

**Testimony in Opposition to House Bill 2706
to the House Committee on Federal and State Affairs
by Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
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Good morning, Chairman Barker and members of the committee. I am Kenneth Titus and I serve as Chief Counsel for the Kansas Department of Agriculture (KDA). Thank you for this opportunity to provide testimony in opposition to House Bill 2706.

House Bill 2706 makes significant changes to the current Commercial Industrial Hemp Act, K.S.A. 2-3901 *et seq.* Along with changing the definition of delta-9 tetrahydrocannabinol (delta-9 THC) concentration, the bill also modifies the existing prohibition and restrictions on the sale of certain hemp products.

The prohibition and restrictions on certain products were developed in coordination with Kansas law enforcement entities for very specific public safety reasons, and KDA defers to the judgement of those entities when it comes to regulating specific products. However, the changes to the definition of delta-9 THC concentration and the elimination of KDA's discretion under the Kansas Food, Drug and Cosmetic Act, K.S.A. 65-636 *et seq.* (FDCA), and the Commercial Feeding Stuffs Act, K.S.A. 2-1001, *et seq.* (Feed Law), will be detrimental to the state's hemp producers and public health overall.

The proposed amendment to the definition of delta-9 THC concentration may cause KDA's commercial industrial hemp plan, approved by the U.S. Department of Agriculture (USDA), to become non-compliant with federal law, and potentially risk revocation of state authority to regulate industrial hemp producers within Kansas. The proposed amendment would strike "*and its optical isomers, their salts and acids, and salts of their acids, reported as free THC*" from the definition of delta-9 THC concentration [emphasis added].

In contrast to the proposed language, the federal definition of hemp includes "any part of that plant, including the seeds thereof and *all derivative, extracts, cannabinoids, isomers, acids, salts, and salts of isomers*, whether growing or not with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis"¹ [emphasis added]. Further, USDA regulations state that their references to delta-9 THC concentration and total THC in regulation are not intended to affect the statutory definition of hemp.² USDA regulations also require testing of "total delta-9" THC.³

¹ 7 USC 1639o(1).

² 7 CFR 990.1

³ 7 CFR 990.3

The practical effect of such an amendment would be that KDA would be limited to measuring only delta-9 tetrahydrocannabinol, and not its precursor tetrahydrocannabinolic acid (THCA), as is currently required by USDA regulation.⁴ This inconsistency in law could lead to direct federal regulation of hemp producers in Kansas.

In addition to concerns with the state approved hemp plan, the limitation on related compounds, such as the currently popular delta-8 compound, would change what is legally allowed in hemp products that are regulated by our food safety and animal feed programs. This change could create potential conflicts with future U.S. Food and Drug Administration (FDA) requirements. Both the FDCA and Feed Law are primarily FDA-based programs administered by KDA at the state level and the provisions in K.S.A. 2-3908 (Section 2) were intentionally included to provide maximum flexibility to the state in the regulation of hemp products intended for human or animal consumption. It is widely acknowledged that the FDA has been slow to provide clear guidance on hemp products, especially those that contain cannabidiol (CBD) and other derivatives of hemp, such as delta-8. The sale and distribution of hemp products is an arena that is marked by many ambiguities in state and federal law, but the existing references provide some clarity to the regulated community regarding products intended for consumption by humans and animals. KDA believes that it is best to maintain this flexibility until federal law becomes clearer.

While it has been argued that federal law, because it only references delta-9, does in fact allow delta-8 compounds at an unregulated level, the Kansas Attorney General has determined that, under state law, since delta-8 is an isomer of delta-9, the total THC measurement is limited to 0.3 percent, regardless of the specific THC compound being measured.⁵ In the absence of specific federal authorization to limit how THC is measured, KDA cannot support a change in this standard at this time.

Thank you for the opportunity to testify in opposition to House Bill 2706. KDA believes that passage of this bill may jeopardize the state's authority to regulate industrial hemp producers and may create additional ambiguity in how hemp products intended for human and animal consumption are regulated in the state.

⁴ 7 CFR 990.1

⁵ Kansas Attorney General Opinions 2021-4.