

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 443

(Delegate Fraser-Hidalgo, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

Agriculture - Industrial Hemp - Agricultural or Academic Research

This bill authorizes the Maryland Department of Agriculture (MDA) or an institution of higher education to grow or cultivate industrial hemp if the industrial hemp is grown or cultivated for agricultural research or academic research purposes. A site used by MDA or an institution of higher education to grow or cultivate industrial hemp must be certified by and registered with MDA. The department may adopt regulations to carry out the bill's provisions. "Industrial hemp" means the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration that does not exceed 0.3% on a dry weight basis. "Industrial hemp" does not include any plant or part of a plant intended for a use that is regulated by the Natalie M. LaPrade Medical Cannabis Commission.

The bill terminates upon the taking effect of Chapter 456 of 2015.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances since it only authorizes limited growing or cultivation of industrial hemp. MDA can handle any certification and registration with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under the Maryland Controlled Dangerous Substances Act (MCDSA) and the federal Controlled Substances Act (CSA), marijuana and THC are controlled dangerous substances (“controlled substances,” under CSA). Under MCDSA, similar to the federal definition under CSA, “marijuana” is defined as (1) all parts of any plant of the genus *Cannabis*, whether or not the plant is growing; (2) the seeds of the plant; (3) the resin extracted from the plant; and (4) each compound, manufactured product, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. “Marijuana,” however, does not include (1) the mature stalks of the plant; (2) fiber produced from the mature stalks; (3) oil or cake made from the seeds of the plant; (4) except for resin, any other compound, manufactured product, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or (5) the sterilized seed of the plant that is incapable of germination.

Under MCDSA, a person must be registered by the Department of Health and Mental Hygiene (DHMH) in order to manufacture, distribute, or dispense a controlled dangerous substance in the State. DHMH may waive the registration requirement by regulation based on a finding that a waiver is consistent with public health and safety. DHMH must register an applicant unless the department determines that the issuance of the registration is inconsistent with the public interest, based on specified considerations, including maintenance of effective controls against diversion of controlled dangerous substances into other than legitimate medical, scientific, or industrial channels. Registration with the U.S. Drug Enforcement Administration (DEA) is required under CSA and DEA regulations.

Background: The federal Farm Bill (Agricultural Act of 2014, Pub. L. No. 113-79) allows an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp notwithstanding CSA and other federal laws. The growing or cultivation must be for purposes of research, including studying the growth, cultivation, or marketing of industrial hemp and may only be conducted if growing or cultivation of industrial hemp is allowed under the laws of the applicable state. The National Conference of State Legislatures indicates that at least 27 states have laws related to industrial hemp. Some states’ laws (including Maryland, see below) require a change in federal laws or a waiver from DEA prior to implementation.

In Maryland, Chapter 456 of 2015, which is contingent on specified federal law taking effect, authorizes a person to plant, grow, harvest, possess, process, sell, or buy industrial hemp in the State, provided a person registers with MDA before planting or growing industrial hemp. The Act also excludes industrial hemp from the definition of marijuana under criminal law provisions addressing controlled dangerous substances. The Act is contingent on the taking effect of the federal Industrial Hemp Farming Act of 2015 or

another federal law that delegates authority over industrial hemp to the states or authorizes a person to plant, grow, harvest, possess, process, sell, and buy industrial hemp.

The Industrial Hemp Farming Act of 2015 (S. 134 and H.R. 525, 114th Congress) generally would exclude industrial hemp from the definition of marijuana under CSA and deem *Cannabis sativa L.* to meet the definition of industrial hemp and fall within the exclusion if it is grown or processed for purposes of making industrial hemp in accordance with state law. Both S. 134 and H.R. 525 were introduced and referred to committee in January 2015 but have not been acted on further.

Chapter 681 of 2000 established a pilot program to study the growth and marketing of industrial hemp in the State. MDA was charged with administering the program, in consultation with DEA and the Department of State Police. The program included a requirement that an individual register with DEA under the CSA registration requirement to manufacture a controlled substance. However, that hurdle was never cleared and the program was not fully implemented. Chapter 681 terminated December 31, 2004.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, University System of Maryland, National Conference of State Legislatures, Library of Congress, Department of Legislative Services

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