



IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Attorney General’s statement on hemp and CBD products

Background

Various state agencies have been fielding hundreds of questions about the legality of products containing cannabidiol (CBD). CBD is a specific type of cannabinoid that occurs naturally in cannabis plants, predominately in its flowering tops and to a lesser extent in its resin and leaves. 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 SF599, the Iowa Hemp Act, at the state level. This memo will clarify the legal status of CBD products under state law, provide information to people who are interested in buying or selling CBD products, and will explain enforcement authority.

Currently, Iowa law defines marijuana as “all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including tetrahydrocannabinols.” Iowa Code § 124.101(20).

The definition of marijuana explicitly excludes “the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, sale derivative, mixture, or preparation of such mature stalks (except the resin extracted

therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.” *Id.*

Because CBD is derived from parts of the cannabis plant that are included in definition of marijuana, CBD is considered marijuana under Iowa law. Iowa law places both marijuana and its psychoactive component, tetrahydrocannabinols (THC), in Schedule I of the Uniform Controlled Substances Act. Iowa Code § 124.204(m), (u). Consequently, any product containing any amount of CBD or any amount of THC is classified as a Schedule I controlled substance under Iowa law. The only exception in state law is described in Iowa Code Chapter 124E.

Iowa Code Chapter 124E, the Medical Cannabidiol Act, permits the manufacturing and distribution of medical cannabidiol (mCBD). mCBD is any pharmaceutical grade cannabinoid found in a cannabis plant with 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 two licensed manufacturers can manufacture mCBD for distribution to individuals with state-issued mCBD registration cards at Iowa’s five licensed dispensaries. Iowa Code chapter 124E. This memo does not alter the implementation of Iowa’s existing mCBD program.

Iowa Hemp Act

On May 13, 2019, Governor Reynolds signed [SF599](#), known as the Iowa Hemp Act, which will allow for the production of hemp in Iowa in the future. Under the 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. Before hemp production can commence in Iowa, the United States Department of

Agriculture (USDA) must approve a state plan. The USDA will not begin approving state plans until after it promulgates regulations. The USDA has indicated it intends to issue regulations in the fall of 2019 and is committed to completing its review of plans within 60 days once regulations are effective. [Hemp Production Program, USDA \(Feb. 27, 2019\).](#)

The only provision of the Iowa Hemp Act that can be currently implemented is Section 3, which requires the Iowa Department of Agriculture and Land Stewardship (IDALS) to prepare a state plan to be submitted to the USDA. Per Section 18 of the Act, the other provisions of the newly adopted Chapter 204 cannot be implemented until after the USDA approves Iowa's state plan. Therefore, at present time, no one can grow, manufacturer, or process hemp in Iowa, outside of the two mCBD manufacturers licensed by the Iowa Department of Public Health.

In addition, the coordinating amendments, many of which remove hemp and hemp products from the Uniform Controlled Substances Act, do not become effective until after the USDA approves Iowa's state plan. Until the coordinating amendments of the Iowa Hemp Act are effective, any product sold over-the-counter containing CBD or THC technically falls within the definition of marijuana and is considered a Schedule I controlled substance.

When the Iowa Hemp Act becomes fully effective, CBD products containing no more than 0.3% THC will no longer be controlled substances under Iowa law. But this does not mean that all such products will become legal. While items such as cloth, cordage, fiber, fuel, paint, paper, particle board, and plastic will be able to 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 following are FDA-approved drugs: Marinol, Syndros, Cesamet, and Epidiolex. The FDA's current position is also that it is illegal to introduce food containing CBD or THC into interstate commerce or to market products containing CBD or THC as dietary supplements. [*Statement from FDA Commissioner Scott Gottlieb, M.D. on new steps to advance agency's continued evaluation of potential regulatory pathways for cannabis-containing and cannabis-derived products*](#), FDA (April 2, 2019). When the Iowa Hemp Act becomes fully implemented and effective, these products will 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. The FDA has published additional information about the FDA's regulation of cannabis-derived products. [*FDA regulation of cannabis and cannabis-derived products: questions and answers*](#), FDA (April 2, 2019).

Consumer Advisory

Consumers should be aware that CBD products are not regulated for quality by the FDA or the state. CBD 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. [*Marcel O. Bonn-Miller et al., Labeling Accuracy of Cannabidiol Extracts Sold Online, Journal of the American Medical Association, Nov. 7, 2017, at 1708*](#). 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 their 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. [*Statement from FDA Commissioner Scott Gottlieb, M.D. on new steps to advance agency's continued evaluation of potential regulatory pathways for cannabis-containing and cannabis-derived products, FDA \(April 2, 2019\)*](#). In particular, the FDA is concerned with products with unproven claims to treat serious or 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. *Id.* 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 before making investments.

Enforcement

Consumers and sellers of CBD products should understand that, because the products are illegal 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. 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 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 over the legality of a specific product, should contact a private attorney.