

HOUSE BILL 458: AGRICULTURE; HEMP FARMING¹
AMENDING O.C.G.A. § 2-1 THROUGH § 2-23

First signature: Representative Clay Pirkle (169th)

Co-Sponsors: Representative John Corbett (174th), Representative Noel Williams Jr. (148th), Representative Trey Rhodes (124th), Representative Inga Willis (55th)

Summary: This bill stands “to be entitled an Act to amend Chapter 23 of Title 2 of the O.C.G.A., relating to hemp farming, so as to provide for intent; to amend Chapter 12 of Title 16 of the O.C.G.A., relating to offenses against public health and morals, so as to prohibit the purchase of, sale of, and the offering of samples of hemp products by or to any individual under the age of 21 years old; to provide for inspections, enforcement, and penalties for violations; to provide for venue; to provide for rules and regulations; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.”²

Status: Senate Read and Referred on March 7, 2023³

TEXT OF HOUSE BILL 458 ⁴

SECTION 1.

Said chapter is further amended in Code Section 2-23-3, relating to definitions, by revising paragraph (6) and paragraph (12) and by adding new paragraphs to read as follows:

"(1.2) 'Consumable hemp products' means a hemp product intended to be ingested, absorbed, or inhaled by humans or animals."

"(3.1) 'Full panel certificate of analysis' means a document, produced by a laboratory which is unaffiliated with the processor and which has been accredited pursuant to the standards of the International Organization for Standardization for the competence, impartiality, and consistent operation of laboratories, attesting to the

¹ H.B. 458, 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), <https://www.legis.ga.gov/api/legislation/document/20232024/216989> (last visited Sept. 30, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

composition of a product, and which shall include a designation indicating whether the product passed or failed."

"(6) 'Hemp products' means all products with the federally defined THC level for hemp derived from, or made by, processing hemp plants or plant parts that are prepared in a form available for legal commercial sale, but not including food products infused with THC unless approved by the United States Food and Drug Administration all finished products with a concentration of delta-9-THC and esters of delta-9-THC of not more than 0.3 percent on a dry-weight basis that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. Hemp products shall not be considered controlled substances solely due to the presence of hemp or hemp derived cannabinoids.

(6.1) 'Industrial hemp product' means any hemp product that is not a consumable hemp product."

"(8.1) 'Passing,' with regard to a full-panel certificate of analysis, means that the full-panel certificate of analysis attests to the final packaged product's composition of the following grouping of assays and, where applicable, that the final packaged product contains equal to or less than the maximum acceptable contaminant levels set forth:

(A) Cannabinoids:

(i) Total tetrahydrocannabinol (THC) sum percentage by weight of Delta-9-tetrahydrocannabinol; and Delta-9-tetrahydrocannabinolic acid;

(ii) Cannabidiol (CBD);

(iii) Cannabidiolic Acid (CBDA);

(iv) Cannabigerol (CBG);

(v) Cannabigerol Acid (CBGA);

(vi) Cannabinol (CBN);

(vii) Delta-8-tetrahydrocannabinol (Delta-8-THC);

(viii) Any isomer of Delta-9-THC, (e.g., Delta-8-THC, Delta-10-THC, Delta-11-THC); and

(ix) Any ester of Delta-9-THC (e.g. THC-O) or Delta-9(11) exo-tetrahydrocannabinol (Exo-THC);

(B) Heavy metals:

- (i) Arsenic, in an amount less than 1.5 parts per million;
- (ii) Cadmium, in an amount less than 0.5 parts per million;
- (iii) Chromium, in an amount less than 0.5 parts per million;
- (iv) Lead, in an amount less than 0.5 parts per million; and
- (v) Mercury, in an amount less than 0.3 parts per million;

(C) Residual pesticides:

- (i) Abamectin, in an amount less than 0.3 parts per million;
- (ii) Acephate, in an amount less than 5 parts per million;
- (iii) Acequinocyl, in an amount less than 4 parts per million;
- (iv) Acetamiprid, in an amount less than 5 parts per million;
- (v) Aldicarb, in an amount less than 0.01 parts per million;
- (vi) Azoxystrobin, in an amount less than 40 parts per million;
- (vii) Bifenazate, in an amount less than 5 parts per million;
- (viii) Bifenthrin, in an amount less than 0.5 parts per million;
- (ix) Chlormequat Chloride, in an amount less than 0.01 parts per million;
- (x) Chlordane, in an amount less than 0.01 parts per million;
- (xi) Chlorpyrifos, in an amount less than 0.01 parts per million;
- (xii) Cyfluthrin, in an amount less than 1 parts per million;
- (xiii) Daminozide, in an amount less than 0.01 parts per million;
- (xiv) Diazinon, in an amount less than 0.2 parts per million;
- (xv) Dichlorvos, in an amount less than 0.01 parts per million;
- (xvi) Dimethoate, in an amount less than 0.2 parts per million;
- (xvii) Etoxazole, in an amount less than 1.5 parts per million;
- (xviii) Fenoxycarb, in an amount less than 0.01 parts per million;
- (xix) Fenhexamid, in an amount less than 10 parts per million;
- (xx) Fluoxastrobin, in an amount less than 0.01 parts per million;
- (xxi) Fipronil, in an amount less than 0.01 parts per million;
- (xxii) Imazalil, in an amount less than 0.01 parts per million;
- (xxiii) Imidacloprid, in an amount less than 3 parts per million;
- (xxiv) Malathion, in an amount less than 5 parts per million;

- (xxv) Myclobutanil, in an amount less than 9 parts per million;
- (xxvi) Paclobutrazol, in an amount less than 0.01 parts per million;
- (xxvii) Permethrin, in an amount less than 20 parts per million;
- (xxviii) Spirotetramat, in an amount less than 13 parts per million;
- (xxix) Thiacloprid, in an amount less than 0.01 parts per million;
and
- (xxx) Trifloxystrobin, in an amount less than 30 parts per million;

(D) Residual solvents:

- (i) Acetones, in an amount less than 5000 parts per million;
- (ii) Butanes, in an amount less than 5000 parts per million;
- (iii) Benzene, in an amount less than 1.0 parts per million;
- (iv) Methanol, in an amount less than 3000 parts per million;
- (v) Ethanol, in an amount less than 5000 parts per million;
- (vi) Heptanes, in an amount less than 5000 parts per million;
- (vii) Hexane, in an amount less than 10 parts per million;
- (viii) Toluene, in an amount less than 890 parts per million; and
- (ix) Total Xylenes (m,o,p-xylene), in an amount less than 1.0 parts per million;

(E) Any visible foreign or extraneous material that is not intended to be part of the product being produced, including, but not limited to, mold, hair, insects, metal, or plastic;

(F) Microbiological impurities, meeting the following colony-forming unit in per gram (CFU/g) levels:

- (i) Total viable aerobic bacteria, not exceeding 105 CFU/g;
- (ii) Total Yeast and Mold, not exceeding 10,000 CFU/g;
- (iii) Total Coliforms, not exceeding 103 CFU/g;
- (iv) Bile-tolerant Gram Negative Bacteria, not exceeding 103 CFU/g;
- (v) E. coli (pathogenic strains) and Salmonella, not detected in 1 gram; and

(vi) Aspergillus fumigatus, Aspergillus flavus, Aspergillus niger, less than 1 CFU/g;

(G) Mycotoxins:

(i) Aflatoxin B1 at less than 20 µg (micrograms) of any mycotoxin per kg of material;

(ii) Aflatoxin B2 at less than 20 µg (micrograms) of any mycotoxin per kg of material;

(iii) Aflatoxin G1 at less than 20 µg (micrograms) of any mycotoxin per kg of material;

(iv) Aflatoxin G 2at less than 20 µg (micrograms) of any mycotoxin per kg of material; and

(v) Ochratoxin A at less than 20 µg (micrograms) of any mycotoxin per kg of material;

(H) Vitamin E acetate in an amount less than 100 parts per million in an inhalable hemp product."

"(10.1) 'QR code' means a quick response code that is a type of machine-readable, two-dimensional barcode that stores information about a product."

"(12) 'Retail consumable hemp establishment license' means a license issued by the department under the authority of this chapter to an establishment that prepares or sells prepackaged consumable hemp products to an end consumer."

(13) 'THC' means tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid.

(14) 'Wholesale consumable hemp establishment license' means a license issued by the department under the authority of this chapter to an establishment that manufactures, processes, packs, holds, or prepares consumable hemp products for sale to other businesses."

SECTION 2.

Said chapter is further amended in Code Section 2-23-5, relating to procedure for licensing, fees, licensing requirements, and limitations on licenses, by revising paragraph (2) of subsection (a) and subsection (c) as follows:

"(2) Hemp grower licenses shall be issued for one calendar year at an annual license fee of \$50.00 per acre cultivated up to a maximum license fee of ~~\$5,000.00~~ \$1,000.00."

"(c)(1) Upon receipt of an application for a hemp grower license, the department shall conduct a criminal background check and is authorized to obtain a federal criminal history report in accordance with paragraph (2) of this subsection for an individual or, if the applicant is a business entity, all key participants seeking to obtain a hemp grower license. For renewal of any previously issued license, a background check shall be required every three years.

(2) At least one set of classifiable electronically recorded fingerprints of the individual applicant or, if the applicant is a business entity, one set of classifiable electronically recorded fingerprints of each key participant shall be submitted to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall review the record for all individuals or key participants, as applicable. For renewal of any previously issued license, such set of classifiable electronically recorded fingerprints shall not be required for any individual applicant or key participant who has already submitted such.

(3) No license shall be issued to any applicant who has been convicted ~~of a misdemeanor involving sale of or trafficking in a controlled substance or a felony related to a state or federally controlled substance~~ within ten years of the date of application or who materially falsifies any information contained in a license application.

(4) Upon receipt of an application for renewal of any previously issued license, the department may require a signed affidavit stating that the licensee has not had a material change to his or her permit eligibility."

SECTION 3.

Said chapter is further amended in Code Section 2-23-6, relating to procedure for permitting and limitations on permits and interests, by revising subsections (c) through (g) as follows:

"(c)(1) Upon receipt of an application for a hemp processor permit, the department shall conduct a criminal background check and is authorized to obtain a federal criminal history report in accordance with paragraph (2) of this subsection for an individual or, if the applicant is a business entity, all key participants seeking to obtain a hemp processor permit. For renewal of any previously issued permit, such criminal background check or federal criminal history report shall be required every three years for each individual applicant or key participant who has previously undergone such.

(2) At least one set of classifiable electronically recorded fingerprints of the individual applicant or, if the applicant is a business entity, one set of classifiable electronically recorded fingerprints of each key participant shall be submitted to the department in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation. The department shall transmit the fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of state records based upon the fingerprints. After receiving the report from the Georgia Crime Information Center and the Federal Bureau of Investigation, the department shall review the record for all individuals or key participants, as applicable. For renewal of any previously issued permit, such set of classifiable electronically recorded fingerprints shall not be required for any individual applicant or key participant who has already submitted such.

(3) No permit shall be issued to any applicant who has been convicted of ~~a misdemeanor involving sale of or trafficking in a controlled substance or~~ a felony related to a state or federally controlled substance within ten years of the date of application or who materially falsifies any information contained in a license application.

(d) The department shall ~~annually~~ accept applications for hemp processor permits to be issued by the department and renew on an annual basis.

(e) Hemp processor permits shall be issued for ~~one~~ five calendar ~~year~~ years ~~at an annual~~ a permit fee of \$25,000.00, to be paid in annual installments of \$5,000.00, so long as no administrative action has been taken by the department regarding such permittee under this chapter. If annual permit fee installments are not paid according

to the preapproved schedule, the department may revoke the permit. The department may annually require a signed affidavit stating that the permittee has not had a material change to his or her permit eligibility.

(f) Issuance of any hemp processor permit shall be conditioned upon the permittee's compliance with Code Section 2-23-7 prior to initiating hemp processing activities.

(g) A permittee may also apply for and be issued no more than one hemp grower license."

SECTION 4.

Said chapter is further amended in Code Section 2-23-6.1, relating to procedure for permitting and limitations on permits and interests, by revising subsection (a) as follows:

"(a) Any applicant for a hemp processor permit shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of good standing issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner within 30 days. The bond ~~shall be in such amount as the Commissioner may determine, not exceeding an amount equal to 2 percent of the amount of hemp purchased from licensees by the permittee in the most recent calendar year; provided, however, that the minimum amount of such bond shall be \$300,000.00 and the maximum amount shall be \$1 million~~ \$50,000.00. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to licensees for hemp purchased by such permittee as well as to secure the permittee's compliance with the requirements of this chapter. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given in compliance with this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a permittee is canceled, the permit of such permittee shall be immediately revoked by operation of law without notice or hearing, and such permittee shall be ineligible to reapply for such permit for a period of four years after such revocation."

SECTION 5.

Said chapter is further amended by adding a new Code section to read as follows:

235 "2-23-6.2.

(a) A retail consumable hemp establishment license shall be issued by the department. Such license shall be issued for one calendar year at an annual permit fee of \$250.00.

(b) A wholesale consumable hemp establishment license shall be issued by the department. Such license shall be issued for one calendar year at an annual permit fee of \$1,500.00.

(c) No retail establishment shall sell or offer for sale any consumable hemp product in this state without first obtaining a retail consumable hemp establishment license issued by the department.

(d) No person shall act as a wholesaler or distributor of consumable hemp products in this state without first obtaining a wholesale consumable hemp establishment license issued by the department."

SECTION 6.

Said chapter is further amended by adding new Code sections to read as follows:

248 "2-23-9.1.

(a) No consumable hemp product shall be sold or otherwise distributed in this state unless the manufacturer has, within the last 12 months, contracted for a full-panel certificate of analysis to be conducted on such product and such analysis has been designated as passing.

(b) Any consumable hemp product sold or otherwise distributed in this state shall bear conspicuous labeling providing the information from a passing certificate of analysis conducted on the product within the last 12 months or allowing a consumer to access such information using a QR code.

(c) The department shall randomly test consumable hemp products available for purchase at retail consumable hemp establishments to ensure compliance with this Code section. Such testing shall be conducted in compliance with this chapter and with regulations promulgated by the department.

(d) In the event that a test sample reveals a concentration of delta-9-THC and esters of delta-9-THC of more than 0.3 percent on a dry-weight basis, all related hemp products shall be disposed of in compliance with this chapter and with regulations promulgated by the department.

264 2-23-9.2.

Any consumable hemp product shall have a maximum total concentration of any combination of delta-9-THC, isomers of delta-9-THC, and esters of delta-9-THC of 25mg per individual dose and 500mg per individual package."

SECTION 7.

Said chapter is further amended in Code Section 2-23-11, relating to plan for regulation and approval, by adding a new subsection to read as follows:

"(c) The department may submit an amended plan to the secretary of agriculture of the United States if or when required by any amendment to this chapter, the rules and regulations promulgated by the department pursuant to this chapter, or any federal law or regulation."

SECTION 8.

Said chapter is further amended in Code Section 2-23-12, relating to rules and regulations, as follows:

278 "2-23-12.

The department, ~~in consultation with the Georgia Bureau of Investigation, shall~~ may promulgate rules and regulations as necessary to implement the provisions of this chapter. ~~Such rules and regulations shall include the plan provided for in Code Section 2-23-11 upon the approval of such plan by the secretary of agriculture of the United States."~~

SECTION 9.

Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, is amended by adding a new article to read as follows:

286 ARTICLE 10

287 16-12-240.

288 As used in this article, the term:

(1) 'Community service' means a public service which an individual under the age of 21 years might appropriately be required to perform as punishment for certain offenses provided for in this article as determined by a court of competent jurisdiction.

(2) 'Consumable hemp products' has the same meaning as provided in Code Section 2-23-3.

(3) 'Person' means any natural person or any firm, partnership, company, corporation, or other entity.

(4) 'Proper identification' means any document issued by a governmental agency that contains a description of an individual, such individual's photograph, or both; provides such individual's date of birth; and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104. Proper identification shall not include a birth certificate.

302 16-12-241.

(a)(1) It shall be unlawful for any person to knowingly:

(A) Sell or barter, directly or indirectly, any consumable hemp product to any individual under the age of 21 years;

(B) Purchase any consumable hemp product for any individual under the age of 21 years; or

(C) Advise, counsel, or compel any individual under the age of 21 years to smoke, inhale, chew, or use consumable hemp products.

(2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply with respect to the sale of consumable hemp products by a person when such person has been furnished with proper identification showing that the individual to whom the consumable hemp products are sold is 21 years of age or older.

(B) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the individual to whom consumable hemp products are to be sold or otherwise furnished is 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such consumable hemp products to request to see and to be furnished with proper identification in order to verify the age of such individual. The failure to make such request and verification in any case where the individual to whom the

consumable hemp products are sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person who sold or otherwise furnished such consumable hemp products did so knowingly.

(3) Any person that violates this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any individual under the age of 21 years to:

(A) Purchase, attempt to purchase, or possess for personal use any consumable hemp products; or

(B) Misrepresent his or her identity or age or use any false identification for the purpose of purchasing or procuring any consumable hemp products.

(2) An individual under the age of 21 years who commits an offense provided for in paragraph (1) of this subsection or in paragraph (1) of subsection (a) of this Code section shall be punished by requiring the performance of community service not to exceed 20 hours that may be related to the awareness of the health hazards of consumable hemp product use.

334 16-12-242.

(a) Any person owning or operating a place of business in which consumable hemp products are sold or offered for sale shall post in a conspicuous place a sign which shall contain the following statement:

'SALE OF CONSUMABLE HEMP PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW.'

Such sign shall be printed in letters of at least one-half inch in height.

(b) Any person that fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor.

343 16-12-243.

(a) As used in this Code section, the term 'consumable hemp product sample' means a consumable hemp product distributed to members of the general public at no cost for purposes of promoting the product.

(b) It shall be unlawful for any person to distribute any consumable hemp product sample to any individual under the age of 21 years.

(c) A person distributing consumable hemp product samples shall require proof of age from a prospective recipient in any case where a reasonable or prudent person could conclude on the basis of appearance that such prospective recipient may be under the age of 21 years.

(d) It shall be unlawful for any individual under the age of 21 years to receive or attempt to receive any consumable hemp product sample.

(e) No person shall distribute consumable hemp product samples on any public street, sidewalk, or park within 500 feet of any school or playground when such facilities are being used primarily by individuals under the age of 21 years.

(f) A violation of subsection (b), (c), or (e) of this Code section shall be punished as a misdemeanor. A violation of subsection (d) of this Code section shall be punished as provided for in paragraph (2) of subsection (b) of Code Section 16-12-171.

361 16-12-244.

(a) The provisions of this article shall be enforced through actions brought in any court of competent jurisdiction by the prosecuting district attorney for the county in which the alleged violation occurred as well as through administrative citations issued by special agents or enforcement officers of the Commissioner of Agriculture. Any fine collected for a violation of such provisions shall be paid to the clerk of the court of the jurisdiction in which the violation occurred. Upon receipt of a fine for any violation of such provision, such clerk shall promptly notify the Commissioner of Agriculture of the violation.

(b) The Commissioner of Agriculture, acting through special agents or enforcement officers, shall annually conduct random, unannounced inspections at locations where consumable hemp products are sold or distributed to ensure compliance with this article. Individuals under the age of 21 years may be enlisted to test compliance with this article; provided, however, that such individuals may be used to test compliance with this article only if the testing is conducted under the direct supervision of such special agents or enforcement officers and written parental consent for such individuals has been provided. Any other use of individuals under

the age of 21 years to test compliance with this article or any other similar provisions shall be unlawful, and the person or persons responsible for such use shall be subject to the penalties prescribed in this article.

379 16-12-245.

The Commissioner of Agriculture is authorized to make reasonable rules and regulations for the administration and enforcement of this article. The Commissioner of Agriculture may designate employees of the Department of Agriculture for the purpose of administering and enforcing this article and may delegate to employees of such department any of the duties required of the Commissioner of Agriculture pursuant to this article."

SECTION 10.

Sections 1 through 4 and 6 through 11 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. Section 5 of this Act shall become effective January 1, 2024.

SECTION 11.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR'S RATIONALE

Representative Clay Pirkle introduced House Bill 458 to address the need for greater transparency for consumers of the ingredients of ingestible hemp products, provide clarification on the legality of hemp products containing THC, as well as to set an age restriction on the purchase of hemp products to 21 years old.⁵

Representative Pirkle and other sponsors of House Bill 458 believe the Bill will clarify the legalities and give business owners, law enforcement, and farmers clear directives on what and how hemp products can be manufactured and sold.⁶ Legislation has yet to be enacted that specifically addresses edible hemp products in

⁵ Ross Williams, *Georgia lawmakers try to wrap heads around regulating hemp-based recreational products*, DOUGLAS COUNTY SENTINEL (Apr. 20, 2023), https://www.douglascountysentinel.com/news/local/georgia-lawmakers-try-to-wrap-heads-around-regulating-hemp-based-recreational-products/article_05fa7ab3-8bb5-5397-ac09-2a1dee7e15d8.html.

⁶ *Id.*

Georgia.⁷ Sponsors and supporters believe House Bill 458 will protect consumers through the ban of certain ingredients, testing requirements, and disclosures which are required to be presented on the packaging.⁸ For example, House Bill 458 bans the use of certain heavy metals, pesticides, and other potentially harmful substances in ingestible hemp products.⁹

Ingestible hemp products are currently de facto legal in Georgia, but are not explicitly legal under current law.¹⁰ As a result, the ambiguity on their legality has resulted in challenges being brought in the courts.¹¹ These challenges arise from brick-and-mortar business owners who sell the products in their stores. There have been multiple incidents where these products were seized by local authorities and criminal charges brought against the owners for selling the products.¹² Present legislation is unclear on the legalities of the products and fails to provide merchants or authorities with much, if any, direction.¹³ The Superior Court of Gwinnett County issued an order on April 17th, 2023, in *The State of Georgia v. Nazmul Islam, MD*, holding that Delta-8 gummies were not considered food products under the Hemp Farming Act O.C.G.A § 2-23-3, *et seq.*¹⁴ The Hemp Farming Act (“the Act”) allows for the commercial sale of hemp products containing less than 0.3% THC, but does not specify that ingestible hemp products are considered a food product.¹⁵ Because the ingestibles are not considered food products under the Act, the ingestibles are not required to adhere to the same regulations as other food products.¹⁶ While appeals have reached the Georgia Supreme Court, the Court has yet to issue an opinion on whether the ingestible products are legal under current law.¹⁷

⁷ Jonathan Raymond (11Alive), *What is delta-8, and is it legal in Georgia?* 11ALIVE (Oct 1, 2023), <https://www.11alive.com/article/news/politics/what-is-delta-8-georgia-legal/85-b73ec403-ccb3-4de0-9b03-855772cf8c18>.

⁸ *Id.*

⁹ H.B. 458.

¹⁰ Raymond, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *State of Georgia v. Nazmul Islam MD*, Order Granting Defendant’s for Return of Property (Apr. 18, 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Raymond, *supra* note 7.

Representative Pirkle further noted that he did not wish to see products with psychoactive effects to be sold to Georgians.¹⁸ House Bill 458 was written to limit these products, while still allowing for hemp products to be legally sold, so long as the aforementioned requirements are met. Moreover, the Bill has received favorable support from legislators, demonstrating the bipartisan effort to regulate an industry that has seemingly operated with little oversight.¹⁹ While House Bill 458 has received strong support, according to Representative Cowsert, the Bill failed to pass in session for the current year.²⁰ This was likely due to debate regarding the definition of allowable THC content, which was at issue as the Bill amended the language mirroring the federal government's definition.²¹

The U.S. Food and Drug Administration ("FDA") has warned that the lack of distinction between Delta-8 products, which produce psychoactive effects, and other non-psychoactive hemp products may be conflated by consumers.²² The FDA further noted that many of these products could contain unsafe chemicals which can cause harm to those who ingest them.²³ The FDA's sentiments and warnings on the topic demonstrate their concern for the lack of regulatory measures throughout the industry as a whole.²⁴ Supporters of H.B. 458 seek to remedy the issues the FDA has expressed through well-defined regulation in the Bill.²⁵

OPPOSITION'S RATIONALE

Business owners and hemp farmers in Georgia have expressed concern with House Bill 458. Opposing parties voiced their concerns during the legislative debate on the bill, stating their concern with how the changes could affect small businesses if

¹⁸ Williams, *supra* note 5.

¹⁹ Summit Labs, *Georgia house bill– HB458: aims to ban hemp-derived thc*, HEMPLITUDE (Mar. 24, 2023), <https://hemplitude.com/georgia-house-bill-hb458-aims-to-ban-hemp-derived-thc#>.

²⁰ *Id.*

²¹ *Id.*

²² Raymond, *supra* note 7.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

enacted.²⁶ During the House floor debate, one business owner in the industry stated that House Bill 458, if passed with its current language, would make the cultivation of hemp products significantly more difficult due to farmer's being required to adhere to the 0.3% THC content during the cultivation process.²⁷ During the cultivation period, the plants may contain more than 0.3% THC, which is later reduced during the manufacturing process.²⁸ The unpredictability of the plants however, poses a significant challenge to farmers as they would now be required to maintain the .03% THC content throughout the growing phase of production.²⁹ Maintaining such content limitation brings additional costs associated with testing, destruction of plants producing above the allowable content, and constant monitoring during cultivation.³⁰

Additionally, the changes to licensing, testing requirements, and various other regulatory measures which House Bill 458 seeks to enact, would increase the cost of production, ban certain products currently being sold, and restrict the age limit of the purchase of all hemp products to 21 years.³¹ Under current law, edible hemp products are not considered to be a food product under the Hemp and Farming Act.³² This has allowed these products to be sold and ingested without adequate testing to determine whether the products contain harmful chemicals.³³

Opposers also believe the universal age restriction on hemp products, regardless of the THC content, is overly restrictive.³⁴ Moreover, such restrictions would inevitably reduce their consumer pool and limit the sale of non-ingestible hemp products such as CBD.³⁵ One organization, Georgia Healthy Alternatives Association ("GHA") has vocalized its opposition to House Bill 458, stating an overregulation of hemp products could impact the

²⁶ Georgia House of Representatives, *Agriculture & Consumer Affairs Committee 3.1.23*, YOUTUBE (Mar. 1, 2023), <https://www.youtube.com/live/CwiGFJzgavw?si=Kmwya9h6--riazfS>.

²⁷ *Id.*

²⁸ Georgia House of Representatives.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Summitt Labs, *supra* note 19.

³⁵ *Id.*

availability of these health alternatives for consumers.³⁶ Hemp products are used for a variety of purposes including pain relief, mental health, and alternatives for medications.³⁷ GHA notes that significant regulation would cause the hemp alternatives to be more difficult to acquire.³⁸

Delta-8 in Georgia is approximately an \$8 billion dollar industry.³⁹ Thus, increased regulation and restrictions on the age to purchase the products could have a significant impact for many Georgia businesses while also lessening Georgia's taxable revenue from the sale of the products.⁴⁰ Small-business owners have addressed their concern during legislative debate on the Bill.⁴¹ These tax paying businesses note that House Bill 458 will result in significantly less availability of products available to be sold, causing businesses to suffer economic loss.⁴² The concerns with the impact House Bill 458 will have on the industry highlight the discord between business and regulatory measures due to unintended consequences of additional costs, fears of criminal liability, and the unavailability of products.⁴³

The economic impacts of House Bill 458 are not the only concerns raised. Georgia Secretary of Agriculture Tyler Harper expressed concerns with House Bill 458's changes to the definition of THC.⁴⁴ The current version of House Bill 458 removes the language that mirrors and adheres to federal regulatory requirements of legal THC content, and instead, sets the THC limit to 0.3%.⁴⁵ The primary concern with such change is that it could potentially place the legislation out of compliance with federal and USDA definitions of allowable THC content.⁴⁶ Additionally, the language as presently

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Ryan Zickgraf, *Georgia lawmakers are eyeing more control over controlled substances*, ATLANTA CIVIC CIRCLE (Feb. 21, 2023), <https://atlantaciviccircle.org/2023/02/21/georgia-lawmakers-are-eyeing-more-control-over-controlled-substances/>.

⁴⁰ Summitt Labs, *supra* note 19.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Williams, *supra* note 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

written, would require hemp farmers to adhere to the 0.3% THC requirement during the cultivation period.⁴⁷

IMPLICATIONS IN GEORGIA

If enacted, House Bill 458 will restrict the sale of all hemp products to individuals under the age of 21, require a QR code that gives a full nutritional label to consumers, and will require business owners who sell hemp products to be licensed and post certain signs within their businesses.⁴⁸ House Bill 458 will also change the definition of THC to allow the commercial sale of products which contain less than 0.3% THC.⁴⁹ This change involves removing the current language which states that the THC content of hemp products is based on federal regulations.⁵⁰ Farmers would not be allowed to exceed this content amount regardless of whether they later reduced the THC content to 0.3% in the production of the products.⁵¹ In addition to these changes, House Bill 458 allows for individuals with either felony or misdemeanor convictions within ten years of the application date to be eligible for a license to grow and process industrial hemp.⁵² However, the convictions must not be related to a state or federal controlled substance violation.⁵³

In addition, because of the regulatory measures impact on the sale of hemp products, taxable revenue will be consequently impacted.⁵⁴ Some businesses report the sale of hemp products consist of 70-80% of their revenue.⁵⁵ With increased regulation and costs associated with the manufacturing of hemp, businesses who rely primarily on hemp revenue may face the possibility of having to close their doors altogether, meaning less taxable revenue for the state.⁵⁶

⁴⁷ *Id.*

⁴⁸ H.B. 458.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Georgia House of Representatives.

⁵² H.B. 458.

⁵³ *Id.*

⁵⁴ Zickgraf, *supra* note 39.

⁵⁵ *Id.*

⁵⁶ *Id.*

In contrast, if House Bill 458 fails to pass, the issue of legality of hemp products will remain unclear and contested.⁵⁷ Moreover, there would be little to no testing regulations which could result in unsafe products containing harmful chemicals being present in the products.⁵⁸

LEGISLATIVE GENEALOGY

House Bill 458 was introduced in the House Hopper on February 16, 2023.⁵⁹ The Bill was first read in the House on February 21, 2023, and read for a second time on February 22, 2023.⁶⁰ The House Committee favorably reported the Bill by substitute on March 1, 2023. On March 6, 2023, the Bill was read for a third time and was subsequently passed/adopted by substitute, with a vote of 169 yeas, 2 nays, 3 not voting, and 6 excused.⁶¹ The Senate read and referred the Bill on March 7, 2023.⁶²

Prepared by: *Morgan Knowles*

⁵⁷ Raymond, *supra* note 7.

⁵⁸ *Id.*

⁵⁹ H.B. 458.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*