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FOR IMMEDIATE RELEASE:
Friday, September 12, 2025

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Lt. Gov. Dan Patrick Statement on the Governor's THC Executive Order

AUSTIN – Lt. Gov. Dan Patrick issued the following statement today:

"This is not a personal fight with the governor. It is a disagreement on extremely important policy. We worked together well this session and will in the future. On this issue, we disagree.

"The Governor's executive order, intentionally or not, has sent a signal to the THC industry that they have a state seal of approval on the current THC market.

"This is the industry's boastful reaction to the executive order:

"This is huge for our industry, coming from a full out ban and making it to this executive order completely legitimizes our industry and shows that we are here to stay!"

"These are the same people who have been selling dangerous THC products to kids and teens for the last four years in thousands of locations across Texas. They will continue to do so under this executive order without a ban. They are the ones who purposefully built their stores close to schools to target our kids. They have always claimed only to sell to people age 21 and up, but we know that is a lie. Almost every THC product they have on the shelf today is still illegal, often grossly mislabeled with ingredients unknown to the buyer.

"The governor has stated he does not want to legalize marijuana in Texas, but testimony from law enforcement and others say that is exactly what will happen.

"It is important to understand how we got here. The Texas Legislature never voted to legalize recreational marijuana or the intoxicating THC products now sold at nearly 9,000 locations across the state. Recreational marijuana is still illegal in Texas. However, because

an unscrupulous industry has exploited a loophole in the hemp law, they are now selling highly potent and dangerous THC products to our kids and all Texans alike.

“That is why the legislature passed Senate Bill 3 in the regular session to ban dangerous THC products. A ban is the only way to truly protect kids from accessing these products. We have age limits on alcohol and cigarettes, but we know that does not stop kids from getting them either. The difference here is that one highly potent THC product can cause irreversible damage to a young person’s mind forever. Recent undercover police video from three different smoke shops in the Dallas area, chosen at random by police, show employees warning customers that if they ingested the wrong amount of product, it could kill them.

“During the last special session, the Governor, Speaker, and I spent hours trying to find a consensus on THC. We could not come to an agreement on a safe THC concentration, serving size, or amount that would not lead to intoxication and abuse. Though we tried to find common ground on a law to protect the public, the legislature simply could not vote for the unknown on those three critical issues.

“Here are several key points about the executive order:

- The executive order does not prohibit the continued manufacture and sale of dangerous intoxicating synthetic THC products, like Delta 8 and Delta 10
- The executive order does not prohibit the current and continued sale of products containing dangerously potent levels of Delta 9 THC
- The executive order does not prohibit stores from maintaining their current locations near schools
- The executive order anticipates people driving while intoxicated on THC and other intoxication-related crimes, and asks state agencies to study ways to prevent and prosecute those crimes
- Even while asking a state agency to limit THC sales only to adults, the executive order also anticipates an unlawful resale market that will continue to reach minors
- The executive order anticipates local law enforcement will not be enough to keep law breakers in check, and will require the assistance of state police and multiple law enforcement agencies across the state

“The executive order also references a 150-page regulation bill that was filed in the House at the last moment. That bill did not have support and did not receive a hearing. The House canceled a vote on another bill, House Bill 36, because it did not have enough support either. Neither bill was filed in the Texas Senate.

“The governor mentions in his executive order that he wants people 21 and over to ‘enjoy’ THC. For most people who buy these products, ‘enjoy’ means getting high. If they are not getting high, why are they buying any THC product?

“In our discussions with the governor last week, when trying to agree on a law the legislature could pass, there was agreement to prohibit smoke shops, convenience stores with gas pumps, and corner stores from selling any THC product. There was agreement that only Texas-grown consumable hemp products could be sold in retail stores. There was agreement to ban all smokable THC products and ban all Delta 8 and Delta 10 synthetic products. The executive order does none of this. Most of the issues in the executive order are left for agencies to look at in the future.

“It is also important to clarify a few key points from the executive order. First, the executive order says the ‘legislature did not pass any legislation concerning consumable hemp products, not even a ban for minors, leaving in place the status quo.’ As mentioned above, the legislature passed SB 3, which protected kids and all Texans alike. SB 3 was vetoed.

“Additionally, the executive order says the federal government does not allow states to ban THC. That is simply incorrect. If so, all states would be federally required to legalize and regulate THC, the key ingredient in marijuana. Multiple courts have already ruled states can ban THC, and several states have already done so.

The 4th Circuit held:

“The 2018 Farm Bill says nothing about the ability of states to regulate the sale of hemp products within their borders. ... [T]he plaintiffs have cited nothing in the statutory text, nor have they identified any other authority, to support their argument that Congress intended to create a nationwide hemp market.”

The 7th Circuit held:

“The 2018 [Farm] Law says nothing about whether a state may prohibit possession or sale of industrial hemp. ... We see nothing in the 2018 Farm Law that supports the inference that Congress was demanding that states legalize industrial hemp, apart from the specific provisions of the express preemption clause [regarding transportation through the state].”

The 8th Circuit held:

“The text of the 2018 Farm Bill shows only that Congress wanted to facilitate state legalization of hemp, if a state wants to. ... [J]ust because states may legalize hemp under the 2018 Farm Bill does not mean they must.”

“Furthermore, Congress is now considering a full ban on consumable THC products.

“The executive order reflects a distrust of the industry; otherwise, the order would not propose setting up a massive taxpayer-funded program to regulate and inspect every step of the process, from growing, to packaging, and to selling THC at the retail level. As

mentioned above, the executive order also anticipates an unlawful resale market that will continue to reach minors and it recognizes local law enforcement will not be enough to keep law breakers in check, requiring the assistance of state police and multiple law enforcement agencies across the state.

“In the most current poll, Republicans have spoken clearly on this issue. 70% of Republicans do not want any regulation plan that will lead to recreational marijuana in our state.

“It is for all these reasons and more that the Senate passed a THC ban 3 times this year with the full support of law enforcement across Texas, the Texas Pediatric Society, and the Texas Medical Association. The first bill, SB 3, in regular session passed with 105 of 108 Republicans in the legislature.

“I continue to fully support the Texas Compassionate Use Program (TCUP) that allows for the medical use of THC as prescribed by doctors. I also continue to support CBD and CBG, which are currently legal in Texas. I am and will always be against any pathway that could open the door to recreational marijuana in our state. We do not want to be another failed Colorado.

“As always, I am open to conversations with the governor, as I would be on any issue.”

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