

BILL ANALYSIS

Senate Research Center
89R9393 LHC-D

S.B. 3
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State Affairs
2/24/2025
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 3 bans the sale of all consumable hemp products that contain THC. The only consumable hemp products that will remain legal under this bill are products that only contain cannabidiol (CBD) or cannabigerol (CBG). Any product that remains legal under this bill will have to comply with a strict regulatory framework.

S.B. 3 also prohibits the sale of consumable hemp products to minors under 21, prohibits marketing consumable hemp products to minors, and requires all legal consumable hemp products to be properly labeled and placed in tamper-evident, child-resistant, and resealable packaging. These new safety features will help ensure children are not accidentally exposed to any consumable hemp products.

Furthermore, S.B. 3 creates several new criminal offenses to prevent the sale of illegal products in this state.

As proposed, S.B. 3 amends current law relating to the regulation of consumable hemp products and the hemp-derived cannabinoids contained in those products, requires a registration, imposes fees, creates criminal offenses, and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Department of State Health Services is modified in SECTION 9 (Section 443.2025, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 11 (Section 443.204, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 16 (Section 443.201, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 443.001(1), Health and Safety Code, to redefine "consumable hemp product."

SECTION 2. Amends Subchapter A, Chapter 443, Health and Safety Code, by adding Section 443.0025 to provide that Chapter 443 (Manufacture, Distribution, and Sale of Consumable Hemp Products) does not apply to low-THC cannabis regulated under Chapter 487 (Texas Compassionate-Use Act).

SECTION 3. Amends Section 443.104(b), Health and Safety Code, to require the Department of State Health Services (DSHS) to renew a consumable hemp product manufacturer's license (license) if the license holder meets certain requirements, including if the license holder has not violated this chapter or a rule adopted under this chapter, and to make nonsubstantive changes.

SECTION 4. Amends Subchapter C, Chapter 443, Health and Safety Code, by adding Section 443.106, as follows:

Sec. 443.106. RESTRICTION ON MANUFACTURE OF CERTAIN CONSUMABLE HEMP PRODUCTS. Prohibits a license holder from manufacturing a consumable hemp product that contains any amount of cannabinoid other than cannabidiol or cannabigerol.

SECTION 5. Amends Sections 443.151(b), (d), and (e), Health and Safety Code, as follows:

(b) Requires that a sample representing a hemp plant, before the plant is processed or otherwise used in the manufacture of a consumable hemp product, be tested, as required by the executive commissioner of the Health and Human Services Commission (executive commissioner), to determine:

(1) the concentration and identity of the cannabinoids in the plant, and the presence of quantity of heavy metals, pesticides, microbial contamination; and

(2) any other substance prescribed by DSHS. Makes a nonsubstantive change.

Makes a nonsubstantive change to this subsection.

(d) Requires that a sample representing the hemp product, except as otherwise provided by Subsection (e), before a consumable hemp product is sold at retail or otherwise introduced into commerce in this state, be tested:

(1) by a laboratory that is accredited by an accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable successor standard to determine the identity and concentration of any cannabinoids contained in the product, rather than to determine the delta-9 tetrahydrocannabinol concentration of the product; and

(2) by an appropriate laboratory to determine that the product does not contain a substance described by Subsection (b)(2), rather than Subsection (b), or (c) (relating to requiring that the material extracted from hemp by processing, before being sold, be tested to determine certain properties) in a quantity prohibited for purposes of those subsections.

(e) Provides that a consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product:

(1) has been tested in accordance with Subsection (d), rather than in accordance with Subsections (b) and (c) or Subsection (d); and

(2) does not contain any amount of a cannabinoid other than cannabidiol or cannabigerol, rather than does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Makes nonsubstantive changes to this subsection.

SECTION 6. Amends Sections 443.152(a) and (c), Health and Safety Code, as follows:

(a) Makes a conforming change to this subsection.

(c) Provides that the seller of a consumable hemp product, if the results of testing required by Section 443.151 (Testing Required) are not able to be made available, is authorized to have the testing required under Section 443.151 performed on the product and is required to make the results available to a consumer and DSHS.

SECTION 7. Amends Sections 443.202(b) and (c), Health and Safety Code, as follows:

(b) Deletes existing text prohibiting a person from selling, offering for sale, possessing, distributing, or transporting cannabidiol oil in this state in certain circumstances. Makes a conforming change.

(c) Requires DFPS, rather than DFPS and the Department of Public Safety, to establish a process for the testing of cannabinoid oil, rather than the random testing of cannabinoid oil, including cannabidiol oil at various retail and other establishments to ensure that the oil meets certain standards. Makes a conforming change.

SECTION 8. Amends the heading to Section 443.2025, Health and Safety Code, to read as follows:

Sec. 443.2025. REGISTRATION REQUIRED FOR RETAILERS OF CERTAIN CONSUMABLE HEMP PRODUCTS.

SECTION 9. Amends Sections 443.2025(b), (d), (f), and (g), Health and Safety Code, as follows:

(b) Prohibits a person from selling consumable hemp products containing a cannabinoid, rather than cannabidiol, at retail in this state unless the person registers with DSHS each location owned, operated, or controlled by the person at which those products are sold. Provides that a person is not required to register a location associated with an employee, rather than with an employee or an independent contractor, described by Subsection (d).

(d) Deletes existing text providing that a person is not required to register with DSHS under Subsection (b) if the person is an independent contractor of a registrant who sells the registrant's products at retail. Makes nonsubstantive changes.

(f) Authorizes DSHS by rule to adopt a registration fee schedule that establishes reasonable fee amounts for the registration of:

(1) a single location at which consumable hemp products, rather than consumable hemp products containing cannabidiol, are sold; and

(2) makes a conforming change to this subdivision.

(g) Requires DSHS to adopt rules to implement and administer Section 443.2025 (Registration Required for Retailers of Certain Products) and to require a person required to register under this section to provide to DSHS information regarding the type and concentration of each cannabinoid present in each consumable hemp product offered for sale by the person. Makes nonsubstantive changes.

SECTION 10. Amends Section 443.203, Health and Safety Code, as follows:

Sec. 443.203. DECEPTIVE TRADE PRACTICE. (a) Provides that a person who sells, offers for sale, or distributes a consumable hemp product, rather than a cannabinoid oil including cannabidiol oil, that the person claims is processed or manufactured in compliance with this chapter commits a false, misleading, or deceptive act or practice actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business and Commerce Code, if the product, rather than the oil, is not processed or manufactured in accordance with this chapter.

(b) Provides that a person who sells, offers for sale, or distributes a consumable hemp product commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business and Commerce Code, if:

(1)-(2) makes conforming and nonsubstantive changes to these subdivisions;

(3) the product contains any amount of a cannabinoid other than cannabidiol or cannabigerol; or

(4) the product's packaging or advertising indicates that the product is for medical use.

Makes conforming changes to this subsection.

SECTION 11. Amends Section 443.203, Health and Safety Code, as follows:

Sec. 443.203. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS. Requires that rules adopted by the executive commissioner regulating the sale of consumable hemp products, to the extent allowable by federal law, reflect the following principles:

(1) hemp-derived cannabidiol and cannabigerol, rather than hemp-derived cannabinoids including cannabidiol, are not considered controlled substances or adulterants;

(2) products containing hemp-derived cannabidiol or cannabigerol, rather than products containing one or more hemp-derived cannabinoids such as cannabidiol, intended for ingestion are considered foods, not controlled substances or adulterated products; and

(3) makes a nonsubstantive change to this subdivision.

Deletes text of existing Subdivision (4) requiring that rules adopted by the executive commissioner reflect that the processing or manufacturing of a consumable-hemp product for smoking is prohibited. Makes nonsubstantive changes.

SECTION 12. Amends Section 443.205(a), Health and Safety Code, as follows:

(a) Requires that a consumable hemp product, before the product that contains or is marketed as containing cannabinoids, rather than containing more than trace amounts of cannabinoids, is authorized to be distributed or sold, be:

(1) labeled in the manner provided by this subchapter, rather than this section, including the following information:

(A)-(E) redesignates existing Subdivisions (1)-(5) as Paragraphs (A)-(E);

(F) the amount of cannabidiol or cannabigerol in each serving or unit of the product; and

(G) a certification that the concentration of any cannabinoid other than cannabidiol or cannabigerol in the product is not more than 0.0001 percent on a dry weight basis; and

(2) prepacked or placed at the time of sale in packaging or a container that is tamper-evident, child-resistant, and, if the product contains multiple servings or consists of multiple products purchased in one transaction, resealable in a manner that allows the child-resistant mechanism to remain intact.

Makes conforming and nonsubstantive changes to this subsection.

SECTION 13. Amends Subchapter E, Chapter 443, Health and Safety Code, by adding Sections 443.2055 and 443.2056, as follows:

Sec. 443.2055. CRIMINAL OFFENSE OF PROHIBITED MARKETING OF CONSUMABLE HEMP PRODUCT OR PACKAGING IN MANNER ATTRACTIVE

TO MINORS. (a) Provides that a person commits an offense if the person markets, advertises, sells, or causes to be sold an edible consumable hemp product containing a hemp-derived cannabinoid that:

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

(2) is in packaging or a container that has certain qualities.

(b) Provides that, in this section, a cartoon includes a depiction of an object, person, animal, creature, or any similar caricature that uses comically exaggerated features and attributes, assigns human characteristics to animals, plants, or other objects, or has unnatural or extra-human abilities, such as imperviousness to pain or injury, x-ray vision, tunneling at very high speeds, or transformation.

(c) Provides that an offense under this section is a Class A misdemeanor.

Sec. 443.2056. **PACKAGING THAT IS MISLEADING PROHIBITED.** Prohibits the packaging and labeling of consumable hemp products that contain or are marketed as containing hemp-derived cannabinoids from depicting any statement, artwork, or design that would likely mislead a person to believe the package does not contain a hemp-derived cannabinoid.

SECTION 14. Amends Section 443.206, Health and Safety Code, as follows:

Sec. 443.206. **RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP PRODUCTS.** Authorizes retail sales of consumable hemp products processed or manufactured outside of this state to be made in this state when the products were processed or manufactured in another state or jurisdiction if the products:

(1) were manufactured or processed in compliance with:

(A)-(C) redesignates existing Subdivisions (A)-(C) as Subdivisions (1)-(3) and makes nonsubstantive changes;

(2) do not contain any amount of a cannabinoid other than cannabidiol or cannabigerol; and

(3) are packaged and labeled in the manner provided by this subchapter.

SECTION 15. Amends Chapter 443, Health and Safety Code, by adding Subchapters F and G, as follows:

SUBCHAPTER F. CRIMINAL OFFENSES

Sec. 443.251. **OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO DELIVER OF CERTAIN CONSUMABLE HEMP PRODUCTS.** (a) Provides that a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a consumable hemp product that contains any amount of a cannabinoid other than cannabidiol or cannabigerol.

(b) Provides that an offense under this section is a felony of the third degree.

(c) Authorizes, if conduct constituting an offense under this section also constitutes an offense under another law, the actor to be prosecuted under this section, the other law, or both.

Sec. 443.252. **OFFENSE: POSSESSION OF CERTAIN CONSUMABLE HEMP PRODUCTS.** (a) Provides that a person commits an offense if the person knowingly or

intentionally possesses a consumable hemp product that contains any amount of a cannabinoid other than cannabidiol or cannabigerol.

(b) Provides that an offense under this section is a Class A misdemeanor.

(c) Authorizes, if conduct constituting an offense under this section also constitutes an offense under another law, the actor to be prosecuted under this section, the other law, or both.

Sec. 443.253. OFFENSE: SALE OR DISTRIBUTION OF CERTAIN CONSUMABLE HEMP PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE; PROOF OF AGE REQUIRED. (a) Provides that a person commits an offense if the person, with criminal negligence, sells a consumable hemp product that contains or is marketed as containing hemp-derived cannabinoids to a person who is younger than 21 years of age.

(b) Provides that an employee of the owner of a store in which consumable hemp products that contain or are marketed as containing hemp-derived cannabinoids are sold at retail is criminally responsible and subject to prosecution for an offense under this section that occurs in connection with a sale by the employee.

(c) Provides that an offense under this section is a Class B misdemeanor.

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

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

(f) Prohibits the owner of a store in which consumable hemp products that contain or are marketed as containing hemp-derived cannabinoids are sold, or an employee of the owner, from displaying consumable hemp products for sale adjacent to products that are legal for children to consume.

Sec. 443.254. OFFENSE: MANUFACTURE, DISTRIBUTION, OR SALE OF CONSUMABLE HEMP PRODUCTS FOR SMOKING. (a) Provides that a person commits an offense if the person manufactures, distributes, sells, or offers for sale a consumable hemp product for smoking.

(b) Provides that an offense under this section is a Class B misdemeanor.

Sec. 443.255. OFFENSE: SALE OR DELIVERY OF CERTAIN CONSUMABLE HEMP PRODUCTS NEAR SCHOOL. (a) Defines "school" and "premises."

(b) Provides that a person commits an offense if the person sells, offers for sale, or delivers a consumable hemp product containing a hemp-derived cannabinoid in, on, or within 1,000 feet of the premises of a school.

(c) Provides that an offense under this section is a Class B misdemeanor.

Sec. 443.256. OFFENSE: PROVISION OF CERTAIN CONSUMABLE HEMP PRODUCT BY COURIER, DELIVERY, OR MAIL SERVICE. (a) Provides that a person commits an offense if the person provides a consumable hemp product containing a hemp-derived cannabinoid by courier, delivery, or mail service.

(b) Provides that an offense under this section is a Class A misdemeanor.

SUBCHAPTER G. ADMINISTRATIVE ENFORCEMENT

Sec. 443.301. ENFORCEMENT BY DEPARTMENT. (a) Requires DSHS to receive and investigate complaints concerning violations of this chapter by certain individuals.

(b) Authorizes DSHS to revoke, suspend, or refuse to renew a license or registration for a violation of this chapter or a rule adopted under this chapter.

(c) Authorizes DSHS to impose an administrative penalty in an amount not to exceed \$10,000 against a license holder or registrant for each violation of this chapter or a rule adopted under this chapter.

(d) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 16. Repealer: Section 443.201 (Possession, Transportation, and Sale of Consumable Hemp Products), Health and Safety Code.

Repealers: Sections 443.2025(a) (relating to providing that Section 443.2025 (Registration Required for Retailers of Certain Products) does not apply to low-THC cannabis regulated under Chapter 487) and 443.202(a) (relating to providing that Section 443.202 (Regulation of Certain Cannabinoid Oils) does not apply to low-THC cannabis regulated under Chapter 487), Health and Safety Code.

SECTION 17. Requires DSHS, not later than December 1, 2025, to adopt the rules required by Section 443.2025(g), Health and Safety Code, as amended by this Act.

SECTION 18. (a) Makes application of this Act, except as otherwise provided by Subsection (b) of this section, prospective.

(b) Authorizes a person selling consumable hemp products on the effective date of this Act to continue to sell those products and provides that the person is not required to register under Section 443.2025, Health and Safety Code, as amended by this Act, before January 1, 2026.

SECTION 19. Effective date: September 1, 2025.