



July 30, 2021

Assemblymember Aguiar-Curry

Capitol Office, Room 5144

P.O. Box 942849

Sacramento, CA 94249-0004

RE: AB 45 (Aguiar-Curry), Oppose

Dear Assemblywoman Aguiar-Curry:

For the past three years, the United Cannabis Business Association and a majority of the cannabis industry has genuinely attempted to engage your office regarding the development of robust legislation that will establish a framework for hemp-derived cannabinoid products. Since the beginning, our advocacy has been driven by the belief that prioritizing public health, promoting the viability of the hemp industry and supporting California's legal cannabis industry can not only coexist, it must be the foundation of any policy empowering hemp-derived cannabinoid products intended for human consumption to enter the market.

The previous bills you introduced, AB 228(2019) and AB 2028(2020), failed to incorporate our amendments intended to protect the public's health and ultimately neither of those bills were passed. This year, the bill that

was reintroduced, as with previous years, failed to consider the many concerns that have been articulated by UCBA as well as various other stakeholders. Upon raising these issues with Senator Allen, sponsor of SB 235, there was a consensus that the bill needed to be more robust and was placed on the inactive file.

We have continued to outreach to your office in good faith to try and engage with you and the proponents of AB 45. We are deeply disappointed in the lack of substantive conversation surrounding these concerns or willingness to understand the deeper, highly complex intersectional issues - including public health and the viability of the cannabis industry - that will be impacted by AB 45 in its current form. As such, on behalf of the undersigned organizations, representing over 1,300 cannabis licensees from all parts of the cannabis supply chain, regretfully, our only remaining option moving forward is to amend our previous position of “Oppose Unless Amended” to now “Fully Opposed.”

Here is a brief overview of our previous concerns:

- In 2019 we shared our concerns around the lack of safety testing requirements of these hemp products. Shortly after, we saw the role that untested CBD products played in the vaping crisis as reported by the [Associated Press](#). The importance of complete parity in safety testing and label requirements as cannabis products cannot be overstated. AB 45 undermines public health by allowing testing to take place at the ingredient level and not in its final form as an end consumer product. Without true final form testing (meaning the final consumer form ready for retail sale) there is no way to ensure the packaging and other ingredients when combined do not create a health hazard as seen with the vaping crisis.
- In 2020 we raised concerns about loopholes that would allow for psychoactive hemp cannabinoids to be sold into the market without age restrictions. Now, we are seeing a growing number of reports regarding psychoactive hemp products, such as Delta 8 and Delta 10 entering the market. Currently, 17 states have moved to prohibit these products and another four are pursuing similar actions. AB 45 has instead chosen to allow these psychoactive hemp cannabinoids to be sold, including to minors. While we appreciate Delta-8 and Delta-10 being included in the 0.3% THC calculation, a percentage-based limit does not guarantee any sort of milligram cap or limit. With more than 100 known cannabinoids, of which only a small handful have been researched, there is no way to know what newly discovered cannabinoids or their derivatives may enter the market. This is a clear threat to public safety. We have proposed an amendment to address this concern by empowering the regulating agency with a mechanism to determine and list cannabinoids which are non psychoactive and authorized prior to being sold into the market. AB 45 leaves the door wide open for ill intentioned operators to exploit this loophole. Unless the intent of AB 45 is to allow for loopholes to sell psychoactive hemp cannabinoids to minors, it is imperative that we have a proactive mechanism to address these concerns as we’ve recommended.

Additionally, in a recent discussion with the U.S. Hemp Roundtable (the proponents of AB 45), they rejected the proposal to amend the bill's language that would adopt appropriate and sensible labeling standards, including listing the quantity of hemp cannabinoids such THC and others in milligrams as opposed to the proposed percentage based requirement. The lack of transparency to the consumer is alarming and deeply concerning. This is a reasonable and purposeful policy proposal that was recently included in New York State legislation for hemp cannabinoids, which requires products to list cannabinoid content in milligrams on the label. This policy was openly supported by the US Hemp Roundtable, however they now appear to lack the same level of concern for the residents of California.

Furthermore the bill does not address enforcement in any meaningful way. If a hemp product contains THC in quantities above the legal limit it is technically an illegal cannabis product. However, the enforcement of which is not clearly defined. Who is responsible for this kind of oversight and who is going to pay for it?

Cannabis products are taxed in part to provide revenue needed for this kind of enforcement. AB 45, by comparison, does not tax these products nor does it provide additional enforcement funding to ensure operators aren't diverting cannabis into the illicit market under the guise of hemp. Enforcement of illegal cannabis by itself has proven to be a resource intensive endeavor and, if we are to add additional burdens to various enforcement agencies, there must be a mechanism that defines how the state and local governments will contend with these new challenges. AB 45 fails to reconcile this issue or provide a pathway that will guide any legal actions pertaining to future violations.

We are committed to future engagement and collaboration that will work toward effective and sensible hemp cannabinoid legislation. As stated previously, we believe that prioritizing public health as well as promoting the legal cannabis and hemp industries can coexist so long as there is a true commitment to these principles from the beginning. We regret that AB 45 does not meet those goals and we respectfully oppose the bill. We look forward to continuing this dialogue and working together in the future to achieve those goals.

Below, we have included our previous amendments once again for your consideration.

As written, AB 45 poses substantial risks to both public health and the integrity of the legal cannabis framework. We believe the following amendments are essential to addressing major gaps within the current hemp framework.

Issue #1:

In late February, the New York Times published a detailed article on the rise of delta-8 THC "hemp." The article describes how delta-8 THC, derived via chemical synthesis from hemp CBD, produces psychoactive effects near-identical to delta-9 THC, and is sold across the country under a claimed federal legal loophole.

This legal loophole is reaffirmed within AB 45 and SB 235 as written. By defining "THC" specifically as "delta-9 tetrahydrocannabinol, Chemical Abstracts Service (CAS) number 1972-08-3," AB 45 and SB 235 specifically exclude delta-8 THC and all other psychoactive analogs, thus allowing them in hemp and final form hemp products.

Other THC-comparable cannabinoids, including delta-10 THC, exo-THC, D9-THCP, HHC, and THCV, can also be sold as hemp under the same claimed legal loophole. We anticipate that other psychoactive analogs are likely to become prevalent in the future, absent some statutory mechanism that clearly excludes them.

Recommendation #1: Legislation should be amended to explicitly prohibit delta-8 THC and all other psychoactive analogs from sale as "hemp." Additional authority should be given to regulators to determine and restrict other intoxicating cannabinoids with properties similar to delta-9 THC. THC and its intoxicating analogs should be prohibited in hemp products beyond trace amounts, and prohibited from being mentioned in the marketing of final form hemp products.

Issue #2: THC limits in final form manufactured hemp products should be quantified in terms of milligrams, rather than by a percentage of the final form product's weight. We recommend that permissible amounts not exceed 0.1mg THC per final form manufactured hemp product.

As drafted, Section 111925 (a)(3) has the unintended consequence of allowing higher amounts of THC in hemp products than in the cannabis industry's BCC and DPH regulations, which require all edible cannabis products to contain no more than 100mg THC per package. The unintended potency problems stem from confusion caused by the 0.3% designation, which was only intended to define the permissible potency of commodity hemp during farming, not describe permissible potencies of final form products which will differ in weight according to their size and form factor.

AB 45 should call out maximum THC thresholds for final form manufactured hemp products in terms of milligrams, rather than by a percentage.

Recommendation #2: Legislation should be amended to include a milligram-based limitation of 0.1mg THC per final form manufactured hemp product, which would assure that a person purchasing one or multiple final form hemp products would not consume a psychoactive dose of THC. This limitation should also apply to other THC-comparable psychoactive cannabinoids, such as delta-8 THC, delta-10 THC, exo-THC, D9-THCP, HHC, and THCV.

Additionally, legislation should clarify that the practice of marketing the permissible THC content in hemp products should be banned to avoid opportunistic and misleading product claims.

Issue #3: Cannabis and hemp products should be tested at parity for pesticides, heavy metals, and other contaminants.

Adulterants in cannabis products and hemp-derived products pose identical risks to consumer health, and should be tested to the same standards. Hemp-derived products can only be distinguished from cannabis products by the relative absence of THC in a hemp-derived product, but the level of THC does not impact whether pesticides, solvents, or heavy metals are safe for human consumption.

AB 45 and SB 235 as written do not include testing parity with cannabis. Hemp products are proposed to be tested at the raw extract level, rather than the final product level (where cannabis is tested), a process that would fail to detect contamination in the manufacturing or packaging process, and which would preclude testing of imported final-form hemp products. Additionally, AB 45 and SB 235 as written propose repealing testing parity upon federal regulation, and grant DPH the discretion to test cannabis and hemp at different standards.

Recommendation #3: Hemp and cannabis should be tested at parity, which includes:

- Testing hemp for contaminants at the final form product level, rather than the raw extract level.
- Durable parity, which is not rolled back based on a change in federal regulations.
- The authority to change hemp testing standards should not be distinct from the authority to change cannabis testing standards. Contaminants in either products in either category have identical impacts on human health, and subject to the same contaminant thresholds in perpetuity.
- Parity in batch size limitations and representative sampling requirements.

Issue #4: Hemp-derived CBD and other cannabinoids should be able to enter the cannabis supply chain at the distribution and retail level.

The current language of AB 45 and SB 235 does not guarantee a pathway for cannabis operators inside the BCC regulated ecosystem to incorporate and sell hemp-derived cannabinoids and products. In order to promote a fair and sustainable BCC regulated cannabis industry, legal cannabis operators should not be excluded from access to, or the selling of, hemp-derived cannabinoids. As currently worded, the regulated cannabis industry would be curiously and uniquely excluded from participation in the sales of hemp products, unlike any other businesses in the state.

Recommendation #4: Cannabis operators should be allowed to incorporate non-intoxicating hemp-derived cannabinoids and other ingredients in their supply chain immediately following passage. Cannabis retailers should be allowed to sell hemp products that are produced outside the cannabis supply chain.

Issue #5: To inform and protect public health, cannabinoid content should be labeled in milligrams, directly on final form products, and not on a QR code.

Current legislation does not require cannabinoid content be directly labeled on industrial hemp products. Instead, this important information can be omitted and relegated to a scannable bar code or QR code, where it may not be noticed or accessible to consumers.

Additionally, potency labeling on final form hemp products should describe cannabinoid content in milligrams, not in percentage. Describing THC content as a percentage of the final form product's weight requires that the consumer weigh every different product and then do complex math calculations to determine how many milligrams it contains. Current state law and regulation for cannabis requires these same cannabinoids to be labeled in milligrams on cannabis products, which is the clearest and most accurate way to delineate potency. Imagine if prescription strength ibuprofen was measured in milligrams, but over-the-counter ibuprofen was to be measured as a percentage of the particular product's weight. Surely this would be harder for consumers to understand than sticking with a single form of measurement for both.

Recommendation #5: To limit consumer confusion and protect public health, require cannabinoid content to be listed in milligrams directly on the product label.

We are aware of how dense this hemp and cannabis subject matter can be, and are extremely grateful for your leadership in taking on these complex issues. We are happy to continue the conversation with you, your staff, and the sponsors to deepen your understanding of these issues, and ensure that everything above is fully grasped. We look forward to working through the legislative process with you, and thanks again.

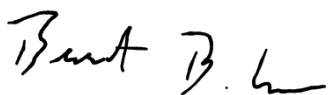
Sincerely,



Jonatan Cvetko
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United Cannabis Business Association



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Long Beach Collective Association



Brent Buhrman
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