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Client Alert: Florida Hemp Regulation is Coming: What Farmers, Investors, and Business Owners Can Do Now

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On December 12, 2018, President Trump signed the Farm Bill removing hemp from the list of controlled substances and making it federally legal to grow and sell hemp. Hemp comes from the same cannabis plant that produces marijuana. However, marijuana has much higher levels of tetrahydrocannabinol (THC), the chemical in the plant that is psychoactive and has a euphoric effect. Both hemp and marijuana have cannabidiol (CBD)—a medical compound that has health benefits but is non-euphoric. Pursuant to the Farm Bill, hemp is legal as long as it contains no more than .3 percent THC. If hemp has more than .3 percent THC, it is still a federally banned controlled substance.

Hemp can be transformed into a variety of products including, but not limited to, rope, clothing, sunscreen, paper, and dietary supplements (i.e. CBD oil). The Brightfield Group, a predictive analytics and market research firm for the legal cannabis and CBD industry, predicts that the hemp industry is going to be worth 22 billion dollars by 2020.

In reaction to the Farm Bill, states like Florida are filing bills to create a legalized and regulated hemp industry. Florida legislators have filed several bills to regulate hemp in Florida: House Bill 333 and Senate Bill 1010, and Senate Bill 1058, to name a few.

The bills propose to create a state hemp program within the Department of Agriculture and Consumer Services (Department) to promote the cultivation, handling, processing, and sale of hemp, hemp products, and hemp extract. Under the proposed regulatory framework, a person seeking to cultivate, handle, process, transport, or sell hemp, hemp products, or hemp extract must register with the Department. Farms or businesses that want to cultivate hemp must provide to the Department the legal land description and GPS coordinates where hemp will be cultivated. Also, a person or entity seeking to cultivate, handle, process, transport, or sell hemp must provide written consent to allow law enforcement to enter upon the property and inspect the operations to ensure compliance with this law.

The Florida bills also propose requirements for distributors of hemp products and retail sale of hemp extract

to go into effect December 31, 2019. This would appear to also regulate CBD oil, which is a hemp product. Among the proposed requirements is that hemp extract must be tested by an independent laboratory to confirm the hemp extract has less than .3 percent THC on a dry weight basis. Interestingly, the bill proposes that a registrant, who negligently violates this section of the Department on the rules to be developed, is not subject to any criminal or civil enforcement by state or local government. This proposed bill however, does not, and in fact cannot, provide any protection from a violation of federal law.

Farms, business owners, and investors can take action now for what is likely to be the inevitable regulation of the hemp industry in Florida. Businesses exploring hemp production should, at minimum, actively monitor the 2019 legislative process. Such individuals and businesses may also choose to work with a governmental relations team to best represent their interests.

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