

Intoxicating Marijuana and Hemp-Derived Beverages: Where Are We With Them?

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“Provides the uplifting effects of cannabis for any occasion.”

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Definition of Marijuana (G.L. c. 94G, § 1)

- All parts of any plant of the genus *Cannabis* . . . the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol [THC - Delta-9 concentration greater than 0.3%] . . .
- Shall not include:
 - Mature stalks
 - **Hemp**
 - Other ingredients combined with marijuana to prepare products

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The Farm Act (2018)

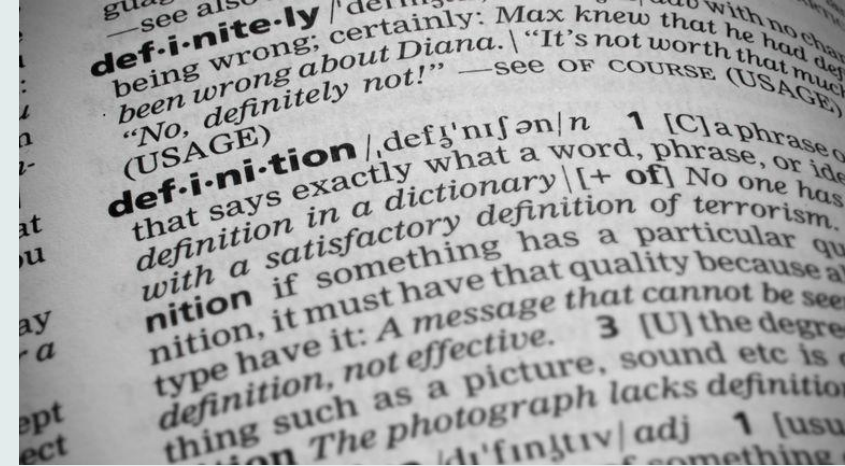
Removes **hemp** from the definition of **marijuana** in the Controlled Substances Act (CSA).

Definition of **hemp**: “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** concentration of not more than 0.3 percent on a dry weight basis.”

Plain language – all products that are **sourced** from the Cannabis plant, contain **not more than 0.3 percent delta-9 THC**, and are a derivative, extract, cannabinoid, or one of the other terms in the definition of hemp.

Massachusetts definition for hemp is the same.

Started seeing these products after the Farm Act passed.



What is Delta-8, 10, etc?

- One of the more than 100 **cannabinoids** produced in the Cannabis sativa L. plant.
- An “isomer” of Delta-9.
 - Same atoms but arranged differently.
 - Found naturally, but in **miniscule** amounts.
 - No Delta-8 product is naturally extracted. They are produced **synthetically** in labs.
- To produce Delta-8 naturally with the necessary isolation and purification required you would need to process about 55,000 kilos (app. **122,000** lbs.) of hemp to produce one kilo (app. **2.2** lbs.) of natural Delta-8. Cost would be about **\$22 million**.
- “Calling commercial Delta-8 THC a ‘hemp-derived’ or a ‘natural’ product is the equivalent of calling codeine a ‘poppy-derived, natural’ herbal supplement.
- Available in candy, cookies, chips, gummies, vapes, dabs, shatter, smokable hemp sprayed with delta-8 THC extract, distillate, tinctures, and **infused beverages**.



Risks of Delta-8 (etc.) Isomer Products

We Don't Know What's in Them

CCC's private, independent lab tested thousands of synthetic isomer products and found acetic acid and 15 – 30 unknown contaminants, as well as acetic acid.

“Frankenstein-like chemical components”

No required certification for evaluating contaminants.

High Potency and Intoxicating

While Delta-8 and Delta-10 THC are less intoxicating than Delta-9 THC, product labels indicate **much higher amounts of Delta-8 and Delta-10 per serving.**

Example: Delta-8 Seltzer is labeled as having **20 mg** per serving of synthetic THC, compared with the legal cannabis product with a maximum of **5.5 mg** of Delta-9 per serving.

Widely Available to Youth

NO Age Restrictions

Perception of safety because they are on sale everywhere

Risks of these Synthetic Isomer Products, cont.

- Adverse effects reported by FDA:
 - Hallucinations, vomiting, tremor, anxiety, dizziness, confusion, loss of consciousness.
- Severe toxicity has been associated with changes in heart rate, low blood pressure, difficulty breathing, and coma.
- National Poison Control Center Delta-8 data*:
 - 2,362 calls to Poison Control for Delta-8 Exposure in ~12 months
 - 40% Accidental Exposure; 82% were youth
 - 70% Required Evaluation at Healthcare Facility
 - 8% Admitted to Critical Care Unit



*see: <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>



MA bans the sale of all flavored tobacco products

Definition of tobacco products includes:

“electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization ***regardless of nicotine content in the product.***”

All flavored vapes are now covered by MA law.

PRODUCT CATEGORIES

- CBD Products
- Delta-8 Products
- Delta-9 THC Products
- Delta-10 THC Products
- Delta-11 Products
- HHC Products
- HHC-O Products
- HHC-P Products
- Mushroom Supplements
- PHC Products
- THC-B Products
- THC-H Products
- THC-JD Products
- THC-O Products
- THC-P Products
- THC-V Products
- Edibles



★★★★★ 5 Reviews

Nerdy Bears Delta 8 Gummies | 420mg

\$20.00

- 2018 Farm Bill Compliant
- 105mg Delta-8 THC and CBD Per Gummy
- 420mg Delta-8 THC And CBD Per Bag
- Assorted Flavors
- Extremely Potent

Availability: 349 in stock

Purchase now to earn 100 Loyalty Points!

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ADD TO CART

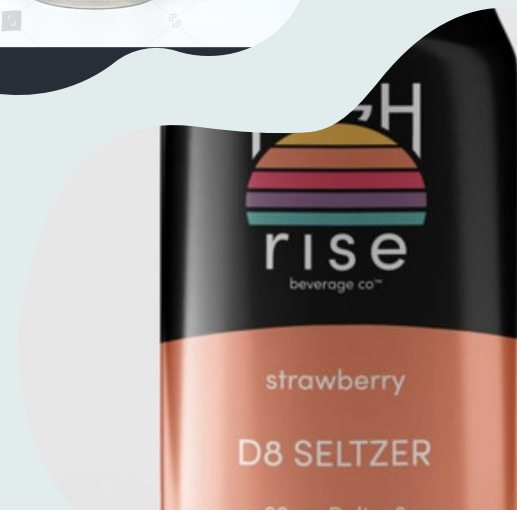
SECURE CHECKOUT POWERED BY: Bolt

Categories: Delta 8 Gummies, Delta-8 Products, Edibles
Brand: Nerdy Bears

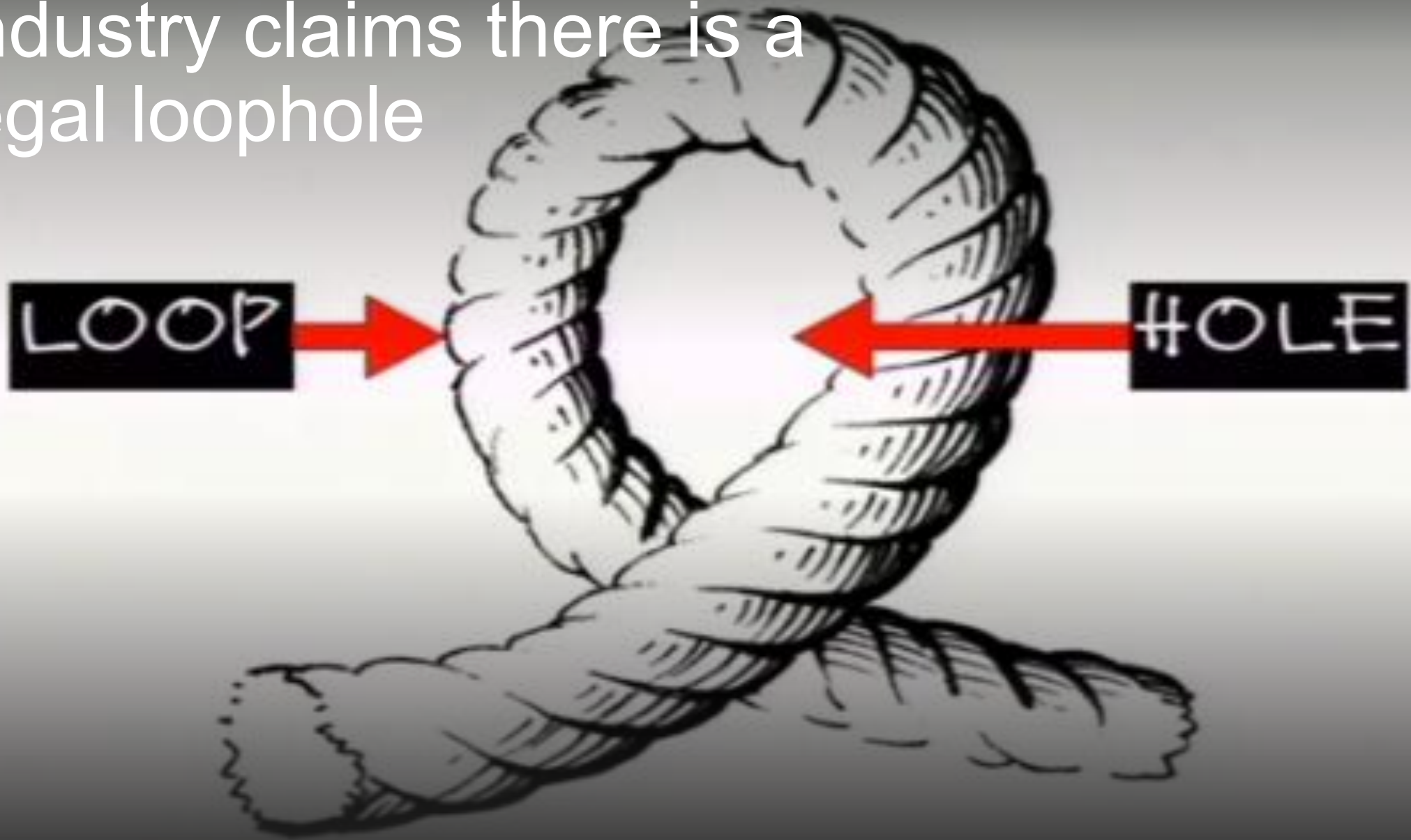
Hemp-Derived Intoxicating Beverages



Types of CBD/THC Beverages



Industry claims there is a
legal loophole



What's the Loophole?

- **Definition of Hemp:** The plant Cannabis and any part of that plant, including all derivatives, extracts, cannabinoids, **isomers . . . with a delta-9 concentration of not more than 0.3 %.**
- **Industry claims their products are legal because:**
 - They are hemp-derived; and
 - have less than 0.3% of **delta-9.**
- Even if they're **intoxicating**, created in a lab using **unknown components**, have **no certification process** for testing contaminants, **no labeling requirements**, and **no age-restriction.**
- AK Futures, LLC v. Boyd Street Distro, LLC (9th Cir.)
 - “Regardless of the wisdom of legalizing delta-8 THC products, this Court will not substitute its own policy judgement for that of Congress... **If [the defendant] is correct and Congress inadvertently created a loophole legalizing vaping products containing delta-8 THC, then it is for Congress to fix its mistake.”**
- **Not controlling in MA**

'Your regulation is only as good as your ability to enforce it.'

CHERYL SBARRA, executive director of the Massachusetts Association of Health Boards



PHOTOS BY JOHN TLUMACKI/GLOBE STAFF

at Trade Roots, a Wareham cannabis company, workers face strict rules. It's a different story for makers of hemp-derived products.

LOOPHOLES PUT A DANGEROUS HIGH IN TEENS' HANDS



Unlike highly regulated cannabis, hemp-based delta-8 is in a legal gray area

By Adam Piore
GLOBE STAFF

It's Catherine Dhingra's job to worry about the youth of Wakefield.

So in late January, when the town's prevention, outreach, and youth services manager heard from a colleague about an uptick in kids showing up to school so high that

sold in local vape shops," she said. "Throughout our region, youth are talking about it."

Although she and others didn't know the exact intoxicants involved, she had learned enough about delta-8 on her own that she sent an email to a group of concerned volunteers, col-

But No Loophole Exists

- **Federal and MA Controlled Substances Act (CSA)**
 - Federal – All synthetically derived THC and CBD remain schedule I controlled substances regardless of amount of Delta-9.
 - MA – incorporates Federal Scheduling
 - These products are illegal, and it is a crime to sell them.
- **Joint Guidance issued by DPH and MDAR in May 2024**
 - **MDAR Hemp Program**
 - Farm Act removed hemp from definition of CSA
 - Farm Act did not remove federal prohibition of adding CBD or THC to food or beverages.
 - **DPH Food Code**
 - All food must be from approved food sources.
 - CBD and THC are not approved food sources.
 - Cannot be sold in liquor stores (ABCC sent out guidance in May 2024).

Cannabis Control Commission and THC Infused Products

- Marijuana Products (more than 0.3% Delta-9), including Marijuana Infused Beverages are regulated by the CCC.
- “Edibles means a Marijuana Product that is to be **consumed by humans by eating or drinking**. These products, when created or sold by a Marijuana Establishment . . . **shall not be considered a food . . .**” (935 CMR 500).
- Marijuana infused beverages can only be sold in CCC Registered Marijuana Establishments.
 - Cannot be sold in liquor stores.
 - What about in Social Consumption Establishments?



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But who enforces and how?

- Retailers who only sell shelf-stable food are in a grey area for enforcement.
- Do not need a food service permit under state food code.
- Specialty stores like head shops.
- MDAR's website states that MDAR does not enforce in retail stores, and they have no applicable enforcement arm.
- Local health can likely enforce under nuisance or food adulteration laws.

Products Sold at Retail	Required Permit	Enforcement Body
Food establishments	Retail Food Code	Local Health
Convenience Stores	Retail Food Code	Local Health
Liquor Stores	Liquor License	Liquor licensing Board/ABCC
Gas stations and other stores selling only shelf-stable food (gummies, twinkies, Coke)	No food service permit required. Embargo or nuisance?	Local Health?

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In a Nutshell

Real Marijuana Infused Beverages (more than 0.3% of Delta-9) can only be sold in CCC Licensed Marijuana Establishments.



All other CBD/THC products are synthetic hemp products and are illegal and cannot be sold anywhere in MA.



BUT – Enforcement appears to remain with local boards of health



AND – Wait until the legislature starts regulating.



HOUSE CANNABIS BILL (2:20 pm today) It changes everything, if it ever gets passed!

Where does this leave us?

- **Local health regulations.**
 - **Resource constraints and enforcement inconsistency** between municipalities with and without regulations.
- **MDAR, DPH and ABCC will need to continue collaborating including:**
 - Issuing further guidance and protocols on enforcement in ‘grey area’ locations
 - Ensuring that each state agency consistently enforces under the full extent of their authority.
- **Explore other avenues to address synthetically-derived THC/CBD products:**
 - Engagement with law enforcement.
 - Possible AG action for online sales or against larger manufacturers/distributors.
 - CCC lab testing support.



Questions and Comments

The background of the slide is a solid teal color. It is decorated with several large, organic, wavy shapes in shades of green and teal. Scattered across the entire background are numerous speech bubbles of various colors (teal, light green, brown, and grey). Each speech bubble contains a large, dark teal question mark. The speech bubbles are of different sizes and orientations, creating a sense of dynamic movement and inquiry.