

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: SB 1766

INTRODUCER: Senator Powell

SUBJECT: Sale of Hemp-derived Delta-8-tetrahydrocannabinol

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 1788 creates s. 581.218, F.S., to regulate the sale of hemp-derived delta-8-tetrahydrocannabinol (delta-8-THC) products. It provides definitions for certain terms relating to the sale of delta-8-THC products.

The bill specifies that a sale of hemp-derived delta-8-THC products constitutes a delivery sale regardless of whether the person accepting the order for the delivery is located in Florida. A retailer who mails or ships any hemp-derived delta-8-THC products must:

- Obtain a certification from the consumer who is purchasing the product that he or she is 21 years of age or older;
- Include as part of the order's shipping documents, in a clear and conspicuous manner, the following statement: "Hemp-derived Delta-8-Tetrahydrocannabinol Products: Florida law prohibits shipping to individuals under 21 years of age and requires the payment of all applicable taxes"; and
- Be in compliance with any labeling requirements, pursuant to Department of Agriculture and Consumer Services rule for the state hemp program.

The bill outlines specific violations that are misdemeanors of the first degree.

The bill is effective July 1, 2021

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed), and pain relief as a topical oil.¹

Cannabis

Cannabis is a Schedule I controlled substance.² It is a felony of the third degree³ to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁴ As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S., [the Compassionate Medical Cannabis Act of 2014], hemp as defined in s. 581.217, F.S., [the state hemp program], or industrial hemp as defined in s. 1004.4473, F.S., [industrial hemp pilot projects].⁵

Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the electors and is codified in Article X, section 29, of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁶ The bill revised the Compassionate Medical Cannabis Act of 2014⁷ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

¹ See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited March 15, 2021).

² Section 893.03(1)(c)7., F.S.

³ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed 5 years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁴ Section 893.13(1)(a)2., F.S.

⁵ Section 893.02(3), F.S.

⁶ Chapter 2017-232, Laws of Fla.

⁷ Chapter 2014-157, Laws of Fla.

- Marijuana without any limitation or restriction on the percentage of THC;⁸ and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol⁹ weight for weight.¹⁰

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., is authorized to conduct medical marijuana research and education.¹¹

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹²

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹³

The 2014 Farm Bill defines “industrial hemp” to mean:

...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 0.3 percent on a dry weight basis.¹⁴

Section 1004.4473, F.S., authorizes the Florida Department of Agriculture and Consumer Services (department) 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, any land grant university in the state that has a college of agriculture, and any Florida College System institution or state university that has an established agriculture, engineering, or pharmacy program.¹⁵ The purpose of the pilot projects is

⁸ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

⁹ Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited March 15, 2021).

¹⁰ See ss. 381.986(1)(e) and (f), F.S.

¹¹ Section 1004.4351, F.S.

¹² See s. 381.986(14), F.S.

¹³ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s. 7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

¹⁴ *Id.*

¹⁵ Section 1004.4473(2)(a), F.S.

to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁶

2018 Federal Farm Bill

In the Agricultural Improvement Act of 2018 (2018 Farm Bill), the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁷ The 2018 Farm Bill defines "hemp" to mean:

...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 0.3 percent on a dry weight basis.¹⁸

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.¹⁹

State Hemp Program

The state hemp program was created within the department to regulate the cultivation of hemp in Florida.²⁰

Section 581.217(3)(d), F.S., defines the term "hemp" to mean:

...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 thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

¹⁶ Fla. Admin. Code R. 5B-57.013 (2018).

¹⁷ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C 802(16)).

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²⁰ See s. 581.217, F.S.

Section 581.217(3)(e), F.S., defines the term “hemp extract” to mean “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.” 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.²¹ Products that are intended for inhalation and contain hemp extract may not be sold in this state to a person who is under 21 years of age.²²

The department is required to seek federal approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture (USDA) in accordance with the 2018 Farm Bill within 30 days of adopting rules.²³ A license is required to cultivate hemp²⁴ and to obtain a license, a person must apply to the department and submit a full set of fingerprints.²⁵ A person seeking to cultivate hemp must provide the department with a legal land description and GPS coordinates of where the hemp will be cultivated.²⁶ The department must deny an application under certain circumstances.²⁷

Delta-8-tetrahydrocannabinol

Delta-8-tetrahydrocannabinol (delta-8-THC) is not regulated under Florida law. Delta-8-THC is only slightly chemically different from delta-9-tetrahydrocannabinol (delta-9-THC), which is the main psychoactive ingredient in marijuana. Under federal law, psychoactive delta-9-THC is outlawed but delta-8-THC derived from hemp is not.²⁸

III. Effect of Proposed Changes:

Section 1 creates s. 581.218, F.S., to regulate the sale of hemp-derived delta-8-tetrahydrocannabinol (delta-8-THC) products. It provides definitions for the terms “consumer,” “delivery sale,” “delivery service,” “hemp,” “hemp-derived delta-8-tetrahydrocannabinol,” “mail,” “retailer,” and “shipping document.”

The bill specifies that a sale of hemp-derived delta-8-THC products constitutes a delivery sale regardless of whether the person accepting the order for the delivery is located in Florida. A retailer may not sell hemp-derived delta-8-THC products to a consumer who is under 21 years of age and must provide notice of such in a prominent and clearly legible statement. A retailer who mails or ships any hemp-derived delta-8-THC products must:

- Obtain a certification from the consumer who is purchasing the product that he or she is 21 years of age or older;

²¹ Section 581.219(3)(e), F.S.

²² Section 581.217(7)(c), F.S.

²³ Section 581.217(4), F.S.

²⁴ Section 581.217(5)(a), F.S.

²⁵ Section 581.217(5)(b), F.S.

²⁶ Section 581.217(5)(d), F.S.

²⁷ Section 581.217(5)(e), F.S.

²⁸ Kalifa, Tamir, “*This Drug Gets You High, and is Legal (Maybe) Across the Country*,” The New York Times, February 27, 2021. Available at <https://www.nytimes.com/2021/02/27/health/marijuana-hemp-delta-8-thc.html> (last visited March 15, 2021).

- Include as part of the order’s shipping documents, in a clear and conspicuous manner, the following statement: “Hemp-derived Delta-8-Tetrahydrocannabinol Products: Florida law prohibits shipping to individuals under 21 years of age and requires the payment of all applicable taxes”; and
- Be in compliance with any labeling requirements, pursuant to Department of Agriculture and Consumer Services rule for the state hemp program.

A person who violates this section who is 21 years of age or older commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.,²⁹ and:

- For a first violation, the person shall be fined \$1,000 or 5 times the retail value of the product involved in the violation, whichever is greater.
- For a second or subsequent violation, the person shall be \$5,000 or 5 times the retail value of the product involved in the violation, whichever is greater.

A person who is 21 years of age or older and knowingly submits a false certification of a consumer’s age commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. For each offense, the individual shall be fined \$5,000 or 5 times the retail value of the product involved in the violation, whichever is greater. A person who, in connection with a delivery sale, delivers a hemp-derived delta-8-THC product on behalf of an individual who is not 21 years of age or older commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. A person who is under 21 years of age and who knowingly violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.³⁰

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁹ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083 F.S.

³⁰ *Id.*

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sellers of hemp-derived delta-8-THC products will have to obtain certifications from purchasers and provide a notice with the products. This could be a burden on retailers.

C. Government Sector Impact:

The bill provides for various fines for violations of the bill, which could result in increased revenue to the state if there are violations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 581.218 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.