

Federal rules around hemp unsettled; lawsuits filed

Is CBD legal?

The legal status of cannabidiol (CBD), one of the many cannabinoids found in the plant *Cannabis Sativa L.* has been the topic of much discussion lately for many reasons. This article, while not legal advice, is an overview of issues that one might face regarding CBD.

First off, what is CBD? CBD is a chemical compound found mainly in the flowers of a hemp plant. It has been claimed that CBD has numerous health benefits although these claims have not been verified or approved by relevant governmental organizations as discussed below.

Second, is CBD legal? As discussed here, the answer is not always so clear.

Generally, the federal government exercises authority over CBD through two agencies: the Drug Enforcement Administration (DEA) and the Food and Drug Administration (FDA).

DEA Authority

Prior to the enactment of the Agriculture Act of 2014 (the “Farm Bill”), it seemed clear that CBD fell within the Controlled Substances Act (CSA) definition of “marihuana” and DEA had the authority to regulate. The CSA does not mention THC or a particular level of THC in its definition of “marihuana.” Its legality is solely dependent upon from which part of the plant CBD is derived. CBD comes primarily from the flowers of a cannabis plant, and thus falls within the definition of “marihuana” in the CSA.

The Farm Bill of 2014

The Farm Bill of 2014 legalized the growth, cultivation, or marketing of industrial hemp pursuant to state authorized pilot programs. North Carolina has such a pilot program authorized by state law. Pursuant to the Farm Bill, pilot program license holders can legally grow industrial hemp.

The Farm Bill defines “industrial hemp” as any part of the cannabis plant with a THC level of not more than 0.3 percent. The question that has arisen is whether CBD that contains less than 0.3 percent THC and which comes from an industrial hemp crop grown as part of a hemp pilot program fits within the Farm Bill definition of “industrial hemp” or whether it would still be regulated by the DEA as “marihuana” under the definition in the CSA, which makes no mention of the amount of THC and instead relies on which part of the plant the CBD comes from.

Conflict Between the Farm Bill and DEA Rule

Under the authority of the CSA, DEA enacted a rule which lists “Marihuana Extract” as a controlled substance. The definition of “Marihuana Extract” makes no distinction between

marihuana and industrial hemp. Some argue that DEA with the enactment of this rule has included CBD (from whatever source) as a controlled substance. Others argue that CBD would be legal if it comes from industrial hemp grown as part of a hemp pilot program since it comes from a legal source.

The Status of CBD regarding DEA Authority

At present, there is conflicting opinion regarding the legality of CBD. As a result of the lack of clarity in the DEA rule, the Hemp Industries Association filed a lawsuit against the DEA. The case seeks to strike down the DEA rule, or at the very least require the DEA to clarify that the rule does not pertain to lawful industrial hemp extracts.

So, the best guidance regarding DEA's view of CBD as a controlled substance at this point is that it is unclear. There are two federal laws that appear to be at odds with each other and an ongoing lawsuit that has not been resolved.

The Status of CBD regarding FDA Authority

As mentioned above, there is another area of federal authority regarding CBD. The federal Food, Drug, and Cosmetic Act places authority with the FDA to promote and protect the public health through regulation of many areas, including food safety, dietary supplements, and pharmaceuticals.

Here is what the FDA has to say from its website on the question of whether it is legal in interstate commerce to sell a food to which CBD has been added: No.

So, as noted on the FDA website, it considers the addition of CBD to a food product to be a "prohibited act" within its authority.

Here is what the FDA has to say from its webpage on the question of whether products that contain CBD can be sold as dietary supplements: No.

Conclusion

The law regarding CBD might best be described as unsettled. One should take every precaution to ensure that all federal and state laws are complied with when considering CBD. Again, nothing in this article should be considered as legal advice. Anyone interested in CBD for personal use or as a part of a business enterprise would be wise to consult an attorney who specializes in regulatory issues.

It should be noted however that the ability of a licensed grower to grow industrial hemp in North Carolina remains unchallenged. The pilot program, backed by federal and state law, allows the grower to grow industrial hemp as an agricultural commodity. The above issues would arise later in the supply chain as processors process the hemp and extract the CBD.

