Hemp, CBD, and Marijuana: What's the Difference?

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Posted By: Stacy C. Gerber Ward & Jeffrey E. Mark

Practice Area: Business and Corporate Law & School Law & Start-up and Next Level Business Planning & Hemp, CBD & Cannabis

The increasing hype and prevalence of hemp (also referred to as industrial hemp), CBD, and marijuana products has caught the attention of businesses in Wisconsin. While the prospect of entering this marketplace is enticing, it is crucial for businesses to do their homework and understand the relationships between hemp, CBD, and marijuana and what laws and regulations apply to products derived from these substances.

Hemp and marijuana are two types of cannabis plants (specifically, *Cannabis sativa L.*). Cannabis contains numerous chemical compounds, but the two most notable compounds found in cannabis are delta-9-tetrahydrocannabinol ("*THC*") and cannabidiol ("*CBD*"). In the legal and regulatory context, hemp and marijuana are generally distinguished based on their THC content.[1] Hemp contains very little THC as compared to marijuana. This difference is significant because THC is psychoactive, which means that it affects cognitive functions and behavior. In other words, THC causes the "high" associated with marijuana. Unlike marijuana, hemp contains negligible amounts of THC.

Hemp. Hemp plants and extracts from hemp have a wide range of uses. For instance, hemp can be used to produce paper, textiles, food products, paint, fuel, and CBD products. Though hemp does not have a psychoactive effect, hemp was illegal under federal law until 2018 because the Controlled Substances Act did not distinguish between hemp and marijuana.[2] That changed with the enactment of the Agriculture Improvement Act of 2018 (commonly referred to as the "*Farm Bill*"), which (1) differentiated between hemp and marijuana and (2) legalized hemp and hemp-derived products. The Farm Bill empowers states to regulate the production and sale of hemp products under the oversight of the U.S. Department of Agriculture. Wisconsin and all but nine states have established a hemp program.[3] Wisconsin's hemp program provides a regulatory framework for production and sale of hemp and hemp-derived products within the state. Current and prospective Wisconsin hemp businesses must comply with Wisconsin's hemp program.

CBD. CBD can be extracted from hemp or marijuana plants.[4] CBD (unlike THC) is not psychoactive and does not cause a high, but CBD is believed to produce a calming effect in addition to myriad other health benefits. The increasing popularity of CBD has driven businesses to produce a wide array of CBD products such as lotions, oils, pet treats, soaps, candles, dietary supplements, vape juices and oils, and CBD infused foods and beverages. Under federal law, hemp-derived CBD was legalized along with hemp by the Farm Bill. Nevertheless, the U.S. Food & Drug Administration ("*FDA*") has regulatory authority over certain CBD products such as those that make therapeutic claims, or food containing CBD. CBD businesses should track the development of relevant FDA regulations. At the state level, CBD products fall under the umbrella of Wisconsin's hemp regulations because CBD is a hemp-derivative. Wisconsin CBD businesses therefore must stay apprised of and comply with applicable regulations under Wisconsin's hemp program.

Marijuana. Marijuana is psychoactive because of its THC content, and it is used for both recreational and medicinal purposes. Common methods of using marijuana include smoking, vaping, or ingesting in the form of edibles, such as baked goods and candies. While a growing number of states have legalized or are considering legalization of marijuana for medicinal and recreational purposes, marijuana remains illegal for all uses under federal law as a Schedule I substance under the Controlled Substances Act. Marijuana is also presently illegal in all forms in Wisconsin, although provisions to legalize medicinal marijuana were included in the governor's proposed 2019-2021 budget. Nevertheless, Wisconsin businesses should stay tuned because there appears to be growing support for the legalization of marijuana in Wisconsin.[5]

This *Legal Update* is intended solely to present an overview of hemp, CBD, and marijuana and the corresponding legal landscape. Wisconsin businesses (and businesses in any other state) should pay careful attention to evolving laws and regulations regarding these matters.

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[1] Under the Agriculture Improvement Act of 2018, hemp is defined as cannabis with a THC concentration of 0.3 percent or less, and cannabis with a higher concentration of THC (e.g. greater than 0.3 percent) is considered to be marijuana.

[2] The Controlled Substances Act defined marijuana broadly to include hemp, and hemp was therefore considered to be a Schedule I substance—just like marijuana—prior to the Farm Bill.

[3] *See State Industrial Hemp Statutes*, National Conference of State Legislatures (Feb. 1, 2019). States lacking industrial hemp programs include Connecticut, Georgia, Mississippi, Louisiana, Texas, Ohio, Iowa, South Dakota, and Idaho. Wisconsin's Industrial Hemp Pilot Program took effect early in 2018 and was established under 2017 Wisconsin Act 100.

[4] When referring to CBD products, this article is only referring to hemp-derived CBD.

[5] In February of 2019, Tony Evers (Wisconsin's governor) proposed legalization of medicinal marijuana and decriminalizing the possession and smoking of small amounts of marijuana.

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