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AB-1397 Hemp: low-dose hemp drinks. (2025-2026)

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AMENDED IN ASSEMBLY MARCH 28, 2025

CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 1397

Introduced by Assembly Member Flora

February 21, 2025

An act to add Article 11 (commencing with Section 111929.6) to Chapter 9 of Part 5 of Division 104 of the Health and Safety Code, and to add Part 14.6 (commencing with Section 34100) to Division 2 of the Revenue and Taxation Code, relating to hemp, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1397, as amended, Flora. Hemp: low-dose hemp drinks.

The Sherman Food, Drug, and Cosmetic Law, among other things, regulates the labeling of food, beverages, and cosmetics and makes it a crime to distribute in commerce any food, drug, device, or cosmetic if its packaging or labeling does not conform to these provisions. Existing law establishes a process for the embargo, condemnation, and destruction of a food, drug, device, or cosmetic that is adulterated, misbranded, or falsely advertised, gives the authority to place items under embargo to authorized agents of the State Department of Public Health, and requires the department to take specified actions. Violation of the Sherman Food, Drug, and Cosmetic Law is a misdemeanor. Existing law also requires hemp manufacturers who produce specified products that include industrial hemp or who produce raw hemp extract, as defined, to complete a registration process, under the State Department of Public Health, and to meet various requirements for testing and labeling on products. Existing law, as part of the registration process, requires the department to assess specified fees, including an oversight and authorization enrollment fee, to cover the actual reasonable costs of implementing the regulatory program.

This bill would authorize a hemp manufacturer to produce and sell low-dose hemp drinks, as defined, if specified requirements are met, including that the low-dose hemp drink contains no greater than ~~0.5~~ 5 milligrams of total THC per container and does not contain cannabis, as defined. The bill would require the low-dose hemp drink to be tested by an independent testing laboratory, and would prohibit a low-dose hemp drink from being sold to or consumed by an individual under 21 years of age.

This bill would impose a low-dose hemp drink excise tax upon purchasers of low-dose hemp drinks sold in the state at 10% of the gross receipts of any retail sale of low-dose hemp drinks, as specified. The bill would require the California Department of Tax and Fee Administration to administer the tax pursuant to the Fee Collection Procedures Law, the violation of which is a crime. The bill

would require a retailer to collect the tax from the purchaser and remit it to the California Department of Tax and Fee Administration. The bill would require the tax, and interest, penalties, and other amounts collected and paid to the department pursuant to the tax, to be deposited into the Low-Dose Hemp Drink Excise Tax Fund, which the bill would establish, and would continuously appropriate the moneys in the fund to the department and to the State Department of Public Health for regulatory purposes related to low-dose hemp drinks, as specified.

By extending the application of the Fee Collection Procedures Law, and by expanding the application of the Sherman Food, Drug, and Cosmetic Law, both of which make a violation of their provisions a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 11 (commencing with Section 111929.6) is added to Chapter 9 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 11. Low-Dose Hemp Drinks

111929.6. (a) Notwithstanding any other law, a hemp manufacturer may produce and sell low-dose hemp drinks in the state, if all of the following requirements are met:

(1) The low-dose hemp drink contains no greater than ~~0.5~~ 5 milligrams of total THC per container.

(2) The low-dose hemp drink contains a total THC concentration that does not exceed 0.3 percent.

(3) The THC concentration is clearly visible on the outside of the low-dose hemp drink container.

(4) The low-dose hemp drink is tested by an independent testing laboratory.

(5) The low-dose hemp drink does not contain any cannabis, as defined in Division 10 (commencing with Section 26000) of the Business and Professions Code.

(b) A low-dose hemp drink shall not be sold to, or consumed by, individuals under 21 years of age.

(c) Except as specifically provided in this article, a low-dose hemp drink shall comply with the provisions of this chapter.

(d) For purposes of this article, "low-dose hemp drink" means a beverage containing hemp and has a total THC concentration that does not exceed 0.3 percent.

SEC. 2. Part 14.6 (commencing with Section 34100) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 14.6. Low-Dose Hemp Drink Tax

34100. This part shall be known, and may be cited, as the Low-Dose Hemp Drink Tax.

34101. For purposes of this part, the following definition shall apply:

(a) "Department" means the California Department of Tax and Fee Administration or its successor agency.

(b) "Gross receipts" has the same meaning as set forth in Section 6012, but shall not include any amount the purchaser is required to pay for tangible personal property that is a separately stated charge.

(c) "Low-dose hemp drink" has the same meaning as in Article 11 (commencing with Section 111929.6) of Chapter 9 of Part 5 of Division 104 of the Health and Safety Code.

34102. (a) Beginning on and after January 1, 2026, a low-dose hemp drink excise tax shall be imposed upon purchasers of low-dose hemp drinks sold in this state at 10 percent of the gross receipts of any retail sale of low-dose hemp drinks.

(b) A retailer shall be responsible for collecting the low-dose hemp drink excise tax from the purchaser and remitting that tax to the department in accordance with this division.

(c) The retailer shall provide each purchaser with an invoice, receipt, or other document that separately states the low-dose hemp drink excise tax.

(d) The low-dose hemp drink excise tax imposed by this section shall be in addition to the sales and use tax imposed by the state and local governments.

(e) Low-dose hemp drinks shall not be sold to a purchaser unless the low-dose hemp drink excise tax imposed by this section has been paid by the purchaser at the time of sale.

34103. (a) The department shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the taxes imposed by this part, and references to "feepayer" shall include a person required to pay or collect the taxes imposed by this part.

(b) The department may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

34104. (a) The Low-Dose Hemp Drink Excise Tax Fund is hereby created in the State Treasury. The fund shall consist of all taxes, interest, penalties, and other amounts collected and paid to the department pursuant to this part, less payment of refunds.

(b) Notwithstanding Section 13340 of the Government Code, the moneys in the fund is continuously appropriated, without regard to fiscal years, as follows:

(1) To the department for reimbursement of all costs incurred by the department in connection with their duties under this part.

(2) To the State Department of Public Health for reimbursement of all costs incurred by the department in connection with their duties under Article 11 (commencing with Section 111929.6) of Chapter 9 of Part 5 of Division 104 of the Health and Safety Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.