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Hemp Legally Speaking

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How Do I Grow Hemp in Ohio?

Soil. Seeds. Sunlight. A license – AND A LOT OF HARD WORK.

With the explosion of the hemp-derived product industry around the United States, including the increasingly popular cannabidiol (CBD) oil product market, it is no surprise Ohioans with a plot of land and ambition are thinking about growing hemp. This article focuses on the federal and state laws governing hemp cultivation and provides an update on where the state of Ohio stands on its proposed hemp cultivation and processing rules.

Many people are aware that the recently enacted 2018 Farm Bill fully legalizes hemp and hemp-derived products. The law also redefines "hemp" to generally mean all parts of the cannabis plant with less than 0.3% tetrahydrocannabinol (THC), including cannabinoids like CBD. Note that THC is the chemical component of cannabis plants that gives users the feeling of euphoria. However, the 2018 Farm Bill does not explicitly preempt state law. For this reason, states like Ohio are able to treat hemp and hemp products differently under state law.

Until recently, Ohio's state law definition of "marijuana" captured hemp products, like CBD oil, regardless of their THC content. Thus, the state's position was that hemp and hemp-derived products could only be sold in licensed medical marijuana dispensaries under the state's medical marijuana control program.

However, with the efforts of our lobbying group, CivicPoint, Ohio eventually passed Senate Bill 57, legalizing hemp and hemp-derived products as of September 30, 2019. The new law expressly provides that "… [a]ny person may, without a hemp cultivation license or hemp processing license, possess, buy, or sell hemp or a hemp product." O.R.C. 928.02.

But how about those hemp cultivation and hemp processing licenses? While the 2018 Farm Bill allows states (and Native American tribes) to regulate the production of hemp in their jurisdictions through regulatory plans (and issue licenses as part of

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those plans), it also sets the minimum requirements that those plans must include. The United States Department of Agriculture (USDA) recently elaborated on the requirements in an Interim Final Rule, which became effective October 31, 2019.

Ohio has been going through its rulemaking process to come up with a regulatory framework by which Ohioans must abide to procure a hemp cultivation and hemp processing license. As of November 14, 2019, these rules were filed with The Joint Committee on Agency Rule Review, a legislative committee consisting of members from the Ohio Senate and Ohio House. There is a public hearing scheduled December 18, 2019, on these rules and the hope is that they will be finalized in early 2020 to allow for hemp cultivation beginning in the spring of 2020. If they are approved, Ohio will likely submit the rules as a regulatory plan for approval by the USDA.

Those interested in gaining a hemp cultivation or processing license should begin to consider where and how they plan to grow their product. The Ohio Department of Agriculture has a resources page, and the proposed amended rules for cultivators are available here; rules for processors are available here. Our firm has assisted numerous hemp licensees in other states and is well-equipped to provide counsel to prospective Ohio hemp licensees as well.

The annual application window for a cultivation license would be from November 1 to March 31. The application requires that the following information be submitted for each growing location:

- The global position system coordinates;
- The physical address;
- Maps for each field, greenhouse, building, or storage facility where hemp will be cultivated or stored; and
- Number of outdoor acres, indoor square footage, and number of plants intended to be planted.

The cultivator application fee is proposed to be $100 for each license application, and the annual license application fee is proposed to be $500 for each growing location. All applicants and key participants must undergo a criminal background check.

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Licensed cultivators may not plant or grow hemp in an outdoor growing location of less than one-quarter acre or an indoor growing location of less than one thousand square feet unless prior approval is received in writing by the Ohio Department of Agriculture.

Our Frost Brown Todd hemp team has been advising clients in the industrial hemp business for years. We would be happy to provide counsel to anyone interested in this budding industry.

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