

BEFORE THE OHIO SENATE
GENERAL GOVERNMENT COMMITTEE
HEARING ON SB86

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Madam Chairman Roegner, Madam Vice Chair Gavarone, Ranking Member Blackshear, and members of the General Government Committee. My name is Don E Wirtshafter, I am an Attorney with the Athens County Bar. In addition to the practice of law, I have been engaged in the legal cannabis industry for over 30 years. I speak as a citizen. I am not an investor or employee of any of the players. My statements are my own and based on my expertise and experience. I am here to warn the legislature that SB86 is a mistake. It is a priority to do something about these synthetics, but this attempt to regulate them is wrong.

Synthetic cannabinoids are clearly the elephant in the room. This is a confusing issue for people who know a lot about cannabis; so I'm sure it is even more confusing to those of you who profess naivete on the subject. Please do not be confused between natural cannabis produced under the law and all the problems we are seeing from these imitation products being marketed as "cannabis" in our gas stations. Most importantly, please do not try to regulate these two completely different products under the same set of laws. Any effort to try to "regulate" these new, potential poisons as cannabis will cause confusion in the marketplace and destroy the state's efforts to compete in the legitimate hemp/cannabis industry.

Understand, these synthetics are not chemicals underground chemists can buy from legitimate sources. One hundred percent of these chemicals are concocted in underground drug laboratories; the same sources that fuel our cocaine, heroin, and meth crisis. Yet, because there is a potential for tax revenue, this bill proposes regulating these grey market chemicals by setting the same standards as natural cannabis and allowing our licensed dispensaries the exclusive right to sell these adulterated products. Our existing dispensaries don't want to become the distributors of these new chemicals. They certainly want to get them out of the gas stations because the cheap imitation products are hurting their market, and for public health and safety.

Please don't be confused by the self-serving behavior of these underground chemists and buy into the scam that these chemical imitations are hemp or cannabis, or "synthetic cannabis"; they are synthetic, but they are not cannabis. We don't know the derivation of these chemicals being imported from China. We don't know where or how they are made. This stuff was originally made with CBD extracted from industrial hemp. This involved acids and caustics and a very inefficient reaction, meaning a wide variety of chemicals are produced in such a reactor; meaning consumers are ingesting many more "drugs" than they are aware of.

There is no FDA inspection of these chemicals, there is no quality control. If these drugs were killing people on the streets we would not know it because there is no required monitoring by the manufacturers. There have not been published toxicity or safety studies on any of these

synthetics. Our communities have no idea how safe or how dangerous these chemical substances are that the legislature is seeking to tax and regulate. It's the wild west all over again.

These chemicals are being used to *adulterate* products being sold in Ohio. Please don't accept these scammers' euphemism by calling this "intoxicating hemp". A better term, the proper legal term, should be contaminated or adulterated hemp. Bunk hemp. Cracking down on bunk hemp is something we can all get behind. Just don't do it by confusing it with legal products or trying to regulate it under the same umbrella.

"Intoxicating hemp" is an oxymoron, a pairing of contradictory words. Hemp is not intoxicating, it's considered non-psychedelic. The only way to make hemp intoxicating is to mess with it; to chemically alter its molecular structure.

I am the first in line stating we need to do something, but SB86 attempts to regulate the unregulatable, while creating more crimes for Ohioans. Ohio's legislature should not make such important health decisions without the proper guidance from our FDA. None of these synthetic imitations have been subjected to the FDA review process. The FDA review process is expensive and it takes years. But the FDA new product review is the only system we have to assure that new chemical entities are studied for their safety before they are cast into widespread consumer use. Please don't let the merchant of these toxins run around the protections given to American citizens. Ohio's Legislature is not the FDA. It is not your job to approve the human use of chemicals. If you regulate these mysterious chemicals and people get hurt, the people will hold the legislature responsible.

Many of these chemicals are Schedule I controlled substances or controlled substance analogs. They should not be anywhere near the marketplace without toxicity and safety studies. They should not be sold in this country under current federal prohibition, yet, because of their potential tax revenue, the legislature seems poised to tolerate the entry of these new chemicals into our retail stores. This bill language attempts to regulate the unregulatable by treating these chemicals as though they are natural marijuana. These imitation products are a problem in the legitimate market because they are so inexpensive, that producers are tempted to cut corners and use them.

These potential poisons are already a contaminant in our commercial stream. If the legislature allows quantities of these chemicals into our commerce, the resulting confusion will quickly erode any confidence our citizens have in the products they buy from approved dispensaries. Regulating these new chemical entities like cannabis under our existing laws spells doom for our existing legitimate state industries.

Most importantly, our state crime labs do not have the capability to differentiate the natural products from these adulterants. Delta 8 THC, Delta 10 THC and other bootleg products are positional isomers of Delta 9 THC; the substance we use to regulate cannabis. This means that our state crime laboratories with their current equipment and methodologies are unable to

differentiate these three substances from each other. How is Ohio expected to regulate these new chemical entities when you cannot see or measure them?

SB86 is getting pushback from the state's legal cannabis and industrial hemp community because trying to control these chemicals, using our existing regulations for natural products, cannot be done without requiring our existing producers to go through much more chemical testing and regulation. In Ohio's cannabis industry there have been no embarrassments of diversion or safety issues. Our dispensaries do a good job keeping the industry to adults only. Our Ohio producers are not the problem. So please do not try to harness the rampaging synthetics trend by putting additional burdens on the competent Ohio companies that have nothing to do with the problem.

I applaud the legislature's efforts to do something about these synthetics. I spoke to the legislature a year ago about this new problem. I was gratified six weeks later when our governor took up this issue and made it one of his legislative priorities. I agree, we have to do something, but regulating these unregulatable substances is not the answer.

Instead, the answer to what our state should be doing about these synthetics lies in existing Ohio law. This stuff is already quite illegal. We already ban the adulteration of Ohio products with unapproved drug substances. The synthetics on convenience stores shelves are clearly unapproved drug substances. ORC 3715.32 prohibits "*Selling or delivering any adulterated or misbranded product*". The statute includes civil and criminal penalties for violators. Revised Code section 3715.59 prohibits adulteration of our products. A product is adulterated if it contains any poisonous or deleterious substances that may render it injurious. The same statute specifically prohibits the addition of any unapproved additives or contaminants which includes undisclosed synthetic cannabinoids.

Finally, Ohio Revised Code section 3715.03 through 3715.06 prohibits misbranding of products sold in Ohio. A product is misbranded if it is labeled falsely, or if the label omits important information such as ingredient identity or proper warnings. None of these bunk products are sold with proper labeling. They are both adulterated and misbranded. We have no reason to be confident that they are safe.

Ohio law already prohibits what you seek to criminalize with this bill. The Ohio Health Department is already legally enabled to go after these fake products and get them off of our shelves. The answer is not in new laws. The answer is in enforcing existing laws and giving the Department of Health the resources needed to do so.

Ohio has set up a strictly regulated market for natural cannabis, a market that promises a wealth of taxes to the state. Natural cannabis has been in use for thousands of years. More than 50,000 scientific studies have been conducted on natural cannabis. Scientists and the general population have come to understand cannabis is relatively safe, far safer than alcohol or tobacco, drugs we tolerate and regulate.

These synthetics being imported into Ohio have no such history and no assurance of safety. These synthetics are the problem that the governor asked the Ohio legislator to tackle. But instead of keeping these drugs off of Ohio streets, the legislature is being led into “regulating” them, allowing the adulteration of consumer products with these drugs in controlled quantities. And on top of that, the plan is to restrict their sales to the existing cannabis dispensaries. The result will be a loss in confidence by the public in the products from these dispensaries. The dispensaries will face increased laboratory and testing expenses, huge potential civil liabilities, and eventually decreased business.

We have budding cannabis and industrial hemp industries in Ohio. We mostly avoided the initial flush of CBD scams. Ohio's second wave of the hemp industry is far more substantial, and sustainable. Industries are springing up to use industrial hemp from Ohio farms. Please don't do anything to impede this progress for Ohio's farmers and Ohio industries and Ohio consumers.