

**THE STATUS OF THE MARYLAND HEMP INDUSTRY
&
IMPLICATIONS OF CHANGING THE LEGAL STATUS OF Δ⁸ (DELTA-8)**

An Economic Impact Report
Prepared by the
Maryland Healthy Alternatives Association
For
Presentation to the Maryland Legislative Finance Committee
Honorable Senator Brian Feldman and the
Honorable Representative Pina Melnick

My name is Daniel Simmonds, President of the Maryland Healthy Alternatives Association. We are pleased to have this opportunity to provide testimony that describes our understanding of the Hemp industry in Maryland, and its personal and economic impact across a growing market of consumers who are currently free to seek locally sourced natural alternatives to traditional pharmaceutical products. Our membership represents statewide growers and manufacturers of Hemp and CBD products (hereinafter Hemp) that have developed a profitable Hemp industry in Maryland whose impact extends beyond our political jurisdiction.

Our Association is chartered as a 501 (c) (6) organization that **directly represents and supports Hemp farmers in Maryland**. However, the products provided by our members find their way into a broad and vast consumer market.

And while our association **does not represent them**, these diverse points of sale service tens of thousands of consumers and hundreds of businesses. Well over 10,000 tobacco and other age-gated retail sales located in service stations, big-box stores, corner groceries, and over 128 specialized “smoke” and “vape” shops. Additionally, there are hundreds of locations where thousands of professional health and wellness providers such as acupressure, acupuncture,

massage therapy, chiropractic care and traditional physical therapy use and sell Hemp enhanced products.¹

In our advocacy role, we are dedicated to assisting and supporting corporate and consumer members, as well as the general public, to make informed choices about providers, products and to understand the political and economic pressures that challenge the Hemp marketplace.

However, the key advocacy role of our Association is to represent our membership to our regulating bodies as to what legislation and economic development is required to help support our CBD industry. We also recognize our chartered responsibility to hold both ourselves, industry and regulatory agencies accountable for their actions, or inactions.

Report Objectives: The specific objective of this report is to provide regulatory agencies and entities with a better understanding of:

- The significant investment of 'mom-and-pop,' racial, ethnic and gender minorities who makeup Hemp growers/retailers/processors,
- The potential destruction of and adverse economic impact to the Maryland Hemp market.
- The scope and impact of Hemp product use in Maryland,
- The unique inter-relationship between DELTA-9 and DELTA-8 products,

There are at least 11,850 individual, licensed, age-gated points of sale for tobacco and or e-cigarette, and vape products in Maryland where consumers can purchase Hemp-based products.² Our experience shows, and it's reasonable to assume, that many of these licensed locations offer a broad range of other products containing Hemp. Additionally, there are over 3,300 licensed massage therapists at hundreds of locations who provide traditional and alternative care that, with high probability, use and sell Hemp products. The animal health market, both in big box and at veterinary clinics, has embraced CBD products, and their owners and pets rely on the beneficial results.

Since the 2018 'Farm Bill', P.L. 115-334 & Maryland House Bill 698] over 60 Maryland producers acquired licensure and established agricultural production

¹ DOH Licensing Boards & Commissions; [://health.maryland.gov/Pages/licensing-boards.aspx](https://health.maryland.gov/Pages/licensing-boards.aspx), retrieved November 8, 2022,

² "2022 Annual Report of Tobacco Retailers," Alcohol & Tobacco Commission, Andrew Waters, Director of Research Division, November 9, 2022.

of Hemp. In-state licensed farmers have over 6,580 acres in field production across the state. Additionally, there are over 202,775 sq. ft of greenhouse production. The Maryland Hemp market production profile shows that over 69% of gross products are used for CBD extraction, 17% for fiber, 5% for grain and 8% for seed.³

The Maryland Hemp industry represents over \$15.5M in estimated capital investment for the 62 licensed growers. Maryland's Hemp market yields an estimated \$370M in product sales.⁴

It is unclear how many Hemp products are purchased outside the state and enter the Maryland market. Although Maryland law requires all importers to document purchases from a producer either licensed by Maryland, or by another State, acquiring these data are difficult and imprecise. Additionally, there are documented glitches in this data entry process using the METRC system. The best defense against such importation challenges is to continue to support and encourage the existing Maryland Hemp producers to bank on Maryland 'home-grown' products.

Regional market impact is unknown. There is little data on commerce with adjacent states and regional sales. We are beginning to collect this information from members, state agencies and private data providers. We do know national sales data collected from various sources show ongoing sales of CBD products were over \$4.17B in 2022, projected to increase to \$4.4B by 2024.⁵

Besides the regional competition, our members face the challenge of working with 'Big Cannabis' and large scale operators. The Hemp industry currently provides Cannabis producers use with an array of minor cannabinoids including Delta 8. These products are used to enhance the Cannabis products offered to the public. It is estimated by the Association that over 6,500 acres of Hemp, mainly for CBD/Delta 8 production, is grown annually for the Maryland Cannabis trade. Nationally, the main profit center of the immature Hemp industry is the supply of Delta 8 to the Cannabis industry estimated at 75% of total output.⁶

³ Maryland Department of Agriculture, Jim Drews, provided in interview November 7, 2022

⁴ Market Report, Maryland Hemp Market

<http://headset.io/industry-reports/a-high-level-overview-of-the-maryland-cannabis-market>, Retrieved November 8, 2022

⁵ National CBD sales statistics, Statista Inc., Retrieved November 8, 2022.

www.statista.com/topics/6262/cbd-retail-in-the-united-states/#dossierContents__outerWrapper

⁶ Market Report, "Hemp Shrinkage," PanXchange, quoted by J.Grillo, correspondence dated October 12, 2022.

Banning Delta 8 would terminally cripple the Maryland market and impact the national Hemp industry from which it could never recover.

Another potentially impacted sector, and a significant market concern, is from the tobacco industry. In a recently cited report 41% of tobacco quitters successfully replaced tobacco with Hemp-based smoking products.⁷

Historically, Hemp has been a significant product of the early Americas.

“Until 1883, 90% of all paper in the world was made with hemp fiber. This included paper money, books, news print, maps, stocks, bonds and books. The first draft of the Declaration of Independence was written on Dutch hemp paper and the second draft was completed on July 2, 1776.”⁸

Besides augmenting the THC medicinal market and personal care products, Hemp is 100% green, used in food and dairy products, flour, feed and fuel, paint, construction materials, and the fabric industry. The Hemp industry is providing nationally impacting products to millions of consumers. There are over 25,000 products cataloged as Hemp-based.⁹

Because of the complexity and unknowns of the inter-related markets, there may be significant unintended consequences from well-intended regulations. Your actions could easily terminate the Maryland Hemp growers as well as those in adjacent states.

Before the disruptive regulation of 1937, Hemp’s traditional medical uses have been known for over 8,000 years. Hemp products were pervasive in North America in the 17th century, and derivatives commonly used in medicinal preparations labeled as “Hemp” until regulation effectively banned production.

The Marihuana Tax Act of 1937, Pub.L. 75–238, 50 Stat. 551, enacted August 2, 1937, was a United States Act that taxed cannabis, and promulgated restrictions on its growth, possession and use. History shows that the legislation was proposed and rapidly pushed through Congress by a few highly influential business leaders who represented the powerful special interest groups in competing industries. Even the American Medical Association attempted to

⁷ Cannabidiol reverses attentional bias to cigarette cues in a human experimental model of tobacco withdrawal, www.ncbi.nlm.nih.gov/pmc/articles/PMC6099309/, Retrieved November 8, 2022.

⁸ History of Industrial Hemp, [/www.treefreehemp.com](http://www.treefreehemp.com), Retrieved November 8, 2022

⁹ Many Uses of Hemp, [/www.hempaware.com](http://www.hempaware.com), Retrieved November 9, 2022

reverse the legislation once they realized that the legislature purposely used the name 'Marihuana' in place of Hemp to hide the actual reason for removing Hemp from the marketplace.¹⁰

The prohibition act lasted 81 years and disrupted the growth by many farmers who depended on this cash crop. Historical evidence of the importance of Hemp is shown by the action in 1943 when a Federal program (Hemp for Victory) encouraged the growth of over one million acres of Hemp for the war effort. The Controlled Substances Act of 1970, repealed the 1937 law, but operationally banned the production of industrial hemp because the DEA refused to issue tax stamps. The USDA final rule published October 31, 2019, established the U.S. Domestic Hemp Production Program.

History provides adequate evidence that the Hemp industry has undergone significant damage by the imposition of misguided legislation by rule makers who were subject to powerful special interest groups.¹¹

As part of the post prohibition era The "Farm Bill," 2018, P.L.115-334 legalized hemp, (*Cannabis sativa L.*) and derivatives with concentrations not to exceed 0.3 percent of delta-9-tetrahydrocannabinol (THC). However, there is nothing within the bill that prohibits deriving Delta 8 from hemp and enhancing the products with the compound.¹² Supporting this is a panel of the U.S. Court of Appeals for the Ninth Circuit stated in March 2022 in a 3-0 ruling, "this Court will not substitute its own policy judgment for that of Congress."¹³ We believe the Maryland study group outcome and subsequent regulatory actions should reflect the same.

This has led to changes in policy which continue to evolve. One indicator of change is the first major policy reformation where the FDA recognized three food products derived from hemp seeds (which are CBD/THC free) through the Agency's Generally Recognized as Safe (GRAS) process.¹⁴

¹⁰ The history of Hemp ([//cannabis.net](https://cannabis.net)) retrieved November 3, 2022

¹¹ "Why was Hemp Banned in the U.S?., Retrieved November 6, 2022
[//greathemp.net/why-hemp-was-banned-in-1937/](https://greathemp.net/why-hemp-was-banned-in-1937/)

¹² "What is the Difference Between Delta 8 and Delta 9", Retrieved November 9, 2022,
www.discovermagazine.com/sponsored/what-is-the-difference-between-delta-8-thc-and-delta-9-thc

¹³ AK FUTURES LLC,, v. BOYD STREET DISTRO, LLC,, D.C. No. 8:21-cv-01027- JVS-ADS, 9th Circuit Court of Appeals, March 18, 2022, Retrieved from
[://cdn.ca9.uscourts.gov/datastore/opinions/2022/05/19/21-56133.pdf](https://cdn.ca9.uscourts.gov/datastore/opinions/2022/05/19/21-56133.pdf) November 18, 2022,

¹⁴ FDA CFSAN Update, Retrieved November 8, 2022,
[//www.fda.gov/food/cfsan-constituent-updates/fda-responds-three-gras-notice-hemp-seed-derived-ingredients-use-human-food](https://www.fda.gov/food/cfsan-constituent-updates/fda-responds-three-gras-notice-hemp-seed-derived-ingredients-use-human-food)

In addition, the FDA has identified that its highest concern is “the marketing of CBD products that make unsubstantiated therapeutic claims to prevent, diagnose, mitigate, treat, or cure serious diseases, but have not obtained new drug approvals.” ¹⁵

We agree with and fully support and promote the FDA concerns and observations for the need of qualitative laboratory analysis and adoption of standardized manufacturing processes.

We also join with the FDA recommendations in public testimony for robust public input in decision and policy making processes, which include by extension, other Federal agencies, state regulatory bodies and all members of the related industries. ¹⁶

The FDA maintains regulatory oversight of food/beverages, drugs and cosmetics (FD&C Act) which contain hemp-derived products. However, there is no specific regulatory jurisdiction for CBD in consumable hemp products not covered under the FD&C regulations. ¹⁷

And although CBD is not currently an approved ingredient in supplements, foods, and beverages, the extraction of minor cannabinoids from Hemp products with less than the 0.3% THC and their use to enhance Cannabis products from state-approved venues is not further Federally regulated, and its legality varies from state to state.

There are 15 states that restrict the sale and use of Delta 8 products, with another 6 states pending legal action. ¹⁸

This confusing status and patch-work of state actions negatively impacts investment in the significant portion of the Hemp vertical market. Our Hemp growers provide valuable minor cannabinoid extracts to the main-stream, state-licensed Cannabis industry. To reduce this confusion and uncertainty it would benefit all stakeholders if states would recuse themselves from such regulation and relinquish such action to the FDA.

¹⁵ IBID

¹⁶ IBID

¹⁷ Federal Regulations for CBD, Retrieved November 9, 2022, [//www.sleepline.com/is-cbd-regulated-by-the-fda/](https://www.sleepline.com/is-cbd-regulated-by-the-fda/)

¹⁸ “What is the Difference Between Delta 9 and Delta 8”, Retrieved November 9, 2022, www.discovermagazine.com/sponsored/what-is-the-difference-between-delta-8-thc-and-delta-9-thc

In typical business case scenarios Hemp growers and processors who extract Delta 8 constituents are providing these extracts to licensed Cannabis producers. Members of the Hemp industry that engage in these processes and subsequent sales do not produce end-products that claim to diagnose, cure, mitigate, treat or prevent various diseases, in violation of the FD&C Act. This brings into question who, if any, entity has clear jurisdiction over the extraction process and sale of extracts to state licensed businesses. It is our Association's contention that the FDA should act on this question in lieu of various states. We support a positive, regulatory approach to Delta 8 and not the imposition of another era of prohibition and denial of the marketplace.

A critical public health component that must be implemented across the two industries is the standardization of testing and measurement processes for Cannabis and Hemp products that are currently absent. We strongly encourage state and Federal regulators to take a leadership position in developing and promulgation of laboratory standards and practices.

It has been the current trend of Big Cannabis to propose, both publicly and privately to key decision makers, that the Delta 8 marketplace be relegated to their purview, and that the very long well established Hemp industry be excluded, or eradicated.

Our Association suggests that a cooperative venture between the Hemp and Cannabis market entities be promoted. We feel that such an approach would best serve the public and industry stakeholders. We are concerned for all parties that well-intended but misguided actions that damage the long-term traditional Hemp market by legislation or regulation could clearly be considered in restraint of trade. Such actions could result in costly and disruptive legal action among all parties, with serious unintended consequences for the public.

In 2019, according to New Frontier Data, the national hemp industry already produced \$1.1 billion in revenue, with \$2.6 billion expected by 2022. After the direct industrial revenue, increases in employment rates are the most noticeable economic effect. As of 2019, legal cannabis created 211,000 full-time jobs in the US.¹⁹

¹⁹ "The Economic Impacts of Hemp Regulation Globally"
[//canxchange.eu/blog/the-economic-impacts-of-hemp-regulation-globally-kly5r](https://canxchange.eu/blog/the-economic-impacts-of-hemp-regulation-globally-kly5r) Retrieved November 2, 2022

In comparison, the Maryland cannabis sales totaled about \$370M in cannabis sales from January through August 2021.²⁰

In contrast, Maryland Hemp wholesale sales are estimated at \$1.4M, as cited in a 2022 USDA report.²¹

In a Baltimore Sun article, Hope Wiseman, owner of Mary & Main dispensary, stated that “it would take millions of dollars for someone to break into today’s tightly regulated [Cannabis] market,” but said, “...she knows folks of color who are building businesses around delta-8.”²²

To better identify racial, ethnic and gender diversity in the Maryland Hemp market, our Association intends to conduct an internal review of owner and distributor profiles in Maryland. We are confident that this survey will show a more equitable minority distribution than in the Cannabis market.

In fact, the stinging lack of diversity in the initial Maryland medical cannabis licensure has been highlighted by claims of racial, ethnic and gender disparity resulting in extensive press coverage and legal actions.

Only 10% of the program’s investors are minorities, according to a recent study. In an attempt to achieve some level of parity the MMMC opened licensing in 2019, but the effort has been mired in litigation and investigations.²³

We are highly concerned that the dismantling of the Hemp infrastructure in Maryland will have a further negatively disproportionate effect on the minority stakeholders who could not achieve Cannabis licensure. Moving Hemp under the Cannabis licensing process is the equivalent of the effective elimination of small farmsteads in lieu of massive agricultural conglomerates. In Maryland,

²⁰ “Market Report,” Retrieved November 8, 2022, [//headset.io/industry-reports/a-high-level-overview-of-the-maryland-cannabis-market](https://headset.io/industry-reports/a-high-level-overview-of-the-maryland-cannabis-market)

²¹ USDA NASS report, [://www.nass.usda.gov/Statistics_by_State/Maryland/Publications/News_Releases/2022/2022-MD-Hemp-Press-Release.pdf](https://www.nass.usda.gov/Statistics_by_State/Maryland/Publications/News_Releases/2022/2022-MD-Hemp-Press-Release.pdf), retrieved November 10, 2022

²² Giacomo Bologna, May 12, 2022, “There is a Rapidly Expanding Unregulated Competitor...Delta 8, Baltimore Sun, retrieved November 18, 2022, [//www.baltimoresun.com/business/bs-bz-delta-8-maryland-20220512-uwdu3gyhcfahfc7jyc7hwakxre-story.html](https://www.baltimoresun.com/business/bs-bz-delta-8-maryland-20220512-uwdu3gyhcfahfc7jyc7hwakxre-story.html)

²³ Article from Marijuana Business Journal, The Baltimore Sun, retrieved November 18, 2022 from [//mjbizdaily.com/maryland-medical-marijuana-market-ascends-but-diversity-issues-linger/#:~:text=Only%2010%25%20of%20the%20program's%20investors%20are%20minorities%2C,fall%20hired%20outside%20consultants%20to%20conduct%20two%20investigations%3A](https://mjbizdaily.com/maryland-medical-marijuana-market-ascends-but-diversity-issues-linger/#:~:text=Only%2010%25%20of%20the%20program's%20investors%20are%20minorities%2C,fall%20hired%20outside%20consultants%20to%20conduct%20two%20investigations%3A), Retrieved November 7, 2022,

Hemp producers are essentially traditional outdoor farmers, not highly evolved and vertically integrated technical growers of the Cannabis trade.

Because of the demand of the Cannabis market for Delta 8 enhancements, the majority of these traditional farmers produce Hemp products whose primary cash-crop is the extracted Delta 8 components. One viewpoint we suggest is that this free marketplace could easily be up-ended by the instigation of biased law and regulation by well-funded MSOs who favor removing the Delta 8 processing from the traditional Hemp farmers, and vesting it within their own organizations.

Maryland is not alone. Other states are grappling with Delta 8 concerns. In lieu of clear decisive FDA guidance in this matter, and looming concerns over potential market upheaval, over a dozen States have reviewed their options to act or stay silent at this time. The similar concerns as presented in this document have resulted in Tennessee, Colorado, Kentucky and Virginia all failing to address the issue, and Maryland and Minnesota at least enacting age-gated sales of CBD enhanced products.²⁴

Additionally, there are many reported instances of enforcement agencies in other states criminally citing and closing retail outlets who sell CBD derived products as though they were under Schedule 1 controls, only to have these actions reversed in litigation. Clearly, the states that are early adopters of potentially over-reaching regulatory approaches potentially face long-term litigation with eventual consequential damage awards.

The economic impact of actions which ban CBD production by the Maryland Hemp industry would create an instant estimated capital loss of over \$15M and \$350M of annual sales. This action would functionally terminate over 60 growers and affect hundreds of active and profitable businesses. For growers and cultivators, this would result in an effective business disenfranchisement of this class of owner/operators; for retailers and end users, the loss of product options.

The loss of Maryland sales tax revenue from these establishments is estimated to exceed \$21M of non-recoverable funds. In addition, there would be a corresponding reduction in corporate taxation. We also estimate the State

²⁴ Article from CBD Thinker, [//cbdthinker.com/is-delta-8-thc-legal/](https://cbdthinker.com/is-delta-8-thc-legal/), retrieved November 10, 2022

paying out well over \$2M of unemployment compensation and related social service benefits and economic security payments.

In addition to these recurring losses for industry and government, there will be the loss of startup capital, potential calling in of loans, bankruptcy filings and the personal impact to staff and families.

In summary, we focus on these key messages:

- Our Association is seeking an equitable outcome. We seek cooperation not competition in a supportive venture with Big Cannabis MSOs.
- We ask that you defer precipitous actions which, although well intended, may have significant negative consequences for this complex and not fully understood marketplace.
- We offer guidance, input, and access to our constituent data, and finally,
- We welcome your support for the century-old Hemp farming community that is a unique and valuable member of the Maryland marketplace.

Thank you for accepting our testimony in this important matter.