

Date of Hearing: April 28, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 8 (Aguiar-Curry) – As Amended April 21, 2025

2/3 vote. Fiscal committee.

SUBJECT: Cannabis: cannabinoids: industrial hemp

SUMMARY: Subjects products containing certain concentrated cannabinoids that are derived from industrial hemp to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and reduces the cannabis excise tax to 15%, beginning January 1, 2028. Specifically, **this bill:**

- 1) Subjects products containing concentrated "cannabinoids," other than "cannabidiol (CBD) isolate," that are derived from "industrial hemp" to the provisions of MAUCRSA governing cannabis, including the track and trace identification system, advertisement restrictions, quality assurance standards, laboratory testing, and security and transportation safety requirements.
- 2) Expands the authority of the California Department of Tax and Fee Administration (CDTFA) to seize cannabis and cannabis products by creating a rebuttable presumption that products containing or purporting to contain THC or comparable cannabinoids are cannabis products, if there is reasonable cause to believe they violate the Health and Safety Code (H&SC).
- 3) Reduces the cannabis excise tax to 15%, beginning January 1, 2028.
- 4) Requires out-of-state hemp manufacturers who produce food or beverage industrial hemp products for sale in California to register with the California Department of Public Health (CDPH).
- 5) Prohibits the sale of an alcoholic beverage that contain "cannabinoids," an inhalable cannabis product containing "cannabinoids" derived from "industrial hemp," or a product containing "synthetic cannabinoids."
- 6) Expands the definition of "cannabis products" to include industrial hemp that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabinoids, or products containing cannabis or concentrated cannabinoids.
- 7) Defines "cannabinoid" as one of the various naturally occurring compounds found in cannabis and industrial hemp that attach to cannabinoid receptors in humans and animals, including tetrahydrocannabinol (THC) and CBD.
- 8) Defines "CBD isolate" as a compound extracted from cannabis or industrial hemp consisting of CBD, as defined, with a purity level greater than 99%.

- 9) Defines "industrial hemp" as types of the plant *Cannabis sativa* Linnaeus with a delta-9 THC concentration of no more than 0.3% on a dry weight basis. This definition is limited to only agricultural products, including seeds, propagated plant material, immature or mature plants, harvested plants, processed plant material, mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant or any other preparation that does not contain cannabinoids, and does not include cannabis products.
- 10) Defines a "synthetic cannabinoid" as a cannabinoid or cannabinoid-like compound that is produced or converted by using biosynthesis, bioconversion, or chemical synthesis, reaction, modification, conversion, or a similar process. This term includes, but is not limited to, delta-8-THC (CAS number 5957-75-5), delta-9-THC (CAS number 1972-08-3), or delta-10-THC (CAS number 95543-62-7) that was produced by the conversion of CBD (CAS number 13956-29-1), as restricted.
- 11) Provides that no reimbursement of local agencies or school districts is required by this bill because the only costs that may be incurred will be because this bill creates a new crime or infraction, eliminates a crime or infraction, changes the penalty for a crime or infraction, or changes the definition of a crime.

EXISTING LAW:

- 1) Enacts the MAUCRSA to implement and consolidate Proposition (Prop.) 64, the Control, Regulate, and Tax Adult Use of Marijuana Act, which authorized the licensure and regulation of commercial adult-use cannabis, and the Medical Marijuana Regulation and Safety Act (MMRSA), which established a regulatory framework for the cultivation, manufacture, distribution, sale, and product safety of medicinal-use cannabis. (Business and Professions Code (B&PC) Section 26000 *et seq.*)
- 2) Enacts the Cannabis Tax Law, which imposes a cannabis excise tax on purchaser of cannabis or cannabis products at a rate of 15% on the "gross receipts" of any retail sale by a cannabis retailer, who is responsible for collecting and remitting that tax. The cannabis excise tax rate must be raised, beginning July 1, 2025, by the percentage necessary to offset the revenue loss attributed to the suspension of the cannabis cultivation tax. The CDTFA is responsible for administering the Cannabis Tax Law, and is vested with limited peace officer status. The CDTFA may inspect any premises that are used by a cannabis licensee for cannabis activities. Failure to comply with the CDTFA regarding inspections is a misdemeanor, and a fine of \$5,000 or less, imprisonment for a year or less, or both punish each offense. The CDTFA may also seize any cannabis that is sold by unlicensed entities, is not reported in the track and trace system, or is not contained in secure packaging. Any seized cannabis is considered forfeited, and must be consistently treated with forfeited products under the Cigarette and Tobacco Products Tax (CTPT) Law. (R&TC Section 34010 *et seq.*)
- 3) Enacts the CTPT Law and the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act), which requires the CDTFA to administer a statewide cigarette and tobacco products license program to enforce the CTPT Law, and grants the CDTFA the authority to seize products in violation of the CTPT Law (R&TC Section 30001 *et seq.*) or the Licensing Act (B&PC Section 22970 *et seq.*).
- 4) Enacts the Sherman Food, Drug, and Cosmetic (SFDC) Law, which provides for the regulation of hemp and industrial hemp products. Under the SFDC Law, industrial hemp is

defined as an agricultural product of the plant *Cannabis sativa L.* and any part of that plant, including extracts or cannabinoids, among others, with a delta-9 THC concentration of no more than 0.3% on a dry weight basis. Prohibits the inclusion of industrial hemp in a product containing nicotine or tobacco, or an alcoholic beverage. The manufacture or sale of inhalable industrial hemp products is prohibited, unless selling in other states. (H&SC Section 109875 *et seq.*)

FISCAL EFFECT: The CDTFA estimates that this bill would result in a total cannabis excise tax and sales and use tax revenue loss of approximately \$199 million in 2028.

COMMENTS:

- 1) The author has submitted the following statement in support of this bill:

Since the federal Farm Bill legalized industrial hemp in 2018, hemp-derived products containing CBD and other cannabinoids have become widely available in grocery stores, fitness centers, and other retail locations. In 2021, I authored AB 45 (Aguiar-Curry, Chapter 457, Statutes of 2021) to establish the nation's strongest safety and testing standards for hemp products while preserving access to CBD, because it is a non-intoxicating compound used to manage epilepsy, anxiety, chronic pain, and other health concerns. However, limited enforcement and rapidly evolving industry practices have led to a surge in intoxicating hemp products that are easily accessible to consumers – including youth – in everyday retail settings, posing public health risks and undermining California's regulated hemp and cannabis markets. This bill will protect public health and licensed businesses by strengthening enforcement against illegal hemp products, ensuring that all intoxicating cannabinoids are regulated and taxed as cannabis, and creating a pathway for responsible hemp and cannabis operators to participate in the federal and state legal markets.

- 2) Writing in support of this bill, UFCW – Western States Council, notes, in part:

AB 8 seeks to strengthen the enforcement provisions established by your prior bill, AB 45 (2021), and fulfill a long-standing commitment to integrate hemp cannabinoids into the regulated cannabis supply chain. Specifically, AB 8 enhances enforcement by addressing the public health threat posed by unregulated, high-potency intoxicating hemp products, which can be easily purchased online and found in gas stations, liquor stores, and vape shops. These products blatantly subvert California's rigorous cannabis laws and taxation framework, creating confusion for consumers and unfair competition for compliant businesses. At the same time, AB 8 provides a path for legal cannabis manufacturers to incorporate hemp cannabinoids, bringing California in line with 17 other states.

- 3) Writing in opposition to this bill, a coalition of childcare, health, and environmental advocates state, in part:

When voters approved Proposition 64, they were explicitly promised that hundreds of millions of dollars annually of Cannabis Excise Tax and Cultivation Tax revenues would be permanently dedicated for the Tier 3 programs, to protect children, youth and the environment. This revenue is a significant funding source for childcare for low-income families, youth substance use prevention programs, environmental remediation including

restoration of watersheds damaged by cannabis cultivation, and law enforcement programs.

Many of our organizations refrained from opposing the 2022 cultivation tax only because an agreement was reached, and it was clearly required in law under AB 195, that a compensatory adjustment of the excise tax of up to 19% to maintain revenue neutrality would be implemented this year. Even with that adjustment it is unclear if it will fully compensate the loss of the cultivation tax [...] If the Legislature fails to uphold the promise made in AB 195, in our estimate, between \$145 to 182 million dollars annually for Tier 3 childcare, youth, environmental, and law enforcement program or other needed investments would be lost.

4) Committee Staff Comments:

- a) *Federal cannabis treatment*: Federally, cannabis is classified as a Schedule I drug under the Controlled Substances Act (CSA). The CSA distinguishes between different types of drugs and classifies them according to their medical use, potential for abuse, and safety or dependence liability. The schedules range from 1 to 5 in decreasing severity, with Schedule 1 drugs defined as having no currently accepted medical use and a high potential for abuse. Cannabis, termed marijuana in federal statute, is classified as a Schedule 1 drug under the CSA.
- b) *Hemp and cannabis*: Hemp and what has been traditionally called "marijuana" are both derived from the same plant species, *Cannabis sativa*. Both federal and state law, however, distinguish between the two types of products. As noted previously, marijuana is federally classified as a Schedule 1 drug. With the passage of the Agriculture Improvement Act of 2018 (Farm Bill), hemp was federally distinguished from marijuana, and defined as the plant species *Cannabis sativa* with a delta-9 THC concentration of 0.3%, or less¹, as specified.
- c) *State cannabis regulation*: In 2015, the Legislature enacted the MMRSA, commencing the regulation of cannabis at the state level. The MMRSA was composed of numerous proposals that regulated the cultivation, manufacturing, transportation, distribution, sale, and product safety of medicinal-use cannabis, and subsequently renamed to the Medical Cannabis Regulation and Safety Act.

In November 2016, California voters approved Proposition 64, which legalized adult-use cannabis for people 21 years of age or older. Prop. 64 provided for the licensure and regulation of commercial adult-use cannabis and medicinal-use cannabis by various state agencies and permitted local jurisdictions to apply additional taxes and regulate cannabis businesses through local zoning, land-use requirements, and business license requirements.

To implement Prop. 64, the Legislature enacted the MAUCRSA in June 2017. MAUCRSA integrated the licensing and regulation of adult-use and medicinal-use cannabis activities. Enacted by SB 94 (Committee on Budget and Fiscal Review),

¹ Delta-9 THC is the psycho active chemical component of cannabis, and is the chemical that is often attributed as the compound responsible for the "high" experienced by consumption of cannabis.

Chapter 27, Statutes of 2017, MAUCRSA replaced references to "marijuana" with "cannabis" in existing law. Subsequently, in 2021, the Legislature consolidated the various state agencies responsible for administering the licensure and regulation of cannabis into the Department of Cannabis Control (DCC) by authorizing AB 141 (Committee on Budget), Chapter 70, Statutes of 2021.

- d) *Modifications to cannabis taxes:* When Prop. 64 was enacted, it imposed two taxes on cannabis businesses. The first was the cultivation tax, which was a flat tax on the weight of cannabis with rates based on the form of cannabis. The second was the cannabis excise tax, which imposed a 15% excise tax on the gross receipts from the sale of cannabis or cannabis products. Subsequently, the Legislature modified the imposition of these taxes in 2022, by suspending the cannabis cultivation tax and requiring a rate increase of the cannabis excise tax beginning July 1, 2025. The percentage increase in the cannabis excise tax rate was calculated based on the amount of forgone revenue resulting from the suspension of the cannabis cultivation tax, but capped the aggregate rate at 19%.
- e) *Funding priorities:* Revenues derived from cannabis taxation are deposited into the Cannabis Tax Fund and allocated according to a stipulated schedule in Prop. 64. This schedule prioritizes reimbursement of costs incurred by implementing state agencies, including the CDTFA and the DCC. After these disbursements, Prop. 64 requires that revenues be allocated as follows, and in descending order of priority:
 - i) \$10 million to public universities for research activities;
 - ii) \$3 million to the California Highway Patrol for establishing protocols to determine cannabis impairment while operating a vehicle;
 - iii) \$50 million to the Governor's Office of Business and Economic Development to establish a Community Reinvestments program; and,
 - iv) \$2 million to the University of California San Diego Center for Medicinal Cannabis Research to enhance the pharmacological applications and impact of cannabis.

After these allocations, the remaining revenues are allocated such that 60% are deposited into the Youth Education, Prevention, Early Intervention and Treatment Account, 20% into the Environmental Restoration and Protection Account, and 20% into the State and Local Government Enforcement Account. These final three categories are also referred to as "Tier 3 entities". The Governor has discretion regarding the percentage allocation of revenues within each account. Under Prop. 64, the Legislature, beginning on July 1, 2028, has the authority to allocate funds for purposes other than those stipulated in the measure by a majority vote, but only if the changes further the purpose of the measure and the amount of funds to each account are not reduced from their 2027-28 fiscal year (FY) levels.

- f) *Cannabis market outlook report:* In January of this year, ERA Economics, an agricultural and resources economics consultancy, prepared a report for the DCC, the *California Cannabis Market Outlook 2024 Report* (CCMO Report). The CCMO Report provided a holistic evaluation of California's cannabis market and estimates that the illicit

market continues to account for about 60% of the cannabis consumption in California. The report states that while "the total value of retail sales in the licensed market is down, leading some to conclude that the licensed market is failing or shrinking, this is not in fact the case." The total volume of retail sales for "nearly all product categories is up." Rather, the decrease in value of cannabis retail sales was driven by a decrease in the wholesale price of cannabis. The report notes that "the licensed market continues to grow."

- g) *The Hemp Report*: In January, 2023, the DCC released *The Hemp Report: Steps and Considerations for Incorporating Hemp into the Commercial Cannabis Supply Chain*. As the title suggests, the report recommends actions to integrate hemp into the cannabis market. The DCC notes that the statutory and regulatory provisions for hemp and cannabis are bifurcated and any approach that California chooses to adopt regarding the integration of hemp will likely take significant time and resources.
- h) *This bill*: Relevant to tax law, as currently drafted, this bill would integrate products containing concentrated cannabinoids, as defined, that are derived from hemp into California's regulatory system for cannabis, subject those products to the Cannabis Tax Law and reduce the cannabis excise tax to 15% beginning January 1, 2028.

The author intends to incorporate these types of products into the cannabis market, thereby increasing the base of goods subject to the tax while simultaneously decreasing the rate of the cannabis excise tax. Prop. 64 prescribed two types of taxes be imposed on cannabis, as opponents note. When the Legislature modified the imposition of cannabis taxes, it effectively cut the taxes of the cannabis industry. While the upcoming percentage rate increase to the cannabis excise tax must be sufficient to cover the lost revenue from the suspension of the cultivation tax, the increase is limited to 19%. Absent this restriction, the rate would increase to approximately 19.6% to fully compensate for lost cultivation tax revenues. Losses resulting from reductions in cannabis taxes generally cause reductions in funding to Tier 3 entities; these entities likely bear the majority, if not entirety, of the loss.

The Origins Council, an organization of small- and medium-sized cannabis cultivators opposing this bill, notes the potential for intoxicating hemp to infiltrate the California cannabis market in a number of manners. One such manner is hemp complying with the THC concentration threshold of 0.3% containing high levels of THCa. THCa is the precursor to THC and, upon oxidization, is converted to THC. The Council contends that this bill could be interpreted as allowing hemp with high levels of THCa to enter the California market and be subsequently manufactured into THC, bypassing the cannabis regulatory system. This bill does, however, provide that concentrates containing cannabinoids derived from industrial hemp are subject to existing cannabis taxes, laws, and regulations. Committee staff is unclear whether this bill would incorporate all methods of extracting THC from industrial hemp. Should this bill not incorporate said methods, then this bill could be interpreted as treating substitute goods in a disparate manner. Economically speaking, substitute goods are ones that a consumer may readily interchange without a loss in utility. In other words, consumers replace one good with a different good that fulfills the same need. Sound tax policy subjects substitute goods to consistent treatment. Absent this consistency, consumers and producers modify their

practices to avoid the tax, creating market distortions and potentially further decreasing cannabis excise tax revenues.

- i) *Technical considerations*: On Page 66, Line 35, it appears the term "cannabis" was omitted. Absent its inclusion, the CDTFA would not have the authority to seize cannabis that was not submitted to the track and trace system. If this is not the author's intent, this bill should be amended.

Additionally, on page 67, line 11, this bill authorizes the seizure of "synthetic cannabis," which is an undefined term. This bill should be amended to refer to "synthetic cannabinoids."

- j) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are typically reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote. This bill reduces the cannabis excise tax to 15%, beginning January 1, 2028, thereby qualifying as a tax expenditure.

- k) *Committee's tax expenditure policy*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the Personal Income Tax Law, the Corporation Tax Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. While existing statute does apply to tax expenditures under the Cannabis Tax Law, this Committee's policy requires application of R&TC Section 41 to all tax expenditures. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote². Sunsets are required because eliminating a tax expenditure generally requires a 2/3 vote. These requirements

² An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

must be satisfied before a bill can receive a vote in this Committee. This bill does not comply with this Committee's policy on tax expenditures.

- l) *Inbound!* This bill has been double referred, with this Committee as that of second referral. For an evaluation of this bill's provisions unrelated to taxation, please refer to the Committee on Business and Professions' analysis of this bill.

m) *Related legislation:*

- i) AB 564 (Haney) would repeal the rate increase to the cannabis excise tax scheduled on July 1, 2025. AB 564 is set for a hearing by this Committee on May 5.
- ii) AB 1397 (Flora) would amend the SFDC Law to allow hemp manufacturers to produce and sell low-dose hemp drinks, as restricted, and impose an excise tax on the gross receipts of any retail sale of those drinks. AB 1397 is pending a hearing by the Committee on Business and Professions.

n) *Previous legislation:*

- i) AB 195 (Committee on Budget), Chapter 56, Statutes of 2022, among other provisions, suspended the cultivation tax; required the CDTFA to estimate the forgone revenues resulting from the suspension of the cultivation tax; and required, on July 1, 2025, the cannabis excise tax rate to increase by the percentage necessary to offset the forgone cultivation tax revenues
- ii) SB 94 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2017, reconciled the regulation, licensing, and enforcement of legal medical and recreational cannabis, thereby enacting MAUCRSA.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cannabis Industry Association
UFCW – Western States Council

Opposition

California Trout
Getting It Right from the Start
Origins Council
Resources Legacy fund
Trout Unlimited
Youth Forward

Analysis Prepared by: Harrison Bowlby / REV. & TAX. / (916) 319-2098