

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1613 Hemp

**SPONSOR(S):** Agriculture, Conservation & Resiliency Subcommittee, Gregory

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	11 Y, 5 N, As CS	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 4 N	Byrd	Pigott
3) Infrastructure Strategies Committee		Gawin	Harrington

### SUMMARY ANALYSIS

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry-weight basis, with the exception of hemp extract, which may not exceed 0.3 percent total delta-9 THC on a wet-weight basis. Hemp is used to create hemp extract, which is defined as “a substance or compound intended for ingestion, containing more than trace amounts of cannabinoid, or for inhalation which is derived from or contains hemp and which does not contain other controlled substances.” In 2019, the Legislature created the State Hemp Program within the Department of Agriculture and Consumer Services (DACS), which authorizes the cultivation of hemp and sale of hemp extract products.

Hemp extract products are available throughout the state in various forms, including, but not limited to, oils, lotions, and gummies. Hemp extract products are only authorized to be distributed in the state if the product meets certain requirements established by DACS. Hemp extract products meant for ingestion or inhalation may not be sold to individuals under the age of 21.

The bill revises the definition of “hemp” and specifies that it does not include synthetically or naturally occurring versions of controlled substances such as delta-8 THC. As such, products containing these substances could no longer be legally sold as hemp. The bill also revises the definition of “attractive to children” to expand the types of hemp products that are considered attractive to children and therefore prohibited.

The bill expands the laboratory testing and packaging requirements that are currently applicable to hemp extract that is distributed or sold in the state to also apply such requirements to hemp extract that is manufactured, delivered, held, or offered for sale in the state.

The bill prohibits an event organizer from promoting, advertising, or facilitating an event where hemp extract products that do not comply with general law are sold or marketed or where hemp extract products are sold or marketed by businesses that are not properly permitted.

The bill may have an indeterminate fiscal impact on state government and an indeterminate negative fiscal impact on the private sector.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Hemp

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration<sup>1</sup> that does not exceed 0.3 percent on a dry-weight basis, with the exception of hemp extract, which may not exceed 0.3 percent total delta-9 THC on a wet-weight basis.<sup>2</sup>

While hemp and marijuana are both grown from the *Cannabis sativa L.* plant, they are different varieties that have been genetically bred and grown for different uses. Hemp can be distinguished from marijuana by its lower concentrations of THC and higher concentrations of cannabidiol (CBD).<sup>3</sup> CBD does not have psychoactive properties like marijuana does and does not produce a “high.”<sup>4</sup>

Hemp is used to create hemp extract, which is defined as “a substance or compound intended for ingestion, containing more than trace amounts of cannabinoid, or for inhalation which is derived from or contains hemp and which does not contain other controlled substances.”<sup>5</sup> The term does not include synthetic CBD or seeds or seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration (FDA).<sup>6</sup>

###### Hemp Cultivation

The Agricultural Act of 2014 authorized an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp if it is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research program, provided the growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.<sup>7</sup>

In 2017, the Legislature authorized the Department of Agriculture and Consumer Services (DACS) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.<sup>8</sup> The purpose of the pilot projects was to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector.<sup>9</sup>

Section 10113 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) created the Hemp Farming Act to allow the cultivation of hemp beyond industrial hemp pilot programs. The 2018 Farm Bill removed hemp-derived products from Schedule I of the Controlled Substances Act. While the law

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<sup>1</sup> “Total delta-9 THC concentration” means delta-9 THC + (0.877 x THC acid). Rule 5B-57.014(1)(i), F.A.C.

<sup>2</sup> Section 581.217(3)(e), F.S.

<sup>3</sup> Marijuana is identified in the United States drug laws as cannabis having high THC levels that are associated with psychotropic effects and is typically made from the flowering tops and leaves of the *Cannabis sativa L.* plant (sativa or indica varieties). The Controlled Substances Act was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 84 s. 1 236 (1970).

<sup>4</sup> Centers for Disease Control and Prevention (CDC), *CBD: What You Need to Know*, <https://www.cdc.gov/marijuana/featured-topics/CBD.html> (last visited Jan. 17, 2024).

<sup>5</sup> Section 581.217(3)(f), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> 7 U.S.C. s. 5940 (2014); Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (April 2022), available at [https://documents.ncsl.org/wwwncsl/Agriculture/lb\\_2537.pdf](https://documents.ncsl.org/wwwncsl/Agriculture/lb_2537.pdf) (last visited Jan. 17, 2024).

<sup>8</sup> Chapter 2017-124, Laws of Fla.; s. 1004.4473, F.S.

<sup>9</sup> Section 1004.4473(2)(a), F.S.

legalized hemp as an agricultural product, the law did not legalize CBD generally.<sup>10</sup> CBDs derived from hemp are considered legal if the hemp is grown by a licensed grower, produced in a manner that is consistent with the 2018 Farm Bill, and complies with other federal and state regulations.<sup>11</sup>

In 2019, the Legislature created the state hemp program within DACS,<sup>12</sup> which was approved by the Secretary of the U.S. Department of Agriculture in 2020.<sup>13</sup> To grow hemp in Florida, each potential hemp grower must obtain a cultivation license from DACS.<sup>14</sup> Within 30 days prior to harvest, DACS, or its agent, is required to collect a representative sample from each lot to be tested for total delta-9 THC concentration.<sup>15</sup> DACS, or its agent, will then send those samples to an independent testing laboratory,<sup>16</sup> and if the sample comes back with an acceptable level of THC, the hemp grower may harvest their hemp crop.<sup>17</sup>

### Sale of Hemp Extract Products

Hemp extract products are available throughout the state in various forms, including, but not limited to, oils, lotions, and gummies. Hemp extract products may only be distributed in the state if the product has a certificate of analysis prepared by an independent testing laboratory that verifies the hemp extract does not exceed 0.3 percent total delta-9 THC on a dry-weight basis; does not contain contaminants unsafe for human consumption; and the container includes, among other information, the expiration date and number of milligrams of each marketed cannabinoid per serving.<sup>18</sup> Hemp extract products meant for ingestion or inhalation may not be sold to individuals under the age of 21.<sup>19</sup>

Since the passage of the 2018 Farm Bill and approval of the state hemp program, various other cannabinoid products have appeared on the market.<sup>20</sup> While such cannabinoids can naturally occur within the cannabis plant, certain cannabinoids like delta-8 THC are not found in significant amounts and must be synthetically derived from CBD.<sup>21</sup> States have taken various approaches to regulate these substances, including, but not limited to, developing caps on total THC in hemp products<sup>22</sup> and regulating delta-8 THC as part of legal marijuana programs.<sup>23</sup> The FDA has issued a warning stating delta-8 THC products have not been approved by the FDA for safe use.<sup>24</sup> Additionally, the CDC

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<sup>10</sup> 7 U.S.C. s. 1639o (2018).

<sup>11</sup> John Hudak, *The Farm Bill, hemp legalization and the status of CBD: An Explainer*, Brookings Dec. 14, 2018, available at <https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/> (last visited Jan. 17, 2024).

<sup>12</sup> Ch. 2019-132, L.O.F.

<sup>13</sup> USDA, *Status of State and Tribal Hemp Production Plans for USDA Approval*, <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review> (last visited Jan. 17, 2024); USDA, *Florida State Hemp Plan*, available at <https://www.ams.usda.gov/sites/default/files/media/FloridaStateHempPlan.pdf> (last visited Jan. 17, 2024).

<sup>14</sup> Rule 5B-57.014(4), F.A.C.

<sup>15</sup> Rule 5B-57.014(8)(a), F.A.C.

<sup>16</sup> See Rule 5B-57.014(1)(d), F.A.C. for lab requirements. See also DACS, *Approved Designated Laboratories for THC Testing*, available at <https://www.fdacs.gov/content/download/92484/file/approved-designated-labs-01-18-2023.pdf> (last visited Jan. 17, 2024).

<sup>17</sup> Rule 5B-57.014(8)(g), F.A.C.

<sup>18</sup> Section 581.217(7), F.S.

<sup>19</sup> Section 581.217(7)(d), F.S.

<sup>20</sup> The federal and state hemp regulations do not specifically address THCs other than delta-9 THC in the definition of hemp, which has caused debate and concern among various stakeholders.

<sup>21</sup> United States Food and Drug Administration (FDA), *5 Things to Know about Delta-8 Tetrahydrocannabinol-Delta-8 THC*, <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc> (last visited Jan. 17, 2024).

<sup>22</sup> See Virginia Acts of Assembly – 2023 Reconvened Session, *Chapter 744*, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?231+fu1+CHAP0744+pdf> (last visited Jan. 17, 2024). Hemp manufacturers in Virginia filed a motion for a preliminary injunction on the grounds that the law was preempted by the 2018 Farm Bill, and that the law violates the commerce clause and dormant commerce clause. The injunction was denied and such denial is being appealed. *N. Va. Hemp & Agric. LLC. v. Virginia*, 2023 WL 7130853 (E.D. Va. 2023).

<sup>23</sup> See State of Connecticut, *Adult-Use Cannabis in Connecticut*, [https://portal.ct.gov/cannabis/knowledge-base/articles/buying-or-selling-products-with-delta-8-thc-or-delta-10-thc-in-connecticut?language=en\\_US](https://portal.ct.gov/cannabis/knowledge-base/articles/buying-or-selling-products-with-delta-8-thc-or-delta-10-thc-in-connecticut?language=en_US) (last visited Jan. 17, 2024); State of Vermont Cannabis Control Board, *Emergency Rule: Synthetic and Hemp-Derived Cannabinoids*, available at <https://ccb.vermont.gov/sites/ccb/files/2023-04/Emergency.Hemp.Rule.2023-4-24.pdf> (last visited Jan. 17, 2024).

<sup>24</sup> FDA, *5 Things to Know about Delta-8 Tetrahydrocannabinol-Delta-8 THC*, <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc> (last visited Jan. 17, 2024).

recommends that all CBD and THC products be kept in childproof containers and placed out of reach of children due to the unknown effect of such products on children.<sup>25</sup>

In 2023, the Legislature passed SB 1676,<sup>26</sup> which specified that hemp extract products are food products that DACS can regulate under its food safety regulations.<sup>27</sup> The bill required any hemp extract that will be distributed and sold in the state to have come from a batch that was processed in a facility that holds a current and valid permit issued by a human health or food safety regulatory entity with authority over the facility, and that meets the human health or food safety sanitization requirements of the regulatory entity.<sup>28</sup> Additionally, hemp extract products must be sold in containers that are suitable to contain products for human consumption; are composed of materials designed to minimize exposure to light; mitigate exposure to high temperatures; are not attractive to children;<sup>29</sup> and are compliant with the U.S. Poison Prevention Packaging Act of 1970 without regard to provided exemptions.<sup>30</sup> Products sold in violation of these guidelines are subject to embargo, detainment, or destruction.<sup>31</sup> Any products that are found to be mislabeled or attractive to children are subject to immediate stop-sale.<sup>32</sup> Additionally, the bill prohibited the sale of hemp extract products such as snuff, chewing gum, and other smokeless products to children under 21.<sup>33</sup>

### Food Safety

DACS is the agency responsible for the enforcement of the production, manufacture, transportation, and sale of food in the state. DACS's Division of Food Safety is directly responsible for assuring the public of a safe, wholesome, and properly represented food supply.<sup>34</sup> The division accomplishes this through the permitting and inspection of food establishments, the inspection and evaluation of food products, and the performance of specialized laboratory testing on a variety of food products sold or produced in Florida. The division also proactively monitors food from manufacturing and distribution to retail.

DACS, as part of its responsibilities, can impose a variety of disciplinary actions against food establishments for specified violations.<sup>35</sup> This includes, but is not limited to, revoking or suspending the permit of a food establishment<sup>36</sup> or imposing Class III<sup>37</sup> administrative fines.<sup>38</sup> DACS, or its duly authorized agent, can also issue and enforce a stop-sale, stop-use, removal, or hold order if DACS or its agent finds that any food, food processing equipment, food processing area, or food storage area is in violation of the Florida Food Safety Act.<sup>39</sup>

### **Effect of the Bill**

The bill revises the definition of "attractive to children" to expand the types of hemp extract products that are considered attractive to children and are therefore prohibited. Specifically, products that are manufactured in the shape of or packaged in containers displaying humans, cartoons, animals, toys, novel shapes, animations, promotional characters, licensed characters, or other features that

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<sup>25</sup> CDC, *CBD: What You Need to Know*, <https://www.cdc.gov/marijuana/featured-topics/CBD.html> (last visited Jan. 17, 2024).

<sup>26</sup> Chapter 2023-299, Laws of Fla.

<sup>27</sup> Section 500.03(1)(n), F.S.

<sup>28</sup> Section 581.217(7)(a)1.d., F.S.

<sup>29</sup> "Attractive to children" means manufactured in the shape of humans, cartoons, or animals; manufactured in a form that bears a ny reasonable resemblance to an existing candy product that is familiar to the public as a widely distributed, branded food product such that a product could be mistaken for the branded product, especially by children; or containing any color additives. Section 581.217(3)(a), F.S.

<sup>30</sup> Section 581.217(7)(a)3., F.S.

<sup>31</sup> Section 581.217(7)(e), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 581.217(7)(d), F.S.

<sup>34</sup> DACS, *Division of Food Safety*, <https://www.fdacs.gov/Divisions-Offices/Food-Safety> (last visited Jan. 17, 2024).

<sup>35</sup> Section 500.121(1), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> The fine for each Class III violation cannot exceed \$10,000. Section 570.971(1)(c), F.S.

<sup>38</sup> Section 500.121(1), F.S.

<sup>39</sup> Section 500.172(1), F.S.

specifically target children; products that bear any reasonable resemblance to an existing snack product; and products intended for inhalation that are flavored are all deemed attractive to children.

The bill revises the definition of hemp to specify that hemp extract may not exceed 0.3 percent total delta-9 THC concentration on a wet-weight basis or may not exceed 2 milligrams per serving and 10 milligrams per container on a wet-weight basis, whichever is less. Additionally, the bill specifies that synthetically or naturally occurring versions of controlled substances listed in statute such as delta-8 THC, delta-10 THC, hexahydrocannabinol, tetrahydrocannabinol acetate, tetrahydrocannabiphorol, and tetrahydrocannabivarin are not included in the definition of hemp. As such, products containing these substances could no longer be legally sold as hemp.

The bill defines “total delta-9 tetrahydrocannabinol concentration” to mean a concentration calculated as follows:  $[\text{delta-9-THC}] + (0.877 \times [\text{delta-9 THC acid}])$ .

The bill expands the laboratory testing and packaging requirements that are currently applicable to hemp extract that is distributed or sold in the state to also apply such requirements to hemp extract that is manufactured, delivered, held, or offered for sale in the state. Additionally, the bill adds a new requirement related to lab testing such products that specifies that if the batch from which the hemp extract comes is sold at retail, the batch must meet the total delta-9 THC concentration limits established for hemp extract products. The bill also requires that hemp extract product containers include the Poison Control Help Line number.

The bill specifies that to procure hemp extract products in the state, a business must be properly permitted. The bill prohibits a business or food establishment from possessing hemp extract products that are attractive to children.

Hemp extract possessed, manufactured, delivered, held, or offered for sale by an entity regulated under ch. 500, F.S., in violation of these regulations is subject to embargo, detainment, destruction, or stop-sale. DACS may not grant permission to remove or use, except for disposal, hemp extract products subject to a stop-sale order that are attractive to children until DACS determines that the hemp extract products comply with state law.

The bill prohibits an event organizer from promoting, advertising, or facilitating an event where hemp extract products that do not comply with general law, including hemp extract products that are not from an approved source, are sold or marketed, or where hemp extract products are sold or marketed by businesses that are not properly permitted. Additionally, before an event where hemp extract products are sold or marketed, the bill requires an event organizer to provide to DACS a list of the businesses selling or marketing hemp extract products at the event and verify that each business is only selling hemp products from an approved source. The event organizer must ensure that each participating business is properly permitted. An individual who violates these regulations is subject to an administrative fine in the Class III category for each violation.

## B. SECTION DIRECTORY:

Section 1. Amends s. 581.217, F.S., related to the state hemp program.

Section 2. Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on DACS related to the regulation of hemp extract which may increase the number of violations and the collection of administrative fines.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DACS related to ensuring compliance with the requirements of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector associated with the requirements and restrictions on hemp products established in the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 29, 2024, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required that the Poison Control Helpline number be included on hemp extract product containers.

This analysis is drafted to the committee substitute as approved by the Agriculture, Conservation & Resiliency Subcommittee.