

Introduction

Chairwoman McClain and Ranking Member Porter, thank you for the opportunity to submit testimony on hemp intoxicants like Delta-8 THC that pose a grave public health threat to all Americans, especially our young people.

I am a former three-time White House ONDCP appointee currently serving as the President and CEO of Smart Approaches to Marijuana (SAM), a non-partisan non-profit that I co-founded in 2013 with former Congressman Patrick Kennedy. SAM advocates for a health-first approach to marijuana policy, aiming to reduce marijuana use and prevent the commercialization of a new addiction-for-profit industry. I also serve as the President and CEO of the Foundation for Drug Policy Solutions, an organization we launched last year that works to address the overdose and addiction epidemic. We are concerned by the unintended consequences of the 2018 Farm Bill and urge Congress to take action to close the loophole that legalized hemp intoxicants like Delta-8 THC. This will be an important step to protect public health and reduce cannabis-related harms.

Background

As you know, the 2018 Farm Bill legalized hemp, a species of the cannabis plant that can be converted into an industrial-grade fiber. Hemp and smokable marijuana are separate cannabis plant species that look identical and have nearly identical chemical compositions, with the legal difference centered around the amount of tetrahydrocannabinol (THC), the psychoactive compound of the cannabis plant. Hemp's current legal definition, as first defined in the 2018 Farm Bill, requires THC to fall below 0.3% by dry weight, while marijuana is often above that threshold.

As you may also know, both species of cannabis contain hundreds of cannabinoids including CBD, a non-psychoactive component of the cannabis plant. Through a chemical process called isomerization, the CBD in hemp can be converted into Delta-8 THC, a psychoactive component that is nearly identical to the Delta-9 THC in marijuana plants. Like Delta-9 THC, Delta-8 THC is addictive, intoxicating, impairing, and harmful to mental and physical health.¹ The legalization of hemp inadvertently legalized Delta-8 THC and myriad similar compounds that are comparable to traditional marijuana.

Despite the original intention of lawmakers, because Delta-8 THC is derived from hemp, not marijuana, the federal government treats it as a legal product. A ruling from the Ninth Circuit Court of Appeals in May 2022 (*AK Futures v. Boyd Street Distro*) affirmed that Delta-8 THC

¹ Office of the Commissioner. (2022). 5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC. U.S. Food and Drug Administration. <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

legally falls within the definition of hemp, as defined in the 2018 Farm Bill.² Delta-8 THC is neither prohibited nor regulated at the federal level; it is often sold as an unregulated product at the state level in gas stations, convenience stores, and other similar places accessible to young people.

Given the ambiguity surrounding hemp intoxicants like Delta-8 THC, several states have taken action to regulate or ban the sale of Delta-8 THC products. As of July 2023, fifteen states have banned Delta-8 THC and twelve states have expressly legalized Delta-8 THC. Delta-8 THC remains legal and unregulated in the remaining states.³

Health-Related Harms of Hemp Intoxicants Like Delta-8 THC

The use of hemp intoxicants like Delta-8 THC poses numerous risks to the health and well-being of individuals, particularly children. In fact, there is no federal age limit for buying Delta-8 THC products, meaning children are legally allowed to purchase it without parental approval in commercial establishments, such as gas stations, as well as online. There are no advertising or packaging requirements for products that contain Delta-8. According to federal law, it is perfectly legal to sell Delta-8 THC-laced gummy bears to a ten-year-old at a convenience store. This dangerous and broken system urgently needs to be repaired.

Despite their lack of action, the FDA recently warned, “Delta-8 THC products have not been evaluated or approved by the FDA for safe use and may be marketed in ways that put the public health at risk.”⁴ Much remains unknown about Delta-8 THC products, which is why legislators must work to resolve the loophole created in the 2018 Farm bill.

Children are particularly vulnerable to obtaining Delta-8 THC because manufacturers market it to young people. Delta-8 THC is being infused into brownies, cookies, gummies, and other candies, for example, and the packaging is being made to look like traditional candies and snacks. A child may think they are purchasing candy but unknowingly consume an entire package of intoxicating Delta-8 THC-infused edibles.

² Ninth Circuit rules Hemp-Derived Delta-8 THC products are federally legal, creating broad implications for the hemp, marijuana and insurance industries – Insights – Wilson Elser. (2022, June 13).

https://www.wilsonelser.com/news_and_insights/insights/4579-ninth_circuit_rules_hemp-derived_delta-8_thc.

³ USA Today. (2023, June 6). Is delta-8 THC legal? Here’s where (and why) the hemp product skirts marijuana laws. USA TODAY. <https://www.usatoday.com/story/news/health/2023/04/29/is-delta-8-legal/11530893002/>.

⁴ Office of the Commissioner. (2022). 5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC. U.S. Food and Drug Administration. <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

The screenshot shows the CBD Supply MD website. The header includes the logo 'CBD SUPPLY MD THE CBD EXPERTS!', a search bar, and links for 'LOGIN / REGISTER' and 'CART / \$0.00'. The navigation menu lists 'DELTA-8 PRODUCTS', 'DELTA-9 PRODUCTS', 'THCA PRODUCTS', 'DELTA-10', 'DELTA-11 PRODUCTS', and 'HHC PRODUCTS'. Below the menu, there are links for 'THC TOP SELLERS', 'FLOWER PRE-ROLLS', 'BY BRAND', 'CBD PRODUCTS', 'VAPE DEVICES', 'WHOLESALE', 'STORE LOCATIONS', and 'CONTACT US'. The main content area displays 'DELTA 8 / DELTA 8 THC GUMMIES' with a list of product categories on the left. The featured product is 'Skittles Wild Berry DELTA-8 400mg 20 count', priced at '\$25.00 - \$65.00'. It has a '764 Sold This Month' badge and a description: 'Fruit-flavored candy infused with premium delta-8 THC. Try the best tasting candy.' The product is categorized as 'THC SKITTLES EDIBLES' and includes details: '(20) Pieces Per Bag', '400mg DELTA-8 THC Per Skittles Package', and '20mg THC Per Piece'.

Delta-8 THC Candy Legally for Sale Online

Young children are obtaining these products, either from their peers at school or as is often the case in children under 6, are finding their parents’ stashes and consuming the products without the understanding that these products are different from normal candy. From 2017-2021, exposure to THC edibles among kids younger than six increased by 1,375%.⁵ Those who are concerned about the youth use of marijuana should be equally concerned about the sale and use of hemp-derived Delta-8 THC.

National Poison Control Centers received 2,362 exposure cases of Delta-8 THC products between January 1, 2021 and February 28, 2022: 82% of unintentional exposures affected pediatric patients and 45% of patients requiring health care facility evaluation were pediatric patients.⁶ The Blue Ridge Poison Center at UVA Health in Virginia saw a fivefold increase over the past year in calls for adverse reactions to Delta-8 THC.⁷ In Tennessee, researchers have seen a threefold increase.⁸ It is no exaggeration to say that Delta-8 THC products are killing our kids. According to the FDA, a case of pediatric exposure to Delta-8 THC resulted in death.⁹

These outcomes were especially noticeable in Arkansas, where SAM helped pass legislation banning Delta-8 THC. “Since delta-8 is marketed as more or less a ‘safe’ alternative to illegal substances, people haven’t been as careful when it comes to storage and who can get into it,”

⁵ Tweet, M. S., Nemanich, A., & Wahl, M. (2023). Pediatric Edible Cannabis Exposures and Acute Toxicity: 2017–2021. *Pediatrics*, 151(2). <https://doi.org/10.1542/peds.2022-057761>.

⁶ Office of the Commissioner. (2022). 5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC. U.S. Food and Drug Administration. <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

⁷ Swensen, E. (2022, July 21). Blue Ridge Poison Center sees major spike in THC-Related calls. UVA Health Newsroom. <https://newsroom.uvahealth.com/2022/07/21/blue-ridge-poison-center-fivefold-increase-delta-8-thc-calls/>.

⁸ Tennessee Poison Center seeing “alarming” increase in calls about delta-8 and children. (2023). Wbir.com. <https://www.wbir.com/article/news/health/thc-delta-8-poison-control-calls/51-afb9edbb-db26-44e4-a762-1f12cd2384f7>.

⁹ Office of the Commissioner. (2022). 5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC. U.S. Food and Drug Administration. <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

said Dr. Mason Jackson, an emergency medicine resident physician, “we’ve seen a significant number of children who require hospitalization or even time in intensive care due to the effects of ingesting delta-8.”¹⁰ Similarly, Dr. Alison Oliveto, the director of the Center for Addiction Research at the University of Arkansas for Medical Sciences, said, “Kids can purchase these because it’s unregulated,” adding that the symptoms associated with Delta-8 include, “Hallucination, delusions, psychotic breaks in vulnerable individuals.”¹¹

Recommendations

The public health effects of the legalization of hemp intoxicants have been disastrous. SAM recommends that Congress close the loophole that was inadvertently created in the 2018 Farm Bill, which allows the production and sale of Delta-8 THC. Just as numerous states have responded to its health-related harms by banning hemp intoxicants, we urge Congress to take similar action.

Conclusion

Thank you for allowing me to submit testimony on this matter before this Committee. Recognizing the harms posed by Delta-8 THC, which was inadvertently legalized by the 2018 Farm Bill, we urge Congress to close the loophole that allows its production and sale. Those who voted to legalize hemp did not intend to legalize recreational marijuana. However, in effect, that is what this loophole has allowed. By clarifying the Farm Bill and banning Delta-8 THC, legislators will be able to improve public health and protect vulnerable populations.

Sincerely,

Dr. Kevin Sabet, PhD

Smart Approaches to Marijuana (SAM)

¹⁰ Faulk, K. (2023, February 24). Is delta-8 dangerous for kids? Flourish. <https://blog.prismahealth.org/is-delta-8-dangerous-for-kids/>.

¹¹ McCoy, M. (2023, March 7). Loophole getting Arkansans high off chemically-altered marijuana product. KARK. <https://www.kark.com/news/working4you/loophole-getting-arkansans-high-off-chemically-altered-marijuana-product/amp/>.