

**Office of the District Attorney**  
FIFTH JUDICIAL CIRCUIT OF ALABAMA  
Chambers, Macon, Randolph, and Tallapoosa Counties



Office: (256) 234-3741  
Fax: (256) 329-8221

P.O. Box 997  
Alexander City, Alabama 35011

**D. JEREMY DUERR**  
DISTRICT ATTORNEY

July 11, 2019

Vendors and Merchants in Tallapoosa County

Dear Sir or Madam:

I have received multiple communications regarding alleged possession and sale of marijuana or marijuana-like substances and alleged possession and sale of cannabidiol (CBD) products at various locations across Tallapoosa County. Because there has been confusion surrounding recent legislation concerning marijuana, hemp, and CBD products, I am writing, in the interest of clarity, to inform you of my legal opinion and the opinions of the Sheriff and Chiefs of Police who have signed this letter. As of the date of this letter, the manufacturing, cultivating, distributing, selling, or possessing any marijuana, marijuana derivatives, components, and extracts, substances containing tetrahydrocannabinol (THC), substances purporting to be hemp or industrial hemp, and CBD products are illegal in Alabama, subject to very narrow, specific exceptions and defenses as outlined below.

Currently, cultivation, distribution, sale, or possession of marijuana is illegal under Alabama law.<sup>1</sup> If a plant or plant material contains THC and does not meet the definition of hemp, it is legally treated as marijuana and it is illegal.<sup>2</sup> Hemp is defined as any part of the cannabis plant that has a delta-9 tetrahydrocannabinol (THC) concentration of less than 0.3% by weight, AND that is either possessed on premises and by a grower licensed by the State of Alabama, OR is possessed in compliance with a USDA approved state regulatory plan.<sup>3</sup> There is no USDA approved state plan at this time. Therefore, cultivation, distribution, sale, or possession of any plant material containing THC is illegal under Alabama law unless the Alabama Department of Agriculture and Industries has previously approved your premises and properly licensed you as a grower.

Similarly, CBD is an extract from the cannabis plant that contains a THC level of less than 0.3%.<sup>4</sup> CBD is illegal to manufacture, distribute, sell, or possess; however, certain persons may have an affirmative defense to possessing the substance if they are under a Doctor's care for certain

<sup>1</sup> See § 13A-12-217, § 13A-12-218, § 13A-12-211, § 13A-12-213, § 13A-12-214, Ala. Code 1975

<sup>2</sup> § 20-2-2(14), Ala. Code 1975

<sup>3</sup> § 2-8-381(4), Ala. Code 1975

<sup>4</sup> § 13a-12-214.2, § 13A-12-214.3, Ala. Code 1975

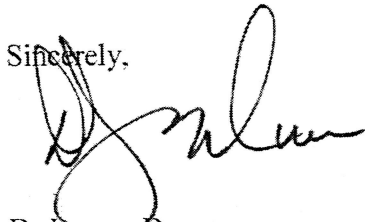
debilitating conditions. There is no other exemption or defense to manufacturing, distributing, selling, or possessing CBD oil.

Non-plant material substances containing THC that are not CBD products are also illegal; there are no exemptions or affirmative defenses to these substances.<sup>5</sup>

In summary, marijuana remains illegal in Alabama. Hemp and CBD products, as derivatives of the cannabis plant, are also illegal unless one of the very narrow, specific exceptions apply to both the substance and the person possessing the substance. As of the date of this letter, any and all hemp is illegal unless it is at a licensed farm operated by a licensed grower. Hemp is not legal, regardless of its origin, in a store, gas station, or in someone's pocket. CBD products are also illegal, regardless of its origin, in a store, gas station, or in someone's pocket, although specific people who are receiving treatment from a doctor for certain debilitating conditions might have an affirmative defense to an arrest for possession.

As the elected District Attorney, it is my duty to enforce the laws of the State of Alabama. My office will prosecute any criminal matters arising out of this or any other criminal law.

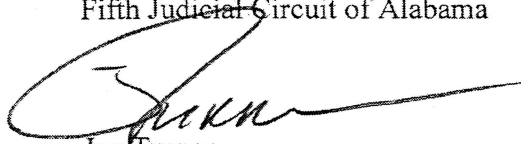
Sincerely,



D. Jeremy Duerr  
District Attorney  
Fifth Judicial Circuit of Alabama



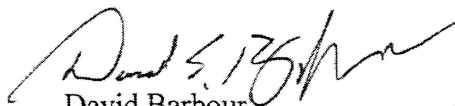
Jimmy Abbett  
Tallapoosa County Sheriff



Jay Turner  
Chief, Alexander City Police Department



Matthew Higgins  
Chief, Tallassee Police Department



David Barbour  
Chief Dadeville Police Department



Danny Williams  
Chief, Camp Hill Police Department



Philip Weddle  
Chief, Newsite Police Department



B.C. Cooper  
Chief, Jackson's Gap Police Department

Attachments: (4)  
cc: File

<sup>5</sup> See § 13A-12-212, Ala. Code 1975

D. Jeremy Duerr  
**DISTRICT ATTORNEY**  
5th Judicial Circuit - State of Alabama  
Chambers, Macon, Tallapoosa, & Randolph Counties  
395 Lee Street  
Alexander City, AL 35010  
256-234-3741

Patrick Lamb <[patrick.lamb@alabamada.gov](mailto:patrick.lamb@alabamada.gov)> , 6/26/2019 8:24 AM:  
Good morning.

I received a couple of calls recently regarding marihuana, hemp, and CBD. I'd like to set out a little bit of the law and a recent change. I am afraid that unscrupulous defense attorneys will confuse your judges to the point that they throw in the towel.

First, the definition of marihuana has excepted hemp since an Alabama 2016 hemp bill. That change went largely unnoticed because even though it excepted all Cannabis with THC lower than .3%, it also required that the cannabis be part of the state approved hemp growing program. Essentially, the hemp had to be in the possession of the licensed grower. See 20-2-2 and 2-8-381. As part of this, there is a statutory definition of hemp. It does not matter what type of plant it is, it matters whether it meets the statutory definition (2-8-381).

Second, this definition was changed as of **about 2 weeks ago** to include cannabis below .3% that was **EITHER** in possession of a licensed grower (2016 law) **OR** pursuant to the USDA approved state plan (2019 law). While the 2016 hemp bill has regulations and guidelines, the USDA approved state plan is from the 2018 Federal Farm Bill. **THERE IS NOT AN APPROVED STATE PLAN AT THIS TIME**. Agriculture's website sets this out (<http://www.agi.alabama.gov/s/industrial-hemp---home---w-o/>). In other words, the only legal hemp is in the possession of a licensed and approved hemp grower or processor pursuant to 2-8-381. A gas station is not a licensed hemp grower. When Agriculture passes guidelines, I sincerely doubt they will allow the sale of hemp at convenience stores.

Third, defense attorneys are going to try to mix and mingle the lay person's definition of hemp and the legal definition. It does not matter if a substance is truly hemp or if it is marijuana. Hemp is statutorily defined in 2-8-381, so unless it complies with that definition (possession of grower OR pursuant to approved plan), it is not hemp and is not excepted from the definition of marihuana.

Fourth, CBD is not plant material. It is defined in 13A-12-214.2 and 13A-12-214.3 as "a cannabinoid" or "any other preparation". Cannabinoid can be defined in lay terms as a "group of closely related compounds which include cannabidiol and other active constituents of cannabis." Compound is further defined as constituting or making up something else (like an element of a crime). In other words, if it is still in plant form, it is not a compound of a plant, it is a plant. It becomes a compound by being separated from the plant.

Fifth, CBD is an affirmative defense under Carly's Law and Leni's Law. I won't repeat the law regarding those affirmative defenses, but they are narrow.

Finally, defer to DFS. They are getting bombarded by all of this and get over 10,000 marihuana cases a year. They are having to figure all of this stuff out as the Legislature, Congress, and everyone else change the terms. If they have your back (they say it is controlled), then it will work out.

In summary,

- 1) Marihuana is the cannabis plant except for non-THC parts (stalks, infertile seeds, ...) and hemp.
- 2) Hemp is not a type of plant, but rather ALL cannabis which is **BOTH** 1) in possession of licensed grower **or** in the future, pursuant to a new USDA approved state plan **AND** 2) has a THC under .3% by dry weight. Until Agriculture has a state approved plan, hemp is not legal in a gas stations, in someone's pocket, or anywhere but a licensed farm.
- 3) If a defense attorney wants to convince a judge otherwise, he needs to specifically point it out in the law.
- 4) If it is a plant material, it is not CBD. If it is CBD, the defense must comply with the affirmative defense set out in 13A.
- 5) Rely on DFS. If they won't testify it is marihuana and controlled, we cannot prove beyond a reasonable doubt that it is marihuana. Dale Carpenter in Hoover is the point person for the ongoing CBD and hemp discussion.

Good luck. Let me know if I can be of any assistance.

*J. Patrick Lamb*

General Counsel

Office of Prosecution Services

Post Office Box 4780

515 South Perry Street

Montgomery, AL 36104

(334) 242-4191

[patrick.lamb@alabamada.gov](mailto:patrick.lamb@alabamada.gov)