

Letter of Information
House Bill 12
Cannabis – Sale and Distribution - Tetrahydrocannabinol Offenses
Before the House Economic Matters Committee: February 18, 2025

The Legal Resource Center for Public Health Policy – Cannabis (“LRC-C”) is a public health organization housed at the University of Maryland Carey School of Law. Our mission is to help Maryland understand cannabis legalization policy. To advance our mission, we provide legal technical assistance, develop educational resources, and conduct trainings on cannabis policy at the state and national level. To this end, the LRC-C submits this letter of information for HB 12 to provide context on federal and state laws regulating tetrahydrocannabinol (“THC”) products and the enforcement mechanisms for those laws.

THC is a cannabinoid chemical compound derived from the *cannabis sativa* plant. Several isomers (molecular arrangements) of THC are noted for their psychoactive effect, and delta-9-THC is the primary psychoactive chemical in cannabis. However, isomers such as delta-8-THC and the synthetic compound delta-10-THC also have notable psychoactive effects.¹

In 2018, the United States Congress passed the 2018 Farm Bill, which legalized the production and sale of “hemp” by removing it from the Controlled Substances Act. Under its legal definition, hemp is distinguished from cannabis by containing a concentration of no more than 0.3% delta-9-THC on a dry weight basis. Products containing high concentrations of delta-8-THC and delta-10-THC can be derived from hemp products and can have similar psychoactive effects to delta-9-THC.² As a result, a nationwide market for intoxicating hemp-derived delta-8-THC and delta-10-THC products has emerged, growing into a multi-million-dollar industry in the U.S.³ These products pose many public health challenges because they do not have to comply with the regulations for licensed cannabis products. For instance, hemp-derived delta-8-THC and

¹ Prakash Nagarkatti & Mitzi Nagarkatti, *Cannabis-Derived Products Like Delta-8 THC and Delta-10 THC Have Flooded the US Market*, UNIVERSITY OF SOUTH CAROLINA (updated Apr. 28, 2023), https://sc.edu/uofsc/posts/2023/04/conversation_cannabis_derived_products.php.

² *5 Things to Know About Delta-8 Tetrahydrocannabinol – Delta-8 THC*, U.S. FOOD & DRUG ADMINISTRATION (last accessed Jan. 27, 2025), <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc?uid=080ec40d678das16>.

³ Natalie Fertig, *Hemp and Marijuana Go to War*, POLITICO (May 21, 2024), <https://www.politico.com/news/2024/05/21/hemp-marijuana-farm-bill-00159040>.

delta-10-THC products are not subject to the state's cannabis product testing requirements for dangerous substances like heavy metals and solvents. Also, they are not restricted to age gated dispensaries like cannabis products are and can be sold in convenience stores and gas stations in packaging that appeals to children.⁴

With the legalization of adult-use cannabis in 2023, Maryland created regulations governing the production, packaging, labeling, sale, and possession of cannabis products. To address the public health issues posed by intoxicating hemp products, the Maryland General Assembly passed a law that required products containing more than 0.5 mg of THC per serving or 2.5 mg THC per package to be sold by a licensed, regulated cannabis licensee. This rule applied regardless of whether the THC involved is delta-9, -8, -10, or any other isomer.

However, a Maryland Circuit Court has enjoined full enforcement of this restriction, allowing unlicensed businesses that had already been selling intoxicating hemp products prior to July 1, 2023, to continue to do so pending the result of litigation between certain hemp companies and the state, which as of today remains unresolved.⁵ As a result, intoxicating hemp products are still sold in many convenience stores and smoke shops around the state, outside of the closely monitored and regulated market Maryland has created for adult-use cannabis sale.

The Alcohol, Tobacco, and Cannabis Commission has enforcement authority over unlicensed cannabis products and hemp products. However, the current injunction severely limits the enforcement tools available to protect the public's health.

HB 12 focuses on improving the safety of the hemp product market by addressing two elements. First, it applies the state's existing cannabis packaging, labeling, and potency restrictions to all intoxicating THC products, including intoxicating hemp derived delta-8 and delta-10 products. This important change would require child resistant and tamper evident packaging, important health warnings, and listing of important cannabinoid and allergen information. It would also prohibit packaging that is attractive to children and ultra-potent hemp-derived edible products.

Second, it would clarify and enhance the ATCC's enforcement authority. HB 12 clarifies that the ATCC may issue citations and other charging documents to parties that sell delta-8 and delta-10 products to people under the age of 21. It allows for the immediate seizure of products advertised or offered for sale as containing an unlawful amount of THC, rather than requiring that the ATCC engage in the onerous task of purchasing a suspect product, testing it in a laboratory, and returning to the offending store days or weeks later when a chemical analysis has confirmed the

⁴ See *Warning Labels for Cannabis-Derived Products*, U.S. FOOD & DRUG ADMINISTRATION (last accessed Jan. 27, 2024), <https://www.fda.gov/news-events/public-health-focus/warning-letters-cannabis-derived-products>. The archived warning letters are company-specific and include such behaviors as claiming health effects and marketing products in a manner appealing to children.

⁵ *Maryland Hemp Coalition, Inc. v. Moore*, No. C-21-CV-23-348 (Md. Cir. Ct. Oct. 12, 2023), <https://www.law360.com/articles/1732692/attachments/0>.

presence of the illegal chemicals advertised on the product's label. Additionally, it allows the ATCC to seize and destroy products that violate the new packaging, labeling, and potency restrictions.

Through the LRC-C's 2024 Community Needs Assessment and subsequent conversations with local health department officials, we have learned that the presence of intoxicating hemp products in Maryland stores and smoke shops poses a significant risk to consumers, who may not be aware of the lack of regulation of these products. Because the labeling and packaging requirements established for licensed cannabis businesses do not currently apply to unlicensed hemp sellers, packaging clearly designed to appeal to children, with bright, cartoony designs and imitations of existing snack products, proliferate. Because these products can be sold at convenience stores and gas stations, they are displayed in full view of all customers, including children. Additionally, claims about product potency are not subjected to testing to verify accuracy, and potency itself is not limited to common-sense dosages. Furthermore, individuals see intoxicating THC products for sale in convenience stores and lose faith in the efficacy of the state's rigorously enforced cannabis market, not realizing the distinction between the two product categories.

HB 12 addresses these concerns by first, applying the state's cannabis potency, packaging, and labeling requirements to intoxicating hemp products as well, and facilitating effective enforcement by clarifying and extending the authority of the ATCC.

The Legal Resource Center appreciates the opportunity to provide this letter of information. Should you wish to discuss the information in this letter or require additional information, please contact us.

Sincerely,

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(he/him/his)

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