HB 328 Bill summary

Senate committee substitute to the 3rd edition makes the following changes. Makes conforming changes to act's titles and the effective date. Makes organizational changes.

Part III (was, Section 1).

Removes discretion for public school unit to permit hemp-derived consumable products to be included in instructional or research activities on school grounds, as described, in GS 115C-407.

Adds the following content.

Part I.

Enacts new GS Chapter 18D, pertaining to the regulation of hemp-derived consumable products, as follows.

Article 1.

Defines *Alcohol Law Enforcement (ALE) Division, batch, distributor, exit package, hemp, hemp-derived cannabinoid, hemp-derived consumable product, hemp product, independent testing laboratory, ingestion, inhalation, license, licensee, manufacture, manufacturer, producer, prohibited hemp-derived consumable product, retail dealer,* and *serving*.

Enacts GS 18D-101, which sets forth eight offenses involving the sale of hemp-derived consumable products, as follows:

1. Selling a product containing a hemp-derived consumable product to a person who is under 21 years of age. Requires any retail dealer of hemp-derived consumable products to demand proof of age from a prospective purchaser of hemp-derived consumable products before the products are released to the purchaser if the retail dealer has reasonable grounds to believe that the prospective purchaser is under 30 years of age. Also requires a retail dealer that sells a hemp-derived consumable product on an internet website to verify the age of any prospective purchaser and use a method of delivery that requires the signature of a person at least 21 years of age before the product is released.
2. Knowingly, or having reason to know, distribute samples of hemp-derived consumable products in or on a public street, sidewalk, park, or public building.
3. Engage in the business of selling a hemp-derived consumable product without a valid license. (Designates second violations of this prong as a Class A1 misdemeanor with subsequent violations as a Class H felony.)
4. Knowingly, or having reason to know, sell a hemp-derived consumable product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3% on a dry weight basis. (Class H felony, unless another provision of law provides greater punishment.)
5. Knowingly, or having reason to know, sell a hemp-derived consumable product that is not contained in an exit package or a child proof package.

6. Knowingly, or having reason to know, sell at retail or on an internet website offering delivery in this State, a hemp-derived consumable product that is not in compliance with GS 18D-105.
7. Knowingly, or having reason to know, sell at retail hemp flower or a product containing hemp flower that is not accompanied by a certificate of analysis issued within the previous 6-month period demonstrating that the hemp flower or product containing hemp flower has delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.
8. Knowingly, or having reason to know, sell or distribute a prohibited hemp-derived consumable product. (Class G felony).

Provides for three defenses to the violation described as 1 above, including (1) proof that the buyer produced an official State or federal identification showing their age to be at least 21 years old; (2) evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age; and (3) evidence that at the time of sale the purchaser utilized a biometric identification system that demonstrated their age to be at least 21 and that they had registered an official federal or State ID with the retail dealer or the retail dealer's agent showing them to be the legal age for purchase.

Provides for civil penalties ranging from $500 to $2,000 and for a one-year suspension of the retail dealer's licenses for third violations, and revocation of that license for subsequent violations. Provides for payment of a testing fee conducted as part of sample testing in investigating alleged violations of the offense listed as 4 above, to be remitted to the ALE Division. Directs that the clear proceeds of any civil penalty be remitted to the Civil Penalty and Forfeiture Fund (Fund).

Enacts GS 18D-101A, preventing a producer from knowingly selling or in any way transferring hemp that has been processed or prepared with the intent to be used in a hemp-derived consumable product to any person or entity other than a manufacturer licensed under GS Chapter 18D. Designates second violations as a Class A1 misdemeanor with third or subsequent violations a Class H felony. Makes it a Class G felony for a producer to knowingly selling or in any way transferring hemp that has been processed or prepared with the intent to be used in a prohibited hemp-derived consumable product to any person or entity. Provides for civil penalties ranging from $500 to $2,000. Directs that the clear proceeds of any civil penalty be remitted to the Fund. Clarifies that the statute cannot be construed as preventing a producer from selling or transferring hemp intended to be used in a lawful product.

Enacts GS 18D-102, preventing persons less than 21 years of age from purchasing, attempting to purchase or possessing hemp-derived consumable products and to use fraudulent or altered identification or documentation, identification or documents issued to another, or any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing a hemp-derived consumable product under the statute. Further makes it unlawful for a person to permit use of their identification to allow an underage person to purchase a hemp-derived consumable product. Also prohibits a person from giving a hemp-derived consumable product to anyone younger than age 21. Makes it a Class 2 misdemeanor for persons who violate the statute who are less than 21 years of age and a Class 1 misdemeanor for

persons 21 and over who violate the statute. Provides for aiding and abetting liability. Exempts an underage person from liability for selling, transporting, or possessing hemp-derived consumable products in the course of employment if the employment of the person for that purpose is lawful under applicable youth employment.

Enacts GS 18D-102.5, making it a Class A1 misdemeanor for any person to possess a prohibited hemp-derived consumable product.

Enacts GS 18D-103, which makes it unlawful for a manufacturer or distributor to do any of the following four offenses:

1. Knowingly, or having reason to know, distribute samples of a hemp-derived consumable product in or on a public street, sidewalk, park, or public building.
2. Engage in the business of manufacturing or distributing a hemp-derived consumable product without a valid license.
3. Knowingly, or having reason to know, manufacture or distribute a hemp-derived consumable product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3% on a dry weight basis.
4. Knowingly, or having reason to know, manufacturing or distributing a prohibited hemp-derived consumable product. (Class G felony.)

Provides a defense to the violation listed as 3 above if the manufacturer (1) recalls all hemp-derived consumable products from the same batch as the product on which the violation is based; (2) has samples of the batch tested by an independent testing laboratory as described; and (3) provides certified results from the independent testing laboratory indicating that the sample tested does not contain a total combined delta-9 tetrahydrocannabinol concentration of more than 0.3% on a dry weight basis.

Classifies violations of prongs 1-3 as a Class A1 misdemeanor and provides for civil penalties ranging for all 4 violations from $1,000 to $7,500. Authorizes suspension, revocation, or conditions placed upon manufacturer or distributor licenses. Provides for payment of a testing fee conducted as part of sample testing in investigating alleged violations of the offense listed as 3 above, to be remitted to the ALE Division. Directs that the clear proceeds of any civil penalty be remitted to the Fund. Permits for forfeiture of products manufactured, distributed, or sold in violation of the offense listed as 3 above.

Requires in new GS 18D-104, that a manufacturer have a hemp-derived consumable product tested by an independent testing laboratory prior to distribution to a distributor or before distributing the product to a retail dealer as described and for the substances listed in the statute. Requires a hemp-derived consumable product to be labeled with an expiration date that conforms with applicable federal law. Provides for civil penalties ranging from $1,000 to $7,500. Directs that the clear proceeds of any civil penalty be remitted to the Fund. Authorizes suspension, revocation, or conditions placed on the operating hours of the licensee's business placed upon the licensee's licenses in addition to any civil penalty. Requires the ALE Division to (1) maintain and post on its website a list of independent testing labs that meet the qualifications required to conduct the testing required by the section and (2) develop an application and process to

determine qualifying independent laboratories listed on its website, including a sample certificate of analysis indicating that the lab is capable of detecting the substances listed in the act.

Enacts new GS 18D-105, which concerns additional requirements and restrictions for hemp-derived consumable products including packaging requirements, advertising restrictions, ingestible product restrictions for products containing hemp-derived consumable products (both in non-liquid and liquid form), inhalable product restrictions for vaporization restrictions for products containing hemp-derived consumable products. Provides for civil penalties ranging from $1,000 to $7,500. Directs that the clear proceeds of any civil penalty be remitted to the Fund. Authorizes suspension, revocation, or conditions placed on the operating hours of the licensee's business placed upon the licensee's licenses.

Prevents a licensee or its agent or employee from knowingly allowing (1) violations of GS Chapter 18D or (2) any violations of the controlled substances act, gambling, or other unlawful acts to occur on its premises. Makes it unlawful for a permittee to fail to superintend in person or through a manager the business for which a license is issued. Enacts GS 18D-106, which sets forth eight things that continue to not be prohibited by GS Chapter 18D.

Article 2.

Requires manufacturers, retail dealers, and distributors of hemp-derived consumable products in the State to obtain the appropriate license(s) from the ALE Division either prior to commencing business or by July 1, 2026, whichever is later. Specifies that a person or entity engaged in more than one of the businesses listed is required to obtain a separate license for each business. Lists five qualifications for licensure including that the licensee be at least 21 years of age and have not been convicted of a felony related to a controlled substance within 10 years in any state or federal jurisdiction. Requires annual renewal of licenses. Provides, in new GS 18D-202, for application fees ranging from $500 per location for retail dealer licensees, to $25,000 for manufacturers. Sets renewal fees at $10,000 for manufacturers, $1,500 for distributors, and for retail dealers, the same amount as the initial licensing fee.

Allows the ALE Division to revoke or refuse to issue any license for: (1) failure to comply with or meet any of the licensure qualifications; (2) submission of false or misleading information in an application for licensure or renewal; (3) submission of false or misleading information in any report or information required by this Chapter to be submitted to the ALE Division; and (4) failure to comply with civil penalties. Requires that proceedings for the assessment of civil penalties authorized in Article 1 be governed by GS Chapter 150B. Upon failure to pay a penalty, allows the ALE Division to institute an action in the superior court of the county in which the person resides or has their principal place of business to recover the unpaid amount; specifies that this recovery does not relieve any party from any other penalty prescribed by law.

Requires the ALE Division to develop and make available online an application for the license required by this Article. Instructs the ALE Division to establish, maintain, and control a computer software tracking system that traces hemp from seed to sale as a hemp-derived consumable product and allows real-time, 24-hour access by the ALE Division and any State or local law enforcement agency in North Carolina to data from all production facilities and testing

laboratories. Authorizes the ALE Division to adopt rules, amend, and repeal rules to implement GS Chapter 18D. Provides for monthly distribution of fee revenue to the ALE Division to cover enforcement costs.

Article 3.

Enacts new GS 18D-300 describing the enforcement authority of the ALE Division over GS Chapter 18D, including the ability to conduct random, unannounced inspections or general investigative inspections as described at locations where hemp-derived consumable products are sold or distributed to ensure compliance with the Chapter. Authorizes the ALE Division to take samples for testing, if upon reasonable inspection, it determines a licensee's inventory may consist of products not in compliance with the packaging, labeling, and testing requirements discussed above. Makes it a Class 2 misdemeanor for any person to resist or obstruct an ALE Division agent attempting to make a lawful inspection. Specifies that refusal by a licensee or by any employee of a licensee to permit ALE Division agents to enter the premises to inspect is cause for suspension, revocation, or other action against the licensee. Starting January 1, 2027, requires the ALE Division to submit an annual report to the General Assembly on its enforcement efforts under GS Chapter 18D and to post such reports on its website. Enacts GS 18D-301 authorizing a law enforcement officer to seize any hemp-derived consumable product that is subject to forfeiture, and to provide for its safe storage until trial. Allows for an owner of seized property to apply for return of the products if no criminal charge has been made or no action for civil forfeiture has been commenced in connection with that product within a reasonable time after seizure. Prevents return if doing so would be unlawful.

Section 1.(b).

Makes conforming changes to GS 18B-500 (subject matter jurisdiction for investigation and enforcement by ALE Division agents).

Section 1.(c).

Specifies that as part of the costs in criminal actions in GS 7A-304, $600 should be ordered to be remitted to the ALE Division or agency that paid for laboratory services in cases where (1) defendant is convicted of a violation of GS 18D-103(a)(3)or GS 18D-103(a)(4) and (2) as part of the investigation leading to the defendant's conviction, testing was conducted at a laboratory on products regulated under GS Chapter 18D.

Applies to all hemp-derived consumable products possessed, sold, distributed, or manufactured on or after July 1, 2026, and to all offenses committed on or after that date.

Part II.

Repeals GS 90-94.1 (exemption under the NC Controlled Substances Act for use or possession of hemp extract), effective December 1, 2025. Applies to offenses committed on or after that date.

Part IV.

Adds Kratom (defined) to the list of Schedule VI controlled substances in GS 90-94.