

Cannabis Business Blog

## Washington's LCB Clarifies Legality of Producing Delta-9 THC from Hemp-based CBD – What Cannabis Companies Need to Know

By Emily Gant and Melia Preedy on 8.12.21 | Posted in CBD, Washington Liquor and Cannabis Board

The Washington State Liquor and Cannabis Board ("LCB") issued [an interpretive statement on July 22, 2021](#) ("Notice"), with the aim of resolving questions surrounding the legality of processors making delta-9 THC from CBD. The LCB concluded that cannabis processors cannot convert hemp-derived CBD into delta-9 THC in the legal cannabis market. Processors engaging in these activities may be subject to administrative violations ("AVNs") or criminal prosecution.

The LCB's Notice piggybacks on its April 2021 advisory statement and [May 2021 policy clarification](#) wherein the LCB was evaluating possible rulemaking with regard to additives other than delta-9 THC. In its most recent Notice, the LCB has gone on to conclude that processor-created delta-9 THC products made from hemp are illegal in Washington to produce or sell under the Washington State Controlled Substances Act (the "CSA").

*What you need to know:* Licensed cannabis processors may not sell or purchase any THC product not legally produced by a licensed cannabis producer. The LCB's interpretive/advisory statements are not law, but these statements do serve to clarify the LCB's interpretation of its governing laws and regulations. It remains to be seen how the LCB will target violations of these regulations, but for now, the LCB intends to [enforce](#) the issue from an "education-first perspective" to help licensees achieve compliance.

Companies manufacturing, selling and marketing processor-created delta-9 products are not legally operating within the bounds of the CSA and may be susceptible to AVNs, criminal exposure and civil lawsuits if they continue these practices. For now, we suggest companies segregate and hold this product or dispose of it in compliance with applicable disposal regulations. Cannabis companies should immediately gain a thorough understanding of the relevant state laws to ensure compliance with all the applicable laws and regulations.

**Warning Regarding Federal Law:** The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity

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under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

**Tags:** cannabis processors, cannabis producers, CBD, delta-9 THC, hemp-derived CBD, Washington State Liquor and Cannabis Board