

Focus on New Laws: Some Edible Cannabinoids Now Legal

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Cities may want to consider regulating sellers of certain edibles and beverages infused with the cannabis ingredient THC.

It is now legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. Cities may want to update regulations and employee policies as a result of this new law.

The new law was passed by the Legislature as part of [Chapter 98](#). Article 13 makes several changes to [Minnesota Statutes, section 151.72](#) regarding the sale of certain cannabinoid (CBD) products. The changes took effect on July 1.

This new law was a surprise to many stakeholder groups and even to legislators, as many were not aware of the full extent of the language's authorizations. Many lawmakers were hoping to pass a provision to reign in the selling of delta-8, a substance manufactured from hemp-derived cannabidiol that has similar intoxicating effects as the more commonly known cannabinoid delta-9.

Instead, the language authorized certain amounts of both delta-8 and delta-9 in edible CBD products. This legislation was passed in the last days of session without broad discussion, with the provision added into the health and human services policy omnibus bill. It has been a source of frustration for both stakeholders and legislators, as the full impacts of the legislation are realized.

The League is continuing to work with the involved stakeholders to better understand the new law and provide guidance to cities on potential paths forward.

New definitions added

The new law creates several new definitions, including the following:

- Defining “certified hemp” to mean hemp plants that have been tested and found to meet the requirements of Minnesota Statutes, [chapter 18K](#).
- Defining “edible cannabinoid product” to mean any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients, and is not a drug.
- Defining “nonintoxicating cannabinoid” to mean substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.

Cannabinoids extracted from hemp

The new law amends the scope of sale of any product that contains cannabinoids extracted from hemp and that is an edible cannabinoid product or is intended for human or animal consumption.

Previous law authorized a product containing nonintoxicating cannabinoids to be sold, but the authority to sell edible CBD products was unclear. The new law expands the authority to include nonintoxicating cannabinoids, including edible cannabinoid products, provided they do not contain more than 0.3% of any THC. An edible cannabinoid product also cannot exceed more than five milligrams of any THC in a single serving, or more than a total of 50 milligrams of any THC per package.

Requirements for edible cannabinoid products

Along with testing and labeling requirements, an edible CBD must meet several requirements, including that it:

- Not bear the likeness or contain cartoon-like characteristics.
- Not be modeled after a brand of products primarily consumed or marketed to children.
- Not be made by applying an extracted or concentrated hemp-derived cannabinoid to a commercially available candy or snack food item.
- May not contain an ingredient, other than a hemp-derived cannabinoid, that is not approved by the federal Food and Drug Administration.
- May not be packaged in a way that resembles any commercially available food product.
- Must not be packaged in a container that could reasonably mislead any person to believe that it contains anything other than an edible cannabinoid product.

An edible CBD product must be prepackaged in a container with certain requirements, including being child-resistant and tamper-evident. Any CBD product intended for more than a single use or containing multiple servings must have indicators or separate wrapping for the individual serving sizes.

The new law prohibits the sale of any product containing any CBD or THC extracted or otherwise derived from hemp to be sold to any individual under the age of 21.

Regulation of edible cannabinoids

Regulation of the edible CBD products falls under the state Board of Pharmacy. The board has the authority to issue cease-and-desist orders under Minnesota Statutes, section 151.06; to embargo adulterated and misbranded drugs under Minnesota Statutes, section 151.38; and to seek injunctive relief under Minnesota Statutes, section 214.11.

Guidance from the Board of Pharmacy indicates that retailers selling products that contain cannabinoid to individuals under the age of 21 should be reported to local law enforcement agencies.

Local regulation of edible cannabinoids

The new law does not specifically prohibit cities from regulating the sale of cannabinoid products locally. Cities will need to work with their attorneys to determine what, if any, local

regulation would be right for their communities. Local regulations will most likely be through a city's zoning or licensing authority.

Employment impacts of edible cannabinoids

It is important to consider both federal and state laws with respect to employee CBD use and related impacts to the workplace.

Cities often have positions requiring an employee to hold a commercial driver's license (CDL). These positions are regulated by federal law and those regulations are supervised by the Federal Department of Transportation (DOT).

Federal law preempts state law related to CBD use. In fact, in a [December 2012 notice](#), the DOT states it does not authorize the use of Schedule I drugs, including marijuana, for any reason. As a result, cities should continue to follow their current drug testing procedures related to CDL holders and to enforce prohibitions against any use of cannabis for CDL holders, regardless of state law protections.

Additionally, public safety employees who carry a firearm cannot lawfully use cannabis under federal law. Federal law prohibits cities from providing firearms or ammunition to an employee it knows or has reason to know is using cannabis.

For non-sworn police officer positions and non-CDL drivers, the new law provides no allowance for an employee to use, possess, or be impaired by cannabis while on duty. Dealing with impaired behavior on the job site can be challenging, so League staff will continue to research this new law and next steps for this groups of workers.

Law enforcement impacts of edible cannabinoids

The new law and recent rulings by the Board of Pharmacy have changed Minnesota's controlled substances schedules related to certain types of THC products. The League is working with the Minnesota Chiefs of Police Association to explore the public safety implications of the new law.

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