HOUSE BILL 563:
Hemp-Derived Consumables/Con Sub Changes.

2023-2024 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	June 18, 2024
Introduced by:	Reps. McNeely, Sasser, Cotham, Fontenot	**Prepared by:**	Rob Ryan Staff Attorney
Analysis of:	Fifth Edition		

OVERVIEW: House Bill 563 would do the following:

- ***Regulate the sale and distribution of hemp-derived consumable products.***
- ***Require a license to sell, distribute, or manufacture hemp-derived consumable products.***
- ***Ban hemp-derived consumable products from school grounds.***
- ***Amend the North Carolina Controlled Substances Act by adding tianeptine as a Schedule II controlled substance, xylazine as a Schedule III controlled substance, and kratom as a Schedule VI controlled substance.***
- ***Create new criminal offenses related to the unlawful sale of and possession of embalming fluid.***
- ***Create new criminal offenses for exposing a child to a controlled substance.***

The Finance-related provisions are as follows:

- ***Testing Fee. (p. 3) – Would allow the Department of Revenue to collect a testing fee that would be remitted to ALE to compensate it for the actual cost of testing samples to determine whether they violate certain manufacturing, distribution, or sales restrictions.***
- ***Licensing Fees. (p. 14) – Would require application and renewal fees to be paid to the Department of Revenue for licensing entities that are seeking to manufacture, distribute, or sell hemp-derived consumable products. The fees would be remitted to the ALE Division, on a monthly basis, to cover the costs incurred regulating these products.***

CURRENT LAW AND BILL ANALYSIS:

PART I. REGULATION OF HEMP-DERIVED CONSUMABLE PRODUCTS

Under current law, hemp and hemp products are excluded from the definition of marijuana and therefore are not controlled substances. The two terms are defined in G.S. 90-87 as follows:

- "Hemp" means the plant Cannabis sativa (L.) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.
- "Hemp products" means all products made from hemp, including, but not limited to, cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal and seed oil for consumption, and verified propagules for cultivation if the seeds originate from hemp varieties.

Section 1.(a) – New Chapter 18D

House Bill 563 would enact a new Chapter 18D to regulate hemp-derived consumable products in North Carolina.

Article 1 – Hemp-derived consumable products

Article 1 of Chapter 18D would provide requirements and regulations for hemp-derived consumable products.

G.S. 18D-100 would define terms applicable to hemp-derived consumable products.

"Hemp-derived consumable product" would be defined as follows:

> *"A hemp product that is a finished good intended for human ingestion or inhalation, that contains a delta-9 THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, but may contain concentrations of other hemp-derived cannabinoids, in excess of that amount. This term does not include hemp products intended for topical application, or seeds or seed derived ingredients that are generally recognized as safe by the United States Food and Drug Administration (FDA)."*

This definition includes consumable products commonly referred to as "CBD", "delta-7", "delta-8", and "delta-10", and others. It would not include topical products such as lotions or creams intended to be used externally, or items such as hemp milk that are derived from seed.

For purposes of this summary, the term "THC" refers to delta-9 tetrahydrocannabinol, unless otherwise specified.

G.S. 18D-101 would provide **sales restrictions** on hemp-derived consumable products and prohibit the following:

- Selling a hemp-derived consumable product to a person under 21.
- Distributing samples of a hemp-derived consumable product in or on a public street, sidewalk, or park.
- Engaging in the business of selling hemp-derived consumable products without a valid license.
- Selling a hemp-derived consumable product that has a concentration of more than 0.3% on a dry weight basis total combined of THC.
- Selling a hemp-derived consumable product that is not contained in an exit package.
- Selling a hemp-derived consumable product not in compliance with the requirements of G.S. 18D-105.
- Selling hemp flower that is not accompanied by a certificate of analysis issued within the previous six-month period demonstrating that the flower has a concentration of no more than 0.3% THC.

In general, there would be no criminal penalties for violations, but civil penalties would be imposed by the Department of Revenue (Department) as follows:

- 1st violation – Department may impose a penalty up to $500.
- 2nd violation within 3 years of the 1st violation – Department may impose a penalty up to $750.
- 3rd violation within 3 years of the 1st violation – Department shall impose a penalty up to $1,000 and suspend the seller's license for one year.

- 4th or subsequent violation within 3 years of the 1st violation – Department shall impose a penalty up to $2,000 and revoke the seller's license.

In any case where the Department is authorized to suspend or revoke a license, the Department may accept an offer in compromise of up to $3,000. If the Department accepts the offer in compromise, it may suspend the license, but not revoke it.

Additionally, in any case in which the Department imposes a penalty for a violation of selling a product with more than 0.3% THC the seller shall also pay to the Department the actual costs paid by the Alcohol Law Enforcement (ALE) Division for testing the product samples resulting in the violation.

This section does provide that it is a Class A1 misdemeanor for any person who sells hemp-derived consumable products without a license if they have previously received a civil penalty from the Department for selling without a license. Any person who then commits a third or subsequent violation shall be guilty of a Class H felony.

G.S. 18D-101A would create **sales and transfer restrictions on a producer** ("producer") of hemp that has been processed or prepared with the intent to be used in a hemp-derived consumable product. A producer is only authorized to sell or transfer hemp that has been processed or prepared with the intent to be used in a hemp-derived consumable product to a licensed manufacturer. This section would not prohibit a producer from selling or transferring hemp that is intended to be used in any other lawful product, other than those regulated by this Chapter.

Civil penalties would be imposed by the Department as follows:

- 1st violation – Department may impose a penalty up to $500.
- 2nd violation within 3 years of the 1st violation – Department may impose a penalty up to $750.
- 3rd violation within 3 years of the 1st violation – Department shall impose a penalty up to $1,000.
- 4th or subsequent violation within 3 years of the 1st violation – Department shall impose a penalty up to $2,000.

Any person against whom a civil penalty has been imposed for violation of this section, who then commits a second violation would be guilty of a Class A1 misdemeanor. Any person who commits a third or subsequent violation would be guilty of a Class H felony.

G.S. 18D-102 would create criminal offenses for **underage purchase and use of fake IDs** as follows:

- Giving a hemp-derived consumable product to a person under 21.
- A person under 21 possessing, purchasing, or attempting to purchase a hemp-derived consumable product.
- Using a fake, fraudulent, or borrowed ID to enter or attempt to enter a place where hemp-derived consumable products are sold or to purchase or attempt to purchase hemp-derived consumable products.
- Allowing an underage person to use the person's ID to purchase or attempt to purchase hemp-derived consumable products.

Violation of these provisions by a person under 21 would be a Class 2 misdemeanor. Violation by a person 21 or older would be a Class 1 misdemeanor. Aiding or abetting a violation would be punished the same as the commission of the offense.

G.S. 18D-103 would create criminal offenses and civil penalties for the following **conduct when committed by a manufacturer or distributor**:

- Distributing samples of a hemp-derived consumable product in or on a public street, sidewalk, or park.
- Engaging in manufacturing or distributing a hemp-derived consumable product without a valid license.
- Manufacturing or distributing a hemp-derived consumable product with a concentration of more than 0.3% on a dry weight basis total combined of THC.

Violation of these provisions would be a Class A1 misdemeanor. In addition to the criminal penalties, the Department may also impose one or more of the following actions against a licensee:

- Suspend the license for up to 3 years.
- Revoke the license.
- Impose conditions on the licensee's operating hours.
- Impose civil penalties as follows:
  - 1st violation – up to $1,000.
  - 2nd violation within 3 years – up to $5,000.
  - 3rd violation within 3 years of the 1st violation – up to $7,500.

In any case where the Department is authorized to suspend or revoke a license, the Department may accept an offer in compromise of up to $8,000. If the Department accepts the offer in compromise, it may suspend the license, but not revoke it.

Additionally, in any case in which the Department imposes a penalty for a violation of manufacturing or distributing a product with more than 0.3% THC the manufacturer or distributor shall also pay to the Department the actual costs paid by the ALE Division for testing the product samples resulting in the violation.

The statute would authorize a defense for a violation of manufacturing or distributing a hemp-derived consumable product with more than 0.3% THC, if the manufacturer or distributor takes all the following actions:

- Recalls all hemp-derived consumable products from the same batch on which the violation is based.
- Has samples of the batch tested by an independent testing laboratory in sample sizes of 5 times the amount required for pre-distribution testing.
- Provides certified results indicating the sample tested does not contain more than 0.3% THC.

G.S. 18D-104 would require **testing prior to distribution**. The manufacturer must have a hemp-derived consumable product tested prior to distribution to a distributor or before distributing the product to a seller. If the hemp-derived consumable product is packaged in a manner that may be sold to the ultimate consumer of the product when delivered to the distributor and the distributor does not open such package, the distributor is not required to test the hemp-derived consumable product. If the hemp-derived consumable product is not packaged in a manner that may be sold to the ultimate consumer of the product when delivered to the distributor or the distributor does open such package, the distributor must have the hemp-derived consumable product tested prior to distribution. Testing must be done by an independent testing laboratory using high-performance liquid chromatography for any separation and measurements to test for specified items and determine the amounts of those items present. Testing must be done in

sample quantities determined by the size of the product batch. The label of the product must include an expiration date conforming with federal law.

G.S. 18D-105 would establish certain requirements for **packaging and serving sizes**, including limiting the amount of delta-9 tetrahydrocannabinol, delta-7 tetrahydrocannabinol, delta-8 tetrahydrocannabinol, or delta-10 tetrahydrocannabinol that can be contained in a serving of a hemp-derived consumable. The aggregate amount of these hemp-derived cannabinoids allowed in each serving of a hemp-derived consumables would be the following:

- 25 milligrams per serving for a solid hemp-derived consumable.
- 10 milligrams per serving for a liquid hemp-derived consumable.
- 3 milligrams per serving for an inhalable hemp-derived consumable.

This statute also places restrictions on **advertising** of hemp-derived consumable products.

G.S. 18D-105.1 would make it unlawful for a licensee or a licensee's agent to knowingly allow any of the following **conduct to occur on the license premises**:

- Any violation of this Chapter.
- Any violation of the controlled substances, gambling, or any other unlawful acts.

It would also be unlawful for a permittee to fail to superintend in person or through a manager the business for which a license is issued.

G.S. 18D-105.2 would create a **safe harbor protection for goods not sold in North Carolina** clarifying that the restrictions contained in this article do not apply to a manufacturer or storage facility that makes or stores hemp-derived consumable products that are intended for export from North Carolina and will not be sold or distributed in North Carolina.

G.S. 18D-106 would clarify that the regulation of hemp-derived consumable products is not intended to allow the consumption of hemp-derived consumable products in various situations or limit an employer's ability to enforce a drug-free workplace.

<u>Article 3 – Licensing for Hemp-derived consumable products</u>

Article 3 would require anyone in the business of manufacturing, distributing, or selling hemp-derived consumable products in this State to obtain a **license from the Department of Revenue**.

G.S. 18D-300 incorporates the definitions from Article 1 as appropriate.

G.S. 18D-301 would require a **license to be obtained prior to commencement of business or by July 1, 2025,** whichever is later, and set out the minimum requirements for obtaining the license, including consent to reasonable inspections of inventory by the ALE Division and the taking of samples found to not be in compliance with packaging, labeling, and testing requirements. Only one license is required, but the application must include information on all types of business the person or entity engages in or intends to engage in pursuant to the license. A licensee engaged in more than one type of business would only pay a single fee, as provided in G.S. 18D-302. A license would be valid for one year, and could be renewed annually.

G.S. 18D-302 would set the **initial application fees and renewal fees** as follows:

- **Manufacturing license** - $15,000 initial, $5,000 annual renewal. However, the application fee would be reduced to $1,000 for an applicant submitting proof of a gross income of less than $100,000 for the previous calendar year.
- **Distribution license** - $2,500 initial, $750 annual renewal. However, the application fee would be reduced to $750 for an applicant submitting proof of a gross income of less than $100,000 for the previous calendar year.
- **Retail sale license at physical location or online for delivery to a person within this State** - $250 for each retail location, both initially and renewal. However, a licensee with more than 25 retail locations, internet websites, or combination of the two, would pay $5,000 and provide a list of all retail locations and internet websites.
- For an application for or renewal of a license to **engage in more than one business activity**, the fee would be the highest fee of those prescribed for the type of business indicated on the application or renewal, as applied to that applicant or licensee.

G.S. 18D-303 would **authorize the Department to revoke or refuse to issue a license** for any of the following:

- Failure to comply with or meet any qualification of G.S. 18D-301(b).
- Submission of false or misleading information in an application for licensure or renewal.
- Submission of false or misleading information in any report or information required to be submitted to the Department.
- Failure to comply with civil penalties authorized by the Chapter.

G.S. 18D-304 would provide that **proceedings for civil penalties** would be governed by the Administrative Procedures Act, and also authorize the Department to institute a civil action to recover unpaid civil penalties.

G.S. 18D-305 would require the Department to develop the license application and make it available online. Revenue from **fees collected would be remitted to the ALE Division** on a monthly basis to cover costs incurred in enforcing the Chapter.

Article 4 – Enforcement

Article 4 would grant **enforcement authority to the ALE Division** and provide a process for forfeiture of seized hemp-derived consumable products.

G.S. 18D-400 would authorize the **ALE Division to enforce** the provisions of the Chapter and would require the Division to report any violation for which civil penalties are authorized to the Department of Revenue, regardless of whether criminal charges have been filed. The Division would also be required to submit an annual report describing their enforcement efforts, and to also make that report available on their website.

G.S. 18D-401 would authorize **seizure and forfeiture of property** for violation of the prohibition on more than 0.3% THC in a hemp-derived consumable product, and provide a process for the forfeiture and destruction of seized products.

Section 1.(b) would amend G.S. 18B-500 to give the **ALE Division subject matter authority** over criminal offenses occurring on the premises of or involving an entity with a license issued pursuant to Chapter 18D.

Section 1.(c) would amend G.S. 7A-304 to allow a **$600 fee to be collected through court costs** to for a criminal conviction for violation of the prohibition on more than 0.3% THC in a hemp-derived consumable product, if testing was conducted on products.

Section 1.(d) – Effective date Section 1 would become effective July 1, 2025, and apply to all hemp-derived consumable products possessed, sold, distributed, or manufactured on or after that date, and to all offenses committed on or after that date.

PART II. TECHNICAL CHANGES

Section 2 would repeal G.S. 90-94.1 which authorizes the use of hemp extract for intractable epilepsy. This statute was enacted as part of a temporary authorization and registration process before the federal approval of a medication that has now been approved and all other statutes were repealed effective July 1, 2021. This section would become effective December 1, 2024, and apply to offenses committed on or after that date.

PART III. APPROPRIATION

Section 3 would make the following appropriations:

- $2,000,000 nonrecurring to the ALE Division to hire 20 full-time Special Agents to assist in implementing the provisions of this act.
- $375,000 nonrecurring to be used for costs incurred by the Department of Revenue in implementing the provisions of this act.
- $125,000 nonrecurring to be used for costs incurred by the ALE Division in implementing the provisions of this act.

Any nonrecurring funds that are not expended by the end of the 2024-2025 fiscal year would not revert. This section would become effective July 1, 2024.

PART IV. PROHIBIT USE OF HEMP-DERIVED CONSUMABLE PRODUCTS FROM BEING USED ON SCHOOL GROUNDS

Section 4 would require all governing bodies of public school units to adopt a policy prohibiting the use of hemp-derived consumable products at all times on school property, including school sponsored events at another location when in the presence of students or school personnel.

Section 4 would be effective when it becomes law and apply beginning with the 2025-2026 school year.

PART V. MISCELLANEOUS

Section 5.(a) would direct the Department of Revenue to establish guidance for the parties regulated by Chapters 18D and 18E, and to adopt rules to implement those Chapters prior to July 1, 2025. The Department shall accept applications and issue licenses prior to July 1, 2025, but no license shall take effect until July 1, 2025.

Section 5.(b) would direct the Department of Public Safety to adopt rules consistent with the provisions of this act.

PART VI. ADD TIANEPTINE, XYLAZINE, AND KRATOM TO THE CONTROLLED SUBSTANCE SCHEDULES

Article 5 of Chapter 90 is the North Carolina Controlled Substances Act, and it contains the laws related to controlled substances which are listed on Schedules I through VI of the Controlled Substances Act.

Section 6 amends the North Carolina Controlled Substances Act by adding tianeptine as a Schedule II controlled substance, xylazine as a Schedule III controlled substance, and kratom as a Schedule VI controlled substance.

Section 6 becomes effective December 1, 2024, and applies to offenses committed on or after that date.

PART VII. CREATE THE OFFENSE OF CRIMINAL POSSESSION AND UNLAWFUL SALE OF EMBALMING FLUID AND TO MAKE OTHER TECHNICAL REVISIONS

Section 7.(b) defines the term "embalming fluid" and makes other technical changes.

Section 7.(c) would amend Article 13A (Practice of Funeral Service) of Chapter 90 of the General Statutes to create a new criminal offense making it a Class I felony for a funeral director, embalmer, or resident trainee to knowingly give, sell, permit to be sold, offer for sale, or display for sale embalming fluid to another person with actual knowledge the person is not a funeral director, embalmer, or resident trainee.

Section 7.(d) would amend Chapter 90 of the General Statutes by adding Article 5H (Miscellaneous Drug-Related Regulations) to create the following new criminal offenses:

- Making it unlawful to possess embalming fluid for any purpose other than the lawful preservation of dead human bodies or wildlife.
- Making it unlawful to sell, deliver, or distribute embalming fluid to another person with knowledge the person intends to use the embalming fluid for any purpose other than the lawful preservation of dead human bodies or wildlife.

Punishment for both Article 5H offenses depend on the amount of embalming fluid involved as follows:

- Less than 28 grams is a Class I felony, with punishment ranging from unsupervised probation to an active sentence of 3 months minimum to 24 months maximum.
- 28 grams to 199 grams is a Class G felony, with punishment ranging from unsupervised probation to an active sentence of 8 months minimum to 47 months maximum.
- 200 grams to 399 grams is a Class F felony, with punishment ranging from unsupervised probation to an active sentence of 10 months minimum to 59 months maximum.
- 400 or more grams is a Class D felony, with punishment ranging from an active sentence of 38 months minimum to 204 months maximum.

Section 7.(d) of the bill grants limited immunity from prosecution to overdose victims and Samaritans who seek medical attention for overdose victims where the embalming fluid violation is punishable as a Class I felony.

Section 7 becomes effective December 1, 2024, and applies to offenses committed on or after that date.

PART VIII. CREATE NEW CRIMINAL OFFENSES FOR EXPOSING A CHILD TO A CONTROLLED SUBSTANCE

Section 8(a) would amend Article 39 (Protection of Minors) of Chapter 14 of the General Statues by creating new criminal offenses for exposing a child, defined as a person less than 16 years of age, to a controlled substance. A person who knowingly, recklessly, or intentionally caused or permitted a child to be exposed to a controlled substance would be guilty of the following offenses:

- A Class H felony for exposure.
- A Class E felony for exposure which results in the child ingesting the controlled substance.
- A Class D felony for exposure which results in the child ingesting the controlled substance, which then results in serious physical injury.
- A Class C felony for exposure which results in the child ingesting the controlled substance, which then results in serious bodily injury.
- A Class B1 felony for exposure which results in the child ingesting the controlled substance, which then is the proximate cause of the child's death.

Section 8 becomes effective December 1, 2024, and applies to offenses committed on or after that date.

EFFECTIVE DATE: Sections 9.(a) and (b) would create a criminal savings clause and a severability clause respectively. Except as otherwise stated above, this act would be effective when it becomes law.

**Susan Sitze, staff attorney with the Legislative Analysis Division, substantially contributed to this summary.*