

Department of Legislative Services

Maryland General Assembly

2022 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

Senate Bill 1006

(Senators Guzzone and Feldman)

Education, Health, and Environmental Affairs

Environment and Transportation

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 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: The impact of this bill is largely unknown. Although the bill authorizes a person to sell consumable products containing hemp or hemp products at the State level, the sale of such products is likely still illegal at the federal level. As a result, near-term fiscal and operational effects are expected to be minimal, as discussed below.

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

Small Business Effect: Minimal or none, as discussed below.

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).

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 the above prohibitions to the Attorney General and the U.S. Attorney.

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. A person may not produce hemp in the State unless the person is licensed by MDA or the U.S. Secretary of Agriculture. MDA published regulations to implement the program that took effect November 1, 2020. The regulations require MDA to conduct annual inspections of, at a minimum, a random sample of licensed growers and collect regulatory samples of hemp to verify that hemp is being produced in accordance with State law. Additionally, if MDA has reason to believe that a program violation is occurring, the department may conduct additional regulatory inspections as it deems appropriate.

Hemp Research Pilot Program: Chapters 475 and 476 of 2018 established the Hemp Research Pilot Program in Maryland that is administered by MDA. Chapter 228 of 2019 expanded upon the pilot program and established a regulatory framework for the commercial production of hemp in the State in conjunction with the federal changes from the 2018 Farm Bill. The U.S. Department of Agriculture (USDA) published guidance on state hemp farming plans at the end of calendar 2019. MDA promulgated regulations in late 2020, as stated above, that brought the State into compliance with the 2018 Farm Bill and established industrial hemp as an agricultural commodity.

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.

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.

Relevant Definitions: Pursuant to Code of Maryland Regulations 10.62.01.01, “medical cannabis” means (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; (4) each compound, manufactured product, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin; and (5) any other naturally produced cannabinol derivative, whether produced directly or indirectly by extraction.

Medical cannabis 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; (5) the sterilized seed of the plant that is incapable of germination; or (6) hemp as defined under the Agriculture Article.

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 went into 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 and is regulated under State regulations (COMAR 10.62.37). Generally, before engaging in the business of possessing, processing, packaging, labeling, transferring, transporting, selling, or distributing edible cannabis products to a dispensary, a person must be licensed as a processor, and must obtain an edible cannabis permit. Further, all edible cannabis products must be approved by MMCC prior to sale or distribution to a licensed dispensary. An edible cannabis product may not contain more than 10 milligrams (mg) THC per dose, and 100 mg per package, unless otherwise approved by MMCC. Regulations also establish general requirements for a facility that processes edible cannabis products, including equipment and cleaning and sanitation procedures.

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.

Criminal Law Article – Marijuana

“Marijuana” means (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 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; (5) the sterilized seed of the plant that is incapable of germination; or (6) hemp as defined under the Agriculture Article.

Controlled dangerous substances (CDS) are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Marijuana is listed on Schedule I. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana.

Possession of *10 grams or more* of marijuana is a misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.

Possession of *less than 10 grams* of marijuana is a civil offense, punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by MDH; and (3) refer the individual to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana paraphernalia and eliminated the associated penalties. The law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

State Fiscal Effect: The bill authorizes a person to sell consumable products that contain hemp and/or hemp products. However, for several reasons (discussed below), it is unclear that a person is actually able to sell these products for human or animal consumption in the State.

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. Additionally, the bill authorizes the use of hemp in consumable products outside of the regulatory framework established for both the production and sale of medical edible cannabis products and for the production and sale of hemp products. The authorized delta-9-THC concentration of 1.0% (or higher if the product is diluted in an independent testing laboratory) for hemp added to consumable products under the bill exceeds allowable levels for hemp produced under the authorization from the 2018 Farm Bill (and State regulations). These products are also not subject to MMCC oversight. Thus, any such products would likely be considered to be CDS and, therefore, illegal at the federal level. For these reasons, it is unlikely that a person is able to legally sell these products in the State even under the bill's provisions.

Thus, the overall impact of the bill is largely unknown. To the extent that MDH and MDA need to develop a regulatory framework to allow the sale of consumable products that contain hemp and hemp products for humans and animals in the State, State expenditures for MDH and MDA increase significantly, likely by more than \$1.0 million annually beginning in fiscal 2023 to hire staff, develop regulations, purchase testing equipment, and generally enforce the program. This broad estimate is based on costs to develop and enforce an edible cannabis regulatory framework in the State. MDA notes that its unit that regulates animal feed products is short staffed, so it needs to hire staff to conduct any enforcement actions under the bill. However, since it is likely that individuals are unable to legally sell consumable products that contain hemp and hemp products despite the bill's provisions, near-term impacts on the State are expected to be minimal.

Small Business Effect: As discussed above, it is unlikely that consumable products that contain hemp and hemp products are able to be sold legally in the State, despite the bill's provisions. Thus, near-term impacts on small businesses in the State are expected to be minimal.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 28, 2022
js/lgc Third Reader - April 11, 2022
Revised - Amendment(s) - April 11, 2022

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