



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

September 9, 2024

The Honorable Lee Yancey  
Mississippi House of Representatives  
192 Dogwood Place  
Flowood, Mississippi 39232

Re: Hemp Beverages

Dear Representative Yancey:

The Office of the Attorney General has received your request for an official opinion.

### Questions Presented

1. Is it legal to sell hemp beverages in Mississippi?
2. If so, do the beverages have to contain less than 0.3% THC?

### Brief Response

1. Mississippi Code Annotated Section 97-31-5 states that it is unlawful, unless otherwise legalized under state law, to sell any drug, elixir, or compound that “when drunk to excess, in the form sold, will produce intoxication.” Accordingly, because there is no state law that specifically legalizes hemp beverages, should a factual determination be made that hemp beverages would produce intoxication if drunk to excess, then the sale of the same would be unlawful.
2. Beverages containing a THC concentration of greater than 0.3% would be classified as marijuana beverages. Such beverages are illegal under state law unless purchased in accordance with the Mississippi Medical Cannabis Act.

### Applicable Law and Discussion

Mississippi Code Annotated Sections 69-25-201, *et. seq.*, are known as the Mississippi Hemp Cultivation Act (the “Act”) and regulate the licensing of growers and the cultivation and processing of hemp in Mississippi. The Act defines “hemp” as:

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-tetrahydrocannabinol (THC) concentration of not more than three-tenths percent (0.3%) on a dry weight basis* that is grown or processed under [the Hemp Cultivation Act].

Miss. Code Ann. § 69-25-203(g) (emphasis added).<sup>1</sup>

Notably, neither the Act nor any other state law specifically addresses the sale of *hemp* beverages.<sup>2</sup> Hemp regulated under the Act is excluded from the Uniform Controlled Substances Law, as well as certain industrial cannabis products and “[p]ersonal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (if the products do not cause THC to enter the human body)” and “[a]ny product derived from the hemp plant designed for human ingestion and/or consumption that is approved by the United States Food and Drug Administration[.]”<sup>3</sup> Miss. Code Ann. § 41-29-113(d)(31).

However, without specific legal authority, drugs, compounds, or preparations are unlawful in Mississippi if intoxicating when consumed in excess. Section 97-31-5 provides:

It shall be unlawful for any person, firm, corporation or association, to sell, barter, or give away, or keep for such purposes any sweet spirits of nitre, liquid ginger preparation, elixir of orange peel, pear extract, *or any like drug, compound, bitters, elixir or preparation of any kind whatsoever, except where otherwise legalized under the laws of this state, which when drunk to excess, in the form sold, will produce intoxication,* except when the same is kept, sold, bartered or given away for either medicinal, or household purposes, or for uses in cooking, baking, and purposes incidental to the treatment of disease.

(emphasis added). Whether a hemp beverage when consumed in excess would produce intoxication is a determination of fact that is outside the scope of this opinion. Miss. Code Ann. § 7-5-25 (stating that this office may opine only on questions of state *law*). However, if the factual determination is made that hemp beverages “when drunk to excess, in the form sold, will produce intoxication,” the sale of the same would be unlawful in Mississippi pursuant to Section 97-31-5 because no other state law legalizes such sales. Additionally, if a factual determination is made that a hemp beverage has a THC concentration of greater than 0.3%, then the beverage would be classified as a marijuana beverage; marijuana beverages are illegal under state law unless

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<sup>1</sup> Marijuana is defined as “all parts of the plant of the genus *Cannabis* and all species thereof, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds, excluding hashish[.]” and “does not include ‘hemp’ as defined in and regulated by [the Act].” Miss. Code Ann. § 41-29-105(r). Hemp is distinguished from marijuana through its “delta-9-tetrahydrocannabinol (THC) concentration of not more than three-tenths percent (0.3%) on a dry weight basis.” Miss. Code Ann. § 69-25-203(g).

<sup>2</sup> The Mississippi Medical Cannabis Act, Sections 41-137-1, *et seq.*, allows the sale of *medical* cannabis products, including edible cannabis products and beverages, “[s]ubject to the conditions, limitations, and requirements and exceptions set forth in [that] chapter.” *See* Miss. Code Ann. § 41-137-9(h)-(j) (emphasis added).

<sup>3</sup> This office is unable to interpret or opine on any federal law or regulation. Miss. Code Ann. § 7-5-25.

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purchased in accordance with the Mississippi Medical Cannabis Act through a licensed dispensary.  
*See supra* notes 1-2 and Miss. Code Ann. § 41-29-139(a).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo  
Special Assistant Attorney General

OFFICIAL OPINION