



Kansas Bureau of Investigation

Kirk D. Thompson
Director

Derek Schmidt
Attorney General

November 22, 2019

Dear Kansas Law Enforcement Partner,

We have received a number of inquiries regarding industrial hemp, cannabidiol (CBD), and CBD with tetrahydrocannabinol (THC). While we cannot offer legal advice to citizens, we do feel it is incumbent upon us to attempt to offer our interpretation of the legal status of these substances for our law enforcement partners.

The attached document is a very high level overview of the state and federal legal status of industrial hemp, both under the currently enacted research program and under the anticipated commercial program; CBD; CBD with THC; and Marijuana. Because recent and anticipated changes to cannabis-related laws are complex and rapidly evolving, this document is intended to provide clarification to assist you in your efforts to identify and enforce criminal violations of law. The information contained herein is based on our research, participation in policy discussions, and understanding of the current legal status. It is not intended to provide, and does not constitute, legal guidance.

We understand that questions will remain. You are strongly encouraged to consult your local county or district attorney to address any case specific legal questions you may have. If you have any other questions, please feel free to contact one of our Special Operations Division (SOD) Special Agents in Charge (SAC).

- SAC Kelly Ralston, Criminal Intelligence Unit, (785) 230-6350
- SAC Doug Younger, SOD Northeast Region, (316) 215-4928
- SAC Glen Virden, SOD West Region, (785) 564-0474
- SAC Chris Bumgarner, SOD Southeast Region, (316) 215-4927

We will continue working as a team to respond to frequently asked questions, and will provide an updated matrix if and when there are additional changes to cannabis-related state law.

Sincerely,

Kirk D. Thompson
Director

KT/kmw

Overview of the Current Status of Industrial Hemp, CBD, THC, and Marijuana Under Federal and State of Kansas Law

Produced by the Kansas Bureau of Investigation, Office of Governmental Affairs

DISCLAIMER: This document is a summary of the current status of state and federal laws and regulations regarding industrial hemp, cannabidiol (CBD), tetrahydrocannabinol (THC), and marijuana. It is intended to provide Kansas law enforcement officers and prosecutors with information and an overview of the relevant state and federal laws and regulations. It is not intended to provide legal guidance. You are strongly encouraged to work with your local county or district attorney to address any legal questions you may have.

Status under Federal Law	Status under Kansas Law
Industrial Hemp – RESEARCH PROGRAM	
<p><i>2014 Farm Bill</i></p> <ul style="list-style-type: none"> • Allowed states to produce hemp in pilot program for research purposes only. • Did not allow for general commercial production. • Did not exempt hemp from controlled substances act. 	<p><i>2019 HB 2167 – This is Current Law</i></p> <ul style="list-style-type: none"> • Excluded industrial hemp from Schedule I of the controlled substances act. • “Industrial hemp” means all parts and varieties of the plant cannabis sativa L., whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.” • Allows for the cultivation, transportation, processing, distribution of industrial hemp for research purposes only. • Requires all growers, distributors, processors, and state educational institutions to submit research plan to KDA¹; reviewed by Advisory Board and recommended for approval by Secretary. • Only those whose plans are approved are allowed to participate in program; all participants must be licensed. • Applicants required to undergo state/national criminal history record check; disqualified if felony drug conviction within preceding 10 years. • All individuals engaged in activity authorized by the act are required to be licensed by KDA and must carry proof of licensure when engaged in authorized activities. • KDA must test THC within 15 days of harvest; fields over 0.3% THC require destruction. <p><u>NOTE:</u> Cultivation, processing, and distribution of hemp by an unlicensed person are illegal and would constitute a Chapter 21 drug crime.</p>

¹ Kansas Department of Agriculture

Status under Federal Law	Status under Kansas Law
Industrial Hemp – COMMERCIAL PROGRAM	
<p><i>2018 Farm Bill in effect, with Interim Federal Rule, published October 31, 2019</i></p> <ul style="list-style-type: none"> • Removed industrial hemp from Schedule I of controlled substances act. • Hemp is defined as “the plant <i>Cannabis sativa</i> L. and any part of that plant, including the seeds thereof 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 percent on a dry weight basis.” • Directed USDA² to develop domestic production program to review and approve states plans; and develop federal plan for producers in states where hemp production not prohibited. • Requires USDA, federal or state LEO to collect samples to be tested by DEA registered laboratory. <ul style="list-style-type: none"> -0.3% THC or less – harvested -0.3-0.5 % THC – non-negligent/destroyed* -0.6% THC or greater –negligent/destroyed* • Producers with 3 or more negligent violations in 5 years ineligible to participate. • Preserved states authority to enact and enforce more stringent laws regulating <i>hemp production</i>. • States <i>may not prohibit interstate transportation</i> or shipment of hemp lawfully produced under state plan or 2014 Farm Bill. <p>*Destruction must be done in accordance with the CSA³ and DEA regulations because such material constitutes marijuana. As such, it must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor or a duly authorized Federal, State, or local law enforcement officer.</p>	<p><i>Pending Update by KDA and Submission to USDA for Approval</i> <i>(Pending USDA approval, all Industrial Hemp Research Program provisions remain in effect)</i></p> <ul style="list-style-type: none"> • Legislative intent specified that KDA was to implement commercial program in least restrictive manner allowed under Federal law. • Allows KDA to discontinue Research Program upon repeal of federal law allowing research programs, adoption of federal plan for commercial production, or state adoption of KDA rules and regulations for state commercial program. • Requires KDA to <i>license</i> hemp producers. • Requires KDA to <i>register</i> hemp processors. • All primary hemp producers and all employees of hemp processors who are engaged in extraction shall undergo state/national criminal history record check; disqualified if felony drug conviction within preceding 10 years. • Requires all solid and hazardous waste resulting from cultivation, production or processing to be managed and disposed of in accordance with all applicable solid and hazardous waste laws and regulations.
Marijuana	
Remains a Schedule I controlled substance.	Remains a Schedule I controlled substance.

² United States Department of Agriculture

³ Federal Controlled Substances Act

Status under Federal Law	Status under Kansas Law
Industrial Hemp PRODUCTS	
<p>No guidance given or prohibitions specified to products, other than what is noted in CBD and CBD with THC sections, below.</p>	<p><i>2019 HB 2167 prohibits the manufacture, marketing, sale, or distribution of the following products containing industrial hemp by any person in Kansas:</i></p> <ul style="list-style-type: none"> • Cigarettes or cigars; • Chew, dip, or smokeless material; • Teas; • Liquids, solids, gases for use in vaporizing devices; • Any product intended for human or animal consumption that is prohibited pursuant to the Kansas food, drug, and cosmetic act, and the commercial feeding stuffs act. <p><u>NOTE:</u> The intent of the legislature was to allow hemp-derived CBD to be added to human food and cosmetic products, so long as no claims are made that would make the product akin to a dietary supplement or drug.</p> <p><i>2019 HB 2167 prohibits the marketing, sale, or distribution of the following to any person who is not registered or licensed as a hemp processor in Kansas:</i></p> <ul style="list-style-type: none"> • Hemp buds; • Ground industrial hemp floral material; • Ground industrial hemp leaf material. <p><u>NOTE:</u> Violations of any of these prohibitions are illegal and would constitute a Chapter 21 drug crime.</p>
Cannabidiol (CBD)	
<p>CBD <i>has not</i> been excluded from Schedule I.</p> <p><i>CBD is illegal to sell</i> as dietary supplements.</p> <p>It is <i>illegal</i> to introduce or deliver for introduction into interstate commerce any food to which CBD has been added.</p>	<p>CBD is excluded from definition of marijuana in KSA 21-5701(j) and KSA 65-4101(aa).</p> <ul style="list-style-type: none"> • CBD in isolate form (i.e. pure form) <i>is legal</i>. • CBD containing THC or any other controlled substance <i>is illegal</i>. • “Full spectrum⁴” or “broad spectrum” CBD products <i>are illegal</i>. <p><u>NOTE:</u> Violations of any of these prohibitions are illegal and would constitute a Chapter 21 drug crime.</p> <p>KSA 65-4111(f)(3) CBD in FDA approved drug product is Schedule IV and available by prescription. (i.e. Epidiolex)</p>

⁴ “Full spectrum” or “Broad spectrum” refers to cannabis concentrates produced with the goal of preserving the full range of cannabinoid and terpene compounds produced by the raw plant’s trichome glands. They preserve the nature of the extracted compounds, which may include the acidic forms of THC, CBD, and CBG, without altering them through decarboxylation or oxidation.

Status under Federal Law	Status under Kansas Law
CBD containing THC	
<p><i>DEA Press Release 19-895</i></p> <ul style="list-style-type: none"> • CBD hemp preparations at or below 0.3% THC threshold <i>are not</i> a controlled substance. <p>It is <i>illegal</i> to introduce or deliver for introduction into interstate commerce any food to which THC has been added.</p>	<p>2019 SB 28 created an <i>affirmative defense</i> to prosecution for possession of CBD with no more than 5% THC concentration relative to CBD; requires signed physician’s letter specifying treatment for a qualifying debilitating medical condition to be possessed at all times and shown to LE upon request. <i>It did not legalize CBD with any amount of THC.</i></p> <p><u>NOTE:</u> Possession of CBD with any amount of THC is illegal and would constitute a Chapter 21 drug crime.</p>

HELPFUL LINKS AND RESOURCES:

Kansas Department of Agriculture, Industrial Hemp Program

<https://agriculture.ks.gov/divisions-programs/plant-protect-weed-control/industrial-hemp>

- Review information on research program and pending commercial program
- Verify active licenses by type or name search via online portal
- Verify approved seed varieties and see examples of certified seed

Kansas Legislature <http://www.kslegislature.org/li/>

- Find enrolled bills and helpful summaries of legislation previously referenced at links below

HB 2167 (2019), Alternative Crop Research Act, research and commercial programs

http://www.kslegislature.org/li/b2019_20/measures/hb2167/

SB 51 (2017), adding CBD as FDA approved drug product to Schedule IV

http://www.kslegislature.org/li_2018/b2017_18/measures/sb51/

SB 282 (2018), exempting CBD from definition of marijuana

http://www.kslegislature.org/li_2018/b2017_18/measures/sb282/

SB 28 (2019), “Claire and Lola’s Law”, affirmative defense to prosecution for CBD with THC

http://www.kslegislature.org/li/b2019_20/measures/sb28/

Federal References

US FDA Regulation of Cannabis and Cannabis related products, including CBD

<https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#approved>

2018 Farm Bill, section by section

<https://www.agriculture.senate.gov/imo/media/doc/ALL%20SBS%20S.3042.pdf>