

## **Emerging hemp industry a fertile ground for lawyers**

BY BILL CRESENZO

[bcresenzo@nclawyersweekly.com](mailto:bcresenzo@nclawyersweekly.com)

North Carolina's burgeoning hemp industry has created a growing area of law practice that didn't even exist until a couple of years ago, and the field is poised to expand even more if the state legislature approves a proposed law that would create a new commission to oversee hemp's cultivation and sales under new federal guidelines.

"We have a chance to develop new laws, rules, and regulations that will establish our state as a national leader in hemp, and benefit our citizens and businesses, both in and out of the agricultural sector, for years to come," said Tyler Russell, an attorney with Ward and Black in Raleigh who practices hemp law.

Unlike its cousin marijuana, there's no buzz to be had with hemp, which contains just .03 percent THC (which is to say, not enough to get you high). But until last year, it was nevertheless under tight federal government control.

"Hemp and marijuana are not the same thing," said Rod Kight, an attorney in Asheville. "But the law is only now catching up with that fact."

Also unlike marijuana, hemp can be used to make items such as fabric and even homes. The first home made out of "hemcrete" was built in Asheville in 2010.

North Carolina became involved in the hemp industry in 2014, when it became part of a pilot program that allowed agricultural departments and universities to cultivate the plant. In 2015, the legislature made it legal for farmers to grow it, but only after they secure a license.

Congress then passed the 2018 Farm Bill, which will legalize hemp on the federal level, with the U.S. Department of Agriculture will regulating sales and distribution.

In response, legislators filed the North Carolina Farm Act of 2019, Senate Bill 315, in the General Assembly March 20. Among other provisions, it would create a commission would craft a state hemp plan that aligns U.S.D.A. rules. The bill has wide bipartisan support in the upper chamber.

**Hemp! I need somebody**

Right now, there are 706 licensed growers who tend to 8,569 acres of hemp in fields and in 3.5 million square feet of greenhouse space, said Andrea Ashby, a spokesman for the N.C. Department of Agriculture. But there are still many challenges ahead, attorneys said.

“There is so much to know, so many unanswered questions, and rapidly evolving laws and regulations,” Kight said.

The federal government hasn’t laid out all the regulations, and while hemp is now legal under federal law, some states treat it like marijuana, so that raises unanswered issues of federalism and pre-emption, Kight said.

“These were very important and transformational changes for the hemp industry,” Russell said. “But the 2018 Farm Bill did not cure or resolve all legal uncertainties surrounding hemp. It also ushered in a new era of federal and state regulations.”

Although Russell said the latest developments are a big step for hemp in general, statutory authorization is limited, and implementing rules and regulations has been slow. There are several remaining unresolved issues affecting the industry, such as the legality of some types of commercial hemp activities and of hemp-derived cannabidiol (CBD), which, like THC, has certain therapeutic properties.

“Those legal ambiguities have largely prevented industry participants from accessing traditional banking services, some insurance programs like crop insurance for farmers, and other commonplace business activities,” Russell said.

### **Not just anybody**

Clint Pinyan, an attorney with Brooks Pierce in Greensboro, said that hemp laws can be murky for some farmers, yet North Carolina’s new commission could bring more clarity to the industry.

One thing is certain, Russell said--the hemp businesses isn’t a “get rich quick” industry, and it carries significant risk for farmers.

“It is important that we, as counselors and advisors, help our clients to understand the risks they are undertaking,” Russell said. “There are certainly profits to be made and financial incentives for farmers and growers to undertake those risks, but people need to enter the market with their eyes wide open. As attorneys, we cannot effectively counsel our clients if we ourselves do not have a strong understanding of the laws, regulations and rules impacting our clients, and the norms of the industry within which they are operating.”

Ward and Black tells its hemp-cultivating clients to avoid investing more money into the crop than they can afford to lose. The firm also recommends that farmers contract with reputable processors and buyers before they plant so they have a source for the sale of their crop once they harvest it, Russell said.

While there are dozens of products made from hemp, CBD products are driving the market right now, Kight said. In the past few months, they've become ubiquitous at convenience stores.

"It is lawful," Kight said. "However, the FDA has indicated that it cannot be marketed as a dietary supplement or used as a food ingredient and no medical claims can be made about it. This has created a host of issues, obstacles, and grey areas regarding the marketing of hemp-derived products."

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