

Anne W. Grande Law Library CLE Series

October 21, 2022

HEMP-INFUSED FOOD & BEVERAGE IN MINNESOTA: HISTORY, STATUS, AND WISH LIST FOR 2023



S BURNS LEGAL
P L L C



CANNABIS DEFINED

Cannabis is defined as “the plant *Cannabis sativa L.*”

DIFFERENCE BETWEEN MARIJUANA AND HEMP (AND ITS DERIVATIVES)



The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 a/k/a the Controlled Substances Act (CSA)

- Became effective on May 1, 1971
- Defines Schedule I substances: high abuse potential with no accepted medical use; medications within this schedule may not be prescribed, dispensed, or administered
- Heroin, marijuana, ecstasy, gamma hydroxybutyric acid (GHB)

Agricultural Act of 2014 a/k/a The Farm Bill

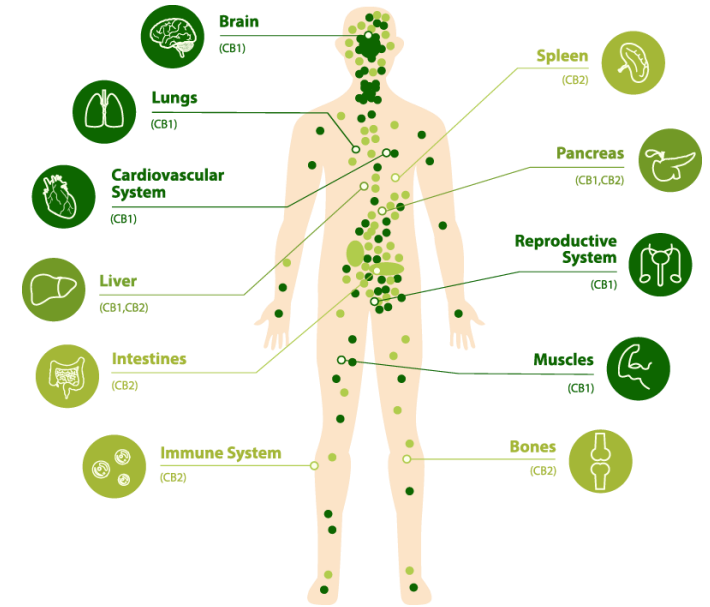
The [Agricultural Act of 2014 a/k/a “The Farm Bill”](#) defined industrial hemp as:

“the plant *Cannabis sativa L.* or any part of such plant, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

Agricultural Act of 2018 a/k/a The Farm Bill

Four years later, hemp was removed from the definition of marijuana in the Controlled Substances Act (CSA) and the definition was amended to include ...” including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers ...” via the [2018 Farm Bill](#).

Cannabis As Medicine



Note: The 2018 Farm Bill also:

- provided parameters for seeking approval of a regulatory plan by State and Tribal governments, and
- explicitly preserved the FDA’s authority over hemp products, including over food, dietary supplements, human and veterinary drugs, and cosmetics

HEMP vs. MARIJUANA

Cannabis is defined as “the plant *Cannabis sativa L.*”

Hemp: or any part of such plant, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Cannabis: anything other than the plant with more than .3% D9 THC

DELTA-8 AND OTHER CANNABINOIDS

There are ~150 cannabinoids, including CBD, CBG, CBN, D8, D9, D10 ...

Delta 8 has received the most media attention.

DELTA-8 IS LEGAL ON THE FEDERAL LEVEL

*AK FUTURES LLC
V. BOYD STREET
DISTRO, LLC, 9TH
CIR. CT. APP, MAY
19, 2022*

- The plain and unambiguous text of the 2018 Farm Bill compels the conclusion that the delta-8 THC products of AK Futures were lawful.
- The relevant portion of the Farm Bill removes "hemp" from the definition of marijuana in the Controlled Substances Act, and
- The delta-8 THC in question fit comfortably within the statutory definition of "hemp"—i.e., it was a **derivative, extract, or cannabinoid originating from the cannabis plant that contained "not more than 0.3 percent" delta-9 THC.**
- Because the Farm Bill's definition of hemp is not ambiguous, the panel did not consider the Drug Enforcement Agency's interpretation, and even if it did, the agency's view of the Farm Bill's plain text aligned with the Court's own.

See commentary: Susan Burns: [DELTA 8 IS FEDERALLY LEGAL: BANNING AT THE STATE LEVEL TEES UP A GAME OF WHAC-A-MOLE](#), Cannabis Law Journal, September 2022

MINNESTOA DEFINITION

Section 18K.02, Subd 3, Section 152.22 Subd 5a

- Definition of Marijuana excludes hemp
- Industrial Hemp:
 - the plant *Cannabis sativa L.* and any part of the plant, whether growing or not, including the plant's seeds, and all of the plant's 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.

MINNESOTA AUTHORIZATION

Section 18K.02, Subd 3

In 2018, Minnesota adopted the Minnesota Industrial Hemp Development Act.

It expressly authorized the cultivation, processing, possession and sale of hemp and hemp-derived products.

Loveless

State v. Loveless, 425 N.W.2d 602, MN Ct App, September 13, 2021

- Criminal possession case – flower and vapes
- Prosecutors need not determine the quantity of THC present in a liquid to secure a criminal drug conviction.
- They merely needed to prove that THC was present.
- ❖ --> selective cease & desists from MDA and law enforcement

Minnesota Board of Pharmacy

December 2021 report concluded:

“the sale of products containing cannabinoids or tetrahydrocannabinols” remains illegal in Minnesota.

That meant that a substance containing ANY cannabinoids was not allowed for sale in Minnesota.

+ D8 illegal [based on?]



2022 TO PRESENT

Minnesota Statute 151.72

Governs the sale of hemp-derived
cannabinoids

- Authorized use in edibles and beverages
- Products not a food or drug
- No prohibition from making or selling the products
- Compliance: MN Board of Pharmacy



DOSAGE, TESTING, PACKAGING & LABELING REQUIREMENTS

Edible Cannabinoid Products

(including NA beverages)

Dosage limits

Label Requirements

Not attractive to children | 21+ YOA to purchase

Final Product Testing



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