Kentucky Bills Would Tax and Strictly Regulate Hemp-Infused THC Beverages Like Alcohol

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In the years since the 2018 Farm Bill became federal law, a burgeoning industry of hemp-infused THC beverages has proliferated throughout the country, including in Kentucky. The 2018 Farm Bill legalized the domestic production of hemp and protected hemp and hemp products in interstate commerce. Likewise, Kentucky law has—for years—broadly allowed retail sales of hemp products, including food and beverages with hemp-derived THC.

Some states, however, perceive the 2018 Farm Bill to have created a legal loophole that allows hemp products with intoxicating amounts of THC to be sold, despite the 2018 Farm Bill's restriction that hemp may not contain more than 0.3% delta-9 THC on a dry weight basis. To close the loophole, states have enacted laws or implemented regulations banning certain hemp products with intoxicating amounts of THC or restricting such products to adult-use channels like licensed alcohol stores or cannabis dispensaries.

Kentucky appeared poised to do the same when state Senator Julie Raque Adams introduced Senate Bill (SB) 202, which would have placed a one-year moratorium on the sale of hemp-infused THC beverages while the state developed a regulatory regime. Hemp beverage manufacturers and other hemp industry stakeholders loudly and quickly voiced opposition, arguing for narrower means than banning all sales. The next day, Senator Adams filed a floor amendment that removed the moratorium and instead imposed the three-tiered regulatory system that exists for alcohol.

The three-tiered regulatory system that will apply if the bill becomes law has robust requirements, including licensing, shipping, and signature-on-delivery requirements. Additionally, hemp beverages will be limited to five milligrams of intoxicating cannabinoids per serving and may only be sold or consumed by persons 21 years of age or older. Beverages that exceed the cannabinoid limit could be legally sold until May 1, 2025.

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The Senate approved the floor amendment. The House passed a committee substitute retaining the Senate floor amendment's provisions but that extends the sell-through provision until June 1, 2025, and makes the five-milligram per serving limit applicable per every 12-ounce serving. The House committee substitute allows hemp beverages to be sold at fairs, festivals, and similar events. The Senate concurred with the House's version, and Governor Beshear received the bill to sign into law or veto.

Although SB 202 eschews a ban against hemp-infused THC beverages, it creates strict regulations that differ significantly from the current regulatory regime for hemp beverages, while also directing state agencies to develop further regulations. Ongoing compliance by manufacturers, distributors, and retailers will be critical.

In addition to SB 202, the House and Senate passed House Bill (HB) 775, which sets tax rates for hemp-infused THC beverages. The taxes must be paid and reported by both manufacturers and distributors. Among other provisions, the bill requires manufacturers to obtain a food manufacturer permit from the Department for Public Health and to register with the Department of Revenue, and requires sellers to obtain a retail package, distributor, or direct shipper license. HB 775 is headed to Governor Beshear's desk.

As a nationally preeminent and leading firm for hemp legal and regulatory services, Frost Brown Todd is well positioned to assist hemp manufacturers, distributors, and retailers in navigating applicable federal and state laws. For more information about SB 202 or HB 775, or their implications for hemp beverages sold in Kentucky, please contact the author or any other attorney with Frost Brown Todd's Consumable Goods Team.

You can also visit our Hemp Legally Speaking Blog for more insight into the legal and operational issues unique to the industrial hemp, CBD, and hemp-derived THC marketplaces.

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