

By: Moody

H.B. No. 4439

A BILL TO BE ENTITLED

AN ACT

relating to the production, sale, distribution, delivery, and regulation of consumable hemp products; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 443, Health and Safety Code, is amended by adding Section 443.005 to read as follows:

Sec. 443.005. CONSUMABLE HEMP PRODUCTS ACCOUNT. (a) The consumable hemp products account is an account in the general revenue fund administered by the department.

(b) The account consists of:

(1) appropriations of money to the account by the legislature;

(2) public or private gifts, grants, or donations, including federal funds, received for the account;

(3) fees collected under this chapter or under Chapter 431 as it applies to consumable hemp products;

(4) interest and income earned on the investment of money in the account;

(5) penalties for violations of this chapter or Chapter 431 as it applies to consumable hemp products; and

(6) funds from any other source deposited in the account.

(c) The department may accept appropriations and gifts,

1 grants, or donations from any source to administer and enforce this
2 chapter and Chapter 431 as it applies to consumable hemp products.
3 Money received under this subsection shall be deposited in the
4 account.

5 (d) Money in the account may be appropriated only to the
6 department for the administration and enforcement of this chapter
7 and Chapter 431 as it applies to consumable hemp products.

8 SECTION 2. Section 443.103, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 443.103. APPLICATION; ISSUANCE. An individual or
11 establishment may apply for a license under this subchapter by
12 submitting an application to the department on a form and in the
13 manner prescribed by the department. The application must be
14 accompanied by:

15 (1) the physical address [~~a legal description~~] of each
16 location where the applicant intends to process hemp or manufacture
17 consumable hemp products [~~and the global positioning system~~
18 ~~coordinates for the perimeter of each location~~];

19 (2) written consent from the applicant or the property
20 owner if the applicant is not the property owner allowing the
21 department, the Department of Public Safety, and any other state or
22 local law enforcement agency to enter onto all premises where hemp
23 is processed or consumable hemp products are manufactured to
24 conduct a physical inspection or to ensure compliance with this
25 chapter and rules adopted under this chapter;

26 (3) any fees required by the department to be
27 submitted with the application; and

1 (4) any other information required by department rule.

2 SECTION 3. Subchapter C, Chapter 443, Health and Safety
3 Code, is amended by adding Section 443.106 to read as follows:

4 Sec. 443.106. EXPEDITED LICENSING PROCESS. The department
5 by rule may provide an expedited licensing process for the
6 purchaser of a business that requires a license.

7 SECTION 4. Section 443.151(c), Health and Safety Code, is
8 amended to read as follows:

9 (c) Before material extracted from hemp by processing is
10 sold as, offered for sale as, or incorporated into a consumable hemp
11 product, the material must be tested, as required by the executive
12 commissioner, to determine:

13 (1) the presence of harmful microorganisms; and

14 (2) the presence or quantity of:

15 (A) any residual solvents used in processing, if
16 applicable; ~~and~~

17 (B) any synthetic cannabinoid; and

18 (C) any other substance prescribed by the
19 department.

20 SECTION 5. Section 443.152, Health and Safety Code, is
21 amended by adding Subsection (d) to read as follows:

22 (d) The executive commissioner by rule may exclude a
23 substance that is generally recognized as having no risk of
24 contaminating a finished consumable hemp product, including a
25 microorganism or other substance that is inevitably destroyed or
26 removed while processing or manufacturing the product, from the
27 testing required under Section 443.151.

1 SECTION 6. Section 443.201, Health and Safety Code, is
2 amended by adding Subsection (c) to read as follows:

3 (c) A person may transport and deliver a consumable hemp
4 product to a consumer who purchased the product in compliance with
5 this chapter. The person transporting and delivering the
6 consumable hemp product shall maintain at all times while the
7 consumable hemp product is in the person's possession a record
8 sufficient to demonstrate that the transaction complies with this
9 chapter. The person transporting and delivering the consumable
10 hemp product is not required to:

11 (1) obtain a license under Section 443.101, unless the
12 person processes or manufactures the product delivered; or

13 (2) register under Section 443.2025, unless the person
14 sells the product delivered.

15 SECTION 7. Section 443.2025, Health and Safety Code, is
16 amended by amending Subsections (b), (d), and (f) and adding
17 Subsection (d-1) to read as follows:

18 (b) A person may not sell or distribute consumable hemp
19 products [~~containing cannabidiol at retail~~] in this state, other
20 than products generally recognized as safe by the United States
21 Food and Drug Administration, unless the person registers with the
22 department each location owned, operated, or controlled by the
23 person at which those products are sold. A person is not required
24 to register a location associated with an employee or independent
25 contractor described by Subsection (d).

26 (d) Except as provided by Subsection (d-1), a [A] person is
27 not required to register with the department under Subsection (b)

1 if the person is:

2 (1) an employee of a registrant; or

3 (2) an independent contractor of a registrant who
4 sells the registrant's products to consumers [~~at retail~~].

5 (d-1) A person is required to register with the department
6 under Subsection (b) if the person, as an employee or independent
7 contractor of a person located outside this state who is not a
8 registrant, sells or distributes products covered by Subsection (b)
9 in this state.

10 (f) The department by rule may adopt a registration fee
11 schedule that establishes reasonable fee amounts for the
12 registration of:

13 (1) a single location at which consumable hemp
14 products [~~containing cannabidiol~~] are sold; and

15 (2) multiple locations at which consumable hemp
16 products [~~containing cannabidiol~~] are sold under a single
17 registration.

18 SECTION 8. Section 443.204, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP
21 PRODUCTS. (a) Rules adopted by the executive commissioner
22 regulating the sale of consumable hemp products must to the extent
23 allowable by federal law reflect the following principles:

24 (1) hemp-derived cannabinoids, including cannabidiol,
25 are not considered controlled substances or adulterants;

26 (2) products containing one or more hemp-derived
27 cannabinoids, such as cannabidiol, intended for ingestion are

1 considered foods, not controlled substances or adulterated
2 products;

3 (3) consumable hemp products must be packaged and
4 labeled in the manner provided by Section 443.205; and

5 (4) the processing or manufacturing of a consumable
6 hemp product for smoking is prohibited.

7 (b) The department shall propose any rules necessary to
8 incorporate and implement a change to this chapter, a federal
9 statute, or a federal regulation not later than the 90th day after
10 the effective date of the change. The department may also adopt the
11 proposed rules as emergency rules. If a change to this chapter, a
12 federal statute, or a federal regulation creates a conflict with
13 department rules, the amended chapter, statute, or regulation
14 controls until the department's rules incorporating and
15 implementing the change take effect.

16 SECTION 9. Section 443.205(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) Before a consumable hemp product, including hemp plant
19 material, that contains or is marketed as containing hemp-derived
20 ~~[more than trace amounts of]~~ cannabinoids may be distributed or
21 sold, the product must be:

22 (1) labeled in the manner provided by this subchapter,
23 including ~~[section with]~~ the following information:

- 24 (A) ~~[(1)]~~ batch or lot identification number;
25 (B) ~~[(2)]~~ batch or lot date;
26 (C) ~~[(3)]~~ product name;
27 (D) ~~[(4)]~~ a uniform resource locator (URL) that

1 provides or links to a certificate of analysis for the product or
2 each hemp-derived ingredient of the product;

3 (E) [~~(5)~~] the name of the product's
4 manufacturer; and

5 (F) [~~(6)~~] a certification that the delta-9
6 tetrahydrocannabinol concentration of the product or each
7 hemp-derived ingredient of the product is not more than 0.3
8 percent; and

9 (2) prepackaged or placed at the time of sale in
10 packaging or a container that is:

11 (A) tamper-evident;

12 (B) child-resistant; and

13 (C) if the product contains multiple servings or
14 consists of multiple products purchased in one transaction,
15 resealable in a manner that allows the child-resistant mechanism to
16 remain intact.

17 SECTION 10. Subchapter E, Chapter 443, Health and Safety
18 Code, is amended by adding Sections 443.2055, 443.2056, 443.208,
19 443.209, and 443.210 to read as follows:

20 Sec. 443.2055. CONSUMABLE HEMP PRODUCT AND PACKAGING THAT
21 IS ATTRACTIVE TO CHILDREN PROHIBITED. (a) An edible consumable
22 hemp product that contains or is marketed as containing
23 hemp-derived cannabinoids may not be in the shape of a human,
24 animal, fruit, or cartoon or in another shape that is attractive to
25 children.

26 (b) The packaging of an edible consumable hemp product that
27 contains or is marketed as containing hemp-derived cannabinoids may

1 not:

2 (1) be in the shape of a human, animal, fruit, or
3 cartoon or in another shape that is attractive to children; or

4 (2) depict an image of a human, animal, fruit, or
5 cartoon or another image that is attractive to children.

6 (c) In this section, a cartoon includes a depiction of an
7 object, person, animal, creature, or any similar caricature that:

8 (1) uses comically exaggerated features and
9 attributes;

10 (2) assigns human characteristics to animals, plants,
11 or other objects; or

12 (3) has unnatural or extra-human abilities, such as
13 imperviousness to pain or injury, x-ray vision, tunneling at very
14 high speeds, or transformation.

15 Sec. 443.2056. PACKAGING THAT IS MISLEADING PROHIBITED.
16 The packaging and labeling of consumable hemp products, including
17 hemp plant material, that contain or are marketed as containing
18 hemp-derived cannabinoids may not depict any statement, artwork, or
19 design that would likely mislead a person to believe the package
20 does not contain a hemp-derived cannabinoid.

21 Sec. 443.208. SALE OF CONSUMABLE HEMP PRODUCTS TO PERSONS
22 YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a)
23 A person commits an offense if the person, with criminal
24 negligence, sells a consumable hemp product, including hemp plant
25 material, that contains or is marketed as containing hemp-derived
26 cannabinoids, to a person who is younger than 21 years of age.

27 (b) An employee of the owner of a store in which consumable

1 hemp products, including hemp plant material, that contain or are
2 marketed as containing hemp-derived cannabinoids, are sold at
3 retail is criminally responsible and subject to prosecution for an
4 offense under this section that occurs in connection with a sale by
5 the employee.

6 (c) An offense under this section is a Class C misdemeanor.

7 (d) It is a defense to prosecution under Subsection (a) that
8 the person to whom the consumable hemp product was sold presented to
9 the defendant apparently valid proof of identification.

10 (e) A proof of identification satisfies the requirements of
11 Subsection (d) if it contains a physical description and photograph
12 consistent with the person's appearance, purports to establish that
13 the person is 21 years of age or older, and was issued by a
14 governmental agency. The proof of identification may include a
15 driver's license issued by this state or another state, a passport,
16 or an identification card issued by a state or the federal
17 government.

18 (f) It is an exception to the application of Subsection (a)
19 that the person to whom the consumable hemp product was sold is at
20 least 18 years of age and presented at the time of purchase a valid
21 military identification card of the United States military forces
22 or the state military forces.

23 (g) A person who owns, manages, or operates an Internet
24 website that contains an e-commerce platform on which consumable
25 hemp products, including hemp plant material, that contain or are
26 marketed as containing hemp-derived cannabinoids are sold at retail
27 or offered for retail sale must:

1 (1) require a consumer accessing the e-commerce
2 platform to state affirmatively that the person is at least 21 years
3 of age; and

4 (2) prior to completing a purchase on the e-commerce
5 platform, verify a consumer's age by:

6 (A) using a reliable online age verification
7 service; or

8 (B) obtaining and examining a copy of a valid
9 government-issued identification.

10 Sec. 443.209. SALE OF CERTAIN CONSUMABLE HEMP PRODUCTS TO
11 PERSONS YOUNGER THAN 21 YEARS OF AGE. (a) The department by rule
12 shall adopt a list of hemp-derived cannabinoids that are exempt
13 from the requirements of Sections 443.205(a)(2), 443.2055, and
14 443.208.

15 (b) The list adopted under Subsection (a):

16 (1) must include cannabidiol; and

17 (2) may include cannabinoid quantity thresholds.

18 (c) Notwithstanding Subsection (a), Sections
19 443.205(a)(2), 443.2055, and 443.208 apply to any consumable hemp
20 product that contains:

21 (1) a hemp-derived cannabinoid not included on the
22 list adopted under Subsection (a); or

23 (2) a quantity of a hemp-derived cannabinoid that
24 exceeds the applicable threshold established under Subsection
25 (b)(2).

26 Sec. 443.210. APPLICABILITY OF PENALTIES TO CERTAIN
27 RETAILERS. Notwithstanding another provision of this subchapter, a

1 retailer of consumable hemp products is not liable for a penalty
2 under this subchapter if the retailer proves by a preponderance of
3 the evidence that the violation was unintentional and due to the
4 retailer's good faith reliance on a representation made by a
5 manufacturer, processor, or distributor of consumable hemp
6 products.

7 SECTION 11. Notwithstanding any other law, a retailer may
8 possess, transport, or sell a consumable hemp product that becomes
9 part of the retailer's inventory before rules required to implement
10 the changes in law made by this Act become effective unless the
11 product:

12 (1) is unsafe for consumption based on the presence or
13 quantity of heavy metals, pesticides, harmful microorganisms, or
14 residual solvents; or

15 (2) has a delta-9 tetrahydrocannabinol concentration
16 that exceeds the concentration allowed by federal law for hemp.

17 SECTION 12. Not later than December 1, 2023, the Department
18 of State Health Services shall adopt the list of hemp-derived
19 cannabinoids that may be sold to persons younger than 21 years of
20 age as required by Section 443.209, Health and Safety Code, as added
21 by this Act.

22 SECTION 13. This Act takes effect September 1, 2023.