The Whole Plant Act

Comparison: S. 5736, the Hemp Guardrails Act

A comparison of the standalone Federal Whole Plant Act against S. 5736, the Hemp Guardrails Act, introduced on November 17, 2026 by Senator Sheehy for himself and Senator Klobuchar and referred to the Committee on Health, Education, Labor, and Pensions. This comparison reads the introduced print published by the Government Publishing Office. Section 2, the bill's only operative section, amends the hemp definition in section 297A of the Agricultural Marketing Act of 1946 as rewritten by section 781 of Public Law 119-37, adds new definitions and prohibited acts to the Federal Food, Drug, and Cosmetic Act, adds a new chapter XI to that Act for hemp-derived cannabinoid products, and sets out the states' authority. All of it takes effect December 11, 2026.

Read against the introduced print (S. 5736 IS), end to end, which matches the text the sponsors released, and against section 297A as section 781 rewrote it. Every section citation below was checked against those texts. The sponsors' section-by-section is cited only for what the sponsors say the bill is meant to do. Citations to the Whole Plant Act are to the standalone Federal Whole Plant Act unless otherwise marked. Independent policy analysis, not legal advice.

Where they agree

Stated first, because the two bills share more than they divide.

Both put cannabinoid products under the Food and Drug Administration. The bill adds a new chapter XI to the Food, Drug, and Cosmetic Act and directs the Secretary to set product standards by regulation within 180 days of enactment (sec. 2(b)(3), new FDCA sec. 1103). The Whole Plant Act does it through a Center for Cannabis Products within the Food and Drug Administration (Federal Sec. 5(2)).

Both protect children with packaging and marketing rules. The bill requires child-resistant packaging, which may vary by product form (new FDCA sec. 1103(1)(A)), makes a sale in noncompliant packaging a prohibited act (new FDCA sec. 301(jjj)(5)), and deems misbranded a product whose packaging imitates images used to advertise to children or anyone under 21 (new FDCA sec. 1101(3)). The Whole Plant Act requires child-resistant, tamper-evident packaging for every item, bars imitation of products marketed to children, and limits marketing that appeals to persons under 21 (Federal Sec. 4(9), 4(13)).

Both test and publish the result. The bill requires uniform manufacturing and testing requirements for key components, contaminants and cannabinoid content, third-party laboratory testing of finished products, and good manufacturing practices (new FDCA sec. 1103(2)), and a label code or address that leads to the certificate of analysis (new FDCA sec. 1103(1)(B)). The Whole Plant Act requires accredited laboratories, independent sampling, testing across the supply chain and a certificate of analysis accessible to the person who obtains the item (Federal Sec. 4(2), 4(12), 4(14), 13(1)).

Both set 21 as the age to buy. The bill makes a sale to anyone under 21 a prohibited act (new FDCA sec. 301(jjj)(3)). The Whole Plant Act bars the sale of an intoxicating item to, and its purchase by, a person under 21 (Federal Sec. 4(13)).

Both give the regulator recall, registration, inspection and seizure authority (new FDCA sec. 1103(4), 1103(5); sec. 2(b)(4), 2(b)(6); Federal Sec. 4(11)), and both control added substances, the bill by regulation for every added substance (new FDCA sec. 1103(3)) and the Whole Plant Act by statute for alcohol and by rule on human evidence for any other added substance (Federal Sec. 4(17), 4(23)).

Both open a lawful path for cannabinoids beside the drug pathway. The bill provides that a dietary supplement that is a hemp-derived cannabinoid product is not excluded from the definition of dietary supplement in section 201(ff)(3) solely because of constituents derived from cannabis, and is not adulterated under section 402(f) solely because of constituents derived from cannabinoids (new FDCA sec. 1104(b)). The Whole Plant Act lifts the drug-preclusion clauses for every cannabinoid the plant makes, whether obtained from the plant or produced by synthesis or conversion (Federal Sec. 6(8)).

Both preserve the states' power to be stricter. The bill preserves state, territorial and tribal laws that are "more stringent than, or at least as protective as" its standards, and bars any state, territory or tribe from preventing the passage of a compliant product through its borders (sec. 2(c)). The Whole Plant Act makes the federal role a floor and keeps each state's power to restrict or decline commercial sale (Federal Sec. 5(5), 5(6), 13(11)). Once interstate commerce opens, the Act also protects a lawful shipment crossing a state that prohibits it, limited to passage on a manifest and binding states and their subdivisions but not tribes (Federal Sec. 13(12), 16(7)).

What the Hemp Guardrails Act does not do

It does not set a dose. Section 781's per-container cap of 0.4 milligrams is struck (sec. 2(a)(1)(B)(iii)), and nothing replaces it. The bill contains no milligram figure per serving, per package or per container. The only quantity line left is the hemp definition's concentration, 1.0 percent total tetrahydrocannabinols including tetrahydrocannabinolic acid on a dry-weight basis (sec. 2(a)(1)(A), amending 7 U.S.C. 1639o(1)(A)). A concentration by weight is not a dose: a 5-gram gummy at 1.0 percent carries 50 milligrams.

It does not reach state-licensed cannabis. The bill amends the hemp definition and regulates hemp-derived cannabinoid products, defined by reference to that definition (new FDCA sec. 201(tt)(1)). Marijuana stays under the Controlled Substances Act, and the two federal lanes stay split by origin.

It builds no public record of the plant and says nothing about patents or exclusivity.

It does not write the conversion rule the sponsors describe. The sponsors say the bill restricts the manufacture or synthesis of delta-8, delta-10 and THC-O outside the plant, preserves conversions that yield a naturally occurring end product, and maintains the prohibition on synthetic cannabinoids. The text does something narrower. It strikes section 781's exclusion of cannabinoids the plant can make but that "were synthesized or manufactured outside the plant," for both intermediate and final products (sec. 2(a)(1)(B)(ii)(I), (iii)(II)). What remains is section 781's exclusion of cannabinoids "not capable of being naturally produced by a Cannabis sativa L. plant," and a new exclusion of final products with "more than trace amounts of restricted cannabinoids" (sec. 2(a)(1)(B)(iii)). The bill says nothing about where a cannabinoid is made. A cannabinoid the plant can make is lawful however it was produced, unless it is a restricted cannabinoid, which is barred beyond a trace whatever its source.

The divergence in one table

Axis	Hemp Guardrails Act	The Whole Plant Act
Sorting principle	Origin first: hemp, defined at 1.0 percent total THC by dry weight, split from marijuana, and consumable hemp split from industrial hemp (sec. 2(a); 7 U.S.C. 1639o(1), (2), (3))	One botanical input; every herbal cannabis item classified by intoxicating potential at the labeled dose (Federal Sec. 3, 4(1))
The dose line	None. The per-container cap is struck and no milligram limit replaces it; the only line is concentration by weight	Interim line of 1 milligram total intoxicating cannabinoid equivalent per labeled dose, moved by human evidence and replaced by the national standard (Federal Sec. 4(3), 13(2)(b))
Intoxicating cannabinoids other than delta-9	Final products with more than trace amounts of "restricted cannabinoids," CB1 agonists other than delta-9 THC that produce intoxication or impairment, excluded from hemp (sec. 2(a)(1)(B)(iii), (C), new 297A(1)(D))	Classified by intoxicating potential at the labeled dose like any other cannabinoid, reported by name, counted in classification (Federal Sec. 4(1), 4(7), 4(18))
Converted cannabinoids	Section 781's exclusion of plant-producible cannabinoids synthesized or manufactured outside the plant struck; cannabinoids the plant cannot make still excluded (sec. 2(a)(1)(B))	Method disclosed on the label and to the laboratory; byproducts and residues tested as contaminants; classification by intoxicating potential (Federal Sec. 3(1), 4(7), 4(18))
Who may buy	21 and over for every hemp-derived cannabinoid product, cannabidiol included (new FDCA sec. 301(jjj)(3))	21 and over where an item intoxicates or impairs at its labeled dose; other items in general retail (Federal Sec. 4(2), 4(13), 4(16))
A person under 21	Possession or consumption is a prohibited act under section 301, which carries the criminal penalties of section 303(a) (new FDCA sec. 301(jjj)(4))	No federal arrest or imprisonment for noncommercial possession, adult or minor; supervised ceremonial participation where state or tribal law permits (Federal Sec. 8(3), 8(16)(c))
Flower	Products with raw floral hemp material, smokable flower or pre-roll material intended for inhalation barred from interstate commerce (new FDCA sec. 301(jjj)(6), 201(tt)(4))	Flower is an herbal cannabis item like any other, with the packaging, labeling, recall and safety rules applied to it by rule and heightened inhalable standards (Federal Sec. 4(4), 4(8))
Sourcing	Domestic only: cultivated, processed, finished, packaged and labeled in the United States (new FDCA sec. 301(jjj)(2))	An import enters on the same terms as a domestic item, traced to a lot tested to the national standard (Federal Sec. 13(10)(a), (b))
Food	A food with a hemp-derived cannabinoid product added must comply with chapters IV and XI (new FDCA sec. 301(jjj)(1)); section 409 relief for compliant products; section 301(ll) not amended	Both drug-preclusion clauses lifted for naturally occurring cannabinoids (Federal Sec. 6(8))
Medical use	A rule of construction preserving the Secretary's authority over a Medicare beneficiary incentive and	Medical use as public-health infrastructure: provider authorization for any condition, reimbursement pathways

	Medicare Advantage supplemental benefits for hemp-derived cannabinoid dietary supplements (sec. 2(b)(9))	under Medicare, Medicaid and the Department of Veterans Affairs, patient access to certificates (Federal Sec. 7(1), 7(3), 7(5), 7(11))
States and tribes	Stricter laws preserved; no state, territory or tribe may prevent passage of a compliant product (sec. 2(c))	Federal role is a floor; states run their own markets; transit protected once interstate commerce opens; tribal jurisdiction preserved (Federal Sec. 5(5), 5(6), 13(11), 13(12), 16(7))
Tax	None	Excise keyed to intoxicating potential, graduated by scale (Federal Sec. 11(1), 11(2))
The commons	No public record of the plant	A public-domain reference standard and registry as prior art; no approval or exclusivity removes the plant from lawful sale (Federal Sec. 6)

Where they diverge

1. No dose line

Section 781 drew its line at 0.4 milligrams per container, which would end most of the intoxicating hemp market on December 11. The sponsors' section-by-section says that limit "would make 95% of consumer hemp products illegal overnight"; that figure is the sponsors' claim. The bill strikes the cap and puts nothing in its place. A product is lawful hemp if its concentration is at or under 1.0 percent total THC by dry weight and it carries no more than a trace of a restricted cannabinoid. Nothing limits the dose in a serving or the amount in a package.

The Whole Plant Act classifies every item by its intoxicating potential at the labeled dose, with an interim line of 1 milligram per labeled dose from day one, and holds a stated dose to the amount the item is designed and marketed to be taken at one time (Federal Sec. 3(44), 4(3), 13(2)(b)). An item over that line goes to age-restricted retail under every safety, packaging and labeling rule for intoxicating items. In general retail the whole package of a food-form item is treated as its labeled dose (Federal Sec. 4(19)(a)). The Act sets no container cap in age-restricted retail (Federal Sec. 4(19)(e)), but it never lets a product's dose go unmeasured.

2. Restricted cannabinoids and classification by identity and amount

The bill defines restricted cannabinoids as cannabinoids "other than delta-9 tetrahydrocannabinol, that produce intoxication or impairment in humans through agonism of the cannabinoid CB1 receptor," naming delta-8 THC, delta-10 THC, HHC and THC-O-acetate "together with their isomers, analogs, esters, ethers, and salts," and excluding CBD, CBN, CBG, CBC, CBDV, THCV and delta-9 THC (new 297A(1)(D)). A final product with more than a trace of one is not hemp. The test is partly effect, intoxication or impairment through CB1, and partly a list, and it applies whatever the cannabinoid's source. Delta-8 THC occurs naturally in the plant in small amounts, so a naturally occurring cannabinoid is barred above a trace.

The Whole Plant Act draws no line by molecule. Every cannabinoid is reported by name in the cannabinoid profile, counted in the item's classification at its equivalence to delta-9 THC, and classified with everything else in the item by intoxicating potential at the labeled dose (Federal Sec. 3(67), 4(1), 4(7); Model 4(16)). A delta-8 product with intoxicating potential at its labeled dose is an intoxicating item, sold to adults, labeled, tested and dosed. The Act also keeps every naturally occurring cannabinoid in lawful sale: no federal act removes one from the general or specialty market (Federal Sec. 6(7)).

3. Converted and synthesized cannabinoids

The bill's text, as set out above, removes section 781's bar on plant-producible cannabinoids made outside the plant and keeps only the bar on cannabinoids the plant cannot make. A delta-9 THC converted from CBD is lawful hemp under the bill; a delta-8 THC converted from CBD is barred above a trace because it is a restricted cannabinoid, not because of how it was made. The bill requires the Secretary to set manufacturing and testing requirements for contaminants (new FDCA sec. 1103(2)(A)) but says nothing specific about the byproducts and residues of conversion.

The Whole Plant Act reaches the same molecules through safety rather than prohibition. Production method is disclosed on the label and to the laboratory; every product of the conversion other than the intended cannabinoid is reported or tested as a contaminant; residual reagents, catalysts, acids and solvents are held to the standard; and an unidentified product above the regulator's level keeps the item off the market (Federal Sec. 3(1), 4(7), 4(14), 4(18); Model 4(18), 4(28)). Classification remains by intoxicating potential.

4. Who may buy, and a person under 21

The bill makes every hemp-derived cannabinoid product, including a cannabidiol tincture with no intoxicating content, a 21-and-over product (new FDCA sec. 301(jjj)(3)). The Act draws the age line where an item intoxicates or impairs at its labeled dose (Federal Sec. 4(2), 4(13), 4(16)). Taken together, nothing with impairment potential at its labeled dose is sold in general retail, and a non-intoxicating item is not treated as an intoxicating one.

The bill also makes possession or consumption by anyone under 21 a prohibited act (new FDCA sec. 301(jjj)(4)).

Under section 303(a)(1) of the Food, Drug, and Cosmetic Act, violating a provision of section 301 is punishable by up to one year's imprisonment, a fine, or both, and the bill writes no exception for the new paragraph. It also makes no exception for ceremonial use. The Whole Plant Act bars sale to and purchase by a person under 21 and makes no person, adult or minor, subject to federal arrest or imprisonment for noncommercial possession (Federal Sec. 4(13), 8(3)). It permits a person under 21 to take part in ceremonial use in the presence and under the supervision of a parent or guardian where state or tribal law permits, without authorizing any sale (Federal Sec. 8(16)(c), (d)).

5. Flower

The bill bars from interstate commerce any hemp-derived cannabinoid product intended for human consumption that contains raw floral hemp material, smokable flower, or pre-roll material intended for inhalation (new FDCA sec. 301(jjj)(6)), and leaves those forms out of the inhalables a hemp-derived cannabinoid product may include (new FDCA sec. 201(tt)(4)). The sponsors describe the target as "gas station weed." The bar reaches only interstate commerce, so intrastate sale is left to each state.

The Whole Plant Act regulates flower rather than banning it. Herbal cannabis sold as flower carries the packaging, labeling, advertising, health-claim, recall and safety requirements that apply to it by rule, so no item is unregulated by reason of being flower (Federal Sec. 4(4)). Flower is classified by intoxicating potential like any other item, sold only to adults where it intoxicates, and held to heightened inhalable standards (Federal Sec. 4(1), 4(8)). The shelf the sponsors object to, intoxicating flower sold without age checks or testing, is closed under the Act by those rules, without removing the plant's oldest form from lawful sale.

6. One plant, two splits

The bill keeps two splits the Whole Plant Act removes. Hemp at 1.0 percent total THC is split from marijuana above it, and consumable hemp, the hemp-derived cannabinoid product, is split from industrial hemp, which section 781 defines by end use (7 U.S.C. 1639o(2), (3); new FDCA sec. 201(tt)). The sponsors call this "bifurcated definitions for consumable and industrial hemp."

The Whole Plant Act treats cannabis as one botanical input. Industrial cannabis is regulated as an agricultural commodity by end use, not by a THC concentration, and every herbal cannabis item is classified by intoxicating potential whatever its source plant was formerly called (Federal Sec. 4(1), 4(5), 12). The industrial split in the bill and the Act's industrial track are close in purpose; the difference is that the bill keeps the hemp-marijuana line underneath both.

7. Medical use

The bill's only medical provision is a rule of construction: nothing in section 2 alters the Secretary's authority to administer the Substance Access Beneficiary Engagement Incentive, or a successor program, involving hemp-derived cannabinoid dietary supplements, or to permit their coverage as a Medicare Advantage supplemental benefit under section 1852(a)(3)(D) of the Social Security Act (sec. 2(b)(9)). The sponsors describe this as allowing the program and the coverage. The text preserves authority; it does not grant new authority. A hemp-derived cannabinoid dietary supplement may not be marketed for its impairing effects and may not be inhaled or applied to the skin (new FDCA sec. 201(uu)).

The Whole Plant Act builds medical use as public-health infrastructure. A provider may authorize medical use for any condition the provider judges cannabis may benefit; authorization is billed as ordinary care; and the Center provides reimbursement pathways under Medicare, Medicaid and the Department of Veterans Affairs (Federal Sec. 7(1), 7(3), 7(5)). The bill's Medicare provisions fit inside that frame, for one product category.

8. Sourcing

The bill bars from interstate commerce any hemp-derived cannabinoid product not derived exclusively from hemp cultivated, processed, finished, packaged and labeled in the United States (new FDCA sec. 301(jjj)(2)). The Whole Plant Act admits an import only as federal import law permits and then on the same terms as a domestic item, traced to a tested lot and classified by intoxicating potential on receipt (Federal Sec. 13(10)). The Act meets the concern behind the sourcing rule, uncharacterized and contaminated imports, through testing that applies to every input crossing a boundary.

9. Food and hemp seed

The bill provides that a food containing a compliant hemp-derived cannabinoid product is not adulterated under section 402(a)(1) or (2)(C)(i) by reason of that product (sec. 2(b)(5), amending FDCA sec. 409(a)), and makes adding a hemp-derived cannabinoid product to food a prohibited act unless the finished product complies with chapters IV and XI (new FDCA sec. 301(jjj)(1)). It does not amend section 301(ll), which bars introducing a food containing an approved drug or a substance under substantial clinical investigation. Whether cannabidiol can lawfully be added to conventional food under the bill is left open. The Whole Plant Act lifts both drug-preclusion clauses, section 201(ff)(3)(B) and section 301(ll), for every naturally occurring cannabinoid (Federal Sec. 6(8)).

On hemp seed, the bill inserts "industrial hemp intended for human or animal use and hemp seed, hemp seed oil, or hempseed protein not containing cannabinoids" into the parenthetical after "food (including" in the definition of food additive (sec. 2(b)(1)(A), amending FDCA sec. 201(s)). As written, that adds those items to what counts as food for purposes of the definition, so a substance whose intended use makes it a component of them can be a food additive. It does not say the items themselves are food additives. The sponsors' section-by-section says these products are "to be considered food additives," which the text does not do. The bill does not touch the clause that excludes substances generally recognized as safe, and it neither confirms nor removes any such status for hemp seed products. The pesticide and color additive exclusions in section 201(s) are existing law.

10. Drafting points

Six points in the introduced text would need correcting in any version that moves, whatever its policy.

- The sponsors describe the bill as restricting the manufacture of delta-8, delta-10 and THC-O outside the plant and maintaining the ban on synthetic cannabinoids. The text bars restricted cannabinoids by content in a final product, whatever their source, and strikes section 781's exclusion of plant-producible cannabinoids made outside the plant. If the sponsors intend a rule on where conversion may happen, the text does not contain it.
- The sponsors say the under-21 and labeling prohibitions take effect on enactment. Section 2(d) makes all of section 2 effective December 11, 2026.
- Section 2(c)(2) bars a state from preventing "the passage and delivery" of a compliant product "through" its borders. Read with section 2(c)(1), which preserves a state's power to regulate sale within its borders, "delivery" could be read either as delivery onward through the state or as delivery into it. The first reading fits the paragraph's heading; the second would undercut a state's ban.
- New FDCA section 201(ww)(1) misspells "tetrahydrocannabinol" and measures the processing allowance in "total tetrahydrocannabinol" without "(including tetrahydrocannabinolic acid)," the measure the bill uses everywhere else.
- Section 2(b)(9)(B) reads "the authority of the Secretary ... permit coverage," missing "to."
- New FDCA section 201(tt)(1) refers to "subparagraph (2)" for what is paragraph (2).

Four federal scenarios

Scenario	Hemp Guardrails Act as written	Federal Whole Plant Act
Section 781 takes full effect December 11, 2026	The bill takes effect the same day and replaces the 0.4 mg cap with the 1.0 percent concentration line, the restricted-cannabinoid bar and the FDA chapter, if it is enacted by then	Makes 781 moot by descheduling and classifies every item by intoxicating potential, but needs its own bill rather than a rider
Section 781 is delayed or repealed	The bill's FDA chapter, age line and flower bar still stand on their own; the dose question stays unanswered	Same frame for every item, with descheduling to follow
Rescheduling widens beyond medical	Hemp products under chapter XI, state-licensed products under the Controlled Substances Act, for the same molecule at the same dose	State Whole Plant Acts make federal registration a voluntary election per line of business
Congress deschedules	The hemp split stays in the code and chapter XI governs only hemp-derived products	This is the descheduling bill

The bottom line

The Hemp Guardrails Act puts hemp cannabinoid products under the Food and Drug Administration with real packaging, testing, certificate, recall and registration rules, sets 21 as the age to buy, keeps the dietary supplement path open for cannabinoids, preserves the states' power to be stricter, and protects transit. Where it does those things, the Whole Plant Act already agrees.

What it lacks is a dose. Striking the 0.4 milligram cap without a replacement leaves a concentration by weight as the only line, so a high-dose edible can be lawful hemp. It sorts by origin and by a list of molecules rather than by intoxicating potential, bans flower in interstate commerce rather than regulating it, puts a cannabidiol tincture behind the same counter as an intoxicating product, makes a minor's possession a federal offense, closes the market to imported inputs rather than testing them, leaves conventional food uncertain, and builds no public record of the plant. Its text also departs from its sponsors' description on conversion, on the effective date and on hemp seed.

The Whole Plant Act answers each gap with its own provisions: a dose line from day one, classification by intoxicating potential for every cannabinoid and every form, flower regulated rather than banned, an age line that follows intoxicating potential, no criminal penalty for a minor's possession, imports tested on the same terms as domestic inputs, both drug-preclusion clauses lifted, and the plant kept public.

How the Act holds whichever way this bill fares

Weight-bearing policy is policy that holds whichever party is in power and whichever way federal action goes, because its structure does not depend on any one outcome. The Whole Plant Act is weight-bearing, and it holds against every outcome for the Hemp Guardrails Act. If the bill passes as written, the state Whole Plant Acts still classify every item by intoxicating potential within their borders, their dose line applies to every product sold there, and the bill's own savings clause preserves state law at least as protective as its standards. If it rides a continuing resolution, nothing in a state Whole Plant Act depends on it. If it fails, the standalone federal bill and the state bills are unchanged. No outcome for this bill requires the Act to be rebuilt.