

# A PHASED APPROACH TO CANNABIS LEGALIZATION: THE MINNESOTA MODEL



PRAIRIE CIRCLE

# INTRODUCTION

In the last decade, 23 states have legalized the recreational use of cannabis products. Forty-four tribally owned cannabis shops in the US are currently selling retail products. Those states and tribal nations took a variety of paths to get to legalization. Some states achieved legalization through ballot measures, while others passed legalization bills through legislatures. Tribal governments have legalized cannabis through popular votes, resolutions, and compacts with states.

But one state has taken its own unique path. Rather than legalize recreational marijuana use outright, Minnesota has opted to take a phased approach. In 2022, the state legalized the production and sale of low potency hemp derived consumable THC products. What does that mean, and why does that matter?

Those are important questions. Before we get to the answers, we need to talk about hemp and cannabis.

## HEMP AND CANNABIS: THE BASICS

### What is hemp? What is cannabis?

Think about all the different ways we can use corn. We can eat sweet corn off the cob. We can grow corn for animal feed. We can process it into anything from syrup to flour to auto fuel. Farmers might grow different varieties of corn for those purposes, but they are all still corn plants.

So it is for hemp and cannabis: they are **two types of the same plant**. The main difference between them is how much THC they contain. THC is the substance in marijuana that makes people feel high. Hemp only has a little THC. Cannabis has a lot.

Before the 2018 Farm Bill passed, hemp and cannabis were treated much the same way under the law—they were illegal to grow or sell. As of the passing of that law, the federal government differentiates between the two plants based on how much THC they contain. A hemp plant must contain less than 0.3% THC, or it's considered cannabis.



Although hemp is still highly regulated, it is legal to grow and process in the US for licensed farmers and manufacturers. Cannabis remains a Schedule I drug at the federal level, but is legal for recreational use in many tribal nations and states, and is working its way toward legalization in several others, like Minnesota.

## Why do people use hemp and cannabis?

The obvious answer to that question is, to get the feeling that THC gives them. But THC isn't the only compound in hemp and cannabis that can impact the human body. Those other compounds are called cannabinoids, and there are actually more than 100 of them in hemp and cannabis plants. Taken alone and together, they have different effects. Four of the most commonly used cannabinoids are CBD, CBG, CBN, and THC.

### CBD

CBD is short for cannabidiol. CBD doesn't get you high like THC does, but some people find that it produces calming effects. Others that find that it helps to alleviate their chronic pain. CBD interrupts the breakdown of the "bliss" molecule anandamide, allowing your body to feel the positive feelings that molecule brings for longer than it would otherwise. More studies are needed to determine the best dosage and delivery method to get the best impact from CBD. But right now the ways people take it include tablets, tinctures, topicals, and gummies.

### CBG

CBG is another cannabinoid, cannabigerol. It's the first cannabinoid that young hemp and cannabis plants make. Like CBD, it doesn't have intoxicating effects. But what it can do is increase the effectiveness of other cannabinoids through what's called the "entourage effect." That's why you might see products with CBG added to them.

### CBN

CBN, or cannabinol, is found in older plants. One reason some people take it is because it makes them feel sleepy. CBN may also have anti-inflammatory effects for some users.



## THC

We've all heard of this one, right? THC is the compound in cannabis that **creates the feeling of being high**. You won't get the same effect from the rest of the cannabinoids. If the high is what you're after, you need to consume some THC.

You may have heard of something called "the deltas." Delta-8, delta-9, and delta-10 are some of the THC molecules that create the feeling of being high. They don't all produce the same effect—delta-9 creates the strongest high, then delta-8, and then delta-10. All of the deltas are all found in both hemp and cannabis, but cannabis flower has much higher concentrations of them than hemp does.

## MINNESOTA'S JOURNEY TO LEGAL CANNABIS GOES THROUGH HEMP

Recreational cannabis production and sale remains illegal under current Minnesota law. But some THC products are legal to produce, sell, possess, and consume. How is that possible?

Minnesota law allows for what are called "low-potency hemp derived products." Products made with hemp-derived delta THC are legal for consumers 21 and older, but only in doses of **5mg or less per serving, with a maximum of 10 servings (50mg of THC) per package**. For people who aren't habituated to consuming cannabis, one or two servings are generally enough to generate the feeling they're looking for. Regular cannabis smokers might need to consume four or five servings to get the high they are accustomed to. Because consumables are processed through the liver rather than the lungs, even regular cannabis users should start with a low dose until they know how their body handles a different ingestion method.

The products that Minnesota legalized must be consumables—edibles or beverages. Vapes and joints are not legal. In addition, all packaging must be child-resistant and not designed to appeal to children. The products must be tested for potency, as well as for pesticides, heavy metals, residual solvents, and mold.



A bill to legalize recreational cannabis is working has just passed in Minnesota. The goals of the proposed law include:

- Minnesota business development. The intent of the law is to keep as much of the industry's revenue in the state as possible.
- Tax revenue. The projected sales of cannabis in Minnesota range from nearly half a billion in the first year to more than a billion dollars a year within five years. Proposed sales tax rates range from 5% to 15%, which could yield an additional \$50 to \$150 million a year in state sales tax revenue.
- Product safety. The new law would create an Office of Cannabis Management, whose role would be to oversee and regulate the new market, and make sure that the products being sold are safe, tested, and not sold or marketed to children.
- Eliminating the black market. Black markets bring crime. A well-regulated legal cannabis market would reduce the demand for black market sales.

## Minnesota's Timeline

- 2014: Passed limited medical marijuana program for nine severe medical conditions, including epilepsy, cancer, and glaucoma
- 2016: Added intractable pain to qualifying conditions
- 2017: Added PTSD to qualifying conditions
- 2019: Added macular degeneration and chronic pain to qualifying conditions
- 2022: Passed recreational use of hemp-derived consumables
- 2023: Passed recreational cannabis
  - Personal use provisions in effect on August 1, 2023
  - Hemp derived consumables will continue to be legal
- 2024: Cannabis regulatory board expected to be appointed and begin working
- 2025: Cannabis growing and processing licenses expected to be issued.

Because this is a new industry, some provisions of the law will go into effect this summer, while others might take as long as two years to take effect. In the meantime, the new law will keep hemp derived consumables legal.



# ADVANTAGES, DISADVANTAGES, AND OPPORTUNITIES IN THE MINNESOTA MODEL

Taking Minnesota's path to cannabis provides some advantages, at least one disadvantage, and a few significant opportunities.

## Advantages

The main reason why tribal nations might want to legalize hemp derived delta-9 products before cannabis is that hemp derived delta-9 is **legal at the federal level to process, sell, possess, and consume**. Those products can bring a new source of revenue to tribal communities.

In addition to the obvious advantage of having less interaction with the DEA and other federal law enforcement agencies, the federal legality of hemp derived products means that businesses selling them can participate in the normal banking system. Cannabis businesses have a difficult time, for example, processing payments because the major credit card companies will not work with sellers of illegal products. Federal legality means this isn't an issue for hemp derived THC products.

Also, because these products must undergo significant processing from plant to product, rather than being grown in someone's basement or backyard, they are easier to track, test, and regulate. They can be packaged in child resistant containers in consistent, low dosage quantities. The most popular form of consumables are gummies, but other types include mints, taffies, chewable tablets, and THC-infused canned or bottled beverages.



## Disadvantage

The primary disadvantage that hemp derived THC products over cannabis products is that THC occurs in low quantities in hemp. That's what makes it legal at the federal level, but it also means that the THC in hemp products isn't extracted directly from the plants. Instead, other cannabinoids are extracted and then converted through chemical and physical processes into THC. This does come at costs in terms of energy and loss of material during the conversion process. However, consumable THC products may not be more expensive to produce from hemp than from cannabis because cannabis is very expensive to grow relative to hemp.

## Opportunities

### Sales revenue

Like any other product, sales revenue for hemp derived THC products depends on market demand. Demand can be difficult to estimate due to the relative recency of cannabis being legally available in some states and tribal nations. But here is what we do know:

- According to a 2021 Gallup survey, about half of all US adults have tried marijuana in some form.
- In states where cannabis is legal, consumables (THC edibles and beverages) account for about 10% of cannabis sales.
- In a study of six states where recreational cannabis is legal, edibles sales grew by more than 20% from 2020 to 2021, outpacing the rest of the cannabis market.

North Dakota has not legalized recreational use of cannabis. This leaves an opening for sovereign tribal nations to be the only source of legal, in-person purchases of cannabis products within the state.

### Tax revenue

States that have legalized recreational cannabis have also opted to tax it. That taxable revenue has gone to help fund programs like education, public safety, the environment, mental health treatment, and many others.



## Preparing for the future

Eventually, federal prohibition of recreational cannabis use will end. Tribal nations that set up their own regulatory structure in advance of that will likely be in a stronger position to chart their own course through the legalization process. They will be ready and able to protect tribal interests from outside actors whose intention will be to extract profits and take them off the reservation.

### Edibles take a bigger bite out of the market

Edibles are increasing in popularity. In 2021, the overall cannabis market grew by more than 18% over 2020. The consumables category, such as gummies, mints, and taffies, grew by more than 20% year over year, outpacing the rest of the cannabis market. In 2021 alone, more than \$1 billion worth of gummies were sold in six states: California, Colorado, Michigan, Nevada, Oregon and Washington.

## BENEFITS OF A PHASED APPROACH

Taking a phased approach to legal recreational cannabis production, sales, and personal use has a number of benefits.

First, it gives tribal nations time to get buy-in on full cannabis legalization from tribal leadership and community members. Not everyone wants to see cannabis legalized. Starting “small” with hemp derived products can give communities a chance to take a test run before moving to a more robust cannabis program.

Second, it gives regulators time to learn how to regulate these products. Because hemp derived products can be made in low potencies of measurable doses, regulators will have an easier time tracking products and testing them for safety.



Next, this is an opportunity to grow a local industry. The investments needed to get started aren't as high as in cannabis or even as in opening a new bar or restaurant, which means local business owners can get up and running quickly. Tribal nations have the option to limit ownership of retail licenses to tribal members if they choose.

And finally, given that hemp derived products are federally legal, starting with those products should reduce the opportunity for the federal government to get involved. Tribal nations will need to carefully regulate these products in order to minimize the likelihood of federal government interference.

## Waiting has consequences

Recreational cannabis legalization is a complicated topic that presents a number of legal and logistical challenges, from stringent banking regulations to the need to work around federal government prohibition. Hemp derived THC products offer an opportunity for an easier path forward for recreational THC products that can generate sales and sales tax revenue, while providing consumers with a product that tribal nations can regulate independently to ensure product quality and safety.

But this opportunity won't last forever. When the federal government ends cannabis prohibition, some complications will resolve themselves but others, like outsiders coming in to try to extract cannabis profits from tribal nations, will begin. **The time to make a plan for how to avoid that is now.** A phased approach like the Minnesota model is a step in that direction.



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## Contact Prairie Circle

**Veronica Michael, CEO**

701-540-6234

veronicamichael@prairieproductsnd.com

**Nicole Mattson, Operations Director**

218-790-5854

nicole@prairieproductsnd.com

