

State Laws on Retail CBD Sales

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Issue

In Connecticut, are retail CBD sales legal (as opposed to sales through the [medical marijuana program](#))? In states that have not legalized recreational marijuana, is the retail sale of CBD legal?

(This report only discusses state laws. CBD-based products (namely food, dietary supplements, and cosmetics) are also subject to federal laws, which are discussed in OLR Report [2019-R-0021](#). It appears that some state laws permit the retail sale of products that are prohibited under federal law.)

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Under Connecticut law, a person does not need a license to sell low THC hemp-derived CBD products at retail, as long as the person is not processing or manufacturing hemp into CBD. The CBD need not be sourced from within Connecticut, but must be legally acquired. (“Low THC” means up to 0.3% THC, on a dry weight basis.)

Cannabinoid: *Cannabinoids are the naturally-occurring, biologically active, chemical constituents in hemp and marijuana, both of which are varieties of cannabis. Examples include CBD, THC, and cannabitol.*

CBD: *cannabidiol (“CBD”) is a cannabinoid that is chemically similar to THC, but does not have the same psychoactive effects. One CBD-based medication has federal approval for seizure treatment. Researchers continue to investigate whether CBD may also help people manage anxiety, insomnia, and chronic pain.*

THC: *delta-9-tetrahydrocannabinol (“THC”) is a cannabinoid that is responsible for producing psychoactive effects.*

Hemp: *Under Connecticut and federal law, “hemp” is the plant Cannabis sativa L. and any part of it, including seeds and derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3% on a dry weight basis ([7 U.S.C.A. § 1639o](#)).*

If a person in Connecticut is converting hemp into a product such as CBD that will be ingested, inhaled, absorbed, or otherwise internally consumed (a “consumable”), he or she must obtain a Department of Consumer Protection (DCP) manufacturer of hemp consumables license, regardless of where the hemp was grown. If a person is not processing hemp but is only adding CBD to a consumable, he or she must comply with the appropriate food manufacturing laws.

Retail CBD sales are legal in a number of states that have not legalized recreational marijuana. In these states, retail CBD sales are subject to varying restrictions. As is the case in Connecticut, people growing hemp generally must obtain a state license, as must people who process raw hemp into products such as CBD. However, only some states specifically subject CBD and products made from it to consumer protection-based testing and labeling requirements (e.g., Indiana and Utah). Some states only permit CBD extracts to be sold at retail (e.g., Indiana); other states (e.g., Kentucky and Ohio) allow the retail sale of products to which CBD has been added (e.g., food). Below we outline the status of retail CBD sales in select states, chosen to show the variety of state policies: Indiana, Kentucky, Ohio, and Utah.

Connecticut

As of May 9, 2019, the retail sale of hemp-derived CBD is legal under state law. [PA 19-3](#), which requires the state Department of Agriculture (DoAg) commissioner to establish and operate a hemp research pilot program in Connecticut, specifies that (1) hemp-derived CBD with a low THC level is not a controlled substance or adulterant and (2) products containing CBD that are intended for ingestion are regulated as food, not controlled substances or adulterated products.

[PA 19-3](#) does not create a regulatory structure for the retail sale of hemp-derived CBD. Instead, it establishes licensing requirements, qualifications, and fees for hemp growers, processors, and manufacturers. It requires DoAg to license and regulate [growers and processors](#) and DCP to license and regulate [manufacturers](#). (A manufacturer converts hemp into a product intended for human consumption (i.e., a “consumable”).) The new law also establishes inspection and testing requirements for growers and processors, as well as independent testing requirements for manufacturers, to ensure that hemp plants and products comply with state and federal requirements. If a person is not processing hemp but is only adding CBD to a consumable, he or she must only comply with the appropriate food manufacturing laws.

Under Connecticut law, it is illegal for a person to market consumable hemp products, including CBD, by claiming they have health impacts, medical effects, or physical or mental benefits.

Other States

Indiana

In Indiana, one may sell a “low THC hemp extract” (e.g., CBD) only if its THC content is 0.3% or less on a dry weight basis and the distributor complies with various testing and labeling requirements. According to the Department of Health’s Food Protection Program, state law does not permit the retail sale of goods to which CBD has been added (e.g., food). (Currently, it [appears](#) that hemp is not cultivated in Indiana for commercial purposes.)

Indiana law requires that before being distributed, CBD be tested by an independent laboratory to determine its THC and CBD content. Additionally, before hemp extracts may be sold at retail, the packaging must be labeled with a scannable bar or QR code that gives consumers access to specified information, including the manufacturer, batch number, expiration date, and ingredients ([Ind. Code §§ 24-4-21-4; 24-4-22-1 et seq.](#) and [35-48-1-17.5](#)).

Kentucky

In Kentucky, the retail sale of “publicly marketable hemp products,” including CBD and products containing it, is legal if the products contain no more than 0.3% THC on a dry weight basis. To process (convert hemp into marketable form) or market (promote or sell) hemp or its viable seeds, leaves, or floral materials, a person must obtain a [hemp processor license](#) from the state’s Department of Agriculture.

Selling CBD and products containing it does not require a Department of Agriculture license, because CBD is considered a publicly marketable hemp product. According to the Department of Agriculture, publicly marketable hemp products must comply with the applicable state laws concerning manufacture and labeling (for many CBD products, these would be the state’s food or cosmetic [laws](#)) ([KY. Rev. Stat. Ann. §§ 218A.010\(28\)\(e\)](#) and [260.850 et seq.](#); [302 Ky. Admin. Regs. 50:020 et seq.](#)).

Ohio

In Ohio, the retail sale of “hemp products” is legal if they contain no more than 0.3% THC on a dry weight basis and have been tested by the [Department of Agriculture](#) for safety and accurate labeling. Ohio law specifically includes in the definition of legal “hemp products” CBD-based cosmetics, dietary supplements, and food.

(Currently, hemp is [not cultivated](#) in Ohio for commercial purposes. Such production is expected to begin in 2020. People processing hemp into CBD will need a hemp processing license from the

Department of Agriculture. Ohio's law only passed in July 2019, so there are no implementing regulations yet. The Department of Agriculture is responsible for establishing testing and labeling requirements for hemp products ([Ohio Rev. Code Ann. § 928.01 et seq.](#).)

Utah

Utah law allows the retail sale of hemp-derived “cannabinoid products,” including CBD. CBD products sold at retail must be (1) processed into a medicinal dosage form and (2) contain less than 0.3% THC on a dry weight basis. “Medicinal dosage form” includes, among others, tablets; concentrated oil; and sublingual, topical, and transdermal preparations. It is a violation of state law to add CBD to food products or to label CBD products with medical claims. CBD products must comply with various registration, testing, and labeling requirements.

In order to process hemp into CBD, one must obtain a [processor license](#) from the Department of Agriculture and Food. Among other things, processors must explain how they will extract CBD from hemp, to ensure the final product is safe for consumers. Additionally, each retail CBD product must be registered with the department. Before a product is registered, it must be tested by an independent laboratory to analyze its cannabinoid profile, as well as checked for contaminants (e.g., solvents, pesticides, and microbes).

CBD products must be labeled according to state law, and the proposed label must be approved by the department before the product can be registered. Among other things, the label must have a scannable bar or QR code or website that gives consumers access to specified information, including the batch number, expiration date, and information on the results of the required laboratory analysis ([Utah Code Ann. § 4-41-101 et seq.](#); [Utah Admin. Code r. 68-26-4](#), [r. 68-25](#) and [r. 68-26](#)).

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