



Attorney General’s statement on hemp and CBD products

Updated: May 14, 2020

Background

The Attorney General’s office has received questions about the legality of products containing cannabidiol (CBD). CBD is a specific type of cannabinoid that occurs naturally in cannabis plants. Confusion about the legality of CBD products has increased in light of the federal Agriculture Improvement Act of 2018 (2018 Farm Bill, Section 10113) and the passage of Senate File 599, the Iowa Hemp Act, at the state level. This memorandum will clarify the legal status of CBD products under Iowa law, provide information to people who are interested in buying or selling CBD products, and explain enforcement authority.

As of April 8, 2020, hemp and hemp products are not considered to be marijuana as long as the hemp or hemp product has “a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.” Iowa Code § 204.2(6)(a). Iowa Code Chapter 124E, the Medical Cannabidiol Act, permits the manufacturing and distribution of medical cannabidiol (mCBD). As defined in Iowa Code Chapter 124E, mCBD is any pharmaceutical grade cannabinoid found in a cannabis plant or any preparation thereof that has a THC level of no more than 3% that is manufactured and distributed pursuant to the Iowa Department of Public

Health's mCBD program. Iowa Code § 124E.2(6). Under this program, Iowa's licensed manufacturers can manufacture mCBD for distribution to individuals with state-issued mCBD registration cards at Iowa's licensed dispensaries. Iowa Code chapter 124E. This memorandum does not alter the operation of Iowa's existing mCBD program.

Iowa Hemp Act

On May 13, 2019, Governor Reynolds signed [SF599](#), known as the Iowa Hemp Act, and on April 8, 2020, the U.S. Department of Agriculture's ("USDA") approval of the State's plan was published in the Iowa Administrative Bulletin, fully implementing SF599 and allowing for the production of hemp in Iowa. Applications for a license to grow hemp may now be submitted to the Iowa Department of Agriculture and Land Stewardship.¹ Under the Iowa Hemp Act, hemp means the plant cannabis and any part of that plant with a THC concentration of not more than 0.3% on a dry weight basis.

Now that the Iowa Hemp Act is fully effective, CBD products containing no more than 0.3% THC are no longer controlled substances under Iowa law. This does not mean that all CBD products are now legal. While hemp products such as cloth, cordage, fiber, fuel, paint, paper, particle board, and plastic can be legally produced, Section 7 of the Act clarifies that hemp-derived CBD can only be added to products intended for human consumption to the extent consistent with applicable federal law. The U.S. Food and Drug Administration's (FDA) current position is that products marketed with therapeutic benefit claims must be approved by the FDA as drugs prior to introducing them into interstate commerce. The FDA also takes the position that it is illegal to introduce food containing CBD or THC into interstate commerce or to market

¹ <https://iowaagriculture.gov/hemp>

products containing CBD or THC as dietary supplements. The FDA has published guidance detailing its approach to regulating cannabis and cannabis-derived products such as CBD, including a list of FDA-approved drugs.² Finally, even though the Iowa Hemp Act is fully implemented and effective, hemp-derived CBD products intended for human consumption remain illegal under the newly enacted Iowa Code Section 204.7(9) and under Iowa Code Chapter 126, the Iowa Drug, Device, and Cosmetic Act.

Consumer Advisory

Consumers should be aware that CBD products advertised for human consumption are not regulated for quality by the FDA. These products potentially could contain contaminants, such as heavy metals or pesticides. The quantity of CBD or THC advertised on a product's label may not accurately reflect the true composition of the product. In 2017, a study published in JAMA found that out of 84 products sold online, 43% had more CBD than advertised and 26% had less CBD.³ A product labeled as containing CBD may not contain any CBD at all. Some CBD products may contain more than 0.3% THC, even if they are advertised as being derived from hemp. In addition, consumers should be cautious about any CBD product claiming to treat or cure serious diseases or ailments. A consumer should never cease taking prescribed medications in favor of taking CBD products without consulting a licensed health care provider.

The FDA has, and intends to continue, using its authority to take action against companies who sell CBD products that put consumers at risk.⁴ In particular, the FDA is concerned about

² <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd>

³ [Marcel O. Bonn-Miller et al., *Labeling Accuracy of Cannabidiol Extracts Sold Online*, *Journal of the American Medical Association*, Nov. 7, 2017, at 1708.](#)

⁴ [Statement from FDA Commissioner Stephen M. Hahn M.D. *FDA Advances Work Related to*](#)

products with unproven claims to treat serious of life-threatening diseases, which can lead patients to opt to forgo available treatments in favor of an unproven product. The FDA has issued several warning letters to distributors of CBD products, which are posted for public viewing on its website.⁵ Distributors of CBD products should also be aware that strict product liability laws make the seller of a dangerous product liable to a person injured by that product, even though the product was manufactured by another entity. Finally, farmers who are considering growing hemp in Iowa under the IDALS program should understand the legal market for hemp products before making investments.

Enforcement

Consumers and sellers of CBD products should understand that, because not all products are legal under Iowa law, local law enforcement agencies retain the authority and discretion to take criminal enforcement action against people who sell or possess over-the-counter CBD products that are not compliant with the law. In addition, the Office of the Attorney General has the authority to take enforcement action against any person for false or misleading advertisements or deceptive sales practices related to CBD products.

Finally, two state agencies may have jurisdiction over an entity that sells CBD products. The Iowa Department of Inspections and Appeals (DIA) licenses and regulates entities that sell or serve food, unless an entity sells only pre-packaged and non-temperature controlled foods. The DIA has issued a regulatory notice to licensees indicating that they are prohibited from selling CBD products for human consumption. The Alcoholic Beverages Division (ABD) licenses and

[Cannabidiol Products with Focus on Protecting Public Health, Providing Market Clarity, FDA \(March 5, 2020\).](#)

⁵ <https://www.fda.gov/news-events/public-health-focus/warning-letters-and-test-results-cannabidiol-related-products>

regulates those who sell and serve alcoholic beverages. The ABD has issued a regulatory bulletin to license and permit holders indicating that both CBD and THC are prohibited in alcoholic beverages sold in Iowa. Stores that are not licensed and regulated by a state agency remain subject to enforcement at the discretion of local law enforcement.

Businesses and consumers that have further questions, including questions about the legality of a specific product, should contact a private attorney.

Warning for Farmers

Claims are abundant that farmers can “make a killing” growing hemp. But regulators have seen irrational exuberance over alternative crops before, and the potential for fraud and overstated returns is high. The Iowa Department of Agriculture and Land Stewardship advises growers to do their research and confirm there is a viable, profitable market for commercial hemp production before they make an investment in seed and equipment. Growers and landowners should ask for documented returns and seek contracts that spell out payment details.