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An Act To Clarify That Food and Food Products Containing Hemp-derived Cannabidiol Produced and Sold within the State Are Not Adulterated and To Match the State's Definition of "Hemp" to the Definition in Federal Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the federal Food and Drug Administration, in response to the passage of the federal Agriculture Improvement Act of 2018, released a statement announcing that it is unlawful under the Federal Food, Drug, and Cosmetic Act to introduce food containing added cannabidiol into interstate commerce because it is an active ingredient in a federally approved pharmaceutical drug; and

Whereas, the health inspection program within the Maine Centers for Disease Control in the Department of Health and Human Services has sent letters to retail food establishments in the State and regulators from the Department of Agriculture, Conservation and Forestry have contacted pet stores explaining that any food or food products containing hemp-derived cannabidiol must be removed from shelves, even if those food or food products are not introduced into interstate commerce, which has created anxiety and confusion among business owners, stakeholders and consumers alike; and

Whereas, any compliance with the letters or statements from the Department of Health and Human Services or the Department of Agriculture, Conservation and Forestry, which expand the federal Food and Drug Administration's authority to regulate only food that enters into interstate commerce, will undermine state sovereignty, diminish the livelihoods of Maine hemp farmers, food producers and retailers and deprive the people of Maine of the food that they consider necessary for their own or their animals' health and well-being; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 22 MRSA §2158-A is enacted to read:

§ 2158-A. Food and food products containing hemp not adulterated

Notwithstanding any other provision of law to the contrary, food or food products that contain hemp or any part of the hemp plant, including the seeds and all naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, resins, isomers, acids, salts, salts of isomers or cannabidiol derivatives, are not considered to be adulterated or misbranded under this subchapter based solely on the inclusion of hemp or any part of the hemp plant. The nonpharmaceutical or nonmedical production, marketing, sale

or distribution of food or food products within the State that contain hemp or any part of the hemp plant may not be restricted or prohibited within the State based solely on the inclusion of hemp or any part of the hemp plant. A food establishment may not make any claims that food or food products that contain hemp can treat, cure or prevent any disease without approval pursuant to federal law. For the purposes of this section, "hemp" has the same meaning as in Title 7, section 2231, subsection 1.

PART B

Sec. B-1. 7 MRSA §2231, as amended by PL 2015, c. 202, §1, is further amended to read:

§ 2231.Hemp

1. Definition. As used in this chapter, unless the context otherwise indicates, "~~industrial hemp~~" means any variety of the plant Cannabis sativa L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed of not more than 0.3% on a dry weight basis and that is grown or possessed by a licensed grower in compliance with this chapter. As used in this chapter, unless the context otherwise indicates, "certified seed source" means a source of hemp seeds that are certified by a 3rd party as producing hemp having a delta-9-tetrahydrocannabinol concentration ~~that does not exceed~~of not more than 0.3% on a dry weight basis.

2. Growing permitted. Notwithstanding any other provision of law, a person may plant, grow, harvest, possess, process, sell and buy ~~industrial hemp~~ if that person holds a license issued pursuant to subsection 4. A person licensed pursuant to subsection 4 may plant, grow and harvest only hemp that is grown from seeds acquired from a certified seed source. A person licensed pursuant to subsection 4 may acquire hemp seeds directly from a certified seed source or from a hemp seed distributor licensed in this State distributing hemp seeds pursuant to subsection 2-A.

2-A. Seed distribution. The commissioner may issue a license for a hemp seed distributor if the hemp seeds distributed by the hemp seed distributor are from a certified seed source. The commissioner may issue a license under this subsection to a holder of a seed labeling license pursuant to section 1044-A.

3. Application. A person desiring to grow ~~industrial hemp~~ for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of ~~industrial hemp~~ and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields.

4. License issued. Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

6. Rules. The commissioner shall adopt rules to establish an application fee, a license fee, per acre fees for monitoring, sampling and testing and guidelines for monitoring the growth and harvest of industrial hemp. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Fees. The commissioner shall establish through rulemaking under subsection 6 an application fee, a license fee and per acre fees for monitoring, sampling and testing that are reasonable and necessary to cover the costs of the department. The application fee must be no less than \$50 and no more than \$100, the license fee must be no less than \$100 and no more than \$500, and the fees for monitoring, sampling and testing must be no less than \$1 per acre and no more than \$100 per acre.

All fees received pursuant to this subsection must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this subsection must be used for the expenses of administering this chapter.

Sec. B-2. 17-A MRSA §1101, sub-§22, as enacted by PL 2003, c. 61, §1, is amended to read:

22. "~~Industrial hemp~~Hemp" means ~~any variety of the plant~~ Cannabis sativa L. ~~and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not,~~ with a delta-9-tetrahydrocannabinol concentration ~~that does not exceed of not more than~~ 0.3% on a dry weight basis and that is grown under a federal permit in compliance with the conditions of that permit.

Sec. B-3. 17-A MRSA §1103, sub-§7, as enacted by PL 2003, c. 61, §2, is amended to read:

7. It is an affirmative defense to prosecution under this section that the substance trafficked in is ~~industrial~~ hemp.

Sec. B-4. 17-A MRSA §1105-A, sub-§3, as enacted by PL 2003, c. 61, §3, is amended to read:

3. It is an affirmative defense to prosecution under this section that the substance trafficked in is ~~industrial~~ hemp.

Sec. B-5. 17-A MRSA §1105-C, sub-§3, as enacted by PL 2003, c. 61, §4, is amended to read:

3. It is an affirmative defense to prosecution under this section that the substance furnished is ~~industrial~~ hemp.

Sec. B-6. 17-A MRSA §1105-D, sub-§3, as enacted by PL 2003, c. 61, §5, is amended to read:

3. It is an affirmative defense to prosecution under this section that the substance cultivated or grown is ~~industrial~~ hemp.

Sec. B-7. 17-A MRSA §1106, sub-§6, ¶A, as enacted by PL 2007, c. 346, Pt. B, §1, is amended to read:

A. ~~Industrial hemp~~Hemp; or

Sec. B-8. 17-A MRSA §1107-A, sub-§3, ¶A, as enacted by PL 2005, c. 430, §4 and affected by §10, is amended to read:

A. The substance possessed is industrial hemp; or

Sec. B-9. 17-A MRSA §1107-A, sub-§5, ¶A, as enacted by PL 2007, c. 346, Pt. B, §2, is amended to read:

A. ~~Industrial hemp~~Hemp; or

Sec. B-10. 17-A MRSA §1111-A, sub-§10, as enacted by PL 2003, c. 61, §8, is amended to read:

10. It is an affirmative defense to prosecution under this section that the drug paraphernalia used or possessed is used or possessed for the propagation, cultivation or processing of industrial hemp.

Sec. B-11. 17-A MRSA §1117, sub-§3, as enacted by PL 2003, c. 61, §9, is amended to read:

3. It is an affirmative defense to prosecution under this section that the substance cultivated or grown is industrial hemp.

Sec. B-12. 28-B MRSA §102, sub-§27, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

27. Marijuana. "Marijuana" means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate but does not include industrial hemp as defined in Title 7, section 2231, subsection 1 or a marijuana product.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

Part A of this bill provides that food and food products containing hemp-derived cannabidiol that are produced and sold within the State are not considered to be "adulterated" under state law, and the production, marketing, sale or distribution of food or food products containing hemp may not be prohibited.

Part B of this bill changes the term in Maine law "industrial hemp" to "hemp" and defines "hemp" to match the definition of "hemp" in the federal Agriculture Improvement Act of 2018.