The Whole Plant Act

Comparison: H.R. 10079, the Beverage Regulatory Parity Act

A comparison of the standalone Federal Whole Plant Act against H.R. 10079, the Beverage Regulatory Parity Act, introduced by Representative Van Duyne for herself and Representative Landsman on August 10, 2026 and referred to the Committee on Energy and Commerce and the Committee on Ways and Means. The bill lifts the per-container limit of section 781 of Public Law 119-37 for hemp-derived beverages, adds a new section 425 and new adulteration and misbranding provisions to the Federal Food, Drug, and Cosmetic Act, places the beverages under the Tax and Trade Bureau in a three-tier distribution system, and adds a new chapter 56 to the Internal Revenue Code taxing them by intoxicating content.

Read against the introduced text of H.R. 10079 as printed, end to end. Every section citation below was checked against that text. The comparison is drawn mainly against Sections 4 and 13 of the Federal Whole Plant Act, which carry its product rules and its national standard, with other sections cited where the bill reaches them. Citations to the Whole Plant Act are to the standalone Federal Whole Plant Act. The bill dies when the 119th Congress ends on January 3, 2027. If it is reintroduced in the 120th Congress, it will carry a new number, and this comparison will be checked against the new text. Independent policy analysis, not legal advice.

Where they agree

Stated first, because the two bills share more than their scope suggests.

Both set the line per serving and by intoxicating content. H.R. 10079 defines a hemp-derived beverage as one with no more than 5 milligrams of total intoxicating tetrahydrocannabinol content per serving (sec. 4(l)(3)(G)) and directs the regulator to adjust serving and container sizes on the evidence (sec. 4(k)(2)). The Whole Plant Act classifies by intoxicating potential at the labeled dose and sets the threshold by rule, keyed to dose, formulation and route of administration (Federal Sec. 4(1), 4(3)).

Both draw the 21 line at the sale. H.R. 10079 makes it unlawful for a retailer to sell a hemp-derived beverage to anyone under 21 (sec. 4(g)(2)). The Whole Plant Act bars the sale of an intoxicating item to, and its purchase by, a person under 21, from age-restricted premises (Federal Sec. 4(13)). A 5-milligram beverage is intoxicating under the Act's interim line of 1 milligram per labeled dose (Federal Sec. 13(2)(b)), so both put it behind the same age line.

Both treat decarboxylation as ordinary processing. H.R. 10079 says a cannabinoid is not synthetically derived on the sole basis of routine extraction, decarboxylation, filtration, distillation for purification, winterization or other standard purification (sec. 4(l)(5)(B)). The Whole Plant Act says decarboxylation of a naturally occurring cannabinoid acid by heat alone is not a conversion (Federal Sec. 3(1)).

Both keep cannabinoids out of alcohol. H.R. 10079 limits itself to non-alcoholic beverages (sec. 4(l)(3)) and deems adulterated a beverage with added alcohol, caffeine, tobacco, nicotine or melatonin that the Secretary finds interacts harmfully with cannabinoids (sec. 3(b), new FDCA sec. 402(j)(3)). The Whole Plant Act bars cannabinoids mixed or infused into any alcoholic beverage as a national floor and lets the regulator restrict any other added substance by rule on human evidence (Federal Sec. 4(17), 4(23)).

Both label for the person drinking. H.R. 10079 requires the label to give the cannabinoid content in milligrams and the number of servings, risks to special populations, the effect on driving and operating machinery, directions for use including the expected onset, the age requirement, and a warning that the product may cause a failed drug test, and bars images designed to appeal to children (sec. 4(d)(2)). The Whole Plant Act requires the cannabinoid profile, the total intoxicating cannabinoid equivalent at the labeled dose, and the onset and duration of effect (Federal Sec. 4(7)), bars imitation of products marketed to children (Federal Sec. 4(9)), and sets health information by rule (Federal Sec. 4(20)).

Both open a lawful path into food. H.R. 10079 makes a hemp-derived beverage a food, says it is not adulterated for containing a naturally occurring cannabinoid, and says such a cannabinoid in the beverage is not a drug for purposes of section 301(ll) (sec. 3(a), new FDCA sec. 425(a), (b), (d)). The Whole Plant Act lifts both drug-preclusion clauses for every naturally occurring cannabinoid (Federal Sec. 6(8)).

Both give the regulator recall authority (new FDCA sec. 425(c); Federal Sec. 4(11)), require uniform manufacturing and testing (sec. 4(c)(2)(A); Federal Sec. 13(1)), track product from cultivation to the finished item (sec. 4(k)(1), 4(l)(12); Federal Sec. 13(5)), and leave each state free to be stricter (sec. 4(i)(1); Federal Sec. 5(5), 13(11)). Both tax the intoxicating product by its content rather than its volume: H.R. 10079 at 8 cents per milligram of intoxicating tetrahydrocannabinol (sec. 5, new IRC sec. 5901(b)), the Whole Plant Act through an excise keyed to intoxicating potential (Federal Sec. 11(1)).

What H.R. 10079 does not do

H.R. 10079 reaches beverages and nothing else. Its relief from the per-container limit applies only to a hemp-derived beverage made and sold within the serving requirements (sec. 2(a)), and the definition excludes a tincture, isolate, powder or distillate (sec. 4(l)(3)(F)). Every other intoxicating product, including gummies, chocolates, tinctures, capsules, flower and vapes, stays under section 781 as staged by section 2019 of Public Law 119-103: from December 11, 2026 a finished product with more than 0.4 milligrams of total tetrahydrocannabinol per container is outside the definition of hemp and inside the definition of marijuana under the Controlled Substances Act.

H.R. 10079 does not reach state-licensed cannabis. Its naturally occurring cannabinoid excludes marijuana (sec. 4(l)(4)(C)), so a beverage made under a state cannabis license gets nothing from it, and the two federal lanes stay split by origin.

It builds no public record of the plant. Its list of naturally occurring cannabinoids grows by Tax and Trade Bureau determination (sec. 4(l)(4)(A)(iv)) with no interval and no petition path, and it says nothing about patents or exclusivity.

The divergence in one table

Axis	H.R. 10079	The Whole Plant Act
Scope	Hemp-derived beverages only; every other product stays under section 781 (sec. 2(a), 4(l)(3))	Every herbal cannabis item in one regulated market (Federal Sec. 4(1))
Sorting principle	Origin first: hemp-derived only, marijuana excluded, then a per-serving limit (sec. 4(l)(2), 4(l)(4)(C))	One botanical input, classified by intoxicating potential at the labeled dose whatever the source (Federal Sec. 4(1))
The dose line	5 mg total intoxicating tetrahydrocannabinol per serving, in statute, adjustable by regulation after an FDA report (sec. 4(l)(3)(G), 4(k)(2), 4(j)(2))	Threshold set by rule; interim line of 1 mg total intoxicating cannabinoid equivalent per labeled dose from day one; no statutory concentration ceiling (Federal Sec. 4(3), 4(7), 13(2)(b))
The serving	12 fluid ounces in a single-use container; 1.5 fluid ounces in a 750 mL multi-serving container (sec. 4(l)(6))	A stated dose smaller than what the item is designed and marketed to be taken at once is not a labeled dose; multi-serving items are marked so each dose can be identified (Federal Sec. 3(44), 4(3), 4(21))
Non-intoxicating cannabinoids	No more than 5 mg, with no per-serving qualifier (sec. 4(l)(3)(I))	No cap on non-intoxicating cannabinoids
Who may buy	21 and over for every hemp-derived beverage, including one with no intoxicating content; purchase, possession and consumption under 21 are unlawful (sec. 4(g)(2), 4(h))	21 and over where an item intoxicates or impairs at its labeled dose; sale to and purchase by a person under 21 barred; no arrest or imprisonment for noncommercial possession, adult or minor (Federal Sec. 4(2), 4(13), 4(16), 8(3))
A drink with no intoxicating content	Behind the 21 line with every other beverage	General retail if the whole package, treated as its labeled dose, has no intoxicating potential (Federal Sec. 4(19)(a))
Distribution	Mandatory three tiers: manufacturer to wholesaler to retailer, with no person holding an interest in more than one tier (sec. 4(b), 4(c)(2)(B))	No federal three-tier or mandatory-distributor structure; no intermediary tier required for authentication or tax; licensing and market structure reserved to the states (Federal Sec. 13(5), 13(8))
Sourcing	Domestic only: no cannabinoid extracted, sourced or processed from hemp grown outside the United States; packaged and labeled in the United States (sec. 4(l)(3)(B), (E))	An import enters the national market on the same terms as a domestic item, traced to a lot tested to the national standard (Federal Sec. 13(10)(a), (b))
Converted and synthesized cannabinoids	Excluded, including any cannabinoid chemically converted or isomerized outside the plant (sec. 4(l)(3)(C), 4(l)(5)(A))	Classified by intoxicating potential; method disclosed on the label; byproducts and residues tested as contaminants (Federal Sec. 3(1), 4(7), 4(18))
Testing and standards	Uniform manufacturing and testing requirements set by the Tax and Trade Bureau as a condition of the manufacturer's permit (sec. 4(c)(2)(A))	One national standard for testing, safety, labeling and authentication, built with the National Institute of Standards and Technology and consensus standards bodies, continuous across the supply chain (Federal Sec. 13(1))
Advertising	Federal rules may be no more restrictive than those for alcohol under section 105(f) of the Federal Alcohol Administration Act; states may	Marketing and advertising standards by rule, including limits on placement and content that appeal to persons under 21 (Federal Sec. 4(13))

	be stricter (sec. 4(e)(2), 4(i)(4)(A))	
Tax	8 cents per mg of intoxicating tetrahydrocannabinol, flat, at removal from the manufacturer (new IRC sec. 5901)	Excise keyed to intoxicating potential, graduated by scale at each stage, with no origin-based differential (Federal Sec. 11(1), 11(2))
States	Shipment in violation of state law prohibited; states may be stricter or prohibit altogether; transshipment protected (sec. 4(i))	Federal role is a floor; states run their own markets and may classify more strictly on human evidence; transit protected once interstate commerce opens (Federal Sec. 5(5), 5(6), 13(11), 13(12))
The commons	A cannabinoid list grown by determination, no interval, no petition path, no public record of the plant	A public-domain reference standard and registry as prior art; no approval or exclusivity removes the plant from lawful sale (Federal Sec. 6)

Where they diverge

1. One product, or one market

H.R. 10079 solves the December 11 problem for one product form. A 12-ounce can at 5 milligrams has an honest serving, a clear label and an age line, and the bill gets those right. A 5-milligram gummy beside it on the same shelf gets none of that, because it stays under the 0.4 milligram container limit and becomes marijuana under federal law on December 11. The Whole Plant Act classifies every herbal cannabis item by intoxicating potential at the labeled dose under one set of standards (Federal Sec. 4(1), 4(2)), so the can and the gummy are held to the same line and sold in the same channel.

2. The dose line and the serving

The bill writes 5 milligrams per serving into the definition (sec. 4(l)(3)(G)) and lets the Tax and Trade Bureau adjust serving and container sizes after the Food and Drug Administration reports on testing, impairment and serving size (sec. 4(j)(2), 4(k)(2)). The Whole Plant Act sets no statutory figure. It puts the interim 1-milligram line in force on day one, lets human evidence move it, and replaces it with the national standard (Federal Sec. 4(7), 13(2)). The two approaches meet in practice: a 5-milligram beverage is intoxicating under the Act and sold only to adults.

The multi-serving rule is where they part. A 750-milliliter container served at 1.5 fluid ounces holds about seventeen servings, roughly 85 milligrams at the 5-milligram ceiling. The bill caps nothing at the container level. The Whole Plant Act also sets no container cap in age-restricted retail (Federal Sec. 4(19)(e)), but it asks whether the stated serving is the amount the item is designed and marketed to be taken at one time, and if it is not, the regulator sets the real dose (Federal Sec. 3(44), 4(3)). It also requires each labeled dose to be identifiable (Federal Sec. 4(21)). A 1.5-ounce serving in a bottle marketed for pouring by the glass would not hold under the Act.

3. Non-intoxicating cannabinoids

The bill caps non-tetrahydrocannabinol naturally occurring cannabinoids at 5 milligrams, and, unlike the intoxicating limit beside it, the clause does not say per serving (sec. 4(l)(3)(I)). Read literally, a 750-milliliter bottle could carry 5 milligrams of cannabidiol in total while carrying up to about 85 milligrams of tetrahydrocannabinol. The Whole Plant Act sets no cap on cannabinoids that do not intoxicate and treats their interaction with intoxicating ones as part of classification (Federal Sec. 3(42), 4(1), 4(3)).

4. Who may buy, and the shelf

The bill puts every hemp-derived beverage behind the 21 line (sec. 4(g)(2)), including one that contains only cannabidiol or cannabigerol. The Act draws the age line where an item intoxicates or impairs at its labeled dose. A drink that intoxicates or impairs at its labeled dose is sold only to adults 21 and over (Federal Sec. 4(13), 4(16)). A drink in general retail is held to its whole package as its labeled dose, so it moves to age-restricted retail if the whole container would intoxicate (Federal Sec. 4(19)(a), (c)). Taken together, nothing with impairment potential at its labeled dose is sold in general retail, and a non-intoxicating drink is not treated as an intoxicating one.

The bill also makes it unlawful for a person under 21 to purchase, possess or consume a hemp-derived beverage (sec. 4(h)). It attaches no penalty to that subsection, since its penalty provisions reach subsections (c) through (e) and (g)(1) and (2) (sec. 4(f), 4(g)(3)). The Act bars sale to and purchase by a person under 21 and makes no person, adult or minor, subject to federal arrest or imprisonment for noncommercial possession (Federal Sec. 4(13), 8(3)).

5. Three tiers

The bill requires a three-tier system on the alcohol model: manufacturers sell only to wholesalers, retailers buy only from wholesalers, and no person may hold a permit as both manufacturer and wholesaler or any interest, direct or indirect, in more than one tier (sec. 4(b), 4(c)(2)(B)). It applies the alcohol tied-house rules of section 105(a) through (d) of the Federal Alcohol Administration Act to manufacturers and wholesalers (sec. 4(g)(1)).

This is the bill's sharpest departure from the Act. The Whole Plant Act authenticates on the reporting and inventory

data operators already keep, "not on a federal three-tier or mandatory-distributor structure," requires no intermediary tier for authentication or tax, and authenticates a vertically integrated operator on the same terms as any other (Federal Sec. 13(5)). It reserves licensing, ownership limits and market structure within a state to that state, and directs that federal instruments not become a barrier that favors the largest operators (Federal Sec. 13(8)). A state that chooses three tiers for its own market may have them. The federal statute does not impose them, and a craft beverage maker that brews, cans and sells its own product keeps that path.

6. Domestic sourcing

The bill excludes a beverage containing any cannabinoid extracted, sourced or processed from hemp grown outside the United States, and requires packaging and labeling here (sec. 4(l)(3)(B), (E)). The Whole Plant Act admits an import only as federal import law permits and then on the same terms as a domestic item, traced to a lot tested to the national standard and classified by intoxicating potential on receipt (Federal Sec. 13(10)). The Act answers the concern behind the sourcing rule, uncharacterized and contaminated imports, through testing that applies to every input crossing a boundary rather than through origin.

7. Converted and synthesized cannabinoids

The bill excludes any synthetically derived cannabinoid, defined to include a cannabinoid the plant can make that was chemically converted or isomerized outside the living plant, and anything structurally identical to or intended to mimic an intoxicating compound (sec. 4(l)(3)(C), 4(l)(5)(A)). It permits more than a trace of a non-natural cannabinoid in no beverage (new FDCA sec. 402(j)(2)). The Whole Plant Act classifies by intoxicating potential whatever the source, requires the method of conversion or synthesis to be disclosed on the label and to the laboratory, and tests every byproduct and residue as a contaminant, holding an unidentified product off the market until it is identified (Federal Sec. 3(1), 4(7), 4(14), 4(18)). Both reach the safety problem. The Act does it without a ban that turns on how a molecule was made.

8. Advertising

The bill caps the federal rule: advertising requirements may be no more restrictive than those for distilled spirits, wine and malt beverages (sec. 4(e)(2)), while states keep stricter rules (sec. 4(i)(4)(A)). The Act sets marketing and advertising standards by rule, including limits on placement and content that appeal to persons under 21, with no ceiling tied to alcohol (Federal Sec. 4(13)).

9. The states

The bill's state provisions are strong. A state may regulate hemp-derived beverages more strictly or prohibit them altogether, shipment into a state in violation of its law is prohibited, a beverage may move to a state where it is lawful, and transshipment across a state that prohibits it is protected (sec. 4(i)(1) through (3)). The Act keeps each state's market and its power to be stricter or to prohibit commercial sale (Federal Sec. 5(5), 5(6)), lets a state classify more strictly on human evidence, and gives it a petition path to the national standard (Federal Sec. 13(11)). The Act's interstate market opens on an one-plant frame (Federal Sec. 13(6), 13(7)). Once it opens, the Act protects a lawful shipment crossing a state, on a manifest and without delivery in the state crossed (Federal Sec. 13(12)). The bill's transshipment rule also binds tribes; the Act's does not, under Federal Sec. 16(7).

10. Drafting points

Four points in the introduced text would need correcting in any version that moves, whatever its policy.

- Section 4(e)(1) joins its two conditions with "and": an advertisement is unlawful if it violates the Administrator's requirements and is an intermediate hemp-derived cannabinoid product. Read literally, the advertising rules reach only advertisements for intermediate products, which are not for consumer use (sec. 2(b)(4)). The two conditions read as alternatives were likely intended.
- Section 4(g)(1)(B) refers to "subsections (a) through (c) of such Act." The reference is to section 105 of the Federal Alcohol Administration Act, not to that Act as a whole.
- Section 4(l)(4)(A)(iv) adds cannabinoids that meet "the criteria to be established under paragraph (2)." Paragraph (2) defines hemp and establishes no criteria.
- Section 4(l)(5)(A)(iii) defines total synthesis "from non-Cannabis sativa L. starting materials regardless of whether the starting materials were derived from a Cannabis sativa L. plant," which contradicts itself.

Four federal scenarios

Scenario	H.R. 10079 as written	Federal Whole Plant Act
Section 781 takes full effect December 11, 2026	Beverages within 5 mg per serving stay lawful as hemp under a three-tier system; every other intoxicating hemp product becomes marijuana under the Controlled Substances Act	Makes 781 moot by descheduling and classifies every item by intoxicating potential, but needs its own bill rather than a rider

Section 781 is delayed or repealed	The beverage rules stand on their own; other products return without a federal product standard	Same frame for every item, with descheduling to follow
Rescheduling widens beyond medical	Hemp beverages under the Tax and Trade Bureau, state-licensed beverages under the Controlled Substances Act, for the same drink	State Whole Plant Acts make federal registration a voluntary election per line of business
Congress deschedules	The hemp split stays in the code and the beverage chapter governs only hemp-derived drinks	This is the descheduling bill

The bottom line

H.R. 10079 gets the beverage right. It sets the line per serving and by intoxicating content, keeps alcohol out, labels for onset, impairment and drug testing, treats decarboxylation as ordinary processing, protects the states' power to be stricter, protects transshipment, and taxes by content rather than volume. Those provisions match the Whole Plant Act where it already speaks.

What it lacks is scope and a frame. It fixes the December 11 cliff for one form and leaves every other product on the far side of it. It sorts by origin before intoxicating potential, puts a cannabidiol drink behind the same counter as a 5-milligram one, allows a 1.5-ounce serving in a bottle that may not be taken that way, writes a mandatory three-tier system into federal law, closes the market to imported inputs rather than testing them, bans converted cannabinoids rather than classifying them, caps federal advertising rules at the alcohol level, and builds no public record of the plant.

Where the bill gets it right, the Act already agrees: a single-use container counts as one serving, the label gives content and onset, cannabinoids stay out of alcohol, decarboxylation is ordinary processing, states may be stricter, a lawful shipment may cross a state that prohibits it, and the tax falls on intoxicating content. The Act does not take the bill's figures, its 1.5-ounce serving, its flat rate or its hemp-only tax. It answers the rest with its own provisions: one market by intoxicating potential, an honest serving, an age line that follows intoxicating potential, no required tier, imports tested on the same terms as domestic inputs, and the plant kept public.

How the Act holds whichever way this bill fares

Weight-bearing policy is policy that holds whichever party is in power and whichever way federal action goes, because its structure does not depend on any one outcome. The Whole Plant Act is weight-bearing, and it holds against every outcome for H.R. 10079. If H.R. 10079 passes as written, the state Whole Plant Acts still classify every item by intoxicating potential within their borders, a state that wants three tiers for its own market may adopt them, and a state that does not keeps its own structure for every product other than federally permitted hemp beverages. If it rides a continuing resolution alone, nothing in a state Whole Plant Act depends on it, and every non-beverage product in that state is still classified by intoxicating potential under state law. If it fails, the standalone federal bill and the state bills are unchanged. No outcome for this bill requires the Act to be rebuilt.