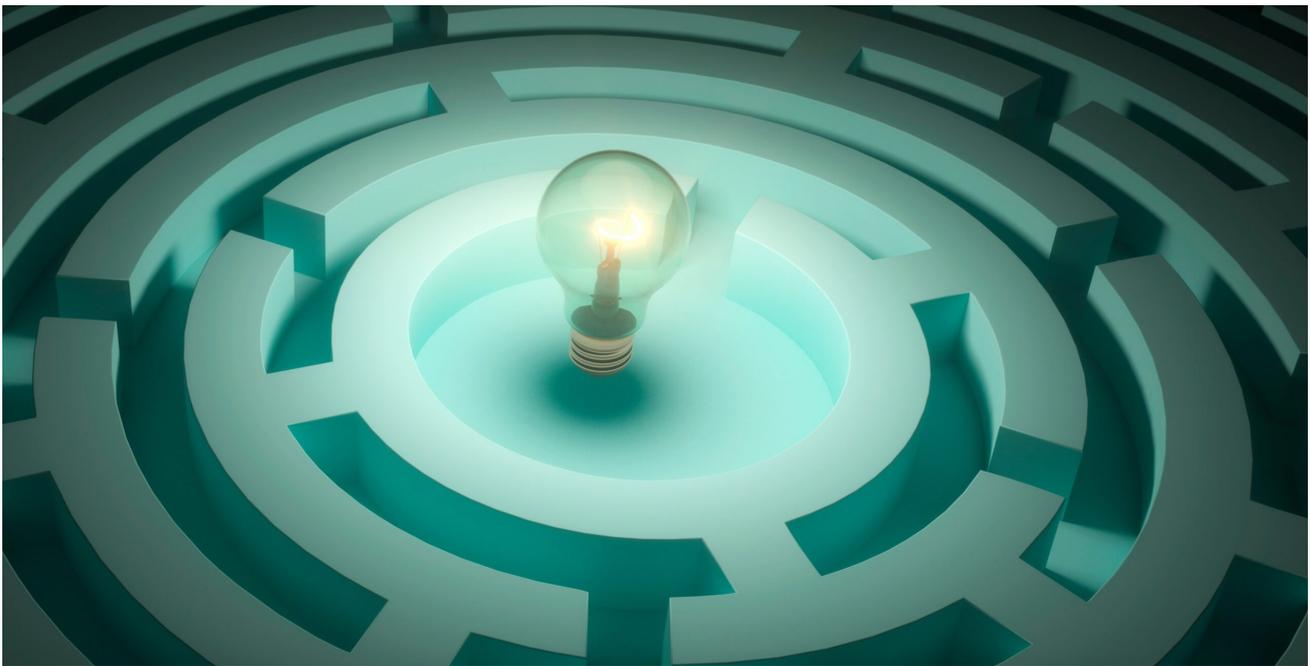


“Hemp-Derived” THC in Massachusetts: Navigating the Regulatory Maze

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The recent proliferation of intoxicating hemp products containing “hemp-derived” THC in Massachusetts restaurants, liquor stores, and convenience shops has sparked debate among state officials in determining whether these products are legal in the first place and, if so, whose responsibility it is to create and enforce regulations over them.

The 2018 Farm Bill’s So-Called “Legal Loophole”

The manufacturers and sellers of products containing hemp-derived cannabinoids – many of which products are strikingly similar to those found in cannabis retail dispensaries – assert these products are legal under the 2018 Farm Bill because they contain “hemp-derived” THC, which is not “marijuana-derived” THC found in regulated cannabis products.

The federal Agriculture Improvement Act of 2018 (the Farm Bill) removed “hemp” from the definition of marijuana under the Controlled Substances Act (CSA). The Farm Bill defined legal hemp as the cannabis plant

(*Cannabis sativa* L.) and its derivatives with “extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol.” By removing “hemp” from the definition of marijuana, hemp is no longer a Schedule I controlled substance. In other words, Congress effectively legalized the cultivation and sale of hemp as well as, as argued by the manufacturers and sellers of products containing hemp-derived cannabinoids, “all” of hemp’s “derivatives, extracts, cannabinoids, isomers, acids” and more at the federal level.

This change to the definition of hemp created what some consider a “loophole” for the sale of products containing intoxicating cannabinoids other than delta-9 THC, such as, among others, [delta-8 THC and tetrahydrocannabinolic acid \(THCA\)](#). This “loophole” is the law to which businesses in Massachusetts cite when questioned about the legality of their products.

The Regulatory Conundrum in Massachusetts

Unlike cannabis products that contain marijuana-derived delta-9 THC – such as those regulated products sold in cannabis retail dispensaries – the products in question contain hemp-derived intoxicating cannabinoids, including but not limited to THCA, delta-8, as well as delta-9.

Although derived from hemp, these products still produce the same or similar psychoactive effects as marijuana-derived delta-9 THC. However, despite being intoxicating, products containing hemp-derived cannabinoids do not come with the same regulatory or enforcement burdens (from the manufacturer and seller’s perspective) or protections (from the consumer’s perspective). That is why, specifically in Massachusetts, businesses such as corner and convenience stores are currently selling products containing THC in restaurants and shops despite those restaurants and shops not being licensed as cannabis retailers.

Passing the Buck: Regulatory Agencies at a Standstill

In Massachusetts, at the commonwealth level, cannabis is regulated by the Cannabis Control Commission (CCC); hemp is regulated by the Massachusetts Department of Agriculture Resources (MDAR). However, it appears that no agency in Massachusetts has the responsibility to address the issues presented by products containing intoxicating hemp-derived cannabinoids.

When MDAR was asked about the undeniable availability of “hemp-derived” THC products on the market in Massachusetts, MDAR acknowledged the issue but stated it was an issue for the Department of Public Health (DPH)[1] to address. When asked, DPH would not confirm they are the Massachusetts agency responsible for regulating products containing hemp-derived THC within the state but instead responded – passing the buck further down the line – that it was an issue for the local municipalities or the federal Food and Drug Administration (FDA) to address, since the hemp products in questions are often edible items[2]. When the commonwealth’s Alcoholic Beverage Commission (ABC) was asked about these products being sold in liquor stores and included on menus at restaurants, ABC asserted such sales were not allowed but also indicated ABC was not going to take any relevant enforcement action because – completing the circle – that is up to MDAR to handle[3].

Efforts to Tackle the Issue and Future Considerations

Despite there being no agency in Massachusetts that is apparently willing to accept responsibility with respect to regulating and enforcing rules affecting products containing hemp-derived cannabinoids, there have been a handful of attempts within the commonwealth to handle this issue in the past.

Specifically, in 2022, MDAR released a memo clarifying that Massachusetts prohibits the sale and manufacture of the hemp-derived intoxicant delta-8 THC. However, many of the products being sold in Massachusetts are hemp-derived THCs other than delta-8 (such as delta-9, delta-10, and more), and the majority of products being sold in the commonwealth were manufactured out of state. As demonstrated by the current market in Massachusetts, MDAR’s 2022 attempt to reign in the sale of hemp-derived THCs proved unsuccessful.

With no clear answers or solutions available at this time and existing agencies apparently passing the buck, some Massachusetts officials have raised the possibility of the CCC taking over responsibility for regulating hemp.[4] Other potential fixes have also been floated, including undertaking other legislative action that would make it more difficult or costly for businesses to sell hemp-derivatives such as penalizing the unlicensed sale of hemp-derived cannabinoids[5].

Implications for the Hemp Industry in Massachusetts and Beyond

As experienced by other states which have attempted to regulate intoxicating hemp-derivatives, an attempt to effectively regulate hemp-derived cannabinoids in Massachusetts could cause additional complications and also have unintended consequences, particularly for businesses within the state who want to sell other cannabinoids with no or less intoxicating potential, such as CBN and CBD. It could also mean that MDAR licensees will be prohibited from participating in the hemp-derived market while companies from out of state continue to produce and profit off hemp-derivatives sold to Massachusetts consumers.

Hemp farmers in Massachusetts are also concerned with what regulating or re-defining hemp-derivatives could mean for them, especially after seeing how the same affected hemp farmers in neighboring Connecticut. There is no dispute that as an increasing number of states across the U.S. are becoming marijuana-friendly, many states are simultaneously attempting to [enact more restrictive laws](#) with respect to hemp-derived cannabinoids, particularly THCs and THCA. Connecticut is one of those states. In 2021, the state prohibited synthetic cannabinoids and imposed a “total THC” limit, all but completely stifling the legal market for products containing cannabinoids derived from anything but marijuana. This resulted in the loss of a large number of the state’s hemp farmers.

In 2019, the first year hemp was legal to produce in Connecticut, 109 licensed producers harvested 120 acres of the plant. At its highest point in 2020, 140 producers harvested 134 acres of hemp in Connecticut. However, in 2022, after Connecticut prohibited most hemp-derived cannabinoids from being sold outside of licensed cannabis retailers, the state had only 78 producers who harvested less than 13 acres of hemp that year. Massachusetts hemp farmers also fear that their livelihoods will be “under attack” if the commonwealth decides to more aggressively regulate hemp-derived cannabinoids.

The Future of “Hemp-Derived” THC in Massachusetts

Massachusetts lawmakers and regulators must be careful with respect to how they choose to restrict or regulate hemp-derived and synthetic THC products being sold in their state. Indeed, imposing a “total THC” limit or other strict prohibitions on hemp-derivatives could be catastrophic for Massachusetts hemp businesses, especially if the language is specific to MDAR licensees only, meaning that such restrictions would only be imposed on already distressed hemp farmers. Massachusetts must also be cautious not to impose or enforce regulations that address only small or isolated parts of the issue, lest they make the legal landscape even murkier. In all likelihood, it will take time and, as Massachusetts’ leaders indicated, they would welcome federal action to bring more clarity to these issues, as well as certainty to industry participants and consumers alike.

[1] [Hemp-based THC products are showing up all over – Commonwealth Beacon](#)

[2] [Hemp-based THC products are showing up all over – Commonwealth Beacon](#)

[3] [Hemp-based THC products are showing up all over – Commonwealth Beacon](#)

[4] [Massachusetts Officials Eye Regulation Of THC-Infused Hemp Products Sold In Liquor Stores And Smoke Shops – Marijuana Moment](#)

[5] [Mass Hemp Isn’t To Blame, But Response To Synthetics Could Hurt Locals \(talkingjointsmemo.com\)](#)

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