

U.S. Hemp Roundtable

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February 6, 2019

VIA REGULAR MAIL

Hon. David Yost
Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Dorothy Pelanda
Director
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

Steven W. Schierholt
Executive Director
State of Ohio Board of Pharmacy
77 South High Street, Floor 17
Columbus, Ohio 43215

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Dear General Yost, Director Pelanda, and Director Schierholt:

In recent months, the Ohio Board of Pharmacy issued advisory guidance that Ohio law prohibits the retail sale of hemp-derived cannabidiol (CBD) outside of medical marijuana dispensaries due to its controlled status under federal and state law. Unfortunately, that guidance has served as the basis for troubling local and state law enforcement actions.

In recent weeks, the guidance has been unmistakably abrogated by changes in federal law. As you likely know, on December 20, 2018, President Donald J. Trump signed into law the Agriculture Improvement Act of 2018, Public Law Number 115-334 ("2018 Farm Bill"). In important part, the 2018 Farm Bill, which became effective immediately, permanently removes hemp from scheduling under the federal Controlled Substances Act (21 U.S.C. § 801). Further, it expands the definition of hemp to include derivatives, extracts, and cannabinoids, such as hemp-derived CBD.

The primary effect of the 2018 Farm Bill—the deletion of hemp from scheduling under federal drug abuse control laws—reverberates in Ohio. Pursuant to Ohio Code section 3719.43, enactment of the 2018 Farm Bill causes the automatic removal of hemp from scheduling under Ohio's controlled substances laws.

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In full, Ohio Code section 3719.43 provides:

When pursuant to the federal drug abuse control laws the attorney general of the United States adds a compound, mixture, preparation, or substance to a schedule of the laws, transfers any of the same between one schedule of the laws to another, or removes a compound, mixture, preparation, or substance from the schedules of the laws then such addition, transfer, or removal is automatically effected in the corresponding schedule or schedules in section 3719.41 of the Revised Code, subject to amendment pursuant to section 3719.44 of the Revised Code (emphasis added).

The 2018 Farm Bill carries the weight of supreme federal law. The signature of President Trump is sufficient to effectuate the automatic removal of hemp under Ohio's controlled substances laws under Ohio Code section 3719.43. The same result would occur under the amended language of Ohio Code section 3719.43, which does not take effect until 2020.

In addition to its federally-legal status, hemp has been declared safe, non-toxic, and lacking any abuse potential or risk to public health by the World Health Organization and the U.S. Food and Drug Administration. Millions of Americans, and likely thousands of Ohioans, take hemp-derived CBD for general health and wellness, and the 2018 Farm Bill ensures they can continue doing so without risk of penalty.

Further, we understand that the Ohio legislature will soon consider legislation that would clarify the legality of the retail sale of hemp-derived CBD in Ohio. Given the enactment of the 2018 Farm Bill and its impact on Ohio's controlled substances laws, we respectfully request your offices to stand down on any efforts to prosecute, embargo, or otherwise enforce against the possession, use, or retail sale of hemp-derived CBD until the legislature acts.

If you have any questions regarding our interpretation of the laws cited herein, please do not hesitate to contact us directly. We look forward to your timely attention to this matter and would appreciate the opportunity to further discuss this subject with you.

Sincerely,

Jonathan S. Miller, Esquire
Nolan M. Jackson, Esquire
Counsel for U.S. Hemp Roundtable, Inc.