



Charles G. Cooper  
Commissioner

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## **TEXAS DEPARTMENT OF BANKING**

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### **INDUSTRY NOTICE 2019-01**

*Date: July 29, 2019*

#### **Hemp and Hemp-Related Products**

The Texas Department of Banking (Department) is aware that the legal landscape for hemp and hemp-related products is changing. Laws at both the state and federal level have been passed that create a framework for the legal production, distribution, and sale of hemp and hemp-related products.

This industry notice addresses much of the evolving legal framework for hemp in Texas. However, it does not address: 1) cannabis and cannabis-related products, which continue to be illegal in Texas under both state and federal law, or 2) low-delta-9 tetrahydrocannabinol (THC) cannabis authorized under the [Texas Compassionate Use Act](#) and [administered by](#) the Texas Department of Public Safety (DPS), but illegal under federal law.

#### **Hemp Legal Status: Legal at the Federal Level, Soon to Be Legal in Texas**

At the end of 2018, Congress passed the Agriculture Improvement Act of 2018 ([2018 Farm Bill](#)) which legalized hemp under federal law. Hemp is defined as any part of the cannabis plant, with a THC of not more than 0.3 percent on a dry weight basis. The 2018 Farm Bill also authorizes cannabidiol (CBD) to the extent that it is contained and produced from hemp in the manner consistent with the 2018 Farm Bill and other state and federal regulations. However, CBD continues to be regulated by the U.S. Food and Drug Administration (FDA), as outlined in the FDA Commissioner's [statement](#).

On June 10, 2019, [Texas House Bill 1325](#) was signed into law by Governor Greg Abbott and took effect immediately. The bill authorizes the production, manufacture, retail sale, and inspection of industrial and consumable hemp, as well as hemp-derived CBD products in Texas. However, as detailed below, additional steps are necessary to create licensing and registration systems in Texas.

#### **Next Steps towards Legal Hemp in Texas**

##### *1. Industrial Hemp Farming and Production*

According to its website, the U.S. Department of Agriculture (USDA) is expected to release rules for state hemp programs in the fall of 2019. Afterwards, the Texas Department of Agriculture (TDA) can submit a plan to the USDA for monitoring and regulating the production of hemp in Texas. Upon the USDA's approval, the TDA can initiate rulemaking, and thereafter issue grower licenses as soon as 2020. Because a license is required to cultivate hemp in Texas, the current absence of licensing rules means that growing hemp is not currently legal in Texas. The TDA's [website](#) addresses the path to legalization of hemp farming in Texas.

## 2. Consumable Hemp Products and CBD

The TDA, however, is not the only Texas state agency involved in hemp regulation. The Texas Department of State Health Services (DSHS) will be the primary state regulator with oversight over consumable hemp product sales in Texas, including those containing CBD. As soon as practicable, DSHS will begin rulemaking to establish licensing and registration processes for manufacturers and retailers of consumable hemp products, respectively. DSHS will also work with the DPS to establish a process for random testing of such products.

Because a license is required to process hemp or manufacture a consumable hemp product, the current absence of licensing rules means that such *processing and manufacturing* is not currently legal in Texas.

However, under Texas state law, a *retailer* may currently possess, transport, or sell a consumable hemp product that becomes part of the retailer's inventory before DSHS's registration rules become effective, unless the product is unsafe for consumption as a result of contaminants or has a THC concentration of more than 0.3 percent. DSHS has promulgated [guidance](#) regarding the state and federal legal status of consumable hemp products, including CBD.

At the federal level, however, consumable hemp products, such as CBD, are currently regulated by the FDA and subject to the requirements of the Food, Drug & Cosmetic Act (FD&C Act). The FDA has issued guidance in the form of [frequently asked questions](#) related to the complex legal status of CBD uses in various products, including drugs, dietary supplements, cosmetics and food and plans to promulgate rules regarding CBD's legal status. Until such rules are promulgated, however, retailers of consumable hemp products such as CBD, must meet the requirements of the FD&C Act. State banks wishing to bank manufacturers and retailers of consumable hemp products are urged to exercise due diligence as outlined below.

### **Necessary Due Diligence**

In Texas, hemp's legal status is currently in transition. Texas financial institutions are advised to:

- 1) consult legal counsel;
- 2) exercise due diligence in ensuring that they are providing services to individuals and companies that operate within the law to produce, manufacture, transport, and sell, legal hemp and hemp-related products; and
- 3) keep apprised of ongoing legal developments at the state and federal level, including new rules, licensing, and registration requirements that may be promulgated by the USDA, TDA, DSHS and FDA.

And, as is the case anytime a bank considers offering a new or expanded product or service, or targets a new customer base, a thorough risk assessment must take place. Understanding the current fluid legal status of hemp and hemp-related products is only one part of this complex risk assessment. Texas financial institutions should also carefully evaluate all other risks in the chain of bringing industrial hemp and hemp-related products to market – from the agricultural field to retail. The Department thus advises Texas financial institutions to use sound “know-your-

customer” practices tailored to this complex industry and to their individual customers, both prior to and after on-boarding hemp and hemp-related businesses.

As required by federal law, a bank must file a suspicious activity report (SAR) to report a suspicious transaction relevant to a possible violation of a federal law or regulation (see 31 U.S.C. §5318(g) and 31 C.F.R. §1020.320). A bank may also voluntarily file a SAR for any suspicious transaction that it believes is relevant to the possible violation of a federal law or regulation, but whose reporting is not required (see 12 U.S.C. §5318(g)). Whether required or voluntary, a bank may not be held liable to any person as a consequence of filing a SAR. *Id.* A bank’s board or SAR committee must continue to exercise due diligence in determining whether to file a SAR, in accordance with federal law.

Questions may be submitted to the Texas Department of Banking’s Legal Division via [email](#) or by telephone at 512-475-1300.