



Informational Hearing on Unregulated Intoxicants and
Psychoactive Substances
House Health Committee
April 26, 2023

Testimony Submitted by the Pennsylvania District Attorneys Association

Thank you for the opportunity to submit testimony on this important topic related to Delta-8, Kratom and CBD. The hearing is important because these unregulated intoxicants are not tested for toxicity levels and are potentially dangerous to individuals ingesting them without certainty of what they contain or how they are manufactured.

Delta-8, a hemp-based product, has become readily available for purchase in retail locations such as convenience stores and online despite it being illegal under Pennsylvania law. Ease of accessibility draws adolescents and young people to obtain it despite the risks.

Delta-8 is often advertised as a legal alternative to marijuana due to conflicting federal and state laws. That assertion is wrong.

Under Pennsylvania law, Delta-8 tetrahydrocannabinol (THC), is explicitly illegal. Those who possess it, sell it, manufacture it, or possess it with the intent to sell or manufacture it, are subject to prosecution under Pennsylvania state law. (*35 P.S. § 780-102 (2019)*, *35 P.S. § 780-104 (1)(iii)(16) (2020)*, and *35 P.S. § 780-104 (1)(vii)(1)(B) (2020)*).

In addition to being illegal in Pennsylvania, it is important to know that Delta-8 products may be dangerous. The federal Food and Drug Administration (FDA) warned consumers that Delta-8 products could result in serious health risks, including hallucinations, vomiting, anxiety, and loss of consciousness. The FDA also issued warning letters to manufacturers selling Delta-8 THC products.

Delta-8 is unregulated in Pennsylvania. It is not subject to the type of testing that is required to manufacture legal medical marijuana. This leads to concerns that there could be chemicals, pesticides and contaminants in the products left behind in the manufacturing process.

So why do stores think it is okay to sell Delta-8?

In 2018, Congress passed a federal Farm Bill legalizing hemp production, when manufactured from a hemp-derived cannabidiol. The definition of hemp includes the seeds, derivatives, extracts, cannabinoids, with a tetrahydrocannabinol concentration of not more than 0.3 percent. Some manufacturers believed the change in federal law made products like Delta-8 legal in Pennsylvania. That's incorrect and has provided a legal gray area regarding some byproducts of hemp, most notably Delta-8. While Delta-8 may be legal under federal law, state law still prohibits it.

Pennsylvania law considers Delta-8 THC to be a schedule I controlled substance. Under the state hemp law, some forms of industrial hemp, which are cultivated for fiber,

seed, and floral extracts, are permitted. State law requires that the concentration of THC in hemp be less than 0.3%. Tetrahydrocannabinols are listed as controlled Schedule I substances in the PA with no exception for those contained in hemp thereby making Delta-8 illegal under PA law.

Thank you for the opportunity to provide testimony in this important matter.