

# Hemp-Derived Products What's up with them?

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Massachusetts Association of Health Boards

MHOA Conference

October 2022

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Assisting Massachusetts Boards of Health through  
training, technical assistance and legal education



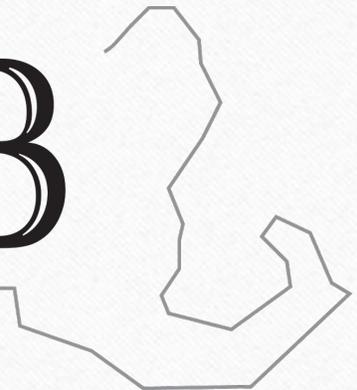
# Disclaimer

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- This information is provided for legal educational purposes only. It is not intended to constitute legal advice. Please consult your municipal attorney for legal advice relative to legal questions regarding cannabis and hemp.

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# In the olden days of weed and hemp

- **“Old Fashioned” Hemp plants**
  - Grown for fiber and seed oil.
  - Industrial hemp – sourced from a low-resin agricultural crop.
- **“Old Fashioned” Drug plants**
  - Include euphoric THC-rich plants and non-euphoric CBD-rich plants.
  - High-resin horticultural crop, hand-harvested, dried, trimmed and cured.
- **Fewer and fewer differences between the two.**
  - Really depends on amount of THC.





# Can You Get “High” Off Hemp?

*“Your lungs will fail before your brain attains any high from smoking industrial hemp”*

## Hemp vs Marijuana

*The Difference Between Hemp and Marijuana*

Type	Is it Cannabis?	Chemical Makeup	Psychoactive?	Cultivation	Applications
<b>Hemp</b>	Yes	Low THC (< 0.3%)	No	Requires minimal care. Adaptable to grow in most climates.	Automobiles, body care, clothing, construction, food, plastic, etc.
<b>Marijuana</b>	Yes	High THC (5%-35%)	Yes	Grown in carefully controlled atmosphere	Medical and recreational use

# 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.





# Hemp-Derived Cannabis Products



## MA bans the sale of all flavored tobacco products

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- 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!

-	1	+
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ADD TO CART

SECURE CHECKOUT POWERED BY: Bolt

Categories: Delta 8 Gummies, Delta-8 Products, Edibles

Brand: Nerdy Bears

# What is Delta-8, etc.?

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- One of the more than 100 cannabinoids produced in the Cannabis plant.
- An “isomer” of Delta 8.
  - Same atoms but arranged differently.
  - Found naturally, but in miniscule amounts.
  - No Delta-8 products is naturally extracted.
    - Synthetically produced in labs.
- Available in candy, cookies, gummies, **vapes**, dabs, shatter, distillate, tinctures, infused beverages, etc.



## • PUBLIC HEALTH CONCERNS

### Public Health Concerns

- Health effects have not been researched extensively.
- Psychoactive and impairing.
- Some Delta-9 THC regulated products also contain Delta-8 THC without accurate labelling.
- Not regulated.
- Frequently mislabeled.
- Confused with hemp or CBD products that are not intoxicating
- Increased reports of severe adverse effects.
- Widely available to youth in stores and online.

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**Public Health**  
Prevent. Promote. Protect.

# US Court of Appeals for the Ninth Circuit Decision May 2022

- AK Futures LLC, v. Boyd Street Distro, LLC
- Trademark infringement case
  - Cake-branded Delta-8 THC products.
- Question before the Court:  
**Does federal law prohibit the sale of Delta-8 products.**



# Yes, it's legal argument.

- The Farm Act used the **concentration of Delta-9** to distinguish between hemp and cannabis.
- The Act defines hemp as a product including **any part** of the Cannabis sativa L. plant, including **all** derivatives, extracts, cannabinoids.
  - As long as the Delta-9 THC concentration is no more than 0.3 percent on a dry weight basis.
- Plaintiff describes the product as “a hemp-derived product with less than 0.3% of the psychoactive delta-9 THC compound.”
- Plain meaning of the Act. **If it has less than 0.3 % of Delta-9, it's hemp-derived and legal.**

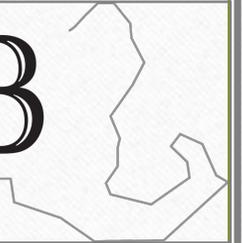


# No, it's not legal argument.

- The Drug Enforcement Agency (DEA) Delta-8 remains a schedule I substance because of its method of manufacture.
  - “All synthetically derived [THC] remain schedule I controlled substances.” 85 Fed. Reg. at 51,641.
  - Delta-8 products need to be extracted from the cannabis plant and refined through a manufacturing process.
    - It's synthetically derived because it's concentrated and flavored.
- Congressional intent of the Farm Act was to legalize only industrial hemp and not potentially psychoactive substances like Delta-8.

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# MA Department of Agricultural Resources

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- **Hemp Program FAQs**
- **“Is it legal to manufacture delta-8 THC from hemp?”**
- *“Because delta-8 is not naturally occurring in hemp (except for possible trace amounts), to produce delta-8 THC in commercial quantities it must be derived from hemp synthetically. While the Farm Bill did remove hemp from the Controlled Substances Act, it did not impact the control status of synthetically derived cannabinoids, thus delta-8 THC remains a controlled substance, regardless of the source. As a result, we do not allow hemp-derived delta-8 THC products to be processed or sold in Massachusetts.”*



## Court's Ruling

### *AK FUTURES, LLC V. BOYD STREET DISTRO, LLC, 35 F. 4<sup>th</sup> 682 (2022)*

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- “. . . [C]ourts will allow neither ambiguous legislative history, nor speculation about congressional intent to ‘muddy’ clear statutory language.”
- **“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.”**

# Possible local strategies for hemp-derived products

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- No federal or state regulation.
- Age-restrict products.
- Require sales permit.
- Require products come from an approved source licensed either by MDAR or equivalent.
- Require products be tested by approved independent laboratory.
- Exempt FDA approved medications (Epidiolex).
- Ban self-service displays.
- Ban vending machines.
- **RESOURCES?**





# Contact information



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