

HUMBOLDT COUNTY GROWERS ALLIANCE

March 9, 2021

Senator Ben Allen
State Capitol, Room 4076
Sacramento, CA 95814

Assemblywoman Cecilia Aguiar-Curry
State Capitol, Room 5144
Sacramento, CA 95814

RE: AB 45 (Aguiar-Curry) & SB 235 (Allen): Hemp-derived CBD Products

Dear Senator Allen & Assemblywoman Aguiar-Curry:

On behalf of the more than 250 members of the Humboldt County Growers Alliance (HCGA), we are writing to express our members' concerns - as well as to offer substantive amendments - to both AB 45 and SB 235, which would authorize the sale of hemp-derived consumable products, such as CBD-infused products, in California. As written, these bills would establish that hemp-derived products are not "adulterants" when added to a food, beverage, or cosmetic product.

Since 2019, HCGA has been engaged on prospective state hemp legislation, with three major priorities:

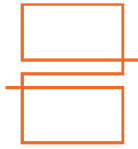
1. Hemp should be tested to the same standards as cannabis for pesticides, heavy metals, and other contaminants.
2. Multiple loopholes – including the delta-8 THC loophole and the "percentage by weight" loophole – currently enable high-THC and psychoactive products to be sold as "hemp," without the restrictions and regulations applicable to cannabis. These loopholes should be clearly closed in statute, with additional authority granted to DPH to identify and close future loopholes.
3. Cannabinoid content should be required to be physically labeled on hemp products.

These priorities continue to drive HCGA's concerns regarding AB 45 and SB 235 and are discussed in turn below. If the issues identified below are addressed, HCGA would remove any opposition to both AB 45 & SB 235.

For brevity, and considering the multiple-year history of the issue, this letter briefly discusses each concern and proceeds to recommend statutory changes that would address our concerns. Previous white papers authored by HCGA explore these issues in greater detail, and we are happy to provide them upon request.

1. Hemp should be tested to the same standards as cannabis for pesticides, heavy metals, and other contaminants.

Like cannabis, hemp is a bioaccumulator that removes heavy metals and contaminants from the soil and concentrates these compounds within the plant. In part to account for its bioaccumulation properties and frequent use as a medicinal and wellness product, cannabis is tested to strict standards in California for contaminants including pesticides, residual solvents, mold, microbiological contamination, mycotoxins, and heavy metals.



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Adulterants in cannabis products and hemp-derived products pose identical risks to consumer health, and should be tested to the same standards. Hemp-derived products can only be distinguished from cannabis products by the relative absence of THC in a hemp-derived product, but the level of THC does not impact whether pesticides, solvents, or heavy metals are safe for human consumption.

In comparison with previous proposed legislation, AB 45 and SB 235 takes some steps towards testing parity with cannabis. However, we believe several statutory changes would be necessary to create meaningful parity between cannabis and hemp.

- **Issue:** Legislation as written proposes that that hemp is tested at the raw extract level, rather than the final form. In addition to diverging from cannabis testing standards - where products are tested in their final form - this approach would suggest that imported final-form hemp products from other states would not be tested.
- **Solution:** Test hemp products in final form, as with cannabis.
- **Statutory recommendation:**

111925. (a) A hemp manufacturer shall meet all of the following testing requirements:

(1) Industrial hemp shall be tested in its raw extract final form in which the industrial hemp product will be consumed or used, ~~to allow its use as an ingredient, prior to being incorporated into a product.~~

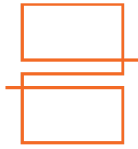
(2) Testing shall be completed by an independent testing laboratory.

(3) The manufacturer of ~~the hemp extract in its final form or the final form industrial hemp product~~ shall be able to prove total THC concentration is below 0.3 percent. ~~A manufacturer of raw extract shall be able to prove~~ **and** that the THC concentration meets department requirements set forth pursuant to subdivision (a) of Section 111921.

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- **Issue:** Legislation as written would initially set hemp and cannabis testing standards at the same levels, but would allow these standards to diverge over time.
 - **Solution:** Require that hemp testing standards are set the same as, and remain the same as, cannabis testing standards.
 - **Statutory recommendation:**

111925.4. ~~(a) As of the effective date of the act adding this chapter,~~ Testing requirements for contaminant levels **in hemp products** shall be the same as those for cannabis, as established in paragraph (2) of subdivision (d) of Section 26100 of the Business and Professions Code and regulations adopted pursuant thereto.

~~(b) The department may adjust the specific contaminant levels for industrial hemp by regulation.~~



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- **Issue:** Legislation as written would repeal all hemp law and regulation upon the implementation of federal hemp regulations.
- **Solution:** Re-assess state hemp regulation upon the implementation of federal regulations, without automatically repealing state law and regulation.
- **Statutory recommendation:**

Health and Safety Code 110036. ~~All laws and regulations pertaining to industrial hemp products shall remain in effect until~~ **Upon** the adoption of regulations pursuant to the federal law that authorizes industrial hemp products. ~~At that time,~~ the department shall adopt new regulations as necessary pursuant to the federal law.

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- **Issue:** Legislation as written would require conformity with prospective federal hemp regulations. Regulations should be developed consistent with both state law and federal regulations, not only in conformance with federal regulations.
 - **Solution:** Clarify that regulations must conform with state law as well as federal regulation.
 - **Statutory recommendation:**

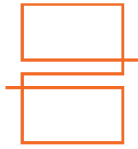
110065. (a) The department may adopt any regulations that it determines are necessary for the enforcement of this part. The regulations shall be adopted by the department in the manner prescribed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall, insofar as practicable **and consistent with California state law**, make these regulations conform with those adopted under the federal act or by the United States Department of Agriculture or by the Internal Revenue Service of the United States Treasury Department.

2. Currently, multiple loopholes – including the delta-8 THC loophole and the “percentage by weight” loophole – enable high-THC and psychoactive products to be sold as “hemp,” without the restrictions and regulations applicable to cannabis. These loopholes should be clearly closed in statute, with additional authority granted to DPH to identify and close future loopholes.

In late February, the New York Times published a detailed article on the rise of delta-8 THC “hemp.”¹ The article describes how delta-8 THC, derived from hemp, produces psychoactive effects near-identical to cannabis, and is sold across the county in a manner identical to high delta-9 THC cannabis under a claimed legal loophole.

Notably, the production, marketing, distribution, and sale of delta-8 THC is not especially clandestine: it is out in the open and promoted in hemp industry trade publications, on social media, and in major newspapers. For example, a recent Hemp Industry Daily Article suggests:

¹ <https://www.nytimes.com/2021/02/27/health/marijuana-hemp-delta-8-thc.html>



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“About 3% of growers were cultivating hemp for delta-8 THC, a category that has gained traction over the past year.

Hemp processors have been buying up excess flower and distillate on the market to make delta-8 THC, an edible and smokable extract that has become popular among consumers.

The market for delta-8 THC has helped both growers and extractors keep their doors open as the industry struggles with low wholesale prices due to an oversupply of hemp on the market and regulatory uncertainty, which have caused a bottleneck for CBD brands.”²

While the delta-8 THC loophole is the most prominent existing loophole for psychoactive hemp products, it is not the only cannabinoid with the potential to skirt the intent of hemp laws and undermine the integrity of the regulated cannabis market. Clear regulatory direction should be given to DPH to prohibit or limit cannabinoids with psychoactive effects comparable to high-THC cannabis.

Additionally, we have previously raised concerns regarding the applicability of the 0.3% THC threshold to consumable hemp products. Food, beverage, and dietary supplement products containing less than 0.3% THC can still contain substantial psychoactive doses of THC. For example, a typical energy bar weighing 60 grams (60,000 milligrams) would be allowed to contain up to 180mg THC if limited to 0.3% THC concentration by weight, an extremely high dose which exceeds the allowable THC dose for any single product under state cannabis regulation.

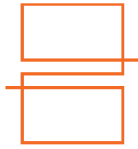
“Percentage” thresholds of THC are an inappropriate measure for foods, beverages, or tinctures, which is why DPH cannabis regulations always use a “milligram” unit of measurement for these items.

- **Issue:** The proposed definition of “THC” excludes delta-8 THC and other potentially psychoactive THC analogues sold as “hemp” under legal loopholes.
- **Solution:** Include delta-8 THC under the definition of “THC,” and also include other psychoactive analogues of THC.
- **Statutory recommendation:**

(k) “THC” and “delta-9 THC” means **includes delta-9 tetrahydrocannabinol, Chemical Abstracts Service (CAS) number 1972-08-3, delta-8 tetrahydrocannabinol, and other psychoactive derivatives or analogues of tetrahydrocannabinol as determined by the Department in regulation.**

²

<https://hempindustrydaily.com/chart-despite-buzz-around-delta-8-thc-cannabinoid-cultivation-dominated-by-cbd-cb-g/>



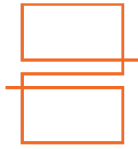
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- **Issue:** Psychoactive cannabinoids similar to, but chemically distinct from, delta-9 THC may be sold as hemp.
- **Solution:** Establish a process to prohibit the sale of hemp-based cannabinoids with psychoactive properties similar to delta-9 THC.
- **Statutory recommendation:**
 - a. The department shall review cannabinoids present in industrial hemp products in order to identify cannabinoids that exhibit psychoactive properties comparable to delta-9 tetrahydrocannabinol.
 - b. Cannabinoids that exhibit psychoactive properties comparable to delta-9 tetrahydrocannabinol shall be restricted to a concentration of 0.3 percent, or a concentration determined by the department to not produce psychoactive effects. For foods, beverages, dietary supplements, and other consumable products, the department shall set weight-based thresholds for these cannabinoids such that an industrial hemp product will not produce a psychoactive effect.
 - c. The department may prohibit the inclusion of a cannabinoid in industrial hemp products in this state based on a finding that the cannabinoid is either unsafe or has other properties that make it a danger to the public health or safety.

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- **Issue:** Food, beverage, and dietary supplement products containing less than 0.3% THC can still contain substantial psychoactive doses of THC. For example, a typical energy bar weighing 60 grams (60,000 milligrams) would be allowed to contain up to 180mg THC if limited to 0.3% THC concentration by weight, an extremely high dose which exceeds the allowable THC dose for any single product under state cannabis regulation.
 - **Solution:** Clarify that the department is required to set acceptable levels of THC and other comparable psychoactive cannabinoids in food, beverage, and dietary supplement products.
 - **Statutory recommendation:**

111925. (b) The department ~~may regulate and restrict the cap on extract and may~~ shall cap the amount of total THC concentration at the extract and product level at a level to ensure that hemp products are not psychoactive in a manner similar to cannabis products. Such restrictions may be based on the product form, volume, number of servings, ratio of cannabinoids to THC in the product, or other factors, as needed.

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- **Issue:** Section 111921 uses the word “or” where “and” is more appropriate. “Or” would allow loopholes where products that contain many milligrams of THC, but do not exceed 0.3% THC by weight, could be legally sold as “hemp.”



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- **Solution:** Use “and” rather than “or” to clarify that hemp products must meet both conditions for THC content.

- **Statutory recommendation:**

111921. An industrial hemp product shall not be distributed or sold in the state except in conformity with all applicable state laws and regulations, including this chapter and any regulations promulgated thereunder, and with documentation that includes both of the following:

(a) A certificate of analysis from an independent testing laboratory that confirms both of the following:

(1) The industrial hemp raw extract, in its final form, does not exceed THC concentration of an amount determined allowable by the department in regulation, ~~or~~ **and** the final form product does not exceed THC concentration of 0.3 percent.

3. Cannabinoid content should be required to be physically labeled on hemp products.

Hemp-derived products are often marketed and consumed as health and wellness products. Such effects, if present, are a consequence of the active cannabinoids present in the product. Clear labeling of the quantity of cannabis

- **Issue:** Current legislation does not require the concentration of active cannabinoids to be clearly labeled on industrial hemp products. Instead, this important information is allowed be relegated to a scannable bar code or QR code, where it will not be noticed or accessible by many consumers.

- **Solution:** Require the concentration of active cannabinoids to be clearly labeled on industrial hemp products.

- **Statutory recommendation:**

111926.2. (a) An industrial hemp product that is a dietary supplement, food, or beverage shall not be distributed or sold in the state without packaging and labeling on the product that includes all of the following information:

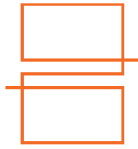
(1) A label, scannable barcode, internet website, or quick response (QR) code linked to the certificate of analysis of the final form product batch by an independent testing laboratory that provides all of the following information:

(A) The product name.

(B) The name of the product’s manufacturer, packer, or distributor, and their address and telephone number.

(C) The batch number, which matches the batch number on the product.

(D) The concentration of cannabinoids present in the product batch, including, at minimum, total THC and any marketed cannabinoids or ingredient, as required by the department in regulation.



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(E) The levels within the product batch of contaminants, as required in subdivision (c) of Section 111925.2.

(2) The product expiration or best by date, if applicable.

(3) A statement indicating that children or those who are pregnant or breastfeeding should consult with a health care professional before using the product.

(4) A statement that products containing cannabinoids should be kept out of reach of children.

(5) The following statement, "THE FDA HAS NOT EVALUATED THIS PRODUCT FOR SAFETY OR EFFICACY."

(6) The concentration of active cannabinoids in the product.

(b) The requirements of this section shall apply to products manufactured 90 days or more after the enactment of this section.

111926.3. (a) An industrial hemp product that is a cosmetic shall not be distributed or sold in the state without packaging and labeling on the product that includes all of the following information:

(1) A label, scannable barcode, internet website, or quick response (QR) code linked to the certificate of analysis of the final form extract or the final form product batch by an independent testing laboratory that provides all of the following information:

(A) The product name.

(B) The name of the product's manufacturer, packer, or distributor, and their address and telephone number.

(C) The batch number, which matches the batch number on the product.

(D) The concentration of cannabinoids present in the product batch, including, at minimum, total THC and any marketed cannabinoids.

(E) The levels within the product batch of contaminants, as required in subdivision (c) of Section 111925.2.

(2) The product expiration or best by date, if applicable.

(3) The following statement, "THE FDA HAS NOT EVALUATED THIS PRODUCT FOR SAFETY OR EFFICACY."

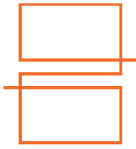
(F) The concentration of active cannabinoids in the product.

(b) The requirements of this section shall apply to products manufactured 90 days or more after the enactment of this section.

4. Integrate other clean-up language consistent with the above priorities.

We also recommend the following clean-up language that integrates multiple priorities discussed in previous sections.

- Strike "raw" hemp product, to clarify that hemp is tested in its final form.
- Test a "representative," rather than "random," sample of a hemp batch. This mirrors language from cannabis law and regulation, and is critical to integrity in the sampling process, which is in turn critical to the integrity of testing results.
- Clarify that tested samples cannot exceed THC content as specified in regulation, whether by percentage or by weight.
- Clarify that tested samples are held to the same contaminant standards as cannabis.



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111925.2. A ~~raw~~ hemp product shall not be distributed or sold in this state without a certificate of analysis from an independent testing laboratory that confirms all of the following:

(a) The ~~raw~~ hemp product is the product of a batch of industrial hemp that was tested by the independent testing laboratory.

(b) A tested ~~random~~ **representative** sample of the batch of industrial hemp contained a total THC concentration that did not exceed 0.3 percent on a dry-weight basis, **and did not exceed THC concentration of an amount determined allowable by the department in regulation.**

(c) The tested sample of the batch did not contain contaminants that are unsafe for human or animal consumption **as established in paragraph (2) of subdivision (d) of Section 26100 of the Business and Professions Code and regulations adopted pursuant thereto.**

We would be happy to continue the conversation with you, your staff and the sponsors to ensure the issues identified above are addressed. HCGA looks forward to working with you through the legislative process this year.

Sincerely,

Ross Gordon
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