

Department of Legislative Services  
 Maryland General Assembly  
 2023 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 508

(Senators Elfreth and Feldman)

Education, Energy, and the Environment

Economic Matters and Health and  
 Government Operations

Hemp Farming Program - Consumable Hemp Products

This bill authorizes a person to produce “consumable hemp products” for sale by the person if the consumable hemp product is tested by a State-authorized cannabis or hemp testing laboratory to ensure (1) the product meets applicable safety standards and (2) the tetrahydrocannabinol (THC) content of the product does not exceed 0.5 milligrams (mg) of THC per serving or 2.5 mg of THC per package. A person is explicitly prohibited from knowingly producing a consumable hemp product with a THC content that exceeds 0.5 mg of THC per serving or 2.5 mg of THC per package. “Consumable hemp product” means a product that is intended for human consumption that (1) is derived from hemp and (2) contains no more than 0.5 mg of THC per serving or 2.5 mg of THC per package. “Consumable hemp product” includes the acidic forms of cannabinoids extracted from hemp, including THC acid and cannabidiolic acid. **The bill takes effect July 1, 2023.**

Fiscal Summary

**State Effect:** Special fund revenues increase by *at least* \$591,000 in FY 2024 from laboratory testing fees; out-years reflect minimum ongoing fee revenues. General/special fund expenditures increase by \$2.0 million in FY 2024. Out-year expenditures, which reflect annualization, inflation, and the elimination of one-time costs, are covered with special funds.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$591,000	\$827,400	\$868,800	\$912,200	\$957,800
SF Expenditure	\$0	\$729,500	\$760,400	\$793,000	\$833,200
GF/SF Exp.	\$2,044,800	\$0	\$0	\$0	\$0
Net Effect	(\$1,453,800)	\$97,900	\$108,400	\$119,200	\$124,600

*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

### 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 Natalie M. LaPrade Medical Cannabis Commission (MMCC). “Hemp product” means a product derived from hemp produced in accordance with Title 4, 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 Revenues:** Special fund revenues for MDA increase by *at least* \$591,000 in fiscal 2024, increasing to *at least* \$957,819 by fiscal 2028, from laboratory testing and analysis fees for testing samples of consumable hemp products to ensure the products meet

applicable safety standards and that the THC content is within statutory limits. The information and assumptions used in calculating these estimates are stated below:

- MDA charges an initial fee of \$788 per sample, which is based on industry prices for similar testing;
- the fee is increased by 5% each year to account for increasing costs; by fiscal 2028, the fee is \$957.82 per sample; and
- MDA tests and analyzes 750 samples in the first year, which assumes a 90-day start-up delay, and 1,000 samples annually thereafter.

Under current law, MDA is authorized 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 also indicates that it plans to charge a fee for the registration of products. Thus, special fund revenues for the Hemp Farming Fund likely increase beyond the revenues estimated above for laboratory testing beginning in fiscal 2024 (from product registration fees and any additional license 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 amount that MDA charges for product registration.

**State Expenditures:** Based on projected levels of sampling and the fee that MDA plans to charge for laboratory testing and analysis, as discussed above, special fund revenues from laboratory testing fees alone are expected to fully cover MDA's increased costs under the bill beginning in fiscal 2025. However, in fiscal 2024, when MDA incurs substantial one-time start-up costs, it is assumed that general funds are needed to help cover MDA's costs under the bill.

Therefore, general/special fund expenditures increase by \$2,044,825 in fiscal 2024, which accounts for a 90-day start-up delay, and special fund expenditures increase by \$729,479 in fiscal 2025. The fiscal 2024 estimate reflects the cost of hiring one administrator, one office secretary, one laboratory technician, one chemist supervisor, two chemists, 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; (4) establish a new laboratory group within MDA's State Chemist's Section to test and analyze hemp products, including consumable hemp products, to ensure the products meet applicable safety standards and that the THC content is within statutory limits; 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, the renovation of the State Chemists' laboratory, and the purchase

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of new laboratory equipment), and ongoing operating expenses (including service contracts for new laboratory equipment and laboratory supplies). 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;
- although there are independent testing laboratories that are registered under the State’s medical cannabis program, there are only a limited number of such laboratories in the State, and the State Chemist’s laboratory serves as the primary laboratory where consumable hemp products are tested;
- under the current Hemp Farming Program, MDA tests between 55 and 60 samples each year; under the bill, MDA expects to test an additional 1,000 samples annually for several contaminants, including microbial contaminants, yeast, mold, mildew, pesticides, residual solvents, and heavy metals; and
- existing staff are fully subscribed and cannot absorb the additional duties.

	<u>FY 2024</u>	<u>FY 2025</u>
Positions (New)	9.0	0
Salaries and Fringe Benefits (Total)	\$510,894	\$667,454
Vehicle Purchases	88,000	0
Laboratory Equipment and Services	372,500	30,300
Laboratory Renovation Costs	1,000,000	0
Operating Expenses	<u>73,431</u>	<u>31,725</u>
<b>Total State Expenditures</b>	<b>\$2,044,825</b>	<b>\$729,479</b>

Based on the estimated minimum level of available special funds in fiscal 2024 (as discussed above), general fund expenditures are anticipated to total no more than approximately \$1.45 million in fiscal 2024.

Future year expenditures, which are fully funded with special funds, reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

**Small Business Effect:** The bill establishes a meaningful opportunity for small businesses to become involved in the production and sale of consumable hemp products. This may result in new businesses entering the market and/or an expansion of existing businesses that are interested in producing and selling consumable hemp products.

**Additional Comments:** This analysis includes additional information provided by MDA regarding the fiscal effect of the bill on the State Chemist Section that was not included in the fiscal and policy note for the bill as introduced.

## **Additional Information**

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

**Designated Cross File:** HB 1067 (Delegate Fraser-Hidalgo, *et al.*) - Economic Matters and Health and Government Operations.

**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

**Fiscal Note History:** First Reader - March 1, 2023  
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