

**CATHY WURZER:** You want to buy THC in suburban Richfield, well, you're going to have to wait at least a year. Richfield's the latest Minnesota city to enact a moratorium on the sale of THC edibles. The July Minnesota law regulating the sale of hemp-derived THC has caused a scramble for both cities and retailers. The resulting patchwork of regulations, different city by city, has made a confusing environment for consumers. Here to help us make sense of it all is Susan Burns. She's a business attorney working with cannabis businesses based in Minnesota. Susan, welcome to *Minnesota Now*.

**SUSAN BURNS:** Thank you, Cathy. It's a pleasure to be here.

**CATHY WURZER:** My thinking with the knowledge that I have is that many people have this misconception about THC in Minnesota that it's newly legal, but it really isn't, right?

**SUSAN BURNS:** That's right, Cathy. The federal Farm Bill removed him from the Controlled Substances Act. And Minnesota followed suit, and then enacted a series of regulations that govern the sale of hemp-derived cannabinoids. So as long as the THC quantity was less than 3/10 of a percent and it followed the other statutory guidelines, it was legal. So it has been sold in the state since 2020 at least.

**CATHY WURZER:** I want to go back to that federal Farm Bill. That was 2018, I believe. Can you explain how that paved the way for where we are now?

**SUSAN BURNS:** Yes. So we have cannabis as the overarching term. *L. Cannabis sativa* is the name for cannabis. There is marijuana and there is hemp. Hemp is now defined as any product that contains less than 3/10 of a percent THC. If it's over 3/10 of a percent THC, it's marijuana. Marijuana is still considered a controlled substance under the Farm Bill. But that allowed for the revival the hemp farming industry and the sale of hemp-derived cannabinoids.

**CATHY WURZER:** And of course, we're talking about industrial hemp here in the state of Minnesota. That was back in 2019. And so that created this legal pathway. But as you know, for goodness' sake, it's been a roller coaster. How did this most recent law change everything?

**SUSAN BURNS:** So what happened, Cathy, was there was a case that was decided by the Minnesota Court of Appeals in September of 2021, And that was *State v. Loveless*. That was a criminal case at the district court level. The court convicted him of violating the marijuana Controlled Substances Act in Minnesota. He had leafy green material or what we would call it a hemp or marijuana plant, a cannabis plant. And he also had vape cartridges. In its decision, the district court found him guilty of both of those because the products were tested by the BCA and were found to have THC.

On appeal, the argument was, we have this statute that says if it's 3/10 of a percent THC or less, it's not on the Controlled Substances Act and therefore legal. You only tested for THC content, not the amount. So the Appeals Court said, well, if it's a leafy green material plant substance, you have to test to make sure it has more than 3/10 of a percent THC. If it's a liquid, you don't. Just if it contains THC, that's enough. You're guilty of a crime. So we had this community of businesses developing and a lot of them smaller that was selling, quote unquote, liquid substances that would contain THC, tinctures and the like.

And so now you have this case that throws everything into question and even everybody's like, well, am I going to be convicted of a crime for continuing to do what I thought was legal? So that spurred a conversation about, what changes do we need to make to the statute to make sure that the legislative intent is in effect and that these businesses are allowed to continue?

**CATHY** That is confusing, isn't it?

**WURZER:**

**SUSAN BURNS:** Yes, it was. It was chaotic. It was very crazy.

**CATHY** Hmm. But of course, the new law is also a little muddy because it really doesn't offer much in the way of

**WURZER:** regulation. So the environment we're in now is quite confusing.

**SUSAN BURNS:** [CHUCKLES] It has become confusing. And when this statute first was amended and became effective, I was delighted because the main thing it did was the protection for consumers. Products were being sold at much higher dosages before. And now, it's required that there's a cap on the amount of milligrams that you can sell 5 milligrams, 50 in a pack. The item that's really great about this statute is that it specifically allows hemp-derived cannabinoids in beverage and edibles. But there isn't any regulation.

I really do think this statute was a great first step. And I think we do have some more cleaning up to do, but I think this is a process that will go on for a couple of more years because it's a nascent industry.

**CATHY** Wow. What's it like right now with your clients? It sounds like you may be a pretty busy attorney trying to help

**WURZER:** them wind their way through some of this confusion.

**SUSAN BURNS:** Yeah. It is busy, Cathy. It's difficult because certain cities took the time and met with constituents. They met with consumers and they met with business owners, and they were able to enact a set of regulations and they have licensing in place. And I think that some of the confusion is this is really a complex industry. I've been focused on cannabis for two years, and every day I learned so many new things. It's so complex, so you're trying to educate legislators. You're trying to educate a city council. You're trying to educate city attorneys.

You're trying to educate mayors. And it's because people don't know what it is. They're a little bit afraid of it. So there's been some kneejerk, in my opinion, reactions. And a lot of cities are issuing moratoriums. And then one city in particular that I'm aware of said that if you violate this ordinance, it's a misdemeanor. The complicated part of that is that these moratoria are enacted under Minnesota statute zoning ordinances. So under the zoning ordinance, any business that is legally operated continuously can continue to operate.

So then there's a conflict between what they were thinking they were doing and what the city's ability under the law is. So it's very confusing. And unfortunately, it's distracting some business owners from being able to continue to operate their business because they have to deal with this issue and it's expensive.

**CATHY** So you mentioned consumers. And I'm wondering, some edibles that we've been hearing about are a little more

**WURZER:** potent than others. And I'm wondering, how do folks know they're buying safe, legitimate THC compliant with this new law? Are there some elements that people need to watch for?

**SUSAN BURNS:** In my opinion, I would say buy from a dispensary. All of my clients, when they order something and receive it from the manufacturer, the manufacturer provides a certificate of analysis that tells you the makeup of the product. They then send random samples for more testing to confirm that what the manufacturer said they received is actually what they received. So there are steps that are taken. Whereas if you go to a convenience store or a gas station or a tobacco store, they're carrying a consumer product as far as they know, and there's no checks and balances there.

The other thing is the way the legislation is written. I think we do need to do some cleanup because it talks about THC. And there are some very dangerous THC derivatives being sold. The plant has 150 cannabinoids. They don't all have the same potency. Some have no psychoactive effect. Some are very minimal. And others are a lot. And some, especially those that are not natural from the plant that are being created, like you have THCP, THC-O, those kinds of things, those are very, very dangerous products. So it's important to know what you're getting and to be able to talk to somebody that can educate you on what you're buying.

And the other thing is everybody's system is different and reacts to different cannabinoids differently. So my opinion is that it's important to make sure you're buying the products from somebody that knows what they're doing.

**CATHY WURZER:** As you mentioned, it's quite likely that the upcoming legislative session will probably look to clean up this statute. But I'm wondering, even with that, do you see the hemp industry continuing to grow in an upward trajectory, given what you know?

**SUSAN BURNS:** I do. And I think in spite of all these problems, Cathy, and uncertainty on some things that we have to work out-- and I think they're all good things to work out. In spite of that, we have just a beautifully blossoming industry in the state of Minnesota around this, and it provides a lot of good for people. And so I think it will continue to grow. I don't think there's any question about that.

**CATHY WURZER:** All right. Susan Burns, I appreciate the conversation. Thank you so much.

**SUSAN BURNS:** My absolute pleasure. Thank you, Cathy.

**CATHY WURZER:** Susan Burns is a business attorney working with cannabis businesses based in Minnesota. Since the midterm elections last week, Governor Tim Walz and House Speaker Melissa Hortman have both indicated support for broadly legalizing recreational cannabis. A DFL-supported bill last may did not get a hearing in the Republican-controlled state Senate, but with the DFL controlling both arms of the legislature, legalization could be more likely. We're going to keep following this story on MPR news.