

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

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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.

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