

AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

No THC with ABV: Commission Blocks Marijuana in Alcoholic Beverages

BY ANDREW C. BARTHOLOMEW • JUNE 1, 2018

The Alcoholic Beverages Control Commission of Massachusetts (ABCC) recently issued an advisory regarding the use of marijuana in alcoholic beverages. Although the sale of marijuana for recreational use is slated to become legal in the Commonwealth on July 1, 2018, the ABCC announced that infusing marijuana or extracts derived from the plant into alcoholic beverages will not be permitted, even after legalization is fully implemented.

The ABCC emphasized that marijuana is still considered a Schedule 1 drug by the U.S. Drug Enforcement Agency. As many commentators have noted with respect to other states that have already legalized the drug, federal law trumps conflicting state law under the Supremacy Clause of the U.S. Constitution. Therefore, if federal authorities saw fit, they could begin prosecuting individuals or businesses for the sale of marijuana, even if it is permitted under their respective states' laws. This is particularly problematic in light of Attorney General Jeff Sessions' announcement in January that he was withdrawing federal guidelines that limited such prosecutions, effectively leaving the decision up to individual U.S. attorneys.

The advisory from the ABCC further indicated that adding marijuana extracts to alcohol would violate state law as well. Under G. L. c. 270, § 1, it is illegal to sell alcohol that has been "adulterated" with a number of substances that are "poisonous or injurious to health." In the view of the ABCC, brewing a beer with tetrahydrocannabinol (THC), for instance, would be considered adulteration, and individuals charged with doing so could be subject to imprisonment for up to 3 years.

A brewery out of Everett had already planned on releasing a beer made with an extract of marijuana, but following the ABCC's announcement, it was forced to change course. The original recipe for Down the Road Beer Co.'s Goopmassta Session IPA included cannabidiol (CBD), an extract of the cannabis plant that is said to produce physical effects without the corresponding psychoactive aspects associated with THC. However, following issuance of this advisory, the brewery instead released a CBD-free version of the beer.

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It's possible that the ABCC could adjust its policy regarding marijuana in alcoholic beverages, especially if norms continue to change following legalization. For example, marijuana is not specifically mentioned in the alcohol adulteration statute, so the ABCC could later conclude that the drug is not "poisonous or injurious to health." However, for the time being at least, fans of the two substances have no choice but to enjoy them separately.

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