

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Agriculture, Conservation and Forestry
From: Karen S. Nadeau, Legislative Analyst
Date: February 23, 2021
Subj: **LD 33 – An Act To Improve the Laws Governing Hemp by Bringing Them into Compliance with Federal Law**

SUMMARY: This bill brings the laws governing hemp into compliance with the federal Agriculture Improvement Act of 2018 and the USDA's regulations in 7 Code of Federal Regulations, Part 220.

Sec. 1 – Federal rules require a 10-year prohibition on licensing if an applicant has been convicted of a felony related to a controlled substance.

Sec. 2 – Adds the definition of “key participants” to the hemp law in Title 7.

- USDA rules require states to identify all the key participants in a hemp production operation since license eligibility restrictions are applied to all key participants.

Sec. 3 – Deletes the exemption for planting 3 hemp plants for personal use.

- USDA does not allow for any exemptions from licensing.

Sec. 3 – Also removes the prohibition on asking applicants to provide seed or clone information with their license application.

- According to DACF, these documents (certificates of analysis or seed certification) are more easily obtained now than they were even a year ago.

Sec. 4 – Adds rulemaking language to specifically address the need to conform with federal rules and to establish a process for criminal background checks of licensees and all key participants. These are routine technical rules.

Sec. 5 – Repeals T. 7, section 2231, subsection 6-A

6-A. Preliminary program; indoor cultivation. The commissioner shall establish a preliminary program to allow the growing of hemp inside buildings and greenhouses. The number of grower licensees selected for the program under this subsection may be limited by available resources as determined by the department. Notwithstanding subsection 7, the rules may specify additional fees based on square footage and the number of buildings or greenhouses approved under the program. A grower licensee who uses a hoop house, high tunnel, row cover or other season extender over crops approved for outdoor cultivation may not be required to be part of the program and may not be assessed additional fees.

- Department testified that this was repealed b/c this subsection was only for the establishment of a preliminary indoor licensing program.

Sec. 6 – Repeals T. 7, section 2231, subsection 9

9. Confidentiality. Notwithstanding [Title 1, section 402](#), the legal description of the land area or indoor facility to be used for the production of hemp provided under subsections 3 and 5-A, including a map, an aerial photograph or global positioning coordinates sufficient for locating each field, site or indoor facility where hemp will be grown, handled or stored, is confidential and may be shared with state, county and local government agencies only for purposes of administration and enforcement of this section.

Summary reports of information designated as confidential may be released to the public using aggregate data that does not reveal the location of a field, site or indoor facility where hemp is grown, handled or stored.

- Department testified that this was revealed b/c federal rules require states to report the locations of all hemp growing sites.

TESTIMONY

Proponents: *Department of Agriculture, Conservation and Forestry (DACF)*

Written testimony only: Maine Organic Farmers and Gardeners Association

- DACF has been licensing hemp growers since 2016 under the 2014 federal Farm Bill authorization.
- In December 2018, the federal Agriculture Improvement Act made hemp production legal in all 50 states.
- USDA's Agricultural Marketing Service (AMS) published Interim Final Rule (IFR) 7 CFR, Part 990. USDA-AMS approved Maine's State Plan based on the IFR on 9/2/20.
- USDA-AMS published the Final Rule 1/15/21 which goes into effect 3/22/21. As part of the Final Rule, USDA-AMS requires approved plans from states that want to license hemp growers.
- To implement the State Plan, Maine must enact statutory changes to conform w/federal rules.
- While MOFGA advocates for agricultural systems that minimize regulations between farmers and customers, we also want to ensure that products are safe for consumers and that consumers have confidence in the markets.

Opponents: *None*

NFNA: *None*

RELEVANT STATUTES (attached)

- Section 1 of LD amends Title 5, Chapter 341, section 5303, subsection 2
Chapter 341 – Occupational License Disqualification on Basis of Criminal Record
Sec. 5303 – Time limit on consideration of prior criminal conviction, Sub 2 – 10-year limits
- Sections 2 thru 6 of LD amend Title 7, Chapter 406-A, section 2231 (the Hemp law)

INFORMATION REQUESTS

What are the current penalties for violating the hemp statutes? (T. 7 section 2231)

- T. 7 section 16

Unless a specific penalty has otherwise been provided, a person, firm, partnership or corporation that violates a provision of this Title or a rule adopted pursuant to this Title commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

- Rule Chapter 274, Section V (attached):

Any violation of T. 7 section 2231 or corresponding rules may be enforced as a civil violation.

- According to the Gary Fish, State Horticulturist: “The rules allow license suspension and requiring the grower to destroy the crop and the general statutes allow for a range of \$100 - \$500 civil penalty per violation. It is very unlikely that we would assess a fine unless the violation was egregious.”

What are the consequences of not conforming with the federal law and corresponding rule?

According to Gary Fish: “The consequences of not passing the bill so we can conform with the federal rule are explained by William Richmond of USDA-ARS, “If after Jan 1, 2022 Maine is not administering a 2018 Farm Bill/Final Rule compliant program, USDA assumes oversight of the growers.”

PRELIMINARY FISCAL IMPACT STATEMENT: *Not yet received.*