

Closing the Loophole: Updates on Federal and State Attempts to Regulate Intoxicating Hemp-Derived Products

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Intoxicating hemp-derived products have proliferated across the U.S. under the guise of the 2018 Farm Bill's definition of "hemp." Although these products produce psychoactive effects akin to state-regulated cannabis products, they are often manufactured and sold with little oversight or regulatory controls.

Lawmakers and regulators have intensified efforts to address the Farm Bill's perceived loophole, prompting new legislation, regulatory action, and litigation. Manufacturers and retailers argue that the Farm Bill preempts state regulatory efforts to restrict these products. This article outlines significant federal and state developments related to the regulation of intoxicating hemp-derived products in the U.S. over the last year.

Background: The Delta-9 THC Loophole

The 2018 Farm Bill aimed to legalize the cultivation, manufacture, and distribution of industrial hemp products by carving "hemp" out of the definition of "marijuana" under the federal Controlled Substances Act. Congress did so by defining hemp as any part of the cannabis plant which contains less than 0.3% *delta-9 THC* on a dry weight basis. At the time, delta-9 THC was the most well-known psychoactive compound of the cannabis plant.

Shortly thereafter, innovative market actors developed methods to exploit less well-known cannabinoids that also have psychoactive effects — such as delta-8 and delta-10 THC — and create intoxicating products that technically fall below the delta-9 THC threshold. This has allowed manufacturers and retailers to develop and sell these products without regulatory oversight, all while claiming that they are federally legal.

The Food and Drug Administration maintains that it cannot regulate intoxicating cannabinoids under its existing legal authority and has urged Congress to act. While some attempts have been made to address the Farm Bill's loophole through legislation, those efforts have, so far, been unsuccessful.

Federal Legislative Proposals

In June 2025, the U.S. House Appropriations Committee advanced a [spending bill](#) with provisions designed to redefine "hemp" and ban most THC-containing hemp products. Championed by Rep. Andy Harris, the proposed

measure would adjust the definition to limit total *combined* THC (including all isomers and THCA) in hemp at 0.3%, replacing the current delta-9-only standard.

Moreover, any product containing a “quantifiable amount” of THC, or any similar psychoactive cannabinoid would be deemed illegal, as well as synthetic cannabinoids. An exception is carved out for true industrial hemp uses (fiber, seed, etc.), but even non-intoxicating CBD products could be swept up if they contain any detectable amount of THC.

The spending bill was [approved](#) by the House Appropriations Committee in late June. The likelihood of the provisions passing through with the spending bill remains uncertain, as similar language has appeared in prior proposed amendments to the Farm Bill, only to stall before receiving a full vote.

State Regulatory Approaches and Challenges

In the face of federal inaction, states have taken varied approaches to addressing intoxicating hemp-derived products: Some have enacted outright bans, while others have implemented regulatory frameworks with age limitations, potency caps, and licensing, to allow limited sales. These state-level efforts have been challenged by industry stakeholders under the dormant Commerce Clause and principles of federal preemption.

Although early challenges to state laws and regulations suggested that state regulatory attempts would be preempted by the 2018 Farm Bill, more recent decisions reaffirm the states’ ability to regulate these products to protect the health and welfare of their citizens.

In September 2024, the California Department of Public Health issued [emergency regulations](#) banning hemp-derived food, beverage, and dietary products with any detectable amount of THC or other intoxicating cannabinoids. The rules cover over 30 compounds, including delta-8 and delta-10 THC, and impose a prohibition on sales to individuals under 21 years old and a limit of five servings of product per package.

Industry members quickly filed suit in Superior Court for the County of Los Angeles, arguing that the agency overstepped its legal authority, failed to comply with the state’s Administrative Procedure Act, and that the regulations conflict with state and federal law.

The court in *U.S. Hemp Roundtable v. California Department of Public Health* [rejected](#) their arguments, holding that “[t]he Farm Bill does not prevent states from prohibiting the manufacture or storage of hemp final form food products containing detectable levels of THC. Nor does it prevent states from banning sales of these products within their borders.” The plaintiffs ultimately dropped their suit, and as a result, the regulation will [remain in effect](#).

In Virginia, a group of hemp businesses challenged the state’s 2023 law, which capped *total* THC in hemp products at 0.3%, as preempted by the 2018 Farm Bill and in violation of the Dormant Commerce Clause. In January, the 4th U.S. Circuit Court of Appeals issued an opinion in which it refused to enjoin the law, rejecting the plaintiff’s preemption arguments.

Echoing the Superior Court’s reasoning in California, the 4th Circuit emphasized that “by expressly permitting states to regulate the production of hemp more stringently than federal law, the 2018 Farm Bill actually recognizes

the states' ability to regulate the production and sale of industrial hemp extracts and hemp products within their borders," leaving states free to regulate the products under their traditional health and safety powers.

Dormant Commerce Clause attacks were likewise turned aside, as the restrictions applied equally to in-state and out-of-state products and therefore did not unduly burden out of state actors. See [Northern Virginia Hemp and Agriculture v. Commonwealth of Virginia](#), 125 F.4th 472 (4th Cir. 2025).

More recently, the 8th U.S. Circuit Court of Appeals dissolved an injunction against Arkansas' Act 629, which criminalizes most psychoactive hemp products by scheduling delta-8, delta-10, and other cannabinoids under the state's Controlled Substances Act. Like Virginia, a coalition of hemp growers and retailers filed suit, claiming that Arkansas' attempt to criminalize these products was preempted by the 2018 Farm Bill.

The court disagreed, holding that "[t]he text [of the 2018 Farm Bill] does not support [Plaintiff's] claim that Congress intended to 'federally protect[] hemp' and coercively mandate nationwide legality," and that "just because states may legalize hemp under the 2018 Farm Bill does not mean they must."

Citing the Farm Bill's anti-preemption clause ([7 U.S.C. §1639p\(a\)\(3\)\(A\)](#)), the court ruled that states may impose stricter hemp regulations — even outright bans — so long as interstate transport of lawful hemp is not impeded. As a result, Arkansas is now free to enforce its ban on intoxicating hemp-derived products, which state officials heralded as a major victory for public health. See [Bio Gen LLC v. Sanders](#), (8th Cir. 2025).

Finally, also in June, the Texas Legislature passed SB 3, which would have banned all consumable hemp products that contain any amount of THC in the state. However, in a move that surprised and frustrated some lawmakers, [Governor Abbott vetoed the bill](#) before it could become effective.

Ironically, Abbott's veto reasoning cited the now-overturned Arkansas injunction: He argued that signing a ban would mire Texas in litigation for years, as happened in Arkansas. One day later, the 8th Circuit upheld Arkansas' law. Governor Abbott called a special legislative session and urged lawmakers to craft a regulatory framework for hemp products that is similar to alcohol, rather than an outright ban.

Why It Matters

The legal landscape for intoxicating hemp-derived products has shifted significantly over the past year. Federal efforts are underway to redefine hemp and ban synthetic and intoxicating cannabinoids. At the same time, courts have affirmed state authority to enact bans or impose strict limits. Together, courts are sending a clear message: The Farm Bill is not a shield against state bans on hemp-derived THC. As a result, states have been able to implement robust restrictions.

Businesses must stay informed and compliant as regulations continue to evolve. With federal reform looming and states tightening controls, the era of unregulated hemp-derived intoxicants may be coming to an end.

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