



VIRGINIA
**Cannabis
Control
Authority**

2023 CONSUMABLE HEMP PRODUCT REPORT:

A Comparative Examination of the Commonwealth’s Approach to Hemp-Derived Product Regulation with Other State Approaches, Updates on Regulatory Activity at the Federal Level, and Recommendations for Future Legislative Considerations

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Executive Summary

In the last few years, the market for edible hemp products and hemp products intended for smoking (collectively, “consumable hemp products”) has exploded in popularity due in large part to their accessibility and potential to produce intoxicating effects comparable to the “high” experienced from marijuana. The public health risks posed by these products are numerous and grave. They include, but are not limited to, minors’ relatively unhindered access to the products, unwitting consumption of the products because of their resemblance to other commonly consumed non-intoxicating goods, and the potential ingestion of products contaminated by residual solvents, microbials, and pesticides. These dangers have spurred state-level efforts to regulate the consumable hemp products market.

Virginia has made significant regulatory changes to address the challenges presented by consumable hemp products. An examination of other states’ efforts to limit the risks associated with consumable hemp products reveals other regulatory strategies for Virginia to consider as it explores additional methods to bring this difficult problem under control.

This report surveys the market for consumable hemp products, identifies public health concerns, and discusses common state approaches to addressing these problems. It also examines difficulties states have faced as they adopt restrictions limiting sales of consumable hemp products, including ongoing legal challenges and uncertainty over the implications of potential federal legislation. The report concludes with recommendations, which include (1) imposing robust contaminant testing requirements for all consumable hemp products; (2) requiring ingredient limits on consumable hemp products and implementing a preapproval process for consumable hemp products; (3) addressing access by minors to consumable hemp products at retail locations and through online sales; and (4) imposing further limits on online sales of consumable hemp products.

Background & Methodology

The Cannabis Control Authority (“Authority” or “CCA”) prepared this report in response to the 2023 General Assembly’s directive in the 4th enactment clause of Chapters 744 and 794 of the 2023 Acts of Assembly. The General Assembly tasked the CCA, in consultation with Virginia Department of Agriculture and Consumer Services (VDACS), to:

conduct a study regarding edible hemp products and hemp products intended for smoking and report the following: (i) a summary of the approaches taken by other states to address the public safety and health challenges posed by the online and in-person sale of hemp-derived products and a recommendation as to whether the Commonwealth may benefit from adopting one or more of these approaches or another approach and (ii) a summary and the implications of any pending federal legislation on hemp-derived products.

To create this report, the Authority tracked legislative and regulatory activity in states across the country and at the federal level.¹ This included reviewing proposed legislation and engaging cannabis regulators in other states. The CCA also is monitoring developments related to potential legislation in Congress.

Introduction

The need to regulate consumable hemp products arose after the United States Congress enacted the Agriculture Improvement Act of 2018 (“2018 Farm Bill”).² The legislation amended the federal Controlled Substances Act to remove hemp from the definition of marijuana. Federal law defines hemp as “plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”³ Delta-9 tetrahydrocannabinol (THC) is the most well-known compound in cannabis, the one people most associate with marijuana’s intoxicating effects.

The primary goals of removing hemp from the definition of marijuana were to legalize “low THC” cannabis as an agricultural commodity used for industrial products such as fiber, rope, paper, and mulch and to allow the sale of products containing nonintoxicating cannabidiol (CBD). However, by removing hemp from the definition of marijuana, the 2018 Farm Bill inadvertently facilitated the creation of a new market for consumable products containing a wide range of hemp-derived cannabinoids.⁴

Despite their widespread availability, many products containing hemp-derived cannabinoids present public health and safety concerns like those presented by marijuana products. Products that do not exceed the delta-9 THC limit of 0.3 percent may still contain large amounts of other naturally occurring or semi-synthetic cannabinoids, some of which have intoxicating properties. Some semi-synthetic cannabinoids currently found in consumable hemp products are delta-8-THC, delta-10-THC, THC-O acetate, THCV, THCP, HHC, HHC-O-acetate, HHCP, and CBN.⁵ These semi-synthetic cannabinoids are created through chemical processes that may introduce dangerous solvents into the products.

Further, the THC limit set in the 2018 Farm Bill ensures “low THC” for the consumer only when it applies to plant material. Consumable hemp products are usually denser. As a result, even products that have less than 0.3 percent delta-9 THC when measured “on a dry weight basis” may contain significant amounts of delta-9 THC, sometimes more than allowed for sale within any existing adult-use retail market. For example, a typical chocolate bar could contain 150 mg of delta-9 THC and still fall under the 0.3 percent threshold; by comparison, most adult-use retail marijuana programs allow no more than 100 mg of delta-9 THC in a single package.⁶

Under the 2018 Farm Bill, the Food and Drug Administration (FDA) maintains its authority to regulate foods, beverages, dietary supplements, and cosmetics containing hemp or hemp-derived cannabinoids through powers granted to it under the federal Food, Drug, and Cosmetic Act. In June 2022, the FDA issued an advisory letter to warn consumers about the accidental consumption of products containing THC by children, especially products intended to mimic the appearance or branding of candy, snacks, cereals, and other child friendly foods. The letter was driven largely by increasing poison center reports across the country, including in Virginia, of hospitalizations of minors following their ingestion of hemp-derived products.⁷ In July 2023, the FDA issued a warning letter to six companies illegally selling what they called “copycat food products” containing delta-8 THC.⁸ To date, the FDA has not followed up with any additional letters or disciplinary action.

Absent consistent FDA regulation and enforcement actions, there is minimal federal regulatory oversight of consumable hemp products to protect consumers and minors. Because there is no minimum age to purchase hemp-derived products under the 2018 Farm Bill, these products became easily accessible in traditional retail stores across the country. These traditional retail stores typically do not have vigorous age-verification processes that stores would be required to have if they were selling intoxicating marijuana subject to a comprehensive regulatory framework and state-issued license. Similarly, there is little stopping online retailers from selling hemp-derived products to purchasers under 21 years of age.

The intoxication of minors, including very young children, which often results from the inadvertent consumption of hemp-derived products, is a serious public health concern. As noted, many hemp-derived products imitate other commonly consumed products. These products can be enticing to children and pose significant risks of accidental ingestion. Poison center reports from across the United States indicate children frequently consume intoxicating cannabinoid hemp products — often provided by unsuspecting parents and caregivers — under the false impression the products were candy or some other appealing snack. These products can cause severe reactions in children, including drowsiness, lowered blood pressure, slurred speech, and increased heart rate.⁹ The most recently available national data show the number of accidental ingestions of edible cannabis products by children under six years-old increased to 3,054 in 2021—a 1,375% increase from the 207 reported in 2017.¹⁰ While reporting of events involving children under the age of six has grown most dramatically, the number of reported cannabis ingestions has increased across all age groups for minors over recent years.

The Commonwealth has experienced similar increases in accidental underage ingestions. The University of Virginia Blue Ridge Poison Center has documented the increase in accidental ingestion of cannabis by minors. From 2021 to 2022, the number of reported accidental ingestions of cannabis products nearly tripled — from 26 to 77.¹¹ Data from Virginia’s Poison Control centers, which service the Richmond and Hampton Roads areas, reveal a similar increase. In 2022, the Centers reported 88 calls regarding pediatric ingestions, up from three pediatric cases in 2018. Even with the recorded alarming uptick, the data may understate the problem, as public health officials suggest the actual number of accidental ingestions could be much larger than those reported.¹²

Lack of federal oversight also entails considerable risks for adult consumers of consumable hemp products. Although intoxicating cannabinoids are created through chemical processes that may introduce dangerous solvents, there are no federally required testing standards to ensure the final products do not have unhealthy levels of residual solvents and to curb the risks of products containing other contaminants, such as heavy metals and microbials. There are also no federal labeling standards for consumable hemp products. As a result, consumers lack consistent and reliable information about what they are buying and consuming.

This report looks at the responses of Virginia and other states to address the public health problems created by the lack of federal oversight of consumable hemp products. It identifies additional approaches taken by other states that could inform future attempts in Virginia to further regulate consumable hemp products. The report also considers how federal legislative action could begin to mitigate public health and safety concerns presented by consumable hemp products.

Regulation of Consumable Hemp Products in Virginia

Virginia has adopted statutory changes over the past two years to address problems caused by insufficient federal oversight of consumable hemp products. In 2022, a budgetary amendment included new statutory language prohibiting the sale of products containing THC to those under 21 years of age, requiring products containing THC to be sold in child-resistant packaging, and mandating cannabinoid testing and labeling standards for products containing THC.¹³ The amendment also prohibited the manufacture or sale of any hemp product that “depicts or is in the shape of a human, animal, vehicle, or fruit,” or is sold in packaging intended to mimic or bear similarity to famous trademarks or commonly known products.¹⁴

In addition to these statutory changes, the Secretary of Agriculture and Forestry, in conjunction with the Secretary of Public Safety and Homeland Security and Secretary of Health and Human Resources, convened a task force in the summer of 2022 to discuss the safety and sale of hemp products intended for human consumption.¹⁵ The task force issued a report with its recommendations and findings in November 2022.¹⁶ The task force’s findings informed the development of Senate Bill 903 and its companion House Bill 2294, which expanded VDACS’ oversight of consumable hemp products, curbed the availability of intoxicating hemp products, and ensured that hemp-derived products sold in Virginia meet certain standards for consumers.

Senate Bill 903, as enacted, contained several provisions aimed at curtailing the unchecked sale of consumable hemp products across Virginia. It included new requirements for product manufacturers, limits on products sold at retail, and packaging and labeling requirements. Key provisions include:

- Packaging, labeling, and testing requirements specific to consumable hemp products.
- Granting VDACS authority to issue regulated hemp product retail facility registrations.
- Defining a hemp product to be a product that contains industrial hemp that, when offered for retail sale, contains (i) no more than 0.3% *total* THC rather than 0.3% of delta-9 THC and (ii) no more than two milligrams of total THC per package, unless the product has a CBD to THC ratio of 25:1.
- Defining total THC to include “the percentage by weight of naturally occurring or synthetic [THC] and the percentage by weight of tetrahydrocannabinolic acid.”
- Removing THC from Virginia’s Schedule I list of controlled substances.
- Updating the definition of “marijuana” to exclude substances containing THC that the Board of Pharmacy placed into one of the schedules of the Drug Control Act.
- Requiring a person to obtain a food permit before manufacturing, selling, or offering for sale a substance intended to be consumed orally that contains an industrial hemp-derived cannabinoid.
- Adding a new provision to the Virginia Consumer Protection Act restricting the sale of “any substance intended for consumption, orally or by inhalation, that contains a synthetic derivative of [THC].”¹⁷
- Requiring that topical hemp products include a label stating that the product is not intended for human consumption.



The bill also established greater enforcement and compliance tools for VDACS, including new civil penalties for businesses that fail to comply with the new standards. Manufacturers and retailers of industrial hemp-derived extracts intended for use in edible hemp products are also now subject to inspections by VDACS for compliance with the new requirements in the Virginia Food and Drink Law. These inspections may be unannounced and may include the sampling and testing of products.

As noted, Senate Bill 903 expanded the testing and labeling requirements for consumable hemp products. Labels must “contain the total percentage and milligrams of all tetrahydrocannabinols included in the substance and the total number of milligrams of all tetrahydrocannabinols that are contained in each serving.”¹⁸ Retailers of consumable hemp products must also provide proof of THC testing by a laboratory that meets standards for total THC established by statute.

Virginia’s efforts to protect consumers from unregulated consumable hemp products are currently facing a legal challenge. On September 1, 2023, two hemp businesses and an individual plaintiff filed a lawsuit against several Commonwealth of Virginia defendants.¹⁹ The plaintiffs argue that the total THC standard for hemp products established by Senate Bill 903 is unenforceable because it is more restrictive than the delta-9 standard for hemp established under federal law by the 2018 Farm Bill. The plaintiffs also argue that Virginia’s laws violate the dormant Commerce Clause because they restrict interstate commerce and burden sales to out-of-state buyers.²⁰ As of the date of publication of this report, the plaintiffs’ motion for preliminary injunction and the Commonwealth’s motion to dismiss the case are pending before the court.

Regulatory Frameworks for Consumable Hemp Products in Other States

States across the country have pursued regulatory solutions to the problems posed by the proliferation of consumable hemp products available in traditional retail stores and online. Some states have folded regulation of consumable hemp products into their adult-use retail markets,²¹ while other states have established separate regulatory paths or taken a hybrid approach.²² Regardless of the specific regulatory pathway adopted, most states’ approaches incorporate similar elements to protect consumers against contaminated products, increase consumers’ knowledge of product contents, and limit the access of minors to intoxicating products. This report will not discuss in detail the state approaches that overlap with Virginia’s existing laws on consumable hemp products.²³ Instead, it will identify approaches taken in other states that differ from, or expand upon, concepts found in current law in the Commonwealth.

Ensuring Safer Products Through Testing, Ingredient Restrictions, and Pre-Approval

One of the overarching objectives when regulating consumable hemp products is to ensure the products available for sale are subject to strict oversight and sufficient testing standards. States regulating consumable hemp products take varying approaches to ensure the safety of products sold to consumers, including establishing robust testing standards, imposing ingredient restrictions (particularly on inhalable hemp products), and requiring pre-approval of consumable hemp products.

Many states have established robust testing standards for consumable hemp products that are similar to rigorous testing requirements for contaminants that apply to marijuana sold in adult-use retail markets.

Comparable testing requirements apply to medical cannabis in Virginia, which must pass microbiological, mycotoxin, heavy metal, residual solvent, and pesticide testing.²⁴

Numerous states have applied similar testing requirements to hemp-derived cannabinoids through either statute or rulemaking.²⁵ For example, in Kentucky, licensees manufacturing hemp products must provide a sufficient sample for testing from each batch of products to ensure consistency in the hemp products within the batch. Kentucky regulations also require testing for cannabinoids, microbial impurities, mycotoxins, residual pesticides, heavy metals, and residual solvents and processing chemicals. In Virginia, regulations adopted pursuant to Article 5 of the Virginia Food and Drink Law require manufacturers of industrial hemp extracts used in food to adhere to the contaminant levels set forth in the medical cannabis program.²⁶ However, there are no similar testing requirements imposed on hemp products intended for smoking in Virginia.

Another strategy states have used to improve the safety of consumable hemp products sold to consumers is to establish limits on the ingredients used in products. It is common in states with adult-use cannabis markets and medical cannabis programs to limit the substances that can be added to certain consumable hemp products depending on the products' mode of use.

The e-cigarette, or vaping, product use-associated lung injury (EVALI) crisis in 2019 highlights the risks certain chemicals can pose when inhaled. The crisis prompted adult-use and medical cannabis regulators to impose additional restrictions on substances used in extraction for cannabinoids intended for inhalation.²⁷ The Virginia medical cannabis program prohibits using vitamin E acetate in cannabis oil intended to be vaporized or inhaled.²⁸ A few states have applied similar restrictions to consumable hemp products sold outside of adult-use cannabis markets.²⁹ For example, consumable hemp products in Kentucky cannot contain (1) Vitamin E acetate (VEA); (2) Medium-chain triglycerides (MCT); (3) Polyethylene glycol (PEG); (4) Propylene glycol (PG or PPG); (5) 2,3-butanedione (Diacetyl); and (6) Myclobutanil.³⁰ These ingredients may cause short-term and long-term health effects when vaped.³¹

Restrictions on ingredients in consumable hemp products are not limited to hemp products intended for inhalation. Other restrictions on ingredients reduce polysubstance use or prevent other health risks.³² Kentucky prohibits treating consumable hemp products with caffeine, nicotine, or “[o]ther chemicals that may increase carcinogenicity or cardiac events.”³³ Currently, Virginia does not impose similar limits on ingredients used in consumable hemp products.

Product review and preapproval is yet another approach states use to protect consumers from potentially dangerous consumable hemp products. In Louisiana, for example, consumable hemp processors must submit product information for regulatory approval before distribution or sale of the product.³⁴ To receive approval, processors must provide test results for products that identify THC potency and any detected solvents, pesticides, microbials, and heavy metals. This process serves as an additional filter to prevent unsafe products from reaching the market. It also creates a central database of approved products in the market, accessible to regulators, which provides useful information regarding consumption trends; the data also can be used to help identify future regulatory needs. Notably, Virginia requires pre-approval of medical cannabis products, but not consumable hemp products, before they can be sold in the Commonwealth.



Restricting Access to Consumable Hemp Products by Minors and Regulating Online Access Generally

Through recent legislative efforts, Virginia has made considerable strides in preventing purchases and consumption of consumable hemp products by minors. However, other states' efforts illustrate further steps Virginia could take to strengthen the protection of minors in the Commonwealth.

The widespread availability of, and ease of access to, consumable hemp products help fuel accidental and intentional consumption of these products by minors, creating a serious public health challenge; the products can be easily found on the shelves of many traditional retail stores. A foundational restriction applied to most adult-use cannabis retail businesses is that only individuals over the age of 21 years can enter locations selling marijuana. A handful of states have sought to effectively replicate for consumable hemp products the protections for minors found in adult-use cannabis regulations by limiting where and how stores can display consumable hemp products.³⁵ Kentucky requires consumable hemp products to “[b]e secured in the retail setting to prevent theft or other access to persons under the age of twenty-one.”³⁶ Likewise, under Tennessee law it is a misdemeanor to fail to maintain consumable hemp products behind the counter in an area inaccessible to a customer.³⁷ Virginia does not have anything comparable in law when it comes to limiting the physical access of minors to consumable hemp products in retail stores.

In the digital age, sales of unregulated products online can undermine state regulatory efforts. In recognition of this, mail and shipping services published guidance stating hemp products can be mailed only when the sender has complied with all state laws and regulations regarding hemp products.³⁸ Some states have prohibited online sales of consumable hemp products completely, either through hemp product-specific regulations or by folding consumable hemp products into their adult use retail market.³⁹ In contrast, West Virginia allows online sales of consumable hemp products, but only for online retailers that have complied with the same registration requirements that apply to brick-and-mortar retailer.⁴⁰

Virginia law requires a person selling a consumable hemp product to obtain a retail facility registration requirement but does not explicitly address online retailers.⁴¹ Nor do any current provisions of Virginia law explicitly prohibit online sales of consumable hemp products. Virginia Code section 18.2-371.2 imposes minimal restrictions only on the online sales of hemp products intended for smoking, not those intended for consumption through other means. Under Virginia law, a person selling hemp products online that are intended for smoking must (1) verify the customer is at least 21 years of age prior to the sale and (2) “use[] a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the . . . hemp product intended for smoking will be released to the purchaser.”⁴² However helpful this preventative measure is when applied to products intended for smoking, Virginia does not currently place similar requirements on online sales of edible hemp products.

Federal Action

The patchwork nature of state-level approaches to the regulation of consumable hemp products exists primarily because of the absence of federal regulatory efforts. Despite the FDA's advisory letter warning consumers about the safety of delta-8 products, it remains uncertain what role the FDA will play in the regulation of hemp-derived products and the extent to which the agency will exert its authority. The FDA issued a statement in January 2023 concluding that “existing regulatory frameworks for foods and

supplements are not appropriate for cannabidiol,” and the agency would attempt to address the situation with Congress.⁴³ Other stakeholders believe the FDA already possesses the necessary regulatory authority to regulate hemp-derived products. In July 2023, the House Energy and Commerce Committee issued a request for information regarding stakeholder feedback on FDA regulation of CBD and the market for hemp-derived cannabinoids as part of an effort to carve out a clear regulatory path moving forward.⁴⁴

Apart from the FDA using existing or modified authority to address the gap in regulation, amendments to the 2018 Farm Bill are another potential avenue to close the loopholes that allow the proliferation of consumable hemp products. The 2018 Farm Bill has several provisions that expire in 2023, and Congress began the process of developing the 2023 Farm Bill in late 2022.⁴⁵ Many state regulators hope Congress will consider potential modifications to the current federal regulatory treatment of hemp that will facilitate tighter regulation of consumable hemp products, or at least create more latitude for strong state regulation in this area.⁴⁶ The Cannabis Regulators Association (CANNRA), a nonpartisan association representing cannabis and hemp regulatory agencies from more than 45 member states and U.S. territories, sent a letter to Congress in September 2023 recommending specific changes to address the risks associated with federally unregulated consumable hemp products that are widely available throughout the country.⁴⁷ CANNRA asked Congress to consider:

(1) adding a definition for “Hemp-Derived Cannabinoid Products,” (2) defining THC in terms of both THCA and delta-9 THC, (3) clarifying that the 0.3% THC threshold applies only to the plant and naming a regulator to set appropriate thresholds for intermediate or final hemp-derived cannabinoid products, (4) naming a federal regulatory agency with a timeline for implementing regulations to protect consumer safety, and (5) ensuring that states are not preempted from going beyond federal policies (which should set minimum standards) to protect consumer safety and public health.⁴⁸

Because of the complexities involved in reauthorizing the farm bill, as well as competing legislative priorities in Congress, action on the 2023 Farm Bill, including any changes affecting hemp, is more likely to occur in 2024 than in 2023.

As of the publication of this report, no action on the farm bill has occurred. Without further action from Congress addressing the loopholes created through the 2018 Farm Bill, hemp-derived product manufacturers, distributors, and retailers will remain emboldened to challenge any state-level efforts to impose restrictions on hemp-derived products.

Conclusion and Recommendations

Future congressional action may address the regulatory challenges created by the current gaps in federal law. Until that time, Virginia should consider strengthening its laws to improve protections for minors and adult consumers in the Commonwealth. While other state regulatory frameworks for addressing consumable hemp products are all relatively new and still in the early stages of implementation, they offer ideas for Virginia to consider as it seeks to further strengthen its laws regulating consumable hemp products. The CCA recommends Virginia consider adopting laws and policies that would:

- (1) *Impose robust contaminant testing requirements for all consumable hemp products.*
Virginia requires testing of consumable hemp products to determine the product's THC concentration. It only requires contaminant testing for industrial hemp extracts used in food. The CCA recommends requiring all regulated hemp products, as defined in Va. Code § 3.2-4112, to undergo testing for pesticide chemical residue, heavy metals, residual solvents, mycotoxins, moisture, and microbiological contaminants. Requiring contaminant testing for all consumable hemp products will enhance public safety and protect consumers.
- (2) *Impose ingredient limits on consumable hemp products and implement a preapproval process for consumable hemp products.*
Most states' adult-use retail or medical cannabis programs prohibit the use of vitamin E acetate in products intended to be vaporized or inhaled, including Virginia's medical cannabis program. States also limit ingredients—such as alcohol, caffeine, and nicotine—that encourage polysubstance use or create other health risks. The CCA recommends establishing a list of prohibited ingredients for consumable hemp products much like those used in other states. To ensure manufacturers only produce products with approved ingredients, Virginia also should implement a preapproval process for consumable hemp products.
- (3) *Address access by minors to consumable hemp products at retail locations and through online sales.*
Ease of access to consumable hemp products on the shelves of traditional retail stores contributes significantly to the risk of inadvertent and intentional ingestion of consumable hemp products by minors. To address this concern, the CCA recommends Virginia follow the lead of other states and restrict where businesses can display consumable hemp products to ensure all customers, particularly minors, do not have physical access to them without first producing government identification substantiating they are at least 21 years old. Virginia also should extend its age verification requirements for online sellers of consumable hemp products intended for smoking to the online sale of all edible hemp products. This would further limit the access of minors to consumable hemp products.
- (4) *Impose further limits on online sales of consumable hemp products.*
Online sales of consumable hemp products also can endanger the health of adult consumers if the products do not have to satisfy the same requirements as products sold in brick-and-mortar retail stores. To close this gap in treatment and mitigate the public health risks associated with online sales under current law, Virginia should explicitly require that online sellers of consumable hemp products can sell consumable hemp products into Virginia only if they register as a retail facility (like physical retailers are currently required to do) and are, therefore, subject to the same set of regulations that apply to physical retailers. This action will ensure online products sold into Virginia are safer because they will be subject to state regulation, which could include the enhanced testing and ingredient restrictions proposed in this report.

Endnotes

¹ The CCA reviewed legislative and regulatory activity in the following states: Alaska, Arkansas, California, Colorado, Kentucky, Louisiana, Maryland, Minnesota, Montana, New York, North Dakota, Oregon, Rhode Island, Tennessee, Texas, Vermont, Washington, and West Virginia. The CCA has compiled excerpts from the consumable hemp products laws and regulations in these states in Appendix A.

² H.R.2 - Agriculture Improvement Act of 2018 115th Congress. Retrieved from <https://www.congress.gov/bill/115th-congress/house-bill/2>.

³ 7 U.S.C. § 1639o(1).

⁴ The market for consumable hemp products is strong. Some estimates hold that sales of products containing one such cannabinoid, delta-8 THC — one of the most well-known and widely available cannabinoids found in consumable hemp products on the market — have generated \$2 billion in a two-year period. See Sabaghi, D. (2023, January 18). *Delta-8 THC generated \$2 billion in revenue in two years, report finds*. Forbes. Retrieved from <https://www.forbes.com/sites/dariosabaghi/2023/01/16/delta-8-thc-generated-2-billion-in-revenue-in-2-years-report-finds/>.

⁵ CANNRA, “An Overview of Regulatory Challenges for Cannabinoid Hemp.” See Appendix B.

⁶ CANNRA, “An Overview of Regulatory Challenges for Cannabinoid Hemp.” See Appendix B.

⁷ U.S. Food and Drug Administration. (2022, June 16). FDA warns consumers about the accidental ingestion by children of food products containing THC [Advisory]. Retrieved from <https://www.fda.gov/food/alerts-advisories-safety-information/fda-warns-consumers-about-accidental-ingestion-children-food-products-containing-thc>.

⁸ U.S. Food and Drug Administration. (2023, July 5). FDA, FTC warn six companies for illegally selling copycat food products containing delta-8 THC [Press release]. Retrieved from <https://www.fda.gov/news-events/press-announcements/fda-ftc-warn-six-companies-illegally-selling-copycat-food-products-containing-delta-8-thc>.

⁹ Shaker, K., Nillas, A., Ellison, R., Martin, K., Trecki, J., Gerona, R., & Aldy, K. (2023). Delta-8-tetrahydrocannabinol exposure and confirmation in four pediatric patients. *Journal of Medical Toxicology*, 19(2), 190–195. <https://doi.org/10.1007/s13181-022-00927-x>.

¹⁰ Change, E. (2023, Jan 3). *Steep increase of kids accidentally eating cannabis edibles, data shows*. The Washington Post. Retrieved from <https://www.washingtonpost.com/parenting/2023/01/03/edibles-kids-increasing/>.

¹¹ University of Virginia Health. (2023, March 22). *UVA Health’s Blue Ridge Poison Center identifies emerging poisoning trends*. [Press Release] Retrieved from <https://newsroom.uvahealth.com/2023/03/22/uva-health-blue-ridge-poison-center-identifies-emerging-poisoning-trends/>.

¹² University of Virginia Health. (2023, January 21). *Calls for kids accidentally eating marijuana edibles nearly tripled in 2022, Blue Ridge Poison Center reports* [Press release]. Retrieved from <https://newsroom.uvahealth.com/2023/01/17/calls-kids-accidentally-eating-marijuana-edibles-nearly-tripled-2022/>.

¹³ H.B. 30 Item 4-14 #5c, 162nd Gen. Assem., 2022 Spec. Sess. (Va. 2022). Retrieved from <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/4-14/5c/>.

¹⁴ H.B. 30 Item 4-14 #5c, 162nd Gen. Assem., 2022 Spec. Sess. (Va. 2022). Retrieved from <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/4-14/5c/>.

¹⁵ The 15th enactment of Item 4-14 of the 2022 Appropriation Act mandated the taskforce, which was comprised of 16 Virginia state officials and convened two meetings in July and August of 2022 to gather information and feedback from public health officials and industry stakeholders. The task force met a third time to review the draft version of the report before its release.

¹⁶ Lohr, M. J. (2022). *Report of the Task Force to Analyze and Make Recommendations Regarding 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 in the Commonwealth*. <https://rga.lis.virginia.gov/Published/2022/RD679/PDF>.

¹⁷ Va. Code § 59.1-200(A)(69) (defining “synthetic derivative” as “a chemical compound produced by man through a chemical transformation to turn a compound into a different compound by adding or subtracting molecules to or from the original compound”).

¹⁸ Va. Code § 3.2-4123(A)(2)(iii).

¹⁹ *Northern Virginia Hemp & Agriculture LLC v. Commonwealth of Virginia*, No 1:23-cv-01177-LMB-IDD (E.D. Va.).

²⁰ Many other states that have imposed restrictions on consumable hemp products have faced legal challenges in state or federal courts filed by consumable hemp product manufacturers, distributors, retailers, and customers alleging claims which mirror those asserted against Virginia. *See, e.g., Bio Gen, LLC v. Sanders*, No. 4:23-cv-00718-BRW (E.D. Ark); *Duke’s Investments LLC v. Char*, No. 22-00385 JAO-RT (D. Haw.); *C.Y. Wholesale v. Holcomb*, No. 1:19-cv-2659-SEB-TAB (S.D. Ind.), *Maryland Hemp Coalition, Inc. v. Moore*, No. C-21-CV-23-348 (Cir. Ct. Wash. Cnty Md.); *Delta Extraction LLC v. Dept. of Health and Senior Services*, No. 23-0608 (Mo. Admin. Hearing Comm’n).

²¹ *See, e.g.,* Maryland, Minnesota, and Washington. Proponents of having one regulator for both cannabis and intoxicating hemp products (the so-called “unified” regulator approach) point to the similar physical effects of each product, the need for extensive public health safeguards for each type of product, and the interdependence of the two products’ markets. They also note a single regulator makes it more likely that regulation of the two, similar categories of products will be carried out more consistently.

²² *See, e.g.,* Kentucky, Rhode Island, Tennessee, Texas, West Virginia.

²³ Some common approaches include: required testing for THC levels; serving size and/or per-package limits on THC content; restrictions on sales to minors; required registrations or licensing.

²⁴ 18 Va. Admin. Code 110-60-300.

²⁵ *See, e.g.,* Alaska (Alaska Admin. Code tit. 11 § 40.600, 40.640, 40.645, 40.650); Arkansas (Ark. Code R. § 20-56-410); California (Cal. Health & Saf. Code § 111925.4 and California Code of Regulations tit. 4, §15714); Kentucky (Kentucky Rev. Stat. Ann § 902.45-190E); Louisiana (La. Rev. Stat. § 3:1483); New York (N.Y. Comp. Codes R. & Regs. tit. 9 § 114.10); Rhode Island (230 R.I. Code of Regs. 80-10-1.9(D)(1)); Tennessee (Tenn. Code Ann. Title 23, Chapt. 27); Texas (Texas Admin. Code Rule §300.301); West Virginia (W.V. Code of State Rules 61-30-9).

²⁶ 2 Va. Admin. Code 5-595-50.

²⁷ Centers for Disease Control and Prevention. (2021, August 3). *Outbreak of lung injury associated with the use of e-cigarette, or vaping, products*. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html; Meehan-Atrash, J., & Rahman, I. (2021). *Cannabis vaping: Existing*

and Emerging Modalities, Chemistry, and Pulmonary Toxicology. *Chemical Research in Toxicology*, 34(10), 2169–2179. <https://doi.org/10.1021/acs.chemrestox.1c00290>.

²⁸ 18 Va. Admin. Code 110-60-280(G).

²⁹ Cal. Health & Saf. Code § 111929.2 (effective pending further legislation); 902 Kentucky Admin. Regs. 45:190E, section 7; N.Y. Comp. Codes R. & Regs. tit. 9 § 114.8(3).

³⁰ 902 Kentucky Admin. Regs. 45:190E, section 7

³¹ See, e.g., Oregon Liquor Control Commission. (2020, October 29). *Non-Cannabis Additives in Inhalable Cannabinoid Products: Rationale for Rulemaking*. Retrieved from https://www.oregon.gov/olcc/Docs/commission_agendas/2020/Non-Cannabis-Additives-in-Inhalable-Cannabinoid-Products.pdf.

³² Cal. Health & Saf. Code § 111921.5 (prohibiting industrial hemp in a product containing nicotine or tobacco, or an alcoholic beverage); Kentucky Rev. Stat. Ann § 902.45-190E; N.Y. Comp. Codes R. & Regs. Tit. 9 § 114.8 (a)(3) and (4) (prohibiting consumable hemp products “contain[ing] liquor, wine, beer, cider or meet the definition of an alcoholic beverage” or “contain[ing] tobacco or nicotine”).

³³ Kentucky Rev. Stat. Ann § 902.45-190E.

³⁴ La. Rev. Stat. § 3:1483.

³⁵ See, e.g., 902 Ky. Admin Regs. 45:190E; 230 R. I. Code of Regs 80-10-1.11(J)(3); Tenn. Code. Ann. § 43-27-204/

³⁶ 902 Ky. Admin Regs. 45:190E, Section 6.

³⁷ Tenn. Code. Ann. § 43-27-204 (effective July 1, 2024) (including an exception that applies if the business limits entry to only customers over the age of 21). Another tactic is to require employees of retail stores selling consumable hemp products to sign “server awareness forms.” Ark. Code R. § 20-56-406. These forms require employees to attest they understand the legal restrictions against sales of consumable hemp products, which ensures the retailer has given its staff minimal information and training regarding the laws applicable to consumable hemp products. Here are some examples of server awareness forms for alcohol and tobacco:

<https://www.dfa.arkansas.gov/images/uploads/abcOffice/serverAwareness.pdf>;

<https://www.atc.arkansas.gov/wp-content/uploads/2020/05/ATC-R4-2-2020-SERVER-AWARENESS-FORM.pdf>.

³⁸ See, e.g., United States Postal Service Publication 52, effective June 6, 2019. Retrieved from https://about.usps.com/postal-bulletin/2019/pb22521/html/updt_002.htm); see also United Parcel Service of America (n.d.) *Shipping Hemp and CBD*. Retrieved from <https://www.ups.com/us/en/support/shipping-support/shipping-special-care-regulated-items/prohibited-items/hemp-cbd-marijuana.page>.

³⁹ See, e.g., Ark. Code R. 20-56-411 (g)(1) (expressly prohibiting sales of hemp-derived products through “an order executed solely over the internet or similar means”); Wa. Admin. Code 314-55-079(5) (where adult-use cannabis restrictions apply to consumable hemp products “with any detectable amount of THC” and “[i]nternet sales and delivery of product to consumers is prohibited.”).

⁴⁰ W.V. Code of State Rules 61-30-5.1. New York has a similar requirement. See N.Y. Comp. Codes R. & Regs. tit. 9 § 114.1(e).

⁴¹ See Va. Code § 3.2-4122.

⁴² Va. Code § 18.2-371.2(C).

⁴³ U.S. Food and Drug Administration. (2023, January 26). FDA Concludes that Existing Regulatory Frameworks for Foods and Supplements are Not Appropriate for Cannabidiol, Will Work with Congress on a New Way Forward [Press release]. Retrieved from <https://www.fda.gov/news-events/press-announcements/fda-concludes-existing-regulatory-frameworks-foods-and-supplements-are-not-appropriate-cannabidiol>.

⁴⁴ House Committee on Energy and Commerce. (2023, July 27). *Bicameral Health Committee leaders announce bipartisan request for information regarding FDA regulation of CBD*. Retrieved from <https://energycommerce.house.gov/posts/bicameral-health-committee-leaders-announce-bipartisan-request-for-information-regarding-fda-regulation-of-cbd-1>.

⁴⁵ Congressional Research Service. (2023, August 21). *Expiration of the Farm Bill*. Retrieved from <https://sgp.fas.org/crs/misc/R47659.pdf>; United States Senate Committee on Agriculture, Nutrition, & Forestry. (n.d.) *The Farm Bill*. Retrieved from <https://www.agriculture.senate.gov/farm-bill>.

⁴⁶ In July 2023, the congressional House Energy and Commerce Committee issued a Request for Information (RFI) through the bicameral Health Committee as part of the conversation surrounding CBD and hemp-derived product. Press release available at:

<https://energycommerce.house.gov/posts/bicameral-health-committee-leaders-announce-bipartisan-request-for-information-regarding-fda-regulation-of-cbd-1>. See Appendix C.

⁴⁷ Cannabis Regulators Association. (2023, September 15). *CANNRA calls for modifications to the 2023 farm bill to address cannabinoid hemp products* [Press release]. Retrieved from <https://www.cannra.org/news-events/cannra-calls-for-modifications-to-the-2023-farm-bill-to-address-cannabinoid-hemp-products>. See Appendix D.

⁴⁸ Cannabis Regulators Association. (2023, September 15). *CANNRA calls for modifications to the 2023 farm bill to address cannabinoid hemp products* [Press release]. Retrieved from <https://www.cannra.org/news-events/cannra-calls-for-modifications-to-the-2023-farm-bill-to-address-cannabinoid-hemp-products>. See Appendix D.

Appendix A

Appendix B

Appendix C

Appendix D