
THIRD READING

Bill No: AB 45
Author: Aguiar-Curry (D), et al.
Amended: 9/2/21 in Senate
Vote: 27 - Urgency

SENATE HEALTH COMMITTEE: 11-0, 6/23/21
AYES: Pan, Melendez, Eggman, Gonzalez, Grove, Hurtado, Leyva, Limón, Roth,
Rubio, Wiener

SENATE AGRICULTURE COMMITTEE: 5-0, 7/1/21
AYES: Borgeas, Hurtado, Caballero, Eggman, Glazer

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 64-9, 6/1/21 - See last page for vote

SUBJECT: Industrial hemp products

SOURCE: US Hemp Roundtable

DIGEST: This bill establishes a regulatory structure in the California Department of Public Health (CDPH) for food, beverage and cosmetic products containing industrial hemp, and limits these products to containing no more than 0.3% concentration of tetrahydrocannabinol.

Senate Floor Amendments of 9/2/21 revise the definition of THC to cover any cannabinoid that CDPH determines causes intoxication, revised the prohibition on inhalable products to permit the manufacture of these products for sale in other states, and to also permit the manufacture and sale of inhalable products in California upon the effective date of legislation establishing a tax on inhalable products, and deleted provisions creating a hemp research program.

ANALYSIS:

Existing law:

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and cannabis products, and adult-use cannabis and cannabis products for adults 21 years of age and over. [BPC §26000, et seq.]
- 2) Defines “cannabis,” for purposes of MAUCRSA, as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, the seeds thereof, the resin, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Excludes “industrial hemp,” as defined in the California Uniform Controlled Substances Act (UCS Act), from the definition of cannabis for purposes of MAUCRSA. [BPC §26001 (f)]
- 3) Defines industrial hemp, under the UCS Act, as a crop that is limited to types of the plant *Cannabis sativa* L. having no more than 0.3% THC. Excludes industrial hemp from the UCS Act, and from MAUCRSA, and instead requires industrial hemp to be regulated by the California Department of Food and Agriculture (DFA), as specified. [HSC §11018.5]
- 4) Establishes a regulatory structure for the cultivation of industrial hemp, and an Industrial Hemp Advisory Board, under the DFA. Requires a grower of industrial hemp for commercial purposes to register with the county agricultural commissioner. [FAC §81000, et seq.]

This bill:

- 1) Revises the definition of “industrial hemp,” for purposes of the USC Act and for purposes of this bill, to be consistent with the definition in federal law, which is an agricultural product that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, and salts, with a Delta-9 THC of no more than 0.3% on a dry weight basis.
- 2) Defines various other terms for purposes of this bill, including the following:
 - a) “Industrial hemp product” means a finished product containing industrial hemp that is a cosmetic, food, dietary supplement, or herb; is for human or animal consumption; and, does not include THC isolate as an ingredient;
 - b) “Raw extract” means extract not for consumer use containing a THC concentration limited to that determined by CDPH in regulation; and,

- c) “THC or comparable cannabinoid” means tetrahydrocannabinolic acid; any tetrahydrocannabinol (THC), except that CDPH can exclude isomers of THC pursuant to the process in 3) below; and, any other cannabinoid, except cannabidiol, that CDPH determines causes intoxication.
- 3) Permits CDPH to exclude from, or add, one or more isomers to the definition of “THC or comparable cannabinoid” by considering scientific evidence concerning the pharmacological effects of the THC, and requires any determination to be confirmed under the Administrative Procedures Act within 18 months of the date of the initial determination.
 - 4) Requires a hemp manufacturer, in addition to any licensing and registration requirements required to be a food processing facility, cosmetic manufacturer, or pet food manufacturer, to also obtain an industrial hemp enrollment and oversight authorization from CDPH, which must be renewed annually. Requires CDPH to assess a fee to cover costs of the regulatory program.
 - 5) Permits CDPH to adopt emergency regulations to implement this bill, and to readopt any emergency regulation that is the same as, or substantially equivalent to, an emergency regulation previously adopted, limited to one readoption for each regulation.
 - 6) Exempts initial regulations regarding industrial hemp from the Administrative Procedures Act, with the exception of a 30-day public comment period. However, any regulations to impose an age requirement on the sale of industrial hemp products, or to determine maximum serving sizes must still comply with the Administrative Procedures Act.
 - 7) Prohibits a manufacturer, distributor, or seller of an industrial hemp product from including on the label of the product, or publish or disseminate in advertising or marketing, any health-related statement that is untrue in any particular manner as to the health effects of consuming products containing industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp.
 - 8) Specifies that foods, beverages, dietary supplements, cosmetics, and pet food are not adulterated by the inclusion of industrial hemp as long as the cannabinoids meet the requirements of this bill, and prohibits restricting the sale of these products based on the inclusion of industrial hemp.
 - 9) Prohibits an industrial hemp product from being distributed or sold in the state unless it has documentation that it was produced from industrial hemp grown regulated by the Department of Food and Agriculture, if sourced within

California, or licensed in accordance with the US Department of Agriculture requirements if sourced from outside the state.

- 10) Permits CDPH to adopt regulations imposing an age requirement for the sale of certain industrial hemp products upon a finding of a threat to public health.
- 11) Prohibits industrial hemp, unless explicitly approved by the federal FDA, from being included in medical devices or prescription drugs, any product containing nicotine or tobacco, or alcoholic beverages.
- 12) Permits CDPH to prohibit the inclusion of industrial hemp in other products when it poses a risk to human or animal health through regulation.
- 13) Prohibits the manufacture or sale of inhalable products, except for the sole purpose of sale in other states, until the effective date of future legislation passed by the Legislature that establishes a tax on inhalable products.
- 14) Establishes, upon the effective date of future legislation establishing a tax on inhalable products, the following requirements on inhalable products: prohibits inhalable products from being sold to consumers under 21 years of age, and prohibits inhalable products from containing any flavorings, vitamin E acetate, and certain other substances.
- 15) Permits CDPH, through regulation, to determine maximum serving sizes, active cannabinoid concentration per serving size and number of servings per container, and any other requirements for foods and beverages.
- 16) Requires a hemp manufacturer to meet all of the following testing requirements: requires industrial hemp to be tested in raw extract final form, to allow its use as an ingredient, prior to being incorporated into a product; requires testing to be completed by an independent testing laboratory, as defined; and, prohibits the hemp extract in its final form from exceeding THC concentration of an amount determined allowable by CDPH in regulation, or the mass of the industrial hemp extract used in the final form product from exceeding THC concentration of 0.3%.
- 17) Permits CDPH to regulate the cap on extract and to cap the amount of THC concentration at the product level based on the product form, volume, number of servings, ratio of cannabinoids to THC in the product, or other factors.
- 18) Prohibits a raw hemp product from being distributed or sold in this state without a certificate of analysis from an independent testing laboratory that confirms all of the following: the raw hemp product is the product of a batch of

industrial hemp that was tested by the independent testing laboratory; a tested representative sample of the batch of industrial hemp contained a total THC concentration that did not exceed 0.3% on a dry-weight basis; and, the tested sample of the batch did not contain unsafe contaminants.

- 19) Requires the testing requirements for contaminant levels to initially be the same as those for cannabis, as specified in existing law, but permits CDPH to adjust the specific contaminant levels for industrial hemp by regulation
- 20) Prohibits a hemp manufacturer from directly target advertising or marketing to children or to persons who are pregnant or breastfeeding, and limits advertising or marketing to only be displayed where at least 70% of the audience is reasonably expected to be 18 years of age or older.
- 21) Prohibits an industrial hemp product that is a dietary supplement, food, or beverage, or cosmetic from being distributed or sold in the state without packaging and labeling that includes a link to the certificate of analysis from the independent testing laboratory, the product expiration date, and a statement that the FDA has not evaluated this product for safety or efficacy.
- 22) Exempts communications between state agencies and local law enforcement officials regarding license, registration, cultivar, and enforcement information of manufacturers and retailers of industrial hemp products and raw extract from being subject to the California Public Records Act and to be considered “official information” pursuant to specified provisions of existing law.
- 23) Requires, by July 1, 2022, the Department of Cannabis Control to prepare a report to the Governor outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain.
- 24) Requires all laws and regulations pertaining to industrial hemp products to remain in effect until the adoption of regulations pursuant to the federal law that authorizes industrial hemp products. Requires CDPH to adopt new regulations as necessary pursuant to protect consumers.
- 25) Contains an urgency clause making this bill effective upon enactment.

Comments

Author’s statement. According to the author, this bill provides legal clarity and strictly regulates the manufacture, sale and use of hemp-derived cannabidiol (CBD) products in California. Notably, statute already permits and carefully regulates the manufacture and sale of cannabis-derived CBD products. However,

the laws regulating the manufacture and sale of hemp-derived CBD products in California are murky, at best. According to the World Health Organization (WHO) Expert Committee on Drug Dependence, “CBD is well tolerated, has a good safety profile, and any adverse side effects are rare and likely due to interactions with other medications a patient may be on.” In addition, the WHO has published findings that hemp-derived CBD does not lead to abuse or dependence. By establishing robust regulatory oversight of California’s hemp-derived CBD marketplace while simultaneously elevating consumer health and safety standards, including comprehensive, strictest-in-the-nation testing requirements that mirror those for cannabis, this bill ensures California plays a pivotal role in the responsible growth of the hemp industry.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, CDPH estimates costs of \$3.3 million in the first year and \$3 million ongoing to license, inspect, investigate, and enforce manufacturers of industrial hemp derived products. Actual costs would depend on the number of possible new hemp-derived cannabidiol food and beverage processors, warehouses, distributors, and cosmetic manufacturers that may seek licensure or registration under this bill.

SUPPORT: (Verified 9/8/21)

US Hemp Roundtable (source)
Alameda County Board of Supervisors
Arcadia Biosciences
California Cannabis Industry Association
California Grocers Association
California Hemp Council
Cannabis Beverage Association
Canopy Growth Corporation
Charlotte’s Web
CMG/Caliva
Cronos Group
Council for Responsible Nutrition
CV Sciences
Daytrip Beverage Company
Eden Enterprises
Imperial County
NXT Water
Ojai Energetics

Vote Hemp
Vybes

OPPOSITION: (Verified 9/8/21)

American Cancer Society Cancer Action Network
Angeles Emeralds
Big Sur Farmers Association
California Hemp Association
Cannabis Distribution Association
Coachella Valley Cannabis Alliance Network
Getting it Right from the Start
Humboldt County Growers Alliance
Long Beach Collective Association
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
San Francisco Cannabis Retailers Alliance
Santa Ana Cannabis Association
Social Equity LA
Sonoma County Growers Alliance
South Bay Cities Council of Governments
Trinity County Agricultural Alliance
United Cannabis Business Association
Youth Forward

ARGUMENTS IN SUPPORT: US Hemp Roundtable, the bill's sponsor, states that from coast to coast, consumers have made hemp CBD a highly desirable wellness product. Nielsen projects that national hemp CBD sales will more than double by 2022 (from \$1.9 billion to \$5.8 billion). However, California consumers are prohibited from purchasing these hemp CBD ingestible products, depriving them of these wellness products and the state of much-needed tax revenue. US Hemp Roundtable states that this bill will establish the most expansive hemp CBD testing program in the country, the same testing regiment for cannabis, and that consumer would have access to the test results for every product they purchase. US Hemp Roundtable states that 28 states, including New York, Florida, Texas, Virginia, New Jersey, Kansas, Nevada, and Oklahoma, all have adopted laws that allow hemp CBD to be used in food, beverages and dietary supplements. California Hemp Council states in support that CBD has been shown to be effective at promoting overall health wellness. The California Hemp Council states that from a health and safety standpoint, it strongly believes that safe and

accurately-labeled CBD products should be mandatory and available to consumers, which is why they support the provisions of this bill. The Cronos Group states that this bill is the product of a multi-year effort and robust negotiations between the Legislature, the Governor's Office, CDPH, and a variety of stakeholders, and that this bill is a critical step for the growth of the hemp/CBD market in California.

ARGUMENTS IN OPPOSITION: Getting it Right from the Start (GRS), a project of the Public Health Institute, opposes this bill, stating that hemp derivatives pose a serious threat to consumer safety as it would lead to a blanket authorization of the adulteration of food, beverages, dietary supplements, cosmetic products, and pet food with hemp-derived ingredients. According to GRS, this bill opens the door for the addition of psychoactive cannabinoids into foods, stating that while Delta-9 THC is often viewed as the only potentially hazardous compound produced by the cannabis plant, industrial hemp contains more than 100 compounds chemically related to Delta-9 THC, and thousands of additional phytochemicals. Most of these have not been researched, and so their effects when concentrated and consumed is largely unknown. According to GRS, research has found that CBD, the cannabinoid most commonly associated with hemp, in addition to certain benefits, can also have significant adverse side effects, including affecting driving ability, and could possibly have drug interactions. GRS states that there is no reason to allow the addition of a wide range of hemp derived products of unknown safety to our food supply or dietary supplements while the FDA is currently evaluating their approach to this thorny regulatory challenge. Youth Forward also opposes this bill, making similar arguments to GRS.

A coalition of organizations, including Angeles Emeralds, Long Beach Collective Association, Coachella Valley Cannabis Alliance Network, Social Equity LA, San Francisco Cannabis Retailers Alliance, United Cannabis Business Association, and Santa Ana Cannabis Association, among others (coalition), jointly submitted an oppose unless amended letter. The coalition argues first that while recent amendments added Delta-8 and Delta-10 to the definition of THC, this bill should be amended further to anticipate the rise of other synthetic THC analogs, and that authority be given to regulators to determine and restrict other intoxicating cannabinoids. Secondly, the coalition requests that the bill be amended to place a limit on THC in terms of milligrams, rather than by a percentage of the form by the product's weight, and recommends permissible amounts not exceed 0.1mg of THC per final form manufactured hemp product. Third, the coalition notes that cannabinoids derived from hemp are the same as those derived from cannabis. The coalition requests this bill be amended to require testing to be in complete parity with cannabis product testing, including final form testing. Finally, the coalition also requests that cannabis operators be permitted to incorporate hemp CBD into

the supply chain, and to require hemp-derived products to label cannabinoid content in milligrams, directly on final form products, and not solely on a QR code.

ASSEMBLY FLOOR: 64-9, 6/1/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Choi, Megan Dahle, Davies, Kiley, Mathis, Nguyen, Smith, Voepel

NO VOTE RECORDED: Chen, Gray, O'Donnell, Patterson, Petrie-Norris, Seyarto

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
9/8/21 14:29:14

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