CANNABIS, HEMP AND LEGAL ISSUES

Phil Dixon
UNC School of Government
Fall 2020

HEMP MARIJUANA

- G.S. 90-87 (16) defines marijuana under state law:
  “Industrial hemp, as defined in G.S. 106-568.51, when the industrial hemp is produced and in compliance with the rules issues by the North Carolina Industrial Hemp Commission” is specifically excluded from the definition.
G.S. 106-568.51(7) - DEFINITION OF INDUSTRIAL HEMP:

• All parts of the cannabis plant grown by a licensed grower that has no more than a 0.3% THC content.

• Grower must be licensed by NC Hemp Commission

• THC content determined from dried plant material

THIS IS SIMILAR TO THE CURRENT FEDERAL DEFINITION OF HEMP:

7 U.S.C. §5940 (2): ALL PARTS OF CANNABIS SATIVA WITH NO MORE THAN .3 % THC ON DRY WEIGHT BASIS

• SPECIFICALLY EXEMPTED FROM FEDERAL DEFINITION OF “MARIHUANA” IN 21 U.S.C. §802 (16)

DOES THAT MEAN YOU CAN GROW IT?

Not without a license from the N.C. Hemp Commission.
SO CAN YOU LEGALLY POSSESS IT?

Yes*, assuming it’s a lawful hemp product—grown in NC by a licensed grower, and containing no more than .3 % THC on a dry weight basis.

HEMP =

Around 170 million dollar industry in 2016.

Expected to hit a billion per year by 2021.

BY CONTRAST, THE LEGAL MARIJUANA INDUSTRY IN THE U.S.

--Around 4.7 billion for medicinal marijuana in 2016, with another 2 billion or so in legal recreational marijuana.

--Medical (only) projected to expand to 13 billion by 2025.
HOW CAN YOU TELL IT APART FROM MARIJUANA?

Great question, let’s take a look...
WHAT EXACTLY IS CBD?
A/K/A "Hemp oil"
CBD is an abbreviation for "Cannabidiol", one of 100+ cannabinoids in marijuana.

- CBD may be taken:
  - Via food or drink
  - Smoked or vaped
  - Absorbed through the skin or under the tongue

Charlotte's first CBD dispensary and "bud bar" is now open on Central Avenue.
SO IS THIS JUST THE LATEST PLACEBO?

These capsules are fabulous! When I look at the box, I stop coughing.

FDA RECENTLY APPROVED FIRST PRESCRIPTION CBD MEDICINE

-for patients 2 years or older for treatment of certain epileptic disorders

Anti-tumor activity of plant cannabinoids with emphasis on the effect of cannabidiol on human breast carcinoma

Alessia Liguori, Anacleto Schiano Merello, Katarzyna Stazewicz, Isabel Matos, Simona Pozzi
SO IT’S UNREGULATED?

FDA HAS AUTHORITY TO REGULATE CANNABIS PRODUCTS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

--CANNOT CLAIM THERAPEUTIC BENEFIT WITHOUT FDA APPROVAL
--CANNOT INTRODUCE “FOOD” CONTAINING CBD OR THC INTO INTERSTATE COMMERCE
--CANNOT MARKET THE PRODUCTS AS DIETARY SUPPLEMENTS
--APPLIES EQUALLY TO HUMAN OR ANIMAL FOOD
DRUG IDENTIFICATION

UNDER STATE V. FLETCHER, 92 N.C. APP. 50 (1988), NO EXPERT TESTIMONY OR CHEMICAL ANALYSIS IS NEEDED TO IDENTIFY MARIJUANA.

-New hemp laws and products cast doubt upon this rule, at least where there's a Rule 702 objection/challenge.

IS THE DEFENDANT'S ADMISSION ENOUGH?

Sufficiency vs. Admissibility: Drug Identification After State V. Osborne

SUBSTITUTE ANALYSTS

Mere Surrogate Testimony?

Or Independent review and opinion?
WHAT'S THE IMPACT ON PROBABLE CAUSE BASED ON THE ODOR OR APPEARANCE OF MARIJUANA?

“800 police K-9’s in the state would be rendered useless . . .” V.P of NC Assoc. of Chiefs of Police.

“As long as smokable hemp is legal for use and sale in NC, marijuana laws are virtually unenforceable.” Legal Counsel for the Assoc. of Police Chiefs.

DEFENSES TO MARIJUANA POSSESSION CHARGES?

--Possession requires willful possession – D knew it was a controlled substance.

--Potential defense where State can’t show guilty knowledge.

DEFENSE TO FAILED DRUG SCREENS?
§ 95.28.2. Discrimination against persons for lawful use of lawful products during nonworking hours prohibited.

(a) As used in this section, “employer” means the State and all political subdivisions of the State, public and quasi-public corporations, boards, bureaus, commissions, councils, and private employers with three or more regularly employed employees.

(b) It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employee during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

(c) It is not a violation of this section for an employer to do any of the following:

(1) Require the lawful use of lawful products by employees during nonworking hours.

STATUTE INCLUDES:

--lost wages/benefits claims

--order of reinstatement to position

--reasonable costs and attorney fees for violations

Hemp, marijuana fight may doom NC Farm Act

S.B. 315 AND 352
**EFFECTIVE DATES:**

- **10/31/2015** – NC legalizes hemp and removes from definition of marijuana
- **SUMMER 2018** – Smokable hemp becomes a thing in N.C.
- **12/20/2018** – U.S. (clearly) legalizes hemp
- TBD: Smokable hemp ban?

**CARTRIDGE/WAX ISSUE**

G.S. 90-95(d)(4) – “If the quantity . . . exceeds . . . 3/20 oz. of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a class 1 misdemeanor. . . if the controlled substance consists of any quantity of . . . tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.
GOOD POLICY TO INSIST ON NC HEMP ONLY?
IS IT CAPABLE OF BEING ENFORCED?

QUESTIONS?

Phil Dixon
UNC School of Government
252.531.4999
dixon@sog.unc.edu