89R18934 CJD-F

By:  King H.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of consumable hemp products and providing for the transfer of regulatory functions; requiring a registration; imposing fees; creating criminal offenses; providing an administrative penalty.

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

SECTION 1.  Section 443.001, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivision (8-a) to read as follows:

(1)  "Consumable hemp product" means [~~food, a drug,~~] a device[~~,~~] or a cosmetic, as those terms are defined by Section 431.002, that:

(A)  contains hemp or one or more hemp-derived cannabinoids; and

(B)  does not contain any amount of a cannabinoid other than cannabidiol, cannabigerol, or delta-9 tetrahydrocannabinol [~~, including cannabidiol~~].

(8-a)  "Minor" means a person under 21 years of age.

SECTION 2.  Subchapter A, Chapter 443, Health and Safety Code, is amended by adding Section 443.0025 to read as follows:

Sec. 443.0025.  LOW-THC CANNABIS. This chapter does not apply to low-THC cannabis regulated under Chapter 487.

SECTION 3.  Subchapter C, Chapter 443, Health and Safety Code, is amended by adding Section 443.1035 to read as follows:

Sec. 443.1035.  LICENSING FEES. (a) An applicant for a license under this subchapter shall pay an initial licensing fee to the department in the amount of $5,000 for each location where the applicant intends to process hemp or manufacture a consumable hemp product.

(b)  Before the department may renew a license as provided by Section 443.104, a license holder shall pay a renewal fee to the department in the amount of $2,500 for each location where the applicant intends to process hemp or manufacture a consumable hemp product.

SECTION 4.  Section 443.104(b), Health and Safety Code, is amended to read as follows:

(b)  The department shall renew a license if the license holder:

(1)  is not ineligible to hold the license under Section 443.102;

(2)  has not violated this chapter or a rule adopted under this chapter;

(3)  submits to the department any license renewal fee; and

(4) [~~(3)~~]  does not owe any outstanding fees to the department.

SECTION 5.  Subchapter C, Chapter 443, Health and Safety Code, is amended by adding Section 443.106 to read as follows:

Sec. 443.106.  MANUFACTURE OF CONSUMABLE HEMP PRODUCTS. (a) A license holder may not manufacture a consumable hemp product that contains any amount of a synthesized cannabinoid.

(b)  Consumable hemp products must be produced using current good manufacturing practices, as defined by executive commissioner rule.

SECTION 6.  Sections 443.151(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a)  A consumable hemp product must be tested as provided by[~~:~~

[~~(1)~~]  Subsections (b), [~~and~~] (c), and [~~; or~~

[~~(2)  Subsection~~] (d).

(b)  Before a hemp plant is processed or otherwise used in the manufacture of a consumable hemp product, a sample representing the plant must be tested, as required by the executive commissioner, to determine:

(1)  the concentration and identity of the [~~various~~] cannabinoids in the plant; and

(2)  the presence or quantity of heavy metals, pesticides, microbial contamination, and any other substance prescribed by the department.

(d)  Before [~~Except as otherwise provided by Subsection (e), before~~] a consumable hemp product is sold at retail or otherwise introduced into commerce in this state, a sample representing the hemp product must be tested:

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

(2)  by an appropriate laboratory to determine that the product does not contain a substance described by Subsection (b)(2) [~~(b)~~] or (c) in a quantity prohibited for purposes of those subsections.

SECTION 7.  Section 443.152(c), Health and Safety Code, is amended to read as follows:

(c)  A license holder shall make available to a seller of a consumable hemp product processed or manufactured by the license holder the results of testing required by Section 443.151. The results may accompany a shipment to the seller or be made available to the seller electronically.  If the results are not able to be made available, the seller may have the testing required under Section 443.151 performed on the product and shall make the results available to a consumer and the department.

SECTION 8.  The heading to Section 443.2025, Health and Safety Code, is amended to read as follows:

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

SECTION 9.  Section 443.2025, Health and Safety Code, is amended by amending Subsections (b), (d), (f), and (g) and adding Subsections (h) and (i) to read as follows:

(b)  A person may not sell consumable hemp products containing a cannabinoid [~~cannabidiol~~] at retail in this state unless the person registers with the department each location owned, operated, or controlled by the person at which those products are sold. A person is not required to register a location associated with an employee [~~or independent contractor~~] described by Subsection (d).

(d)  A person is not required to register with the department under Subsection (b) if the person is[~~:~~

[~~(1)~~]  an employee of a registrant[~~; or~~

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

(f)  The owner of a location at which consumable hemp products are sold shall annually pay to the department a registration fee in the amount of $2,000 for each location owned by the person at which those products are sold [~~The department by rule may adopt a registration fee schedule that establishes reasonable fee amounts for the registration of:~~

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

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

(g)  The department shall adopt rules to:

(1)  implement and administer this section; and

(2)  require a person required to register under this section to provide to the department information regarding the type and concentration of each cannabinoid present in each consumable hemp product offered for sale by the person.

(h)  The department shall provide to the Department of Public Safety the information provided to the department under Subsection (g)(2).

(i)  A person may not sell consumable hemp products unless the person has provided to the department written consent from the person or the property owner, if the person is not the property owner, allowing the department, the Department of Public Safety, and any other state or local law enforcement agency to enter onto all premises where consumable hemp products are sold to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter.

SECTION 10.  Section 443.203, Health and Safety Code, is amended to read as follows:

Sec. 443.203.  DECEPTIVE TRADE PRACTICE. (a) A person who sells, offers for sale, or distributes a consumable hemp product [~~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, Chapter 17, Business & Commerce Code, if the product [~~oil~~] is not processed or manufactured in accordance with this chapter.

(b)  A person who sells, offers for sale, or distributes a consumable hemp product [~~cannabinoid oil~~] commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if [~~the oil~~]:

(1)  the product contains harmful ingredients;

(2)  the product is not produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; [~~or~~]

(3)  the product's packaging or advertising indicates that the product is for medical use; or

(4)  the product has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent or contains more than 10 milligrams of delta-9 tetrahydrocannabinol per serving of the product.

SECTION 11.  Section 443.205, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (c-1) to read as follows:

(a)  Before a consumable hemp product that contains or is marketed as containing [~~more than trace amounts of~~] cannabinoids may be distributed or sold, the product must:

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

(A) [~~(1)~~]  batch identification number;

(B) [~~(2)~~]  batch date;

(C) [~~(3)~~]  product name;

(D) [~~(4)~~]  a uniform resource locator (URL) that provides or links to a certificate of analysis for the product or each hemp-derived ingredient of the product;

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

(F)  the amount of cannabidiol, cannabigerol, or delta-9 tetrahydrocannabinol in each serving or unit of the product; and

(G) [~~(6)~~]  a certification that the delta-9 tetrahydrocannabinol concentration of the product [~~or each hemp-derived ingredient of the product~~] is not more than 0.3 percent and that each serving of the product contains not more than 10 milligrams of delta-9 tetrahydrocannabinol;

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

(A)  tamper-evident;

(B)  child-resistant; and

(C)  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; and

(3)  bear a warning label that reads as follows:

"WARNING: Consumption of this product will result in a positive drug test.".

(c)  The label required by Subsection (a) must appear on the outer packaging of each unit of the product intended for individual retail sale. [~~If that unit includes inner and outer packaging, the label may appear on any of that packaging.~~]

(c-1)  If a container contains multiple servings of a consumable hemp product, each serving must be individually packaged within the container.

SECTION 12.  Subchapter E, Chapter 443, Health and Safety Code, is amended by adding Sections 443.2055 and 443.2056 to read as follows:

Sec. 443.2055.  OFFENSE: MARKETING OF CONSUMABLE HEMP PRODUCT OR PACKAGING IN MANNER ATTRACTIVE TO MINORS. (a) A person commits an offense if the person markets, advertises, sells, or causes to be sold a 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:

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

(B)  depicts an image of a human, animal, fruit, or cartoon or another image that is attractive to children;

(C)  imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;

(D)  includes a symbol that is primarily used to market products to minors;

(E)  includes an image of a celebrity;

(F)  includes an image that resembles a food product, including candy or juice; or

(G)  includes an image that resembles a hemp flower.

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

(1)  uses comically exaggerated features and attributes;

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

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

(c)  An offense under this section is a state jail felony.

Sec. 443.2056.  OFFENSE: MISLEADING CONSUMABLE HEMP PACKAGING. (a) A person commits an offense if the person sells or offers for sale a consumable hemp product that contains or is marketed as containing hemp-derived cannabinoids in a package that depicts any statement, artwork, or design that would likely mislead a person to believe:

(1)  the package does not contain a hemp-derived cannabinoid; or

(2)  the product is intended for medical use, including by depicting a green cross.

(b)  An offense under this section is a Class A misdemeanor.

SECTION 13.  Section 443.206, Health and Safety Code, is amended to read as follows:

Sec. 443.206.  RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP PRODUCTS. Retail sales of consumable hemp products processed or manufactured outside of this state may 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) [~~(1)~~]  that state's [~~state~~] or jurisdiction's plan approved by the United States Department of Agriculture under 7 U.S.C. Section 1639p;

(B) [~~(2)~~]  a plan established under 7 U.S.C. Section 1639q if that plan applies to the state or jurisdiction; or

(C) [~~(3)~~]  the laws of that state or jurisdiction if the products are tested in accordance with, or in a manner similar to, Section 443.151;

(2)  do not contain a concentration of delta-9 tetrahydrocannabinol in excess of 0.3 percent; and

(3)  do not contain an amount of delta-9 tetrahydrocannabinol in excess of 10 milligrams in each serving.

SECTION 14.  Subchapter E, Chapter 443, Health and Safety Code, is amended by adding Section 443.208 to read as follows:

Sec. 443.208.  MAXIMUM AMOUNT OF DELTA-9 TETRAHYDROCANNABINOL. (a) A license holder may not manufacture and a person required to register under Section 443.2025 may not sell, give, or cause to be sold or given a consumable hemp product that contains more than 10 milligrams of delta-9 tetrahydrocannabinol in a container.

(b)  A person required to register under Section 443.2025 may not sell, give, or cause to be sold or given consumable hemp products with a total of more than 10 milligrams of delta-9 tetrahydrocannabinol per transaction.

SECTION 15.  Chapter 443, Health and Safety Code, is amended by adding Subchapters F, G, and H to read as follows:

SUBCHAPTER F. CRIMINAL OFFENSES

Sec. 443.251.  OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO DELIVER OF CERTAIN CONSUMABLE HEMP PRODUCTS. (a) A person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a consumable hemp product that:

(1)  has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent; or

(2)  contains more than 10 milligrams of delta-9 tetrahydrocannabinol in a container or more than 10 milligrams of delta-9 tetrahydrocannabinol in each serving.

(b)  An offense under this section is a felony of the third degree.

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

Sec. 443.252.  OFFENSE: POSSESSION OF CERTAIN CONSUMABLE HEMP PRODUCTS. (a) A person commits an offense if the person knowingly or intentionally possesses a consumable hemp product that:

(1)  has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent; or

(2)  contains more than 10 milligrams of delta-9 tetrahydrocannabinol in a container or more than 10 milligrams of delta-9 tetrahydrocannabinol in each serving.

(b)  An offense under this section is a Class A misdemeanor.

(c)  If conduct constituting an offense under this section also constitutes an offense under another law, the actor may 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) 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)  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)  An offense under this section is a Class A misdemeanor.

(d)  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)  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.  The proof of identification may 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)  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, may not display 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 OR INHALING. (a) A person commits an offense if the person manufactures, distributes, sells, or offers for sale a consumable hemp product for smoking or inhaling.

(b)  An offense under this section is a Class A misdemeanor.

Sec. 443.2545.  OFFENSE: MANUFACTURE, DISTRIBUTION, OR SALE OF EDIBLE CONSUMABLE HEMP PRODUCTS. (a) A person commits an offense if the person manufactures, distributes, sells, or offers for sale a consumable hemp product that is intended for eating, including foods, gummies, and candies.

(b)  An offense under this section is a Class A misdemeanor.

Sec. 443.255.  OFFENSE: SALE OR DELIVERY OF CERTAIN CONSUMABLE HEMP PRODUCTS NEAR SCHOOL. (a) In this section, "school" and "premises" have the meanings assigned by Section 481.134.

(b)  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)  An offense under this section is a state jail felony.

Sec. 443.256.  OFFENSE: PROVISION OF CERTAIN CONSUMABLE HEMP PRODUCT BY COURIER, DELIVERY, OR MAIL SERVICE. (a) 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)  An offense under this section is a Class A misdemeanor.

Sec. 443.257.  OFFENSE: FALSE LABORATORY REPORT. (a) A person commits an offense if the person, with the intent to deceive, forges, falsifies, or alters the results of a laboratory test authorized or required by this chapter.

(b)  An offense under this section is a felony of the third degree.

Sec. 443.258.  OFFENSE: GROWING OR SELLING HEMP FLOWER.  (a) A person commits an offense if the person grows hemp flower or sells or offers for sale hemp flower in a manner that is not approved by executive commissioner rule.

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

SUBCHAPTER G. ADMINISTRATIVE ENFORCEMENT

Sec. 443.301.  ENFORCEMENT BY DEPARTMENT. (a) The department shall receive and investigate complaints concerning violations of this chapter by:

(1)  a license holder under Subchapter C; or

(2)  a registrant under Section 443.2025.

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

(c)  The department may impose an administrative penalty in an amount not to exceed $20,000 against a license holder or registrant for each violation of this chapter or a rule adopted under this chapter.

(d)  A proceeding under this section is a contested case under Chapter 2001, Government Code.

SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING

Sec. 443.351.  MEMORANDUM OF UNDERSTANDING FOR TRANSFER OF REGULATORY FUNCTIONS.  The department shall enter into a memorandum of understanding with the Texas Alcoholic Beverage Commission regarding:

(1)  the transfer of certain regulatory functions for consumable hemp products from the department to the Texas Alcoholic Beverage Commission;

(2)  changing the licensing structure for consumable hemp products to a three-tiered structure that includes manufacturers, wholesalers, and retailers;

(3)  the locations at which consumable hemp products may be sold, including locations for the on-premises consumption of consumable hemp products;

(4)  the regulation of locations described by Subdivision (3), including any signage required for informing consumers;

(5)  the amount of fees to charge permittees or licensees;

(6)  the funding mechanism for a consumable hemp regulatory scheme, including the taxation of consumable hemp and the disposition of those taxes;

(7)  the regulation of synthetic cannabinoids;

(8)  regulating the retail sale of hemp flower;

(9)  the creation of open container laws for consumable hemp products;

(10)  the certification of testing facilities;

(11)  regulating the mixing of consumable hemp products with alcohol or caffeine; and

(12)  the packaging and labeling of consumable hemp products.

SECTION 16.  The following provisions of the Health and Safety Code are repealed:

(1)  Section 443.151(e);

(2)  Section 443.201;

(3)  Sections 443.202(a) and 443.2025(a) and (c); and

(4)  Section 443.204.

SECTION 17.  As soon as practicable after the effective date of this Act, the Department of State Health Services shall adopt the rules required by Section 443.2025(g), Health and Safety Code, as amended by this Act.

SECTION 18.  The changes in law made by this Act apply to the manufacture, sale, delivery, or possession of a consumable hemp product that occurs on or after the effective date of this Act. The manufacture, sale, delivery, or possession of a consumable hemp product that occurs before the effective date of this Act is governed by the law in effect on the date the manufacture, sale, delivery, or possession occurred, and the former law is continued in effect for that purpose.

SECTION 19.  This Act takes effect January 1, 2026.