



Kansas Bureau of Investigation

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Opposition Testimony on House Bill 2706
Before the House Standing Committee on Federal and State Affairs
Robert Jacobs, Executive Officer
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Chairman Barker and Members of the Committee:

Thank you for the opportunity to provide opposition testimony on HB 2706, which proposes to change certain provisions of the Commercial Industrial Hemp Act.

K.S.A. 2-3901 defines delta-9 tetrahydrocannabinol concentration as *the combined percentage of delta-9 tetrahydrocannabinol and its optical isomers, their salts and acids, and their salts of their acids, reported as free THC*.

HB 2706 appears to change this definition by replacing the word *combined* with the word *total* and removing the language, “**the optical isomers, their salts and acids, and salts of their acids reported as free THC from the definition**”.

Tetrahydrocannabinol (THC) is a naturally produced chemical in the plant Cannabis Sativa L. The majority of the THC found in fresh plant material is THC acid, and only upon the application of heat or time will the THC acid transform to delta-9 THC. By replacing the word *combined* with the word *total*, an interpretation could be made that only the delta-9 THC must be under 0.3%, and ignores the additional THC acid in the plant, **which is NOT the actual percentage of all THC in the hemp plant or hemp product**.

The KBI is concerned this could violate the 2018 Farm Bill by eliminating the THC acid from the measurable percentage of delta-9 THC. The 2018 Farm Bill requires that each states’ hemp plan include a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced.

An additional consequence stemming from the modification to the definition of “tetrahydrocannabinol concentration” in final hemp products would be the legalization of delta-8 THC and other delta THC chemicals, such as delta-10 at any concentration in final hemp products. Furthermore, although not reported in Kansas as of yet, Hexahydrocannabinol (HHC), an analog of THC, has very similar effects as other THC. It produces feelings of euphoria and stimulation, altered visual and auditory perception, changes in heart rate and body temperature, and altered

headspace and cognition. HHC is reported to be more potent than delta-8, but slightly less potent than delta-9¹.

On December 2, 2021, Kansas Attorney General Derek Schmidt, provided an opinion on the legality of products containing delta-8, Attorney General Schmidt opined that:

“The Uniform Controlled Substances Act, K.S.A. 65-4101 et seq., defines and classifies the substances that are made unlawful by Article 57 of the Kansas Criminal Code. Substances designated as Schedule I controlled substances include certain "cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation." Among the Schedule I cannabinoids are tetrahydrocannabinols, which are defined as follows:

tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)”²

By eliminating the “tetrahydrocannabinol concentration” in final hemp products reference to K.S.A. 65-6235, HB 2706 would potentially allow the presence of delta-8 THC, delta-10 THC, or any other free THC, except delta-9 THC, in an **unlimited amount** within final hemp products.

Section Two of HB 2706, would propose to change the provisions of K.S.A. 2-3908 by allowing the following hemp products to be manufactured, marketed, sold, or distributed to **ANY** person in Kansas:

- A. Cigarettes containing industrial hemp
- B. Cigars containing industrial hemp
- C. Chew, dip, or other smokeless material containing industrial hemp
- D. Teas containing industrial hemp
- E. Liquids, solids, or gases containing industrial hemp for use in vaporizing devices and
- F. Any other hemp products intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas food, drug, and cosmetic act, K.S.A. 65-636.

HB 2706 would cast away all of the cautionary restrictions put on these specific hemp products. Both marijuana and hemp come from the plant Cannabis Sativa L. **There is currently no reliable method for law enforcement officers to discern between a cigarette, cigar, or vape pen containing industrial hemp versus marijuana.**

Additionally, HB 2706 proposes to remove the prohibition on the marketing, sale, or distribution of industrial hemp buds, ground floral hemp material, ground industrial hemp leaf material, or any

¹ [What is HHC? Hydrogenated Cannabinoids & Apocalypse-Ready THC \(dailycbd.com\)](https://www.dailycbd.com/what-is-hhc-hydrogenated-cannabinoids-apocalypse-ready-thc/)

² [AGO 2021-004 \(ks.gov\)](https://ks.gov/ago/2021-004)

extract from industrial hemp with a delta-9 tetrahydrocannabinol concentration greater than 0.3% *that will be further processed.*

This provision would allow the hemp farmers to sell industrial hemp buds, ground industrial hemp floral material, and ground industrial hemp leaf material directly to the public rather than to a processor. The provisions of K.S.A. 2-3908, which prohibit the sale of ground hemp and hemp buds to anyone other than a hemp processor were created to ensure public safety. Selling ground hemp and hemp buds could result in an increase in the attempted extraction of THC from the hemp by bad actors who are not licensed processors.

This poses a considerable health and public safety risk as THC extraction from Hemp currently done by licensed processors in Kansas occurs through either a carbon dioxide (CO₂) or an Ethanol process. Other states have observed THC extraction done through less expensive and less controlled processes, which are flammable and explosive.

The purpose of the Kansas Department of Agriculture Hemp Research Program and the Commercial Industrial Hemp Act was to create a viable agricultural industry in Kansas and not create a potential threat to public safety. Furthermore, if an individual, who is not a licensed processor, has access to industrial hemp buds, ground industrial hemp floral material, and ground industrial hemp leaf material attempts to extract THC from the material; the individual would be in violation of K.S.A. 2-3907.

HB 2706 will have a detrimental effect on KBI Forensic Science Laboratory operations. Marijuana is a schedule 1 controlled substance in Kansas. As previously mentioned, because of the inability of law enforcement officers in the field to distinguish between hemp and marijuana, a rise in requests for examination and quantitation of hemp/marijuana is anticipated.

Currently the KBI only has the capability to quantitate the THC level in Hemp up to 0.3%, and only when in a vegetative form. The KBI does not currently quantitate the THC level in any other forms of evidence such as edibles, gummies, oils, etc. The KBI believes the passage of HB 2706 is anticipated to have the following effect on the KBI Forensic Science Laboratory:

- Consumable costs associated with the request for chemical analysis of Hemp products will significantly increase.
- The fats and sugars contained in some edibles and gummies would cause excessive wear to the testing equipment resulting in the need to replace laboratory equipment on a more frequent basis.
- The need to test all suspected THC samples and the considerable increase in the length of analysis for these items will have a global effect on the testing and reporting of all drug evidence submissions significantly increasing the overall turnaround time.
- Staffing resources will need to be increased in order to research, test, and implement new methods to quantitate this projected increase in submissions.
- The court system will be potentially delayed due to anticipated increases in criminal case submissions coupled with the delay in forensic laboratory testing.

Although the KBI did not receive a fiscal impact request regarding HB 2706, a similar fiscal impact request was received with the proposal of SB 263 in 2018. The KBI anticipates the initial fiscal

impact of HB 2706 would be approximately \$990,200 with on-going annual cost of approximately \$640,500.

The State of Kansas has a significant amount of money, time, and effort invested in the safe regulation and success of the commercial industrial hemp industry. It is unclear what HB 2706 intends to “fix” with the changes proposed to the Commercial Industrial Hemp Act.

The KBI urges the committee to consider the potential public safety concerns accompanying HB 2706 and not pass the bill out of committee. Thank you.