

Florida Hemp: Is Green the New Orange?

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What is hemp?

Hemp and marijuana are both strains of the cannabis sativa plant. Hemp has been used for centuries in many products ranging from clothing to medicines. It was at one time a booming cash crop in the United States before the country passed sweeping drug laws that folded hemp into regulations prohibiting production and use of the cannabis sativa plant. These regulations applied to hemp even though it contains miniscule levels of tetrahydrocannabinol (THC) that results in the euphoria often associated with marijuana.

Why is this significant?

Before the passage of this bill, any strain of the cannabis sativa plant was considered a controlled substance under Florida law. Florida has now excepted from the definition of cannabis any cannabidiol that is derived from hemp so long as its THC concentration does not exceed 0.3 percent on a dry-weight basis and does not contain other controlled substances. This declassification brings Florida in line with the 2018 Farm Bill, which delisted hemp-derived products from Schedule 1 of the Controlled Substances Act.

So what does this mean for Floridians?

Simply put — opportunity for industry growth. The Florida Legislature has directed the Department of Agriculture and Consumer Services (DACS) to establish a licensing, testing, and tracking regulatory structure for hemp production and processing and to submit Florida's state plan required by the 2018 Farm Bill to the U.S. Department of Agriculture. The new law directs DACS to start the rulemaking process to establish a regulatory structure on or before August 1, 2019, and submit Florida's state plan to the USDA within 30 days of the rulemaking processing being complete. That

means that over the next several months, Florida's executive branch will take public input and promulgate rules to establish the regulatory structure for this new industry. Once Florida's state plan is approved by the USDA, hemp production can begin in Florida by qualified licensees, and processing operations will no longer have to source hemp and hemp-derived cannabinoids from out of state. Approval of Florida's state plan will also pave the way for the use of hemp in cosmetics, personal care products, and products intended for human or animal consumption without the hemp addition constituting an adulteration of the product. This last part, removing hemp for animal or human consumption without constituting an adulteration of the product, makes Florida's law more progressive than the position of federal agencies, several of which maintain that adding hemp to products for consumption is an adulteration of the product until further studies are performed.

While this opens doors to a new industry, the legislature has imposed certain barriers to market entry. For cultivators, a license from DACS is required and no individual with a felony conviction related to a controlled substance within the preceding 10 years may be licensed. For those who want to process and distribute hemp extracts, the new law contains testing, tracking, and packaging requirements.

Any other concerns?

Although Florida has taken acts to decriminalize hemp, those operating in this space still face further regulation as the DACS works to pass further rules implementing the Florida Hemp Bill. Moreover, at the federal level, the FDA has made no secret of its plans to implement regulations governing the use of hemp in many of the current and future products containing hemp. Finally, the FTC has already indicated it will take action against any manufacturers of hemp-derived products who claim benefits of the product that are not supported.

Carlton Fields advises clients in the hemp industry on an array of business and regulatory matters. Please contact Kevin McCoy and Jennifer Tschetter for more information about the impact of this groundbreaking law on your current or future hemp business ventures or investments.

Authored By



Kevin P. McCoy

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