Insurance Terms Critical as Consumable Hemp Products Enter the Endgame

The hemp beverage industry has been a paradox in 2026, with major event partnerships and retail expansions in a category that may be legislated out of existence by the end of the year.

- This summer saw major music festivals across the Midwest selling THC drinks in bars alongside alcohol, fully integrated into the festival experience. The combination was notable since cannabis consumption areas, long a fixture at festivals in states with regulated cannabis like California, have typically been walled off from alcohol service.
- On the retail front, a big-box store piloted THC beverages in a small number of Minnesota stores before expanding to more than 300 locations across Florida, Texas and Illinois. Major grocery, convenience and liquor chains introduced or expanded THC beverage offerings in states where permitted.

The momentum evidenced by these headlines is in stark contrast to the realities on the ground, where many hemp beverage companies have reportedly begun laying off sales teams and scaling back operations to conserve cash flow in anticipation of new federal restrictions that may eliminate most hemp products available today.

Hemp operators face difficult decisions

Hemp operators are facing many difficult decisions. One payment processor, Square, reportedly notified customers that it would no longer process payments for any hemp products effective October 15, including products containing isolated CBD with zero THC which will remain legal under the new rules.

Distributors and retailers are scaling back orders to avoid overstock of products that will transition to controlled substances while in their possession. And many businesses are putting a hold on their plans to introduce THC beverages into on-premises service or retail sales.

Insurance renewals are also top of mind. As policies renew in the months leading up to a potential ban, short-term extensions may look like an easy, cash-conscious choice, but extending a policy without renegotiating terms and conditions could mean missing the last real chance to help correct coverage gaps.

Regulatory changes

As part of the appropriations bill to reopen the federal government in November 2025, Congress redefined hemp to make most cannabinoid products currently on the market federally illegal. The 2018 Farm Bill defined hemp as containing no more than 0.3% delta-9 THC by weight and excepted those products from the Controlled Substances Act. The new definition going into effect on December 11 (Section 781 of P.L. 119-37) imposes an absolute cap of 0.4 mg of total THC per container, over which products are considered marijuana.

While the redefinition was intended to eliminate intoxicating products, the new limit is low enough to incorporate most full-spectrum products, including non-intoxicating, therapeutic CBD products. As a result, the debate is not whether cannabis-infused beverages will continue to exist, but whether they will continue to exist in liquor and mainstream retail channels.

Congress will ultimately determine the regulatory framework under which low-dose THC beverages can be sold. The question is: will they be relegated to the state-licensed dispensary channel, where potency drives sales but beverages generally plateau at just 1% of total revenue, or will they be available via mainstream retail and hospitality outlets, which have proven a far more natural fit for social, intoxicating beverages?

Legislative outlook

Following lively debate, the Senate passed a Continuing Resolution (CR) on August 8, 2026, extending current funding levels from September 30 through December 11. This includes a provision that delayed the Section 781 hemp redefinition by 29 days to the same date. The CR was subsequently passed by the House and signed by the president.

Various hemp regulatory bills have been introduced, but it remains unclear whether any have the support to pass within the remaining window of time. Proposals under consideration range from delaying the ban to building a comprehensive regulatory regime to formally permitting states to write their own rules. While specific guidance has yet to be communicated, the White House has signaled that it will advocate changes to Section 781 provisions.

The hemp industry continues to lobby Congress, focused on the message that more time is needed to finalize regulations. They are also pushing for bridge legislation that would implement basic regulatory guardrails, such as age-gating, labeling/marketing restrictions, product testing and restricting certain types of products. However, such a bridge could create fractures within the hemp industry as it wouldn't necessarily permit the full scope of products currently being sold.

Insurance impacts

Amid the regulatory uncertainty, insurance coverage decisions can carry additional weight for hemp businesses with policies renewing before the end of the year. Operators should consider taking action now to protect their future viability from liabilities associated with products currently sold legally but subsequently.

Designated products & classification limitations

Hemp brands and manufacturers are considering various alternative pathways if the proposed federal definition goes into effect: shifting to state-regulated cannabis markets, reformulating with THC content under 0.4 mg, reformulating with strictly functional ingredients or launching alcoholic products.

As such, hemp operators should be asking whether their current policy covers these new products. Key endorsements such as **designated products limitations,** which exclude coverage for any products not specifically named, and **classification limitations,** which exclude coverage for classes or operations not scheduled on the policy, should also be reviewed. And it's important to remember that popular functional ingredients such as kava, kanna and other novel botanical substances that may not be approved by the FDA for inclusion in food or beverage products are subject to underwriting scrutiny.

Even where new products are perceived to be lower risk than hemp, operators should not assume that their current policy extends coverage or that their carrier has appetite for new products.

Extended reporting periods

Product liability for consumable hemp products is almost exclusively written on a claims-made basis, meaning coverage is triggered based on when a claim is made against the insured, rather than when the injury occurred. For example, if coverage is renewed and the retroactive date is maintained, claims-made policies can provide coverage for injuries occurring prior to the active policy period if the claim itself is made during the term.

If coverage is canceled or not renewed, an Extended Reporting Period (ERP) can provide coverage for claims made after policy expiration. ERPs do not extend coverage for injuries that occur after the policy period. This is a critical consideration for products that may be sold in the lead up to a ban, particularly large-format spirits that may be consumed over time and extend liability exposures for years after the product is sold.

ERP terms are typically available for up to three to six years after policy expiration, but are offered inconsistently across programs. Many specialty cannabis and hemp programs offer far more restrictive terms. Some policies in the market provide ERPs as short as three months and may require the insured to invoke the ERP more than 30 days before policy expiration. That's a potentially significant constraint given that product liability lawsuits are often filed years after an injury occurs or is discovered.

Which regulatory category a company is pivoting toward may dictate its strategy on retroactive products coverage. One approach is to maintain claims-made coverage with retroactive products coverage in place; another is to purchase an ERP and start a fresh policy with more favorable terms for the new products.

Insurance impacts continued

Legality / Violation of laws exclusions

Another potential coverage challenge for hemp operators is exclusionary language for illegal products. These provisions may have received little attention during the purchase process when hemp products were unequivocally federally legal, but they may prove critical now that the legal landscape has shifted.

The legal status of these products remains unsettled in several of the largest state hemp markets, even as non-enforcement postures have given major retailers the comfort to sell THC drinks. Regulators have articulated, but rarely enforced, contentious interpretations of whether adding THC to food or beverage products renders them adulterated and therefore illegal.

Common exclusions for products that violate state or federal law often leave the determination of whether they apply based on legality at the time of sale, at the time of injury or when the claim is made open to interpretation. If the federal redefinition takes effect, carriers may be emboldened to decline claims arising from products previously sold under ambiguous state law.

Prudent operators should consider seeking out coverage with clearly defined provisions based on the legality of products at the time of sale, not the time of claim.

Class action exclusions

Class action exclusions warrant scrutiny, especially since they frequently extend to "mass action" claims that affect multiple claimants but aren't formally certified as a class action. Such provisions may bar coverage for suits where many individuals are injured by a single contaminated bottle or batch.

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High-quality coverage remains available at competitive pricing – even amid today's challenging regulatory environment.

Regardless of whether a policy renews before year-end, now is the opportune time to strengthen coverage before existing products are banned. Prudent operators should work with a partner who understands the developing situation and strives to place coverage using forms that respond accordingly.

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