

Hemp Industry 2024: State and Federal Changes

February 21, 2024



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. Participants in the federally legal hemp industry are already required to navigate a complex web of federal and state laws. However, in light of changes that have occurred and will continue to occur throughout 2024, hemp businesses must be prepared to pivot on a moment's notice throughout the coming months.

Current Legal Status of Hemp

The Agriculture Improvement Act of 2018, better known as the 2018 Farm Bill, signed into law in late December 2018, removed “hemp” – defined[1] as cannabis (*Cannabis sativa L.*) and derivatives of cannabis with “extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol”[2] (no more than 0.3 percent delta-9 THC on a dry weight basis) – from the definition of marijuana in the Controlled Substances Act (CSA).

Prior to the enactment of the 2018 Farm Bill, the CSA did not differentiate between marijuana and hemp, and all cannabis (with certain exceptions) was a Schedule I substance and, therefore, controlled by the Drug Enforcement Administration (DEA). By carving “hemp” out from the definition of “marihuana” – the Schedule I controlled substance – Congress effectively legalized the cultivation and sale of hemp (as well as “all” of its “derivatives, extracts, cannabinoids, isomers, acids,” and more) at the federal level.

This definitional change to hemp arguably created what some consider a “loophole” for the sale of products containing potentially intoxicating cannabinoids other than delta-9 THC, such as delta-8 THC and tetrahydrocannabinolic acid (THCA). (We previously wrote about [THCA's status as a high-risk cannabinoid](#) from a legal standpoint resulting from changes to state laws that were enacted throughout 2023. This article provides information regarding changes to state and federal laws that have occurred and are likely to continue to occur in 2024, which may affect many hemp-derived cannabinoids.)

Since this definitional change was enacted in 2018, the market for hemp-derived (or non-delta-9 THC) cannabinoids within states has soared, including for intoxicating hemp products. Forbes reports that sales of products containing delta-8 THC generated over \$2 billion in revenue in 2021 and 2022.[3] A federally funded study published in December 2023 found that, among people who used cannabis in the past year, those living in states that still do not have legal marijuana markets were more than twice as likely to have used delta-8 THC.[4] As the report summarized, “[h]igher Δ 8-THC use in states without medical or adult-use cannabis laws suggests that cannabis prohibition may unintentionally promote Δ 8-THC use.”[5]

In 2023, the federal government was expected to release the new 2023 Farm Bill, which many state lawmakers anticipated would address – and potentially resolve – the “loophole” with respect to psychoactive hemp products created by the 2018 Farm Bill. However, in November 2023, President Biden extended the 2018 Farm Bill through September 30, 2024.

What's Next for the Hemp Industry?

Many state legislators have now taken it upon themselves – particularly in states that have not legalized marijuana, but not always in these states – to redefine and restrict products containing potentially intoxicating cannabinoids derived from hemp other than delta-9 THC within their state borders. Indeed, Nebraska, Florida, Tennessee, South Dakota, Arkansas, Alaska, and Virginia, as well as others, have all proposed or, in some cases, already passed laws restricting products containing potentially intoxicating cannabinoids derived from hemp.

As discussed in more detail below, many states are able to restrict potentially intoxicating cannabinoids by imposing “total THC” limits on hemp products. This definitional change means that many more potentially intoxicating cannabinoids are included in the calculation of THC in the product, as opposed to only considering the product’s delta-9 THC content. For example, a hemp product containing 0.2% delta-9 THC and 20% delta-8 THC would, under a “total THC” definition, contain 20.2% total THC. If a state law imposes a limit of 0.3% total THC, the product is illegal under state law.

In addition to total THC limits, some states are also placing a total ban on any synthetic or chemically manipulated cannabinoid(s), effectively prohibiting the production and sale of any products containing delta-8 THC, delta-10 THC, THCA, and other potentially intoxicating cannabinoids.

Specific-State Hemp Restrictions

Recent state legislative actions affecting hemp-derived cannabinoids:

Proposed Laws

California: On February 7, 2024, Democratic Assembly Member Cecilia Aguiar-Curry introduced AB 2223. Among other changes, the bill seeks to add a new term – “synthetically derived cannabinoid” – to California law, which would be defined as a substance that is derived from a chemical reaction that changes the molecular structure of any substance separated or extracted from the plant *Cannabis sativa* L. (excluding decarboxylation from a naturally occurring cannabinoid acid). The bill also amends the definition of “industrial hemp” to clarify that no product may contain “any synthetically derived cannabinoid.”

California’s AB 45, adopted in October 2021, applied a definition of “total THC,” defined as the sum of THC + THCA, with THC defined to include any THC (including but not limited to delta-8 THC, delta-10 THC, etc.) “however derived,” as well as any other cannabinoid that the California Department of Public Health categorizes as “intoxicating” to hemp products within the state. If the Total THC exceeds the 0.3% limit, then such a product violates California’s laws applicable to hemp. It is deemed “adulterated” or is considered cannabis, which may only be sold within California’s tightly regulated market and under the control of the Department of Cannabis Control (DCC).

California law also categorically prohibits the sale of *inhalable* hemp products within California until relevant regulations are developed and the legislature imposes a tax on said product. Cal. Health & Safety Code § 111929 and 111929.2.

Nebraska: Nebraska LB 999, introduced by Republican Senator Teresa Ibach on January 5, 2024, seeks to “make clear” that LB 657, the Nebraska Hemp Farming Act, while paving the way for hemp production in the Cornhusker State, “didn’t legalize synthetic products,” according to Nebraska Attorney General Mike Hilgers. According to Ibach, “LB 999 would clarify that CBD products that contain THC above legal limits, especially synthetic Delta-8 THC and similar Delta compounds, would be illegal.”

The bill would also turn over regulation of hemp cultivation from the Nebraska Department of Agriculture (NDA) to the U.S. Department of Agriculture (USDA). If LB 999 does pass, the NDA director will send a formal letter to USDA rescinding the state hemp plan. Once rescinded, Nebraska hemp producers are well advised to immediately apply for a license to produce hemp under the USDA production program.

Florida: Both legislative chambers are actively working to pass bills – HB 1613, filed January 9, 2024, and SB 1698, filed by Republican Senator Colleen Burton on January 5, 2023 – that would, among other things, limit the amount of delta-9 THC in hemp products to 2mg per serving or 10mg per container, whichever is less.

The bills also create a new term, “Total delta-9-tetrahydrocannabinol concentration,” defined as a concentration calculated as follows: $[\text{delta-9 tetrahydrocannabinol}] + (0.877 \times [\text{delta-9-tetrahydrocannabinolic acid}])$. To be considered legal “hemp” under this new law, products in Florida may not contain more than 0.3% *total* delta-9-THC. Under the new law, legal “hemp” may not include any “synthetic or naturally occurring versions” of

controlled substances “such as delta-8-tetrahydrocannabinol, delta-10 tetrahydrocannabinol, hexahydrocannabinol, tetrahydrocannabinol acetate, tetrahydrocannabiphorol, and tetrahydrocannabivarin.”

The bills also expand restrictions on advertising and packaging for hemp products.

South Dakota: House Bill 1125, introduced in the South Dakota legislature on January 22, 2024, by Republican Representative Brian Mulder, seeks to ban the sale of hemp-derived products that have been chemically modified or converted, which would include compounds such as delta-8 THC and delta-10 THC.

Rep. Mulder seeks to accomplish this change in law by implementing a new term – “chemically derived cannabinoid” – defined as “a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant.”[6] Although compounds such as delta-8 THC and delta-10 THC are naturally occurring in the cannabis plant, they occur in such low amounts that marketable products containing usable amounts of these compounds are usually created by converting one or more other cannabinoids into delta-8 or delta-10 THC through a process called isomerization. Thus, South Dakota’s new law, if passed, would make these “chemically derived” cannabinoids illegal in the state.

Proposed Regulations

Tennessee: Under a law passed by the Tennessee General Assembly (TGA) last year, the Tennessee Department of Agriculture (TDA) was tasked with developing regulations that would constitute the final rules concerning hemp and hemp-derived cannabinoids. The TDA’s proposed regulations were released in December of last year.

These proposed regulations seek to implement a “total THC” definition for legal hemp products, defined as “the potential total delta-9 tetrahydrocannabinol (THC) content,” which is calculated as follows: the sum of THC and delta-9 tetrahydrocannabinol acid (THCA) reported on a dry weight basis, calculated as: (cannabinoid concentration (mg/g)) + (cannabinoid acid form concentration (mg/g) x 0.877).” If adopted, these rules will likely not go into effect prior to July 1, 2024. If the proposed rules are implemented, when they become effective, products containing more than ~0.34% THCA will essentially become non-compliant and illegal.

Passed

Arkansas: Act 629, passed in the 2023 regular session of the General Assembly, sought to ban the production and sale of products containing delta-8 THC, delta-9 THC, and delta-10 THC and other cannabinoids in the state of Arkansas. The law was challenged in federal district court, and the judge blocked enforcement of the law in early September 2023. The matter is currently before the Eighth Circuit to determine if it is enforceable.

Alaska: New regulations went into effect in Alaska in November 2023, affecting certain hemp and hemp-derived cannabinoids. A new section was added which prohibits hemp products that contain “delta-9-THC or a non-naturally occurring cannabinoid, including a cannabinoid made from an ingredient extracted from industrial hemp and modified beyond its original form.” Alaska law was also amended to require hemp to be tested for “total THC,” defined as “the sum of the THC and THCA content and reported on a dry weight basis.” At least one lawsuit has been filed arguing that the ban is unconstitutional and directly in violation of the 2018 Farm Bill.

Virginia: During a reconvened session in April of 2023, the Virginia General Assembly amended Virginia law and imposed new requirements and restrictions on hemp-derived products, which went into effect in July 2023.

Under the amended laws, hemp products now may not exceed 0.3% “total THC.” In Virginia, “total THC” is now calculated as the sum of all tetrahydrocannabinol and tetrahydrocannabinolic acid, with “tetrahydrocannabinol” including all naturally occurring and synthetic tetrahydrocannabinols, including their salts and isomers. The Virginia Department of Agriculture and Consumer Services (VDACS) has been aggressively enforcing these new laws; within three weeks of the effective date, the VDACS undertook at least five enforcement actions against hemp retailers, assessing penalties ranging from \$13,000 to \$97,500.

The Future of Hemp-Derived Cannabinoids

While each state’s hemp laws and regulations differ, these proposed (and, in some cases, already enacted) changes will likely have a common result: a negative economic impact on the hemp industry. The trend of more states restricting hemp, such as by imposing “total THC” limits, is likely to have a drastic effect on not only hemp businesses, but also local economies, particularly in states that do not have state-legal marijuana industries. Such broad restrictions may also have the result of encouraging businesses and consumers to engage in black market transactions.

There is no dispute that consumer interest in “minor” cannabinoids – that is, cannabinoids other than delta-9 THC – has surged in recent years and continues to grow. As reported last year, although “there are few controlled human studies with emerging cannabinoids, surveys suggest these products are used for treating sleep or pain and in place of other drugs, including pain medications.”^[7] It is also observable that “providing legal access to regulated marijuana products diverts people away from using unregulated cannabis.” However, it is difficult for lawmakers to regulate substances we know little about, and the few studies we do have undisputedly “highlight the importance of future research to better understand perceptions of safety, motivations for use, and outcomes of use of these products.”

It remains to be seen whether the so-called “loophole” issue will be resolved through state laws banning or restricting their sale, like the states outlined above. Or perhaps congressional lawmakers will take up the issue and provide revised federal rules that address potentially intoxicating cannabinoids in the next Farm Bill.

Next Steps

While participants in the hemp industry await these legal changes, hemp businesses are well advised to keep abreast of these issues at both the state and federal levels and also to begin – right now, if they have not begun already – updating relevant policies, amending operations, and implementing other legal strategies that will see them through these uncertain times.

[1] The 2018 Farm Bill defines hemp as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis.”

[2] [Hemp Production and the 2018 Farm Bill – 07/25/2019 | FDA](#).

[3] [Delta-8 THC Generated \\$2 Billion In Revenue In Two Years, Report Finds \(forbes.com\)](#).

[4] Approximately 25% of respondents reported using an “emerging cannabinoid” in the past year, with about 12% of participants specifically indicating use of delta-8 THC.

[5] <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2812825>

[6] Importantly, this new term “does not include cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a 16 chemical catalyst.”

[7] <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2812825>

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