

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 3235

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3235 (2R).

This bill regulates the production and sale of intoxicating hemp products.

AGENCY RESPONSIBILITIES

Under current law, three entities within the State maintain jurisdiction over the cannabis plant. The Cannabis Regulatory Commission (commission) regulates adult-use and medical cannabis, the Department of Agriculture (department) regulates hemp, and the Attorney General (AG) enforces criminal penalties against illegal marijuana and tetrahydrocannabinol (THC).

The bill synchronizes the definitions of hemp, hemp products, and definitions involving total THC concentration in order to regulate the sale of intoxicating hemp products as a form of cannabis item. By means of updating definitions, and adding a definition of intoxicating hemp products, the bill clarifies the role of each agency. The commission would be responsible for regulating the sale of all legally produced intoxicating cannabis items, whether hemp or cannabis; the department would continue to regulate the cultivation and processing of hemp as an agricultural commodity; and the AG would maintain the jurisdiction over illegally produced marijuana and THC, including any businesses or individuals who fail to sell cannabis items through a licensed retailer.

LICENSING AND COMPLIANCE RELATED TO INTOXICATING HEMP

By amending the definition of “cannabis item” to include an intoxicating hemp product, the commission is required, pursuant to N.J.S.A.24:6I-35, to promulgate regulations related to the sale and purchase of such intoxicating products as a form of cannabis item. Further, pursuant to N.J.S.A.24:6I-42, an entity is required to be licensed as a Class 5 Cannabis Retailer in order to operate a business in which any intoxicating products are retailed, and would be limited to selling products to persons 21 years of age or older. Additionally,

treating such products like cannabis items would subject them to cannabis item product testing and labeling requirements.

As amended, “intoxicating hemp product” is defined as “any product cultivated, derived, or manufactured in this State from hemp regulated pursuant to the “Agricultural Improvement Act of 2018,” Pub.L.115-334 or the “New Jersey Hemp Farming Act,” N.J.S.A.4:28-6 et al., that is sold in this State that has a concentration of total THC greater than 0.5 milligrams per serving or 2.5 milligrams per package.” “Intoxicating hemp product” does not include “a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents and shall not include “hemp products” as defined under amended definition contained within the “New Jersey Hemp Farming Act.”

UNLICENSED SALE AND PENALTIES REGARDING INTOXICATING PRODUCTS

Under the bill, a person would be prohibited from selling or distributing an intoxicating hemp product unless the person is licensed by the commission or is a liquor store approved by the commission to sell intoxicating hemp beverages, and the product complies with the “Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (CREAMMA), N.J.S.A.24:6I-31 et al., and any commission regulations. Further, it would be unlawful to sell or distribute a hemp product or cannabis item that is not derived from naturally occurring biologically active chemical constituents. The prohibition on the sale of intoxicating hemp products also applies to any online retailer selling an intoxicating hemp product in the State.

It would be unlawful, except as otherwise provided by law, to sell or distribute a product that contains THC in any detectable amount to any person under the age of 21 years.

The bill establishes that for the above prohibited or unlawful acts, any civil penalties or fines adopted by the commission in accordance with CREAMMA shall apply to commission-licensed business committing any such prohibited or unlawful acts, in addition to any other penalty provided by law.

Also, any person who sells, offers for sale, or distributes any intoxicating hemp product, or hemp product or cannabis item not derived from naturally occurring biologically active chemical constituents, would be subject to the following penalties:

- (1) for a first violation, a civil penalty of not less than \$100;
 - (2) for a second violation, a civil penalty of not less than \$1,000;
- and
- (3) for a third or subsequent penalty, a civil penalty of not less than \$10,000.

This penalty would be collected and enforced by summary proceedings under the “Penalty Enforcement Law of 1999,” N.J.S.A.2A:58-10 et seq..

REGULATION OF HEMP AND NON-INTOXICATING HEMP PRODUCTS, AND MANUFACTURED THC

The bill amends the “New Jersey Hemp Farming Act,” N.J.S.A.4:28-6 et al., to set limits on the amount of THC that can be sold in hemp or (non-intoxicating) hemp products. This limit is set at a total THC concentration of not more than 0.3 percent on a dry weight basis and additionally, for a hemp product, not more than 0.5 milligrams of total THC per serving, and 2.5 milligrams of total THC per package. “Total THC” is defined as “the total concentration of all tetrahydrocannabinols in hemp or a hemp product, including delta-8, delta-9, delta-10, tetrahydrocannabinolic acid and any other chemically similar compound, substance, derivative, or isomer of tetrahydrocannabinol, regardless of how derived or manufactured, and any other cannabinoid, other than cannabidiol, identified by the commission, in consultation with the Department and the AG, as causing intoxication.” This definitional change clarifies the department’s role in the regulation of hemp, and limits it to hemp or hemp products that meet the limitations established in the bill.

The bill also clarifies the definition of THC in the Schedule I controlled dangerous substance statute, N.J.S.A.24:21-5, to ensure THC produced by way of manufacture, and which is not produced or sold in accordance with the “New Jersey Hemp Farming Act” P, or CREAMMA is included on the Schedule I list. N.J.S.A.24:21-2 defines “manufacture” to mean “the production, preparation, propagation, compounding, conversion, or processing of a controlled dangerous substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled dangerous substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled dangerous substance in the course of the practitioner's professional practice, or (2) by a practitioner, or under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.”

SALE OF INTOXICATING HEMP BEVERAGES

As amended, the bill permits the commission to permit liquor stores and wholesalers to sell intoxicating hemp beverages.

Under the amended bill, the commission is required to promulgate rules and regulations related to packaging, labeling, product testing and safety standards, THC amounts permitted in intoxicating hemp beverages, the number of intoxicating hemp beverages that may be sold to a customer at any given time, and a fee to be charged by the commission to cover the reasonable costs of administering the intoxicating hemp beverage provisions.

Under the amended bill, a holder of a valid and unrevoked plenary wholesale license or plenary retail distribution license, as those terms are defined in N.J.S.A.33:1-11 and N.J.S.A.33:1-12, may apply to the commission for approval to sell intoxicating hemp beverages after the commission has promulgated rules and regulations related to the beverages. “Intoxicating hemp beverage” is defined as a beverage that is an intoxicating hemp product as that term is defined above.

A liquor store or wholesaler which currently sells intoxicating hemp products is required to stop the sale of the such products upon the effective date of the bill. Once approval is received, the liquor store or wholesaler may resume the sale of intoxicating hemp beverages. The prohibition against selling intoxicating hemp products to persons under the age of 21 also applies to the sale of intoxicating hemp beverages. Further, a store or wholesaler that sells intoxicating hemp beverages is required to store or display the items in a place that a customer must receive employee assistance to access the product.

Finally, the amended bill requires that any sale of an intoxicating hemp beverage by a holder of a plenary wholesale license or retail distribution license is subject to: (1) the sales tax imposed on cannabis; and (2) the same local cannabis transfer and user tax imposed on cannabis by a municipality. All taxes, fees, penalties, and revenues collected pursuant to under the bill upon the sale of an intoxicating hemp beverage are deposited in the CREAMM Fund, established pursuant to N.J.S.A.24:6I-50.

ENFORCEMENT AND EDUCATION

Finally, the bill requires the commission, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety and the Business Action Center in the Department of State, to develop and implement a public education program for businesses across the State regarding the provisions of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) clarify that the provisions related to intoxicating hemp beverages also apply to the holder of a plenary wholesale license; and
- (2) update the definition of “intoxicating hemp product” to clarify that it is a product cultivated, derived, or manufactured in this State.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate annual increase in State revenues and expenditures.

The OLS does not have sufficient data on the demand for or future sales of intoxicating hemp products to project the tax revenues generated from these in a regulated marketplace under the authority of the Cannabis Regulatory Commission.

The OLS also estimates indeterminate State revenue increases from civil penalties levied on an owner or operator of a business who sells an intoxicating hemp product in violation of the bill. The OLS cannot project the number or frequency of such violations. Also, the State's ability to collect fines and fees has historically been limited.

The OLS finds the bill will result in State expenditure increases for the Cannabis Regulatory Commission and the Department of Law and Public Safety to develop and implement a public education program for businesses across the State on the bill. Additionally, establishing a regulatory framework for intoxicating hemp products and the bill's enforcement provisions will lead to respective workload increases for the commission and the department.