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December 2, 2021

ATTORNEY GENERAL OPINION NO. 2021- 4

Kirk D. Thompson, Director  
Kansas Bureau of Investigation  
1620 SW Tyler St.  
Topeka, KS 66612

Re: Agriculture—Industrial Hemp—Commercial Industrial Hemp Act;  
Definitions—Unlawful Hemp Products; Penalties; Exceptions

Uniform Controlled Substances Act—Substances included in Schedule I

Crimes and Punishments—Crimes involving Controlled Substances—  
Scope of Act—Unlawful Cultivation or Distribution of Controlled  
Substances—Unlawful Possession of Controlled Substances

Synopsis: Delta-8 tetrahydrocannabinol (Delta-8 THC) comes within the definition of a Schedule I controlled substance and is unlawful to possess or sell in Kansas unless it is made from industrial hemp and is contained in a lawful hemp product having no more than 0.3% total tetrahydrocannabinols (THC). Unlawful hemp products include cigarettes, cigars, teas, and substances for use in vaping devices. Delta-8 THC derived from any source other than industrial hemp is a Schedule I controlled substance and unlawful to possess or sell in Kansas. Other federal and state laws and regulations place additional limits on the legality of products containing THC and other cannabinoids. Cited herein: K.S.A. 2-3901, 2-3908, 21-5702, 65-2365, 65-4105.

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Dear Director Thompson:

As Director of the Kansas Bureau of Investigation, you ask for our opinion regarding the legality of products containing Delta-8 Tetrahydrocannabinol. Specifically, you ask:

1. Are products containing Delta-8 Tetrahydrocannabinol or its optical isomers legal to sell in Kansas?
2. If so, is there a statutorily-prescribed limit to the amount of Delta-8 Tetrahydrocannabinol or its optical isomers such products may contain?

Your questions derive from the fact that tetrahydrocannabinols are Schedule I controlled substances.<sup>1</sup> The possession and sale of controlled substances are prohibited by Article 57 of Chapter 21 of the Kansas statutes, unless, *inter alia*, "the conduct prohibited is authorized by the ... uniform controlled substances act ... [or] the commercial industrial hemp act."<sup>2</sup> Our interpretation of those acts, and particularly of the 2021 amendments to the Commercial Industrial Hemp Act,<sup>3</sup> leads us to conclude that the sale or possession of products derived from industrial hemp that contain no more than 0.3% total tetrahydrocannabinols is not prohibited by the Kansas Uniform Controlled Substances Act.<sup>4</sup> The sale or possession of such products is lawful so long as the products are not unlawful hemp products as defined by Kansas statute and are not otherwise prohibited by state or federal law.<sup>5</sup>

### What is Delta-8 THC?

Delta-8 THC is one of more than 100 cannabinoids present in *Cannabis sativa* plants.<sup>6</sup> Marijuana<sup>7</sup> and industrial hemp<sup>8</sup> are two varieties of *Cannabis sativa*. Although Delta-8

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<sup>1</sup> K.S.A. 2021 Supp. 65-4105(h)(1).

<sup>2</sup> K.S.A. 2021 Supp. 21-5702(b).

<sup>3</sup> K.S.A. 2-3901 *et seq.*

<sup>4</sup> K.S.A. 21-5701 *et seq.*

<sup>5</sup> Unlawful hemp products are defined in K.S.A. 2021 Supp. 2-3908. Products originating from outside of Kansas are subject to federal law concerning tetrahydrocannabinols and other cannabinoids such as cannabidiol (CBD).

<sup>6</sup> *Cannabis (Marijuana) and Cannabinoids: What You Need to Know*, <https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know> (Nov. 2019 Update) (last accessed on Sept. 30, 2021).

<sup>7</sup> "Marijuana" is defined in Kansas "all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. 'Marijuana' does not include: (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant that is incapable of germination; (2) any substance listed in schedules II through V of the uniform controlled substances act; (3) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or (4) industrial hemp as defined in K.S.A. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities authorized by the commercial industrial hemp act." K.S.A. 2021 Supp. 21-5701(j).

<sup>8</sup> Kansas law defines "industrial hemp" as "all parts and varieties of the plant *cannabis sativa* L., whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis." K.S.A. 2021 Supp. 2-3901(b)(7).

THC is produced by the cannabis plant, it is not found in significant amounts in the plant.<sup>9</sup> For commercial purposes, it is manufactured from a non-psychoactive cannabinoid, cannabidiol (CBD), extracted from industrial hemp.<sup>10</sup>

Like the more well-known Delta-9 THC, Delta-8 is a psychotropic substance.<sup>11</sup> When consumed orally, Delta-8 has approximately 50-75% of the psychotropic potency of Delta-9 THC.<sup>12</sup> Users report that the effects of Delta-8 are similar to the "high" from Delta-9, but to a lesser degree.<sup>13</sup> This effect is what has made products containing Delta-8 THC popular among retailers and consumers who tout it as providing a "legal high." To begin our analysis of that claim of legality, we first consider whether Delta-8 THC is a controlled substance.

### Does Delta-8 THC Meet the Definition of Tetrahydrocannabinols in the List of Controlled Substances?

The Uniform Controlled Substances Act, K.S.A. 65-4101 *et seq.*, defines and classifies the substances that are made unlawful by Article 57 of the Kansas Criminal Code. Substances designated as Schedule I controlled substances include certain "cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation." Among the Schedule I cannabinoids are tetrahydrocannabinols, which are defined as follows:

tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances

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<sup>9</sup> This conversion can be performed by the use of solvents, acids, and heat. Centers for Disease Control and Prevention, *Increases in Availability of Cannabis Products Containing Delta-8 THC and Reported Cases of Adverse Events*, CDCHAN-00451, Sept. 14, 2021 (official CDC Health Advisory), available at <https://emergency.cdc.gov/han/2021/han00451.asp> (last accessed Sept. 20, 2021) (hereinafter, "CDC Advisory"). The conversion process may create harmful by-products, and unknown remnants of the materials used in the process may remain in the Delta-8 THC incorporated into consumer products. *Id.* Tests commissioned by a pro-cannabis industry organization revealed pesticides, heavy metals, and "clearly illegal quantities" of THC in some products. U.S. Cannabis Council, *The Unregulated Distribution and Sale of Consumer Products Marketed as Delta-8 THC*, June 2, 2021, available at <https://irp.cdn-website.com/6531d7ca/files/uploaded/USCC%20Delta-8%20Kit.pdf> (last accessed Oct. 29, 2021). The U.S. Cannabis Council characterized the health risks of Delta-8 THC as "a major consumer safety issue, posing dangers greater than the 'vape crisis' of 2019." *Id.* In the first seven months of 2021, 660 cases of Delta-8 THC "adverse events" were reported, a number that is regarded as a fraction of the actual incidents. *Id.* Nearly 40% of the patients were children less than 18 years of age, and nearly 20% of all cases required hospitalization. *CDC Advisory*.

<sup>10</sup> *CDC Advisory*, *supra* n.9.

<sup>11</sup> U.S. Food and Drug Administration, *5 Things to Know about Delta-8 Tetrahydrocannabinol*, [https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc?utm\\_medium=email&utm\\_source=govdelivery](https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc?utm_medium=email&utm_source=govdelivery) (last accessed Sept. 14, 2021) (hereinafter, "5 Things to Know"). Cannabis plants are classified as marijuana or industrial hemp depending on the THC content.

<sup>12</sup> *CDC Advisory*, *supra* n.6.

<sup>13</sup> *Id.*

contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity *such as the following*: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (*Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.*) ...<sup>14</sup>

Neither "Delta-8" nor "Delta-9" appear in this definition – only Delta-1, -6, and -3,4 are specifically named. However, this does not mean that Delta-8 and Delta-9 are not Schedule I tetrahydrocannabinols. First, the list of tetrahydrocannabinols is not limited to those specifically identified by number; the introductory phrase is "such as the following," a phrase that indicates the list is illustrative, not exhaustive.<sup>15</sup> More importantly, the Delta numbers are assigned according to chemical nomenclature (naming systems), and multiple naming systems exist for tetrahydrocannabinols.<sup>16</sup> The monoterpene system names the primary psychoactive tetrahydrocannabinols Delta-1, Delta-6, and Delta-3,4; whereas the dibenopyran or formal pyran system labels the same substances Delta-9, Delta-8, and Delta-6a,10a, respectively.<sup>17</sup> The numbers correspond to the positions on the carbon atom where a double bond occurs.<sup>18</sup>

The Legislature acknowledged in the statute that "nomenclature of these substances is not internationally standardized" and wrote the definition to include "compounds of [the listed] structures, *regardless of designation of atomic positions covered.*"<sup>19</sup> Because Delta-1, Delta-6, and Delta-3,4 named in the statute are the same substances as the tetrahydrocannabinols designated as Delta-8, -9, and -10 in the dibenopyran or formal pyran system, we conclude that Delta-8, Delta-9, and Delta-10 THC fall within the definition of tetrahydrocannabinols in K.S.A. 2021 Supp. 65-4105. Thus, Delta-8 THC is a Schedule I controlled substance, unless it comes within one of the exceptions concerning industrial hemp.<sup>20</sup>

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<sup>14</sup> K.S.A.2021 Supp. 65-4105(h)(1) (emphasis added). This definition is almost identical to the definition found in the federal Controlled Substances Act. See 21 C.F.R. § 1308.11(d)(31)(i).

<sup>15</sup> See *Reverse Mortg. Sols., Inc. v. Goldwyn*, 2017 WL 6625225 at \*6 (Kan. App. 2017) (unpublished opinion), quoting Black's Law Dictionary ("The participle *including* typically indicates a partial list") and Garner's Dictionary of Legal Usage ("It is hornbook law that the use of the word *including* indicates that the specified list ... is illustrative, not exhaustive." [Citation omitted.]").

<sup>16</sup> Pertwee, Roger G. "Cannabinoid Pharmacology: the First 66 Years." *British Journal of Pharmacology* vol. 147 Supp. 1, at 4 (2006), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1760722/> (last accessed Sept. 30, 2021).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> K.S.A. 2021 Supp. 65-4105(h)(1).

<sup>20</sup> This conclusion is strengthened by the recent action of the federal Drug Enforcement Administration ("DEA") in which it added "Delta-8 THC" as one of the "Other Names" for tetrahydrocannabinols in its "OrangeBook" listing of controlled substances. U.S. Department of Justice, Drug Enforcement

### Do Delta-8 Products Come Within an Exception to the Definition of Prohibited Tetrahydrocannabinols?

K.S.A. 2021 Supp. 65-4105(h)(1) carves out three exceptions to its definition of tetrahydrocannabinols.<sup>21</sup> It states that tetrahydrocannabinols contained in the following are *not* controlled substances:

(A) industrial hemp, as defined in K.S.A. 2-3901,<sup>22</sup> and amendments thereto;

(B) solid waste, as defined in K.S.A. 65-3402, and amendments thereto, and hazardous waste, as defined in K.S.A. 65-3430, and amendments thereto, if such waste is the result of the cultivation, production or processing of industrial hemp, as defined in K.S.A. 2-3901, and amendments thereto, and such waste contains a delta-9 tetrahydrocannabinol concentration of not more than 0.3%; or

(C) hemp products, as defined in K.S.A. 2-3901, and amendments thereto, unless otherwise deemed unlawful pursuant to K.S.A. 2-3908, and amendments thereto.<sup>23</sup>

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Administration, *Lists of: Scheduling Actions, Controlled Substances, Regulated Chemicals*, August 2021, at 54, available at <https://www.deadiversion.usdoj.gov/schedules/orangebook/orangebook.pdf>.

<sup>21</sup> Federal law contains one exception: "Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. § 1639o." 21 C.F.R. § 1308.11(d)(31)(ii). "Hemp" is defined there as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."

<sup>22</sup> "Industrial hemp" is defined as "all parts and varieties of the plant *cannabis sativa* L., whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis." K.S.A. 2021 Supp. 2-3901(b)(7).

<sup>23</sup> K.S.A. 65-4105(h)(1)(A)-(C). K.S.A. 2021 Supp. 2-3908 prohibits the following hemp products: (1) cigarettes; (2) cigars; (3) chew, dip, or other smokeless material; (4) teas; (5) liquids, solids, or gases for use in vaporizing devices, and (6) any "hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas food, drug, and cosmetic act, K.S.A. 65-636 *et seq.* ... and the Commercial Feeding Stuffs Act, K.S.A. 2-1001 *et seq.*" The buds of industrial hemp plants, and ground floral or leaf material from industrial hemp plants, may only be marketed, sold, or distributed in Kansas to persons licensed as hemp producers or registered as hemp processors. *Id.* Federal laws, including the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, apply to cannabis and cannabis-derived products. See U.S. Food & Drug Administration, *FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD)*, <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd> (dated Jan. 22, 2021) (last accessed Sept. 16, 2021). The authority to regulate products containing cannabis-derived compounds is vested in the United States Food and Drug Administration (FDA), which has stated that it is unlawful under 21 U.S.C. § 331(II) to sell in interstate commerce any food (or animal food or feed) to which THC or CBD has been added, including "gummies." *Id.* at FAQ 10. The FDA has recognized, though, that certain hemp seed ingredients may be lawfully sold as a food product if they otherwise comply with food safety laws and regulations. *Id.* It is also unlawful to sell CBD products that

Your questions concern Delta-8 products, so we focus on the final exception, tetrahydrocannabinols contained in "hemp products." "Hemp products" are defined in K.S.A. 2-3901, in relevant part, as follows:

"Hemp products" means all products made from industrial hemp, including, but not limited to, cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal, seed oil for consumption, and any extract from industrial hemp intended for further processing.<sup>24</sup>

Because THC in "hemp products" is excluded from the definition of prohibited tetrahydrocannabinols, we conclude that Delta-8 THC from industrial hemp is not a controlled substance.<sup>25</sup> Despite this conclusion, we cannot give an unqualified affirmative answer to your question, "Are products containing Delta-8 Tetrahydrocannabinol or its optical isomers legal to sell in Kansas?" Further issues require consideration.

First, some hemp products are unlawful to sell in Kansas regardless of THC content: (1) cigarettes; (2) cigars; (3) chew, dip, or other smokeless material; (4) teas; (5) liquids, solids, or gases for use in vaporizing devices; and (6) any "hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas food, drug, and cosmetic act, K.S.A. 65-636 *et seq.*

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claim to prevent, diagnose, treat, or cure diseases and to sell products containing THC or CBD as "dietary supplements." *Id.* at FAQ 4, 9. Further excursus into federal law is beyond your question and beyond the scope of this Opinion, but participants in the cannabis-derived products industry would do well to become informed on relevant federal law.

<sup>24</sup> K.S.A. 2021 Supp. 2-3901(b)(4). The 2021 amendment to this definition also added a limit on THC content, as discussed *infra*.

<sup>25</sup> Some concern has been raised about whether Delta-8 is a hemp product because it is produced from CBD extracted from the Cannabis plant, not from processing Cannabis plant matter. Under this view, Delta-8 is not a hemp product and is therefore a prohibited tetrahydrocannabinol. See, e.g., Colorado Department of Public Health and Environment. Letter to Stakeholders Re: Production and/or Use of Chemically Modified or Converted Industrial Hemp Cannabinoids, May 14, 2021 (advising licensees that "chemically modifying or converting any naturally occurring cannabinoids from industrial hemp is non-compliant with the statutory definition of 'industrial hemp product'"). To be an "industrial hemp product" in Colorado, a product must, *inter alia*, "[c]ontain[] any part of the hemp plant, including naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, resins, or derivatives." Colo. Rev. Stat. Ann § 30-15-401. The Kentucky Department of Agriculture has determined that Delta-8 THC is a controlled substance under state and federal law. Kentucky Department of Agriculture, Letter to Kentucky Hemp License Holders, April 19, 2021. As of August 2021, at least 18 states have restricted, regulated, or banned Delta-8 THC in some way, including Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Idaho, Iowa, Michigan, Mississippi, Montana, New York, North Dakota, Rhode Island, Utah, Vermont, and Washington. Alex Malyshev and Sarah Ganley, *Controlling Cannabis and the Classification of Delta-8 THC*, <https://www.reuters.com/legal/litigation/controlling-cannabis-classification-delta-8-thc-2021-09-22/> (last accessed Sept. 30, 2021). Alabama, Florida, and Oklahoma are considering legislative or regulatory changes to address Delta-8 THC. *Id.* The South Carolina Attorney General recently issued an Opinion concluding that the state's Hemp Farming Act did not legalize Delta-8 or any other isomer of THC, and that products containing more than trace amounts of Delta-8 THC remain unlawful because the THC is a controlled substance. S.C. Att'y Gen. Op. to Chief Mark A. Keel, Oct. 4, 2021, at 6.

... and the commercial feeding stuffs act, K.S.A. 2-1001 *et seq.*<sup>26</sup> It is unlawful to manufacture, market, sell, or distribute any of these products in Kansas.<sup>27</sup> Also, the buds of industrial hemp plants and ground floral or leaf material from industrial hemp plants cannot be lawfully marketed, sold, or distributed to consumers in Kansas.<sup>28</sup>

Next, federal laws, including the federal Food, Drug, and Cosmetic Act,<sup>29</sup> apply to cannabis and cannabis-derived products.<sup>30</sup> The federal authority to regulate products containing cannabis-derived compounds is vested in the United States Food and Drug Administration (FDA).<sup>31</sup> The FDA has stated that under 21 U.S.C. § 331(II), it is unlawful to sell in interstate commerce any food (or animal food or feed) to which THC or CBD has been added.<sup>32</sup> This includes "gummies." It is also unlawful to sell in interstate commerce any products designated as "dietary supplements" that contain THC or CBD<sup>33</sup> and CBD products that claim to prevent, diagnose, treat, or cure diseases.<sup>34</sup> Further excursus into federal law is beyond your question and beyond the scope of this opinion, but participants in the cannabis-derived products industry would do well to become informed on relevant federal law.

Finally, there are limits to the amount of THC that a hemp product may lawfully contain, as discussed in the next section.

#### Level of THC in Consumer Hemp Products

Your second question asks whether there is a statutorily-prescribed limit to the amount of Delta-8 THC or its optical isomers that consumer products may contain. Prior to the 2021 amendments, the statutory definition of "hemp products" did not specify a limit on THC content. The 2021 amendments to K.S.A. 2020 Supp. 2-3901 introduced a limit by adding

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<sup>26</sup> K.S.A. 2021 Supp. 2-3908(a)(1)(A)-(E).

<sup>27</sup> *Id.*

<sup>28</sup> These materials may be lawfully marketed, sold, or distributed only to persons licensed as hemp producers or registered as hemp processors in Kansas. K.S.A. 2021 Supp. 2-3908(b)(1)(A)-(C). Likewise, extracts from industrial hemp having a Delta-9 THC concentration greater than 0.3% can only lawfully be marketed, sold, or distributed to persons holding one of those credentials. K.S.A. 2021 Supp. 2-3908(b)(1)(D).

<sup>29</sup> 21 U.S.C. § 301 *et seq.*

<sup>30</sup> U.S. Food & Drug Administration, *FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD)*, <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd> (dated Jan. 22, 2021) (last accessed Sept. 16, 2021). The FDA has stated that the following hemp seed-derived food ingredients may be lawfully sold as food products if they otherwise comply with food safety laws and regulations: hulled hemp seed, hemp seed protein powder, and hemp seed oil. *Id.* at FAQ 10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at FAQ 10.

<sup>33</sup> *Id.* at FAQ 9.

<sup>34</sup> *Id.* at FAQ 4.

the concept of "final" hemp products.<sup>35</sup> We construe "final" hemp products to mean products that are in a form suitable for sale to consumers.<sup>36</sup>

The amendment states:

Final "hemp products" may contain a tetrahydrocannabinol concentration of not more than 0.3%. As used in this paragraph, "tetrahydrocannabinol concentration" means the same as in K.S.A. 65-6235(b)(3), and amendments thereto.<sup>37</sup>

K.S.A. 65-2365(b)(3) defines "tetrahydrocannabinol concentration" as "the combined *percentage of tetrahydrocannabinol* and its optical isomers, their salts and acids and salts of their acids, reported as free tetrahydrocannabinol on a percent by weight basis."<sup>38</sup> Notably, this definition is not limited to any specific form of THC such as Delta-8 or Delta-9. Thus, we conclude that the limit of 0.3% applies to the total amount of *all* tetrahydrocannabinols in a final hemp product, including Delta-8, Delta-9, and all other tetrahydrocannabinols.

### Conclusion

From the foregoing analysis, we opine that Delta-8 THC comes within the definition of a Schedule I controlled substance and is unlawful to possess or sell in Kansas unless it is made from industrial hemp and is contained in a lawful hemp product having no more than 0.3% total tetrahydrocannabinols (THC). Unlawful hemp products include cigarettes, cigars, teas, and substances for use in vaping devices. Delta-8 THC derived from any source other than industrial hemp is a Schedule I controlled substance and unlawful to

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<sup>35</sup> See K.S.A. 2021 Supp. 2-3901(b)(4). The amendments also added "any extract from industrial hemp intended for further processing" to the list of "hemp products." *Id.* This addition reflects that while some processors take in hemp plant material, extract the cannabinoids, and perform processing activities that yield a consumer product, others take in hemp plant material, extract the cannabinoids, and then sell the extract, which contains greater than 0.3% THC, to other processors. Persons holding hemp processor registrations under K.S.A. 2-3907 or research or producer licenses under K.S.A. 2-3902 or 2-3906, respectively, may lawfully possess such extract. See K.S.A. 2021 Supp. 2-3908(b)(1)(D).

Although not relevant to the analysis of your question, we note that some processors perform no extraction but merely take in hemp plant material, dry it, possibly crush or grind it, and then either return it to the producer or sell it to other processors. Such persons are the only ones to whom it is lawful to sell industrial hemp buds and ground industrial hemp floral or leaf material. *Id.*

<sup>36</sup> This is in contrast to hemp products intended for further processing before retail sale. See K.S.A. 2021 Supp. 2-3901(b)(4) (including as hemp products "any extract from industrial hemp intended for further processing").

<sup>37</sup> K.S.A. 2021 Supp. 2-3901(b)(4). These "final" hemp products are distinct from substances at an intermediate stage of processing – extract or "distillate" – that are intended for further processing, not for sale to consumers. *Id.* Indeed, such extracts are illegal to sell to consumers because of their THC content. Such extracts may be lawfully sold only to a person who holds a hemp processor registration or hemp producer license. K.S.A. 2021 Supp. 2-3908(b)(1).

<sup>38</sup> K.S.A. 65-6235(b)(3) (emphasis added).



possess or sell in Kansas. Other federal and state laws and regulations place additional limits on the legality of products containing THC and other cannabinoids.

Sincerely,

/s/Derek Schmidt

Derek Schmidt  
Kansas Attorney General

/s/AnnLouise Fitzgerald

AnnLouise Fitzgerald  
Assistant Attorney General

DS:SS:AF:sb