

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1605

Bill Subtitle: TO PROVIDE REGULATION OF HEMP-DERIVED PRODUCTS BY THE ARKANSAS TOBACCO CONTROL BOARD; AND FOR OTHER PURPOSES.

Basic Change:

Sponsors: Rep. J. Moore, Sen. J. Bryant, Sen. Irvin, and Sen. Hester

HB1605 bill defines “hemp-derived product” and prohibits hemp-derived products from being sold in the state without a permit from ATC. The bill further requires hemp-derived products to be prepackaged, shelf stable, and prohibits hemp-derived products from containing or including any alcoholic beverages, products containing nicotine or tobacco, inhalable products other than hemp-derived e-liquid products defined in the bill, medical devices, prescription drugs, or other FDA-approved drugs.

“Hemp-derived product” does not include products intended for animal consumption, cosmetics, marijuana, medical marijuana, or other cannabis products as regulated under Amendment 98, raw hemp products, dietary supplements, FDA-approved drug, or fabrics, textiles, cordage, fiber, fuel, paper, construction material, plastic, seed, seed meal, and seed oil.

HB1605 requires, before commencing business, or if already in business, before continuing business, an annual privilege fee and permit from the Director of Arkansas Tobacco Control for retailers, manufacturers, and wholesalers of hemp-derived products. The bill authorized ATC to review permit applications, issue permits, issue fines, suspensions, and revocations, and promulgate rules.

The bill requires a background check on hemp-derived permit applicants and prohibits ATC from issuing a retail, wholesale, or manufacturer permit to a person who has pleaded guilty or nolo contendere to or been found guilty of a felony or a business owned or operated, in whole or in part, by a person who has pleaded guilty or nolo contendere to or been found guilty of a felony.

HB1605 requires on hemp-derived product label or product packaging the name of the manufacturer and the distributor, product labeling clearly showing that the product contains material derived from hemp and not marijuana or medical marijuana, and any other marking, words, statement or symbol as required by ATC by rule. The bill also prohibits advertising, marketing, or offering for sale hemp-derived products using, in the labeling or design of the product, its packaging, or in its advertising or marketing materials, trade dress, trademarks, branding, or other related imagery certain terms or imagery listed that are marketed to or commonly associated with children or minors.

The bill prohibits any person from giving, bartering, or selling to a person under the age of twenty-one (21) a hemp-derived product. A person who pleads guilty or nolo contendere to or is found guilty of giving, bartering, or selling to a person under the age of twenty-one (21) a hemp-derived product is guilty of a Class A misdemeanor. ATC is also authorized to conduct compliance checks at retail locations and issue civil penalties against permittees for sale-to-minor violations. Under this bill, it is unlawful for a permittee to sell or distribute hemp-derived product in a vending machine, sell or distribute hemp-derived products through a self-service display, or advertise or promote hemp-derived products in a manner intended to appeal to children.

HB1605 requires testing of all hemp-derived products sold in the state by an approved, third-party laboratory. The bill also provides requirements for testing and marking of packaging as to the make-up of the hemp-derived product. The ATC Director is authorized to investigate and issue subpoenas to

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1605

Bill Subtitle: TO PROVIDE REGULATION OF HEMP-DERIVED PRODUCTS BY THE ARKANSAS TOBACCO CONTROL BOARD; AND FOR OTHER PURPOSES.

any permittee or approved laboratory used by a permittee that the director has reasonable suspicion of intentionally producing falsified test results.

Revenue Impact:

HB1605 establishes annual privilege fees for permits as follows: (1) Wholesale Hemp-derived Products Permit - \$1,000; (2) Retail Hemp-Derived Products Permit - \$200; and (3) Manufacturer Hemp-Derived Products Permit - \$10,000. Permit fees are collected by Arkansas Tobacco Control and submitted to the Arkansas Tobacco Control Revenue Fund.

This bill also authorized ATC to levy civil penalties up to \$5,000 per violation. Such civil penalties are collected by ATC and submitted to General Revenue.

Taxpayer Impact:

A retailer delinquent in payment to a wholesaler may be subject to suspension of the retailer's permit, civil penalties up to \$5,000 per violation, as well as prohibited from continuing to purchase product and prohibited from using tender other than cash.

Resources Required:

ATCB rules would need to be promulgated. ATC Staff, law enforcement, and permit holders would need to be educated. ATCB would also need to be educated. ATC anticipates that the following additional staff would be required:

- Five (5) agents at \$100,000 each for the first year (includes salary, benefits, as well as any necessary vehicles or equipment); and \$50,000 for each agent each additional year.
- One (1) Auditor / Investigator at \$110,000 each for the first year (includes salary, benefits, as well as any necessary vehicles or equipment); and \$60,000 for each agent each additional year.
- One (1) administrative support person \$40,000.

Time Required:

Adequate time is provided for implementation.

ATC must file final promulgated rules with the Secretary of State for adoption on or before January 1, 2024 or, if approval under 10-3-309 has not occurred by January 1, 2024, as soon as practicable after approval under 10-3-309. This bill also requires ATC to file proposed rules with the Legislative Council sufficiently in advance of January 1, 2024.

Procedural Changes:

Department employees will need to be educated and trained as well as the permittees. ATC's records management system will need to be updated and ATC forms and permit applications will need to be created or updated.

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1605

Bill Subtitle: TO PROVIDE REGULATION OF HEMP-DERIVED PRODUCTS BY THE ARKANSAS TOBACCO CONTROL BOARD; AND FOR OTHER PURPOSES.

Other Comments:

None.

Legal Analysis:

None.