

SENATE BILL 2266

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 15; Title 43, Chapter 27 and Title 67, relative to products and materials containing cannabinoids.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1502, is amended by adding the following as a new subsection (d) and redesignating the existing subsections accordingly:

(d) The purpose of this part is also to prohibit the sale or distribution of products containing a hemp-derived cannabinoid to, or purchase of products containing a hemp-derived cannabinoid on behalf of, persons under twenty-one (21) years of age.

SECTION 2. Tennessee Code Annotated, Section 39-17-1503, is amended by adding the following as a new subdivision:

() "Hemp-derived cannabinoid":

(A) Means:

(i) A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or

(ii) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of three tenths of one percent (0.3%) or less;

(B) Includes, but is not limited to:

(i) Delta-8 tetrahydrocannabinol;

(ii) Delta-10 tetrahydrocannabinol;

- (iii) Hexahydrocannabinol;
- (iv) Cannabinol (CBN/CBNa);
- (v) Tetrahydrocannabiphorol (THCp);
- (vi) Tetrahydrocannabinol acetate ester (THCo); and
- (vii) Tetrahydrocannabivarin (THCv); and

(C) Does not include:

- (i) Cannabidiol (CBD/CBDa/CBDv/CBDp);
- (ii) Cannabichromene (CBC/CBCa/CBCv);
- (iii) Cannabielsoin (CBE/CBEa);
- (iv) Cannabigerol (CBG/CBGa/CBGv/CBGm);
- (v) Cannabicyclol (CBL/CBLa);
- (vi) Cannabicitran (CBT/CBTa);
- (vii) Cannabivarin (CBV/CBVa);
- (viii) Hemp-derived fiber, grain, or topical products; or
- (ix) Hemp-derived feed products allowed under § 44-6-103;

SECTION 3. Tennessee Code Annotated, Section 39-17-1504, is amended by adding the language "or products containing a hemp-derived cannabinoid" immediately after the language "vapor products" wherever it appears in subsection (d); adding the language "or product containing a hemp-derived cannabinoid" immediately after the language "vapor product" wherever it appears in subsections (a), (b), and (d); and adding the language "or samples containing a hemp-derived cannabinoid" immediately after the language "vapor product samples" in subsection (c).

SECTION 4. Tennessee Code Annotated, Section 39-17-1505(a), is amended by deleting the language "possess either a tobacco, smoking hemp, or vapor product, to purchase or accept receipt of either product" and substituting instead the language "possess a tobacco,

smoking hemp, or vapor product or product containing a hemp-derived cannabinoid, to purchase or accept receipt of any such product"; and adding the language "or product containing a hemp-derived cannabinoid" at the end of the subsection.

SECTION 5. Tennessee Code Annotated, Section 39-17-1505(f), is amended by adding the language "or products containing a hemp-derived cannabinoid" immediately after the language "vapor products" wherever it appears.

SECTION 6. Tennessee Code Annotated, Section 39-17-1506, is amended by adding the language "or products containing a hemp-derived cannabinoid" immediately after the language "or vapor products" wherever it appears; and adding the language "PRODUCTS CONTAINING A HEMP-DERIVED CANNABINOID," immediately after the language "VAPOR PRODUCTS," in subsection (a).

SECTION 7. Tennessee Code Annotated, Section 39-17-1507(a), is amended by adding the language "or products containing a hemp-derived cannabinoid" immediately after the language "or vapor products".

SECTION 8. Tennessee Code Annotated, Section 39-17-1509, is amended by adding the language "or products containing a hemp-derived cannabinoid" immediately after the language "or vapor products" wherever it appears; adding the language "or product containing a hemp-derived cannabinoid" immediately after the language "or vapor product" wherever it appears; and adding the language "and products containing a hemp-derived cannabinoid" immediately after the language "and vapor products".

SECTION 9. Tennessee Code Annotated, Section 39-17-1511, is amended by adding the language "and products containing a hemp-derived cannabinoid" immediately after the language "smoking paraphernalia" in subsection (b); and is further amended by adding the language "or a product containing a hemp-derived cannabinoid" immediately after the language "smoking paraphernalia" in subsection (c).

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 4, Part 4, is amended by adding the following as a new section:

67-4-403.

(a) Each wholesaler of products containing a hemp-derived cannabinoid shall pay to the department a wholesale tax levied at a rate of six and six-tenths percent (6.6%) of the wholesale sales price per product sold for the privilege of distributing such products in this state.

(b) All sales made by wholesalers at the wholesalers' places of business as well as any sale or transfer by a manufacturer operating as a retailer to a location owned or operated by such manufacturer-retailer are deemed to be wholesale sales and the tax imposed by this section must be collected on all such sales.

(c) The commissioner shall administer and collect the tax in accordance with the Tax Enforcement Procedures Act, compiled in chapter 1, part 14 of this title and with parts 2 and 3 of this chapter.

(d) All revenue received by the department from the wholesale tax on products containing a hemp-derived cannabinoid must be deposited into a special account in the state general fund and allocated to the department of agriculture to be used exclusively for the regulation and promotion of the hemp industry in this state.

(e) For purposes of this section:

(1) "Hemp-derived cannabinoid":

(A) Means:

(i) A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or

(ii) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of three tenths of one percent (0.3%) or less;

(B) Includes, but is not limited to:

- (i) Delta-8 tetrahydrocannabinol;
- (ii) Delta-10 tetrahydrocannabinol;
- (iii) Hexahydrocannabinol;
- (iv) Cannabinol (CBN/CBNa);
- (v) Tetrahydrocannabiphorol (THCp);
- (vi) Tetrahydrocannabinol acetate ester (THCo); and
- (vii) Tetrahydrocannabivarin (THCv); and

(C) Does not include:

- (i) Cannabidiol (CBD/CBDa/CBDv/CBDp);
- (ii) Cannabichromene (CBC/CBCa/CBCv);
- (iii) Cannabielsoin (CBE/CBEa);
- (iv) Cannabigerol (CBG/CBGa/CBGv/CBGm);
- (v) Cannabicyclol (CBL/CBLa);
- (vi) Cannabicitran (CBT/CBTa);
- (vii) Cannabivarin (CBV/CBVa);
- (viii) Hemp-derived fiber, grain, or topical products; or
- (ix) Hemp-derived feed products allowed under § 44-6-

103;

(2) "Retailer" means a person who sells products containing a hemp-derived cannabinoid for consumption and not for resale;

(3) "Wholesale" or "wholesale sale" means a sale, gift, or other transfer and delivery of a product containing a hemp-derived cannabinoid by a wholesaler to any person other than another wholesaler; and

(4) "Wholesaler" means a person or entity that sells products containing a hemp-derived cannabinoid to retailers, and includes wholesalers located in-state and out-of-state, but does not include a manufacturer that sells directly to retailers.

SECTION 11. Tennessee Code Annotated, Section 43-27-101, is amended by adding the following as a new subdivision:

() "Hemp-derived cannabinoid":

(A) Means:

(i) A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or

(ii) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of three tenths of one percent (0.3%) or less;

(B) Includes, but is not limited to:

(i) Delta-8 tetrahydrocannabinol;

(ii) Delta-10 tetrahydrocannabinol;

(iii) Hexahydrocannabinol;

(iv) Cannabinol (CBN/CBNa);

(v) Tetrahydrocannabiphorol (THCp);

(vi) Tetrahydrocannabinol acetate ester (THCo); and

(vii) Tetrahydrocannabivarin (THCv); and

(C) Does not include:

- (i) Cannabidiol (CBD/CBDa/CBDv/CBDp);
- (ii) Cannabichromene (CBC/CBCa/CBCv);
- (iii) Cannabielsoin (CBE/CBEa);
- (iv) Cannabigerol (CBG/CBGa/CBGv/CBGm);
- (v) Cannabicyclol (CBL/CBLa);
- (vi) Cannabicitran (CBT/CBTa);
- (vii) Cannabivarin (CBV/CBVa);
- (viii) Hemp-derived fiber, grain, or topical products; or
- (ix) Hemp-derived feed products allowed under § 44-6-103;

() "Retailer" means a person who sells products containing a hemp-derived cannabinoid for consumption and not for resale;

() "Wholesale" or "wholesale sale" means a sale, gift, or other transfer and delivery of a product containing a hemp-derived cannabinoid by a wholesaler to any person other than another wholesaler;

() "Wholesaler" means a person or entity that sells products containing a hemp-derived cannabinoid to retailers, and includes wholesalers located in-state and out-of-state, but does not include a manufacturer that sells directly to retailers;

SECTION 12. Tennessee Code Annotated, Title 43, Chapter 27, is amended by adding the following as a new part:

43-27-201.

(a)

(1) A person who is not licensed to cultivate hemp under part 1 of this chapter must be licensed by this part before engaging in the business of selling or distributing products containing a hemp-derived cannabinoid in this state and

must obtain a license authorizing the person to engage in that business prior to the commencement of business or by June 1, 2023, whichever is later. All persons engaged in the business of selling or distributing products containing a hemp-derived cannabinoid in this state, and required to be licensed by this part, shall apply for a renewal of the license on or before May 31 of each year. This subdivision (a)(1) applies to persons who are located in-state or out-of-state.

(2) A person licensed to cultivate hemp:

(A)

(i) May sell to a licensed wholesaler; and

(ii) Is not required to collect or remit any tax for such sales

under this section; and

(B)

(i) May sell to a licensed retailer if the person is also

licensed as a wholesaler under this section; and

(ii) Shall collect and remit any tax for such sales under this

section.

(b) The application for license must be made on a form furnished by the commissioner. The application form must require the following:

(1) Name of applicant;

(2) Street address and telephone number of applicant;

(3) City or town in which the applicant's place of business is to be located;

(4) Kind or nature of business to be conducted;

(5) Sufficient information to demonstrate that the applicant has complied with all pertinent registration and tax statutes, as provided by law, including, but

not limited to, the sales and use, business, franchise, and excise taxes. The commissioner shall specify the form and content of the information required by this subdivision (b)(5); and

(6) Such other and further information as the commissioner may require.

(c)

(1) Application for licenses must be accompanied by the following fees:

(A) Retailer—Two hundred dollars (\$200) for each retail location;

and

(B) Wholesaler—Two hundred dollars (\$200) for each separate sale warehouse or wholesale location.

(2) Upon receipt of the application referenced in subsection (b), together with the fee imposed by this subsection (c), the commissioner, upon the commissioner's approval of the application, shall issue within a reasonable time to the applicant the necessary licenses to engage in the business named in the application, to which the following apply:

(A) The licenses expire on May 31 of each year;

(B) If the license is mutilated, lost, or destroyed, a duplicate must be issued upon application, accompanied by a fee of twenty-five dollars (\$25.00); and

(C) Applications for renewal of a license may be denied for failure of the licensee to pay the tax or taxes imposed by this part or for the violation of this part or any rule promulgated by the commissioner under the authority vested in the commissioner.

(d)

(1) A person who engages in any business or activity for which a license is required under this part without obtaining a license to do so, or who fails to file an application for renewal of a license before expiration of the current license, is subject to a specific penalty in the amount of the license fee for each month or part of a month during which the activity or failure continues.

(2) In addition to the penalty specified in subdivision (d)(1), the commissioner may impose a penalty of no more than two hundred fifty dollars (\$250) per day for each day during which the activity or failure occurs or continues. This discretionary penalty may also be imposed upon a person to whom a license has been issued, if the person continues to engage in the business or activity after receiving notice the license is revoked or suspended by the commissioner.

(e) Persons duly and properly licensed to sell products containing a hemp-derived cannabinoid in this state shall not knowingly sell, lend, or exchange such products to, with, or from any person required to be licensed who is not so licensed, or who is improperly licensed.

(f) Licenses are not transferable and a separate license is required for each separate place of business. The license must be prominently displayed in the place of business operated by the person to whom such license is issued.

(g) All information provided by licensees pursuant to subsection (b) must remain current. Licensees shall notify the commissioner, in writing, within ten (10) days of any change in the information.

43-27-202.

(a)

(1) The commissioner may revoke any license issued under this part upon the failure of the licensee to pay the tax or taxes imposed by this part, or for the violation of this part or any rule promulgated by the commissioner under the authority vested in the commissioner.

(2) The commissioner shall, before revoking any license, notify the licensee, by letter addressed and mailed to the last known address of the licensee, and shall afford the licensee an opportunity to be heard in person or by counsel in reference to the license. The department shall mail the notice at least ten (10) days prior to a date set for hearing.

(3) Pending final determination of the notice or hearing, the licensee may continue to buy, sell, and distribute products containing a hemp-derived cannabinoid. The commissioner may require bond with good and solvent surety in such amount as may be deemed necessary to protect the state's interest.

(4) The commissioner has the power to issue subpoenas as provided in § 43-27-203.

(b)

(1) After a full hearing, the commissioner, or the commissioner's duly authorized agent, representative, or employee, shall make a finding as, in the commissioner's opinion, the facts may warrant.

(2) If the commissioner determines that the licensee has failed to pay the tax or taxes imposed by the terms of this part when due, has violated any rule promulgated by the commissioner under the authority vested in the commissioner, or has been guilty of a violation of this part, as charged, then the license of the licensee must be revoked; otherwise, the charges must be dismissed, and the license continues in force unimpaired.

(3) If the commissioner finds that the licensee is guilty of the delinquency charged, but further finds that the violation by the licensee was unintentional or inadvertent, the commissioner, or the commissioner's duly authorized agent, representative, or employee, may:

(A) Suspend the license of the licensee for a period not to exceed thirty (30) days; or

(B) If the licensee has not previously been found guilty of any delinquency by the commissioner under this part, or the dereliction charged has been remedied by the licensee at or prior to the time of the hearing, dismiss the proceeding and charges against the licensee upon the payment by the licensee of all costs and fees incurred in holding the hearing.

(c) A hearing authorized under this section must be held and conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The ruling or order issued by the commissioner with reference to the revocation or suspension of a license may only be reviewed in accordance with the contested case provisions of the Uniform Administrative Procedures Act.

43-27-203.

(a) The commissioner may issue subpoenas in the name of the state of Tennessee requiring the attendance of witnesses as may be designated in the subpoena at the place or places, at either the office of the commissioner in Nashville, or at any place in the county in which the licensee has the licensee's place of business, and at such time or times as may be designated in the subpoena.

(b) Upon written request of the licensee, the commissioner shall issue a subpoena requiring the attendance of any such witnesses as may be desired by the licensee.

(c) All such subpoenas must be served by the sheriff or any deputy of the county where the subpoena is directed, and the sheriff or deputy is entitled to the same fees for serving such subpoenas as in the case of serving subpoenas in civil cases from any court of record.

(d) The commissioner, or any authorized agent, representative, or employee, may administer oaths to any person so summoned or to any person giving evidence at the hearing.

(e) Any person so summoned shall give all such evidence relevant to the matter under investigation as may be required by the commissioner or the commissioner's authorized agent, representative, or employee, or as may be required by the licensee.

(f) The usual fees and mileage expenses allowed witnesses in cases in a court of record are allowed any witnesses so summoned.

43-27-204.

(a) All witness fees, mileage expenses, and all fees of sheriffs for serving any notices or subpoenas are taxed as costs by the commissioner, the commissioner's authorized agent, representative, or employee.

(b) All costs and fees for witnesses and sheriffs must be advanced or collected as provided in the case of witnesses attending upon cases in courts of record, and the service of subpoenas requiring their attendance and testimony.

(c)

(1) If, upon the hearing, the licensee is found by the commissioner, or the commissioner's authorized agent, representative, or employee, to be guilty of the

delinquency charged, then all of the costs in this section are taxed and charged against the licensee.

(2) If the charge against the licensee is dismissed, then such costs are to be paid by the commissioner out of the funds collected under this part, after approval by the commissioner, and constitute lawful expenditures under this section.

SECTION 13. Tennessee Code Annotated, Section 67-6-207(a), is amended by adding the following as a new subdivision:

() Raw, unadulterated hemp;

SECTION 14. For purposes of promulgating rules or forms, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2022, the public welfare requiring it.