



June 19, 2023

The Honorable Cecilia Aguiar-Curry
Assembly District 4
1021 O Street, Suite 6350
Sacramento, CA 95814

RE: AB 420 (Aguiar-Curry) Cannabis: industrial hemp - Oppose Unless Amended

On behalf of Origins Council, representing 800 small and independent cannabis businesses in rural legacy producing counties throughout California, most of whom are homestead and legacy cannabis cultivators, we are writing to respectfully oppose AB 420 unless amended to include greater consideration of technical, policy, and administrative issues regarding the integration of hemp into the cannabis supply chain.

These issues include 1) restricting the allowability of chemically-converted and intoxicating hemp-derived compounds in the cannabis supply chain, 2) clearly capping the quantity of permissible THC in hemp products by weight, and 3) testing parity between hemp and cannabis.

DCC Hemp Report Recommendations Are Not Incorporated Into AB 420 as Written

In January 2023, the Department of Cannabis Control published a 22-page [report](#) regarding policy recommendations for the incorporation of hemp into the cannabis supply chain (referred to hereafter as "integration"). The DCC report discusses a range of policy, administrative, and legal questions accompanying integration, and emphasizes the high degree of complexity and potentially significant implications accompanying such a policy. As of the date of this letter,

however, AB 420 continues to include only high-level, broad language regarding the allowability of integration, and does not include specific consideration of the issues identified in the DCC's report.

The Assembly Business and Professions Committee flagged this issue on April 14, describing AB 420 as a “vehicle for continuing discussions” and stating that “it is presumed that a much more substantive bill would be necessary to resolve the DCC's concerns and recommendations.” To this point, however, AB 420 has not been further amended to address these issues.

The complexity of hemp-related policy makes it particularly critical that hemp policies are carefully considered by the legislature. In 2018, Congress legalized hemp in the federal Farm Bill, but did not include any guardrails or further specification regarding high-THC or synthetic hemp derivatives, or the many ways in which hemp and cannabis can be comparable at the agricultural or final-product level. As a consequence, hemp markets have rolled out in a haphazard fashion across the nation, and a substantial gray-area market for intoxicating, cannabis-like “hemp” products has sprung up in parallel to existing state-regulated cannabis markets.¹

As many of these issues remain unresolved within the hemp market itself, we believe it is important to be particularly cautious regarding the implications of incorporating hemp into the cannabis supply chain. If California were to allow this integration without carefully considering the technical and policy consequences, we believe there is a significant risk that the integrity of California's licensed cannabis market could be severely undermined.

Below, we identify several issues that we believe should be specifically addressed as part of any integration policy.

Intoxicating, Chemically-Converted Hemp-Derived Cannabinoids Should not be Allowed into the Cannabis Supply Chain

Throughout the country, vague language in the 2018 Farm Bill has led to the widespread chemical conversion of hemp-derived CBD into delta-8 THC, THC-O, and other intoxicating synthetic and chemically-derived cannabinoids. The DCC's hemp report speaks to this dynamic and its potential impacts:²

“Cannabinoids naturally occur within and can be extracted from hemp and cannabis plants. However, cannabinoids can also be artificially created through processes such as chemical or biological synthesis, most commonly by using derivatives of hemp plants. As the type, bodily effects, and intoxication level of each cannabinoid that could be chemically or biologically synthesized from hemp derivatives is not well known, the allowance of cannabinoids other than CBD may create health concerns. One way of

¹ <https://fivethirtyeight.com/features/how-mitch-mcconnell-accidentally-created-an-unregulated-thc-market/>

² https://cannabis.ca.gov/wp-content/uploads/sites/2/2023/01/dcc_hemp-report_2023-0112.pdf

addressing this health concern is to restrict the inclusion of what cannabinoids may be derived from hemp into the commercial cannabis supply chain to only well-known formulations, such as CBD...

If hemp or hemp products entering the commercial cannabis supply chain are not limited by the existing restrictions applicable to hemp and are allowed to contain synthetic or intoxicating cannabinoids other than CBD, such as Delta-8 tetrahydrocannabinol, there would be inconsistencies with how hemp and hemp products are treated between agencies and likely cause confusion and compliance challenges. Further, the inclusion of these compounds could have market impacts.”

Utah provides an example of the consequences of failing to address these issues. The unrestricted incorporation of hemp into Utah’s medical cannabis supply chain has led many operators to chemically convert CBD into delta-8 THC, THC-O, and other synthetic and chemically-derived cannabinoids.³

“Confusion clouds Utah’s medical cannabis industry as products loaded with synthetic cannabinoids appear on shelves, indistinguishable from typical products made from the real thing: cannabinoids found in abundant amounts naturally.

Hot hemp grown in Utah is making its way into Utah dispensaries as CBD is synthesized into delta-8 THC, and a variety of other cannabinoids, which the FDA says poses “serious health risks.” Sometimes delta-8 THC is further processed into THC-O. Many other cannabinoids, reagents, and byproducts with unknown risks are being detected.

They’re aggressively marketed, made from hemp using solvents in a chemical process, but often promoted as psychoactive. Going a bit beyond simple extraction, the CBD molecule is modified to make hemp derivatives psychotropic, which requires a solvent plus an acid to serve as a catalyst.”

In addition to delta-8 THC, delta-10 THC, THC-O-acetate, and other intoxicating compounds chemically synthesized from hemp CBD, AB 420 should also prohibit the chemical conversion of hemp-derived cannabinoids into delta-9 THC. This practice has been utilized by manufacturers in Washington State in an attempt to source delta-9 THC from outside the licensed cannabis market,⁴ and carries the same considerations as other cannabinoids derived from synthetic conversion of CBD.

If intoxicating, hemp-derived, chemically-synthesized hemp cannabinoids were allowed to be integrated into the cannabis market, these chemically-synthesized compounds would likely

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<https://www.forbes.com/sites/benjaminadams/2022/10/25/utah-medical-cannabis-flooded-with-synthetic-cannabinoids-from-hot-hemp/?sh=2a3f9f036d99>

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<https://www.usnews.com/news/best-states/washington/articles/2022-02-25/washington-lawmakers-urge-halt-to-hemp-derived-thc-in-state>

come to hold a dominant position in the market: not due to the inherent qualities of these products, but rather as a form of regulatory arbitrage due to regulatory advantages hemp cultivators hold over cannabis cultivators (largely as a consequence of hemp's legal status under the 2018 Farm Bill).

Hemp and cannabis cultivation are essentially identical from an agricultural perspective; despite this, the DCC report describes in detail the ways in which cannabis cultivation is substantially more highly regulated than hemp cultivation:

*“Licensed cannabis cultivators are subject to more extensive statutory and regulatory requirements at the state level compared to hemp cultivators... licensed cannabis cultivators are subject to a far more rigorous regulatory system that is confined to California; thus, Department licensees may only conduct business with other Department licensees. Regulatory provisions span from requirements about what must and must not be incorporated into a licensed cannabis premises, the size of canopy, cultivation practices including allowable uses of pesticides, and robust laboratory testing for numerous contaminants and substances that can negatively impact human health. The use of a licensed distributor is required for quality assurance review and transportation of cannabis, and outputs may only be sold to consumers by state licensed retailers who are restricted to selling cannabis, cannabis products, cannabis accessories, and branded merchandise. Commercial cannabis license fees are typically higher than those for hemp, and cannabis is subject to taxes inapplicable to hemp. (See Cal. Code Regs., tit. 3, § 4900, et seq and tit. 4, § 15000, et seq.). **The cost of cultivating cannabis is therefore generally significantly higher than the cost of cultivating hemp.**”*

For as long as hemp is regulated lightly as a more-or-less typical agricultural product, and cannabis cultivation is heavily regulated outside of a typical agricultural framework, allowing intoxicating and chemically-derived hemp derivatives into the cannabis supply chain would threaten to replace naturally-produced cannabis THC with chemically-converted and synthetic alternatives throughout the legal cannabis market.

The Quantity of Permissible THC in Hemp Products Should be Capped by Weight, in Addition to Percentage

Federal law defines “industrial hemp” as a product containing less than 0.3% delta-9 THC. While this definition is sensible for hemp plant material, it leaves open a substantial loophole for edible, beverage, or dietary supplement hemp products to contain large, highly intoxicating 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. For beverages which weigh more and are more easily consumed, this loophole creates even more egregious skirting of the Farm Bill's intent. Some hemp

manufacturers are already selling products high in THC under this legal theory.⁵

While AB 45 granted the Department of Public Health the authority to cap THC in hemp products by weight, this authority has not yet been utilized. We believe it's critical that this issue is clearly settled within the existing hemp-only market, and even more so as a condition of allowing hemp products to be sold in the cannabis market.

Products with THC content as low as 1-3mg of THC are strong enough to cause intoxicating effects in many or most individuals with low or medium cannabis tolerances. Consequently, we have previously submitted comments to DPH and DCC recommending a limit of 0.1mg THC per container of hemp products in order to clearly ensure that a consumer purchasing one or multiple hemp products would not receive an intoxicating effect. More liberal allowances - such as 1mg or 3mg of THC per container - would easily allow individuals to purchase one or multiple "hemp" products to achieve an intoxicating effect.

Ensuring Testing Parity Between Hemp and Cannabis

Existing legislation regulating hemp products in California, AB 45 establishes a system for the testing of hemp products which is similar - but not identical - to the process for the testing of cannabis products. For example, while cannabis regulations require the testing of products in their final form, hemp regulations require testing to be performed on the hemp extract.

Pesticides, heavy metals, and other contaminants pose identical risks to consumers regardless of whether they are consumed in hemp-derived or cannabis-derived products. For this reason, hemp products sold in the cannabis supply chain should be tested to identical standards and follow an identical process (e.g. sampling procedures) to cannabis products which are sold in the cannabis supply chain.

Additionally, it is critical that hemp products are tested in their final form for potency, inclusive of intoxicating synthetic derivatives such as delta-8 and delta-10 THC, to ensure that these products do not exceed allowances for THC or other intoxicating compounds derived from hemp.

Thank you for your consideration, and we look forward to working with you on these important issues.

⁵ <https://www.usatoday.com/story/news/health/2022/10/29/hemp-delta-9-thc-regulation-explained/10595313002/>

Sincerely,



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