



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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<b>Bill Number:</b>	S. 0423	Introduced on January 19, 2023
<b>Author:</b>	Davis	
<b>Subject:</b>	Compassionate Care Act	
<b>Requestor:</b>	Senate Medical Affairs	
<b>RFA Analyst(s):</b>	Griffith, Bryant, and Gardner	
<b>Impact Date:</b>	February 5, 2024	

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### **Fiscal Impact Summary**

This bill establishes the South Carolina Medical Cannabis Program, which creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or to alleviate symptoms.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,673,000 to establish the program in FY 2024-25. This amount includes \$2,941,000 in recurring salaries and employer contributions for 34.0 FTEs, \$670,000 in recurring operating expenditures, and \$2,062,000 in non-recurring operating expenditures. Further, DHEC expects a shift to Other Funds expenditures beginning in FY 2025-26 as the agency anticipates that Other Funds from fees and monetary penalties will fund the expected \$3,611,000 in recurring expenditures in the second and subsequent years.

The expenditure impact on the Department of Labor, Licensing and Regulation (LLR) and the Board of Pharmacy is pending, contingent upon a response from the agency.

This bill creates new misdemeanor and perjury offenses, which may increase caseloads. The bill will have no expenditure impact on Judicial. Judicial will use existing General Funds to manage any additional costs resulting from an increase in caseloads.

The expenditure impact on the State Law Enforcement Division (SLED) is pending, contingent upon a response from the agency.

The expenditure impact on the Administrative Law Court (ALC) from additional hearings requested by revoked or suspended registry identification cardholders and medical cannabis establishments will be undetermined as there are no data available that may be used to estimate the increase in the number of hearings. However, the Revenue and Fiscal Affairs Office (RFA) expects any increase will be at least partially offset by the collection of filing fees.

We anticipate that this bill will have no expenditure impact on the Office of the Attorney General. We expect that any expenses to provide input to the Board of Pharmacy relating to the dispensing of cannabis products for therapeutic use can be accomplished within the normal course of agency business. If the Office of the Attorney General indicates otherwise, we will update this fiscal impact statement.

This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections, and, therefore, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations. For reference, according to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which \$34,570 was state funded.

The Commission on Indigent Defense indicates that if this bill results in a significant increase in workload due to a significant increase in the number of warrants and cases, the commission will request an increase in General Fund appropriations. Likewise, we anticipate that if this bill results in a significant increase in caseloads, the Commission on Prosecution Coordination may request an increase in General Fund appropriations. We will update this impact statement if the Commission on Prosecution Coordination provides a different response.

The expenditure impact of this bill on the Department of Motor Vehicles (DMV) for programming changes to allow the suspension of a qualified patient's privilege to drive for at least six months if the patient refuses to submit to a blood sample test pursuant to Section 56-5-2950 is pending, contingent upon a response from the agency.

This bill establishes the South Carolina Medical Cannabis Program Fund within DHEC, which is funded by monies collected pursuant to Title 44, Chapter 53. This revenue must be used for direct and indirect costs associated with the implementation, administration, and enforcement of this bill. The amount of revenue will be determined by fees set by DHEC pursuant to the requirements of this bill. As such, we are unable to estimate the total amount of Other Funds revenue that will be generated from these fees. However, we anticipate DHEC will set fees pursuant to the requirements of this bill such that Other Funds revenue will cover expenses related to establishing and maintaining the program.

The potential increase in revenue to the General Fund due to the remittance of 10 percent of expenditures to the Professional and Occupational Licensing Offices pursuant to Proviso 81.3 of the FY 2023-24 Appropriations Act is pending, contingent upon a response from LLR.

This bill may increase the number of criminal records searches that SLED is required to perform for registered caregivers and employees, principal officers, agents, and board members of dispensaries. Pursuant to Section 23-3-115(A), revenue generated by criminal records checks performed by SLED up to an amount of \$4,461,000 must be deposited in the General Fund. Any revenue over that amount is retained by SLED. The current three-year average in fees collected

for background checks totals approximately \$17,147,000, of which \$4,461,000 is deposited to the General and the remainder is kept by SLED.

This bill may result in an increase in the number of hearings filed in ALC. Section 1-23-670 allows for filing fees for hearings filed in ALC to be used to defray the cost of the proceedings. Therefore, this bill will result in an undetermined increase of Other Funds revenue due to the increase in filing fees.

Also, this bill creates new offenses and up to a \$10,000 fine upon conviction. Any revenue collected pursuant to these fines will be distributed according to current statutes depending upon the jurisdiction of the trial court. Therefore, this bill will result in an undetermined increase in General Fund, Other Funds, and local revenue due to the increase in fines collected.

The Department of Revenue (DOR) anticipates that medical cannabis products sold pursuant to this bill will be subject to sales tax based on Section 44-53-2010(3)(b)(iv), which states that cannabis does not mean “a product approved as a prescription medication by the United States Food and Drug Administration”, and the definition of “written certification” provided in the bill. The imposition of this tax will increase state revenue as follows in the table below. Based on trends in states that have passed similar bills, we anticipate that revenues will continue to grow as additional patients become registered identification card holders. Our estimates are outlined below by fiscal year:

Fiscal Year	Estimated General Fund Revenue	Estimated EIA Fund Revenue	Estimated HEX Fund Revenue	Estimated Total State Revenue (at 6% Sales Tax)
FY 2024-25	\$0	\$0	\$0	\$0
FY 2025-26	\$100,000	\$25,000	\$25,000	\$150,000
FY 2026-27	\$482,000	\$120,000	\$120,000	\$722,000
FY 2027-28	\$969,000	\$242,000	\$242,000	\$1,453,000
FY 2028-29	\$1,737,000	\$434,000	\$434,000	\$2,605,000
FY 2029-30	\$2,189,000	\$547,000	\$547,000	\$3,283,000

DOR anticipates that medical cannabis sold pursuant to this bill will also be subject to local sales tax. Revenue is estimated as follows:

Fiscal Year	Estimated Local Revenue (at 1.57% Local Tax)
FY 2024-25	\$0
FY 2025-26	\$39,000
FY 2026-27	\$189,000
FY 2027-28	\$380,000
FY 2028-29	\$682,000
FY 2029-30	\$859,000

The bill allows local governments to enact ordinances or regulations not in conflict with this bill governing the time, place, manner, and number of medical cannabis establishments in the locality. Due to the permissive nature of the bill that allows local governments to choose to enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

## **Explanation of Fiscal Impact**

### **Introduced on January 19, 2023**

#### **State Expenditure**

This bill establishes the South Carolina Medical Cannabis Program, which creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or to alleviate symptoms. The bill would legalize cannabis for specified medical uses, to include:

- cancer;
- multiple sclerosis;
- a neurological disease or disorder, including epilepsy;
- post-traumatic stress disorder;
- Crohn's disease;
- sickle cell anemia;
- ulcerative colitis;
- cachexia or wasting syndrome;
- autism;
- severe or persistent nausea in a person who is not pregnant that is related to end-of-life care, hospice care, is bedridden, or is homebound because of a condition;
- a chronic medical condition causing severe and persistent muscle spasms;
- a chronic medical condition causing severe and persistent pain; or
- a terminal illness with a life expectancy of less than one year.

**Department of Health and Environmental Control.** The bill requires DHEC to promulgate regulations to develop a registry identification card application form and to establish the process for issuing the cards to qualifying patients and designated caregivers. DHEC must begin accepting applications for registry identification cards no later than ninety days after the effective date of the promulgated regulations, and the agency must begin accepting applications for licensure of qualified medical cannabis establishments within a certain time frame of promulgated regulations. Further, the agency must either engage a company to develop or create the necessary software for an electronic registry of the qualifying patients and designated caregivers. These identification cards must be printed with tamper-resistant technology. Once the system is implemented, DHEC must issue a registry identification card within twenty-five days of receiving the application from the qualifying patient or designated caregiver.

DHEC must also establish a secure web-based verification system to allow law enforcement personnel and medical cannabis establishments to verify registry identification cards. The verification system must provide specified information on the cardholder. Confidentiality of this

data is the responsibility of DHEC. Further, the bill requires DHEC to develop security requirements for transportation, storage, and delivery for medical cannabis establishments. The bill also adds other specific duties for DHEC.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,673,000 to establish the program in FY 2024-25. Beginning in FY 2025-26, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,611,000 in recurring expenditures.

General Fund expenditures are expected to total \$5,673,000 in FY 2024-25. These expenditures include \$2,941,000 in recurring salaries and employer contributions for 34.0 FTEs to implement the provisions of the bill. Also, recurring expenses of \$670,000 are expected beginning in FY 2024-25 and include the following:

- Maintenance of the seed-to-sale tracking system - \$80,000
- Maintenance of the electronic registry of qualifying patients and designated caregivers - \$130,000
- Registry identification cards - \$120,000
- Computer software subscriptions, equipment, vehicle fuel and insurance, office supplies, consulting services, leased office space, and general overhead - \$340,000

Additionally, DHEC anticipates non-recurring operating expenditures to total \$2,062,000 in the first year of implementation for start-up operations and include the following:

- Consultants to assist with the initial establishment and implementation of the program - \$650,000
- Implementation of the seed-to-sale tracking system - \$400,000
- Implementation of the electronic registry of qualifying patients and designated caregivers - \$450,000
- Registry identification card equipment - \$20,000
- Computer equipment, electronic devices, vehicles, and office furniture - \$542,000

As noted above, DHEC expects a shift from General Fund expenditures to Other Funds expenditures beginning in FY 2025-26. Recurring Other Funds expenditures are expected to total \$3,611,000 in the second and subsequent years. This amount includes \$2,941,000 in salaries and employer contributions for the 34.0 FTEs and \$670,000 in other operating expenses.

**Department of Labor, Licensing and Regulation.** The Board of Pharmacy, which is under the administration of LLR, is required to promulgate regulations relating to the dispensing of cannabis products for therapeutic use. The Board of Pharmacy shall also develop a process and promulgate regulations for issuing a permit to a therapeutic cannabis pharmacy. No later than thirty days after the effective date of the bill, the South Carolina Board of Medical Examiners, which is also under the administration of LLR, shall approve a three-hour continuing medical

education course on medical cannabis products. The expenditure impact of the bill on LLR is pending, contingent upon a response from the agency.

**Judicial.** The bill creates new offenses for violating the provisions of the bill. The vaporization of cannabis while operating a motor vehicle is a misdemeanor, which subjects the individual to a fine of not more than \$100 or imprisonment of not more than 30 days. Additionally, knowingly making a misrepresentation to a law enforcement official of any fact or circumstance related to the medical use of cannabis to avoid arrest or prosecution or knowingly making a misrepresentation of a medical condition to a physician in order to obtain a registry identification card is considered a misdemeanor. Upon conviction, these actions are punishable by a fine of up to \$1,000 per offense. Further, a pharmacist who knowingly fails to submit medical cannabis monitoring information to the Bureau of Drug Control, or to submit the information required in the verification system, or who knowingly submits incorrect information, is guilty of a misdemeanor, which subjects the convicted individual to a fine of not more than \$2,000, imprisonment of not more than two years, or both.

Additionally, false representation of an applicant's job title or description and the diversion of cannabis to any individual who is not allowed to possess cannabis are felonies, which subject the individual to a fine of not more than \$5,000, imprisonment of not more than five years, or both. The unlawful disclosure or unlawful use of medical cannabis authorization monitoring information is also a felony, for which the convicted person is fined not more than \$10,000, imprisoned for not more than ten years, or both.

As the bill creates new misdemeanors and felonies, there is no data available to estimate any increase in the number of hearings or trials that will be held. However, Judicial will use existing General Funds to manage any additional costs resulting from an increase in caseloads. Therefore, there is no expenditure impact on Judicial. Any revenue collected pursuant to the fines will be distributed according to current statutes depending upon the jurisdiction of the trial court. Therefore, the bill will result in an undetermined increase in General Fund, Other Funds, and local revenue due to the increase in fines collected.

**State Law Enforcement Division.** The bill directs SLED to check criminal records for qualified patients, designated caregivers, and every person seeking to become a medical cannabis establishment agent. Additionally, the bill allows SLED to conduct random inspections of all medical cannabis establishments. The expenditure impact on SLED is pending, contingent upon a response from the agency.

**Administrative Law Court.** The bill allows a person whose registry identification card is revoked or suspended to request a hearing with the ALC. A similar provision allows a medical cannabis establishment to request an ALC hearing when the establishment's license is denied, suspended, or revoked. In addition, if DHEC fails to promulgate regulations to implement this bill within two years of the effective date, a qualifying patient may commence an action in the ALC to compel action by DHEC. While ALC currently conducts contested cases from multiple permitting processes through DHEC, there are no data available that may be used to estimate the increase in the number of hearings that will be held. Therefore, the expenditure impact of this

bill on the ALC is undetermined. However, RFA anticipates that some of this expenditure will be offset by the collection of filing fees.

**Office of the Attorney General.** The bill requires the South Carolina Board of Pharmacy to seek input from relevant stakeholders, including but not limited to, the Office of the Attorney General, relating to the dispensing of cannabis products for therapeutic use. Additionally, the bill requires any denials for Section 8 housing to a cardholder to be reported to the Office of the Attorney General. We anticipate, based on previous responses to similar bills, that this bill will have no expenditure impact on the Office of the Attorney General since we expect that any expenses can be accomplished within the normal course of agency business. We will update this impact statement if the agency provides a different response.

**Department of Corrections.** This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which \$34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

**Commission on Prosecution Coordination.** This bill creates new offenses, which could result in an increase in the number of warrants that are sent to the Offices of Circuit Solicitor for review, prosecution, and disposition. However, the potential increase in warrants is unknown. Any increase in the number of warrants may result in an increase in the workload. We anticipate that if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations. We will update this impact statement if the commission provides a different response.

**Commission on Indigent Defense.** This bill creates new offenses, which could result in an increase in the number cases handled by the Commission on Indigent Defense. The commission expects that it can manage these cases with existing appropriations. However, if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

**Department of Motor Vehicles.** The bill allows the suspension of a qualified patient's privilege to drive for at least six months if the patient refuses to submit to a blood sample test pursuant to Section 56-5-2950. Additionally, the bill makes it unlawful for a driver to vaporize cannabis products while operating a motor vehicle. The expenditure impact of this bill on DMV is pending, contingent upon a response from the agency.

### **State Revenue**

This bill establishes the South Carolina Medical Cannabis Program Fund within DHEC, which is funded by monies collected pursuant to Title 44, Chapter 53. This revenue must be used for

direct and indirect costs associated with the implementation, administration, and enforcement of this bill.

The bill also allows DHEC to establish application and renewal fees to cover costs related to the establishment and maintenance of the program. The amount of revenue will be determined by fees set by DHEC pursuant to the requirements of this bill. As such, we are unable to estimate the total amount of Other Funds revenue that will be generated from these fees. However, we anticipate DHEC will set fees pursuant to the requirements of this bill, such that Other Funds revenue will cover expenses related to establishing and maintaining the program.

The Board of Pharmacy falls under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2023-24 Appropriations Act, LLR is required to remit annually to the General Fund an amount equal to 10 percent of expenditures. The potential increase in revenue to the General Fund is pending, contingent upon a response from LLR.

This bill may increase the number of criminal records searches that SLED is required to perform for registered caregivers and employees, principal officers, agents, and board members of dispensaries. SLED previously indicated that the total cost for a criminal records search is \$51.75, of which \$25 is retained by SLED. The vendor, Identogo, receives \$13.50, and the remainder of the fee, \$13.25, is remitted to the FBI. Pursuant to Section 23-3-115(A), revenue generated by criminal records checks performed by SLED up to an amount of \$4,461,000 must be deposited in the General Fund. Any revenue over that amount is retained by SLED. The current three-year average in fees collected for background checks totals approximately \$17,147,000, of which \$4,461,000 is deposited to the General Fund and the remainder is kept by SLED.

This bill may result in an increase in the number of hearings filed in ALC. Section 1-23-670 allows for filing fees for hearings filed in ALC to be used to defray the cost of the proceedings. Therefore, this bill will result in an undetermined increase of Other Funds revenue due to the increase in filing fees.

Also, this bill creates new offenses and fines upon conviction. Any revenue collected pursuant to these fines will be distributed according to current statutes depending upon the jurisdiction of the trial court. Therefore, this bill will result in an undetermined increase in General Fund revenue and Other Funds revenue due to the increase in fines collected.

Further, DOR anticipates that medical cannabis products sold pursuant to this bill will be subject to sales tax based on Section 44-53-2010(3)(b)(iv), which states that cannabis does not mean “a product approved as a prescription medication by the United States Food and Drug Administration”, and the definition of “written certification” provided in the bill. Therefore, sales would not be exempt as prescription medicine would be subject to sales tax.

Minnesota enacted the *Minnesota Medical Marijuana Act* in 2014 with many of the same medical restrictions as the South Carolina Compassionate Care Act. This analysis utilizes data provided by the Minnesota Department of Health on the number of unique qualifying medical



cannabis patients to estimate the number of registered South Carolina cardholders by accounting for differences in population and disorder prevalence between the states.<sup>1</sup> Further, based upon research published by the Minnesota Department of Health, we assume that the average card holder will spend an average amount of \$4,500 per year on medical cannabis.<sup>2</sup> We also assume that DHEC will register and issue licenses to medical cannabis establishments to be operational by FY 2025-26 for legal medical cannabis sales, as states often observe an approximately year-long lag from the date of legalization to fully registered and operational dispensaries. Please see the table below:

Table 1: Estimated number of Registered Card Holders and Gross Proceeds

Fiscal Year	Estimated Number of Registered Card Holders	Estimated Gross Proceeds
FY 2024-25	N/A	\$0
FY 2025-26	558	\$2,510,000
FY 2026-27	2,677	\$12,047,000
FY 2027-28	5,382	\$24,217,000
FY 2028-29	9,651	\$43,429,000
FY 2029-30	12,162	\$54,729,000

Based on trends in states that have passed similar bills, we anticipate that revenues will continue to grow as additional patients become registered identification card holders. Revenues will be distributed to the General Fund, Education Improvement Act (EIA) Fund, and the Homestead Exemption Act (HEX) Fund accordingly. Our estimates are outlined in the table below by fiscal year:

Table 2: Estimated State Sales Tax Revenue

Fiscal Year	Estimated General Fund Revenue	Estimated EIA Fund Revenue	Estimated HEX Fund Revenue	Estimated Total State Revenue (at 6% Sales Tax)
FY 2024-25	\$0	\$0	\$0	\$0
FY 2025-26	\$100,000	\$25,000	\$25,000	\$150,000
FY 2026-27	\$482,000	\$120,000	\$120,000	\$722,000
FY 2027-28	\$969,000	\$242,000	\$242,000	\$1,453,000
FY 2028-29	\$1,737,000	\$434,000	\$434,000	\$2,605,000
FY 2029-30	\$2,189,000	\$547,000	\$547,000	\$3,283,000

<sup>1</sup> Minnesota Medical Cannabis Dashboard, Minnesota Department of Health, accessed February 1, 2024.

<sup>2</sup> Report on Medical Cannabis Price Study v 1.2, Minnesota Department of Health 2021.  
<https://www.health.state.mn.us/people/cannabis/docs/rulemaking/pricereport.pdf>

### Local Expenditure

The bill allows local governments to enact ordinances or regulations not in conflict with this bill governing the time, place, manner, and number of medical cannabis establishments in the locality. Further, a local government may establish penalties for violation of an ordinance or regulation in regards to medical cannabis. Due to the permissive nature of the bill that allows local governments to choose to enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

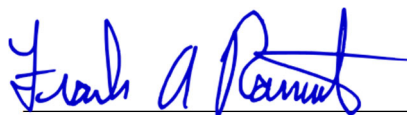
### Local Revenue

This bill creates new offenses and fines upon conviction. Any revenue collected pursuant to these fines will be distributed according to current statutes depending upon the jurisdiction of the trial court. Therefore, this bill will result in an undetermined increase in local revenue due to the increase in fines collected.

DOR anticipates that medical cannabis products sold pursuant to this bill will be subject to local sales tax based on Section 44-53-2010(3)(b)(iv), which states that cannabis does not mean “a product approved as a prescription medication by the United States Food and Drug Administration”, and the definition of “written certification” provided in the bill. Since this is not considered prescription medication, sales tax would apply to these sales. Local sales and use taxes in South Carolina average an additional 1.57 percent. Based upon the analysis outlined in the State Revenue section, this bill would, therefore, increase local sales and use taxes by the following estimated amounts:

Table 3: Estimated Local Sales Tax Revenue

Fiscal Year	Estimated Local Revenue (at 1.57% Local Tax)
FY 2024-25	\$0
FY 2025-26	\$39,000
FY 2026-27	\$189,000
FY 2027-28	\$380,000
FY 2028-29	\$682,000
FY 2029-30	\$859,000



Frank A. Rainwater, Executive Director