

The Evolving Legal Landscape For THC-Infused Beverages

By **Samantha Alexander and Seth Goldberg** (August 8, 2025, 3:38 PM EDT)

On June 24, in *Bio Gen LLC v. Huckabee*, the U.S. Court of Appeals for the Eighth Circuit held that **states may restrict** or prohibit the sale of intoxicating hemp-derived products without violating federal law — casting doubt on the commercial stability of a fast-growing market.[1]

Beverages containing psychoactive THC are becoming an increasingly popular alternative to alcoholic beverages. In certain states that have legalized cannabis for adult use, such as California, Illinois and Massachusetts, THC-infused beverages may be sold in state-licensed cannabis dispensaries.

However, major alcohol distributors and retailers in virtually every state across the U.S. are also selling THC-infused beverages, claiming they are federally legal because the THC in them was derived from cannabinoids found in hemp, which was legalized in 2018. Consumers are choosing these beverages over alcohol with greater frequency, but the laws regarding intoxicating substances allegedly derived from hemp are in flux.

Ongoing regulatory uncertainty at both the federal and state levels — and decisions like *Bio Gen* — could alter the trajectory of the THC-infused beverage market. This article describes some of the legal issues relating to THC-infused beverages.

Are THC-infused beverages legal?

This depends on the type of THC and its source, how current federal law is construed, and state specific laws and regulations.

Federal law draws a distinction between two categories of cannabis. Cannabis that contains more than 0.3% delta-9 THC on a dry weight basis is considered marijuana under federal law and remains a federally unlawful Schedule I controlled substance under the federal Controlled Substances Act.[2]

Cannabis that contains 0.3% or less delta-9 THC on a dry weight basis is considered hemp under federal law and was legalized federally under the Agricultural Improvement Act, widely known as the Farm Bill.[3] Hemp and marijuana are both cannabis; the only distinction is the percentage of delta-9 THC.

Notwithstanding the federal prohibition of marijuana, certain states have legalized marijuana for adult and/or medical use, and, in many of those states, beverages containing delta-9 THC sourced from marijuana are legal under the state's marijuana laws. Some states that have legalized marijuana, such as Pennsylvania, for example, have not authorized beverages as a form in which marijuana may be sold.

In contrast, beverages containing THC sourced from cannabinoids found in hemp are arguably federally lawful and thus may be sold anywhere, but there is significant debate about the intent and construction of the Farm Bill that has resulted in state regulation of THC purportedly derived from hemp cannabinoids.



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Thus, as discussed below, whether beverages containing such THC are lawful is also a state-specific question.

What are some of the different THC that may be made from hemp cannabinoids?

There are different types of THC that are produced by the cannabis plant or that may be created by chemically altering other cannabinoids that are produced by the cannabis plant.

For example, delta-8 THC, which is psychoactive, is produced in small quantities in hemp and marijuana. CBD, which is not psychoactive, and which is produced in larger quantities in both hemp and marijuana, may be chemically altered to create delta-8, delta-9 and delta-10 THC, all of which are psychoactive.

THCA is also found in hemp and marijuana, and it converts to delta-9 THC when it combusts.

With greater frequency, states are restricting or prohibiting THC resulting from chemically altering CBD sourced from hemp because of safety concerns. For example, in Arkansas, Act 629 bans the production and sale of intoxicating substances derived from hemp, including delta-8 THC, delta-9 THC products with more than 0.3% THC, and delta-10 THC.[4]

Act 629 also stipulates that anyone engaged in the selling or manufacturing of hemp products in Arkansas must obtain a yearly license.[5]

Similarly, in California, A.B. 45 prohibits the sale of synthetic cannabinoids and requires hemp-derived products to undergo testing and comply with strict labeling requirements.[6] California requires that hemp extracts be tested in their raw extract final form before incorporation into products by an independent laboratory to ensure they do not exceed 0.3% total THC or any concentration limits set by the California Department of Public Health.

This is a stricter requirement than most states, which typically test the finished product rather than the raw extract. California also requires that labels include a scannable barcode, website or QR code linking to a certificate of analysis detailing the product name, manufacturer info, batch number, cannabinoid levels (including total THC) and contaminant levels, along with expiration or "best by" dates if applicable.

Additionally, labels must contain warnings advising children and pregnant or breastfeeding persons to consult healthcare providers and keep products out of reach of children, plus the statement: "The FDA has not evaluated this product for safety or efficacy." [7]

However, in many other states, including Texas, Florida and North Carolina, products containing THC sourced from hemp or chemically converted hemp-derived CBD, are only lightly regulated or not regulated at all.

Where can THC beverages be sold?

It really depends on state law. In states that have authorized beverages under an adult use or medical marijuana program, THC beverages may be sold in state-licensed cannabis dispensaries.

In states that do not prohibit the sale of products containing intoxicating substances derived from hemp, such as Minnesota and New Jersey, THC beverages may be found in stores that sell alcohol but also may be found in convenience stores.

Are THC beverages safe?

Another "it depends." Like any psychoactive substances, THC beverages have inherent risks. However, the safety of THC beverages can be dependent upon testing and dosing. As previously mentioned, THC that is used in beverages is processed from the cannabis plant or from cannabinoids sourced from the cannabis plant.

Labs can test the processed THC for purity, cleanliness and potency. In states that have legalized marijuana, such testing of THC derived from marijuana is mandated. While hemp and THC

substances purportedly sourced from hemp are being sold across the country, few states have issued regulations requiring lab testing of those substances.

As a result, THC beverages using THC purportedly sourced from hemp may lack the type of safety measures that are mandated for state-legal marijuana.

Dosing is another key element of safety. As a general matter, in states that have legalized marijuana, ingestible products containing THC sold in dispensaries are sold in milligram serving sizes with total serving size limits per package. For example, a THC beverage may contain 100 total milligrams corresponding to 10 servings of 10 mg each.

In contrast, given the absence of similar hemp regulations in most states, it is not uncommon for hemp product manufacturers to base the percentage of THC in their products on the dry weight of the product, as opposed to the dry weight of the plant, in order to market megadoses of THC, which could be unsafe.

What is the future of THC-infused beverages?

In more and more states, including Illinois, North Carolina and New Jersey, for example, laws and regulations aimed at restricting or prohibiting synthetic THC manufactured using cannabinoids derived from hemp are being proposed and passed, and recently two federal appellate courts have upheld such restrictions in the face of constitutional challenges.

In January, the U.S. Court of Appeals for the Fourth Circuit **determined** in *Northern Virginia Hemp and Agriculture v. Virginia* that a Virginia law restricting the total amount of THC that may be contained in an ingestible product to no more than 0.3%, even if the THC was derived from hemp or manufactured from cannabinoids derived from hemp, was not preempted by the Farm Bill.[8]

As a result, those hemp products that are legal under the 2018 Farm Bill — such as those containing less than 0.3% delta-9 THC but more than 0.3% delta-8 THC — are not permitted under Virginia law.

As mentioned above, the Eighth Circuit determined in *Bio Gen LLC v. Huckabee* that an Arkansas law narrowing the scope of legal hemp by changing the basis that the 0.3% delta-9 THC limit is measured from the product's dry weight basis to that product's CBD content, and banning synthetic cannabinoids derived from hemp, such as delta-8 and delta-10 THC, was also not preempted by the Farm Bill.

Recently introduced federal legislation would ban intoxicating substances being marketed as hemp products under the Farm Bill by excluding them from the definition of hemp.[9] As approved by the House Committee on Appropriations on June 23, the bill proposes to revise the federal definition of hemp by distinguishing between industrial hemp (which is grown for noncannabinoid purposes like fiber, grain or research) and hemp-derived cannabinoid products (products containing cannabinoids for human or animal use).[10]

The bill would exclude from the definition of hemp any synthetic or nonnaturally occurring cannabinoids and require THC limits to be based on total THC, including THCA, rather than just delta-9 THC — codifying U.S. Department of Agriculture's 2021 regulations.

It would also exclude hemp seeds and cannabinoid products that exceed 0.3% total THC, or that contain quantifiable amounts of THC as determined by the secretary of health and human services and USDA. The bill also directs the U.S. Food and Drug Administration to form a task force to define those thresholds and provide science-based guidance for regulating hemp-derived cannabinoid products.

The bill intends to restrict synthetic or intoxicating hemp-derived products while continuing to allow industrial and nonintoxicating cannabinoid products with trace THC. On July 10, the bill was approved unanimously by the Senate Committee on Appropriations, with language identical to that of the House bill with one exception: Within 180 days of the act's enactment, the FDA commissioner and the secretary of agriculture must submit a report to Congress detailing implementation of the new hemp provisions, projected effects on the cannabinoid marketplace, engagement with industry stakeholders, and plans for uniform standards on packaging, labeling, testing and adverse event

reporting.[11]

Sen. Mitch McConnell of Kentucky, the Republican Senate majority leader at the time, played a key role in legalizing hemp through the Farm Bill. Reflecting on that legislation, McConnell said that his provision had an "unintended consequence" — it inadvertently opened the door for intoxicating, hemp-derived synthetic products to enter the market without a federal regulatory framework.[12]

"The way I see it, the language I helped secure takes us back to the original intent of the 2018 Farm Bill, and closes this loophole," McConnell said, adding that the prior legislation "sought to create an agricultural hemp industry — not open the door to the sale of unregulated, intoxicating lab-made, hemp-derived substances with no safety framework." [13]

However, on July 29, McConnell acceded to removal of the proposed language regarding intoxicating hemp-derived substances at the urging of Sen. Rand Paul, R-Ky., who threatened to block passage of the agriculture appropriations bill.[14] Consequently, there is still work to be done on Capitol Hill if changes are going to be made to the Farm Bill's hemp provisions.

In this connection, with a particular focus on THC beverages, the Wine and Spirits Wholesale Association, or WSWA, has lobbied Congress for the regulation, rather than prohibition, of hemp-derived THC products by establishing "federal standards for testing and labeling hemp-derived beverages; and state authority to regulate distribution and retail sales." [15]

While the WSWA also seeks to prohibit synthetic hemp-derived THC intoxicating products, the WSWA believes that the next version of the farm bill should "explicitly allow for the production of only naturally derived THC products from hemp (specifically Delta-9) while explicitly granting individual states primary authority to regulate distribution and retail sales, including state level prohibition, to consumers over the age of 21 within their own borders." [16]

As federal and state law continue to evolve with respect to the legality of THC-infused beverages, they may continue to gain market share from alcohol. However, manufacturers of THC beverages and other types of products sourcing THC from hemp cannabinoids should keep a close eye on whether and how the legality of those products may be changing federally and from state to state.

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Disclosure: Goldberg represented the American Trade Association for Cannabis & Hemp in connection with amicus briefs filed in Northern Virginia Hemp and Agriculture v. Virginia and Bio Gen LLC v. Huckabee in the Fourth and Eight Circuits, respectively.

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[1] Bio Gen. LLC v. Sanders, No. 23-3237, 2025 U.S. App. LEXIS 15491 (8th Cir. June 24, 2025).

[2] 21 U.S.C. § 802(16) (defining "marihuana" under the Controlled Substances Act).

[3] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 132 Stat. 4490 (2018); 7 C.F.R. § 990.1.

[4] S.B. 358, 94th Ark. Gen. Assemb. (April 11, 2023).

[5] Anthony Martinelli, Federal Court Clears Way for Arkansas to Enforce Ban on Hemp THC Products, The Marijuana Herald (June 24, 2025), <https://themarijuanaherald.com/2025/06/federal-court-clears-way-for-arkansas-to-enforce-ban-on-hemp-thc-products/>.

[6] California's Ban on Intoxicating Hemp Products Now in Effect, Cal. Dep't of Pub. Health (Sept. 24,

2024), <https://www.cdph.ca.gov/Programs/OPA/Pages/NR24-26.aspx>.

[7] California's AB 45, U.S. Hemp Roundtable, <https://hempsupporter.com/assets/uploads/AB-45-Summary-of-Provisions-and-Regs.pdf>

[8] Northern Virginia Hemp & Agric., LLC v. Virginia, No. 23-2192, 2025 WL 37238 (4th Cir. Jan. 7, 2025).

[9] Renée Johnson, Cong. Rsch. Serv., IN12565, Hemp Restrictions in FY2026 Agriculture Appropriations (2025).

[10] H.R. 4121, 119th Cong. § 759 (2025).

[11] S. 2256, 119th Cong. § 781 (2025).

[12] Joe Sonka, Mitch McConnell Advances Bill to Ban 'Intoxicating' Hemp, Closing His Own 2018 'Loophole', Louisville Pub. Media (July 10, 2025), <https://www.lpm.org/news/2025-07-10/mitch-mcconnell-advances-bill-to-ban-intoxicating-hemp-closing-his-own-2018-loophole>.

[13] Tony Lange, US Lawmakers Advance Bill to Ban Hemp Products With THC, Cannabis Business Times (July 11, 2025), <https://www.cannabisbusinesstimes.com/hemp/news/15750513/us-lawmakers-advance-bill-to-ban-hemp-products-with-thc>.

[14] Grace Yarrow, Senators agree to strip hemp language from ag funding bill, Politico (July 29, 2025), <https://www.politico.com/live-updates/2025/07/29/congress/senators-agree-to-strip-hemp-language-from-ag-funding-bill-00481768>.

[15] WSWA Members Advocate for Federal Regulation of Hemp-Derived Beverages on Capitol Hill, Wine & Spirits Wholesalers of America (Apr. 10, 2025), <https://www.wswa.org/news/wswa-members-advocate-federal-regulation-hemp-derived-beverages-capitol-hill>.

[16] Id.