providing that this amendment does not require a person to violate certain
12 laws or restrictions under certain circumstances; requiring the General Assembly
13 and the Comptroller to provide for the regulation of the commercial production and
14 distribution of cannabis within the State under a certain system; providing for the
15 purpose of certain laws and regulations; requiring certain laws and regulations to
16 include certain requirements; requiring certain laws and regulations to establish
17 certain licensing and application fees for a certain purpose; authorizing the
18 Comptroller to control the commercial production and distribution of cannabis;
19 requiring the Comptroller to issue certain licenses; authorizing a certain cannabis
20 business to take certain actions under certain circumstances; authorizing a local
21 jurisdiction to take certain steps relating to the control and consumption of cannabis
22 within its boundaries; authorizing the General Assembly to require a certain vote
23 within a local jurisdiction; requiring the General Assembly to establish certain taxes;
24 providing that this amendment does not limit certain privileges, rights, immunities,
25 or defenses; providing that if any portion of this amendment is invalidated by a court
26 the remainder shall remain in full force and effect; authorizing a certain direct right
27 of action by a citizen of the State under certain circumstances; and submitting this
28 amendment to the qualified voters of the State for their adoption or rejection.

29 BY proposing an addition to the Maryland Constitution
30 New Article XX – Cannabis

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 1 and 2

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
3 (Three-fifths of all the members elected to each of the two Houses concurring), That it be
4 proposed that the Maryland Constitution read as follows:

5 **ARTICLE XX – CANNABIS**

6 **1.**

7 **(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AND**
8 **SUBJECT TO SECTION 2 OF THIS ARTICLE, AN INDIVIDUAL IN THE STATE WHO IS AT**
9 **LEAST 21 YEARS OLD, WITHOUT BEING SUBJECT TO PENALTY OR SANCTION UNDER**
10 **STATE LAW, MAY:**

11 **(I) USE CANNABIS;**

12 **(II) POSSESS UP TO 1 OUNCE OF CANNABIS, BUT NOT MORE**
13 **THAN 5 GRAMS OF CANNABIS IN A CONCENTRATED FORM, AT ANY ONE TIME;**

14 **(III) CULTIVATE IN THE INDIVIDUAL’S RESIDENTIAL DWELLING,**
15 **IN AN AREA NOT VISIBLE FROM A PUBLIC PLACE OR ANOTHER PRIVATE PROPERTY**
16 **WITHOUT OPTICAL AIDS, UP TO 6 CANNABIS PLANTS, BUT NOT MORE THAN 3 MATURE**
17 **AND FLOWERING PLANTS, AT ANY ONE TIME;**

18 **(IV) POSSESS IN THE INDIVIDUAL’S RESIDENTIAL DWELLING,**
19 **FOR PERSONAL USE, ALL THE CANNABIS CULTIVATED BY THE INDIVIDUAL FROM**
20 **CANNABIS PLANTS DESCRIBED IN ITEM (III) OF THIS PARAGRAPH; AND**

21 **(V) SHARE, WITHOUT RECEIVING ANYTHING OF VALUE, UP TO 5**
22 **GRAMS OF CANNABIS WITH ANOTHER INDIVIDUAL WHO IS AT LEAST 21 YEARS OLD.**

23 **(B) (1) THIS ARTICLE DOES NOT:**

24 **(I) REQUIRE AN EMPLOYER TO ALLOW OR ACCOMMODATE THE**
25 **USE OR POSSESSION OF CANNABIS BY AN EMPLOYEE OR IN THE WORKPLACE; OR**

26 **(II) PROHIBIT AN EMPLOYER FROM TAKING AN ADVERSE**
27 **EMPLOYMENT ACTION AGAINST AN EMPLOYEE FOR VIOLATION OF A WORKPLACE**
28 **DRUG POLICY OR FOR WORKING UNDER THE INFLUENCE OF CANNABIS.**

29 **(2) THIS ARTICLE DOES NOT AUTHORIZE DRIVING WHILE IMPAIRED**
30 **BY OR UNDER THE INFLUENCE OF CANNABIS OR DRIVING WHILE CONSUMING**
31 **CANNABIS.**

1 **(3) THIS ARTICLE DOES NOT CHANGE EXISTING LAW WITH RESPECT**
2 **TO THE PUBLIC SMOKING OR CONSUMPTION OF CANNABIS EXCEPT, FOR THE**
3 **PURPOSES OF THIS ARTICLE, A PUBLIC PLACE DOES NOT INCLUDE A LICENSED**
4 **BUSINESS THAT PERMITS CANNABIS CONSUMPTION IN DESIGNATED AREAS NOT**
5 **ACCESSIBLE TO PERSONS UNDER THE AGE OF 21 YEARS, IF THE BUSINESS IS**
6 **LOCATED IN A JURISDICTION THAT ALLOWS THE BUSINESS.**

7 **(4) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
8 **PARAGRAPH, THIS ARTICLE DOES NOT PROHIBIT A PERSON WHO OWNS, OCCUPIES,**
9 **OR CONTROLS A PROPERTY FROM PROHIBITING OR REGULATING THE USE, DISPLAY,**
10 **OR CULTIVATION OF CANNABIS ON OR IN THAT PROPERTY.**

11 **(II) A LEASE FOR RESIDENTIAL PROPERTY FOR AN ENTIRE**
12 **DWELLING UNIT MAY NOT PROHIBIT A TENANT FROM CONSUMING CANNABIS IN THE**
13 **PREMISES BY MEANS OTHER THAN SMOKING.**

14 **(5) THIS ARTICLE DOES NOT REQUIRE A PERSON OR ENTITY TO**
15 **VIOLATE FEDERAL LAW OR TO IMPLEMENT OR FAIL TO IMPLEMENT A RESTRICTION**
16 **ON THE USE, POSSESSION, OR CULTIVATION OF CANNABIS IF BY SO DOING THE**
17 **INDIVIDUAL OR ENTITY WILL PAY A FINE OR SUBJECT THE PERSON OR ENTITY TO A**
18 **PENALTY OR THE LOSS OF A LICENSING-RELATED BENEFIT UNDER FEDERAL LAW.**

19 **2.**

20 **(A) (1) THE GENERAL ASSEMBLY AND THE COMPTROLLER SHALL**
21 **PROVIDE FOR THE REGULATION OF THE COMMERCIAL PRODUCTION AND**
22 **DISTRIBUTION OF CANNABIS WITHIN THE STATE UNDER A SYSTEM THAT LICENSES,**
23 **REGULATES, AND TAXES THE BUSINESSES INVOLVED.**

24 **(2) THE PURPOSE OF THE LAWS AND REGULATIONS DESCRIBED IN**
25 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE TO:**

26 **(I) REMOVE COMMERCIAL PRODUCTION AND DISTRIBUTION**
27 **OF CANNABIS FROM THE ILLICIT MARKET;**

28 **(II) PREVENT REVENUE GENERATED FROM COMMERCE IN**
29 **CANNABIS FROM GOING TO CRIMINAL ENTERPRISES;**

30 **(III) PREVENT THE DISTRIBUTION OF CANNABIS TO PERSONS**
31 **UNDER 21 YEARS OF AGE;**

32 **(IV) PREVENT THE DIVERSION OF CANNABIS TO ILLICIT**

1 **MARKETS;**

2 **(v) ENSURE THE SAFETY OF CANNABIS CONSUMPTION;**

3 **(vi) ENSURE THE SECURITY OF CANNABIS BUSINESSES AND THE**
4 **COMMUNITY;**

5 **(vii) ENSURE DIVERSITY AMONG THE OWNERS OF CANNABIS**
6 **BUSINESSES, INCLUDING TAKING MEASURES TO REMEDY THE EFFECTS OF PAST**
7 **DISCRIMINATION SHOWN BY DISPARITY STUDIES; AND**

8 **(viii) ENCOURAGE PARTICIPATION IN CANNABIS COMMERCE BY**
9 **SMALL BUSINESSES.**

10 **(3) THE LAWS AND REGULATIONS DESCRIBED IN PARAGRAPH (1) OF**
11 **THIS SUBSECTION SHALL INCLUDE REQUIREMENTS FOR:**

12 **(i) THE TESTING, LABELING, AND PACKAGING OF CANNABIS;**

13 **(ii) TRACKING CANNABIS;**

14 **(iii) LIMITATIONS ON ADVERTISING AND MARKETING OF**
15 **CANNABIS AND CANNABIS BUSINESSES;**

16 **(iv) SAFE PRODUCTION AND HANDLING OF CANNABIS,**
17 **INCLUDING RESTRICTIONS ON THE USE OF PESTICIDES; AND**

18 **(v) PENALTIES FOR THE VIOLATION OF THE LAWS AND**
19 **REGULATIONS RELATING TO CANNABIS.**

20 **(4) THE LAWS AND REGULATIONS DESCRIBED IN PARAGRAPH (1) OF**
21 **THIS SUBSECTION SHALL ESTABLISH LICENSING AND APPLICATION FEES FOR**
22 **CANNABIS BUSINESSES THAT ARE ADEQUATE TO COVER THE COST OF THE**
23 **ADMINISTRATION AND ENFORCEMENT OF THIS SECTION.**

24 **(b) (1) THE COMPTROLLER MAY CONTROL THE COMMERCIAL**
25 **PRODUCTION AND DISTRIBUTION OF CANNABIS, INCLUDING THE ISSUANCE OF**
26 **LICENSES, ENACTMENT OF REGULATIONS, AND THE PERFORMANCE OF**
27 **INVESTIGATIONS AND INSPECTIONS TO ENSURE COMPLIANCE WITH LAWS AND**
28 **REGULATIONS.**

29 **(2) (i) THE COMPTROLLER SHALL, AS SOON AS PRACTICABLE,**
30 **ISSUE TEMPORARY LICENSES TO ALLOW MEDICAL CANNABIS BUSINESSES LICENSED**

1 IN THE STATE THAT ARE IN GOOD STANDING WITH THE MARYLAND MEDICAL
2 CANNABIS COMMISSION ON THE DATE OF THE ENACTMENT OF THIS ARTICLE TO
3 CULTIVATE, PROCESS, AND SELL CANNABIS FOR AND TO INDIVIDUALS WHO ARE AT
4 LEAST 21 YEARS OLD WITHOUT BEING SUBJECT TO PENALTY OR SANCTION UNDER
5 STATE LAW, BUT SUBJECT TO REASONABLE REGULATIONS AND FEES AS THE
6 COMPTROLLER MAY REQUIRE.

7 (II) IF THE COMPTROLLER FAILS TO ISSUE LICENSES UNDER
8 THIS PARAGRAPH BY JUNE 1, 2019, A CANNABIS BUSINESS DESCRIBED IN
9 SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY, ON THAT DATE, BEGIN CULTIVATION,
10 PROCESSING, OR SELLING CANNABIS FOR AND TO INDIVIDUALS WHO ARE AT LEAST
11 21 YEARS OLD WITHOUT BEING SUBJECT TO PENALTY OR SANCTION UNDER STATE
12 LAW.

13 (C) (1) A LOCAL JURISDICTION MAY:

14 (I) CONTROL THE ZONING OF CANNABIS BUSINESSES WITHIN
15 ITS BOUNDARIES;

16 (II) LIMIT THE NUMBER OF CANNABIS BUSINESSES WITHIN ITS
17 BOUNDARIES;

18 (III) PROHIBIT CANNABIS BUSINESSES WITHIN ITS BOUNDARIES
19 WITH VOTER APPROVAL; AND

20 (IV) REGULATE THE TIME, PLACE, AND MANNER OF A CANNABIS
21 BUSINESS'S OPERATIONS.

22 (2) A LOCAL JURISDICTION MAY PERMIT THE ESTABLISHMENT OF
23 BUSINESSES THAT ALLOW THE CONSUMPTION OF CANNABIS IN DESIGNATED AREAS
24 NOT ACCESSIBLE TO INDIVIDUALS UNDER 21 YEARS OF AGE.

25 (3) THE GENERAL ASSEMBLY MAY REQUIRE A VOTE OF THE
26 ELECTORS WITHIN A LOCAL JURISDICTION TO IMPOSE A BAN ON RETAIL CANNABIS
27 STORES.

28 (D) THE GENERAL ASSEMBLY SHALL ESTABLISH A RATE OF CANNABIS
29 TAXATION THAT MAXIMIZES REVENUE FOR THE STATE WHILE MINIMIZING THE SIZE
30 OF THE ILLICIT MARKET FOR CANNABIS, DELAYING INITIAL USE OF CANNABIS, AND
31 DISCOURAGING PROBLEMATIC USE OF CANNABIS.

32 (E) THIS ARTICLE DOES NOT LIMIT ANY PRIVILEGE, RIGHT, IMMUNITY, OR
33 DEFENSE PROVIDED UNDER TITLE 13, SUBTITLE 33 OF THE HEALTH – GENERAL

1 **ARTICLE.**

2 **(F) IF ANY PORTION OF THIS ARTICLE IS INVALIDATED BY A COURT, THE**
3 **REMAINDER SHALL REMAIN IN FULL FORCE AND EFFECT.**

4 **(G) IF THE GENERAL ASSEMBLY OR COMPTROLLER HAS FAILED TO ENACT**
5 **LAWS AND REGULATIONS CONSISTENT WITH THIS ARTICLE ON OR BEFORE**
6 **DECEMBER 31, 2019, A CITIZEN OF MARYLAND HAS A DIRECT RIGHT OF ACTION TO**
7 **COMPEL THE GENERAL ASSEMBLY OR THE COMPTROLLER TO DO SO.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
9 determines that the amendment to the Maryland Constitution proposed by Section 1 of this
10 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland
11 Constitution concerning local approval of constitutional amendments do not apply.

12 SECTION 3. AND BE IT FURTHER ENACTED, That the amendment to the
13 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified
14 voters of the State at the next general election to be held in November 2018 for adoption or
15 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,
16 the vote on the proposed amendment to the Constitution shall be by ballot, and on each
17 ballot there shall be printed the words "For the Constitutional Amendment" and "Against
18 the Constitutional Amendment", as now provided by law. Immediately after the election,
19 all returns shall be made to the Governor of the vote for and against the proposed
20 amendment, as directed by Article XIV of the Maryland Constitution, and further
21 proceedings had in accordance with Article XIV.