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Serving Up CBD: The Legal Status of this Wildly Popular Ingredient

The cannabidiol (CBD) industry is exploding. Hemp and hemp-derived CBD were considered Schedule I controlled substances until Congress passed the Agriculture Improvement Act of 2018 (Farm Bill) on December 20, 2018. The Farm Bill, among other things, decriminalized hemp and CBD. That, coupled with the fast-growing popularity and public interest in CBD, has resulted in a nationwide rush for retail businesses, including restaurants, bars, and breweries, to incorporate CBD into food, beverages, and other products.

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The CBD industry is incredibly dynamic, and it is far outpacing the existing legal and regulatory structure. The FDA is taking steps to create a framework for the lawful marketing and sale of CBD food and supplement products.



What is CBD?

Hemp is not marijuana. Both come from the cannabis plant family but they are chemically different. Each contains various chemical compounds called "cannabinoids," including CBD and tetrahydrocannabinol (THC), but the hemp plant only contains trace amounts of delta-9 THC. CBD is not intoxicating and is believed to be non-habit forming. Its proponents often claim that the cannabinoid offers a calming effect without the "high" associated with marijuana. As it stands today, hemp and CBD are legal so long as the plant (or the products derived from the plant) contain 0.3% delta-9 THC or less by dry weight.

Regulations Remain

Hemp-derived CBD is still subject to a host of laws and regulations. The Farm Bill did not change the authority of the US Food and Drug Administration (FDA) to regulate hemp and its derivatives, like CBD, under the Federal Food, Drug and Cosmetic Act. On the same day the Farm Bill passed, the FDA opined that CBD cannot be lawfully sold in food or beverage products or as a dietary supplement.

The North Carolina Department of Agriculture & Consumer Services (Department) followed suit in February. Since then, the Department has inspected several retail businesses and issued warning letters, taking the position that it is illegal to sell any human food or animal feed in North Carolina that contains CBD. Any product that contains CBD and makes health-related claims must be approved by the FDA prior to sale. For now, however, the Department is following an "educate first" approach instead of taking enforcement action.

Other regulatory bodies have also followed the FDA's lead on CBD. For example, the Federal Tax and Trade Bureau (TTB), the federal body that regulates the production and sale of alcohol, recently issued an industry circular to reinforce the

FDA ban on CBD in alcoholic beverages. The North Carolina ABC Commission has also indicated that it is drafting rules that address the use of CBD in alcoholic beverages. Although the FDA and TTB prohibit the use of CBD in food and beverages, they allow retailers and product manufacturers to use Generally Recognized As Safe (GRAS) ingredients — like hemp seeds and seed oil — in certain instances. Meanwhile, savvy entrepreneurs have identified several loopholes and work-arounds to these general regulatory concerns.

The Future of CBD

The CBD industry is incredibly dynamic, and it is far outpacing the existing legal and regulatory structure. The FDA is taking steps to create a framework for the lawful marketing and sale of CBD food and supplement products. The FDA held a public hearing on May 31 for stakeholders to share their experiences and challenges. It has formed a high-level internal working group to advance those goals. But there is still much work to be done to legitimize the CBD industry and to fully realize its viable economic benefits for our state, businesses, and citizens. Commonsense guidelines that promote a safe, robust, and credible marketplace for the production and sale of CBD products are necessary. Having clear rules in our state will foster and create a welcoming business climate that invites additional hemp-related investments, jobs, taxes, and wealth creation.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney. ■

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