

**Department of Legislative Services**  
 Maryland General Assembly  
 2023 Session

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

House Bill 1204 (Delegates Fraser-Hidalgo and Howard)  
 Economic Matters and Health and  
 Government Operations

**Hemp Farming Program - Refined Hemp and Hemp Extract Products -  
 Requirements**

This bill makes several changes to the Hemp Farming Program within the Maryland Department of Agriculture (MDA). The bill establishes provisions governing the licensing, production, processing, and sale of “hemp products,” “hemp extract products,” and “refined hemp,” as those terms are modified and defined by the bill. MDA must establish five new licenses (a producer license, a processor license, a retailer license, a researcher license, and an industrial license) that allow a licensee to engage in specified activities. MDA must also establish minimum packaging and labeling requirements for refined hemp and hemp extract products. Before distributing refined hemp or a hemp extract product, a person must receive a certificate of analysis prepared by an independent testing laboratory. MDA is authorized to conduct specified analyses to ensure compliance. The bill also establishes a related advisory council.

**Fiscal Summary**

**State Effect:** General/special fund expenditures increase by \$2.3 million in FY 2024; out-years reflect annualization and ongoing costs. Special fund revenues likely increase beginning in FY 2024 but are not anticipated to fully offset MDA’s costs, as discussed below.

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	-	-	-	-
GF/SF Exp.	\$2.3	\$0.9	\$1.0	\$1.0	\$1.1
Net Effect	(-)	(-)	(-)	(-)	(-)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** Potential meaningful.

## Analysis

### Bill Summary:

#### *Licensing Requirements*

MDA must establish the following licenses:

- a producer license that allows a person to plant, cultivate, grow, harvest, and dry hemp;
- a processor license that allows a person to process, compound, or convert hemp into cannabinoid products, concentrates, or extracts;
- a retailer license that allows a person or entity operating a business to sell direct to the consumer refined hemp and hemp extract products;
- a research license that allows a person to research hemp for the purpose of benefiting the hemp industry in the State, medical research, or public health and safety; and
- an industrial license that allows a person to plant, cultivate, grow, harvest, dry, and process hemp grown as an agricultural crop for grain or fiber content.

Pursuant to its existing authority under the Hemp Farming Program, which is unchanged by the bill, MDA may set reasonable fees for the issuance and renewal of licenses and other services MDA provides under the program.

MDA must require, as a condition to the issuance of a retailer license, that a person sign a declaration stating that the licensee will not sell refined hemp or hemp extract products to an individual younger than age 21. A retailer that sells refined hemp or hemp extract products in violation of this provision is subject to existing criminal penalties under § 10-108 of the Criminal Law Article.

MDA must require, as a condition to the issuance of an industrial license, that a person (1) sign a declaration stating that the licensee will harvest only grain and fiber and will not harvest or distribute any floral material, extract, or resin from a crop and (2) consent to periodic visual inspections by MDA to ensure compliance with the licensing requirements. MDA may not (1) require a person to undergo a background check as a condition to the issuance of an industrial license or (2) test or sample the crop of an industrial license holder. However, MDA may require an inspection of the crop of an industrial license holder if a visual inspection reveals crop production that is inconsistent with the license requirements.

An industrial license holder is prohibited from destroying a hemp crop; if a licensee does so, the person is no longer eligible to hold an industrial license and is subject to specified existing enforcement provisions (those in § 14-309 of the Agriculture Article).

### *Packaging, Labeling, and Testing Requirements*

Prior to distributing refined hemp or a hemp extract product, a person must receive a certificate of analysis prepared by an independent testing laboratory. The certificate of analysis must state that (1) the refined hemp or hemp extract product is a product of a batch tested by the independent testing laboratory; (2) the batch tested does not contain delta-9-tetrahydrocannabinol (THC) or contains delta-9-THC in a concentration that does not exceed 0.3% on a dry weight basis after testing a random sample of the batch; and (3) the batch does not contain contaminants unsafe for human consumption.

MDA must establish minimum packaging and labeling requirements for refined hemp and hemp extract products. The packaging must (1) be clear, legible, and printed in English; (2) include a warning statement governing safe use and secure product storage that includes specified information and warnings; (3) include a primary label and an information label that contain specified information; and (4) include a certificate of analysis displaying the product's laboratory test results.

Refined hemp or a hemp extract product packaging may not (1) be labeled as grown in the State unless at least 51% of the hemp used in the product was grown in the State; (2) be targeted at minors, as specified; (3) include false or misleading information, including unproven or unverifiable statements; (4) include disease or drug claims that are not approved by the U.S. Food and Drug Administration (FDA); or (4) include the word "organic" unless the product is certified in accordance with the National Organic Program administered by the U.S. Department of Agriculture (USDA).

MDA may conduct an analysis of a sample of refined hemp or a hemp extract product and the associated label to ensure the product (1) meets the bill's labeling requirements; (2) does not contain delta-9-THC or contains delta-9-THC in a concentration that does not exceed 0.3% on a dry weight basis; (3) has not been tampered with or misbranded; and (4) meets all other requirements of the Hemp Farming Program, as modified by the bill.

### *Transporting Hemp*

A person transporting hemp that contains a delta-9-THC concentration that exceeds 0.3% on a dry weight basis is not in violation of the Hemp Farming Program if the person is transporting the hemp from a cultivator, a producer, or an extractor to a facility for remediation.

### *Hemp Advisory Council*

The Hemp Advisory Council must provide MDA with advice and expertise regarding the implementation of the department's plan for monitoring and regulating the production of

hemp in the State (which is required under current law but will need to be modified to address the bill's changes). Advisory council members may not receive compensation but are entitled to reimbursement for expenses.

### *Key Definitions*

The definition of “hemp” under the Hemp Farming Program is modified to mean the plant *Cannabis sativa L.* and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not that *does not contain delta-9-THC* or contains delta-9-THC in a concentration that does not exceed 0.3% on a dry weight basis. The bill specifies that the definition of “hemp product” (which is defined under current law) *includes* (1) acidic forms of cannabinoids extracted in a commercial kitchen, including tetrahydrocannabinolic acid and cannabidiolic acid; (2) hemp-derived fiber, grain, or topical products; and (3) hemp-derived feed products.

A “hemp extract product” is a hemp product intended for consumption; the term includes a hemp product intended for consumption that is manufactured or distributed in the State or for interstate commerce that is (1) produced, stored, transported, or processed in a facility bonded in accordance with the Hemp Farming Program and (2) labeled with a brand name and descriptors, as specified. “Refined hemp” means a derivative of hemp in which a cannabinoid other than delta-9-THC, or an isomer derived from such a cannabinoid, is found in a concentration greater than 0.3%. The term does not include specified substances.

### **Current Law:**

#### *Agriculture Article – Hemp*

“Hemp” means the plant *Cannabis sativa L.* and any part of that plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-THC concentration that does not exceed 0.3% on a dry weight basis. Hemp does not include any plant or part of a plant intended for a use that is regulated by the Maryland Medical Cannabis Commission (MMCC). “Hemp product” means a product derived from hemp produced in accordance with Title 14, Subtitle 3 of the Agriculture Article (which governs hemp production in the State under the Hemp Farming Program).

*Hemp Farming Program:* The purpose of the Hemp Farming Program is to (1) promote the production of hemp in the State; (2) promote the commercial sale of hemp products; (3) facilitate the research of hemp and hemp products between institutions of higher education and the private sector; and (4) monitor and regulate the production of hemp in the State.

MDA, in consultation with the Governor and the Attorney General, must establish a plan for monitoring and regulating the production of hemp in the State. MDA must submit the plan to USDA for approval. If the U.S. Secretary of Agriculture does not approve the plan, MDA must amend the plan and resubmit it for approval.

A person may not produce hemp in the State unless the person is licensed by MDA or the U.S. Secretary of Agriculture. Implementing regulations require MDA to conduct inspections and collect regulatory samples of, at a minimum, a random sample of licensed growers and collect regulatory samples of hemp to verify that hemp is not being produced in violation of the regulations.

*Prohibitions and Penalties:* Pursuant to § 14-309 of the Agriculture Article, a person may not knowingly (1) fail to comply with MDA's plan for monitoring and regulating the production of hemp; (2) misrepresent or fail to provide the legal description of land on which hemp is produced; (3) produce hemp without a valid license; or (4) produce plants or parts of a plant that exceed a delta-9-THC concentration of 0.3% on a dry weight basis.

MDA must report a person that knowingly violates Title 14, Subtitle 3 of the Agriculture Article to the Attorney General and the U.S. Attorney General. If MDA determines that a person negligently violated those provisions, MDA must require the person to correct the violation in a specified manner. If a person is found to have negligently violated those provisions three times in a four-year period, the person may not produce hemp in the State for the next five years, beginning on the date of the third violation.

*Status of Hemp under Federal Law:* The federal Agriculture Improvement Act of 2018 (2018 Farm Bill) altered certain federal authority relating to the production and marketing of hemp and removed hemp from the federal Controlled Substances Act. Under the 2018 Farm Bill, cannabis plants and derivatives that contain no more than 0.3% delta-9-THC on a dry weight basis are no longer controlled substances under federal law. The 2018 Farm Bill directed USDA to develop a program to review and approve plans submitted by each state, territory, and Indian tribal agency outlining their production of hemp for commercial uses. On January 19, 2021, USDA published its final rule on the production of hemp in the United States, which took effect March 22, 2021. Among other things, the regulations require background checks for all key participants.

*Criminal Penalties for the Sale of Products Containing Specified Tetrahydrocannabinol Substances to Individuals Younger Than Age 21 (Which Apply to an Industrial License Holder Who Destroys a Hemp Crop under the Bill)*

A person may not distribute, purchase for sale, or sell a product containing delta-8- or delta-10-THC to a person younger than age 21. A person who violates that prohibition is guilty of a misdemeanor and, on conviction, is subject to a fine up to \$300 for a

first violation, \$1,000 for a second violation that occurs within two years of the first violation, and \$3,000 for each subsequent violation that occurs within two years of the preceding violation.

### *Health-General Article – Medical Cannabis*

*Natalie M. LaPrade Medical Cannabis Commission:* MMCC is responsible for implementation of the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Hemp as defined under the Agriculture Article is explicitly excluded from the definition of medical cannabis.

*Edible Cannabis Products:* Chapter 456 of 2019 required MMCC to allow licensed medical cannabis dispensaries and processors to sell edible cannabis products. MMCC promulgated regulations to establish a regulatory framework for the oversight of the processing, distribution, and sale of edible cannabis products in 2020, and the regulations took effect April 19, 2021. Pursuant to those regulations, food or a food ingredient that is mixed, infused, or comes into contact with medical cannabis is considered and regulated as an edible cannabis product under the regulations.

### *Food and Feed Safety – In General*

The federal Food, Drug, and Cosmetic Act prohibits the manufacture or sale of any food that is adulterated or misbranded. The Maryland Department of Health (MDH) implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act.

MDA’s State Chemist Section regulates, among other things, the sale and distribution of animal feeds and pet foods to enhance and promote agricultural production, and to protect consumers, animals, and the environment from unsafe products. Broadly, regulation is accomplished by product registration, laboratory analyses, inspection, voluntary compliance, and enforcement actions (such as stop sale orders). According to MDH and MDA, FDA considers only three parts of the hemp plant (hulled hemp seed, hemp seed protein powder, and hemp seed oil) as generally recognized as safe for human

consumption. This means these products can be legally marketed in foods as long as the products comply with all other requirements. MDA advises that there are no approved hemp or cannabis components that are considered safe for animal feed or veterinary drug use.

### *Legalization of Cannabis in Maryland*

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional amendment, as of January 1, 2023, “personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-THC; or (4) beginning July 1, 2023, up to two cannabis plants. “Civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

From January 1, 2023, through June 30, 2023, possession of the personal use amount of cannabis and possession of the civil use amount of cannabis are subject to civil penalties. Possession of more than the civil use amount is subject to a criminal penalty. As of July 1, 2023, (1) a person at least age 21 may use and possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

**State Fiscal Effect:** This analysis assumes that MDA is able to implement the bill’s changes to the Hemp Farming Program. However, as discussed in more detail below, there may be implementation challenges due to conflicts with federal law.

### *Maryland Department of Agriculture – Administrative Costs*

General/special fund expenditures increase by \$2,269,000 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring 12 new employees (one laboratory technician, two chemists, one chemist supervisor, two administrative officers, five agricultural inspectors, and one office secretary) to (1) establish a new plan for monitoring and regulating the production of hemp under the framework established by the bill; (2) establish the required licenses; (3) establish minimum packaging and labeling requirements for refined hemp and hemp extract products; (4) review license applications and issue licenses; (5) register products; (6) expand the State Chemist’s laboratory and conduct additional product sampling; (7) maintain records as needed; (8) conduct visual inspections; (9) generally enforce the program as altered by the bill; and (10) support the work of the advisory council. It includes

salaries, fringe benefits, one-time start-up costs (including costs to expand the State Chemist’s laboratory space and to purchase laboratory equipment and vehicles), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the Hemp Farming Program is significantly expanded by the bill, resulting in a significant increase in workload;
- existing staff are fully subscribed and cannot absorb the additional duties;
- MDA plans to conduct analyses of samples, as it is explicitly authorized to do, in order to properly enforce the bill’s requirements and ensure compliance; and
- the State Chemist’s laboratory space is extremely limited and needs to be expanded to accommodate the anticipated increase in sampling.

Positions	12.0
Salaries and Fringe Benefits	\$654,142
Laboratory Expansion Costs	1,000,000
Purchase of Laboratory Equipment	350,000
Vehicle Purchases/Operations	146,700
Other Operating Expenses/Equipment	<u>118,158</u>
<b>Total FY 2024 State Expenditures</b>	<b>\$2,269,000</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Although MDA is authorized to set reasonable fees for the issuance and renewal of licenses and other services provided under the Hemp Farming Program, historically, fee revenue has not covered MDA’s costs. Accordingly, it is assumed that general funds are needed to supplement available special funds in order to cover MDA’s costs to implement the bill.

*Maryland Department of Agriculture – Special Fund Revenues*

Overall, special fund revenues for the Hemp Farming Fund are expected to increase. However, the magnitude of any such impact is unknown. As noted above, MDA is authorized under current law to set reasonable fees for the issuance and renewal of licenses and other services provided under the Hemp Farming Program. Under current regulations, MDA charges the following nonrefundable fees that apply to hemp growers: (1) an annual application fee of \$50; (2) an annual license fee of \$500; (3) a fee of \$500 for each additional location owned or controlled by a grower with a different mailing address; (4) a fee of \$250 for each time MDA samples and tests official samples for THC; and (5) a site modification fee of \$250. Under the bill, MDA indicates that it plans to charge a fee for the required licenses and for the registration of certain products. Thus, special fund



revenues for the Hemp Farming Fund likely increase, likely beginning in fiscal 2024, from license fees, product registration fees, and additional sampling fees that MDA collects as a result of the bill's changes. A reliable estimate of any such increase is unknown since it depends on the level of interest in the expanded program and the amount that MDA charges for licenses and registrations under the bill.

On the other hand, to the extent that the bill results in the revocation of USDA's approval of the Hemp Farming Program (discussed below), existing program participants are likely negatively affected and may drop out of the program. If that happens, special fund revenues decrease due to foregone application, license, and sampling fees.

#### *Application of Existing Penalty Provisions*

The application of existing penalty provisions is not anticipated to materially affect State finances.

#### *Implementation Issues and the Potential Impact on the Hemp Farming Program*

As noted above, this analysis assumes that MDA is able to implement the bill's changes and administer a robust program under the regulatory framework established by the bill. However, for several reasons, it is unclear to what extent it is able to do so. First, the use of most hemp and hemp products (other than hulled hemp seed, hemp seed protein powder, and hemp seed oil in human food products) is prohibited at the federal and State level from a food/feed safety perspective.

Second, several provisions of the bill violate USDA regulations. Under USDA regulations, all key participants must obtain a criminal history background check that is dated within 60 days of submitting a license application. According to MDA, the bill's prohibition against requiring a person to undergo a background check as a condition to the issuance of an industrial license likely violates USDA regulations. Additionally, the bill specifies that a person transporting hemp that contains a delta-9-THC concentration that exceeds 0.3% is not a violation of the Hemp Farming Program if the person is transporting the hemp from a cultivator, a producer, or an extractor to a facility for remediation. This authorization exceeds the allowable levels for hemp produced under the 2018 Farm Bill. Because these provisions violate federal law and/or regulations, it is possible that Maryland's Hemp Farming Program as altered by the bill may not be approved by USDA.

**Small Business Effect:** The bill establishes a meaningful opportunity for small businesses to become involved in the production and sale of hemp extract products and refined hemp. Growers, processors, retailers, researchers, and industrial licensees must comply with all license requirements, and refined hemp and hemp extract products must (1) meet packaging and labeling requirements and (2) receive a certificate of analysis prepared by an

independent testing laboratory in order to be distributed. Private laboratories that are considered small businesses benefit from an increase in the demand for their services.

However, as noted above, the bill may also jeopardize federal approval of the State's Hemp Farming Program. USDA advises that if it revokes approval of the State's hemp plan, USDA will assume regulatory oversight for hemp producers that are compliant with federal law and regulations.

Individuals growing hemp outside of a USDA-approved hemp farming program will not be eligible for USDA programs such as federally subsidized crop insurance. Additionally, hemp extract products and refined hemp produced in accordance with the bill will likely be restricted from moving in interstate commerce.

For a business that is primarily interested in selling hemp extract products and refined hemp products in the State, the bill allows for a meaningful establishment or expansion of business.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); University of Maryland Medical System; Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2023  
km/lgc

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