



SOUTH MOUNTAIN MICROFARM

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March 1, 2022

Senate Finance Committee

Senator Delores G. Kelley, Chair

Senator Brian J. Feldman, Vice Chair

Subject: Strong Opposition S.B. 788 Cannabis - Regulation - Revisions

Dear Chair Kelley, Vice Chair Feldman, and Members of the Committee,

My name is Levi Sellers. I hold a seat on the MD Ag. Commission, I am an advising member of the Maryland Hemp Coalition and also an owner/operator of my families farm South Mountain MicroFARM, a state licensed hemp farm located just outside the town of Boonsboro in Washington County. Our mission is to provide products that not only improve the health of our customers, but also the community and eco-systems that surround us.

Before I begin I would like to also mention that I do not sell, produce, or consume hemp-derived delta-8 products, but I am familiar with existing research from the 1990's that highlights it's therapeutic value (<https://pubmed.ncbi.nlm.nih.gov/7776837>).

I strongly oppose SB0788, as I feel it will further the confusion between hemp and marijuana. I am in agreement that there is a need for appropriate regulations in regards to hemp derived delta-8 products and consumer safety, but this bill raises concerns.

The bill currently:

- Blurs the definition of hemp and marijuana
- Limits research
- Opens the door for a potential "Conflict of Interest"

Both the **Farm Bill and Agricultural Improvement Act of 2018** laid out a clear intention from Congress to establish a fundamental difference between hemp and marijuana.

The plain language the 2018 Farm Bill **defined "hemp"** as:

The plant "Cannabis sativa L. and any part of the plant, including the seeds thereof and **all derivatives, extracts, cannabinoids, isomers**, acids, salts, and salts of **isomers**, whether **growing or not**, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis" [7 U.S.C. 1639o(1)]

The Agricultural Improvement Act of 2018 **amended the Control Substance Act (CSA)** in two ways:

1. CSA definition of "marihuana" to **exclude hemp**
2. **All tetrahydrocannabinols in hemp** are removed from the CSA's definition of "tetrahydrocannabinols"
 - "Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946

These actions by Congress exhibit a **clear intent** to:

- Establish a **difference between “hemp”**, a federally recognized agricultural commodity **and “marijuana”**, which is still recognized federally as a Schedule 1 Controlled Substance
- **Exclude hemp-derived compounds**, like all other derivatives, extracts, cannabinoids and isomers of the plant, from the CSA control

SB0788 blurs this clarity by altering the state definition of “marijuana” to include delta-8 tetrahydrocannabinol (delta-8), a “derivative extract isomer of hemp” (as defined by Shawn Hauser of Vicente Sederberg LLP). While also attempting to include hemp derived delta-8 under the Maryland Controlled Dangerous Substances Act, which Congress removed from the CSA, federally.

Delta-8 has been further **defined** by Rick Trojan (President of the Hemp Industry Association) as a:

- **Naturally occurring** cannabinoid found in hemp just like CBG, CBC, CBN and others
- Cannabinoid of the tetrahydrocannabinol (THC) “family” of compounds commonly derived from the cannabis plant, including hemp as defined by the 2018 Farm Bill
- Double bond **isomer** of delta-9 THC

The US Justice Department reinforces this definition and the above statements in a letter from the Drug Enforcement Agency dated Sept. 2021, which is attached below for your review.

SB0788 also attempts to “alter the definition of “hemp product” for purposes of certain provisions of law governing hemp research... to exclude certain products made through a process that includes the use of hemp”. This wordage brings up red flags:

- Why **limit** credible Universities the ability to **research** a cannabinoid already discovered to have therapeutic value since the 1990’s?
- Why take **steps back** beyond the 2014 Farm Bill that allowed for state run pilot programs to research hemp?
- Why **exclude products** “made through a process **that includes the use of hemp**”?

Another concern I have is that this is an effort, by a separately defined industry, to gain control over the hemp-derived cannabinoid industry. I base this on the intentions loosely worded in the bill to include in the definition of “medical cannabis”, “any other naturally produced cannabinol derivate, whether produced directly or indirectly by extraction”; therefore placing the regulatory control of a federally recognized agricultural commodity, under the Maryland Medical Cannabis Commission (MMCC). This opens the door for a potential **“conflict of interest”**.

With this concerning overreach the regulation of even the very well known cannabinoid CBD (excluded from the CSA) could become regulated by the MMCC.

Is this truly about public safety?

I find that hard to believe given the fact that:

- The **Maryland hemp industry was never consulted** for input on this topic before a consideration for regulatory control was given to a federally-defined separate industry

If public health and safety is the main concern, why not consult the industry to be regulated for their input on how to handle the matter?

All of these issues could be resolved if the FDA would step up to the task that was granted to them by Congress. An entire **industry waits for its voice to be heard and the opportunity to collaborate** with legislators to address concerns.

The **Maryland hemp industry and responsible retailers agree that meaningful legislation and appropriate regulations are needed to ensure consumer safety**. A plan has been drafted by vested parties in the Maryland hemp industry with goals such as:

- Establish a Hemp Advisory Council to provide advice and expertise to the Maryland Department of Agriculture (MDA) with respect to plans, policies, and procedures applicable to the administration of the state hemp program. Allowing for the MDA to remain regulatory control over these agricultural products, as intended by Congress.
- Define or redefine specific terms that allow for a clarified understanding of hemp extracts, hemp extract products, and hemp-derived cannabinoids.
- Set age restrictions for hemp extracts, hemp extract products and retail establishments
- Establish guidelines, standards and regulation for hemp extract and hemp extract products in regards to:
 - Licensing
 - Distribution
 - Labeling
 - Production/processing
 - Purity/potency testing
 - Inspections
 - Reporting
 - Enforcement/violations
- Align with neighboring states to encourage interstate commerce while bolstering the regional economy and the developing hemp industry
- Clarify and distinguish the difference between hemp and medical cannabis (marijuana)

The solutions stated above could be an answer to the concerns that SB0788 aims to solve, while also helping to improve upon a struggling industry in its infancy and providing opportunities for the Maryland agricultural community attempting to survive the struggles of COVID-19.

Given the opportunity to collaborate, I believe that myself along with the associations representing the interests of the Maryland hemp industry could assist in crafting reasonable regulations.

For these reasons I urge that you oppose Senate Bill 788. Thank you for your time and consideration.

Sincerely,



Matthew W. "Levi" Sellers



U.S. Department of Justice
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, Virginia 22152

www.dea.gov

September 15, 2021

Donna C. Yeatman, R.Ph.
Executive Secretary
Alabama Board of Pharmacy
111 Village Street
Birmingham, Alabama 35242

Dear Dr. Yeatman:

This is in response to your letter dated August 19, 2021, in which you request the control status of delta-8-tetrahydrocannabinol (Δ^8 -THC) under the Controlled Substances Act (CSA). The Drug Enforcement Administration (DEA) reviewed the CSA and its implementing regulations with regard to the control status of this substance.

Δ^8 -THC is a tetrahydrocannabinol substance contained in the plant *Cannabis sativa L.* and also can be produced synthetically from non-cannabis materials. The CSA classifies tetrahydrocannabinols as controlled in schedule I. 21 U.S.C. 812, Schedule I(c)(17); 21 CFR § 1308.11(d)(31). Subject to limited exceptions, for the purposes of the CSA, the term “tetrahydrocannabinols” means those “naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant.” 21 CFR § 1308.11(d)(31). Thus, Δ^8 -THC synthetically produced from non-cannabis materials is controlled under the CSA as a “tetrahydrocannabinol.”

The CSA, however, excludes from control “tetrahydrocannabinols in hemp (as defined under section 1639o of Title 7).” Hemp, in turn, is defined as “the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [Δ^9 -THC)] concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. 1639o(1).

Accordingly, cannabinoids extracted from the cannabis plant that have a Δ^9 -THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of “hemp” and thus are not controlled under the CSA. Conversely, naturally derived cannabinoids having a Δ^9 -THC concentration more than 0.3 percent on a dry weight basis is controlled in schedule I under the CSA as tetrahydrocannabinols.¹

¹ The Agricultural Improvement Act of 2018 (AIA), Pub. L. 115-334, § 12619, amended the CSA to remove “tetrahydrocannabinols in hemp” from control. See 21 U.S.C. § 812, Schedule I(c)(17). As noted, however, “hemp” is defined to “mean the *plant Cannabis sativa L.* and *any part of that plant*, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. 1639o (emphasis added). Thus, only tetrahydrocannabinol in or derived from the cannabis plant—not synthetic tetrahydrocannabinol—is subject to being excluded from control as a “tetrahydrocannabinol[] in hemp.”

If you have any further questions, please contact the Drug and Chemical Evaluation Section at DPE@usdoj.gov or (571) 362-3249.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terrence L. Boos'.

Terrence L. Boos, Ph.D., Chief
Drug & Chemical Evaluation Section
Diversion Control Division

cc: Birmingham Office