



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 86
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Huffman and Wilkin

Jeff Grim, Research Analyst

CORRECTED VERSION*

SUMMARY

Overview

- Provides for the regulation by the Department of Commerce of general intoxicating hemp products and for drinkable cannabinoid products (DCPs), which is a type of intoxicating hemp product.
- Establishes two distinct regulatory frameworks that apply to general intoxicating hemp products and DCPs.

Regulation of general intoxicating hemp products

- Generally prohibits a person from selling an intoxicating hemp product in Ohio, but allows an adult use dispensary licensed under the Adult Use Cannabis Control Law and a medical marijuana dispensary licensed under the Medical Marijuana Control Program to sell such products.
- 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.
- Specifies that an intoxicating hemp product does not include a DCP or a hemp product that cannot be ingested, inhaled, snorted, sniffed, or used sublingually.

* This version adds a discussion related to operating a motor vehicle while under the influence of intoxicating hemp or a drinkable cannabinoid product, which was omitted in the original version of the analysis.

- States that a violation of the prohibition against selling an intoxicating hemp product is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.
- States that the offense is a fifth degree felony if the offense involves selling an intoxicating hemp product to a person under 21.
- Specifies that a licensed dispensary cannot sell an intoxicating hemp product that has not been tested and that does not comply with specified packaging, labeling, and advertising requirements.
- Grants the Director of Commerce jurisdiction over all persons participating in the cultivation, processing, and sale of intoxicating hemp products, including the authority to complete regulating, investigating, and penalizing those persons in a manner that is consistent with the Director's authority with respect to adult use cannabis.
- Establishes testing requirements for intoxicating hemp products that are sold in Ohio and that are produced in and outside of Ohio that are generally consistent with the testing requirements governing adult use cannabis.
- Establishes additional prohibitions involving the sale of hemp products, including:
 - Selling a hemp product and marketing it as adult use cannabis or as medical marijuana; and
 - Using any terms associated with the sale of a hemp product that would cause a consumer to infer that the hemp product is medical marijuana or adult use cannabis.
- Authorizes the Director to impose an administrative penalty against a person that violates the bill's prohibitions governing intoxicating hemp product sales.
- Requires the Ohio Investigative Unit to enforce the bill's prohibitions against sales of intoxicating hemp products, but does not preclude enforcement by local authorities.

Regulation of drinkable cannabinoid products (DCPs)

- Establishes a three-tier regulatory framework governing DCPs by providing for the regulation of manufacturers, distributors, and retailers of DCPs.
- Defines a "drinkable cannabinoid product" as a liquid hemp product to which certain criteria apply, including:
 - The product contains cannabinoids;
 - The cannabinoids in the product are solely derived from hemp;
 - The product does not contain more than 0.3% of any THC, does not contain more than 0.4 mgs of THC per fluid ounce, and contains up to 48 total fluid ounces in all containers included in a package; and
 - The product is not an intoxicating hemp product.

- Allows micro-distilleries, grocery stores, carryout stores, bars, or restaurants (A-1-A, Class C, or Class D liquor permit holders) and licensed adult use or medical marijuana dispensaries to sell DCPs at retail.
- Establishes several prohibitions regarding activities related to the manufacture, distribution, and sale of DCPs, including prohibiting:
 - Selling at retail a DCP unless a person is a liquor permit holder specified above or a licensed adult use or medical marijuana dispensary;
 - If a person is a manufacturer, selling a DCP unless the manufacturer is registered under the bill (see below);
 - If a person is a DCP manufacturer, selling a DCP to any person other than a wholesale beer, wine, or mixed beverage distributor (distributor) or a retailer; and
 - Selling at retail a DCP to an individual who is under 21.
- States that a person who recklessly violates the prohibition against selling DCPs at retail without being a retailer is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on a second or subsequent offense.
- States that a person who recklessly violates the prohibition against selling a DCP to a person under 21 is guilty of a fifth degree felony.
- Requires a manufacturer of DCPs to annually register with the Director of Commerce.
- Requires a manufacturer to test each DCP in accordance with rules adopted by the Director prior to selling the product or offering the product to a distributor.
- Requires a manufacturer to contract with a testing laboratory to provide testing and requires a laboratory to use high-performance liquid chromatography for any separation and measurement required in the testing.
- Requires a manufacturer to ensure that each DCP tested is accompanied by a certificate of analysis issued by the testing laboratory and requires the certificate of analysis to contain specified information, including the method of analysis for each test conducted.
- Requires a manufacturer to include a label on each DCP container that it sells or offers for sale in Ohio that contains certain information, including:
 - The product name or common name on the front of the label;
 - The amount of any THC, in milligrams, as identified in the certificate of analysis.
- Generally requires each manufacturer to assign to a distributor, for each of the manufacturer's brands, a sales area or territory within which the distributor is the exclusive distributor.
- Generally establishes prohibitions against manufacturers, distributors, and retailers from having any financial interest or investment in each other, including by providing assistance via gift or loan and accepting gifts or loans.

Impaired driving (OVI)

- Authorizes law enforcement to arrest an individual who operates a vehicle under the influence of intoxicating hemp or a DCP, similar to other drugs of abuse such as a controlled substance or harmful intoxicant under current law.

Opened containers of intoxicating hemp products that are beverages and DCPs

- Allows the consumption of an opened container of an intoxicating hemp product that is a beverage or a DCP in specified locations, including on the premises of a private residence.
- Prohibits a person, with specified exceptions, from having in the person's possession an opened container of an intoxicating hemp product that is a beverage or a DCP in public places, and states that an offender who violates the prohibition is guilty of a minor misdemeanor.

Enforcement against license or permit holder

- Requires certain state licensing authorities to adopt rules to enforce violations of the bill directly against the following licensees that are involved with the sale of intoxicating hemp products and DCPs:
 - Lottery sales agents licensed by the State Lottery Commission;
 - Cigarette distributors and retailers licensed by the Tax Commissioner;
 - Alcohol manufacturers, distributors, and retailers permitted by the Division of Liquor Control.

Taxation of intoxicating hemp products and DCPs

- Levies a 15% tax on a dispensary's gross receipts from the retail sale of intoxicating hemp products.
- Levies an excise tax on a manufacturer's sale of DCPs to distributors or retailers equal to \$3.50 for each gallon sold.
- Extends each tax to illegal sales of intoxicating hemp products and DCPs.
- Credits revenue from each of these taxes to the GRF.

TABLE OF CONTENTS

Overview of current hemp regulations.....	5
Intoxicating hemp.....	6
Regulation of general intoxicating hemp products	6
Authorization for dispensaries to sell intoxicating hemp	7
Rules and regulations	7

Additional prohibitions.....	8
Administrative penalties and enforcement	8
Additional defined terms	9
Regulation of drinkable cannabinoid products (DCPs)	12
Prohibitions against distribution and sale.....	12
Manufacturer registration and other requirements.....	14
Testing requirements	14
Labeling requirements.....	15
Distribution areas	16
Prohibitions regarding financial interest.....	16
Rules	16
Additional prohibitions.....	16
Enforcement against license or permit holder	17
Impaired driving (OVI).....	17
Opened container provisions.....	17
Opened container of intoxicating hemp products that are beverages	17
Opened container of DCPs	18
Taxation of intoxicating hemp products and DCPs.....	20
Intoxicating hemp products receipts tax	20
DCP excise tax.....	21
Tax on illegal sales	21

DETAILED ANALYSIS

Overview of current hemp regulations

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 are derived 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, or 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, any person may possess, buy, or sell hemp or a hemp product without a license, provided the person is not cultivating or processing the hemp.¹

Intoxicating hemp

As indicated above, the current definitions in the Hemp Law focus on the percentage content of delta-9 THC (0.3% or below). Thus, if a product that includes hemp meets that standard, it is considered a hemp product. However, some processors have created hemp products with additional THC compounds that are not delta-9 THC (e.g., delta-8 THC). The result can be a product that meets the definition of a hemp product (because it is 0.3% delta-9 THC or below), but that has intoxicating effects because other THC compounds are manufactured into the product at a high enough level to cause intoxication. The original intent of the Hemp Law was to allow for the production and sale of products that are not intoxicating. As it stands, because hemp is not regulated as a controlled substance like marijuana, these intoxicating hemp products, which include processed foods (e.g., gummies and other candies) and beverages, can be sold at any location to any person, including children.

The bill retains the Hemp Cultivation and Processing Program and establishes a statutory framework for the regulation of the sale of intoxicating hemp products. The bill's framework establishes two categories of these products – general intoxicating hemp products and drinkable cannabinoid products (DCPs), both to be regulated by the Department of Commerce. DCPs are a type of hemp product that can have intoxicating effects, and the bill's regulatory framework for the regulation of these products is different than the bill's regulatory framework for all other intoxicating hemp products. The bill allows DCPs to be sold at retail from class A-1-A, C, and D liquor permit holders and from licensed marijuana dispensaries. All other intoxicating hemp products may be sold at retail only from licensed marijuana dispensaries.²

Regulation of general intoxicating hemp products

As indicated above, the bill prohibits any person from selling an intoxicating hemp product at retail, except for a licensed marijuana dispensary (see below). Whoever recklessly violates the prohibition is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on a second or subsequent offense. However, if the offense involves the sale of an intoxicating hemp product to a person under 21, whoever recklessly violates the prohibition is guilty of a fifth degree felony. The bill states that notwithstanding any other provision of law to the contrary, a person who sells an intoxicating hemp product cannot be prosecuted under any other criminal statute that otherwise would apply to the person because the person engaged in illegally selling an intoxicating hemp product. A person who violates the prohibition is also potentially subject to administrative penalties established under rules adopted by the Director of Commerce.³

¹ R.C. Chapter 928.

² R.C. Chapter 3779.

³ R.C. 3779.02(A) and (D), 3779.04, 3779.05, and 3779.99(A) and (B).

Under the bill, an “intoxicating hemp product” is a hemp product containing any amount of synthetic THC, 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. It does not include a hemp product that cannot be ingested, inhaled, snorted, sniffed, or used sublingually or a DCP (see “**Regulation of drinkable cannabinoid products**,” below).

“Total non-delta-9 THC” is 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. “At retail” means for use or consumption by the ultimate consumer and not for resale.⁴

Authorization for dispensaries to sell intoxicating hemp

As indicated above, the bill allows a licensed adult use cannabis or medical marijuana dispensary to sell an intoxicating hemp product at retail, provided the dispensary does not sell the intoxicating hemp product to a person under 21. The dispensary also must verify a person’s age by examining the person’s identification card. A licensed dispensary is prohibited from doing any of the following:

1. Selling an intoxicating hemp product that has not been tested in compliance with rules adopted by the Director of Commerce under the bill that otherwise apply to adult use cannabis. An intoxicating hemp product that is sold in Ohio must be tested as follows:
 - a. If the intoxicating hemp product is produced in Ohio, at a facility licensed in accordance with the Medical Marijuana Control Law and rules adopted under it.
 - b. If the intoxicating hemp product is produced outside Ohio, at a facility licensed in accordance with the Medical Marijuana Control Law and rules adopted under it or, as approved by the Director, in a facility in another state that meets requirements in that state that are substantially similar to that of the Medical Marijuana Law.
2. Sell an intoxicating hemp product that does not comply with the standards and procedures for packaging, labeling, and advertising set forth in rules adopted by the Director that otherwise apply to adult use cannabis; and
3. Violate any applicable rules adopted by the Director under the bill.

A person who violates any of the above prohibitions is subject to administrative penalties established under rules adopted by the Director. However, there are no criminal penalties associated with these prohibitions.⁵

Rules and regulations

The bill provides that to ensure the integrity of intoxicating hemp product sales and operations, the Director of Commerce has jurisdiction over all persons participating in the cultivation, processing, distribution, and sales of intoxicating hemp products. This jurisdiction

⁴ R.C. 3779.01(A), (D), and (G).

⁵ R.C. 3779.02(A) and (B), 3779.04, and 3779.05; Section 3.

includes the authority to complete regulating, investigating, and penalizing those persons in a manner that is consistent with the Director's authority with respect to adult use cannabis. To carry out this responsibility, the Director may adopt rules in accordance with the Administrative Procedure Act.

Although the Adult Use Cannabis Control and Medical Marijuana Control Laws and rules adopted under those laws require all adult use cannabis and medical marijuana sold in Ohio to be cultivated and processed in Ohio, the bill specifies that the Director cannot require hemp that is processed into an intoxicating hemp product to be cultivated or processed in Ohio.⁶

The bill requires an intoxicating hemp product that is sold in Ohio generally to be tested in the same manner as adult use cannabis. However, if the intoxicating hemp product is produced in Ohio, the product must be tested in a facility licensed under the Adult Use Cannabis Control Law. If the intoxicating hemp product is produced outside Ohio, the product must be tested in a facility licensed in accordance with the Adult Use Cannabis Control Law or, as approved by the Director, in a facility in another state that meets Ohio's testing facility requirements under that Law.

Additional prohibitions

The bill prohibits a person from doing any of the following:

1. Selling a hemp product and marketing it as adult use cannabis or as medical marijuana;
2. Using any terms associated with the sale of a hemp product that would cause a consumer to infer that the hemp product is medical marijuana or adult use cannabis; and
3. Using any terms associated with the sale of a hemp product that would cause a consumer to infer that the person selling the hemp product is a licensed medical marijuana or adult use cannabis dispensary.

The prohibition specified in (3), above, does not apply to a licensed adult use cannabis dispensary or medical marijuana dispensary. A person who violates any of the above prohibitions is subject to administrative penalties established under rules adopted by the Director. However, there are no criminal penalties associated with these prohibitions.⁷

Administrative penalties and enforcement

As indicated above, the bill authorizes the Director to impose an administrative penalty or take other enforcement actions against a person who violates any of the prohibitions established by the bill governing intoxicating hemp products. The Director must establish the administrative penalties in rules.

The Director must afford a person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination to impose an administrative penalty or take other enforcement action. The Director's determination, the

⁶ R.C. 3779.05(B) and (C).

⁷ R.C. 3779.02(C), 3779.04, and 3779.05.

imposition of the administrative penalty, and taking other enforcement action may be appealed in accordance with specified provisions of the Administrative Procedure Act.⁸

The bill requires the Ohio Investigative Unit in the Department of Public Safety to enforce or caused to be enforced the bill's provisions governing intoxicating hemp products. 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. The bill clarifies that local law enforcement has concurrent enforcement authority with the Ohio Investigative Unit.⁹

Additional defined terms

The bill makes other definitional changes, and creates several new definitions as follows:¹⁰

Defined terms		
Term	Existing law	The bill
Sell	Not defined.	The exchange, barter, gift, offer for sale, and sale of an intoxicating hemp product.
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. Includes vapor products and processed hemp flowers; 2. Does not include a noncannabinoid hemp product (see below); and 3. Includes any hemp not in the possession of a licensed hemp cultivator or hemp processor.

⁸ R.C. 3779.04 and 3779.05(A).

⁹ R.C. 3779.03, 5502.01, 5502.13, and 5502.14.

¹⁰ R.C. 928.01 and 3779.01.

Defined terms		
Term	Existing law	The bill
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.
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-8 THC, delta-10 THC, THC-o acetate, tetrahydrocannabiphorol, tetrahydrocannabivarin, hexahydrocannabinol, 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. Cannabidivanol (CBDV); 6. Cannabielsoin (CBE);

Defined terms		
Term	Existing law	The bill
		<p>7. Cannabigerol (CBG);</p> <p>8. Cannabigerovarin (CBGV);</p> <p>9. Cannabinol (CBN); or</p> <p>10. Cannabivarin (CBV).</p>
Vapor product	Not defined.	A product that contains or is made or derived from hemp and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. “Vapor product” includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product.
Electronic smoking device	Not defined.	Any device that can be used to deliver aerosolized or vaporized hemp or any other substance to the person inhaling from the device, including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. “Electronic smoking device” includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device.
Processed hemp flower	Not defined.	The flower of a hemp plant that has been dried or cured.
Identification card	Not defined.	A state-issued driver’s or commercial driver’s license, an identification card issued or an equivalent identification card issued by another state, a military identification card issued by the U.S. Department of Defense, or a U.S. or foreign passport that displays a picture of the individual for whom the license, card, or passport is issued and shows

Defined terms		
Term	Existing law	The bill
		that the person buying is then at least 21.

Regulation of drinkable cannabinoid products (DCPs)

In addition to establishing requirements governing general intoxicating hemp products, the bill also establishes a framework for the regulation of DCPs and requires the Department of Commerce to implement that framework. The framework established by the bill includes a three-tier system for the sale of DCPs by providing for the regulation of manufacturers, distributors, and retailers of DCPs. The bill allows DCPs to be sold at retail only by micro-distilleries, grocery stores, carryout stores, bars, or restaurants (A-1-A, Class C, or Class D liquor permit holders) or an adult use dispensary licensed under the Adult Use Cannabis Control Law or a medical marijuana dispensary licensed under the Medical Marijuana Control Program. DCPs may be distributed by a manufacturer or a distributor. Under the bill, a DCP is a liquid hemp product to which all the following apply:

1. The product contains cannabinoids;
2. The cannabinoids in the product are solely derived from hemp;
3. The product is intended to be consumed as a beverage by humans;
4. The product does not include a drug as defined in the law governing dangerous drugs;
5. The product does not contain more than 0.3% of any THC;
6. The product does not contain more than 0.4 mgs of THC per fluid ounce; and
7. The product does not contain more than 48 total fluid ounces in all containers included in a package.¹¹

Prohibitions against distribution and sale

The bill prohibits a person from doing any of the following regarding DCPs:

1. Selling at retail a DCP unless the person is a retailer;
2. If the person is a DCP manufacturer, selling a DCP unless the person is registered under the bill;
3. If the person is a DCP manufacturer, selling a DCP to any person other than a distributor or retailer;
4. Selling for distribution a DCP unless the person is a distributor;

¹¹ R.C. 3779.21(C).

5. If the person is a distributor, selling a DCP to any person other than a retailer;
6. Selling at retail a DCP to an individual who is under 21;
7. Failing to verify that an individual who attempts to purchase or purchases a DCP at retail is at least 21 by examining the individual's identification card;
8. Selling a DCP that contains alcohol; and
9. Failing to store a DCP for sale at retail in a display case that clearly states that the product is a DCP.¹²

A person who recklessly violates (1), above, is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on a second or subsequent offense. A person who recklessly violates (6), above, is guilty of a fifth degree felony. There are no criminal penalties for any other prohibition specified above. Furthermore, the bill does not provide for criminal penalties for any prohibitions and requirements discussed below. Presumably, the prohibitions will be enforced in accordance with rules (see below) adopted by the Director.¹³

"Hemp," "hemp product," "THC," "at retail," and "identification card" all have the same meanings in the bill's provisions governing DCPs as they do in the bill's provisions governing general intoxicating hemp products. However, there are several additional definitions as follows:¹⁴

Defined terms		
Term	Existing law	The bill
Distributor	Not defined.	A beer, wine, or mixed beverage distributor (Class B liquor permit holder) that sells, offers for sale, arranges for sale, or delivers a DCP to a retailer. "Distributor" does not include either of the following: <ol style="list-style-type: none"> 1. A DCP manufacturer; or 2. A person that is common carrier and that is used to complete delivery of a DCP to a retailer (e.g., UPS or FedEx).
Retailer	Not defined.	A micro-distillery, grocery, carryout store, bar, or restaurant (A-1-A, Class C, or Class D liquor permit holder) or an

¹² R.C. 3779.22(A) to (I).

¹³ R.C. 3779.99(E) and (F).

¹⁴ R.C. 3779.01(A), (B), (D), (F), and (G).

Defined terms		
Term	Existing law	The bill
		adult use dispensary licensed under the Adult Use Cannabis Control Law or a medical marijuana dispensary licensed under the Medical Marijuana Control Program that sells DCPs from the permit or license premises.
Sale and sell	Not defined.	Includes the exchange, barter, gift, offer for sale, sale, distribution and delivery of any kind, and the transfer of title or possession of DCP either by constructive or actual delivery by any means or devices.

Manufacturer registration and other requirements

The bill prohibits a person from manufacturing a DCP for sale in Ohio without registering with the Director of Commerce in accordance with rules adopted by the Director. The Director must issue a registration if the applicant submits an application and is in compliance with the Director's rules. A registration is valid for one year and must be renewed in the same manner as an initial registration.¹⁵

Testing requirements

The bill requires a DCP manufacturer to test the product in accordance with the Director's rules adopted under the bill prior to selling the product or offering the product for sale to a distributor. No manufacturer, distributor, or retailer can sell or offer to sell a DCP that is not tested in accordance with the bill's provisions and rules or that exceeds the maximum allowable level for a substance or organism specified in those rules.¹⁶

A DCP manufacturer must contract with a testing laboratory to provide the required testing. A testing laboratory that tests a DCP for a manufacturer must use high-performance liquid chromatography for any separation and measurement required in the testing. A "testing laboratory" is a laboratory that meets all the following conditions:

1. Holds an ISO 17025 accreditation or is registered with the DEA in accordance with federal law;
2. Does not have a direct or indirect interest in the entity whose product is being tested;

¹⁵ R.C. 3779.23 and 3779.24.

¹⁶ R.C. 3779.23 and 3779.25(A).

3. Does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells drinkable cannabinoid products in this state or any other jurisdiction; and
4. Performs tetrahydrocannabinol concentration sampling and testing using the high-performance chromatography (HPLC) method.¹⁷

A DCP manufacturer must ensure that each DCP tested is accompanied by a certificate of analysis issued by the testing laboratory. The laboratory must include all the following on the certificate of analysis:

1. The batch identification number;
2. The date the DCP was received by the laboratory;
3. The date that the testing was completed;
4. The method of analysis for each test conducted; and
5. Proof that the applicable certificate of analysis is congruent with the DCP being tested.

The Director must maintain and post on the Department of Commerce's website a registry of testing laboratories that are qualified to test DCPs. In addition, the Director must develop an application and process by which testing laboratories are listed on the Department's website. The application must include a sample certificate of analysis issued by the applying laboratory. The bill specifies that no distributor or retailer can be held liable for any violations or causes of action if a DCP distributed or sold by the distributor or retailer is not consistent with testing as represented.¹⁸

Labeling requirements

The bill requires a DCP manufacturer, in accordance with rules adopted by the Director, to include a label on each DCP container that it sells or offers for sale in Ohio that includes the following information in legible print:

1. The product name or common name on the front of the label;
2. The brand name on the front of the label;
3. The size of the container or net count of individual items included in the container on the front of the label;
4. The net weight or volume of the items included in the container;
5. The number of servings per container;
6. A list of ingredients;

¹⁷ R.C. 3779.21(H) and 3779.25(B).

¹⁸ R.C. 3779.25(C) and (D).

7. The amount of any THC, in milligrams, as identified in the certificate of analysis as required under the bill;
8. The number of calories per container; and
9. The words “This product is a Drinkable Cannabinoid Product.”

In addition to printing the above information on the label, a manufacturer may provide the information specified in (6) and (7), above, via a quick response code.¹⁹

Distribution areas

The bill requires each manufacturer to assign to each of the manufacturer’s distributors a sales area or territory within which each distributor must be the distributor of the brand or brands of the manufacturer. However, the bill states that:

1. If a manufacturer manufactures more than one brand of DCP, the manufacturer may assign sales areas or territories to additional distributors for the distribution and sale of the additional brand or brands, so long as not more than one distributor distributes the same brand or brands within the same sales area or territory; and
2. The manufacturer may sell a DCP directly to a retailer.

A “sales area or territory” is an exclusive geographic area or territory that is assigned to a particular distributor and that either has one or more political subdivisions as its boundaries or consists of an area of land with readily identifiable geographic boundaries.²⁰

Prohibitions regarding financial interest

Similar to the liquor control laws, the bill generally establishes prohibitions against manufacturers, distributors, and retailers from having any financial interest or financial investment in each other.²¹

Rules

The bill requires the Director of Commerce to adopt rules in accordance with the Administrative Procedure Act for the administration and enforcement of the bill’s provisions governing DCPs, including rules governing the registration of manufacturers and testing and labeling of DCPs.²²

Additional prohibitions

The bill establishes additional prohibitions, but, as indicated above, it does not provide specific penalties for the prohibitions. The additional prohibitions are as follows:

¹⁹ R.C. 3779.23 and 3779.26(A) and (B).

²⁰ R.C. 3779.27.

²¹ R.C. 3779.22(J) and (K) and 3779.28.

²² R.C. 3779.23.

1. No manufacturer or testing laboratory may fail to comply with the bill's testing requirements;
2. No manufacturer may fail to comply with the bill's labeling requirements;
3. No distributor may distribute a specific brand of DCP in any area or territory other than the area or territory assigned to the distributor; and
4. No person may violate a rule adopted by the Director under the bill.²³

Enforcement against license or permit holder

The bill requires certain state licensing authorities to adopt rules in accordance with the Administrative Procedure Act to enforce violations of the bill directly against the following licensees that are involved with the sale of intoxicating hemp products and DCPs:

1. Lottery sales agents licensed by the State Lottery Commission;
2. Cigarette distributors and retailers licensed by the Tax Commissioner;
3. Alcohol manufacturers, distributors, and retailers permitted by the Division of Liquor Control.²⁴

Impaired driving (OVI)

The bill authorizes law enforcement to arrest an individual who operates a vehicle under the influence of intoxicating hemp or a DCP, similar to other drugs of abuse such as a controlled substance or a harmful intoxicant under current law. Under current law, driving under the influence of a hemp product is not a violation of the OVI law.²⁵

Opened container provisions

Similar to the law governing opened containers of alcoholic beverages, the bill allows a person to have in the person's possession an opened container of an intoxicating hemp product that is a beverage (beverage) or a DCP in certain locations. The opened container provisions for each type of product are different, with the DCP opened container provisions allowing for more locations at which a person may have an opened container of DCP. The opened container provisions are as follows:

Opened container of intoxicating hemp products that are beverages

A person may have in the person's possession an opened container of an intoxicating hemp product that is a beverage in any of the following locations:

1. On the premises of a private residence;

²³ R.C. 3779.22(L), 3779.25(F), 3779.26(C), and 3779.27(B).

²⁴ R.C. 3779.99(D).

²⁵ R.C. 4506.01.

2. On the premises of an outdoor performing arts center if the person is attending a specified orchestral performance and the owner or operator of the center allows the possession and consumption of a beverage in certain predesignated areas of the premises;
3. At an outdoor location at which the person is attending an orchestral performance if the person with supervision and control over the performance allows the possession and consumption of a beverage in certain predesignated areas of that outdoor location; and
4. In a chauffeured limousine that is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking if all the following apply:
 - a. The person, or the guest of the person, pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract;
 - b. The person or guest is a passenger in the limousine; and
 - c. The person or guest is in the limousine but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located.

Except as provided above, no person can have in the person's possession an opened container of a beverage in any of the following circumstances:

1. In any public place;
2. While operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;
3. While being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.²⁶

A person who knowingly violates the above prohibition is guilty of a minor misdemeanor.²⁷

Opened container of DCPs

A person may have in the person's possession an opened container of a DCP in any of the following locations:

1. On the premises of a private residence;
2. On the premises of a retailer that is a micro-distillery, bar, or restaurant (an A-1-A or class D liquor permit holder);

²⁶ R.C. 3779.06.

²⁷ R.C. 3779.99(C).

3. In an outdoor area that has been expanded to allow for a retailer that is a micro-distillery, bar, or restaurant to serve beer or intoxicating liquor for on-premises consumption in that area, provided the DCP was purchased from the retailer;
4. On the premises of an outdoor performing arts center if the person is attending a specified orchestral performance and the owner or operator of the center allows the possession and consumption of a DCP in predesignated areas of the premises;
5. At an outdoor location at which the person is attending an orchestral performance if the person with supervision and control over the performance allows the possession and consumption of a DCP in predesignated areas of that outdoor location;
6. On the property of a specified outdoor motorsports facility if both of the following apply:
 - a. The person is attending a racing event at the facility.
 - b. The owner of the facility allows the possession and consumption of a DCP on the property of the facility.
7. In an outdoor refreshment area designated under the liquor control laws (DORA), provided that the DCP was purchased from a retailer located in the DORA and the retailer is a micro-distillery, bar, or restaurant and has been issued a DORA designation for the DORA.

(7) does not authorize a person to do either of the following:

 - a. Enter the premises of an establishment within a DORA while possessing an opened container of a DCP acquired elsewhere; or
 - b. Possess an opened container of a DCP while being in or on a motor vehicle within a DORA, unless the possession is otherwise authorized under (8) or (9) below.
8. In a chauffeured limousine that is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking if all the following apply:
 - a. The person, or the guest of the person, pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract;
 - b. The person or guest is a passenger in the limousine; and
 - c. The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located.
9. On the premises of a market if the DCP has been purchased from a retailer that is a bar or restaurant located in the market; and
10. In a public-use airport if all the following apply:
 - a. Consumption of the opened container of a DCP occurs in the airport terminal that is restricted to persons taking flights to and from the airport;
 - b. The airport's governing body authorizes the consumption of DCPs in that area;

- c. A retailer that is a micro-distillery, bar, or restaurant is located in the area and the DCP was purchased from such a retailer;
- d. The DCP is served solely in plastic bottles or other plastic containers that clearly identify the retailer.

Except as provided above, no person can have in the person's possession an opened container of a DCP in any of the following circumstances:

1. In any public place;
2. While operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;
3. While being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.²⁸

A person who knowingly violates the above prohibition is guilty of a minor misdemeanor.²⁹

Taxation of intoxicating hemp products and DCPs

The bill levies two separate taxes – one is a gross receipts tax on a dispensary's sale of intoxicating hemp products and the second is an excise tax on a manufacturer's sale of DCPs. Both taxes are administered by the Tax Commissioner, and the revenue from each tax is credited to the GRF.³⁰ As an enforcement mechanism, the bill also extends these taxes to illegal sales of such products. Salient details of each tax are discussed below.

Intoxicating hemp products receipts tax

The bill's tax on intoxicating hemp products is imposed on dispensaries and equals 15% of the dispensary's gross receipts from the retail sale of intoxicating hemp products. Each dispensary subject to the tax is required to register with the Tax Commissioner and remit the tax monthly. While the tax is imposed on dispensaries, it is treated as part of the price for sales and use tax purposes, and so will result in additional sales and use tax collections from consumers. The bill prescribes procedural requirements for the tax, e.g., penalties, interest, and assessment procedures for underpayments, interest and refund procedures for overpayments, recordkeeping and inspection requirements, and electronic filing. These administrative provisions are similar in nature to other taxes administered by the Tax Commissioner.³¹

²⁸ R.C. 3779.29.

²⁹ R.C. 3779.99(F).

³⁰ R.C. 3779.40 to 3779.48 and 3779.99(H) to (J), with conforming changes in R.C. 131.02, 5703.052, 5703.053, 5703.19, 5703.263, 5703.50, 5703.70, and 5703.77.

³¹ R.C. 3779.40(A)(2), (B), (D), (F), and (G), 3779.41 to 3779.46, and 3779.99(H) to (J).

The bill also bars municipalities from levying similar taxes and authorizes the cancellation of a taxpayer's dispensary license for failure to pay the tax.³²

DCP excise tax

The bill's tax on DCPs takes the form of an excise tax imposed on DCP manufacturers. It equals \$3.50 for every gallon of DCPs sold to distributors or retailers. Similar to the intoxicating hemp products tax, each DCP manufacturer is required to register with the Tax Commissioner and remit the tax monthly, with similar administrative and enforcement provisions applying.³³ The bill also bars municipalities from levying similar taxes.³⁴

Tax on illegal sales

The bill extends both of the bill's taxes to illegal, nondispensary retail sales of intoxicating hemp products and illegal sales of DCPs on which the excise tax has not been paid. Illegally sold products are subject to the same tax rates and administrative provisions to which dispensaries and DCP manufacturers are subject to, as described above. The Commissioner is also empowered to seize and sell any illegally sold products to cover any delinquent taxes.³⁵

HISTORY

Action	Date
Introduced	02-04-25

ANSB0086IN-CORRECTED-136/ar

³² R.C. 715.013 and 3779.451.

³³ R.C. 3779.40(C), (E), and (F), 3779.41, 3779.42 to 3779.45, 3779.46, and 3779.99(H) to (J).

³⁴ R.C. 715.013.

³⁵ R.C. 3779.47 and 3779.48.