

The End of Hemp Prohibition

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On Thursday, December 20, President Donald J. Trump signed into law the Agriculture Improvement Act of 2018 ('Farm Bill').

"Farm bills" are adopted by Congress from time to time to reauthorize and modify USDA programs that address, among other things, commodity support, conservation,

nutrition assistance, farm credit, rural development, research and extension activities, forestry, energy, horticulture, and crop insurance. The 2018 Farm Bill does more than just that: it legalizes hemp.

For years, hemp was considered a Schedule I banned substance under the Controlled Substances Act of 1972 ("CSA"). The reigns on hemp were loosened a bit with the passage of the Agricultural Act of 2014, which authorized research institutions and state agricultural agencies to grow industrial hemp as part of a research pilot program. North Carolina then established its own state-level pilot program and the NC Industrial Hemp Commission in 2015. Although that was a huge step forward for hemp in general, the authorizing statutes, and the rules and regulations developed as a result, were limited in nature and left major issues to speculation – like the legality of some commercial hemp activities and hemp-derived cannabidiol ("CBD"). Those legal ambiguities also largely prevented industry participants from accessing traditional banking services, insurance programs (like crop insurance for growers), and other common-place business activities.

Now, though, hemp and hemp-derived cannabinoids, extracts, and isomers have been legalized on the Federal level. Once the Farm Bill takes effect, some of its immediate effects on hemp will include:

- Expansion of the legal definition of "hemp" to include all parts of the *Cannabis sativa L.* plant, *"including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis."*
- Amendment of the definition of "marijuana" under the CSA to expressly exclude "hemp" (as defined above) and to expressly carve-out of the Schedule I controlled substances list any tetrahydrocannabinols (THC) that exist in "hemp."
- States may, individually, determine whether or not they want to retain primary regulatory authority over the production of hemp within their borders. To do so, a state must submit to the US Secretary of Agriculture its plan to monitor and regulate hemp production. Importantly, that plan must include *"a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the state."* This is consistent with the

THC compliance test requirements already enforced by the North Carolina Department of Agriculture & Consumer Services (which oversees testing for the current pilot program).

- "Hemp" and related products can be transported legally across state lines and states must not interfere with that transport, allowing for interstate commerce.
- "Hemp" growers can participate in crop insurance and government subsidy programs, as they are developed and implemented by the regulating authorities.

Passage of the Farm Bill is a leap forward not only for hemp, but for the cannabis industry as a whole. Hemp will effectively become a commodity crop for farmers and, we hope, it will be a boon for North Carolina's agricultural economy. Many of the concerns that previously faced hemp growers, processors, manufacturers, retailers, and consumers have been alleviated. But, new challenges will inevitably arise as the industry continues to grow and mature, and our state and Federal governments continue to develop new laws, regulations, rules, and programs applicable to hemp and CBD.

We encourage anyone considering hemp cultivation, processing, or distribution to seek legal counsel before investing significant time and money. Ward and Smith's Industrial Hemp practice team can advise you as you work through these and other complex legal issues.

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