

POLITICO^{PRO}

Morning Cannabis

BY PAUL DEMKO AND MONA ZHANG

QUICK FIX

— **The U.S. Hemp Roundtable is pushing new FDA Commissioner Robert Califf to adopt a policy of enforcement discretion for CBD products**, citing recent congressional testimony as a sign that he might be willing to consider a new approach.

— **Legislation to establish a taxed, regulated recreational marijuana market in Delaware narrowly failed in the House due to the absence of a key supporter.** But advocates are hoping the bill will get another floor vote in June.

— **Cresco Labs and Columbia Care are the latest major U.S. cannabis companies to report flat or falling sales.** The two companies are in the process of completing a \$2 billion merger.

IT'S MONDAY, MAY 23. WELCOME TO POLITICO'S CANNABIS NEWSLETTER. Customs officers [seized more than 2,000 pounds of marijuana](#) in Michigan that was labeled “foam pool toys.” Send us tips and story ideas: [Natalie](#) at nfertig@politico.com, [Paul](#) at pdemko@politico.com and [Mona](#) at mzhang@politico.com. And follow Pro: [@POLITICOPro](#).

New: Campaign Races Dashboard. As the primaries ramp up, check out our updated [Campaign Races Dashboard](#) featuring new interactive & color-coded maps showcasing featured races, race ratings, candidate lists, and more.

DRIVING THE DAY

HEMP ROUNDTABLE SEIZES ON CALIFF REMARKS — The FDA should immediately issue a policy of enforcement discretion for dietary supplements containing CBD and other hemp-derived substances, the U.S Hemp Roundtable argues in [a letter being sent today to FDA Commissioner Robert Califf](#) that was shared with POLITICO.

The industry group points out that the FDA recently took similar action on products that contain N-acetyl-L-cysteine (NAC), indicating that the agency recognizes it as a plausible interim action it can take while considering broader regulatory steps. Hemp Roundtable also renewed calls for creating a legal pathway for including CBD in food and beverages, as well as legislative changes to address the issue.

“We recognize that safety was a factor in FDA’s decision to issue the draft guidance on NAC and agree that safety should always guide FDA policy,” reads the letter from Hemp Roundtable General Counsel Jonathan Miller. “Indeed, there has been no indication that CBD poses significant safety concerns at the levels typically found in CBD dietary supplements, based on adverse event reporting, observational data, and toxicology data on CBD.”

Key context: The hemp industry has long been frustrated by the lack of regulatory action by the FDA since hemp was legalized under the

2018 farm bill, arguing that the uncertainty has stunted growth of the fledgling market. The agency's stance is that ingestible products containing CBD are illegal, even though its enforcement actions have largely been limited to sending out warning letters to companies that make unsubstantiated medical claims.

But Miller cited [recent congressional testimony by Califf](#), who started his second stint as head of the FDA in February, suggesting a new approach to CBD products is needed as a sign that the agency might finally be prepared to move forward.

“Unfortunately, the agency has been unwilling to meet with us to discuss legislative options,” the letter states. “At the same time, we have been told FDA is urging congressional staff not to proceed with existing legislation. We ask for your help to break this stalemate, and we stand by to participate in productive negotiations with your staff to come up with solutions that best protect American consumers.”

STATE OF MARIJUANA

DELAWARE SUFFERS A SETBACK — As Delaware marijuana advocates dealt with a lawmaker's sick day, other states with legal weed wrestled with reforming their own cannabis laws. Here's a look at some of the legislative action in the past week:

Delaware: A [bill to regulate adult-use marijuana](#) narrowly failed in the House just a week after the Legislature sent [a decriminalization bill](#) to the governor's desk. But not all hope is lost for sponsor Democratic Rep. [Ed Osienski](#). The bill lost a vote from a key supporter who was out sick on Thursday. When the bill failed, Osienski changed his vote to “no,” which allows for another opportunity for a vote, [the News Journal reported](#). He hopes to get another vote in early June. Meanwhile, the Senate passed [a bill that would require a labor peace agreement](#) with a union for medical cannabis facilities of a certain size.

Massachusetts: Lawmakers overwhelmingly approved [a bill aimed at strengthening the state's social equity program](#). The bill passed 153-2 in the House, while the Senate unanimously passed its own version in April. The bill's next stop will be a conference committee to iron out the differences. The bill would set aside marijuana revenues for a social equity fund, create greater oversight of host community agreements and make it easier to expunge past cannabis convictions. Meanwhile, [a bill to protect workers from being fired for marijuana use](#) advanced to the House floor.

New York: Republican Sen. [Thomas O'Mara](#) introduced [a bill to criminalize various types of unlicensed marijuana sales](#) that have popped up in the absence of regulated sales. "Gifts or trades" along with store or club sales without a license would be a misdemeanor or felony offense depending on the amount of marijuana. The bill would also bar those convicted of unlicensed sales from seeking a state permit for its regulated adult-use market. The bill was referred to the Codes committee. Meanwhile, Democratic Sen. [James Sanders](#) introduced [a bill to study creating a state public bank](#), including how such a bank could provide services to the cannabis industry.

INDUSTRY INTEL

FLAT OR FALLING FIRST QUARTER SALES — The cannabis industry remains mired in a financial malaise, as reflected in the recent first quarter earnings reports by major companies. Revenues for most firms are stagnant or slipping slightly, due in part to falling prices in many markets.

Cresco Labs, for example, [reported first quarter revenues of \\$214.4 million](#), down 1.6 percent compared to the final three months of 2021. That largely reflected softness in the company's wholesale market, with a 6 percent dip in revenues.

However, Cresco pointed out that it's actually gaining market share in

many of the 10 states where it currently operates. Overall sales in those states were down 4.5 percent, significantly worse than the revenue dip for Cresco.

Meanwhile, Columbia Care — the company that Cresco is in the midst of purchasing for \$2 billion — saw a much steeper revenue slide. The company reported \$123.1 million in sales during the first quarter of this year, down 11.6 percent compared to the final quarter of 2021. That was also well below analyst expectations of about \$138 million. But the sluggish sales didn't faze investors, as reflected by Columbia Care's stock price rising by about 10 percent last week.

Industry analysts remain bullish on the Cresco-Columbia mega merger: "We continue to see this deal as an excellent fit," wrote Jefferies analysts. "It adds critical scale across key states, one-of the major barriers to CC's execution to date."

SMALL BUSINESS IN AN MSO WORLD — It's tough to compete in a cannabis market dominated by multi-state operators, according to a panel of small business owners at MJUnpacked in New York City on Friday. All three panelists operate just one or two retail outlets in a single state.

The benefits: Being independent allows entrepreneurs to "not have to answer to a whole bunch of humans" said Meg Sanders, CEO of Canna Provisions, which has two dispensaries in Massachusetts. That gives entrepreneurs more freedom to stick to their vision when it comes to making hiring decisions or choosing which products to stock, said Lilach Mazor Power, founder of the Giving Tree Dispensary in Arizona.

"MSO chains — they're not going anywhere," said Helen Gomez Andrews, co-founder of Massachusetts cannabis company The High End. "There's room for both [independent retailers and chains] in places like Massachusetts and [New York]," she said.

The challenges: All three entrepreneurs talked about the challenge of

raising capital when it comes to operating a small cannabis business. The biggest disadvantage is the inability to negotiate, Power said. “We don’t have the buying power that MSOs have.”

And it’s not just buying power for cannabis products. It’s harder to negotiate for medical insurance or retirement plans for your employees, she said.

While some of the panelists believed that promoting themselves as a small- or women-owned business could help them reach consumers looking to support local businesses, Power disagreed, citing a lack of sophisticated consumers in the marketplace.

“The consumer at this point chooses dispensary and brands on two things: the dollar amount and the THC level,” she said.

Advice for entrepreneurs: Sanders and Power both said they get approached by MSOs about possibly buying their businesses on a regular basis. “We haven’t seen an MSO operate in an amazing way that you want to be a part of,” Power said. “I’m definitely not taking stocks.”

Sanders agreed, explaining how her business is cash flow positive, yet she faces all-stock offers from larger companies all the time.

“It’s not a fair trade,” she said. “They don’t think that I don’t understand basic math? ... Cash is king in any business.”

HEMP WATCH

DELTA-8 IS LEGAL, SAYS APPELLATE COURT — Delta-8 THC products are legal under the 2018 farm bill, [found a 9th Circuit Court of Appeals opinion](#) . The proliferation of such products is causing headaches for state policymakers, who have struggled with the intoxicating products that are sold outside of state-regulated

marijuana markets.

The context: The 9th Circuit was considering an appeal from a retailer accused of selling counterfeit Delta-8 THC products. The retailer, Boyd Street Distro, did not try to challenge that allegation in court, but instead argued that the plaintiff couldn't have intellectual property protections for its Delta-8 products because the substance is illegal under federal law.

Boyd Street attempted to argue that Congress did not intend to legalize intoxicating products when it legalized industrial hemp.

If “Congress inadvertently created a loophole legalizing vaping products containing Delta-8 THC, then it is for Congress to fix its mistake,” the opinion said.

The latest state development: The Colorado Legislature recently sent a bill to the governor that [would allow regulators to prohibit the chemical modification](#) of different types of THC and create a task force to study the issue.

POT-POURRI

— **Democratic Rep. Kurt Schrader, a key hemp supporter,** appears to have [lost his bid for reelection](#).

— **North Dakota advocates face a July 11 deadline** to [collect enough signatures](#) to put a recreational legalization petition on the ballot.

— **The word marijuana has a racist history.** Maine is the latest state to [switch to cannabis](#).
