





WHAT IS CBD OIL

- ★ Cannabidiol, commonly called CBD oil, is a chemical compound of the cannabis plant. Tetrahydrocannabinol, known as THC, is also a chemical compound of the cannabis plant. The difference between the two is that THC is intoxicating while CBD is not. Many products labelled "CBD-only" may actually contain THC. The product remains unregulated by the U.S. Food and Drug Administration, leading to wide discrepancies in the products' ingredients.
- ★ CBD is alleged to have health benefits of pain relief, easing inflammation, anxiety management, and treatment of epilepsy without the psychoactive
- ★ Both THC and CBD come mainly from the leaves, resin, or flowering tops of the plants, not the stem. Nearly all products that contain THC also contain CBD, but CBD is often sold and used on its own. And hemp oil – found in soaps, cosmetics and other products – is not the same as CBD oil. Hemp oil comes primarily from seeds of the plant, and the seeds contain only very small amounts of CBD.



WHAT IS THE ISSUE?

<https://www.nbcdfw.com/investigations/North-Texas-Stores-Raided-CBD-Products-Seized-507386561.html>



WHAT IS THE ISSUE?

- There are conflicting laws, vaguely worded laws, and laws that are not being enforced that creates confusion on the legal status of CBD oil.

STATE LAW

POSSESSION OF CONTROLLED SUBSTANCE

SECTION 481.113 AND 481.116 OF THE TEXAS CONTROLLED SUBSTANCES ACT

- Under Texas law, possession or delivery of any amount of THC is a felony, as it is a penalty group 2 drug

COMPASSIONATE USE ACT

- In 2015, Texas lawmakers approved a restrictive medical cannabis law that allows dispensaries licensed by DPS to make and sell low – THC CBD oil. But there are only 3 dispensaries to date allowed to obtain licenses, and they may only sell to patients suffering from a rare form of epilepsy (intractable epilepsy) who have two doctor's recommendations and are registered with the state as a CBD patient.

**TO DATE, TEXAS HAS NOT
LEGALIZED HEMP
(OR HAVE THEY.... MORE TO
COME....)**

FEDERAL LAW

The Administrator of the Drug Enforcement Administration (DEA) issued a final order placing Marijuana extract into Schedule I pursuant to the scheduling provisions of the United States Controlled Substances Act effective January 2017. Marijuana extract means an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin obtained from the plant. This includes CBD oil.

However, excluded from the definition is the mature stalks of such plant, fiber produced from such stalks, oil or ... any other... derivative, mixture or preparation of such mature stalks. Presently, the DEA considers the extraction process using only the excluded parts of the cannabis plant to be not practical.

✱ So this would mean that CBD oil is a schedule 1 drug, not found in a penalty group, making it a misdemeanor to possess or deliver under section 481.119 of the Texas Health and Safety Code (possession/delivery of a miscellaneous substance).

✱ But there is more...

2018 FARM BILL

✱ On December 20, 2018, President Trump signed the Agricultural Improvement Act of 2018, which is commonly known as the 2018 Farm Bill. This Act removes hemp from the definition of marijuana in section 102 (16) of the Controlled Substances Act, 21 U.S.C. section 802(16). It also creates an exception for tetrahydrocannabinols in hemp. This clarifies that, at least federally, hemp and hemp products are legal, so long as the THC concentration does not exceed 0.3 percent.

✱ This spurred the Food and Drug Administration (FDA) into action....

FDA

✱ The FDA issued a statement the same day the 2018 Farm Bill became effective as a reminder that it continues to have the authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug and Cosmetic Act and that it will treat those products as it does any other FDA-regulated product. Cannabis and cannabis-derived products that will be promoted for use in the diagnosis, cure, mitigation, treatment or prevention of diseases (such as cancer, Alzheimer's disease, psychiatric disorders and diabetes) are considered new drugs and must go through the FDA approval process before they are marketed. Selling unapproved products with unsubstantiated therapeutic claims violates the Food, Drug and Cosmetic Act.

✱ The FDA claims they will take enforcement action needed to protect public health against companies illegally selling cannabis and cannabis-derived products that can put consumers at risk and are being marketed in violation of the FDA's authorities.

SO NOW...

- ✱ Products that contain THC or CBD cannot be sold as dietary supplements under the FD&C Act.
- ✱ It is illegal, in interstate commerce, to sell a food to which THC or CBD has been added under the FD&C Act.



- ✱ The FDA also cautioned that marketing hemp-derived CBD or THC products as or in dietary supplements is unlawful because both CBD and THC are active ingredients in FDA-approved drugs and were the subject of clinical investigations before they were marketed as foods or dietary supplements. The FDA tempers that warning by noting that it is only likely to initiate an enforcement action if CBD products are marketed with therapeutic claims or if they pose a threat to public health.

- ✱ As with any other product, distributors and sellers of hemp products still must comply with state laws.



- ✱ As we speak, the United States Congress is debating about whether marijuana should be reclassified and possibly be a schedule 3 drug designation.



SO WHAT ABOUT TEXAS....?

- ✱ Texas courts have been silent so far
- ✱ The AG's office has been silent so far
- ✱ TDCAA believes it is illegal outside the Compassionate Use Act, although enforcement has been scant and doesn't appear to have been tested in court.
- ✱ There are several marijuana bills pending in the legislature now....

SO WHAT ABOUT TEXAS....?



SO WHAT ABOUT TEXAS....?

- ✱ Williamson County has publicly stated that retail CBD is legal in Texas if its sold as part of a product containing no detectable level of THC.
- ✱ And Austin PD says retail CBD is legal if it contains no more than 0.3% THC
- ✱ BUT, Tarrant County has stated it is illegal and they will prosecute
- ✱ DPS has stated it considers a product with any detectable level of THC to be illegal in Texas outside the Compassionate Use Act

✱ But the biggest issue in Texas so far seems to be enforcement which so far seems to make CBD's legality moot.

✱ The retail CBD shops seem to be running unchecked and its popularity keeps growing.

✱ Texas Department of State Health Services has slowed the rollout of this previous proposal while it consults with a number of other governmental entities including law enforcement to devise a broader framework for regulation of foods, drugs and cosmetics that are sold at retail and advertise CBD among their ingredients



✱ The Texas Department of State Health Services has posted an amendment to the state's schedule of controlled substances that will remove "hemp" from Schedule 1, bringing Texas' schedule into compliance with the 2018 Federal Farm Bill. That de-scheduling excludes from the schedules' current definitions of marijuana what the feds now define as "hemp" namely, the plant *Cannabis sativa L.* and any part of that plant, including the seeds there-of and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 %.

✱ This de-scheduling occurred on March 15th and became effective 21 days later, which means that on Friday, April 5, 2019 it became effective.



✱ But the legislature still has to change the definition in the Health and Safety code. So for now, it may become legal for some (scheduled) purposes but not for other (criminal) purposes until the definitions are changed.

✱ The only form of CBD oil that is FDA approved is a drug called Epidiolex which treats 2 rare forms of seizures. It is a prescription you get from a pharmacy.

✱ There are currently more than 100 bills impacting various criminal drug laws in Texas, so what will become law is yet to be determined....



