

August 2, 2022

Department of Agriculture & Consumer Services
Task Force to Analyze Industrial Hemp Extracts
and Other Substances Containing Tetrahydrocannabinol
Intended for Human Consumption
Attn: Hon. Parker Slaybaugh, Deputy Secretary
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

U.S. Hemp Roundtable’s further written public comments addressing “whether any statutory or regulatory modifications are necessary to ensure the safe and responsible manufacture and sale of industrial hemp extracts and other substances containing tetrahydrocannabinol that are intended for human consumption, orally or by inhalation, in the Commonwealth of Virginia”

Summary: In addition to overbroad age limitations that apply to intoxicating cannabis products and nonintoxicating hemp products alike, HB 30 contains novel and onerous labeling and packaging requirements of concern. While these standards may be appropriate for regulation of intoxicating products, they are both burdensome and unnecessary for nonintoxicating hemp. The solution is a commission—with representation from across the hemp and cannabis industries—that would make recommendations on how to appropriately assess intoxication in products. Subsequently, a stricter regulatory regime can be applied to intoxicating products.

The U.S. Hemp Roundtable—the hemp industry’s leading national advocacy organization—previously submitted initial public comments regarding HB 30’s age restrictions for hemp extract, food with hemp extract, and ingestible or inhalable hemp substances with any amount of THC. While the Roundtable agrees that age limitations for intoxicating cannabis products are both appropriate and necessary, such restrictions should not be applied to nonintoxicating hemp products, as they are in HB 30.

Along with its initial comments, the Roundtable appreciates the opportunity to submit these further written comments. The age limitations in HB 30 apply to intoxicating cannabis products and nonintoxicating hemp products alike—based solely on whether a substance contains **any amount** of THC. The Roundtable agrees that intoxicating products should be regulated in the same manner as adult-use cannabis, but these strict controls should not be broadly applied to nonintoxicating hemp products, simply because they contain some amount of THC.

The Roundtable urges Virginia to instead adopt the better policy approach being utilized in states like Colorado: creation of a commission to intentionally study the topic of intoxicating compounds and make recommendations on science-based standards for assessing what levels of these compounds are likely to cause intoxication, and what restrictions are appropriate. The commission should have broad representation from across the hemp and adult-use cannabis industries—

regulators, manufacturers, refiners, retailers, laboratories, consumer nonprofit organizations, and adult-use patients—which is missing from this Task Force. A fully representative commission will ensure that all stakeholder viewpoints are captured.

An intentional focus on accurately determining intoxication levels would inform whether other strict requirements of HB 30 should even apply to nonintoxicating hemp products. First, HB 30 exempts the mandatory regulations to be promulgated by the Board of Agriculture and Consumer Services from most of the provisions of Virginia’s Administrative Process Act (section 2.2-4000 *et seq.*). In the Roundtable’s view, the exemption is inconsistent with ensuring that hemp extract manufacturers, distributors, and consumers have adequate opportunities to take part in the regulatory process. Additionally, the exemption means that there is no procedure for contesting charged violations of the Board’s regulations or appealing an adverse decision.

Second, HB 30 requires that any substance intended for human consumption, orally or by inhalation, that contains THC use child-resistant packaging. Only two other states have a similar requirement. Indeed, the vast majority of states does not require child-resistant packaging for lawful hemp products because, by nature, they are nonintoxicating and do not pose the same safety issues as adult use cannabis products. Child-resistant packaging also increases costs significantly for manufacturers and distributors. This is a clear example of a regulation that is very appropriate for intoxicating compounds, but unfair and unduly burdensome for safe, healthy, nonintoxicating products.

Third, HB 30 mandates that any substance containing THC and intended for human oral consumption or inhalation cannot be sold or offered for sale unless it is accompanied by a certificate of analysis produced by an ISO/IEC 17025 accredited independent laboratory that provides the THC concentration. In effect, the law appears to require not only that THC testing for hemp products be conducted by an ISO/IEC 17025 accredited laboratory, but also that an actual certificate of analysis be presented at the time of sale. It is possible that HB 30 intended to allow presentment of a certificate of analysis through a QR code or URL link on a product’s label or packaging, which states routinely allow. But HB 30 is vague, possibly leading to regulatory uncertainty and marketplace confusion. If, on the other hand, HB 30 requires a paper certificate of analysis, the Roundtable strongly urges the Task Force to reject this requirement, as it will place onerous burdens on retailers. We are also not aware of any other state with the same or similar requirements.

The Roundtable again expresses its gratitude to the Task Force for focusing on the important topic of the safe and responsible manufacture and sale of THC-containing hemp extracts in Virginia, and thanks the Task Force for the invitation to submit written comments.