

The crackdown deepens: the next phase in the federal and state battle over intoxicating hemp products

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In our July article, we chronicled the accelerating federal and state pushback against intoxicating hemp-derived cannabinoids like delta-8 THC and delta-10 THC, compounds that flourished in what many perceived to be a legal gray zone opened by the 2018 Farm Bill. Four months later, the crackdown has intensified.

Recent court rulings, gubernatorial actions, and coordinated state advocacy continue to erode the legal foundations of the intoxicating hemp industry, further signaling that the Farm Bill's so-called intoxicating hemp "loophole" could soon be not just narrowed, but effectively closed.

A multistate coalition demands federal action

Last month, attorneys general from 39 states and U.S. territories sent a formal letter (<https://bit.ly/47CLN3P>) to congressional leaders urging them to close the perceived "loophole" created by the 2018 Farm Bill, which federally legalized hemp and hemp-derived products with a delta-9 THC concentration of no more than .3% by dry weight — delta-9 is the primary psychoactive compound in cannabis.

The bipartisan coalition implored lawmakers to clarify the federal definition of hemp during the 2026 appropriations process or through the reauthorization of the Farm Bill to leave no doubt that intoxicating hemp-derived THC products, "of any kind and no matter how it is derived," are illegal.

The letter argues that the original intent of the 2018 Farm Bill has been distorted by "bad actors" exploiting the bill's silence on hemp-derived THC products other than delta-9 to claim that the Farm Bill created a legal market for various synthetic cannabinoids regardless of the chemicals' potency and psychoactive effects.

The AGs warned that companies are using sophisticated conversion processes to create synthetic intoxicants that "can intoxicate a person as severely as the most potent strains of cannabis sold on the illicit market," often in products packaged to appeal to children.

While many signatories represent states that already restrict or ban intoxicating hemp products, the letter underscores the growing consensus that state-by-state enforcement is insufficient. As the coalition wrote, the "patchwork of bans and regulations that differ from State to State ... will not stop the flood of mail-order THC products from streaming through interstate commerce."

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This coordinated state pressure adds significant momentum to ongoing congressional efforts to revise the definition of federally legal hemp in the next Farm Bill or the 2026 appropriations package.

Courts uphold state crackdowns

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For example, in September, a Maryland appeals court dealt a blow to a coalition of hemp businesses when it ruled that "hemp-derived psychoactive products ... are now and have always been illegal in Maryland." See *Governor Wes Moore, et al. v. Maryland Hemp Coalition, Inc., et al.*, No. 1590 (Md. App. Ct. Sept. 9, 2025). The ruling overturned a lower-court

injunction that had temporarily protected hemp businesses challenging licensing requirements established by Maryland's Cannabis Reform Act.

The three-judge panel rejected arguments by the Maryland Hemp Coalition that the 2018 Farm Bill legalized delta-8 and delta-10 products, finding that neither federal nor state law ever created a "common right" to sell intoxicating hemp derivatives. The court emphasized that the mere laxity of prior enforcement in the state did not establish legality.

Taken together, these recent decisions suggest a growing judicial consensus that the 2018 Farm Bill does not preempt state authority to prohibit or regulate intoxicating hemp products, and lax enforcement in prior years provides no legal shield for continued sales.

Just weeks later, the 10th U.S. Circuit Court of Appeals upheld Wyoming's law regulating hemp-derived intoxicants, marking the most significant federal appellate decision to date on the issue. See *Green Room et al. v. Wyoming et al.*, Nos. 24-8053 & 24-8054 (10th Cir. Oct. 27, 2025).

The *Green Room* plaintiffs, hemp processors and distributors, argued (among other things) that the law violated the Dormant Commerce Clause, was unconstitutionally vague, and was preempted by the 2018 Farm Bill. The appellate panel rejected each claim.

Writing for the court, Judge Harris L. Hartz concluded: "[N]o language in the [Farm Bill] speaks in terms of individual rights," foreclosing any private right of action under federal law. The panel further held that Wyoming's restriction on the transportation of noncompliant hemp products did not unduly burden interstate commerce, and that the law's prohibition on "psychoactive" compounds was sufficiently clear to withstand the plaintiffs' vagueness challenge.

The court also rejected the plaintiffs' argument that the law was an unconstitutional regulatory taking of their property without just compensation, analogizing the regulation of hemp to historical alcohol controls.

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Texas chooses regulation over prohibition

In our July article, we addressed the expanding patchwork of state efforts to regulate or prohibit the proliferation of intoxicating hemp-derived products, including a bill passed by the Texas Legislature back in May that would have banned all consumable hemp products containing any intoxicating cannabinoid. Governor Greg Abbott ultimately vetoed the bill, citing concerns over enforcement complexity and calling for a more moderate regulatory approach.

Despite Governor Abbott's call for a special legislative session to develop a regulatory model, state lawmakers failed to pass any legislation concerning consumable hemp products. Citing the Legislature's inaction, on Sept. 10, Governor Abbott issued an executive order (<https://bit.ly/49Dbcgk>) directing state agencies to restrict the sale of hemp-derived psychoactive products to individuals under 21.

The Governor's directive frames youth access to intoxicating hemp products as a public-health concern, requiring the state to adopt robust testing, labeling, and age-verification standards without banning adult sales.

The approach drew praise from the U.S. Hemp Roundtable (<https://bit.ly/3JL5Trt>), which described it in a statement on its website as a potential model for federal and state regulation. Still, critics have dismissed the move as an empty gesture.

Looking ahead

For now, the industry faces considerable uncertainty in the wake of a rapidly tightening regulatory environment and evolving legal landscape. The decisive factor will be Congress' treatment of intoxicating hemp-derived cannabinoids in the upcoming 2026 appropriations and Farm Bill cycles.

If lawmakers heed the AGs' call to outlaw all intoxicating hemp compounds, no matter how they are derived, the current market could disappear overnight. If they instead follow Texas' example, a federally regulated adult-use hemp framework may emerge, though one likely to mirror the compliance and regulatory burdens of state-legal cannabis regimes. Either outcome will end the period of legal ambiguity that has defined the intoxicating hemp market since 2018.

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