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Session 4

An Industry in Legal Limbo: Surveying the Federal & State Landscape for THC-Infused Products

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AN INDUSTRY IN LEGAL LIMBO:
SURVEYING THE FEDERAL AND STATE LANDSCAPE FOR THC PRODUCTS

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Introduction

The legal landscape governing hemp-derived cannabinoid products — including hemp-derived THC — remains one of the most dynamic and unsettled areas of regulatory law in the United States. What began as an agricultural policy decision in 2018 has evolved into a complex patchwork of federal proposals, state legislative experiments, and enforcement uncertainty that practitioners advising businesses in this space must carefully navigate. These materials survey the current federal regulatory environment, examine one of the most instructive state models for THC product regulation, and then turn to the specific challenges and opportunities facing hemp businesses and their counsel in Wisconsin.

I. The Federal Landscape

A. Background: What Is the "Hemp Loophole"?

1. The 2018 Farm Bill

The story begins with the 2018 Farm Bill , which fundamentally altered the legal status of hemp at the federal level. Prior to its enactment, hemp — like marijuana — was classified as a Schedule I controlled substance under the Controlled Substances Act (CSA), making its production, sale, and possession illegal under federal law regardless of the THC content of the plant.

The Agriculture Improvement Act of 2018 (commonly known as the 2018 Farm Bill) removed hemp from the definition of marijuana under the CSA and transferred primary regulatory authority over hemp cultivation to the U.S. Department of Agriculture (USDA). Critically, the statute defined "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 tetrahydrocannabinol (delta-9 THC) concentration of not more than 0.3 percent on a dry weight basis.

This definition opened the door to a thriving market in hemp-derived products. Because the statute focused specifically on delta-9 THC concentration calculated on a dry weight basis,

manufacturers and sellers quickly identified a path to market intoxicating products by utilizing alternative cannabinoids — most notably delta-8 THC, delta-10 THC, and THC-O — which are either naturally present in trace amounts in hemp or can be synthesized through chemical conversion of CBD extracted from hemp. Since these compounds are technically derived from a lawfully grown hemp plant, and since the statutory definition did not expressly address them, industry participants argued that such products fell outside the scope of the CSA's prohibition. This gap between the letter of the law and its intended purpose became widely known as the "hemp loophole."

The hemp loophole has fueled exponential growth in a largely unregulated market for intoxicating hemp-derived products. Products containing delta-8 THC, for example, became available at convenience stores, gas stations, and online retailers across the country, often with little to no age verification, standardized labeling, or third-party testing. Public health concerns escalated alongside market growth, with poison control centers reporting spikes in adverse event calls related to these products, particularly involving accidental pediatric ingestion.

2. The AK Futures Holding

A pivotal judicial development in this area came through the *AK Futures* decision , in which the Ninth Circuit Court of Appeals confronted the legal status of delta-8 THC products derived from hemp. In *AK Futures LLC v. Boyd Street Distro, LLC*, 35 F.4th 682 (9th Cir. 2022), the court held that delta-8 THC products derived from hemp were lawful under the 2018 Farm Bill, provided the finished product contained no more than 0.3 percent delta-9 THC on a dry weight basis. The court reasoned that the statute's plain language was unambiguous and that the definition of hemp encompassed all hemp-derived cannabinoids, regardless of their intoxicating potential.

The *AK Futures* decision was significant for several reasons. First, it validated the legal position that many hemp industry participants had already been operating under — namely, that delta-8 and other novel hemp-derived cannabinoids fell within the 2018 Farm Bill's definition of lawful hemp so long as the delta-9 THC threshold was not exceeded in the finished product. Second, it created tension with the Drug Enforcement Administration (DEA), which had issued interim rules suggesting that synthetically derived tetrahydrocannabinols remained Schedule I controlled substances even if the underlying source material was hemp. Third, and perhaps most importantly from a policy standpoint, the decision underscored the urgency of legislative action to close the hemp loophole. If courts were willing to read the statute's text so broadly as to permit the commercial sale of highly intoxicating hemp-derived products, the only path to meaningful regulation lay with Congress.

For practitioners, *AK Futures* remains an important reference point when advising hemp industry clients about the legal defensibility of their product lines, particularly in jurisdictions that follow or find persuasive Ninth Circuit reasoning. However, it should not be viewed as providing a safe harbor everywhere — the DEA's position, state-level bans on specific cannabinoids, and the evolving federal legislative landscape all continue to create legal risk.

B. HR 5371: The Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act

Congress has been working to address the hemp loophole through proposed legislation, most notably HR 5371 . This bill represents one of the most significant federal efforts to establish a comprehensive regulatory framework for hemp-derived cannabinoid products, and its key provisions would fundamentally reshape the market if enacted.

1. The 4 mg THC Cap

HR 5371 would impose a 4 milligram cap on the THC content per serving of hemp-derived products . This limitation is intended to differentiate hemp-derived cannabinoid products from marijuana-derived products and to set a threshold below which intoxication risk is considered acceptable for consumer access through conventional retail channels. The per-serving limit represents a meaningful restriction on currently available products; many delta-8 and other hemp-derived THC products on the market today are sold with significantly higher per-serving cannabinoid concentrations. Compliance would require product reformulation across much of the existing market.

Practitioners advising hemp businesses should recognize that a per-serving cap does not, by itself, address all consumption risk. A product with a 4 mg per serving THC limit may still contain many servings per container, and consumers — particularly those unfamiliar with potency — may consume multiple servings. Accordingly, some proposals have also discussed per-container limits as a complementary safeguard, a point echoed in subsequent Executive Branch guidance discussed below.

2. Total THC Definition

Another critical feature of HR 5371 is its adoption of a "total THC" definition for purposes of measuring compliance . The significance of this shift cannot be overstated. Under the 2018 Farm Bill's framework, the relevant metric is delta-9 THC concentration on a dry weight basis. Industry participants have exploited this definition by arguing that other psychoactive cannabinoids — delta-8 THC, delta-10 THC, THC-O, and similar compounds — are simply not delta-9 THC and therefore do not count toward the statutory threshold.

A total THC approach would aggregate all THC isomers and analogs when measuring whether a product falls within or outside permissible limits. This is consistent with how many agricultural and scientific experts actually assess the intoxicating potential of cannabis-related products. By adopting a total THC framework, HR 5371 would effectively close the primary loophole that has allowed the unregulated proliferation of intoxicating hemp products, because a product with significant concentrations of delta-8 THC would need to count that concentration against the applicable limit regardless of its delta-9 THC content.

For legal counsel advising hemp companies, this proposed definitional change requires urgent attention to current product formulations and testing protocols. If HR 5371 or a similar total THC framework is enacted, a significant portion of products currently marketed as compliant hemp would require reformulation or may be forced out of the market entirely.

3. 365-Day Implementation Timeline

HR 5371 would provide a 365-day implementation timeline following enactment , giving industry participants one year to come into compliance with the new regulatory requirements. This grace period reflects a congressional recognition that the hemp market — now a multibillion-dollar industry employing hundreds of thousands of Americans — cannot practically be restructured overnight. It also provides regulated businesses with a reasonable runway to reformulate products, adjust supply chains, update labeling and packaging, and implement necessary compliance programs.

From a legal counseling perspective, the 365-day timeline should not be viewed as a reason to delay planning. Clients should begin proactive compliance assessments immediately, modeling what their product lines will look like under both a per-serving THC cap and a total THC definition. Supply chain adjustments — particularly at the extraction and formulation stages — can take significant lead time, and compliance failures following the effective date of any new federal framework would carry legal consequences that far outweigh the cost of early preparation.

C. Presidential Executive Order

The Executive Branch has also weighed in on the hemp regulatory question through a Presidential Executive Order, which provides important direction on the administration's policy goals while acknowledging the need for a more permanent legislative solution.

The Executive Order directs the Assistant to the President and Deputy Chief of Staff for Legislative, Political, and Public Affairs to work with Congress to update the statutory definition of final hemp-derived cannabinoid products, with the stated goal of allowing Americans to benefit from access to appropriate full-spectrum CBD products while preserving Congress's intent to restrict the sale of products that pose serious health risks.

This initiative will include consultation with appropriate executive departments and agencies and authorities to develop a regulatory framework for hemp-derived cannabinoid products, including development of guidance on an upper limit on milligrams of THC per serving with considerations on per container limits and CBD to THC ratio requirements. The express mention of both per-serving and per-container limits signals that federal regulators are thinking carefully about how to address consumption patterns and to prevent circumvention of per-serving limits through product design.

The Executive Order further directs the Secretary of Health and Human Services, the Commissioner of Food and Drugs, the Administrator of the Centers for Medicare and Medicaid Services, and the Director of the National Institutes of Health to develop research methods and models utilizing real-world evidence to improve access to hemp-derived cannabinoid products in accordance with federal law and to inform standards of care.

Taken together, these directives reflect a federal policy disposition that is not categorically hostile to hemp-derived cannabinoids. Rather, the administration appears to be seeking a framework that distinguishes between genuinely therapeutic, low-risk hemp-derived products (such as appropriately dosed full-spectrum CBD) and higher-potency intoxicating products that

pose greater consumer risk. The emphasis on real-world evidence and standards of care also suggests that the regulatory landscape may ultimately be informed by clinical and public health data, not simply political negotiation.

For practitioners, the Executive Order is significant because it represents a formal commitment from the Executive Branch to engage with Congress on this issue and to develop agency-level guidance. Even in the absence of immediate legislative action, guidance documents and proposed rules from FDA, DEA, and USDA could meaningfully reshape the compliance landscape in the near term.

D. The Wyden Bill

On the Senate side, Senator Ron Wyden has introduced legislation aimed at establishing a comprehensive federal regulatory framework for hemp-derived THC products, incorporating a 5 milligram per serving THC cap . The Wyden Bill represents Senate efforts to address the hemp loophole in a way that parallels but is not identical to the House approach reflected in HR 5371.

The bill's proposed 5 mg per serving cap is slightly higher than the 4 mg figure advanced in HR 5371 , reflecting ongoing negotiation over what the appropriate threshold should be. The gap between the two chambers' proposals illustrates the complexity of arriving at a scientifically grounded and politically viable THC limit. Different stakeholder groups — including patient advocates, hemp industry trade associations, alcohol and marijuana regulators, and public health organizations — hold sharply divergent views on what level of THC creates unacceptable consumer risk.

Despite the difference in proposed thresholds, both the House and Senate approaches share the fundamental premise that the current situation — an effectively unregulated market for intoxicating hemp-derived products — is untenable. Legislative convergence on a final cap, combined with a total THC definitional framework and clear enforcement authority, would substantially alter the regulatory landscape.

Practitioners should monitor this legislation closely. Even if neither bill passes in its current form, the parameters they establish — the range of approximately 4 to 5 mg per serving, total THC accounting, and a structured compliance timeline — are likely to inform whatever final framework Congress ultimately adopts. Advising clients to plan for compliance within this range is prudent regardless of which precise figure is eventually enacted.

II. State Regulation of THC Products: The "Minnesota Model"

While Congress has debated federal solutions, several states have moved proactively to establish their own regulatory frameworks for hemp-derived THC products. Minnesota has emerged as arguably the most influential model, having enacted legislation that provides a comprehensive cradle-to-retail regulatory structure for hemp-derived THC products. Understanding the Minnesota framework is instructive for any state considering its own approach, and it provides a useful benchmark for counsel advising clients about what a mature, well-designed state regulatory regime looks like in practice.

A. Licensing Required at All Stages of the Supply Chain

Under the Minnesota model, a license is required at every stage of the supply chain, from cultivation through retail sale . This means that growers, processors, manufacturers, distributors, and retailers must each obtain and maintain a state-issued license as a condition of participating in the hemp-derived THC market. The multi-stage licensing requirement serves several important functions.

First, it creates accountability at each point in the supply chain. By requiring every participant — not just the end retailer — to be licensed, the state can trace products from field to shelf and hold each participant responsible for compliance failures within their scope of operations. Second, it provides the state with a meaningful enforcement tool: license suspension or revocation. Because a license is a prerequisite to doing business, the threat of losing it creates a powerful incentive for compliance. Third, a comprehensive licensing structure generates a regulated industry database, enabling regulators to monitor market participants and respond quickly to public health concerns.

For practitioners advising clients seeking to operate in Minnesota or in states considering similar frameworks, the multi-stage licensing requirement means that compliance is not simply a matter of product formulation and labeling. It begins with business structure, regulatory registrations, and ongoing reporting obligations at every level of operations.

B. Labeling and Packaging Requirements

The Minnesota model establishes detailed labeling and packaging guidelines for hemp-derived THC products . These requirements are designed to ensure that consumers receive accurate information about product contents and potency, and that products are not marketed in ways that are likely to appeal to children or to mislead consumers about the nature of the product they are purchasing.

Standard labeling requirements under a Minnesota-style framework typically include: a clear and conspicuous statement of the total THC content per serving and per package; a list of all ingredients and cannabinoids; a certificate of analysis from an independent, accredited testing laboratory; a batch or lot number traceable to production records; the name and contact information of the manufacturer or distributor; and appropriate warning statements regarding intoxicating effects, potential health risks, and the prohibition on sale to minors.

Packaging requirements similarly focus on child-resistance and non-appeal to minors. Products may not be packaged in forms or with imagery likely to attract children, and child-resistant packaging is generally required for products that could pose a risk of accidental ingestion. These packaging standards draw heavily from existing frameworks in the legal cannabis and dietary supplement industries and are intended to set a baseline of consumer protection that the unregulated market has historically failed to achieve.

C. Serving Size Limitations

The Minnesota framework imposes serving size limitations on hemp-derived THC products. These limitations work in conjunction with per-serving THC caps to ensure that manufacturers cannot circumvent potency limits through product design — for example, by designating an

unrealistically small serving size that artificially reduces the calculated THC content per serving while leaving consumers to consume the product in amounts that substantially exceed the limit.

Serving size standardization is a technically and legally complex area. What constitutes an appropriate serving of a gummy, beverage, tincture, or topical product may differ significantly, and manufacturers have an incentive to define serving sizes in ways favorable to their products. A robust state regulatory scheme addresses this by establishing serving size standards for common product categories, by requiring that serving sizes reflect realistic consumption patterns, and by mandating that product containers display total package THC content alongside per-serving information.

D. Age Restrictions

The Minnesota model includes age restrictions prohibiting the sale of hemp-derived THC products to persons under a minimum age threshold, typically 21 years of age . Age restrictions are among the most fundamental consumer protection measures in any intoxicant regulatory framework, and they are entirely absent from the unregulated hemp market that has existed in many states since the 2018 Farm Bill's passage.

Enforcement of age restrictions requires practical mechanisms: training requirements for retail staff, point-of-sale verification systems, and penalties for retailers who sell to underage purchasers. States adopting a Minnesota-style framework typically place these obligations on the retailer and make compliance with age verification a condition of the retail license. Repeat or willful violations can result in license suspension or revocation.

For clients operating retail businesses — whether brick-and-mortar stores or e-commerce platforms — age restriction compliance is a significant operational undertaking. Online sales in particular present challenges, as age verification systems for digital commerce are not yet standardized and the risk of underage access remains meaningful.

III. Wisconsin Hemp Law Issues

A. The Previous Wisconsin Pilot Program (Ended January 2022)

Wisconsin's history with hemp regulation provides important context for understanding the current legal landscape in the state. For several years, Wisconsin operated its own state hemp pilot program, which authorized a range of commercial hemp activities under state oversight. Understanding how that program functioned — and why it ended — is essential for any practitioner advising clients in the Wisconsin hemp market.

1. Statutory Origins

Wisconsin's hemp pilot program was created by 2017 Wisconsin Act 100, enacted on November 30, 2017 . This legislation predated the federal 2018 Farm Bill and reflected Wisconsin's desire to position itself as a participant in the anticipated growth of the industrial hemp industry.

Under the Act, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) was directed to create a pilot program to study the growth, cultivation, and marketing of industrial hemp . The pilot program framework was expressly modeled on the federal pilot program structure then in place under the 2014 Farm Bill, which had authorized states to establish similar research-focused hemp programs in conjunction with state departments of agriculture or institutions of higher education.

2. How the Program Worked

The application and licensing process under Wisconsin's pilot program involved several steps :

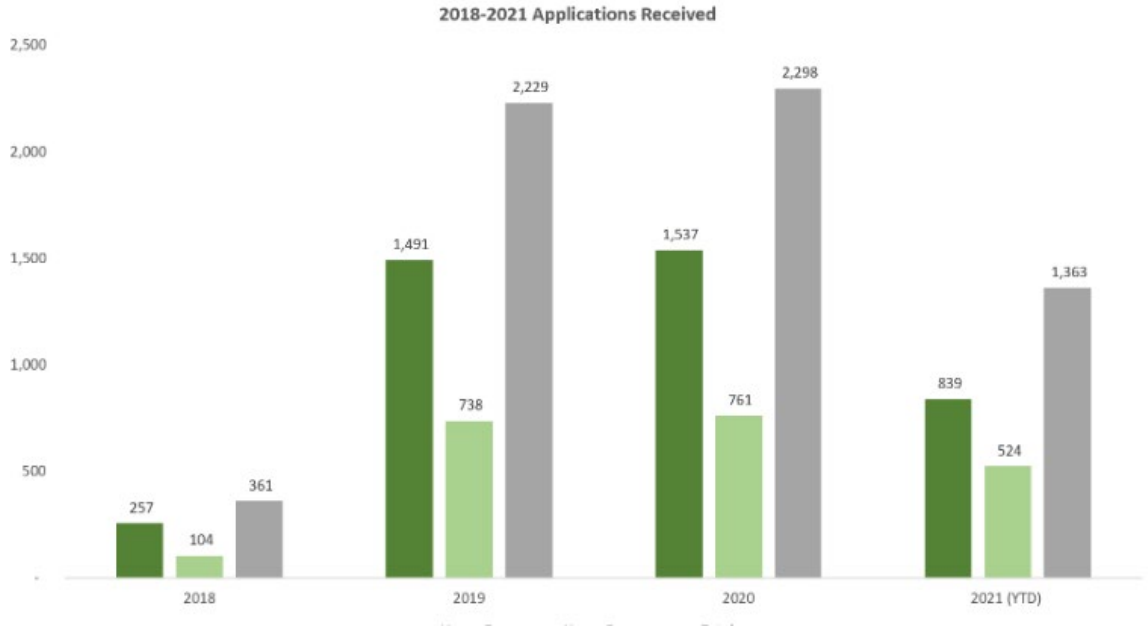
- Applicants were required to apply for a one-time license using forms provided by DATCP.
- A one-time license application fee was required, with the fee amount increasing based on acreage but capped at $1,000.
- All applicants were required to undergo a background check.
- Applicants were required to provide field or greenhouse locations along with GPS coordinates for each growing site.
- License holders were required to register with DATCP every year for the duration of the program.

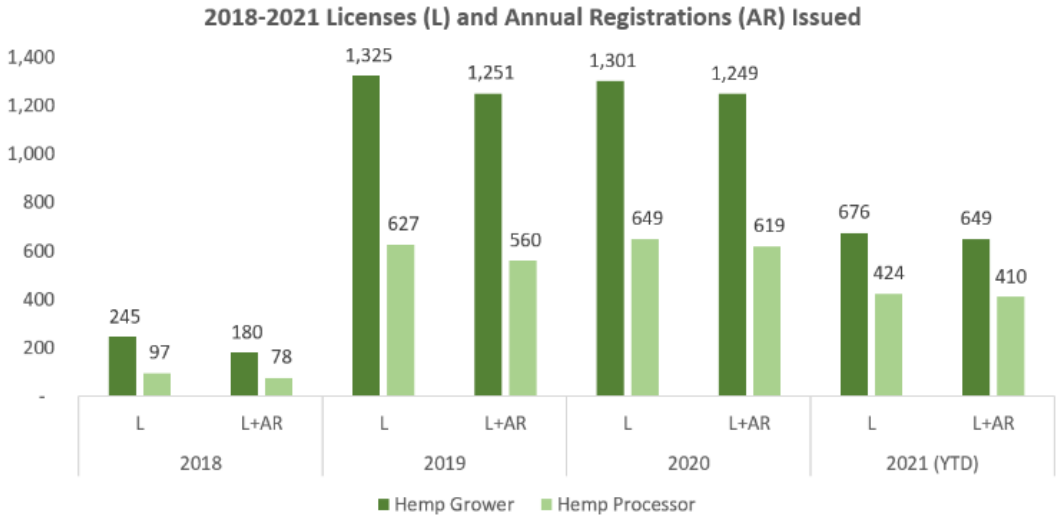
DATCP issued licenses authorizing the planting, growing, cultivation, harvesting, sampling, testing, processing, transporting, transferring, selling, importing, and exporting of industrial hemp. Licenses did not expire unless the pilot program itself expired or the individual license was revoked.

An important restriction applied to processors: processors were permitted to acquire hemp only if it had been issued a "fit for commerce" certificate by DATCP, or if it originated from a grower in another state with an industrial hemp pilot program, provided the hemp was accompanied by documentation demonstrating that it tested at or below 0.3 percent THC. This traceability requirement was central to maintaining the integrity of the pilot program and ensuring that only lawfully grown hemp entered Wisconsin's processing chain.

3. Program Metrics

Between 2018 and 2021, before the program was discontinued, DATCP received a total of 6,251 applications: 4,124 grower applications and 2,127 processor applications. These figures reflect significant industry interest in Wisconsin's hemp market during the pilot period and underscore the economic stakes involved in the program's subsequent discontinuation. *(Note: Final data on the total number of licenses actually issued during the program period should be incorporated here from DATCP's published data.)*





A license was a one-time license for the duration of the research program, and an annual registration was issued for one year at a time. A license holder was required to have a license and a current annual registration to grow or process in a given year. A grower with a current annual registration could process the hemp that they grew without an additional processor license and registration.

Images from: https://datcp.wi.gov/Pages/Programs_Services/HempData.aspx

4. Attorney General Guidance

During the pilot program period, the Wisconsin Attorney General advised that CBD produced from industrial hemp grown through a state pilot program was lawful and should not be

prosecuted, and that retailers could sell such products. This guidance provided a degree of legal comfort to hemp businesses operating in Wisconsin during the pilot program years and helped to establish a functioning commercial market in the state.

5. Discontinuation and Transition to Federal Oversight

Effective January 1, 2022, the DATCP hemp program was discontinued. Beginning on that date, Wisconsin hemp growers became licensed by the U.S. Department of Agriculture (USDA), and all hemp growers were transitioned to regulation under the federal government's hemp program administered by the USDA.

This transition had significant practical implications. The federal USDA program operates under different rules than Wisconsin's pilot program, and the shift in regulatory authority meant that hemp businesses in Wisconsin had to become familiar with — and compliant with — federal program requirements. For many smaller growers and processors who had operated comfortably under the familiar structure of the state pilot program, this represented a meaningful compliance burden.

B. Wisconsin's Adoption of the Federal Definition of Hemp

Wisconsin has adopted a definition of industrial hemp that mirrors the federal definition. Specifically, Wisconsin Statute § 94.55 defines "Industrial hemp" as the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis, or the maximum concentration allowed under federal law up to 1 percent, whichever is greater.

This definition is substantively the same as the federal definition established by the 2018 Farm Bill. The alignment between the Wisconsin and federal definitions was deliberate and reflected a policy choice to maintain regulatory consistency and to ensure that lawfully grown federal hemp would be treated as lawfully grown hemp under Wisconsin law as well.

However, this alignment creates its own complications as the federal definition evolves — a challenge that is squarely presented by the current federal legislative debate. If Congress enacts a revised definition of hemp that incorporates a total THC framework or otherwise narrows the definition, Wisconsin's cross-reference to federal law will need careful attention. The Wisconsin statute's language — "or the maximum concentration allowed under federal law up to 1 percent, whichever is greater" — introduces additional complexity, as it creates a potential divergence between Wisconsin law and any revised federal standard if the federal standard is more restrictive than the state's baseline.

C. The Impact of Maintaining the Status Quo in Wisconsin

The most pressing legal issue for hemp practitioners in Wisconsin today is the risk created by the mismatch between Wisconsin's current statutory framework and the evolving — and potentially more restrictive — federal definition of hemp.

1. The Federal Definitional Change Does Not Directly Affect State Law

If the federal definition of "hemp" is changed through new federal legislation, that change does not directly affect the legality of hemp under Wisconsin state law. Because Wisconsin's hemp statute is independently enacted, a modification to the federal Farm Bill definition does not

automatically amend Wisconsin Statute § 94.55. A product that meets Wisconsin's statutory definition of industrial hemp remains lawful under Wisconsin law regardless of whether federal law has been changed to narrow or otherwise alter the definition.

This might initially seem reassuring to Wisconsin hemp businesses. However, the insulation of Wisconsin law from direct federal amendment is not the end of the analysis.

2. The Risk of Federal/State Divergence

The practical danger is this: a product may be lawful as hemp or a hemp-derived product under Wisconsin state law, but may not meet the revised federal definition and therefore may be unlawful under the federal Controlled Substances Act. Because of federalism — the principle that federal law is supreme over state law in areas of federal jurisdiction — federal law enforcement authorities can prosecute violations of the CSA regardless of whether the conduct at issue is lawful under state law. A Wisconsin hemp business cannot use Wisconsin law as a defense to a federal prosecution.

This is not merely a theoretical risk. The federal CSA authorizes prosecution of individuals and entities involved in the manufacture, distribution, and possession with intent to distribute controlled substances. If hemp-derived THC products that were previously lawful under both state and federal definitions become unlawful under a revised federal framework, businesses that continue to sell those products in reliance on Wisconsin's unchanged statute will be exposed to federal enforcement risk.

3. The Contrast with Recreational Cannabis States

This situation has a structural parallel to the situation in states that have legalized recreational cannabis. In those states, recreational cannabis is lawful under state law but remains a Schedule I controlled substance under the federal CSA and is therefore unlawful under federal law.

However, there is a critical distinction: those states have robust state regulatory regimes governing the cannabis industry, and historically, federal law enforcement has not made prosecution of state-licensed cannabis businesses a priority. In some instances, federal enforcement has been expressly discouraged — as illustrated by the Cole Memorandum, which during the Obama administration directed federal prosecutors to deprioritize prosecution of state-licensed cannabis activities. We do not have that parallel context in Wisconsin with respect to hemp-derived THC products.

In other words, recreational cannabis states have managed the federal/state tension in part through the development of sophisticated regulatory frameworks that have earned a degree of federal prosecutorial forbearance. Wisconsin, by contrast, has not established a comparable regulatory regime for hemp-derived THC products. Without such a framework, there is little basis to expect similar prosecutorial restraint if federal definitions change and Wisconsin's market is no longer aligned with federal law.

The implication for Wisconsin hemp businesses and their counsel is clear: the absence of robust state regulation does not provide legal protection. It may, in fact, increase risk by leaving Wisconsin's market in a legal gray zone without the regulatory structure that has, in other contexts, served as a basis for a measured federal response.

D. Proposals to Regulate Hemp Beverages Under State Law

1. Assembly Bill 606 / Senate Bill 681 (Hemp Beverages Under Alcohol Beverage Control Authority)

One recent proposal introduced in the Wisconsin State Assembly (Assembly Bill 606) and corresponding Senate Bill 681 on October 29, 2025 (failed to pass as of 3/23/26) contemplated regulating hemp-derived THC beverages under the state's alcohol beverage control authority. This approach would subject hemp THC beverages — a rapidly growing product category — to a regulatory framework that is already well established and enforced in Wisconsin, rather than leaving them in a regulatory void or attempting to create an entirely new regulatory apparatus from scratch.

The alcohol beverage control model has several attributes that make it potentially attractive as a framework for hemp THC beverages. The Wisconsin Department of Revenue's Division of Alcohol Beverages maintains a licensing infrastructure, an inspection and enforcement workforce, and a set of retail sale standards (including age verification requirements and restrictions on sales hours and locations) that could be adapted to hemp beverages with relatively limited statutory modification. Retailers who already hold beer and wine licenses would be familiar with the compliance expectations.

From a legal standpoint, this proposal raises a number of issues that practitioners should anticipate. The threshold question is whether the legislature will authorize DATCP, the Department of Revenue, or some other agency to assert regulatory jurisdiction over hemp beverages, and on what statutory basis. There are also questions about whether subjecting hemp beverages to alcohol beverage control authority would create complications for businesses that also handle traditional alcoholic beverages — for example, whether hemp THC beverage distribution must flow through the three-tier system applicable to alcohol, and what the implications of that would be for pricing, distribution, and licensing structures.

Additionally, any proposal to regulate hemp beverages under alcohol beverage control authority will need to grapple with the interaction between Wisconsin's beverage regulation and federal hemp law. If federal law changes the definition of hemp in ways that affect the products covered by the state framework, the state's regulatory regime will need to be flexible enough to adapt. Building that flexibility into the legislative framework from the outset is a counseling priority for practitioners involved in drafting or commenting on proposed legislation.

2. Assembly Bill 747 / Senate Bill 682

Assembly Bill 747 and companion Senate Bill 682 took a different approach, creating specific requirements and restrictions for hemp-derived products and modifying the definition of hemp, but without creating a licensing or distribution framework. The key provisions of that bill included the following:

Revised Definition of Hemp. The bill proposed to define "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-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater, as tested using post-decarboxylation high performance liquid chromatography, gas chromatography-mass spectrometry, or other similarly reliable methods. The definition would have included hemp-derived cannabinoid products but excluded any prescription drug product approved by the U.S. Food and Drug Administration.

Age Restriction. The bill would have prohibited the sale or provision of hemp-derived products to persons under 21 and prohibited purchase or possession by persons under 21, with an ID/appearance-based affirmative defense available to sellers.

Testing and Certificate of Analysis. The bill would have required batch testing by an independent, accredited laboratory covering potency/label accuracy, contaminants, and the delta-9 THC hemp threshold, with a Certificate of Analysis required to accompany the product (with a QR code permissible in lieu of a paper copy).

Packaging and Labeling. The bill would have required specified label information and warnings, child-resistant packaging, a prohibition on child-appealing features, and tamper-evident packaging.

Beverage-Only Potency Cap. Beverages would have been capped at 10 mg THC per serving, with non-resealable containers limited to no more than two servings. Notably, no potency limits would have applied to edibles or inhalable products.

No Licensing or Distribution Framework. The bill notably did not create a three-tier distribution system, a product registry, or manufacturer or distributor licensing requirements.

None of these proposals passed.

Conclusion

The legal framework governing hemp-derived THC products is in a period of profound flux at both the federal and state levels. At the federal level, Congress is actively considering legislation — including HR 5371 and the Wyden Bill — that would close the hemp loophole by imposing per-serving THC caps and adopting a total THC definitional framework, while the Executive Branch has issued a directive to develop a comprehensive regulatory framework with input from multiple federal agencies. At the state level, Minnesota has demonstrated that a robust licensing, labeling, serving size, and age restriction framework is achievable and can meaningfully reduce consumer protection risks associated with hemp-derived THC products.

For Wisconsin, the path forward requires legislative engagement. The current situation — in which Wisconsin's hemp definition mirrors federal law, but federal law may be changing in ways that create enforcement risk without corresponding state regulatory protections — is unsustainable. The proposals to regulate hemp-derived THC products under existing regulatory authorities, including the alcohol beverage control framework for hemp beverages, offer practical pathways that deserve serious consideration.

Practitioners advising hemp industry clients in Wisconsin should be counseling their clients to: monitor federal legislative developments closely; conduct proactive compliance assessments against the emerging federal frameworks; begin planning for product reformulation if current products would not comply with a total THC cap or a per-serving THC limit; engage with state legislative and regulatory processes to advocate for a coherent Wisconsin regulatory framework; and carefully evaluate the federal enforcement risk created by any divergence between Wisconsin law and a revised federal hemp definition.

The hemp-derived THC market is one of the most rapidly evolving areas of regulatory law in practice today, and the legal risks facing businesses in this space — and counsel who advise them — will only increase as federal and state frameworks continue to develop.

These materials were prepared for continuing legal education purposes and are intended to provide a general overview of the legal landscape as of the date of this seminar. They do not constitute legal advice. Attorneys should conduct independent research and analysis appropriate to the specific facts and circumstances of any matter on which they are advising clients.