



**Guidance for Local Government**

***Sensible Change Minnesota - Consumer and patient led advocacy  
Created in consultation with businesses and industry service providers***

***History***

In May 2022, the Minnesota Legislature passed a law regulating the sale of food and beverage products containing hemp-derived cannabinoids, including tetrahydrocannabinols (THC). This law was the result of a number of issues that have arisen since the 2018 Farm Bill, authorizing the production, sale, and possession of hemp products, so long as they do not contain more than 0.3% Delta-9 THC.

The farm bill allowed for the production of novel cannabinoids, contained within the plant in small quantities, but producible through processing, such as - Delta-8 and Delta-10 THC, tetrahydrocannabiphorol (THCP), and THC acetate ester (THC-O). These products have been widely sold in smoke shops, over the internet, and in hemp shops for the past 3-4 years. Additionally, food and beverage products were infused with these THCs and sold widely, so long as they did not contain more than 0.3% Delta-9 THC by weight. This allowed, for example, gummies with 10 mg (or more) Delta-9 THC to be sold.

In addition to the sale of these THC products, food and beverages infused with cannabidiol (CBD), THC's non-psychoactive cousin, widely hit the market everywhere: pet stores, gas stations, smoke shops, hemp shops, the internet, and even in multi-level marketing companies. Often, CBD products are considered "full spectrum," which includes trace amounts of THC, under the 0.3% threshold, and are not intoxicating or psychoactive.

In the fall of 2021, the Minnesota Supreme Court ruled that any hemp-derived extracted Delta-9 THC was a Schedule I narcotic, even if it was under the 0.3% threshold, due to a drafting error in the 2019 law that descheduled hemp from the Minnesota Controlled Substances Act. This meant that any individual in possession of any 'full spectrum' CBD product, Delta-9 THC food and beverage being sold legally under federal law, and even 'full spectrum' topical products was committing a felony.

Around the same time, Minnesota-based hemp cannabinoid manufacturers and retailers making or selling cannabinoid-infused food and beverage products began receiving notice from the Minnesota Department of Agriculture (MDA) notices that their products were illegal – under Minnesota's food laws – due to cannabinoids not being a FDA-approved food additive. This disadvantaged Minnesota-based businesses in a national marketplace where food and beverage products containing hemp-derived cannabinoids are widely sold and distributed.

Regulators saw gross violations of basic standards of conduct from certain bad players in the hemp industry. None of the below described products were produced by Minnesota-based manufacturers, as far as we are aware.

- Packaging designed to attract children
- Packaging mimicking commercially available candy products, such as Sour Patch Kids
- Spraying of THC onto commercially available foods such as Doritos, candy, and even Oreo cookies

Finally, previous law did not have any age restrictions for sale of these products, and testing was lax, at best, oftentimes relying on the testing performed on the plant material prior to its processing into food and beverage products, as well as vapor oils. In addition, the lack of regulation regarding labeling of these products made it difficult for consumers to know what they were consuming.

***The New Law***

The new hemp-derived cannabinoid regulation law was in response to the above-issues. Representative Heather Edelson (D-Edina) worked with stakeholders from state agencies, consumers, and the industry to develop language that would transition the industry from a position of uncertainty with unclear legal jurisdiction to a more regulated industry to protect

consumers and provide business clear guidance and product quality standards while eliminating unintended criminal status for possession. The new law:

1. Creates packaging and labeling requirements for cannabinoid products;
2. Prohibits packaging attractive to children, and the addition of cannabinoids to commercially available products;
3. Places on age restriction of 21 years old on sales of cannabinoid products;
4. Limits the content of any THC to 0.3%, up to 5 mg per serving and 50 mg per package (previously, there was not a mg limit for Delta-9 THC, and other THCs were not restricted to 0.3%); and
5. Requires testing of final product prior to sale, better protecting consumers from residual solvents and contaminants from the processing of raw hemp material.

This law virtually eliminates the sale of THC vape products and many of the food and beverage products that were on the market prior to the law being passed.

MN CBD & THC Products Regulatory Overview								
	Pre July 1st 2022				Post July 1st 2022			
Products	Federal Law	State Law	Sold in MN	Age Restriction	Federal Law	State Law	Sold in MN	Age Restriction
<b>CBD</b>	Legal	Cannot have more than .3% of THC D9*	Yes: Gas stations, Grocery Stores, Health Stores, Tobacco, Internet	NO	Legal	Cannot have more than .3% of THC	Yes: Gas stations, Grocery Stores, Health Stores, Tobacco, Internet	Over 21
<b>THC Delta-9</b>	Legal if under .3%	Per court ruling any hemp derived THC was considered a Felony regardless of amount	Yes: Primarily CBD, Tobacco and Vapor businesses, Internet	NO	Legal if under .3%	Legal if Under .3%	Yes: Primarily CBD, Tobacco and Vapor businesses, Internet	Over 21
<b>Other THC</b>	Legal No restrictions	No Law specifically addresses BUT board of Pharmacy viewed as intoxicating and not approved to sell. Never enforced	Yes: Primarily CBD, Tobacco and Vapor businesses, Internet	NO	Legal No restrictions	Legal if Under .3%	Yes: Primarily CBD, Tobacco and Vapor businesses, Internet	Over 21
<b>Food &amp; Bev</b>	FDA does not approve CBD as a food additive: Enforcement focused on marketing	Illegal: Dept of Ag had enforcement but only applied to handful of MN businesses to out-of state businesses' benefit	Yes, Grocery Store, CBD, Vape, Tobacco Businesses, Internet	NO	FDA does not approve CBD as a food additive: Enforcement focused on marketing	No longer considered food. Legal if THC under .3% and limited to 5mg per serving/50mg per container	Yes, Grocery Store, CBD, Vape, Tobacco Businesses, Internet	Over 21

## **Shortcomings**

We acknowledge remaining shortcomings in the regulation of hemp-derived cannabinoid products, and we appreciate the position that puts local government in. The most important thing for local governments to understand is **these products were already widely sold prior to the 2022 regulatory law**.

The new law does not fund regulation – so local governments should consider how and if they will enforce the law. Violation of the law in question (Minn. Stat. 151.72) is a misdemeanor offense for the retailer of non-compliant products. This allows city or county attorney's authority to pursue criminal charges for the sale of non-compliant products.

Additionally, restrictions on the age of possession were not included in the bill – only restrictions on the sale to persons under 21 years of age. However, with the restrictions on packaging, we are hopeful that this will actually reduce youth use of these products that were previously unrestricted.

## **Recommendations**

As an organization that has been heavily involved in cannabis-policy over the past eight years, we would like to provide some recommendations for cities considering further regulation of these products. Prohibitions will not keep the products out of communities, but have the serious potential of decimating existing businesses, sending consumers to seek out unregulated products from the internet, neighboring states, and negating the consumer protections of the new law.

- Create licensing requirements for retailers and processors that take into account food safety, compliance with the new law's testing requirements, and accommodate the existing market - which includes CBD shops, retail stores, gas stations, smoke/vape shops, multi-level marketing, and traveling vendors.
- Restrict display and storage of products containing THC to behind a counter or inside a locked display.
- Provide restorative measures for businesses out of compliance for the first 3-6 months due to initial confusion on the law.
- We **strongly** discourage prohibitory moratoriums. These products are widely available from retailers nationwide and easily ordered over the internet. **It is better for Minnesota businesses and safer for consumers to purchase from local companies regulated by this new law.** Moratoriums will nullify the positive consumer protections from the new law, because such prohibitions have shown to create illicit market growth outside of regulation and enforcement– something that is dangerous for all stakeholders.
  - We recommend any moratoriums allow for the continued operation of existing retail businesses selling state compliant products.
  - Any prohibitory moratorium should allow for “trace” amounts of THC in ‘full spectrum’ products - especially oils. Full spectrum CBD oil is typically sold in 30 mL bottles, which would contain 9 mgs of THC, at most, based on the 0.3% limit. These products are widely available and sold across the country.

The reality is: this new law was put into place to better protect consumers from products already widely available and distributed nationally. The only way that is effective is if local government partners to enforce the regulations placed by the 2022 legislation.

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## **About Sensible Change Minnesota**

*We believe our neighborhoods are safer when they are more inclusive. Most Minnesotans have experienced fallout from the war on drugs. From mothers who have lost their children to the opioid epidemic to children growing up with a parent incarcerated for non-violent drug offenses, it is time to implement sensible policies and mitigate the harms of prohibition and the failed policies of the war on drugs.*

*Our mission is to make Minnesota safer and more inclusive by collectively promoting policy changes that emphasize compassion over isolation, restorative justice over incarceration, and public health over stigma.*