



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 563: Regulate Hemp-derived Consumables & Kratom.

2023-2024 General Assembly

| | | | |
|-----------------------|--|---------------------|----------------|
| Committee: | House Judiciary 2. If favorable, re-refer to Appropriations. If favorable, re-refer to Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House | Date: | June 21, 2023 |
| Introduced by: | Reps. McNeely, Sasser, Cotham, Fontenot | Prepared by: | Susan Sitze |
| Analysis of: | PCS to First Edition H563-CSSAfa-30 | | Staff Attorney |

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 563 would do the following:*

- *Regulate the sale and distribution of hemp-derived consumable products.*
- *Ban hemp-derived consumable products from school grounds.*
- *Regulate the sale and distribution of kratom 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 of the PCS would enact a new Chapter 18D to regulate **hemp-derived consumable products** in North Carolina.

G.S. 18D-100 would define terms for the Chapter.

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

"A hemp product intended for human ingestion or inhalation, that contains a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis or any hemp-derived psychoactive cannabinoid. This term does not include hemp products intended for topical application."

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

House 563 PCS

Page 2

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.

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 18.
- 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 delta-9 tetrahydrocannabinol (THC) concentration of more than 0.3% on a dry weight basis.

There would be no criminal penalties for violation, but civil penalties could be imposed by the Department of Revenue (Department) as follows:

- 1st violation – up to \$500.
- 2nd violation within 3 years – up to \$750.
- 3rd violation within 3 years of the 1st violation – up to \$1,000 and 30 day suspension of license.
- 4th or subsequent violation within 3 years of the 1st violation – up to \$2,000 and either (i) license suspension for up to 1 year or (ii) license revocation.

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.

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

- Giving a hemp-derived consumable product to a person under 18 without the consent of the underage person's parent or legal guardian.
- A person under 18 purchasing or attempting to purchase a hemp-derived consumable product.
- Using a fake, fraudulent, or borrowed ID 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 18 would be a Class 2 misdemeanor. Violation by a person 18 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 delta-9 THC concentration of more than 0.3% on a dry weigh basis.

House 563 PCS

Page 3

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.

The statute would authorize a defense for a violation of manufacturing or distributing a hemp-derived consumable product with a delta-9 THC concentration of more than 0.3% on a dry weigh basis, if the manufacturer or distributor takes all of 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 authorize the **ALE Division to enforce** the provisions of the Chapter and requires them to submit an annual report describing their enforcement efforts, and to also make that report available on their website.

G.S. 18D-105 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**. The initial and renewal licensing fees would be as follows:

- Manufacturing license - \$5,000 initial, \$1,000 annual renewal.
- Distribution license - \$2,500 initial, \$750 annual renewal.
- Retail sale license at physical location. - \$100 for each retail location, both initially and renewal. However, a licensee with more than 25 retail locations would pay \$2,500 and provide a list of all retail locations.
- Retail sale license for online sales to be delivered to a person within the State - \$100 for each website, both initially and renewal. However, a licensee with more than 25 websites would pay \$2,500 and provide a list of all websites.

Businesses that have a retail ABC permit or a pharmacy permit would not be required to obtain a license to make retail sales of hemp-derived consumable products, but are required to comply with all other provisions of this Chapter.

Revenue collected from licensing fees would be remitted to the ALE Division to cover costs incurred in enforcing this Chapter.

House 563 PCS

Page 4

G.S. 18D-106 would require manufacturers to conduct **testing prior to distribution**. Testing must be done by an independent testing laboratory, must test for specified items, and 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-107 would establish certain requirements for **packaging and serving sizes**, and place restrictions on **advertising** of hemp-derived consumable products.

G.S. 18D-108 would provide that products testing more than 0.3% THC are subject to seizure and forfeiture.

G.S. 18D-109 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.

Section 1.(b) would grant the ALE Division jurisdiction on the premises of any business with a license issued under Chapter 18D.

This section would become effective July 1, 2024, 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 July 1, 2023, and apply to offenses committed on or after that date.

PART III. APPROPRIATION

Section 3 would appropriate \$2,000,000 nonrecurring to the ALE Division to hire 20 full-time Special Agents to assist in implementing the provisions of this act. This section would also appropriate \$500,000 nonrecurring to be used for other costs incurred by the Department of Revenue and the ALE Division. Any nonrecurring funds that are not expended by the end of the 2023-2024 fiscal year would not revert. This section would become effective July 1, 2023.

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.

This section would be effective when it becomes law and apply beginning with the 2023-2024 school year.

House 563 PCS

Page 5

PART V. REGULATION OF KRATOM

Kratom is a tropical tree native to Southeast Asia whose leaves contain two psychoactive ingredients, mitragynine and 7-hydroxymitragynine. The crushed leaves are generally smoked, brewed with tea, or placed into gel capsules. Consumption produces both stimulant effects (in low doses) and sedative effects (in high doses). [Summarized from information provided by the Drug Enforcement Administration of the U.S. Department of Justice.]

Kratom is currently not a controlled substance and is unregulated and legal in North Carolina.

Section 5 of the PCS would enact a new Chapter 18E to regulate **kratom products** in North Carolina.

G.S. 18E-100 would define terms for the Chapter.

"Kratom product" would be defined as "any consumer commodity containing either mitragynine or 7-hydroxymitragynine or both, extracted from the leaf of the plant *mitragyna speciosa*."

G.S. 18E-101 would provide **sales restrictions** on kratom products and prohibit the following:

- Selling a kratom product to a person under 18.
- Distributing samples of a kratom product in or on a public street, sidewalk, or park.
- Engaging in the business of selling kratom products without a valid license.
- Selling a kratom product that is adulterated or contaminated or otherwise violates the provisions of G.S. 18E-106.

There would be no criminal penalties for violation, but civil penalties could be imposed by the Department of Revenue (Department) as follows:

- 1st violation – up to \$500.
- 2nd violation within 3 years – up to \$750.
- 3rd violation within 3 years of the 1st violation – up to \$1,000 and 30 day suspension of license.
- 4th or subsequent violation within 3 years of the 1st violation – up to \$2,000 and either (i) license suspension for up to 1 year or (ii) license revocation.

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.

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

- Giving a kratom product to a person under 18 without the consent of the underage person's parent or legal guardian.
- A person under 18 purchasing or attempting to purchase a kratom product.
- Using a fake, fraudulent, or borrowed ID to purchase or attempt to purchase kratom products.
- Allowing an underage person to use the person's ID to purchase or attempt to purchase kratom products.

Violation of these provisions by a person under 18 would be a Class 2 misdemeanor. Violation by a person 18 or older would be a Class 1 misdemeanor. Aiding or abetting a violation would be punished the same as the commission of the offense.

House 563 PCS

Page 6

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

- Distributing samples of a kratom product in or on a public street, sidewalk, or park.
- Engaging in manufacturing or distributing a kratom product without a valid license.
- Manufacturing or distributing a kratom product that is adulterated or contaminated or otherwise violates the provisions of G.S. 18E-106.

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.

G.S. 18E-104 would authorize the **ALE Division to enforce** the provisions of the Chapter and requires them to submit an annual report describing their enforcement efforts, and to also make that report available on their website.

G.S. 18E-105 would require anyone in the business of manufacturing, distributing, or selling kratom products in this State to obtain a **license from the Department of Revenue**. The initial and renewal licensing fees would be as follows:

- Manufacturing license - \$5,000 initial, \$1,000 annual renewal.
- Distribution license - \$2,500 initial, \$750 annual renewal.
- Retail sales license. - \$100 for each retail location, both initially and renewal. However, a licensee with more than 25 retail locations would pay \$2,500 and provide a list of all retail locations.

Processors and distributors would be required to **register all kratom products** offered for sale by the processor or distributor in this State with the Department. Processors and distributors would also be required to submit a copy of any **adverse event report** to the Department, as required by federal law. If an adverse event report is not submitted when required, the registration for that product would be revoked and the license for that processor or distributor would be suspended or revoked.

Businesses that have a retail ABC permit or a pharmacy permit would not be required to obtain a license to make retail sales of hemp-derived consumable products, but are required to comply with all other provisions of this Chapter.

Revenue collected from licensing fees would be remitted to the ALE Division to cover costs incurred in enforcing this Chapter.

G.S. 18E-106 would provide **product limitations** on the kratom products prepared, manufactured, distributed, or offered for sale. Limitations would include the following:

- A kratom product adulterated with a dangerous non-kratom substance.

House 563 PCS

Page 7

- A kratom product contaminated with a dangerous non-kratom substance.
- A kratom extract containing levels of residual solvents higher than is allowed in the U.S. Pharmacopeia 467.
- A kratom product containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than 1% of the overall alkaloid composition of the product.
- A kratom product containing any synthetic alkaloids.
- A kratom product that does not provide adequate labeling directions necessary for safe use by consumers.

G.S. 18E-107 would provide that products violating the product limitations of G.S. 18E-106 would be subject to seizure and forfeiture.

G.S. 18E-108 would clarify that the regulation of kratom products is not intended to allow the consumption of kratom products in various situations or limit an employer's ability to enforce a drug-free workplace.

Section 5.(b) would grant the ALE Division jurisdiction on the premises of any business with a license issued under Chapter 18E.

This section would become effective July 1, 2024, and apply to all kratom products possessed, sold, distributed, processed, or manufactured on or after that date, and to all offenses committed on or after that date.

PART VI. MISCELLANEOUS

Section 6.(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, 2024. The Department shall accept applications and issue licenses prior to July 1, 2024, but no license shall take effect until July 1, 2024.

Section 6.(b) would direct the Department of Public Safety to adopt rules consistent with the provisions of this act.

Section 6.(c) and (d) would create a criminal savings clause and a severability clause respectively.

EFFECTIVE DATE: Except as otherwise stated above, this act would be effective when it becomes law.

BACKGROUND:

Punishment for a Class A1 misdemeanor ranges from unsupervised probation to 150 days active, depending on prior record level.

Punishment for a Class 1 misdemeanor ranges from unsupervised probation to 120 days active, depending on prior record level.

Punishment for a Class 2 misdemeanor ranges from unsupervised probation to 60 days active, depending on prior record level.