

CONGRESS PRESSES FDA TO ACT ON CBD REGULATIONS

Sep 26, 2019

Following statements by the U.S. Food and Drug Administration that cannabidoil (CBD) in food and beverage products remains illegal, and amid the patchwork of state laws and enforcement actions, a group of U.S. lawmakers, led by Reps. Chellie Pingree (D-Maine) and James Comer (R-Ky.), have urged the FDA to “quickly adopt a policy of enforcement discretion and to consider issuing an interim final rule to regulate CBD as a dietary supplement and food additive while simultaneously moving forward with a robust framework for evaluating the safety and accurate labeling of these products.” The letter stated that the agency’s “current regulatory posture on CBD has created significant regulatory and legal uncertainty for participants in this quickly evolving industry. We are discouraged by FDA’s estimation that a rulemaking process could span 3 to 5 years. We believe there are more expeditious measures that FDA could take that would establish regulatory clarity while pursuing enforcement actions against bad actors.”

In the U.S. Senate, Majority Leader Mitch McConnell (R-Ky.) reportedly took a different path in an effort to reach the same ends by proposing to amend the Senate appropriations bill to insert language that would compel FDA to issue temporary guidance on how it will enforce rules on the sale of products containing CBD. The proposed amendment would require the agency to inform Congress within 90 days about its progress in creating its regulatory policies on CBD and implement a temporary policy within 120 days.

The House of Representatives also received a letter from four banking industry organizations expressing support for the Secure and Fair Enforcement (SAFE) Banking Act of 2019. The bill “would permit depository institutions to serve the needs of their customers in states where cannabis is legal.” According to the letter, the proposed legislation “provides a mechanism for the cannabis industry and its service providers to deposit their cash in regulated financial institutions, which allows our members to meet the needs of their communities and helps those communities reduce cash-motivated crimes, increase the efficiency of tax collections, and improve the financial transparency of the cannabis industry.”

In 33 states and the District of Columbia, medical marijuana is legal. In 10 of those states and the District of Columbia, recreational marijuana is legal.

At the federal level, CBD in food and drink products is still illegal. The federal Food, Drug & Cosmetic Act prohibits adding even approved drugs to human or animal food in interstate commerce.

The 2018 Farm Bill legalized hemp, but the legal status of hemp-derived CBD remains in limbo. Although CBD can be derived from hemp or cannabis, if a hemp plant contains more than .3 percent THC (the active “high” ingredient in marijuana) it is technically a “marijuana” plants.

Amid this legal patchwork, each state is adopting its own laws and regulations for dealing with CBD in food and beverages. In our next post on this issue, we’ll take a closer look at the legal status of CBD in food and beverage products at the federal and state level.

For questions or more information, contact [Merrit Jones](#).

RELATED PRACTICE AREAS

- Food & Agribusiness

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.