



**SOUTH**

THE COUNCIL OF STATE GOVERNMENTS SOUTHERN OFFICE

# **Hemp Beverages: High Risk or High Reward?**

## **An Overview of Southern States' Policies & Approaches**

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## Hemp 101

- Hemp and marijuana come from the same plant, *Cannabis sativa*, but have different levels of THC
- Hemp has 0.3% or less THC
- Hemp can be used to make things like paper, clothing, and milk

### **HEMP**

LOWER THC

HIGHER CBD

**VS**

### **MARIJUANA**

HIGHER THC

LOWER CBD



## “We Drink Our Intoxicants”

- Hemp beverages are infused with hemp extracts, chemical compounds derived from hemp containing THC
- Usually come in the form of seltzers, sodas, mocktails, coffees, and teas
- **Nonalcoholic**
- Potential substitute beverage as alcohol sales drop





## Big Business in the South

- Hemp beverages are available in 44 states, either through permissive state legislation or by not passing any type of ban (thus following federal law to allow them)
- The South accounts for more than 50% of hemp beverage sales across the country
- Southern states led the country in online searches for hemp THC in 2023





## Federal Actions

- The 2014 Farm Bill allowed for hemp cultivation through state programs without the need for a DEA permit
- The 2018 Farm Bill allowed hemp-derived products to be sold, so long as such products are allowed (more so not outright prohibited) under state law
- The next Farm Bill was set for 2023, but Congress is still working on the bill



## In the Eyes of the FDA

- Hemp beverages containing THC (even  $\leq 0.3\%$ ) fall somewhat under the purview of the FDA, specifically the Federal Food, Drug, and Cosmetic Act (FDCA)
- Under the FDCA, it is prohibited to add any substance to food **that was first approved as a drug**
- Certain THC treatments were FDA-approved before 2018
- Therefore, the FDA sees THC as a drug, not a food additive





## In the Eyes of the FDA

- However, the FDA has yet to enforce this decision on most hemp products, including hemp beverages
- The exception being hemp products making unsubstantiated health-related claims
- The FDA has said that it may create exceptions for hemp
- They have also stressed the importance of state and local governments' efforts to ensure food safety



## Delta-8 ( $\Delta^8$ )

- After 2018, CBD prices began to drop due to overproduction
- Producers began converting CBD to THC, leading to delta-8
- This is a **synthetic** process
- There is little information on such synthetics affect the body
- No federal oversight of this process
- Without specific state regulations, products labeled as delta-8 may have chemicals not found in the cannabis plant

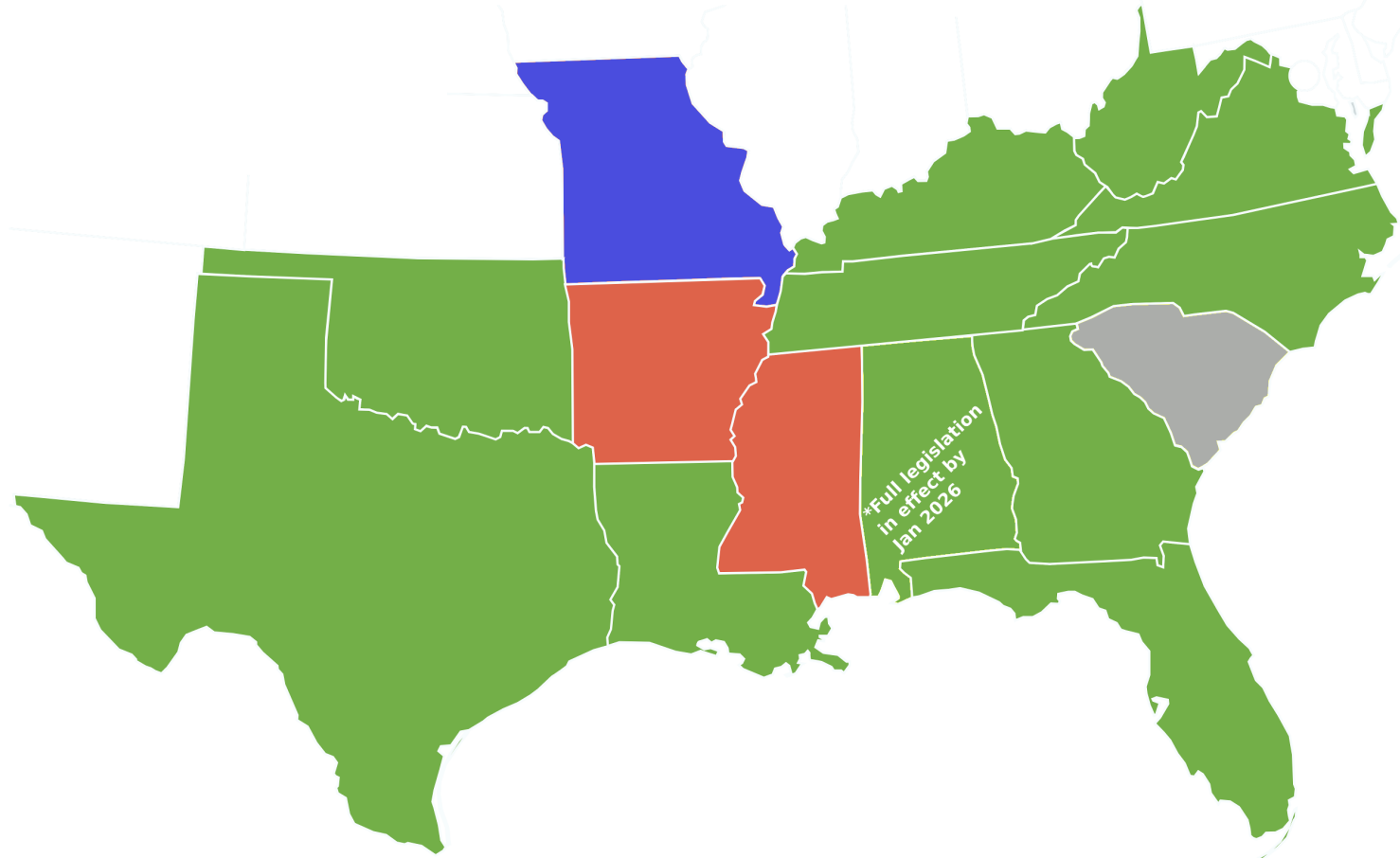




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# Status of Hemp Beverages in Southern States



- Legal and Regulated by the State (with certain provisions like age limits, etc)
- Effectively Legal; NOT Regulated by the State
- Currently Legal, but Awaiting Legal Decision on Ban
- Effectively Banned by State Action



## Mississippi

Mississippi Attorney General Lynn Fitch issued an opinion in September 2024 stating that hemp beverages are **not** legal due to specific state laws regulating intoxicating beverages.

Under Mississippi law, unless such products are specifically legalized, it is unlawful to sell any drug, elixir, or compound that, “when drunk to excess, in the form sold, will produce intoxication.” (MS Code § 97-31-5)

This includes hemp beverages, and therefore, they are not considered legal in the Magnolia State.







## Arkansas

Arkansas passed a law in 2023 that states:

“A hemp-derived product shall not be combined with or contain any of the following: Any liquid, hydrocolloid, animal-based substance, thickener, sweetener, flavoring, synthetic product, propylene glycol, vegetable glycerin, or other non-hemp-derived substance” (AR Code § 20-56-403)



The ban was quickly challenged in federal court (*Bio Gen LLC v. Sarah Huckabee Sanders*). The plaintiffs argued that the U.S. Constitution’s supremacy clause prevented states from passing laws stricter than the 2018 Farm Bill. In September 2023, a district court judge issued a preliminary injunction halting enforcement.

In June 2025, the U.S. 8th Circuit Court of Appeals overturned the injunction, allowing Arkansas to enforce the ban. The ruling cited provisions of the 2018 farm bill that allows states to regulate hemp production in a way that “is more stringent” than federal hemp laws.



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## Missouri

In August 2024, former Missouri Governor Mike Parson issued an executive order banning the sale of food and beverages containing “adulterated” and “unregulated psychoactive cannabis products,” mainly targeting synthetic THC like delta-8 (MO E.O. 24-10).



The Missouri Hemp Trade Association filed a lawsuit (*Missouri Hemp Trade Association v. DHSS*) in state circuit court against the order, arguing that hemp-derived products are regulated and protected under state law and are not adulterated (MO Rev Stat § 196.070).

As a result, the Missouri Department of Health and Senior Services released a letter stating that it would effectively hold off on enforcement. However, a clear ruling in the case has yet to be made.





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## South Carolina



- To date, South Carolina has not enacted any state laws or issued any executive orders related to hemp beverages
- Legislation has been introduced in 2023, 2024, and 2025, but none have passed
- Legality is based on federal law, and there is no clear state oversight



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## South Carolina

“Both federal and state law legalize hemp or hemp products (such as hemp-infused drinks), as long as the hemp or hemp product does not contain a delta-9 THC concentration of more than 0.3% on a dry weight basis. Any drink which meets this requirement is legal...

...The legality of a particular THC-infused drink must be determined individually. In other words, we are unable to give a "blanket" assessment of the legality of a category of THC-infused beverages any more than we could, in a given instance, assess whether marijuana or some other substance is being possessed...

... Thus, lacking [sic] the ability to find facts, the limits of our legal analysis herein are simply to conclude that if a THC-infused beverage meets the delta-9 THC level of 0.3% or less on a dry weight basis, it is legal under federal and state law.”



SC Attorney General

Alan Wilson

September 16, 2024



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A faint, light green map of the Southern United States is visible in the background, showing state boundaries. The map includes Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, and West Virginia.

**What are the regulations in Southern states that have passed laws that allow hemp beverages?**

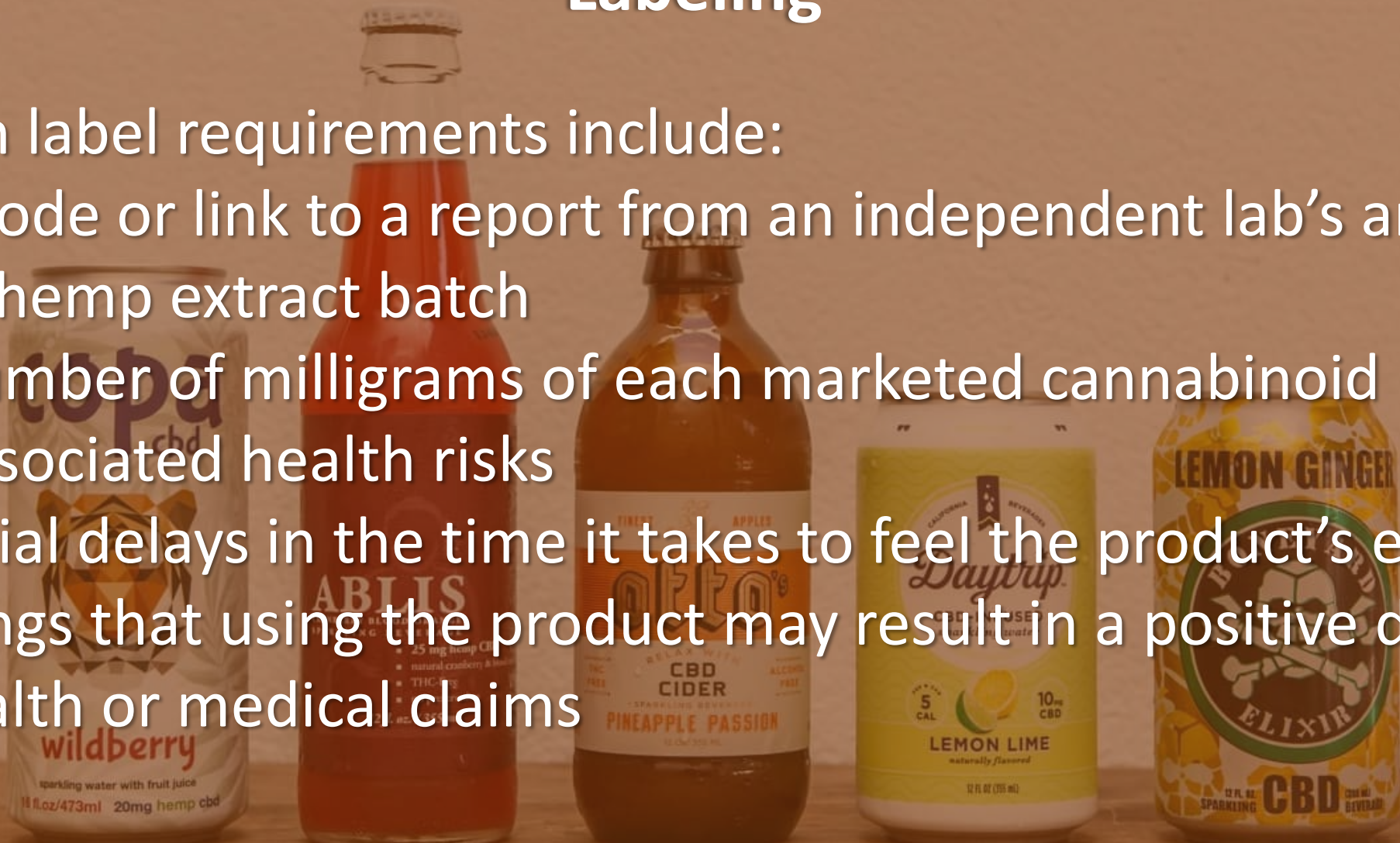




## Labeling

Common label requirements include:

- A QR code or link to a report from an independent lab's analysis of the hemp extract batch
- The number of milligrams of each marketed cannabinoid
- Any associated health risks
- Potential delays in the time it takes to feel the product's effects
- Warnings that using the product may result in a positive drug test
- No health or medical claims







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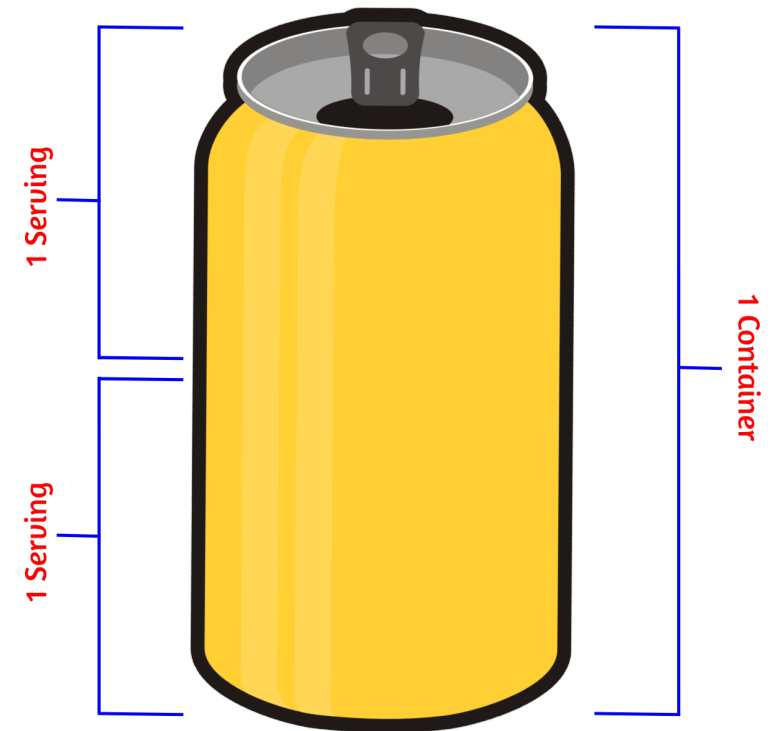
## Think of the Children!

One major staple of label requirements is that the label not be attractive to children in any way or bear a likeness to other widely-distributed food products or brands



## Serving Size & Potency

- Most Southern states currently list a serving as one container, avoiding the issue of multiple servings in one beverage
- Others (Florida and Oklahoma) have no regulations on serving size or container size
- Different states have different definitions of allowable potency in a serving
  - Georgia: 5ml of THC per serving
  - Kentucky: 2.5ml of THC per serving







## Age Restrictions for Purchasing

- Normally 21+
- Some states allow hemp extract to be given to minors in certain circumstances.
  - Missouri allows adults with valid registration cards to give hemp extract to minors in their care if the child is suffering from intractable epilepsy.
- Texas has no age requirement to purchase hemp-derived products





## Age Restrictions in Production

- Several states have put age restrictions on workers in the distribution and supply chain
- Louisiana: A retail worker involved in the sale of hemp beverages must be at least 21 years old
- Kentucky: A person in the supply chain may be 18 years old, so long as they are under the direct supervision of someone who is at least 21 years old





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## Permitting Authority

- States must also determine which agency oversees the permitting and licensing process of hemp product sales.
- Most Southern states have chosen their respective Departments of Agriculture
- Arkansas: The Arkansas Tobacco Control would have be responsible for issuing permits
- Kentucky: The Cabinet for Health and Family Services within the Kentucky Department for Public Health





## Future Considerations

- Viewed as a revenue source or an enforcement target?
- The next Farm Bill
- Ongoing state legislation





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