

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 1698

INTRODUCER: Senator Burton

SUBJECT: Food and Hemp Products

DATE: January 22, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1698 makes a number of changes to s. 581.217, F.S., the State Hemp Program.

The bill modifies the definition of “attractive to children” to include containers displaying toys, novel shapes, animations, promotional characters, licensed characters, or other features that specifically target children, or, for hemp extracted intended for inhalation, the addition of any flavoring. It revises the definition of “hemp” and “hemp extract” and provides a definition of “total delta-9-tetrahydrocannabinol concentration.”

The bill adds requirements for the manufacture, delivery, hold, and offer for sale to the regulation of the distribution and sale of hemp extract. It specifies that if a batch is sold at retail that it must meet the new requirements for total delta-9-tetrahydrocannabinol concentration limits.

The bill clarifies that hemp extract may only be sold to *or procured by* a business in this state if that business is properly permitted. A business or food establishment may not possess hemp extract products that are attractive to children.

The bill prohibits the department from granting permission to remove or use, except for disposal, hemp extract products subject to a stop-sale order which are attractive to children until the department 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 sold that do not comply with general law or are sold by a business that is not properly permitted.

Before an event where hemp extract products are sold or marketed, an event organizer must provide the department with 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.

The bill takes effect July 1, 2024.

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 textiles, building materials, seed oil, and essential 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 chapter 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.

¹ See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited January 22, 2024).

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.

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*:

- 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

⁶ Chapter 2017-232, Laws of Fla.

⁷ Chapter 2014-157, Laws of Fla.

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 January 22, 2024).

¹⁰ See s. 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.*

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 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 of Agriculture and Consumer Services (department) to regulate the cultivation of hemp in Florida.²⁰

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

¹⁵ Section 1004.4473(2)(a), F.S.

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.

...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, with the exemption of hemp extract, which may not exceed 0.3 percent total delta-9-tetrahydrocannabinol on a wet-weight basis.

Section 581.217(3)(f), 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 cannabidiol 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 was 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

Distribution and Retail Sale of Hemp Extract

Hemp extract may only be distributed and sold in this state if the product has a certificate of analysis prepared by an independent testing laboratory that states:

- The hemp extract is the product of a batch tested by the independent testing laboratory;
- The batch contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent pursuant to the testing of a random sample of the batch;
- The batch does not contain contaminants unsafe for human consumption; and
- The batch was processed in a facility that meets certain human health or food safety requirements.²⁸

Additionally, hemp extract may only be distributed or sold in a container that includes:

- A scannable barcode or quick response code linked to the certificate of analysis of the hemp extract batch by an independent testing laboratory;
- The batch number;
- The Internet address of a website where batch information may be obtained;

²¹ Section 581.219(3)(f), F.S.

²² Section 581.217(7)(d), 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 Section 581.217(7)(a), F.S.

- The expiration date; and
- The number of milligrams of each marketed cannabinoid per serving.²⁹

Such container must:

- Be suitable to contain products for human consumption;
- Be composed of materials designed to minimize exposure to light;
- Mitigate exposure to high temperatures;
- Not be attractive to children;³⁰ and
- Be compliant with the United States Poison Prevention Packaging Act of 1970.³¹

III. Effect of Proposed Changes:

SB 1698 makes a number of changes to s. 581.217, F.S., the State Hemp Program.

Definitions

The bill modifies the definition of “attractive to children” to include containers displaying toys, novel shapes, animations, promotional characters, licensed characters, or other features that specifically target children, or, for hemp extracted intended for inhalation, the addition of any flavoring. It revises the definition of “hemp” to outline that hemp extract may not exceed 0.3 percent total delta-9-tetrahydrocannabinol concentration on a wet-weight basis or exceed 2 milligrams per serving and 10 milligrams per container on a wet-weight basis, whichever is less.

The bill revises the definition of “hemp extract” to prohibit it from containing synthetic or naturally occurring versions of controlled substances listed in s. 893.03, F.S., such as delta-8-tetrahydrocannabinol, delta-10-tetrahydrocannabinol, hexahydrocannabinol, tetrahydrocannabinol acetate, tetrahydrocannabiphorol, and tetrahydrocannabivarin. It also creates a definition for “total delta-9-tetrahydrocannabinol concentration” to mean a concentration calculated as: $[\text{delta-9-tetrahydrocannabinol}] + (0.877 \times [\text{delta-9-tetrahydrocannabinolic acid}])$.

Distribution and Sale of Hemp Extract

The bill adds requirements for the manufacture, delivery, hold, and offer for sale to the regulation of the distribution and sale of hemp extract. It specifies that if a batch is sold at retail that it must meet the new requirements for total delta-9-tetrahydrocannabinol concentration limits.

The bill clarifies that hemp extract may only be sold to *or procured* by a business in this state if that business is properly permitted. A business or food establishment may not possess hemp extract products that are attractive to children.

²⁹ Id.

³⁰ Section 581.217(3)(a), F.S., defines “attractive to children” to mean manufactured in the shape of humans, cartoons or animals; manufactured in a form that bears any 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 color additives.

³¹ Section 581.217(7)(a), F.S.

The bill prohibits the department from granting permission to remove or use, except for disposal, hemp extract products subject to a stop-sale order which are attractive to children until the department 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
- Hemp extract products are sold or marketed by businesses that are not properly permitted by this section and chapter 500.

Before an event where hemp extract products are sold or marketed, an event organizer must provide the department with 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.

The bill takes effect July 1, 2024.

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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There are additional requirements for businesses that manufacture, distribute, or sell products containing hemp extract. Event organizers have additional requirements to ensure businesses participating in the event meet certain requirements.

C. Government Sector Impact:

The department could incur increased costs to ensure compliance with the changes set forth in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 581.217 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.