

1 State of Arkansas As Engrossed: S3/13/23 H4/3/23 H4/5/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 358

4

5 By: Senators Dees, J. Boyd, J. Dismang, J. Petty, D. Sullivan, B. Davis, Caldwell, Flippo, Gilmore, M.

6 McKee, C. Penzo, Stone, G. Stubblefield

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

8

9

For An Act To Be Entitled

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

18

19

20

Subtitle

21 TO PROHIBIT INDUSTRIAL HEMP THAT CONTAIN
22 CERTAIN DELTA TETRAHYDROCANNABINOL
23 SUBSTANCES; TO INCLUDE CERTAIN
24 TETRAHYDROCANNABINOL IN THE LIST OF
25 SCHEDULE VI CONTROLLED SUBSTANCES; AND TO
26 DECLARE AN EMERGENCY.

27

28

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

30

31 SECTION 1. DO NOT CODIFY. Legislative intent.

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

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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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;

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

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

8
9 SECTION 6. Arkansas Code 5-64-215(a)(5)(A)(i), concerning controlled
10 substances that are listed in Schedule VI, is amended to read as follows:

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

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

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

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

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

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

31 (e) Delta-8 tetrahydrocannabinol acetate
32 ester;

33 (f) Delta-9 tetrahydrocannabinol acetate
34 ester;

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

1 (h) Delta-10 tetrahydrocannabinol acetate
2 ester;

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

8 (j) Any other psychoactive substance derived
9 therein.

10
11 SECTION 7. Arkansas Code § 5-64-215, concerning the substances in
12 Schedule VI of the Uniform Controlled Substances Act, is amended to add an
13 additional subsection to read as follows:

14 (d) This section does not prohibit the continuous transportation
15 through Arkansas of the plant Cannabis sativa L., and any part of that plant,
16 including the seeds thereof and all derivatives, extracts, cannabinoids,
17 isomers, acids, salts, and salts of isomers, whether growing or not, with a
18 delta-9 tetrahydrocannabinol concentration of not more than three-tenths
19 percent (0.3%) on a dry weight basis, produced in accordance with 7 U.S.C. §
20 1639o et seq.

21
22 SECTION 8. Arkansas Code § 19-6-831(b)(1), concerning the Arkansas
23 Tobacco Control Revenue Fund, is amended to read as follows:

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

28
29 SECTION 9. Arkansas Code § 19-6-831(c)(1), concerning the Arkansas
30 Tobacco Control Revenue Fund, is amended to read as follows:

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

36

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

3 Subchapter 4 - Hemp-Derived Products

4
5 20-56-401. Purpose.

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

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

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

12
13 20-56-402. Definitions.

14 As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (B) "Manufacturer" includes:

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

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

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

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

6 (10) "Minor" means a person who is under twenty-one (21) years
7 of age;

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

13 (12) "Place of business" means the physical location:

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

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

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

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

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

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

29 (15) "Self-service display" means a display:

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

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

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

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

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

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

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

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

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

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

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

28 (A) Does business within the state;

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

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

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

34
35 20-56-403. Construction.

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

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

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

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

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

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

15 (B) Nicotine or tobacco; or

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

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

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

27
28 20-56-404. Permits.

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

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

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

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

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

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

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

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

13 (a) The managing partner or managing member;
14 and

15 (b) The partnership or limited liability
16 company.

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

20 (a) The president or chief executive officer;
21 and

22 (b) The partnership or limited liability
23 company; and

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (B) The nonpublicly traded corporation:

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

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

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

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

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

2 (B) The publicly traded corporation:

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

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

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

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

13
14 20-56-405. Permits – Location – Background check required.

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

18 (b) A permit shall not be issued to:

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

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

24 (c) Arkansas Tobacco Control shall conduct a criminal background check
25 on each permit applicant and application, utilizing its Arkansas Crime
26 Information Center access as a law enforcement agency, in accordance with §§
27 12-12-1008 – 12-12-1011.

28
29 20-56-406. Permits – Annual privilege fees.

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

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

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

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

35 (b)(1) All permits issued under this subchapter shall expire on June
36 30 following the effective date of issuance.

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

5 (B) An expired permit that is not renewed before September
6 1 following the expiration of the permit shall not be renewed, and the holder
7 of the expired permit shall submit an application for a new permit.

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

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

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

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

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

32 (g) A retailer shall:

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

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

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

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

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

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

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

16 (5)(A) Maintain a copy of any complete transfer forms showing:

17 (i) The hemp-derived products that were transferred;

18 (ii) The permitted location from which the hemp-
19 derived products were transferred; and

20 (iii) When the transfer occurred.

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

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

27 (h) A wholesaler and manufacturer shall:

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

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

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

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

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

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

10
11 20-56-407. Permits – Not transferable – Duplicates.

12 (a) A permit under this subchapter is not:

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

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

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

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

23
24 20-56-408. Permits – Suspension or revocation.

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

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

34
35 20-56-409. Advertising prohibitions and packaging requirements.

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

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

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

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

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

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

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

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

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

30
31 20-56-410. Testing.

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

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

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

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

3 (1) Cannabinoid profile;

4 (2) Solvents;

5 (3) Pesticides;

6 (4) Microbials;

7 (5) Heavy metals; and

8 (6) Any non-hemp-based substance.

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

12 (1) The hemp-derived product was tested by an approved
13 laboratory;

14 (2) A tested representative sample of the hemp-derived product
15 contained a total delta-9 tetrahydrocannabinol concentration that did not
16 exceed three-tenths percent (0.3%) under by this subchapter; and

17 (3) A detailed analysis and list of chemical makeup of the
18 tested hemp-derived product under subsection (c) of this section.

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

21 (f) The Director of Arkansas Tobacco Control shall:

22 (1) Investigate and issue subpoenas to any permittee or approved
23 laboratory used by a permittee that the director has reasonable suspicion of
24 intentionally producing falsified test results on hemp-derived products; and

25 (2) Promulgate rules for the enforcement of this section and set
26 penalties for any violation of the rules.

27
28 20-56-411. Providing minors with hemp-derived products – Purchase,
29 use, or possession prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (A) Display the appearance of a minor;

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

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

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

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

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

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

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

17 (2) To any minor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35
36 20-56-412. Enforcement – Penalties.

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

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

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

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

18
19 20-56-413. Rules.

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

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

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

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

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

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

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

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

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

13
14 SECTION 12. Arkansas Code § 26-57-249(b), concerning the procedure for
15 destruction of products upon conviction, is amended to read as follows:

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

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

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

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

7 (C) The board may levy a civil penalty in an amount not to
 8 exceed five thousand dollars (\$5,000) for each violation against a person
 9 found to be in violation of this subchapter, the Unfair Cigarette Sales Act,
 10 § 4-75-701 et seq., § 20-56-401 et seq., or the rules promulgated by Arkansas
 11 Tobacco Control.

12
 13 SECTION 14. Arkansas Code § 26-57-256(a)(2) and (3), concerning the
 14 powers of Arkansas Tobacco Control, are amended to read as follows:

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

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

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

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

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

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

27
 28 SECTION 15. Arkansas Code § 26-57-256(b), concerning the authority of
 29 Arkansas Tobacco Control to enforce the laws against possession by a minor,
 30 is amended to read as follows:

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

35
 36 SECTION 16. DO NOT CODIFY. Rules.

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

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

5 (2) If approval under § 10-3-309 has not occurred by January 1,
6 2024, as soon as practicable after approval under § 10-3-309.

7 (b) Arkansas Tobacco Control shall file the proposed rules with the
8 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
9 2024, so that the Legislative Council may consider the rules for approval
10 before January 1, 2024.

11
12 SECTION 17. Contingent effective date.

13 Sections 6-14 of this act shall become effective only upon the
14 certification of the Arkansas Attorney General that the State of Arkansas is
15 currently enjoined from enforcing Sections 2-5 of this act relating to delta-
16 8 tetrahydrocannabinol and delta-10 tetrahydrocannabinol, but no earlier than
17 August 1, 2023.

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

20 The prohibition of certain types of tetrahydrocannabinol under Section
21 6 which adds additional subdivisions to § 5-64-215(a)(5)(A)(i) shall be
22 effective:

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

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

27
28 SECTION 19. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of
29 this act or the application of this act to any person or circumstance is held
30 invalid, the invalidity shall not affect other provisions or applications of
31 this act which can be given effect without the invalid provision or
32 application, and to this end, the provisions of this act are declared
33 severable.

34
35 SECTION 20. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that current Arkansas law does not

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

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

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

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

16
17 /s/Dees
18

19
20 **APPROVED: 4/11/23**
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36