

POLITICO^{PRO}

Morning Cannabis

BY MONA ZHANG PAUL DEMKO AND NATALIE FERTIG

Presented by Coalition for Cannabis Policy, Education, and Regulation (CPEAR)

QUICK FIX

— **Interstate commerce potentially rolls closer**, as California's cannabis agency asks the state attorney general to issue an opinion that could open the door for cannabis trade with other legal weed states.

— **Workplace testing policies for cannabis consumption remain hindered by the lack of any credible test for impairment**, according to a new report from the Coalition for Cannabis Policy, Education, and Regulation.

— **Cornbread Hemp CEO Jim Higdon says the FDA's refusal to regulate CBD products** is undermining the agency's stated goal of protecting public health.

IT'S MONDAY, JANUARY 30. WELCOME TO POLITICO'S CANNABIS NEWSLETTER. Hong Kong traders are dumping CBD stocks [ahead of a February ban on those products](#). Send us tips and story ideas: [Mona](mailto:mzhang@politico.com) at mzhang@politico.com, [Paul](mailto:pdemko@politico.com) at pdemko@politico.com and [Natalie](mailto:nfertig@politico.com) at nfertig@politico.com. And follow Pro: [@POLITICOPro](https://twitter.com/POLITICOPro).

A message from Coalition for Cannabis Policy, Education, and Regulation (CPEAR):

Americans deserve standardized workplace cannabis testing. Read

our recommendations in CPEAR's latest policy paper: **A Science-and Equity-Centered Framework to Reimagine Workplace Cannabis Testing.**

DRIVING THE DAY

EXCLUSIVE: CALIFORNIA REGULATORS PUSH INTERSTATE COMMERCE — California's Department of Cannabis Control [is asking](#) state Attorney General [Rob Bonta](#) to issue a formal opinion that could open the door for California to be the first state to allow interstate cannabis commerce.

[The DCC lays out its argument in a letter](#) that entering into an interstate compact with another legal state, even while cannabis is still federally illegal, would not get the state itself into hot water.

Now, the DCC wants Bonta to acknowledge that interstate trade would be protected by this anti-commandeering principle. If Bonta chooses to do so, there is a chance that California could be courting other legal states to enter into trade agreements in the near future.

Key point: Bonta was a champion of cannabis legislation in the state Legislature for many years.

The background: California passed a law in September allowing the governor to enter into a commercial compact with another legal state. According to the law, however, the governor is only allowed to negotiate these contracts if one of four things occur: cannabis is federally decriminalized, a federal law passes allowing interstate cannabis commerce, the DOJ issues a memo allowing interstate cannabis commerce, or the California attorney general issues a written opinion determining that interstate commerce would not "result in significant legal risk" to the state.

New Congress Resources: Get to know the 118th Congress through [Pro Directories](#), which provide everything from new-member bios and

RESEARCH CORNER

UNPACKING THE CHALLENGES OF WORKPLACE CANNABIS TESTING

—Workplace testing for cannabis consumption remains fraught with dubious technology, legal uncertainty and inconsistent policies more than a decade after legalization began spreading across the country, according to [a new report published by The Coalition for Cannabis Policy, Education, and Regulation](#).

“It’s a complicated landscape,” said Staci Gruber, one of the co-authors of the report and an associate professor of psychiatry at Harvard Medical School. “There have been a lot of questions about the accuracy ... of workplace testing for something that’s as complex as cannabis.”

The lack of any credible test for marijuana impairment means that workers who consume the drug — even in states where it is legal — can be fired despite no evidence that they were ever impaired at work.

“Impairment of any kind — regardless of the source, doesn’t matter if it’s from cannabis — is really what we’re hoping to identify and mitigate,” Gruber said.

CBD risks: In addition, workers who consume CBD products could also be putting themselves in jeopardy. One study cited in the CPEAR paper found that half of the patients enrolled in a clinical trial for treating anxiety with CBD products — none of whom reported feeling intoxicated after consumption — tested positive for metabolites of Delta-9 THC.

“I hear from so many patients, ‘But I’m only taking CBD, how can I be positive?’” said Gruber, noting that the amounts of Delta-9 THC in the products were well under the threshold for federal legality.

Legal evolution: The courts are wrestling with where to draw the line

between allowing employers to set drug policies designed to establish safe workplaces and the rights of people consuming cannabis. In the early years of state-legal markets, judges tended to side with employers wishing to create a drug-free environment. But over the last five years, the paper notes, courts have increasingly sided with patients challenging workplace policies.

CPEAR will be [hosting a webinar on Tuesday](#) with Gruber and other policy experts to discuss cannabis workplace testing.

Funding note: [CPEAR's members are companies with ties to the cannabis industry](#), including tobacco giant Altria Client Services and alcohol behemoths Constellation Brands and Molson Coors Beverage Company.

HEMP WATCH

CORNBREAD HEMP CEO: FDA INACTION 'SUPER FRUSTRATING' — Jim Higdon thought he knew what was on the horizon from the FDA when it comes to CBD products. The Cornbread Hemp CEO was anticipating that the agency would issue guidance on how much people could consume on a daily basis without significant health risks.

“We were just waiting for that to come through and wondering where the FDA would set that daily dosage limit,” Higdon said in an interview. “The fact that they came in and just threw up their hands after five years of kicking it around was surprising and frustrating.”

Quick recap: On Thursday, the [FDA rejected calls for CBD products to be regulated like dietary supplements](#). Instead, it called on Congress to create a new regulatory pathway for hemp-derived products, raising the likelihood that the struggling CBD industry will remain mired in legal uncertainty for the foreseeable future.

“The FDA is saying that they’re interested in consumer safety, but they’re not issuing the regulations that we need to keep consumers safe,” Higdon said.

Legal risks: While hemp was legalized under the 2018 farm bill, the FDA's stance continues to be that ingestible products containing CBD are illegal. The agency's enforcement actions have largely been limited to sending out warning letters to companies that pose public health risks. But the legal uncertainty has dissuaded major retailers like Walmart and CVS from stocking those products.

"We're simultaneously legal and illegal at the same time," Higdon said. "How is that even possible?"

HEMP MARKET WOES — Wholesale hemp prices were low but mostly held steady in January 2023, [according to the latest Hemp Benchmarks report](#). Despite a contraction in CBD biomass production, prices remained at an all-time low for the third month in a row.

Wholesale prices for CBD extracts also held steady from December 2022 to January 2023, but fell significantly compared to the year before. Smokable CBD flower remained one of the most stable product types in the sector

Meanwhile, CBG prices held steady "suggesting a small, but steady niche market," the report said. Delta-8 THC distillate saw a 3 percent uptick in price over the last month, while Delta-10 THC distillate fell 5 percent of the same time period.

The context: 2022 saw the smallest amount of hemp acreage planted since the 2018 farm bill. About 24,000 acres of hemp were planted last year, with 39 percent for fiber, 35 percent for cannabinoids and 26 percent dedicated to grain and seed production.

That's down from 45,000 acres planted in 2021.

Regulatory confusion: The industry is eagerly waiting for details of the 2023 farm bill, where some lawmakers are seeking to raise the THC percentage in hemp crops while also tamping down on the booming market for intoxicating cannabinoids being marketed as hemp.