

# Insights

## Indiana House Votes to Reverse Indiana's Ban on Smokable Hemp

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On Wednesday, February 17, 2021, the Indiana House of Representatives ("Indiana House") approved House Bill 1224 ("HB 1224") by a vote of 69 to 28. The bill, which now advances to the Indiana Senate, could result in a reversal of Indiana's 2019 ban on smokable hemp. Lifting the ban would, according to proponents, open up one of the fastest growing market segments in the hemp and hemp-derived CBD industry to Indiana farmers.

### Background

As discussed in detail in our **prior alert**, Senate Enrolled Act 516 ("SEA 516") was passed in 2019 to better align Indiana's laws with the Agricultural Improvement Act of 2018 ("2018 Farm Bill") and to establish a regulatory framework for hemp production in the state. However, in contrast to the 2018 Farm Bill, SEA 516 criminalized the manufacture, financing, delivery or possession of "smokable hemp," defined as any industrial hemp product in a form that allows tetrahydrocannabinol ("THC") to be introduced into the human body by inhalation of smoke (e.g., hemp flower). Unfortunately for Indiana farmers, this prohibition effectively locked them out of the market segment with the most profit potential. As a result, in addition to lobbying to change the law through legislative action (like HB 1224), Indiana's smokable hemp ban was also challenged in federal court by several hemp and CBD sellers and wholesalers in a case that is still pending in the United States District Court of the Southern District of Indiana.

### HB 1224

There were multiple cannabis related bills introduced during the 2021 Session of the Indiana General Assembly, with three specifically addressing smokable hemp. However, HB 1224 was the only bill to garner strong support. Still, the bill has faced criticism, most notably from law enforcement officials concerned with the challenges officers would face in the field distinguishing smokable hemp (if legalized) from marijuana (which would remain illegal even if HB 1224 is passed). During a committee hearing on HB 1224 held on January 25, 2021 representatives of Indiana law enforcement expressed concern that its officers currently do not have a reliable, legally admissible, method of distinguishing between legal hemp and illegal marijuana, which look and smell alike, but differ in the amount of THC they contain.

To help address these concerns, HB 1224 was amended by the House Commerce, Small Business and Economic Development Committee to add provisions akin to open container laws for alcohol. Specifically, the version of HB 1224 approved by the Indiana House establishes a Class C Infraction for a person in a motor vehicle who, while the vehicle is in operation or on the right-of-way of a public highway, possesses a container that contains hemp flower if the container does not have tamper evident packaging or the tamper evident packaging has a broken seal. Whether the amendment, and the hemp industry's advocacy efforts, will be enough to sway the Indiana Senate remains to be seen. Stay tuned.



If you have any questions regarding the information in this article or with any of the federal or state legal requirements related to cannabis, hemp or CBD, contact **Kendall A. Schnurpel** or **Mathew W. Norris**.

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