

CHAPTER 78**(HB 544)**

AN ACT relating to the regulation of hemp-derived products.

WHEREAS, on August 3, 2022, the Boone Circuit Court entered a permanent injunction prohibiting the Kentucky State Police from instituting or continuing any criminal enforcement action against a person in possession of certain products containing delta-8 tetrahydrocannabinol (THC); and

WHEREAS, on November 15, 2022, Governor Andy Beshear issued Executive Order 2022-799, stating that delta-8 is a form of THC, delta-8 can be derived from cannabidiol (CBD) through further processing, and products containing delta-8 are sold at retail businesses in Kentucky and surrounding states; and

WHEREAS, Executive Order 2022-799 further stated that there are no requirements currently applied to delta-8 products sold in Kentucky for their packaging and labeling or for their use as ingestible cannabinoid products, and that certain requirements that exist for the packaging and labeling of CBD products sold in Kentucky should also apply to delta-8 products to ensure the public's protection; and

WHEREAS, Executive Order 2022-799 further stated that under KRS 217.125(1) of the Food, Drug, and Cosmetic Act, the Cabinet for Health and Family Services has the authority to promulgate administrative regulations for the administration and enforcement of KRS 217.005 to 217.215; and

WHEREAS, the cabinet promulgated 902 KAR 45:190 to regulate hemp-derived CBD products and establish packaging and labeling requirements for such products; and

WHEREAS, since delta-8 THC is a cannabinoid, 902 KAR 45:190 applies to delta-8 THC products and application of this administrative regulation to delta-8 THC products will ensure the safety of those purchasing and consuming those products and establish a regulatory framework that in the future may be applied to medical cannabis if approved by the Kentucky General Assembly; and

WHEREAS, in Executive Order 2022-799, the Governor ordered and directed that the secretary of the Cabinet for Health and Family Services include delta-8 THC products sold in Kentucky under 902 KAR 45:190; and

WHEREAS, by virtue of Executive Order 2022-799, the Governor also ordered and directed the Cabinet for Health and Family Services to take all necessary steps to implement and enforce 902 KAR 45:190 as applied to delta-8 THC products sold in Kentucky, including but not limited to designating any other state agency as its duly authorized agent to assist with implementation and enforcement of the administrative regulation under KRS 217.155; and

WHEREAS, the General Assembly and this Commonwealth have an interest in limiting the ability of minor children to obtain delta-8 THC products and other products that have intoxicating effects on consumers, and in ensuring that adult consumers of such products have access to accurate information about their contents;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. (1) The General Assembly directs the Cabinet for Health and Family Services to immediately begin the process of regulating delta-8 tetrahydrocannabinol and any other hemp-derived substances.

(2) As used in this section:

(a) "Covered product" means any product containing delta-8 tetrahydrocannabinol or any other hemp-derived substance identified by the Cabinet for Health and Family Services as having intoxicating effects on consumers; and

(b) "Production" has the same meaning as in KRS 218A.010.

(3) Not later than August 1, 2023, the Cabinet for Health and Family Services shall promulgate an emergency administrative regulation with applicability to covered products that:

(a) Implements measures called for in Executive Order 2022-799;

(b) Prohibits the sale, gift, or other transfer of possession of covered products to a person who has not reached the age of 21 years;

- (c) Prohibits the possession of covered products by a person who has not reached the age of 21 years;
- (d) Requires retailers to keep covered products behind the counter in order to prevent theft or easy access by children;
- (e) Establishes a laboratory testing and approval process for contaminants and phytochemicals of a covered product;
- (f) Prohibits a covered product to be sold or distributed in the Commonwealth unless it has been approved under paragraph (e) of this subsection;
- (g) Requires each covered product manufactured, marketed, sold, or distributed in the Commonwealth to be packaged and labeled in accordance with KRS 217.037;
- (h) Except as established in paragraph (i) of this section, requires that a covered product's label include, in a print no less than six point font, the following information:
 - 1. A statement of identity or common product name on the principal display panel of the label;
 - 2. The net quantity of contents expressed in both standard English and metric units of measurement, located in the lower 30 percent of the principal display panel of the label parallel to the base of the container;
 - 3. The ingredients of the product, in descending order of predominance by weight;
 - 4. The name of the manufacturer or distributor;
 - 5. The total amount of each cannabinoid per serving for ingestible products, or the total amount per container for cosmetic products;
 - 6. Suggested use instructions or directions, including serving sizes; and
 - 7. An expiration date, if any;
- (i) Requires an ingestible or cosmetic covered product that has a total area of 12 square inches or less to bear labeling in accordance with paragraph (h) of this subsection, except the print may be smaller than six point font but not less than 1/32 of an inch in height;
- (j) Requires each covered product container have a tamper evident seal;
- (k) Prohibits covered product packaging, labeling, or advertising material from bearing any implicit or explicit health claims stating that the covered product can diagnose, treat, cure, or prevent any disease; and
 - (l) 1. Permits a Kentucky production facility that is shipping a covered product to a state with testing requirements for the covered product, to defer to that state's requirements; and
 - 2. Requires a Kentucky production facility that is shipping a covered product to a state without testing requirements for the covered product, to abide by Kentucky's requirements.

Signed by Governor March 23, 2023.