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**SB-315: Smokable Hemp**

1 message

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**Rod Kight** <Rod@kightlaw.com>

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Bcc: "Blake Butler (blake@ncindhemp.org)" <blake@ncindhemp.org>, Justin Hamilton <justin@hempleton.com>, Bob Crumley <bob@foundershemp.com>, Garrett Perdue <garrett@rootbioscience.com>, Marshall Hurley <mrhurley99@gmail.com>

Honorable Members of the House Finance Committee:

I am writing you regarding the North Carolina Farm Act of 2019 (SB-315). Specifically, I am writing to ask that you remove any ban on "smokable hemp" from SB-315.

I am a North Carolina (NC) attorney. My law firm represents farmers and businesses in the hemp industry in NC and throughout the United States. I represent many, and perhaps most, of the stakeholders in the NC hemp industry who will be impacted by SB-315. My clients are desperately concerned about the possibility of a ban on smokable hemp. It is the single most profitable crop and hemp product that they can grow and sell. Additionally, banning it is illegal for the reasons I discuss below.

You are likely aware that Congress legalized hemp with passage of the Agricultural Improvement Act of 2018 (2018 Farm Bill) on December 20, 2018. It specifically removed "hemp", including tetrahydrocannabinol (THC) derived from hemp, from the Controlled Substances Act. The 2018 Farm Bill defines "hemp" broadly as:

*"[T]he 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."* 2018 Farm Bill, Section 10113, Section 297A(1)

The 2018 Farm Bill grants the United States Department of Agriculture (USDA) exclusive control over hemp production, including the authority to approve (or deny) plans proposed by individual states under Section 297B to regulate hemp within their borders. Absent an approved plan, sole authority to regulate hemp resides with the USDA. To date, the USDA has not approved any state plans. NC has not submitted one for approval. As a preliminary matter, if passed SB-315 will largely be unenforceable unless and until it is packaged as a "plan" under Section 297B and approved by the USDA.

Even assuming that SB-315 is packaged and proposed as a plan to the USDA, its ban on smokable hemp is fatal in at least two ways. First, it makes no exception for transportation of smokable hemp through NC. Section 10114(b) is explicit in prohibiting individual states from interfering with transportation of hemp. It states:

*"No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable."*

Second, and most important, a state may not alter the definition of "hemp". The Conference Report for the 2018 Farm Bill makes clear that Congress intended to preclude a state from adopting a more restrictive definition of hemp than the one set forth in the 2018 Farm Bill:

*"[S]tate and Tribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp or put in place policies that are less restrictive."* Conference Report for Agricultural Improvement Act of 2018, p. 738 (**emphasis added**).

As currently written, SB-315 unlawfully alters the definition of hemp by carving out an exception for "smokable hemp".

Indiana recently enacted Senate-Enrolled Act 516 (SEA-516), which includes a ban on "smokable hemp". Much like SB-315, SEA-516 exempts "smokable hemp" (which includes derivatives hemp bud and hemp flower) from the definition of "hemp" supplied by the 2018 Farm Bill, and renders it a crime to manufacture, finance, deliver, or possess smokable hemp despite the fact that it is a legal hemp derivative under federal law. SEA-516 also criminalizes the transport of smokable hemp despite federal law explicitly stating that states have no power to do so. For these reasons, a lawsuit was filed on June 28, 2019. A copy of the lawsuit is attached to this email.

In the event that smokable hemp is banned and/or possession, sale, or use of it is criminalized, NC stakeholders are likely to file a similar lawsuit as the one filed in Indiana. We do not believe that is necessary. The General Assembly has an opportunity to create reasonable laws to promote the production of hemp in NC, rather than restrict it. By definition, hemp is non-intoxicating. Additionally, numerous studies have shown that it is non-toxic and non-addictive. Perhaps most importantly, it has demonstrated itself to be a significant economic driver for NC farmers and businesses. Despite proclamations you may have heard that the proverbial "sky is falling" with respect to smokable hemp, the fact is that it has been lawful in NC for several years and has caused no demonstrable harm whatsoever. Rather than taking a reactionary approach to hemp, my clients and I encourage the NC General Assembly to take proactive measures to ensure that NC farmers and businesses are able to take full opportunity of the rapidly emerging hemp economy.

My clients, who reside, farm, and operate businesses throughout NC, are keenly aware of SB-315 and their representatives' current views on it. I sincerely hope that you will each take the time to consider this matter carefully and how it may impact your constituents. It is better not to enact any bill at this time than to enact one that will harm NC farmers and businesses.

Thank you for your attention to this important message. Please do not hesitate to reach out if you have any questions.

Rod Kight

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