

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 902 (Delegate Fraser-Hidalgo, *et al.*)  
Environment and Transportation

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**Agriculture - Industrial Hemp - Legalization**

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This bill repeals a provision that makes Chapter 456 of 2015, which legalizes industrial hemp, contingent on the taking effect of specified federal law. Chapter 456 is also amended to (1) eliminate a requirement that a person register with the Maryland Department of Agriculture (MDA) before planting or growing industrial hemp; (2) add “manufacture” to the authorized activities relating to industrial hemp; and (3) clarify that “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 repeals existing provisions enacted under Chapter 105 of 2016 authorizing MDA or an institution of higher education to grow or cultivate industrial hemp if it is grown or cultivated for agricultural research or academic research purposes.

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**Fiscal Summary**

**State Effect:** The bill is not expected to directly affect State finances, as discussed below.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:**

*Industrial Hemp for Agricultural or Academic Research Purposes*

Pursuant to Chapter 105 of 2016, MDA or an institution of higher education may 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 implementing regulations.

### *Legalization of Industrial Hemp*

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 that a person registers with MDA before planting or growing industrial hemp. Chapter 456 also excludes industrial hemp from the definition of marijuana under criminal law provisions addressing controlled dangerous substances. “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. The law 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.

### *Definition of Marijuana (as a Controlled Dangerous Substance)*

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:**

### *Limited Federal Authorization/Legalization*

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 conducted under an agricultural pilot program or other agricultural or academic research and may only be conducted if the growing or cultivation of industrial hemp is allowed under the laws of the applicable state.

In August 2016, the U.S. Department of Agriculture, with the concurrence of DEA and the U.S. Food and Drug Administration, published a *Statement of Principles on Industrial Hemp* in the *Federal Register* to inform the public how federal law applies to activities associated with industrial hemp that is grown and cultivated in accordance with the Agricultural Act of 2014. The statement clarifies that federal law continues to restrict hemp-related activities to the extent that the activities have not been legalized under the Agricultural Act of 2014. The statement focuses on the authorized agricultural pilot programs, indicating that growth and cultivation of industrial hemp may only take place in accordance with an agricultural pilot program, and that the program must provide for state registration and certification of sites used for growing or cultivation of industrial hemp. In addition, the authorization of agricultural pilot programs does not alter other applicable federal requirements, such as requirements under CSA applicable to the manufacture, distribution, or dispensing of drug products containing controlled substances.

The Industrial Hemp Farming Act of 2015 (S. 134 and H.R. 525, 114<sup>th</sup> Congress), referenced in Chapter 456 of 2015, generally would have excluded industrial hemp from the definition of marijuana under CSA and deemed *Cannabis sativa L.* to meet the definition of industrial hemp, and fall within the exclusion, if it was 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 were not acted on further.

### *Other States*

The National Conference of State Legislatures (NCSL) indicates that at least 30 states have laws related to industrial hemp. According to NCSL, 20 states have authorized research and pilot programs and at least 16 have legalized industrial hemp production for commercial purposes (some have done both). NCSL indicates that a number of states, including California, Indiana, Kentucky, Minnesota, Montana, and Virginia, have established a framework for regulating commercial hemp but still consider it illegal outside of research programs, unless federal law changes.

## *Implementation of Chapter 105 of 2016*

MDA is currently in the process of adopting implementing regulations for Chapter 105 of 2016, which authorizes growing or cultivation of industrial hemp for agricultural or academic research purposes. The department has reviewed other states' laws and regulations and developed draft regulations that are being reviewed by researchers with the University System of Maryland.

**State Fiscal Effect:** The bill is not expected to directly affect State finances, since it does not require the State to regulate industrial hemp. MDA does not know to what extent there is interest in growing industrial hemp in the State, and the fact that it remains a controlled substance under federal law may limit the extent to which individuals or entities are able to take advantage of the bill's authorization to plant, grow, harvest, manufacture, possess, process, sell, or buy industrial hemp in the State.

To the extent individuals or entities are able to take advantage of the bill's authorization, the bill may have an indirect effect on general fund sales tax revenues as a result of sales of industrial hemp and related products. In addition, while the bill does not have a direct impact on the Department of State Police (DSP), DSP does not currently have the ability to determine the THC percentage concentration of a *cannabis* plant or part of a plant. Depending on future circumstances and the extent and nature of the production of industrial hemp in the State, if DSP may need the ability to test for THC concentration to differentiate between marijuana and industrial hemp, general fund expenditures increase for DSP for lab equipment and personnel.

**Small Business Effect:** To the extent individuals or entities are able to take advantage of the bill's authorization to produce and sell industrial hemp, the bill has a positive effect on small businesses.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Maryland State Police; National Conference of State Legislatures; Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2017  
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