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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. S. Huffman

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SUMMARY

- Prohibits a person from selling an intoxicating hemp product in Ohio.
- Defines an “intoxicating hemp product” as a hemp product containing more than 0.5 mgs of delta-9 THC per serving, 2 mgs of delta-9 THC per package, or 0.5 mgs of total non-delta-9 THC per package.
- Establishes the following criminal penalties for knowingly violating the prohibition:
 - First degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense;
 - If the offense involves the sale of an intoxicating hemp product to a person under 21, fifth degree felony.
- Authorizes the Director of Commerce to impose an administrative penalty against a person who sells intoxicating hemp products.
- Requires the Ohio Investigative Unit to enforce the prohibition against selling an intoxicating hemp product.

DETAILED ANALYSIS

Regulation of hemp

Background

Current law requires the Director of Agriculture to establish a Hemp Cultivation and Processing Program to monitor and regulate hemp cultivation and the processing of hemp into hemp products. Hemp is a variety of the plant *Cannabis sativa* L. (cannabis) that can be used in a variety of applications, such as paper, textiles, biofuel, animal feed, food, and personal care products. Both hemp and marijuana come from cannabis. However, hemp contains a lower

concentration (0.3% or below) of cannabis’s main psychoactive constituent, delta-9 tetrahydrocannabinol (THC).

Under the program, the Director must issue hemp cultivation licenses and hemp processing licenses to eligible applicants. Thus, any person who plants or harvests hemp, and processes and stores hemp on the site of cultivation until transported for sale, must obtain a hemp cultivation license. A person who converts hemp into a hemp product must obtain a hemp processing license. However, a person may possess, buy, or sell hemp or a hemp product without a license, provided the person is not cultivating or processing the hemp.

A person seeking to cultivate or process hemp must apply to the Director for a license, which is valid for three years (unless the Director has suspended or revoked the license). The Director, in consultation with the Governor and the Attorney General, must adopt rules establishing standards and procedures for the regulation of hemp cultivation and processing.

Current law establishes prohibitions, procedures (including corrective action plan requirements) and criminal penalties to enforce the program. It authorizes the Director, when the Director determines that certain emergency conditions exist, to issue an order requiring those conditions to be mitigated.¹

Additional regulation

As indicated above, the current definitions in the Hemp Law focus on the percentage content of delta-9 THC (0.3% or below). Thus, as long as a product that includes hemp meets that standard, it is considered a hemp product. However, some processors have been adding additional THC compounds to hemp products that are not delta-9 THC (e.g., delta-8 THC). Some of these THC compounds are synthetic in nature. The result is a product that meets the definition of a hemp product, but that has intoxicating effects. The original intent of the Hemp Law was to allow for the production of products with cannabis that are not intoxicating.

The bill retains the Hemp Cultivation and Processing Program, but prohibits a person from selling an intoxicating hemp product in Ohio. It also defines “intoxicating hemp product,” makes other definitional changes, and creates several new definitions as follows.²

Defined terms		
Term	Existing law	The bill
Intoxicating hemp product	Not defined	A hemp product containing more than 0.5 mgs of delta-9 THC per serving, 2 mgs of delta-9 THC per package, or 0.5 mgs of total non-delta-9 THC per package.

¹ R.C. Chapter 928.

² R.C. 928.01, 3779.01, and 3779.02.

Defined terms		
Term	Existing law	The bill
Sell	Not defined	The exchange, barter, gift, offer for sale, and sale of an intoxicating hemp product.
Total non-delta-9 THC	Not defined	The sum, after the application of any necessary conversion factor, of the percentage by weight of THC, other than delta-9 THC, and the percentage by weight of THC acid.
Delta-9 THC	The sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by 0.877 plus the percentage by weight of delta-9 THC.	Same
Hemp	The plant <i>Cannabis sativa</i> 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, containing a delta-9 THC concentration of up to 0.3% on a dry weight basis.	Retains the definition, but adds that “hemp” does not include any plant material with any additional THC additives.
Hemp product	Any product, containing a delta-9 THC concentration of up to 0.3%, that is made with hemp. It includes cosmetics, personal care products, dietary supplements or food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, and any other product containing one or more cannabinoids derived from hemp, including cannabidiol.	Generally retains the definition with the following changes: <ol style="list-style-type: none"> 1. Clarifies that cloth, cordage, fiber, fuel, paint, paper, and particleboard do not have cannabinoids; 2. Includes noncannabinoid hemp products; and 3. Includes any hemp not in the possession of a licensed hemp cultivator or hemp processor.
Noncannabinoid hemp product	Not defined	Any product that is made from hemp that does not include cannabinoids. It includes cloth, cordage, fiber, fuel, paint, paper, particleboard, and foods that have been approved by the U.S. FDA as generally recognized as safe.

Defined terms		
Term	Existing law	The bill
THC	Not defined	<p>Naturally occurring or synthetic equivalents, regardless of whether artificially or naturally derived, of the substances contained in the plant, or in the resinous extractives of cannabis, sp. or derivatives, and their isomers with similar chemical structure to delta-1-cis or trans THC, and their optical isomers, salts and salts of isomers. It includes, but is not limited to, delta-6-cis or trans THC, delta-3,4-cis or trans THC, 9-hexahydrocannabinol, and delta-9-THC acetate. Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are included.</p> <p>THC does not include the following:</p> <ol style="list-style-type: none"> 1. THC approved by the U.S. FDA for marketing as a medication or recognized by the FDA as generally recognized as safe; 2. Cannabichromene (CBC); 3. Cannabicyclol (CBL); 4. Cannabidiol (CBD); 5. Cannabidivarol (CBDV); 6. Cannabielsoin (CBE); 7. Cannabigerol (CBG); 8. Cannabigerovarol (CBGV); 9. Cannabinol (CBN); or 10. Cannabivarin (CBV).

Penalties

Under the bill, a person who knowingly violates the prohibition against selling an intoxicating hemp product is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense. However, a person who knowingly violates this

prohibition when the offense involves the sale of an intoxicating hemp product to a person under 21, is guilty of a fifth degree felony.³

The bill also authorizes the Director of Commerce to impose an administrative penalty against a person who sells intoxicating hemp products. The Director must establish the administrative penalties in rules, but those penalties must not exceed the following:

1. \$10,000 for a first violation;
2. \$25,000 for a second violation; and
3. \$50,000 for a third or subsequent violation.

The Director must afford a person an opportunity for an adjudication hearing under the Administrative Procedures Act to challenge the Director's determination, the Director's imposition of an administrative penalty, or both. The Director's determination and the imposition of the administrative penalty may be appealed in accordance with specified provisions of the Administrative Procedure Act.⁴

Enforcement

The bill requires the Ohio Investigative Unit to enforce the prohibition against selling an intoxicating hemp product or cause it to be enforced. If the Unit has information that the law governing intoxicating hemp products has been violated, it must investigate the matter and take any action as it considers appropriate.⁵

HISTORY

Action	Date
Introduced	11-06-24

ANSB0326IN-135/ar

³ R.C. 3779.02 and 3779.99.

⁴ R.C. 3779.04 and 3779.05.

⁵ R.C. 3779.03, 5502.01, 5502.13, and 5502.14.