

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/13/23

A Bill

SENATE BILL 358

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

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

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."*



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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 tetrahydrocannabinol concentration of no more than *three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis or in any finalized product* 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 § 5-64-215(a)(5)(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,

1 and its optical isomers;

2 (b) Delta-6 cis or trans tetrahydrocannabinol,

3 and its optical isomers; ~~and~~

4 (c) Delta-3.4 cis or trans

5 tetrahydrocannabinol, and its optical isomers;

6 (d) Delta-10 cis or trans

7 tetrahydrocannabinol, and its optical isomers;

8 (e) Delta-8 tetrahydrocannabinol acetate

9 ester;

10 (f) Delta-9 tetrahydrocannabinol acetate

11 ester;

12 (g) Delta-6a,10a tetrahydrocannabinol acetate

13 ester;

14 (h) Delta-10 tetrahydrocannabinol acetate

15 ester;

16 (i) A product derived from industrial hemp

17 that was produced as a result of a chemical process that converted the

18 industrial hemp or a substance contained in the industrial hemp into Delta-8,

19 Delta-9, Delta-6a, 10a, or Delta-10 tetrahydrocannabinol including their

20 respective acetate esters; and

21 (j) Any other psychoactive substance derived

22 therein.

23
24 SECTION 5. Arkansas Code § 5-64-215, concerning the substances in
25 Schedule VI of the Uniform Controlled Substances Act, is amended to add an
26 additional subsection to read as follows:

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

34
35 SECTION 6. Arkansas Code § 19-6-831(b)(1), concerning the Arkansas
36 Tobacco Control Revenue Fund, is amended to read as follows:

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

5
6 SECTION 7. Arkansas Code § 19-6-831(c)(1), concerning the Arkansas
7 Tobacco Control Revenue Fund, is amended to read as follows:

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

13
14 SECTION 8. Arkansas Code Title 20, Chapter 56, is amended to add an
15 additional subchapter to read as follows:

16 Subchapter 4 - Hemp-Derived Products

17
18 20-56-401. Purpose.

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

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

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

25
26 20-56-402. Definitions.

27 As used in this subchapter:

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

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

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

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

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

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

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

13 (8)(A) "Hemp-derived product" means a product intended for any
14 form of human consumption, including consumption by vapor inhalation, or a
15 component of a product, that is derived from hemp, including all derivatives,
16 extracts, cannabinoids, isomers, acids, salts, and salts of isomers, and any
17 product made from such derivatives, and that contains greater than one-tenth
18 percent (0.1%) tetrahydrocannabinol.

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

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

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

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

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

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

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

36 (vi) A dietary supplements as defined by the Federal

1 Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.; or

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

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

8 (B) “Manufacturer” includes:

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

13 (ii) A person that mixes, compounds, extracts,
14 infuses, blends, processes, repackages, or resizes hemp-derived products
15 including the extraction of cannabinoids from hemp biomass.

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

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

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

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

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

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

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

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

36 (B) A sale “in” or “into” a state refers to the state in

1 which the destination point of the hemp-derived product is located in the
2 sale without regard to where title was transferred.

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

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

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

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

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

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

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

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

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

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

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

35 (18) “Warehouse” means a place where hemp-derived products are
36 stored for another person and to or from which place the hemp-derived

1 products are shipped or delivered upon order by the owner of the hemp-derived
2 products, to the warehouse; and

3 (19) "Wholesaler" means a person other than a manufacturer or a
4 person owned or operated by a manufacturer that:

5 (A) Does business within the state;

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

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

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

11
12 20-56-403. Construction.

13 (a) A hemp-derived product shall not be delivered, sold, bought, or
14 used in this state except in conformity with all applicable laws and
15 regulations, including this subchapter and any rules promulgated under this
16 subchapter.

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

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

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

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

28 (B) Nicotine or tobacco; or

29 (C) A percentage of tetrahydrocannabinol as to create a
30 danger of misuse, overdose, accidental overconsumption, inaccurate dosage, or
31 other risk to the public.

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

35 (e) The business of handling, receiving, possessing, storing,
36 distributing, taking orders for, soliciting orders of, selling, offering for

1 sale, and dealing in, through sale, barter, or exchange, hemp-derived
2 products is declared to be a privilege under the Arkansas Constitution and
3 laws of the State of Arkansas.

4
5 20-56-404. Permits.

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

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

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

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

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

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

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

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

26 (a) The managing partner or managing member;

27 and

28 (b) The partnership or limited liability
29 company.

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

33 (a) The president or chief executive officer;

34 and

35 (b) The partnership or limited liability
36 company; and

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

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

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

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

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

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

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

16 (C) May operate under the selling entity's permit for no
17 more than thirty (30) days from the date of the sale.

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

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

23 (B) The partnership or limited liability company:

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

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

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

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

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

1 (B) The nonpublicly traded corporation:

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

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

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

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

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

15 (B) The publicly traded corporation:

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

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

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

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

26
27 20-56-405. Permits – Location – Background check required.

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

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

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

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

1 (c) Arkansas Tobacco Control shall conduct a criminal background check
2 on each permit applicant and application, utilizing its Arkansas Crime
3 Information Center access as a law enforcement agency, in accordance with §§
4 12-12-1008 – 12-12-1011.

5
6 20-56-406. Permits – Annual privilege fees.

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

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

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

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

12 (b)(1) All permits issued under this subchapter shall expire on June
13 30 following the effective date of issuance.

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

18 (B) An expired permit that is not renewed before September
19 1 following the expiration of the permit shall not be renewed, and the holder
20 of the expired permit shall submit an application for a new permit.

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

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

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

33 (e) A permit holder who has unpaid fees, civil penalties, or an
34 unserved permit suspension may not transfer, sell, or give hemp-derived
35 product inventory of the business associated with the permit to a third party
36 until all fees and civil penalties are paid in full and all suspensions are

1 completed successfully, nor shall any third party be issued a new permit for
2 the business location.

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

9 (g) A retailer shall:

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

13 (2)(A) Make the invoices that are older than three hundred
14 sixty-five (365) days available upon demand at any time during normal
15 business hours in the retail store.

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

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

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

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

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

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

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

33 (iii) When the transfer occurred.

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

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

4 (h) A wholesaler and manufacturer shall:

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

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

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

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

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

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

23
24 20-56-407. Permits – Not transferable – Duplicates.

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

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

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

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

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

36

1 20-56-408. Permits – Suspension or revocation.

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

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

11
12 20-56-409. Advertising prohibitions and packaging requirements.

13 (a) A hemp-derived product distributed or offered for sale in this
14 state shall include the following information on the product label or product
15 packaging:

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

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

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

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

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

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

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

7
8 20-56-410. Testing.

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

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

13 (c) A hemp-derived product sold in this state shall be tested for the
14 following and marked as to the hemp-derived product chemical makeup before
15 being sold to consumers:

16 (1) Cannabinoid profile;

17 (2) Solvents;

18 (3) Pesticides;

19 (4) Microbials;

20 (5) Heavy metals; and

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

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

25 (1) The hemp-derived product was tested by an approved
26 laboratory;

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

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

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

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

35 (1) Investigate and issue subpoenas to any permittee or approved
36 laboratory used by a permittee that the director has reasonable suspicion of

1 intentionally producing falsified test results on hemp-derived products; and
2 (2) Promulgate rules for the enforcement of this section and set
3 penalties for any violation of the rules.

4
5 20-56-411. Providing minors with hemp-derived products – Purchase,
6 use, or possession prohibited.

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

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

13 (3) An employee or owner of a retail location permitted under
14 this subchapter who violates subdivision (a)(1) of this section while inside
15 the retail location upon conviction is subject to a fine not to exceed one
16 hundred dollars (\$100) per violation.

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

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

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

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

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

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

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

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

1 derived products to the minor; or

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

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

6 (A) Display the appearance of a minor;

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

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

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

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

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

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

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

30 (2) To any minor.

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

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

36 (2) Advertise or promote hemp-derived products in a manner that

1 is intended to appeal to children.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13 20-56-412. Enforcement – Penalties.

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

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

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

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

31
32 20-56-413. Rules.

33 The Director of Arkansas Tobacco Control and Arkansas Tobacco Control
34 may promulgate rules for the proper enforcement of their powers and duties
35 under this subchapter, including without limitation the regulation of
36 processing, transportation, delivery, sale, and purchase of hemp-derived

1 products in accordance with this subchapter and the power to levy penalties
2 for violations of this subchapter.

3
4 SECTION 9. Arkansas Code § 26-57-247(b), concerning seizure,
5 forfeiture, and disposition of tobacco products and other property, is
6 amended to read as follows:

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

13 (1) Prima facie evidence exists that the full amount of excise
14 tax due on the tobacco products has not been paid to the Secretary of the
15 Department of Finance and Administration;

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

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

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

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

26
27 SECTION 10. Arkansas Code § 26-57-249(b), concerning the procedure for
28 destruction of products upon conviction, is amended to read as follows:

29 (b) Upon an administrative finding of guilty of any person charged
30 with a violation of a state tobacco product, vapor product, alternative
31 nicotine product, ~~or~~ e-liquid product, or hemp-derived product law or rule in
32 a proceeding before the Arkansas Tobacco Control Board where the
33 investigation resulted in the seizure of tobacco products, vapor products,
34 alternative nicotine products, ~~or~~ e-liquid products, or hemp-derived
35 products, the board shall issue an order to destroy the tobacco products,
36 vapor products, alternative nicotine products, ~~or~~ e-liquid products, or hemp-

1 derived products confiscated by Arkansas Tobacco Control or by any state,
2 county, or municipal officer in this state.

3
4 SECTION 11. Arkansas Code § 26-57-255(g)(3)(A) – (C), concerning the
5 creation of the Arkansas Tobacco Control Board, are amended to read as
6 follows:

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

14 (B) After notice and hearing held in accordance with the
15 Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
16 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-
17 701 et seq., § 20-56-401 et seq., or the rules promulgated by Arkansas
18 Tobacco Control, the board may suspend or revoke any or all permits issued by
19 the director to any person.

20 (C) The board may levy a civil penalty in an amount not to
21 exceed five thousand dollars (\$5,000) for each violation against a person
22 found to be in violation of this subchapter, the Unfair Cigarette Sales Act,
23 § 4-75-701 et seq., § 20-56-401 et seq., or the rules promulgated by Arkansas
24 Tobacco Control.

25
26 SECTION 12. Arkansas Code § 26-57-256(a)(2) and (3), concerning the
27 powers of Arkansas Tobacco Control, are amended to read as follows:

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

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

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

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

1 (iii) Other ~~any other~~ state or local taxes;
2 (3) Prescribe forms of applications for permits under this
3 subchapter and § 20-56-401 et seq.;
4

5 SECTION 13. Arkansas Code § 26-57-256(b), concerning the authority of
6 Arkansas Tobacco Control to enforce the laws against possession by a minor,
7 is amended to read as follows:

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

12
13 SECTION 14. DO NOT CODIFY. Rules.

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

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

18 (2) If approval under § 10-3-309 has not occurred by January 1,
19 2024, as soon as practicable after approval under § 10-3-309.

20 (b) Arkansas Tobacco Control shall file the proposed rules with the
21 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
22 2024, so that the Legislative Council may consider the rules for approval
23 before January 1, 2024.

24
25 SECTION 15. Contingent effective date.

26 Sections 6-14 of this act shall become effective only upon the
27 certification of the Arkansas Attorney General that the State of Arkansas is
28 currently enjoined from enforcing Sections 2-5 of this act relating to delta-
29 8 tetrahydrocannabinol and delta-10 tetrahydrocannabinol.

30
31 SECTION 16. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that current Arkansas law does not
33 properly regulate Delta-8 tetrahydrocannabinol acetate ester and Delta-9
34 tetrahydrocannabinol acetate ester; that the absence of proper regulation of
35 the two chemicals has allowed people of any age to access the chemicals; that
36 this unrestricted access to the two chemicals presents a grave risk to public

1 health and safety; and that this act is immediately necessary to remove the
2 grave risk to health and safety. Therefore, an emergency is declared to
3 exist, and this act being immediately necessary for the preservation of the
4 public peace, health, and safety shall become effective on:

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

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

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

11
12 /s/Dees
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