

MEMORANDUM

To: [REDACTED]
From: Vicente Sederberg, LLP
Date: August 31, 2020
Re: 50-State Overview: Legal Status of Ingestible and Vaporizer Products Containing Hemp-derived Delta-8 THC Outside of State-regulated Cannabis Programs

50-STATE OVERVIEW: LEGAL STATUS OF INGESTIBLE AND VAPORIZER PRODUCTS CONTAINING HEMP-DERIVED DELTA-8

The following chart is a 50-state survey of the legal status of hemp-derived delta-8 and associated product type restrictions outside state-regulated cannabis programs. States have broad authority to adopt their own regulatory framework governing hemp production and sale—they are not required to authorize such production nor are they are required to permit the sale of hemp-derived products within their jurisdiction. As a result of the expansive authority given to the states, the regulatory environment applicable to hemp-derived products is heavily fragmented at the state level. Some states passed laws mirroring federal law, while other state laws classify hemp, hemp products and/or delta-8 THC a controlled substance.

The laws and regulations stated herein are explicitly applicable to hemp-derived products and are in addition to any other applicable state law (such as state smoking laws) and federal law. The Food and Drug Administration (“FDA”) maintains oversight of hemp-derived consumer products under the Federal Food, Drug, and Cosmetics Act. FDA’s jurisdiction includes hemp and hemp-derived products as a food and food ingredient, as well as an ingredient for use in cosmetics, dietary supplements, and therapeutic products. Like any other FDA-regulated product, hemp-derived delta-8 THC products must adhere to any applicable FDA requirements.

Generally, for delta-8 THC to be legal under state law, the state must have an industrial hemp program that (1) defines “hemp” to include the *derivatives, cannabinoids, and isomers* of hemp and (2) excludes “hemp” from the definition of “marijuana” under the state’s Controlled Substances Act (“state CSA”) and (3) removes “tetrahydrocannabinols” derived from hemp from the state CSA. State rules also vary as to whether hemp-derived products intended for ingestion or inhalation are permitted. Some states permit all types of hemp products, some permit neither, some permit one type, but not the other type, and some state laws do not contemplate hemp product types at all.

The following chart indicates states where the sale of delta-8 THC is not unlawful and further indicates whether the sale of ingestible and vaporizer products are either expressly permitted (“Yes”); prohibited (“No”); or silent, meaning the state does not expressly authorize or prohibit the sale of such products (“Silent”).

This chart is intended only for the Client named herein—it is not to be interpreted as a formal legal opinion to be relied upon by a third party and is only current as of August 31, 2020 and to the best of our knowledge. The laws and regulations governing hemp continue to evolve rapidly, and the information provided herein is subject to change and the analysis herein may be subject to differing interpretation by applicable regulatory authorities. The information contained herein is Vicente Sederberg’s interpretation of the plain meaning of law, regulation, policy, and other publicly available information. States with pending changes laws or regulations have been noted. Use of the following lists do not guarantee compliance with state or federal law and do not insulate the Client or any of its affiliates from enforcement actions by any governmental entity or third party against it.

**50 STATE OVERVIEW: LEGAL STATUS OF INGESTIBLE AND VAPORIZER
PRODUCTS CONTAINING HEMP-DERIVED DELTA-8**

The following chart indicates states where the sale of delta-8 THC is not prohibited and further indicates whether the sale of ingestible and vaporizer hemp products are either expressly permitted (“Yes”); prohibited (“No”); or silent, meaning the state does not expressly authorize or prohibit the sale of such products (“Silent”). Note that three states, Florida, Tennessee and Virginia, have minimum age requirements for vaporizer products.

| State | Legal Status of Delta-8 | Products Intended for Ingestion | Vaporizer Products | Notes |
|---------------------|-------------------------|---------------------------------|---------------------|--|
| Alabama | Not prohibited | Yes | Silent | |
| California | Not prohibited | No | Silent (Likely 18+) | Products that expose users to cannabis smoke require a Proposition 65 warning. |
| Connecticut | Not prohibited | Yes | Silent | |
| Florida | Not prohibited | Yes | 21+ | |
| Georgia | Not prohibited | No | Silent | |
| Hawaii ¹ | Not prohibited | Yes (*See notes) | No | Hemp cannot be added as an ingredient to a food. |
| Illinois | Not prohibited | No | Silent | |

¹ On August 28, 2020, Governor Inge signed HB-1819 into law. The bill allows, for the first time, the production and sale of hemp in Hawaii. The new law defines hemp to encompass derivatives, cannabinoids, and isomers of hemp. The law also amends the definition of marijuana by excluding hemp as defined by state law, hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol. It prohibits the sale of hemp products that include synthetic cannabinoids which are defined as cannabinoids that are (1) Produced artificially, whether from chemicals or from recombinant biological agents including but not limited to yeast and algae; and (2) Not derived from the genus cannabis, including biosynthetic cannabinoids.

| <u>State</u> | <u>Legal Status of Delta-8</u> | <u>Products Intended for Ingestion</u> | <u>Vaporizer Products</u> | <u>Notes</u> |
|-------------------|--------------------------------|--|-----------------------------|---|
| Indiana | Not prohibited | Yes | Yes (permissible if no THC) | |
| Iowa ² | Not prohibited* (see notes) | Yes | No | |
| Kansas | Not prohibited | Silent | No | |
| Kentucky | Not prohibited | Yes | No | |
| Maine | Not prohibited | Yes* (see notes) | Silent | Ingestible products cannot be imported from other states if they contain "CBD" |
| Minnesota | Not prohibited | Yes* (see notes) | Yes | "CBD" cannot be added to a food, but can be sold in other ingestible forms—including oral tablets, capsules, sublinguals, and products meant to be inhaled (or vaped) |
| Missouri | Not prohibited | Silent | Silent | |
| Nebraska | Not Prohibited | No | Silent | |
| Nevada | Not prohibited | Yes | Yes | |

² Iowa passed a new hemp law, [HF 2581](#) in June, 2020. The new law does not exclude "hemp" or tetrahydrocannabinols in hemp from the state CSA; however, the new hemp law provides that "A consumable hemp product manufactured, sold, or consumed in compliance with this subsection is not a controlled substance under chapter 124 or 453B.

| <u>State</u> | <u>Legal Status of Delta-8</u> | <u>Products Intended for Ingestion</u> | <u>Vaporizer Products</u> | <u>Notes</u> |
|----------------|--------------------------------|--|--|---|
| New Jersey | Not prohibited | Yes | Silent | |
| New Mexico | Not prohibited | Yes | Yes | |
| North Carolina | Not prohibited | No | Silent* (see notes) | North Carolina is considering a prohibition on hemp-derived products intended for human inhalation. |
| North Dakota | Not prohibited ³ | Silent | Silent | |
| Ohio | Not prohibited | Yes | Yes | |
| Oklahoma | Not prohibited | Yes | Silent | |
| Oregon | Not prohibited | Yes | Yes | |
| South Dakota | Not prohibited | Silent | No | |
| Tennessee | Not prohibited | Yes | Yes (Beginning Jan. 1, 2021, minimum age will be 21+) | |
| Vermont | Not prohibited | Yes | Yes | |

³Tetrahydrocannabinols in hemp are expressly removed from CSA; however, the state independently classifies hashish as a controlled substance leaving some risk of exposure. "Hashish" is defined as the "resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin. See N.D. Rev. Stat. § 19-03.1-01(15), <https://www.legis.nd.gov/cencode/t19c03-1.pdf>.

| <u>State</u> | <u>Legal Status of Delta-8</u> | <u>Products Intended for Ingestion</u> | <u>Vaporizer Products</u> | <u>Notes</u> |
|---------------|--------------------------------|--|---------------------------|--|
| Virginia | Not prohibited | Yes | Yes (21+) | Hemp products intended for smoking must be sold in sealed packages with the required health warning. |
| Washington | Not prohibited | Yes | No ⁴ | |
| West Virginia | Not prohibited | Yes | Yes | |
| Wisconsin | Not prohibited | Yes (only if produced in WI) | Silent | |
| Wyoming | Not prohibited | Silent | Silent | |

The remaining states are states where delta-8 is unlawful, and/or the legal protections for hemp product sales are limited to state hemp registrants, and/or the retail sale of some or all hemp-derived products is prohibited.

1. Alaska⁵
2. Arizona⁶
3. Arkansas⁷
4. Colorado⁸

⁴ Per RCW 70.345.030, in Washington no person engaged in or conducting business as a retailer, distributor, or delivery seller may sell a vapor product that contains any amount of any cannabinoid or synthetic cannabinoid.

⁵ Tetrahydrocannabinols not removed from state CSA.

⁶ Tetrahydrocannabinols not removed from state CSA.

⁷ Tetrahydrocannabinols not removed from state CSA.

⁸ Status of delta-8 is unclear in Colorado due to statutory conflicts, but likely not permitted.

5. Delaware⁹
6. Idaho¹⁰
7. Louisiana¹¹
8. Maryland¹²
9. Massachusetts¹³
10. Mississippi¹⁴
11. Michigan¹⁵
12. Montana¹⁶
13. New Hampshire¹⁷
14. New York¹⁸
15. Pennsylvania¹⁹

⁹ The state definition of hemp does not include extracts, derivatives, and cannabinoids thereof and state CSA does not exclude hemp or tetrahydrocannabinols in hemp.

¹⁰ State law expressly prohibits all products containing any amount of THC.

¹¹ Delta-8 likely is not prohibited in Louisiana; however, inhalable products are prohibited; because “CBD” in food is prohibited, there is risk of regulatory confusion if another cannabinoid is added as an ingredient to a food product.

¹² Tetrahydrocannabinols not removed from state CSA.

¹³ The state definition of hemp does not include extracts, derivatives, and cannabinoids thereof.

¹⁴ The sale of all hemp-derived CBD products is prohibited. *Department of Public Safety and Department of Health Warn Public on Dangers of all CBD Products*, Miss. Dep’t. of Public Safety (October 23, 2019), <https://www.dps.ms.gov/node/473>.

¹⁵ Michigan neither expressly allows or permits inhalable products however the law is conflicting with respect to Delta-8 THC. While the hemp law specifically says all cannabinoids, isomers, and derivatives of hemp are legal, Michigan’s controlled substances policies say that Delta 8, as an isomer and derivative is not legal.

¹⁶ Tetrahydrocannabinols not removed from state CSA.

¹⁷ The state CSA excludes “hemp” from the definition of marijuana; however, the State definition of hemp is not inclusive of derivatives, cannabinoids, and isomers. See N.H. Rev. Stat. § 439-A and 318-B:2-c.

¹⁸ New York does not currently allow the addition of “CBD” to food. The sale of hemp products for us in vaping or inhalation systems is unlawful per prior The New York Department of Agriculture and Markets (“NYDAM”) guidance. Although that guidance has since been withdrawn, NYDAM has privately informed VS that such products remain unlawful.

¹⁹ Neither hemp nor tetrahydrocannabinols removed from state CSA.

16. Rhode Island²⁰
17. South Carolina²¹
18. Texas²²
19. Utah²³

²⁰ Tetrahydrocannabinols not removed from state CSA.

²¹ State law prohibits the sale of hemp-CBD vaping devices; while not expressly prohibiting other cannabinoids, there is risk of regulatory confusion.

²² Texas Admin. Code § 300.104 prohibits the manufacture, distribution, processing, or retail sale of consumable hemp products for smoking. The ban on smokable hemp products was temporarily lifted August 19, 2020 thanks to a challenge brought by several hemp companies. The temporary injunction on the state's ban is in effect through September 2, when the court will consider arguments for and against the injunction.

²³ Tetrahydrocannabinols not removed from state CSA.