

Stricken language would be deleted from and underlined language would be added to present law.
Act 629 of the Regular Session

State of Arkansas *As Engrossed: S3/13/23 H4/3/23 H4/5/23*
94th General Assembly **A Bill**
Regular Session, 2023

SENATE BILL 358

By: Senators Dees, J. Boyd, J. Dismang, J. Petty, D. Sullivan, B. Davis, *Caldwell, Flippo, Gilmore, M. McKee, C. Penzo, Stone, G. Stubblefield*

By: Representatives Gazaway, *Haak, Lundstrum, Unger, Breaux*

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CERTAIN DELTA
TETRAHYDROCANNABINOL SUBSTANCES; TO PROHIBIT THE
GROWTH, PROCESSING, SALE, TRANSFER, OR POSSESSION OF
INDUSTRIAL HEMP THAT CONTAINS CERTAIN DELTA
TETRAHYDROCANNABINOL SUBSTANCES; TO INCLUDE DELTA-8,
DELTA-9, AND DELTA-10 TETRAHYDROCANNABINOL IN THE
LIST OF SCHEDULE VI CONTROLLED *SUBSTANCES*; *TO DECLARE*
AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

*TO PROHIBIT INDUSTRIAL HEMP THAT CONTAIN
CERTAIN DELTA TETRAHYDROCANNABINOL
SUBSTANCES; TO INCLUDE CERTAIN
TETRAHYDROCANNABINOL IN THE LIST OF
SCHEDULE VI CONTROLLED SUBSTANCES; AND TO
DECLARE AN EMERGENCY.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

*(a) It is the intent of the General Assembly to prohibit the
production and sale of intoxicating substances derived from industrial hemp.*

*(b) The General Assembly recognizes that the cultivation of hemp for
industrial use, such as home and building construction, should remain
authorized under the "Arkansas Industrial Hemp Production Act."*



SECTION 2. Arkansas Code § 2-15-503(5), concerning definitions that apply under the Arkansas Industrial Hemp Production Act, is amended to read as follows:

(5) "Industrial hemp" means the plant *Cannabis sativa* and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, ~~that contains a~~ with a total delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis, unless specifically controlled under the Uniform Controlled Substances Act, § 5-64-101 et seq. that adopted by federal law under the Agricultural Marketing Act, 7 U.S.C. § 1639o, as it existed on January 1, 2021;

SECTION 3. Arkansas Code § 2-15-515(a), concerning violations of the Arkansas Industrial Hemp Production Act, is amended to read as follows:

(a) A grower has committed a negligent violation of this subchapter if the grower negligently:

- (1) Fails to provide a legal description of land on which the grower produces industrial hemp;
- (2) Fails to obtain a license from the State Plant Board; or
- (3) Produces *Cannabis sativa* with a tetrahydrocannabinol concentration exceeding the tetrahydrocannabinol level threshold of a negligent violation as defined by federal rule and in this subchapter.

SECTION 4. Arkansas Code § 5-64-101(16)(B)(vi), concerning the exclusion from the definition of "marijuana" within the Uniform Controlled Substances Act, is amended to read as follows:

(vi) *Hemp-derived cannabidiol that:*

- (a) Contains not more than three-tenths of one percent (0.3%) of delta-9 tetrahydrocannabinol (THC) on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and
- (b) Is not approved by the United States Food and Drug Administration for marketing as a medication;

SECTION 5. Arkansas Code § 5-64-215(a)(2)(B), concerning the substances in Schedule VI of the Uniform Controlled Substances Act, is amended to read as follows:

(B) Not more than three-tenths of one percent (0.3%) of delta-9 tetrahydrocannabinol in the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and

SECTION 6. Arkansas Code 5-64-215(a)(5)(A)(i), concerning controlled substances that are listed in Schedule VI, is amended to read as follows:

(5) Synthetic substances, derivatives, or their isomers in the chemical structural classes described below in subdivisions (a)(5)(A)-(J) of this section and also specific unclassified substances in subdivision (a)(5)(K) of this section. Compounds of the structures described in this subdivision (a)(5), regardless of numerical designation of atomic positions, are included in this subdivision (a)(5). The synthetic substances, derivatives, or their isomers included in this subdivision (a)(5) are:

(A)(i) Tetrahydrocannabinols, including without limitation the following:

(a) Delta-1 cis or trans tetrahydrocannabinol, otherwise known as a delta-9 cis or trans tetrahydrocannabinol, and its optical isomers;

(b) Delta-6 cis or trans tetrahydrocannabinol, otherwise known as a delta-8 cis or trans tetrahydrocannabinol, and its optical isomers; ~~and~~

(c) ~~Delta-3,4~~ Delta-3,4 cis or trans tetrahydrocannabinol, otherwise known as a delta-6a,10a cis or trans tetrahydrocannabinol, and its optical isomers;

(d) Delta-10 cis or trans tetrahydrocannabinol, and its optical isomers;

(e) Delta-8 tetrahydrocannabinol acetate ester;

(f) Delta-9 tetrahydrocannabinol acetate ester;

(g) Delta-6a,10a tetrahydrocannabinol acetate ester;

(h) Delta-10 tetrahydrocannabinol acetate ester;

(i) A product derived from industrial hemp that was produced as a result of a synthetic chemical process that converted the industrial hemp or a substance contained in the industrial hemp into Delta-8, Delta-9, Delta-6a, 10a, or Delta-10 tetrahydrocannabinol including their respective acetate esters; and

(j) Any other psychoactive substance derived therein.

SECTION 7. Arkansas Code § 5-64-215, concerning the substances in Schedule VI of the Uniform Controlled Substances Act, is amended to add an additional subsection to read as follows:

(d) This section does not prohibit the continuous transportation through Arkansas of the plant Cannabis sativa L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent (0.3%) on a dry weight basis, produced in accordance with 7 U.S.C. § 1639o et seq.

SECTION 8. Arkansas Code § 19-6-831(b)(1), concerning the Arkansas Tobacco Control Revenue Fund, is amended to read as follows:

(b)(1) All permit and license fees received by Arkansas Tobacco Control under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and § 20-56-401 et seq., shall be deposited into the State Treasury as special revenues to the credit of the fund.

SECTION 9. Arkansas Code § 19-6-831(c)(1), concerning the Arkansas Tobacco Control Revenue Fund, is amended to read as follows:

(c)(1) The fund shall be used for expenses incurred by Arkansas Tobacco Control in the organization, maintenance, operation, and merchant education and training with regard to enforcement of § 5-27-227, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., § 20-56-401 et seq., and the Unfair Cigarette Sales Act, § 4-75-701 et seq.

SECTION 10. Arkansas Code Title 20, Chapter 56, is amended to add an additional subchapter to read as follows:

Subchapter 4 - Hemp-Derived Products

20-56-401. Purpose.

It is the intent of this subchapter to provide regulation of certain hemp-derived products to:

(1) Prevent the sale and use of illicit hemp-based products within Arkansas; and

(2) Protect and promote the public health and welfare of the residents of this state.

20-56-402. Definitions.

As used in this subchapter:

(1) "Annual" or "annually" means the fiscal year from July 1 through the next June 30;

(2) "Approved Laboratory" means a laboratory that is accredited by the National Institute on Drug Abuse, the National Environmental Laboratory Accreditation Conference, the International Organization for Standardization or similar accrediting entity as determined by Arkansas Tobacco Control and that has been approved by the Director of Arkansas Tobacco Control specifically for the testing of hemp-derived product;

(3) "Consumer" means a member of the public at large;

(4) "Days" means calendar days unless otherwise specified;

(5) "Finished product" means a product intended for consumer use to be sold at retail;

(6) "Hemp" means the plant Cannabis sativa and any part of the plant, including the seeds of the plant, that contains a delta-9 tetrahydrocannabinol concentration of three-tenths percent (0.3%) or less on a dry-weight basis, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not;

(7) "Hemp-derived e-liquid product" means a liquid hemp-derived product that contains hemp that is inhaled when using a vapor product, and that may or may not include without limitation propylene glycol, vegetable glycerin, and flavorings;

(8)(A) "Hemp-derived product" means a product intended for any

form of human consumption, including consumption by vapor inhalation, or a component of a product, that is derived from hemp, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, and any product made from such derivatives, and that contains greater than three tenths percent (0.3%) tetrahydrocannabinol.

(B) "Hemp-derived product" includes a hemp-derived e-liquid product and a vapor product.

(C) "Hemp-derived product" does not include:

(i) A product intended for animal consumption or use;

(ii) A cosmetic as defined by § 20-56-202(6);

(iii) Any marijuana, medical marijuana, or other cannabis product containing delta-9 tetrahydrocannabinol greater than three tenths percent (0.3%) on a dry weight basis as administered, licensed, and otherwise regulated by the Alcoholic Beverage Control Division, the Medical Marijuana Commission, and the Department of Health under Arkansas Constitution, Amendment 98;

(iv) A raw hemp product, including any intact plant, flower, buds, leaves, or stems;

(v) A drug in the form for which an application filed in accordance with 21 U.S.C. § 355 is approved by the United States Food and Drug Administration;

(vi) A dietary supplements as defined by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.; or

(vii) A fabric, textile, cordage, fiber, fuel, paper, construction material, plastic, seed, seed meal, and seed oil;

(9)(A) "Manufacturer" means a person that manufactures, fabricates, assembles, or processes a hemp-derived product, including without limitation federally licensed importers and federally licensed distributors that deal in hemp-derived products.

(B) "Manufacturer" includes:

(i) A sales entity affiliate of the manufacturer or any other entity representing the manufacturer with regard to the sale of hemp-derived products produced by the manufacturer to wholesalers or permitted retailers; and

(ii) A person that mixes, compounds, extracts,

infuses, blends, processes, repackages, or resizes hemp-derived products including the extraction of cannabinoids from hemp biomass.

(C) “Manufacturer” does not include a person who engages in the agricultural production of hemp, such as growing, planting, and harvesting of raw hemp biomass regulated by the State Plant Board;

(10) “Minor” means a person who is under twenty-one (21) years of age;

(11) “Person” means an individual, retailer, wholesaler, manufacturer, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation or other political subdivision of the state, receiver, trustee, fiduciary, or trade association;

(12) “Place of business” means the physical location:

(A) Where orders for hemp-derived products are taken or received or where hemp-derived products are sold; and

(B) That is on file with Arkansas Tobacco Control;

(13) “Retailer” means a person that purchases hemp-derived products from permitted wholesalers for the purpose of selling the hemp-derived products in person and over the counter at retail to consumers;

(14)(A) “Sale” or “sell” means a transfer, exchange, or barter in any manner or by any means for any consideration, including distributing or shipping hemp-derived product in connection with a sale.

(B) A sale “in” or “into” a state refers to the state in which the destination point of the hemp-derived product is located in the sale without regard to where title was transferred.

(C) A sale “from” a state refers to the sale of a hemp-derived product that is located in that state to the destination in question without regard to where title was transferred;

(15) “Self-service display” means a display:

(A) That contains a hemp-derived product, or any component of a hemp-derived product;

(B) That is located in an area where customers are permitted; and

(C) In which the hemp-derived product, or any component of a hemp-derived product is readily accessible to a customer without the assistance of a salesperson;

(16) “Tetrahydrocannabinol” means a compound that is the natural, primary active cannabinoid substance or its equivalent contained in the plant of the genus cannabis or in the resinous extracts of the plant, including derivatives or isomers derived from such cannabinoids;

(17) “Vapor product” means hemp-derived product that is an electronic oral device of any size or shape that contains a vapor of hemp or hemp-derived e-liquid product that when used or inhaled simulates smoking, regardless of whether a visible vapor is produced, including without limitation a device that:

(A) Is composed of a heating element, battery, electronic circuit, chemical process, mechanical device, or a combination of heating element, battery, electronic circuit, chemical process, or mechanical device;

(B) Works in combination with a cartridge, other container, or liquid delivery device containing hemp or hemp-derived e-liquid product and manufactured for use with vapor products;

(C) Is manufactured, distributed, marketed, or sold as any type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any other produced name or descriptor; and

(D) Does not include a product regulated as a drug or device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as it existed on January 1, 2015;

(18) “Warehouse” means a place where hemp-derived products are stored for another person and to or from which place the hemp-derived products are shipped or delivered upon order by the owner of the hemp-derived products, to the warehouse; and

(19) “Wholesaler” means a person other than a manufacturer or a person owned or operated by a manufacturer that:

(A) Does business within the state;

(B) Purchases hemp-derived products from any source;

(C) Distributes or sells the hemp-derived products to other wholesalers, or retailers; and

(D) Does not distribute or sell the hemp-derived products at retail to consumers.

20-56-403. Construction.

(a) A hemp-derived product shall not be delivered, sold, bought, or

used in this state except in conformity with all applicable laws and regulations, including this subchapter and any rules promulgated under this subchapter.

(b) A person shall not sell a hemp-derived product without being permitted by Arkansas Tobacco Control.

(c) A product intended for human consumption or inhalation that is derived from hemp and contains tetrahydrocannabinol shall not be permitted or allowed under the laws of this state, other than hemp-derived products if otherwise legal under state law.

(d)(1) A hemp-derived product shall not be combined with or contain any of the following:

(A) Any liquid, hydrocolloid, animal-based substance, thickener, sweetener, flavoring, synthetic product, propylene glycol, vegetable glycerin, or other non-hemp-derived substance;

(B) Nicotine or tobacco; or

(C) Any amount of tetrahydrocannabinol as to create a danger of misuse, overdose, accidental overconsumption, inaccurate dosage, or other risk to the public.

(2) Medical devices, prescription drugs, or drugs otherwise approved by the United States Food and Drug Administration shall not be considered hemp-derived products.

(e) The business of handling, receiving, possessing, storing, distributing, taking orders for, soliciting orders of, selling, offering for sale, and dealing in, through sale, barter, or exchange, hemp-derived products is declared to be a privilege under the Arkansas Constitution and laws of the State of Arkansas.

20-56-404. Permits.

(a)(1) Each person listed in this section, before commencing business, or if already in business, before continuing business, shall pay an annual privilege fee and secure a permit from the Director of Arkansas Tobacco Control.

(2) A person purchasing an existing permitted retail location may, with the permission of the seller and Arkansas Tobacco Control, operate under the selling owner's permit for no more than thirty (30) days from the date of the sale.

(b)(1) In addition to securing a permit under subsection (a) of this section, a manufacturer whose products are sold in this state shall register with the Secretary of the Department of Finance and Administration.

(2) A wholesaler of hemp-derived products shall secure the proper wholesale permit.

(3) Every retailer of hemp-derived products that operates a place of business shall secure the proper retail permit.

(c)(1) Permits shall be issued as follows:

(A) A permit for a sole proprietorship is issued in the owner's name and in the fictitious business name, if any;

(B)(i) A permit for a partnership or limited liability company is issued in the name of:

(a) The managing partner or managing member;

and

(b) The partnership or limited liability

company.

(ii) If the managing partner or managing member of a limited liability company is a partnership, limited liability company, or corporation, then the permit shall be issued in the name of:

(a) The president or chief executive officer;

and

(b) The partnership or limited liability

company; and

(C) A permit for a publicly traded or nonpublicly traded corporation is issued in the name of the president or chief executive officer of the corporation and in the name of the corporation.

(2) It is a violation for a permitted entity not to provide written notification to the director within thirty (30) days of a change in the following:

(A) The managing partner, limited liability company managing member, or president or chief executive officer of a corporation, partnership, or limited liability company; or

(B) The stockholders effecting twenty-five percent (25%) or more of the total voting shares of a nonpublicly traded corporation.

(d)(1) When an entity transfers a business permitted under this subchapter, the entity to which the business is transferred:

(A) Shall apply for a new permit under this subchapter;
(B) May be issued a new permit under this subchapter; and
(C) May operate under the selling entity's permit for no more than thirty (30) days from the date of the sale.

(2) When a partnership or limited liability company permitted under this subchapter changes, removes, or replaces the managing partner, managing member, president, or chief executive officer:

(A) The existing permit issued under this subchapter is void; and

(B) The partnership or limited liability company:
(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement of the permit.

(3) When a nonpublicly traded corporation permitted under this subchapter changes, removes, or replaces the president or chief executive officer named on the permit or changes, removes, or replaces a stockholder who owns fifty percent (50%) or more of the total voting shares of the nonpublicly traded corporation's stock:

(A) The permit issued under this subchapter is void; and

(B) The nonpublicly traded corporation:
(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement of the permit.

(4) When a publicly traded corporation permitted under this subchapter changes, removes, or replaces the president or chief executive officer named on the permit or changes, removes, or replaces a stockholder who owns fifty percent (50%) or more of the total voting shares of the publicly traded corporation's stock:

(A) The permit issued under this subchapter is void; and

(B) The publicly traded corporation:

(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement of the permit.

(e) An entity may apply for and be issued a permit under this subchapter in advance of the effective date of the permit to facilitate continuity of business operations.

20-56-405. Permits – Location – Background check required.

(a) A retail, wholesale, or manufacturer permit shall not be issued to a residential address, a mobile structure or vehicle, or for an address not zoned appropriately for the business seeking to secure the permit.

(b) A permit shall not be issued to:

(1) A person who has pleaded guilty or nolo contendere to or been found guilty of a felony; or

(2) A business owned or operated, in whole or in part, by a person who has pleaded guilty or nolo contendere to or been found guilty of a felony.

(c) Arkansas Tobacco Control shall conduct a criminal background check on each permit applicant and application, utilizing its Arkansas Crime Information Center access as a law enforcement agency, in accordance with §§ 12-12-1008 – 12-12-1011.

20-56-406. Permits – Annual privilege fees.

(a) The annual privilege fee for each permit authorized by this subchapter is established as follows:

(1) Wholesale Hemp-derived Products Permit \$5,000

(2) Retail Hemp-derived Products Permit \$5,000

(3) Manufacturer Hemp-derived Products Permit \$5,000

(b)(1) All permits issued under this subchapter shall expire on June 30 following the effective date of issuance.

(2)(A) Upon the failure to timely renew a permit issued under this subchapter, a late fee of two (2) times the amount of the appropriate permit fee shall be owed in addition to the annual privilege fee for the permit.

(B) An expired permit that is not renewed before September 1 following the expiration of the permit shall not be renewed, and the holder of the expired permit shall submit an application for a new permit.

(3) A permit shall not be issued to the applicant until the late fee and the permit fee have been paid.

(c) A permit issued under this subchapter shall not be renewed for a permit holder who is delinquent more than ninety (90) days on a privilege fee, tax relating to the sale or dispensing of hemp-derived products, or any other state and local tax due the Secretary of the Department of Finance and Administration.

(d) A person who is delinquent more than ninety (90) days on a state or local tax may not renew or obtain a permit issued under this subchapter except upon certification that the permit holder has entered into a repayment agreement with the Department of Finance and Administration and is current on the payments.

(e) A permit holder who has unpaid fees, civil penalties, or an unserved permit suspension may not transfer, sell, or give hemp-derived product inventory of the business associated with the permit to a third party until all fees and civil penalties are paid in full and all suspensions are completed successfully, nor shall any third party be issued a new permit for the business location.

(f) Each manufacturer, wholesaler, and retailer shall retain copies of all invoices for the purchase or sale of any hemp-derived products for a period of at least ten (10) years subject to examination by the Secretary of the Department of Finance and Administration and the Director of Arkansas Tobacco Control or their authorized agents upon demand at any time during regular business hours.

(g) A retailer shall:

(1) Maintain copies of at least the last three hundred sixty-five (365) days of hemp-derived product invoices, which the retailer shall provide immediately upon demand;

(2)(A) Make the invoices that are older than three hundred

sixty-five (365) days available upon demand at any time during normal business hours in the retail store.

(B) Except as provided in subdivision (g)(2)(C) of this section, an agent of Arkansas Tobacco Control may determine a reasonable time frame for which invoices are to be provided under subdivision (g)(2)(A) of this section.

(C) An invoice that is provided seventy-two (72) hours or more after the demand shall not be considered for purposes of determining a violation of this subsection;

(3) Retain invoices for all hemp-derived products in the retail store even if the invoice for the hemp-derived products is older than three (3) years;

(4) Maintain a copy of the signed server awareness forms for each employee of the retailer who engages in the sale of hemp-derived products, which the retailer shall provide immediately upon demand;

(5)(A) Maintain a copy of any complete transfer forms showing:
(i) The hemp-derived products that were transferred;
(ii) The permitted location from which the hemp-derived products were transferred; and
(iii) When the transfer occurred.

(B) A transfer form shall be completed contemporaneously with the transfer and shall be provided immediately by the retailer upon demand; and

(6) If any inventory was submitted with a permit application, maintain a copy of the submitted inventory form, which the retailer shall provide immediately upon demand.

(h) A wholesaler and manufacturer shall:

(1) Maintain ten (10) years of hemp-derived product invoices that are available upon demand during normal business hours in the permitted location; and

(2) Permit Arkansas Tobacco Control and authorized personnel of Arkansas Tobacco Control to enter into and inspect stock of hemp-derived products, and any documents and records relating to receipts and disbursements of hemp-derived products.

(i) An invoice from a wholesaler to a retailer shall contain the name or other identifying information of the wholesaler and the retailer.

(j)(1) A nonresident wholesaler shall also keep a record of all hemp-derived products purchased for distribution within this state.

(2) All books, records, and memoranda pertaining to the purchase and sale of the hemp-derived products under subdivision (j)(1) of this section shall be subject to inspection by Arkansas Tobacco Control.

(k) Authorized personnel of Arkansas Tobacco Control shall not release to the Arkansas Tobacco Control Board or to the public any information identifying customers of the manufacturer, wholesaler, or warehouse except when necessary to notify the board of alleged violations of this subchapter.

20-56-407. Permits – Not transferable – Duplicates.

(a) A permit under this subchapter is not:

(1) Transferable to a subsequent owner or operator; or

(2) Transferable to a different physical location unless the permit holder obtains permission from the Director of Arkansas Tobacco Control.

(b) A person purchasing an existing permitted retail location may operate under the selling owner's permit for no more than thirty (30) days from the date of the sale.

(c) When a permit is lost by a permit holder, a duplicate permit may be issued upon application and for a fee of five dollars (\$5.00) when sufficient proof has been given the Director of Arkansas Tobacco Control.

20-56-408. Permits – Suspension or revocation.

(a) All permits issued under this subchapter shall be suspended or revoked by the Director of Arkansas Tobacco Control for any violation of this subchapter or the rules pertaining to this subchapter, subject to a hearing before the Arkansas Tobacco Control Board at the next regularly scheduled board meeting.

(b) The director may revoke all permits to deal in hemp-derived products associated with any person who is convicted of or pleads guilty or nolo contendere to criminally violating this subchapter, subject to a hearing before the board at the next regularly scheduled board meeting.

20-56-409. Advertising prohibitions and packaging requirements.

(a) A hemp-derived product distributed or offered for sale in this

state shall include the following information on the product label or product packaging:

(1) The name of the hemp-derived product manufacturer, whether in-state or out-of-state, and distributor, whether in-state or out-of-state;

(2) Product labeling clearly showing that the product contains material derived from hemp and not marijuana or medical marijuana; and

(3) Any other marking, words, statement, or symbol as required by Arkansas Tobacco Control through rules.

(b) A person shall not advertise, market, or offer for sale in this state any hemp-derived product by using, in the labeling or design of the product, its packaging, or in its advertising or marketing materials, trade dress, trademarks, branding, or other related imagery that:

(1) Imitates or replicates those of food brands or other related products that are marketed to or are commonly associated with children or minors, including without limitation breakfast cereal, cookies, juice drinks, soft drinks, frozen drinks, ice creams, sorbets, sherbets, and frozen pops;

(2) Depicts or signifies characters or symbols that are known to a reasonable person to appeal primarily to or are commonly associated with children or minors, including without limitation superheroes, cartoons or cartoon characters, including anime characters, comic book characters, video game characters, television show characters, movie characters, mythical creatures, unicorns, or that otherwise incorporates related imagery or scenery; or

(3) Uses the terms "candy", "candies", "cake", "cakes", "pies", or "cupcakes" or any variant of these terms, or any other term referencing a type or brand of candy, cakes, pastries, or pies, including types or brands of candy, cakes, pastries, or pies that do not include the words "candy", "candies", "cake", "cakes", "pies", or "cupcakes" in their names, labels, or slogans.

20-56-410. Testing.

(a) All hemp-derived products sold in this state shall be tested by an approved laboratory.

(b) An approved laboratory shall be an independent third-party laboratory.

(c) A hemp-derived product sold in this state shall be tested for the

following and marked as to the hemp-derived product chemical makeup before being sold to consumers:

- (1) Cannabinoid profile;
- (2) Solvents;
- (3) Pesticides;
- (4) Microbials;
- (5) Heavy metals; and
- (6) Any non-hemp-based substance.

(d) A hemp-derived product shall not be distributed or sold in this state without a certificate of analysis from an approved laboratory that confirms:

- (1) The hemp-derived product was tested by an approved laboratory;
- (2) A tested representative sample of the hemp-derived product contained a total delta-9 tetrahydrocannabinol concentration that did not exceed three-tenths percent (0.3%) under by this subchapter; and
- (3) A detailed analysis and list of chemical makeup of the tested hemp-derived product under subsection (c) of this section.

(e) Arkansas Tobacco Control may periodically sample, analyze, and test any hemp-derived product located in this state.

(f) The Director of Arkansas Tobacco Control shall:

- (1) Investigate and issue subpoenas to any permittee or approved laboratory used by a permittee that the director has reasonable suspicion of intentionally producing falsified test results on hemp-derived products; and
- (2) Promulgate rules for the enforcement of this section and set penalties for any violation of the rules.

20-56-411. Providing minors with hemp-derived products – Purchase, use, or possession prohibited.

(a)(1) It is unlawful for any person to give, barter, or sell to a minor a hemp-derived product.

(2) Except as provided in subdivision (a)(3) of this section, a person who pleads guilty or nolo contendere to or is found guilty of violating subdivision (a)(1) of this section is guilty of a Class A misdemeanor.

(3) An employee or owner of a retail location permitted under

this subchapter who violates subdivision (a)(1) of this section while inside the retail location upon conviction is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(b)(1) It is unlawful for a minor to:

(A) Use or possess or to purchase or attempt to purchase a hemp-derived product; or

(B) For the purpose of obtaining or attempting to obtain a hemp-derived product, falsely represent himself or herself not to be a minor by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.

(2) Any hemp-derived product found in the possession of a minor may be confiscated and destroyed by a law enforcement officer.

(c)(1) It is not an offense under subsection (b) of this section if:

(A) The minor was acting at the direction of an authorized agent of Arkansas Tobacco Control to enforce or ensure compliance with laws relating to the prohibition of the sale of hemp-derived product to minors;

(B) The minor was acting at the direction of an authorized agent of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to compile statistical data relating to the sale of hemp-derived products to minors;

(C) The minor was acting at the request of a permit holder to assist the permit holder by performing a check on the permit holder's own retail business to see if the permit holder's employees would sell hemp-derived products to the minor; or

(D) The minor was acting as an agent of a retail permit holder within the scope of employment.

(2) A minor performing activities under subdivision (c)(1) of this section shall:

(A) Display the appearance of a minor;

(B) Have the written consent of the minor's parent or guardian to perform the activity on file with the agency utilizing the minor; and

(C)(i) Present a true and correct identification if asked.

(ii) Any failure on the part of a minor to provide true and correct identification upon request is a defense to any action under this section or a civil action under § 26-57-256.

(d) Any person who sells hemp-derived products has the right to deny the sale of any hemp-derived product to any person.

(e) It is unlawful for any person who has been issued a permit or a license under this subchapter to fail to display in a conspicuous place a sign indicating that the sale of hemp-derived products to or purchase or possession of hemp-derived products by a minor is prohibited by law.

(f) It is unlawful for any manufacturer whose hemp-derived product is distributed in this state and any person who has been issued a permit or license under this subchapter to distribute a free sample of any hemp-derived product, or any component of a hemp-derived product or coupon that entitles the holder of the coupon to any free sample of any hemp-derived product, or any component of a hemp-derived product:

(1) In or on any public street or sidewalk within five hundred feet (500') of any playground, public school, or other facility when the playground, public school, or other facility is being used primarily by minors for recreational, educational, or other purposes; or

(2) To any minor.

(g) It is unlawful for any person that has been issued a permit or license under this subchapter to:

(1) Sell or distribute a hemp-derived product through a self-service display, a vending machine, or an order executed solely over the internet or similar means; or

(2) Advertise or promote hemp-derived products in a manner that is intended to appeal to children.

(h) Any retail permit holder or license holder who violates any provision in this section is deemed guilty of a violation and subject to penalties under § 26-57-256.

(i)(1) A notice of an alleged violation of this section shall be given to the holder of a retail permit or license or an agent of the holder within ten (10) days of the alleged violation.

(2)(A) The notice under subdivision (i)(1) of this section shall contain the date and time of the alleged violation.

(B)(i) The notice under subdivision (i)(1) of this section shall also include either the name of the person making the alleged sale or information reasonably necessary to determine the location in the store that allegedly made the sale.

(ii) When appropriate, information under subdivision (i)(2)(B)(i) of this section should include, but not be limited to, the:

(a) Cash register number of the sale in the store;

(b) Physical location of the sale in the store; and

(c) If possible, the lane or aisle number of the sale in the store.

(j) Notwithstanding the provisions of subsection (h) of this section, the court shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling hemp-derived products to minors;

(2) The business has informed its employees of the applicable laws regarding the sale of hemp-derived products to minors;

(3) The business has required employees to verify the age of a customer attempting to purchase a hemp-derived product by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the hemp-derived product was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(k) A person convicted of violating any provision of this section whose permit or license to distribute or sell a hemp-derived product is suspended or revoked upon conviction shall surrender to the court any permit or license to distribute or sell a hemp-derived product, and the court shall transmit the permit or license to distribute or sell a hemp-derived product to the Director of Arkansas Tobacco Control:

(1) To suspend or revoke the person's permit or license to distribute or sell a hemp-derived product and to not renew the permit or license; and

(2) Not to issue any new permit or license to that person for the period of time determined by the court in accordance with this section.

20-56-412. Enforcement – Penalties.

(a) It is the duty of all state, county, and city officers to assist Arkansas Tobacco Control in enforcing this subchapter.

(b) A person within the jurisdiction of this state who is not permitted to sell hemp-derived products to retailers or consumers and who sells, takes orders from, delivers, or causes to be delivered immediately or in the future any hemp-derived products to retailers or consumers in the State of Arkansas, is guilty of a Class A misdemeanor.

(c) A person engaged in buying or selling hemp-derived products in this state without first obtaining the proper permit upon conviction is guilty of a Class A misdemeanor.

(d) This subchapter does not prohibit in any form the continuous transportation through Arkansas of the plant Cannabis sativa L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent (0.3%) on a dry weight basis, from one licensed hemp producer in another state to a licensed hemp handler in another state.

20-56-413. Rules.

The Director of Arkansas Tobacco Control and Arkansas Tobacco Control may promulgate rules for the proper enforcement of their powers and duties under this subchapter, including without limitation the regulation of processing, transportation, delivery, sale, and purchase of hemp-derived products in accordance with this subchapter and the power to levy penalties for violations of this subchapter.

SECTION 11. Arkansas Code § 26-57-247(b), concerning seizure, forfeiture, and disposition of tobacco products and other property, is amended to read as follows:

(b) The Director of Arkansas Tobacco Control may seize and hold for disposition of the courts or the Arkansas Tobacco Control Board all tobacco products, vapor products, alternative nicotine products, ~~or~~ e-liquid products, or hemp-derived products found in the possession of a person dealing in, or a consumer of, tobacco products, vapor products, alternative nicotine products, ~~or~~ e-liquid products, or hemp-derived products if:

(1) Prima facie evidence exists that the full amount of excise

tax due on the tobacco products has not been paid to the Secretary of the Department of Finance and Administration;

(2) Tobacco products, vapor products, alternative nicotine products, or e-liquid products are in the possession of a wholesaler who does not possess a current Arkansas wholesale permit;

(3) A retail establishment does not possess a current Arkansas retail permit; ~~or~~

(4) The tobacco products, vapor products, alternative nicotine products, or e-liquid products have been offered for sale to the public at another location without a current Arkansas retail permit; or

(5) Hemp-derived products are possessed, sold, or offered for sale in violation of § 20-56-401 et seq.

SECTION 12. Arkansas Code § 26-57-249(b), concerning the procedure for destruction of products upon conviction, is amended to read as follows:

(b) Upon an administrative finding of guilty of any person charged with a violation of a state tobacco product, vapor product, alternative nicotine product, ~~or e-liquid product,~~ or hemp-derived product law or rule in a proceeding before the Arkansas Tobacco Control Board where the investigation resulted in the seizure of tobacco products, vapor products, alternative nicotine products, ~~or e-liquid products,~~ or hemp-derived products, the board shall issue an order to destroy the tobacco products, vapor products, alternative nicotine products, ~~or e-liquid products,~~ or hemp-derived products confiscated by Arkansas Tobacco Control or by any state, county, or municipal officer in this state.

SECTION 13. Arkansas Code § 26-57-255(g)(3)(A) – (C), concerning the creation of the Arkansas Tobacco Control Board, are amended to read as follows:

(3)(A) Conduct public hearings when appropriate regarding a permit authorized under this subchapter or in violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, § 20-56-401 et seq., or any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products, vapor products, alternative nicotine products, ~~or e-liquid products,~~ or hemp-derived products to minors or the rules promulgated by Arkansas Tobacco Control.

(B) After notice and hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 20-56-401 et seq., or the rules promulgated by Arkansas Tobacco Control, the board may suspend or revoke any or all permits issued by the director to any person.

(C) The board may levy a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation against a person found to be in violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 20-56-401 et seq., or the rules promulgated by Arkansas Tobacco Control.

SECTION 14. Arkansas Code § 26-57-256(a)(2) and (3), concerning the powers of Arkansas Tobacco Control, are amended to read as follows:

(2)(A) Receive applications for and issue, refuse, suspend, and revoke permits listed in § 26-57-219 and § 20-56-401 et seq.

(B) Arkansas Tobacco Control shall refuse to issue or renew any permits issued by the Director of Arkansas Tobacco Control for the failure to pay:

(i) Any applicable taxes or fees imposed on tobacco products;

(ii) Permit ~~permit~~ fees imposed under this subchapter or on hemp-derived products under § 20-56-401 et seq.; or

(iii) Other ~~any other~~ state or local taxes;

(3) Prescribe forms of applications for permits under this subchapter and § 20-56-401 et seq.;

SECTION 15. Arkansas Code § 26-57-256(b), concerning the authority of Arkansas Tobacco Control to enforce the laws against possession by a minor, is amended to read as follows:

(b) Any tobacco products, vapor products, alternative nicotine products, e-liquid products, hemp-derived products as defined in § 20-56-402, or cigarette papers found in the possession of a minor may be confiscated and destroyed.

SECTION 16. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under Sections 6-13 of this act, the Arkansas Tobacco Control shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2024; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2024, as soon as practicable after approval under § 10-3-309.

(b) Arkansas Tobacco Control shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so that the Legislative Council may consider the rules for approval before January 1, 2024.

SECTION 17. Contingent effective date.

Sections 6-14 of this act shall become effective only upon the certification of the Arkansas Attorney General that the State of Arkansas is currently enjoined from enforcing Sections 2-5 of this act relating to delta-8 tetrahydrocannabinol and delta-10 tetrahydrocannabinol, but no earlier than August 1, 2023.

SECTION 18. DO NOT CODIFY. Effective date of prohibition.

The prohibition of certain types of tetrahydrocannabinol under Section 6 which adds additional subdivisions to § 5-64-215(a)(5)(A)(i) shall be effective:

(1) On the effective date of this act for persons who are under twenty-one (21) years of age; and

(2) On and after August 1, 2023, for persons who are twenty-one (21) years of age or older.

SECTION 19. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

SECTION 20. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not

properly regulate delta tetrahydrocannabinol substances addressed in this act; that the absence of proper regulation of these delta tetrahydrocannabinol substances has allowed anyone of any age to access these delta tetrahydrocannabinol substances; that this unrestricted access to these delta tetrahydrocannabinol substances presents a grave risk to public health and safety; and that this act is immediately necessary to remove the grave risk to health and safety. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Dees

APPROVED: 4/11/23