2022 SESSION
POSITION PAPER

BILL NO: SB 788
COMMITTEE: Judiciary
POSITION: SWA

TITLE: Cannabis – Regulations – Medical Cannabis Definition and Study

BILL ANALYSIS: Senate Bill (SB) 788, as amended, will: (1) revise the proposed definition of "medical cannabis" to align with the Maryland Medical Cannabis Commission's (the Commission) regulatory definition in Code of Maryland Regulations (COMAR) 10.62.01.01., and (2) 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.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission supports SB 788 with the proposed amendment to restrict youth access as outlined below.

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.

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 in the House of Delegates, 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.

Proposed Amendment

Delta-8 and delta-10 THC products are widely available online and at retail establishments without any age restrictions. The products are not kept behind a counter and do not require ID checks. Therefore, in an effort to protect youth from these potentially dangerous and intoxicating products, the Commission proposes the following amendment to prohibit a person from distributing, purchasing for sale, or selling products containing delta-8 or delta-10-tetrahydrocannabinol to an individual who is less than 21 years of age.

On page 4, after line 17, insert:

"**Article – Criminal Law**

10-108.

(A) A PERSON WHO DISTRIBUTES PRODUCTS CONTAINING DELTA-8- OR DELTA-

10-TETRAHYDROCANNABINOL, INCLUDING A PERSON LICENSED UNDER TITLE 16, TITLE 16.5, TITLE 16.7, OR TITLE 17 OF THE BUSINESS REGULATION ARTICLE, MAY NOT DISTRIBUTE, PURCHASE FOR SALE, OR SELL A PRODUCT CONTAINING DELTA-8—OR DELTA-10-TETRAHYDROCANNABINOL TO AN INDIVIDUAL UNDER 21 YEARS.

(B) IN A PROSECUTION FOR A VIOLATION OF THIS SECTION, IT IS A DEFENSE THAT THE DEFENDANT EXAMINED THE PURCHASER'S OR RECIPIENT'S DRIVER'S LICENSE, OR OTHER VALID IDENTIFICATION ISSUED BY A GOVERNMENTAL UNIT, THAT POSITIVELY IDENTIFIED THE PURCHASER OR RECIPIENT AS BEING AT LEAST 21 YEARS OLD.

(C) ANY WEBSITE OWNED, MANAGED, OR OPERATED BY A PERSON WHO DISTRIBUTES OR SELLS A PRODUCT CONTAINING DELTA-8- OR DELTA-10-TETRAHYDROCANNABINOL SHALL EMPLOY A NEUTRAL AGE-SCREENING MECHANISM THAT VERIFIES THAT THE USER IS AT LEAST 21 YEARS OLD, INCLUDING BY USING AN AGE-GATE, AGE-SCREEN, OR AGE-VERIFICATION MECHANISM.

(D) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING:

(1) $300 FOR A FIRST VIOLATION;

(2) $1,000 FOR A SECOND VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE FIRST VIOLATION; AND

(3) $3,000 FOR EACH SUBSEQUENT VIOLATION OCCURRING WITHIN 2 YEARS AFTER THE PRECEDING VIOLATION.".

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.