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THE COMMON LEGAL QUESTIONS CBD BUSINESSES FACE

Hemp is no longer a controlled substance, but it still has regulations

By [Andrew Brandt](#)

According to [Rod Kight](#), a business attorney in Asheville, North Carolina, the hemp industry is the industry of the moment.

“There’s a lot of innovation across all spectrums,” he says, noting that since the passing of the 2018 Farm Bill, which took hemp off of the Controlled Substances Act, demand has grown. Most of that demand has,



in turn, been geared toward cannabidiol (CBD), a non-intoxicating extract you can derive from the plant.

Kight spends most of his time consulting with businesses that produce or sell CBD, and he often gets the same kinds of questions from his clients —some of which are listed here, below.

Who can grow hemp in North Carolina?

“North Carolina adopted its hemp pilot program not too long after the federal law allowed it. We allow anyone to grow hemp, provided they meet some basic requirements; we don’t restrict the number of licenses issued. North Carolina is a very progressive state when it comes to hemp and CBD.”

How do I register to grow hemp?

“We get this from all over the country. It’s very much a state-by-state registration and certification process right now, as states are still operating under the 2014 Farm Bill that allowed pilot programs. Most



NORTH CAROLINA

“For an extreme example, you say your product cures cancer may be able to say that it may promote a healthy lifestyle, as super generic.”

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Bill specifically removed hemp and cannabidiol from the Controlled Substances Act; at the federal level, it's not a controlled substance. ... Furthermore, the statute specifically says that states cannot prohibit interstate commerce or transportation of hemp or CBD products through the state boundaries."

Is CBD likely to become unlawful in the future?

"The genie is out of the bottle for at least two reasons. Hemp-derived CBD, at a bare minimum, is lawful. For a state or the federal government to try and go back on that, it would require quite a legislative push the other way. The other thing is the market demand for it. We have manufacturers of products, like skin-care products, that are now wanting to put CBD in their topicals for marketing purposes. The demand for hemp products is through the roof."

What will the attorney process consist of?

"Someone will call us, saying they're starting a CBD business, and they need advice. We usually will discuss where they're getting their products, as we want to verify that those products are legal. That means, first, making sure that the hemp was grown according to a program, and that the extraction facility was licensed—if it needed to be. There's a certain amount of quality standards and controls that have to be in place. Then we talk about how their products are going to be marketed, in terms of what types of things can be said in the marketing materials."

What can marketing materials say?

"For an extreme example, you can't say your product cures cancer. You may be able to say that it may promote a healthy lifestyle, as that's super generic. ... The FDA is very specific about what can and can't be said about it. A company has to steer away from any claims explicit or implied. The FDA has sent out several rounds of warning letters over the past two years regarding CBD, and, by and large, the letters were specific to companies making improper claims."

Can attorneys help CBD businesses with non-CBD issues?

"We're a business law firm—some businesses come to us fully formed, and don't need any classic business services, and some need all of those services. A lot of times we'll create the entity, joint-venture agreements or purchase agreements. Each type of client needs a slightly different service, of course, but we've found that it makes a lot of sense for us to

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