



April 29, 2024

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

RE: AB 2223 (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 2223 unless amended.

AB 2223 contains two separate components: 1) provisions to allow the incorporation of hemp into the cannabis supply chain and legal cannabis products, and 2) provisions to regulate the existing hemp market, and particularly intoxicating hemp products.

The majority of our comments focus on AB 2223's proposal to incorporate hemp into legal cannabis products. If not developed with extreme care, we believe this proposal risks an industry-wide shift towards chemically-converted and synthetic cannabinoids with unclear safety profiles. These loopholes would both significantly undermine small cannabis cultivators, and compromise existing quality control practices in the cannabis supply chain that provide protection to consumers. Additionally, unless and until cannabis and hemp cultivation are regulated at parity, the incorporation of naturally-occurring and concentrated delta-9 THC and comparable cannabinoids from hemp into the cannabis supply chain further threatens to

dramatically undermine licensed cannabis cultivators who are currently regulated to a much high degree than hemp cultivators growing the same plant.

In both cases, the critical nuance which must be addressed is the capacity for intoxicating hemp to be incorporated into legal cannabis products at the point of the cannabis manufacturer. This conceptual clarity is critical because while AB 2223 as written restricts hemp-derived THC within the hemp market, it also opens the door to these same products entering the legal cannabis market at the point of a licensed cannabis manufacturer.

To address these concerns, we request the following amendments:

1. Prohibit the incorporation of chemically-converted, intoxicating, hemp-derived cannabinoids into legal cannabis products. Proposed 26003(e) partially addresses this issue, but existing language is inadequate.
2. Prohibit the incorporation of naturally-occurring THC and comparable cannabinoids extracted from hemp into legal cannabis products unless and until cannabis and hemp cultivation are regulated equally as agriculture.
3. Ensure quality control for hemp products introduced into the cannabis supply chain by requiring testing at the point of distribution.
4. Promulgate integration regulations through the normal rulemaking process, rather than through emergency rulemaking.

Additionally, in the parts of the bill that regulate the existing hemp market, we request an additional amendment:

5. Decrease the allowable quantity of THC in a hemp product from 1 milligram to 0.5 milligrams.

We offer a mock-up of these proposed amendments below, followed by a more detailed explanation of why we believe each amendment is necessary.

Origins Council Proposed Amendments - AB 2223

SECTION 1. (a) The Legislature finds and declares that the legal cannabis industry faces challenges from a thriving illicit cannabis marketplace.

(b) The Legislature finds and declares that according to a 2023 report from the Department of Cannabis Control (DCC), the cultivation of cannabis and hemp are currently separately regulated with different requirements. While cannabis cultivation is exclusively regulated by the state through the DCC, hemp cultivation is regulated by both Agricultural Commissioners, the CDFA and the United States Department of Agriculture (USDA). Licensed cannabis cultivators are subject to more extensive statutory and regulatory requirements at the state level compared to hemp cultivators, and the cost of cultivating cannabis is therefore generally significantly higher than the cost of cultivating hemp.

~~(b)~~ **(c)** It is the intent of the Legislature to enhance the viability of cannabis licensees in the marketplace by pursuing measures to relieve tax and regulatory requirements, and to authorize licensees to manufacture, distribute, and sell hemp and cannabidiol (CBD) products in compliance with current law.

(d) It is in the intent of the Legislature to preserve the viability of cannabis cultivation licensees by prohibiting the incorporation of intoxicating hemp-derived cannabinoids into legal cannabis products until such time as hemp and cannabis cultivation are regulated at parity.

SEC. 2. Section 26003 is added to the Business and Professions Code, to read:

26003. (a) This division does not prohibit a licensee from manufacturing, processing, distributing, or selling products that contain industrial hemp, as defined in Section 11018.5 of the Health and Safety Code, or cannabinoids, extracts, or derivatives from industrial hemp, if the product complies with all applicable state laws and regulations, including Division 24 (commencing with Section 81000) of the Food and Agricultural Code or Chapter 9 (commencing with Section 111920) of Part 5 of Division 104 of the Health and Safety Code, as applicable.

(b) A licensed manufacturer or microbusiness may obtain industrial hemp from a person registered with the State Department of Public Health pursuant to Section 110460 of the Health and Safety Code.

(c) Industrial hemp that is purchased by a licensee shall be tracked as a separate batch throughout the manufacturing process in order to document the disposition of that hemp or hemp product. A licensee that manufactures, distributes, or sells products that contain industrial hemp shall record all transactions and relevant data, as prescribed by the department, in the state track and trace system.

(d) Industrial hemp products sold by a licensed cannabis retailer shall be subject to requirements for testing under Section 26110 of the Business and Professions Code in the same manner as cannabis products.

~~(d)~~ **(e)** A manufactured cannabis product that incorporates industrial hemp shall comply with all of the requirements for cannabis contained in this division and any regulations adopted by the department.

~~(e) (f)~~ A licensed manufacturer shall not incorporate ~~delta-9 tetrahydrocannabinol~~ **THC or a comparable cannabinoid, as defined in Section 111920 of the Health and Safety Code**, that has been converted from a hemp-derived cannabinoid **into cannabis, a cannabis product, or an industrial hemp product**. A licensed retailer or distributor shall not sell or distribute cannabis, a cannabis product, or an industrial hemp product that contains ~~converted delta-9 tetrahydrocannabinol~~ **THC or a comparable cannabinoid that has been converted from a hemp-derived cannabinoid**.

(g) A licensed manufacturer shall not incorporate THC or a comparable cannabinoid extracted or separated from hemp into cannabis or a cannabis product. A licensed retailer or distributor shall not sell or distribute cannabis or a cannabis product that contains THC or a comparable cannabinoid which is extracted or separated from hemp. This subsection shall be repealed upon the effective date of a measure passed by the Legislature that regulates cannabis cultivation under the California Department of Food and Agriculture, and that states the intent of the legislature to regulate cannabis and hemp cultivation at parity.

~~(f) (h)~~ The department shall implement a process by which a licensee that is also a registered hemp manufacturer in accordance with Article 2 (commencing with Section of 110460) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code may use the same premises.

~~(g) (1) Notwithstanding any other law, the department shall adopt and readopt emergency regulations to implement this section on or before July 1, 2025. The provisions of Section 26013 shall apply to emergency regulations adopted or readopted pursuant to this section. The emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of public peace, health, safety, or general welfare. (2) Emergency regulations for the implementation of this section shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), except that the department shall post any proposed emergency regulations on its internet website for public comment for 30 days. The department shall consider these comments in developing its regulations. The final adopted regulations shall be filed with the Office of Administrative Law for publication in the California Code of Regulations.~~

SEC. 7. Section 111922 of the Health and Safety Code is amended to read:

111922. (a) The department, through regulation, may determine or modify maximum serving sizes for hemp-derived cannabinoids, hemp extract, and products derived therefrom, active cannabinoid concentration per serving size, the number of servings per container, and any other requirements.

(b) Industrial hemp human food and beverage final form products shall be prepackaged and shelf stable and shall meet all of the following:

(1) A single serving of an industrial hemp product shall be based on the amount of food or beverage customarily consumed in one eating occasion for that food or beverage.

(2) A single serving of an industrial hemp dietary supplement in pill, tablet, or capsule form shall be one unit.

(3) A product shall not exceed five servings per package.

(c) An industrial hemp final form product shall not have a level of total THC that exceeds ~~one~~0.5 milligrams. Each serving per package shall not exceed .25 milligrams of THC. A qualified testing laboratory shall establish a limit of detection of ~~one~~ 0.5 milligrams or lower for total THC and a sample shall pass if total THC does not exceed the limit of detection.

(d) The department may adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement this section. The adoption of any emergency regulations that are filed with the Office of Administrative Law within one year of the effective date of this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Rationale for Requested Amendments

DCC Hemp Report Demonstrates Extreme Complexity of Integration of Hemp into the Cannabis Supply Chain

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 2223 either does not address, or only partially addresses, many of the issues raised in the DCC report.

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.

Cannabis and Hemp are the Same Plant, but Cannabis Cultivation is Regulated to a Much Greater Degree Than Hemp Cultivation

When cultivated for their cannabinoid content - whether THC or CBD - hemp and cannabis cultivation are essentially identical from an agricultural and land use perspective. Like traditional cultivation of cannabis which expresses high THC content, cultivation of hemp for CBD content involves the labor-intensive cultivation of feminized plants² which visually cannot be distinguished from cannabis cultivation.³

The DCC report describes in detail the ways in which cannabis cultivation is substantially more highly regulated than hemp cultivation:

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

² <https://cropsandsoils.extension.wisc.edu/hemp/>

³ https://www.ers.usda.gov/webdocs/publications/41740/15852_ages001eb_1_.pdf

*“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.**”*

The disparity between the regulation of hemp and cannabis cultivation is generally problematic, and in our view cannot be justified on logical grounds. This disparity becomes especially impactful, however, when the integration of hemp into the cannabis supply chain is considered.

Specifically, if high-CBD hemp cultivated under a much lower regulatory burden is allowed to be chemically converted to THC and incorporated into legal cannabis products, these chemically-converted products are likely to be more economically competitive than cannabis grown under a cannabis license; not due to any inherent property of the hemp plant, but due to regulatory resulting from existing disparate systems used for regulating hemp and cannabis cultivation.

Intoxicating, Chemically-Converted Hemp-Derived Cannabinoids Should not be Allowed into Legal Cannabis Products, and Proposed 26003(e) Does Not Adequately Address This

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.

AB 2223 includes significant language intended to close loopholes that allow hemp-derived THC products to be sold within the hemp market. At the same time as it closes these loopholes in the hemp market, however, AB 2223 simultaneously *opens* loopholes that allow hemp-derived THC to be incorporated into legal cannabis products at the point of cannabis manufacturing.

This issue of chemically-converted, hemp-derived intoxicating cannabinoids in the cannabis supply chain is partially addressed in AB 2223 by proposed 26003(e), which states that “a *licensed manufacturer shall not incorporate delta-9 tetrahydrocannabinol that has been*

converted from a hemp-derived cannabinoid.” However, this language is specifically confined to delta-9 THC, not to other intoxicating, synthetically-derived cannabinoids, effectively allowing cannabinoids such as delta-8 THC, delta-10 THC, HHC, THC-O-acetate, and others to be chemically synthesized from hemp and integrated into legal cannabis products.

Utah provides an example of the consequences if these loopholes are left unaddressed. 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.⁴

“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.”

If intoxicating, hemp-derived, chemically-synthesized hemp cannabinoids were allowed to be integrated into the cannabis market, these chemically-synthesized compounds would likely come to hold a dominant position in California’s 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.

To address this, 26003(e) should be amended to prohibit the conversion of hemp to “THC or a comparable cannabinoid,” rather than only to delta-9 THC. This would mirror existing language in AB 2223 designed to encompass hemp-derived intoxicating cannabinoids broadly.

Naturally-Occurring THC Extracted from Hemp Should be Prohibited From Integration Into Legal Cannabis Products Unless and Until Cannabis and Hemp Cultivation are regulated Equally as Agriculture

In addition to chemical conversions described above, it is also possible to extract naturally-occurring THC directly from hemp products and concentrate this THC into intoxicating

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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>

quantities for inclusion into hemp or cannabis products. According to a recent article from Ph.D. chemist Dr. Harold Han:

“In the hemp supply chain, there is another route to obtain D9-THC that does not require chemical conversion. This type of input, which is called Mother Liquor (MoLo) or Refined Hemp Oil, has gained a lot of traction. Hemp is defined by having <0.3% D9-THC in flower at harvest. 0.3% is a seemingly low amount, but given the hemp industry’s scale, it can still be a sizable source of THC if special processes are used to efficiently accumulate, enrich, and purify this low level THC from hemp... Demand for MoLo input has been steadily increasing, especially driven by large beverage / alcohol distributors.”⁵

As discussed above, cannabis cultivators are currently regulated to a much higher degree than hemp cultivators, despite growing the same plant in the same manner. As a result, cannabis manufacturers are paradoxically incentivized to source THC from low-THC hemp farmers - rather than high-THC cannabis farmers ostensibly licensed for this activity - unless these regulatory structures are equalized. Until the disparity between the regulation of hemp and cannabis is addressed by regulating cannabis cultivation as agriculture, it is critical that the state preserve the viability of licensed cannabis cultivators by precluding the inclusion of THC extracted from hemp into legal cannabis products.

The Quantity of Permissible THC in Hemp Products Should be Capped at 0.5mg per Container or Less

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.

This issue was partially addressed in Assembly policy committee in 111922(c) in AB 2223 , which was amended to cap the quantity of THC in a hemp product at 1mg THC. However, we still believe this quantity is too high. 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. An allowance of 1mg THC per product would easily allow individuals to purchase one or multiple “hemp” products to achieve an intoxicating effect.

To address this issue, we recommend a limit of 0.5mg THC per container of hemp products.

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Establish Parity in the Regulation of Final-Form Cannabis and Hemp Products Sold at Cannabis Retail By Requiring Hemp Products to be Integrated at the Point of Cannabis Distribution

Existing legislation regulating hemp products in California establishes a system for the testing of hemp products which is similar - but not identical - to the process for the testing of cannabis products. Notably, while cannabis regulations require the testing of products in their final form, hemp regulations require testing to be performed on the hemp extract. Additionally, cannabis products are required to be sampled for testing as part of a well-defined protocol taking place at the premises of a cannabis distributor; these distributors, in turn, are responsible for arranging for testing at a licensed testing lab, and for ensuring quality and compliance of cannabis products.

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.

In January, the Department of Cannabis Control implemented new testing requirements at cannabis labs designed to prevent fraudulent lab testing.⁶ Establishing reliable testing is equally important in the hemp and cannabis spaces, and this is best accomplished through a single testing system that begins at the point of licensed distribution.

Pursue Rulemaking for Integration Through a Non-Emergency Process

26003(g) in AB 2223 as proposed would require APA-exempt emergency regulations to be adopted and readopted for the integration of hemp into the cannabis supply chain. We oppose this provision and believe that any attempt to incorporate hemp into the cannabis supply chain should be accomplished through regular rulemaking.

The DCC hemp report emphasizes the tremendous complexity, risks, and logistical challenges of incorporating hemp into the cannabis supply chain, and this complexity warrants a full rulemaking process. Additionally, the incorporation of hemp into the cannabis supply chain is not an “emergency,” and does not justify emergency rulemaking.

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

⁶ <https://www.sfgate.com/cannabis/article/california-shut-testing-majority-pot-labs-18587629.php>

Sincerely,



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