THE UNNECESSARY OVERREACH

How Public Chapter 526 Dismantled a Working Regulatory System in Tennessee

While much of the public discussion around Public Chapter 526 has focused on the ban of raw THCA flower, the law goes much further. It represents a fundamental shift away from the successful regulatory model that existed under the Tennessee Department of Agriculture (TDA) — a model that allowed legal THCA flower and other hemp-derived cannabinoid products to be sold responsibly by licensed businesses. This brief examines the broader structural damage caused by abandoning that working framework.

1. THE TOTAL THC POST-DECARBOXYLATION TRAP

The most damaging provision in Public Chapter 526 is the shift from the 2018 Farm Bill standard (which only limited active Delta-9 THC to 0.3% on a dry weight basis) to a strict post-decarboxylation "Total THC" formula: **Total THC = ∆9-THC + (0.877 × THCA)**. This single change effectively reclassifies most raw THCA flower and many full-spectrum products as marijuana rather than hemp — products that were explicitly legal and regulated under the previous TDA framework established by Public Chapter 423.

- **Industry Disruption:** This standard outlaws high-volume products that were legally sold under the old TDA rules, systematically removing safe, lab-tested options from Tennessee retail shelves.
- **Business Impact:** Many independent retailers built their businesses around THCA flower and full-spectrum products that were compliant with TDA regulations. The new testing standard made their inventory illegal overnight.

2. ARBITRARY MILLIGRAM AND SERVING CAPS

Public Chapter 526 introduced strict limits on finished product formulations and hardware that go far beyond what was required under the previous TDA system. These caps were not part of the original successful regulatory framework and represent an unnecessary restriction on consumer choice and business viability.

- **Edibles:** Capped at 15 mg THC per serving and 300 mg per package — forcing complete reformulation of popular products that were legally sold under TDA rules.
- **Vape Hardware:** Limited to 500 mg total cannabinoids per cartridge and max 40 servings — effectively banning standard 1g and 2g vape hardware that represented a major portion of sales under the previous framework.

3. THE UPSTREAM WHOLESALE TAX BURDEN

Perhaps the most severe economic change is the shift from the 6% retail sales tax under the old TDA system to a heavy upstream wholesale excise tax structure administered by the TABC and Department of Revenue. This represents a fundamental departure from the more balanced taxation approach that supported the previous regulatory framework.

- **Flat Rate Levies:** \$50 per ounce on raw flower + \$0.02 per milligram on total cannabinoids, assessed at the wholesale level — dramatically increasing costs before products reach retail.
- **Competitive Disadvantage:** This structure prices many Tennessee operators out of competition with out-of-state online sellers and creates strong incentives for capital flight — something that did not exist under the previous TDA tax model.

SUMMARY: Public Chapter 526 did not simply add new consumer protections to the existing TDA framework. It dismantled the successful regulatory model that had been working reasonably well under the Department of Agriculture — a model that allowed legal THCA flower, supported small businesses, generated state revenue, and provided adult access to lab-tested products. The combination of the Total THC ban, arbitrary product caps, and punitive upstream taxation has created exactly the outcomes many stakeholders predicted: business closures, lost revenue, and consumer displacement into less regulated channels.

RECOMMENDATION

The General Assembly should restore the successful regulatory framework that existed under the Tennessee Department of Agriculture prior to Public Chapter 526, with targeted improvements for individual accountability, revenue collection, and practical enforcement. The Tennessee Responsible Hemp Commerce Act offers a clear path to achieve this restoration while addressing legitimate policy concerns without destroying the market that the old TDA system successfully supported.

Sources: *Public Chapter 423 (2023 TDA framework); Public Chapter 526 (2025 TABC framework); TABC licensing data (June–July 2026); Tennessee Department of Finance & Administration revenue reports; Whitney Economics; contemporaneous news reporting. Current as of July 2026.*

This analysis is provided for legislative and public policy consideration.