



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2022-799
November 15, 2022

On August 3, 2022, based on Kentucky and federal law, in the case of *Kentucky Hemp Association, et al. v. Ryan Quarles, et al.*, the Boone Circuit Court declared that Delta-8 THC is a derivative of CBD, which is a derivative of hemp, and therefore Delta-8 THC is a derivative of hemp pursuant to KRS 260.850(5), and any products that contain Delta-8 THC are legally compliant hemp under KRS 260.850(5) and 7 U.S.C. § 1639o(1). The Boone Circuit Court also permanently enjoined law enforcement “from instituting or continuing any criminal enforcement action on the basis of legally compliant hemp (*i.e.*, the plant *Cannabis sativa* L. with a Delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), as well as any part of that plant that is compliant (*i.e.*, that has a Delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, provided none of those materials have a Delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis;” The court ruled that, “this includes any products that contain Delta-8 tetrahydrocannabinol unless the same contain a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.”

Delta-8 is a form of tetrahydrocannabinol (“THC”). Various products are produced through hemp, including cannabidiol (“CBD”) oil. Through further processing, Delta-8 can be derived from CBD. Products containing Delta-8 are sold at retail businesses in Kentucky and surrounding states.

Delta-8 is not a controlled substance under either Kentucky law or federal law. Under the Agricultural Act of 2014 and the Hemp Farming Act of 2018, the United States Congress removed industrial hemp from the Controlled Substances Act and codified an exemption for industrial hemp containing less than 0.3 percent delta-9-THC (“Delta-9”). Under KRS 260.850(5), hemp or industrial hemp is defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extras. Cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.” Under KRS 218A.010(28)(e), the term marijuana does not include a cannabidiol product derived from industrial hemp, as defined in KRS 260.850.

No requirements are currently applied to Delta-8 products sold in Kentucky for their packaging and labeling, or for their use as ingestible cannabinoid products. Certain requirements that exist for the packaging and labeling of CBD products sold in Kentucky should also apply to Delta-8 products to ensure the public’s protection.

Under KRS 217.125(1) of the Food, Drug and Cosmetic Act, the Secretary of the Cabinet for Health and Family Services has authority to promulgate regulations for the administration and enforcement of KRS 217.005 to 217.215. Under that authority, the Secretary promulgated 902 KAR 45:190 to regulate hemp-derived cannabinoid products and establish packaging and labeling requirements for such products. As Delta-8 THC is a cannabinoid, 902 KAR 45:190 applies to Delta-8 THC products. Applying this administrative regulation to Delta-8 THC products will establish measures for packaging, labeling, and methods for use of Delta-8 THC products that will ensure the safety of those purchasing and consuming those products, and will establish a regulatory



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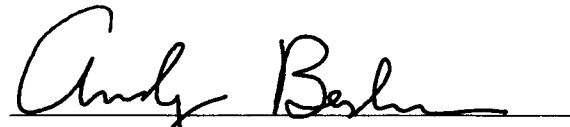
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framework that in the future may be applied to medical cannabis if the Kentucky General Assembly legalizes it.

NOW, THEREFORE, I, Andy Beshear, Governor of the Commonwealth of Kentucky, in consideration of the foregoing, and by virtue of the authority vested in me by the Kentucky Constitution and the Kentucky Revised Statutes, do hereby **ORDER** and **DIRECT** as follows:

1. The Secretary of the Cabinet for Health and Family Services shall apply 902 KAR 45:190 to Delta-8 THC products sold within the Commonwealth of Kentucky.
2. The Cabinet for Health and Family Services shall take all necessary steps to implement and enforce 902 KAR 45:190 as applied to Delta-8 THC products sold within the Commonwealth of Kentucky, including, but not limited to, designating any other state agency as its duly authorized agent to assist with implementation and enforcement of the administrative regulation under KRS 217.155.

This Order shall be effective November 15, 2022.


ANDY BESHEAR, Governor
Commonwealth of Kentucky


MICHAEL G. ADAMS
Secretary of State

RECEIVED AND FILED

DATE

11/16/2022

MICHAEL G. ADAMS

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY

BY

John M. Burgin