

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1067 (Delegate Fraser-Hidalgo, *et al.*)
 Economic Matters and Health and
 Government Operations

Hemp Farming Program – Use of Hemp and Hemp Products in Consumable
 Products

This bill alters the definitions of “hemp” and “hemp product” under the Hemp Farming Program and authorizes a person that produces hemp or a hemp product in accordance with the program to include the hemp or hemp product in consumable products for sale. Before offering for sale a consumable product that includes hemp or a hemp product, the person must ensure that the hemp or hemp product is tested by an independent testing laboratory to ensure (1) the hemp or hemp product meets applicable safety standards and (2) the delta-9-tetrahydrocannabinol (THC) concentration of the hemp product does not exceed 1.0% on a dry weight basis. If the hemp product has a delta-9-THC concentration that exceeds 1.0% on a dry weight basis, the person may include the hemp product in consumable products for sale if the hemp product is diluted to an allowable concentration confirmed by an independent testing laboratory. Finally, the bill prohibits a person from knowingly producing a hemp product that exceeds a delta-9-THC concentration of 1.0% on a dry weight basis.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$389,300 in FY 2024; out-years reflect ongoing costs. Special fund revenues are affected beginning in FY 2024.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	(-)/-	(-)/-	(-)/-	(-)/-	(-)/-
GF/SF Exp.	\$389,300	\$364,100	\$380,100	\$397,200	\$418,100
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: The definition of “hemp” under the Hemp Farming Program is altered. The term still 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. In addition, the term still does not include any plant or part of a plant that is intended for a use that is regulated under Title 13, Subtitle 33 of the Health-General Article (which governs the Natalie M. LaPrade Medical Cannabis Commission (MMCC) and the State’s medical cannabis program). However, the definition is modified to include compounds that occur in the plant *Cannabis sativa L.* that impact smell, taste, or both smell and taste.

The definition of “hemp product” under the Hemp Farming Program is also altered. The term still 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). However, the definition is modified to include (1) a plant, or any part of a plant, with a delta-9-THC concentration that does not exceed 1.0% on a dry weight basis and (2) acidic forms of cannabinoids extracted in a commercial kitchen from the plant *Cannabis sativa L.*, including tetrahydrocannabinolic acid and cannabidiolic acid.

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 MMCC. “Hemp product” means a product derived from hemp produced in accordance with Title 14, Subtitle 3 of the Agriculture Article (which, as noted above, 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.

The Maryland Department of Agriculture (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 the U.S. Department of Agriculture (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: 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.

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, the U.S. Food and Drug Administration 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 referendum, 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 a conflict with federal law.

Maryland Department of Agriculture – Administrative Costs

General/special fund expenditures increase by \$389,299 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one administrator, one office secretary, and three agricultural inspectors to (1) review applications for the registration of products, issue registrations, and potentially license new hemp growers; (2) maintain records; (3) conduct inspections and issue stop sales and violation orders; and (4) generally enforce the program as altered by the bill. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of 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; and
- existing staff are fully subscribed and cannot absorb the additional duties.

Positions	5.0
Salaries and Fringe Benefits	\$264,254
Vehicle Purchases	88,000
Operating Expenses	<u>37,045</u>
Total FY 2024 State Expenditures	\$389,299

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

The ultimate impact on special fund revenues for the Hemp Farming Fund 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 registration of products. Thus, special fund revenues for the Hemp Farming Fund may increase, likely beginning in fiscal 2024, from product registration fees and any additional license and sampling fees that MDA may collect 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 product registration.

On the other hand, because the bill likely 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.

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 that allows a person to sell consumable products that contain hemp. However, for several reasons, it is unclear if a person will be 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, the authorized delta-9-THC concentration of 1.0% (or higher if the product is diluted in an independent testing laboratory) for hemp products, including consumable products, exceeds allowable levels for hemp produced under the 2018 Farm Bill. MDA reached out to USDA for guidance on how the bill may affect the State's Hemp Farming Program. USDA advised that a program that allows hemp with a delta-9-THC greater than 0.3% conflicts with the 2018 Farm Bill. Although the allowed delta-9-THC concentration

in hemp is unchanged under the bill, the bill alters the definition of hemp product to include a plant, or any part of a plant, with a delta-9-THC concentration that does not exceed 1.0% on a dry weight basis. Based on MDA's understanding of USDA's input and the bill, it is likely that Maryland's Hemp Farming Program as altered by the bill would not be approved by USDA.

Small Business Effect: Although the bill may establish a meaningful opportunity for small businesses to become involved in the production and sale of consumable hemp products, as noted above, the bill also jeopardizes 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 and selling hemp products outside of a USDA-approved hemp farming program will not be eligible for USDA programs such as federally subsidized crop insurance. Additionally, hemp products 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 and consumable hemp products in the State, the bill may allow for a meaningful establishment or expansion of business.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 1006 of 2022.

Designated Cross File: SB 508 (Senators Elfreth and Feldman) - Education, Energy, and the Environment.

Information Source(s): Office of the Attorney General; Maryland Department of Agriculture; Maryland Department of Health; U.S. Department of Agriculture; Department of Legislative Services

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rh/lgc

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