2022 SESSION
POSITION PAPER

BILL NO: HB 1078
COMMITTEE: Health and Government Operations Committee
POSITION: SWA

TITLE: Cannabis – Regulations – Revisions

BILL ANALYSIS: House Bill 1078, as introduced, amends the definitions for "hemp product" and "marijuana," and establishes a definition for "medical cannabis." The amended definition for "hemp product" expressly excludes products containing 0.3% or greater delta-8 tetrahydrocannabinol (THC), a THC isomer that produces a similar psychoactive effect or "high" to delta-9 THC. Conversely, the definition of "marijuana" is expanded to expressly include products containing 0.3% or greater delta-8 THC. The bill also defines "medical cannabis" to include products that contain 0.3% or greater delta-8 THC. By establishing a medical cannabis definition that includes delta-8, medical cannabis licensees would be expressly authorized to cultivate, produce, and dispense products containing delta-8, if they meet testing, packaging, and labeling standards established by the Maryland Medical Cannabis Commission.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission (the Commission) supports House Bill 1078 with the sponsor's amendments to (1) eliminate changes to the definition of "hemp product" in Agriculture Article, §14-101 and "marijuana" in Criminal Law Article, §5-101, (2) amend the proposed definition of "medical cannabis" to align with the Commission's regulatory definition in Code of Maryland Regulations (COMAR) 10.62.01.01., and (3) require the Commission, in consultation with the Maryland Department of Agriculture, to study and make recommendations to the General Assembly on how to classify and regulate hemp-derived tetrahydrocannabinols.

Background

The passage of the federal Agriculture and Nutrition Improvement Act ("2018 Federal Farm Bill") legalized *Cannabis sativa L.* plants that contain less than 0.3% delta-9 THC. According to the 2018 Farm Bill, and Agriculture Article §14-101, Annotated Code of Maryland, any product derived from these plants is lawful as long as delta-9 THC does not exceed the 0.3% threshold. Neither the 2018 Farm Bill nor Maryland law address other THC isomers, including delta-8, delta-10, delta-6a10a, and THC-O-acetate, that provide a similar psychoactive effect or "high" to delta-9.

Initially, this regulatory gap did not present an issue, because delta-8 and the other THC isomers only occur naturally in the cannabis plant in very trace amounts. However, manufacturers have

identified cost-effective ways to chemically convert cannabidiol (CBD), which is not psychoactive, into delta-8, delta-10, and other psychoactive THC isomers. In order to convert CBD to delta-8 and other THC isomers, manufacturers must dissolve the CBD in a solvent, mix the solvent with acid, maintain the mixture at least 100 degrees Celsius, and stir the mixture for 24 to 48 hours.

The Problem

No quality control standards or testing requirements

There are currently no health and safety standards for receipt, storage, processing, handling, testing, or transport of these products, and no regulatory oversight to ensure product safety and quality. Absent manufacturing standards, harmful solvents and acids like Heptane, Hexane, Cyclohexane, Toluene, Sulfuric acid, Hydrochloric acid, and p-Toluene sulfonic acid are commonly used in the production of delta-8. These methods can be hazardous to the people performing the reaction, as well as the end-user.

Since there are no testing requirements, mandatory warnings, or labeling standards for these products, consumers – which include youth as there are no age restrictions - are unaware of any health and safety risks. Compounding matters, analyses performed by independent laboratories indicate that few certificates of analysis for CBD and other hemp-derived products are accurate, and that package labels often grossly misstate the amount of CBD, delta-8 THC, delta-9 THC, and other THC isomers that are present in a product. In 2021, Virginia Commonwealth University analyzed dozens of delta-8 products and found "an alarming lack of safety standards, accurate labeling, and quality control." Products they evaluated commonly were, "two, three, 10 times more concentrated with delta-8 than what the package claims."

Health and Safety Concerns

The U.S. Food and Drug Administration (FDA) and U.S. Centers for Disease Control and Prevention issued public health advisories on delta-8 in September 2021, citing the increased availability of these products and the potential for adverse events due to insufficient labeling of products containing THC and CBD. The FDA also expressed concern about the marketing of these products, including online marketing, that is appealing to children, and contamination of products due to unsafe methods of manufacturing (e.g., use of dangerous solvents and acids). The National Industrial Hemp Council and U.S. Hemp Authority have also issued warnings about the unknown safety profile and health risks of unregulated delta-8 THC. During the past year, there has been a sharp increase in the number of poison control calls, emergency department visits, and pediatric ICU admissions related to delta-8 products. The nation's poison control centers released data showing 660 exposure cases of delta-8 products between January 1, 2021, and July 31, 2021 (prior to January 1, 2021, there had only been one exposure case reported in the United States). Of these, nearly 40% of reported exposures involved pediatric patients and 20% required hospitalization.

Regulatory Landscape

Absent federal regulation or clarification as to whether delta-8 and other THC isomers created through chemical processes are lawful under federal law, a growing number of states have taken steps to prohibit or regulate hemp-derived products containing delta-8 or other THC isomers. Since 2019, at least 21 states have laws specifically governing delta-8 and/or other THC isomers. Of these, 15 states have banned the manufacture and sale of products containing more than trace amounts of delta-8 or other THC isomers. The remaining jurisdictions have required these products to meet the regulatory requirements of medical or adult-use cannabis, including, health and safety standards, product testing, and age restrictions.

Proposed Amendments

The Commission understands that the General Assembly is currently considering whether and how to legalize the use and possession of *Cannabis sativa L.* plants that contain greater than 0.3% delta-9 THC. Under House Bill 837, which was passed by the House of Delegates last week, the Commission would be responsible for studying various public health issues associated with cannabis use and making recommendations to the General Assembly. The Commission has the resources to perform a similar study and make recommendations to the General Assembly on the classification and regulation of other THC isomers. In fact, through the Cannabis Regulations Association (CANNRA), the Commission is already working closely with federal and State officials on developing best practices for classifying and regulating comparable products derived from cannabis and hemp.

For these reasons, the Commission requests a favorable report with amendments.

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This position does not necessarily reflect the position of the Maryland Department of Health or Office of the Governor.