



October 14, 2024

To: 2024 Special Committee on Medical Marijuana

From: Leighann Thone, Senior Research Analyst

Re: Legal Status of Marijuana, Cannabidiol, and Delta-8 THC in U.S. States

This memorandum summarizes the legality of marijuana, cannabidiol (CBD), and delta-8 tetrahydrocannabinol (THC) in U.S. states, including Kansas.

Legal Status of Marijuana

Medical Use

As of October 2024, 38 states and the District of Columbia have comprehensive medical marijuana programs. Nebraska residents will vote on the issue in November 2024. The laws in these states generally meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains or products; and allowance for either smoking or vaporization of marijuana products, plant material, or extract.

Recreational Use

As of October 2024, 24 states and the District of Columbia have legalized the recreational use of marijuana. States with adult-use marijuana have legalized the possession of specific quantities of marijuana by individuals aged 21 and older and established state-administered regulatory schemes for the sale of marijuana. Florida residents will vote on the issue in November 2024.

Decriminalization

Marijuana decriminalization differs from legalization. States and municipalities that have decriminalized marijuana have removed or lowered criminal penalties for possession and use, such as removing the possibility of jail time. Civil penalties may still be applied, such as receiving a ticket with a fine. As of October 2024, 31 states and the District of Columbia have decriminalized cannabis.

Federal Rescheduling of Cannabis

On May 21, 2024, the U.S. Department of Justice Drug Enforcement Administration (DEA) published a [notice of proposed rulemaking](#) to transfer marijuana from Schedule I to Schedule III under the Controlled Substances Act. Schedule I drugs, substances, or chemicals, such as heroin and lysergic acid diethylamide (LSD), are defined as drugs with no currently accepted medical use and a high potential for abuse. Schedule III drugs, substances, or chemicals, such as Tylenol with codeine or ketamine, are defined as drugs with a moderate-to-low potential for physical or psychological dependence and a currently accepted medical use. The public comment period on the proposed rule closed on July 22, 2024, and a final rule is expected to be published by the end of the year.

In 2018, the U.S. Food and Drug Administration (FDA) approved Epidiolex, which contains a purified form of CBD, for the treatment of seizures associated with certain conditions; the drug is available only with a prescription from a licensed health care provider. Classifying marijuana as a Schedule III substance would allow pharmacies to dispense the prescription drug. The DEA and Kansas rules and regulations already permit pharmacists to dispense Schedule III, IV, and V substances. There would be no impact on the legal status of recreational marijuana.

Legal Status of CBD

Cannabidiol, or CBD, is typically derived from hemp or manufactured in a laboratory and is not considered a controlled substance. CBD is one of hundreds of cannabinoids and is non-intoxicating on its own. Research in animals and humans have suggested CBD can assist with anxiety, insomnia, chronic pain, and addiction to substances such as tobacco and heroin.

In December 2015, the DEA eased regulatory requirements imposed by the Controlled Substances Act for those conducting FDA-approved clinical trials on CBD. The Agricultural Improvement Act of 2018 (2018 Farm Bill) removed hemp and all byproducts of cannabis with less than 0.3 percent THC from the definition of marijuana in the Controlled Substances Act. In February 2023, the DEA released a letter stating that the 2018 Farm Bill did not intend to legalize cannabis products that could be obtained only synthetically, regardless of their THC content. In 2024, however, the Fourth Circuit Court of Appeals ruled that all hemp-derived products, including those that undergo a chemical process during manufacturing, are legal under federal law.

While the federal law makes CBD derived from hemp with less than 0.3 percent THC permissible, states may enact their own laws to regulate its consumption. Some states, such as Indiana and Wyoming, adhere to the federal guideline and allow for CBD derived from hemp or cannabis as long as it contains no more than 0.3 percent THC. Other states, such as Georgia and Texas, allow for CBD containing a higher, but still limited, amount of THC for medical consumption. Idaho specifically requires all CBD to contain no traceable THC content.

Kansas: Claire and Lola's Law

In Kansas, changes to law in 2019 SB 28 provide an affirmative defense to a prosecution for possession of any CBD treatment preparation if the person has a debilitating medical condition or is the parent or guardian of a minor child with such condition and:

- Is possessing a CBD treatment preparation being used to treat such condition;
- Has simultaneous possession of a letter that:
 - Must be shown to a law enforcement officer on request;
 - Is dated within the preceding 15 months and signed by the Kansas licensed physician who diagnosed the qualifying condition;
 - Is on the diagnosing physician’s letterhead; and
 - Identifies the person or minor child as such physician’s patient and identifies the patient’s qualifying condition (KSA 21-5706).

Claire and Lola’s Law, enacted in the same bill, prevents state agencies and political subdivisions from initiating child-removal proceedings or protection actions based solely upon the parent’s or child’s possession or use of CBD treatment preparation (KSA 65-6235).

Legal Status of Delta-8 THC

Delta-8 tetrahydrocannabinol (delta-8 THC) is one of more than 100 cannabinoids found in the *Cannabis sativa* plant and shares similar molecular structures to delta-9 THC, the component responsible for the intoxication people may experience from using cannabis. The “high” produced by delta-8 THC is generally referred to as milder than that produced by delta-9 THC, and delta-8 THC is typically used to ease stress, depression, or chronic pain with effects including pain reduction, sleep support, increased relaxation, and improved appetite.

Concentrated amounts of delta-8 THC usually are made from hemp-derived CBD; the natural amount of delta-8 THC in hemp is very low, so additional chemicals are needed to synthetically convert other cannabinoids in hemp, such as CBD, into delta-8. Much of the delta-8 THC available for retail sale is synthetically produced with CBD from hemp plants.

On May 19, 2022, the Ninth Circuit ruled that delta-8 THC and similar hemp-derived cannabinoids are legal as they fit under the statutory definition of hemp in the 2018 Farm Bill, and this ruling was reaffirmed in 2024 by the Fourth Circuit Court of Appeals. However, some states have enacted laws regulating, restricting, or banning delta-8 THC.

Whether Cannabis, Cannabidiol, and Delta-8 THC are Legal, by State

State	Medicinal Use	Adult-use	Decriminalized	CBD	Delta-8
Alabama	Yes	No	No	Medical use	Yes, unregulated
Alaska	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Arizona	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Arkansas	Yes	No	No	Medical use	Yes ¹
California	Yes	Yes	Yes	Yes	Only through

State	Medicinal Use	Adult-use	Decriminalized	CBD	Delta-8
					cannabis dispensaries
Colorado	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Connecticut	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Delaware	Yes	Yes	Yes	Medical use	No
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida	Yes	No ²	No	Hemp-derived only	Yes, regulated
Georgia	CBD/Low THC only	No	No	Medical use	Yes, regulated
Hawaii	Yes	No	Yes	Medical use	No
Idaho	No	No	No	Yes ³	No
Illinois	Yes	Yes	Yes	Yes	Yes
Indiana	CBD only	No	No	Yes	Yes, regulated
Iowa	CBD/Low THC only	No	No	Medical use	Restricted
Kansas	No	No	No	Medical use	Restricted
Kentucky	Yes ⁴	No	No	Hemp-derived only	Yes, regulated
Louisiana	Yes	No	Yes	Yes	Restricted
Maine	Yes	Yes	Yes	Yes	Yes, unregulated
Maryland	Yes	Yes	Yes	Yes	Yes, regulated
Massachusetts	Yes	Yes	Yes	Yes; medical use for ages 18-20	No
Michigan	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Minnesota	Yes	Yes	Yes	Medical use for CBD oil	Yes, regulated
Mississippi	Yes	No	Yes	Medical use	No

1 In September 2023, a federal judge in Arkansas blocked the enforcement of Act 629 ([2023 SB 358](#)), which prohibited the production and sale of products containing delta-8, delta-9, and delta-10 THC.

2 Florida citizens will vote on legalizing adult-use marijuana sales in the November 2024 election.

3 Idaho law specifies that CBD and CBD products must contain zero THC and be derived from the mature stalks of the plant ([Idaho Code § 37-2701](#)).

4 Kentucky's medical marijuana program ([2023 SB 47](#)) was signed into law on March 31, 2023, and will become effective on January 1, 2025.

State	Medicinal Use	Adult-use	Decriminalized	CBD	Delta-8
Missouri	Yes	Yes	Yes	Medical use for CBD oil	Yes, unregulated
Montana	Yes	Yes	Yes	Yes	No
Nebraska	No ⁵	No	Yes	Hemp-derived only	Yes, regulated
Nevada	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
New Hampshire	Yes	No	Yes	Medical use	Restricted
New Jersey	Yes	Yes	Yes	Yes	Yes, unregulated
New Mexico	Yes	Yes	Yes	Medical use	Yes, unregulated
New York	Yes	Yes	Yes	Yes	No
North Carolina	CBD only	No	Yes	Medical use	Yes, unregulated
North Dakota	Yes	No	Yes	Medical use	No
Ohio	Yes	Yes	Yes	Yes	Yes, unregulated
Oklahoma	Yes	No	No	Medical use	Yes
Oregon	Yes	Yes	Yes	Yes	Only through cannabis dispensaries
Pennsylvania	Yes	No	No	Medical use	Yes
Rhode Island	Yes	Yes	Yes	Medical use	No
South Carolina	CBD/Low THC only	No	No	Medical use	Yes ⁶
South Dakota	Yes	No	No	Hemp-derived only	No
Tennessee	CBD/Low THC only	No	No	Medical use	Yes, regulated
Texas	CBD/Low THC only	No	No	Medical use	Yes ⁷
Utah	Yes	No	No	Medical use	Restricted

5 Nebraska citizens will vote on two measures related to medical cannabis in the [November 2024 election](#). The Nebraska Medical Cannabis Patient Protection Initiative (Initiative Measure 437) would legalize medical marijuana, and the Nebraska Medical Cannabis Regulation Initiative (Initiative Measure 438) would establish a regulatory framework for medical cannabis production and sales.

6 South Carolina has not explicitly banned delta-8 THC, but the South Carolina Department of Health and Environmental Control sent a [letter](#) to businesses in January 2024 indicating that hemp products, including CBD and delta-8 THC, are not approved for use in food or drinks.

7 In 2020, the Texas Department of State Health Services (DSHS) attempted to classify delta-8 THC as a Schedule I controlled substance, but this was temporarily enjoined by a Texas judge in November 2021 and upheld in September 2023 by the Third Court of Appeals. DSHS has appealed, and the case is pending with the Texas Supreme Court.

State	Medicinal Use	Adult-use	Decriminalized	CBD	Delta-8
Vermont	Yes	Yes	Yes	Yes	No
Virginia	Yes	Yes	Yes	Yes	No ⁸
Washington	Yes	Yes	Yes	Yes	No
West Virginia	Yes	No	No	Medical use	Yes, unregulated
Wisconsin	CBD/Low THC only	No	No	Medical use	Yes, unregulated
Wyoming	CBD only	No	No	Yes	No

8 Delta-8 THC is effectively banned in Virginia by [2023 SB 903](#), which limits the amount of THC that can be included in a hemp product or industrial hemp extract to 0.3 percent and two milligrams per package, which is much lower than in most products available for retail sale. The bill also imposes a civil penalty of \$10,000 for various violations of the bill, including manufacturing, selling, or offering for sale industrial hemp extract without a permit or food and drink containing more than 2 milligrams of THC per package.