

Definition of DELTA 8 THC

Delta-8 THC (or Delta-8-tetrahydrocannabinol) is a **naturally occurring chemical compound** called a cannabinoid that is **naturally produced by all cannabis plants, including hemp and marijuana.**

U.S. Department of Justice Drug Enforcement Administration Diversion Control Division

List of: Scheduling Actions Controlled Substances Regulated Chemicals

https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf

August 2021				
SUBSTANCE	DEA NUMBER	CSA SCH	NARC	OTHER NAMES
Tetrahydrocannabinols	7370	I	N	THC, Delta-8 THC , Delta-9 THC, dronabinol and others

218A.040 Criteria for classification under Schedule I.

The cabinet for Health and Family Services shall place a substance in Schedule I if it finds the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

218A.1416 Possession of controlled substance in second degree – Penalties.

- (1) A person is guilty of possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or a controlled substance classified in Schedule III; but not synthetic drugs, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is a Class A misdemeanor.

218A.1413 Trafficking in a controlled substance in second degree – Penalties.

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He or she knowingly or unlawfully traffics in:
 - (1) Ten (10) or more dosage units of a controlled substance classified in Schedules I and II that is not a narcotic drug; or specified in KRS 218A.1412, and which is not a synthetic drug, salvia, or marijuana; or
 - (2) Twenty (20) or more dosage units of a controlled substance classified in Schedule III;
 - (b) He or she knowingly and unlawfully prescribes, distributes, supplies, or sells an anabolic steroid for:
 - (1) Enhancing human performance in an exercise, sport, or game; or
 - (2) Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; or
 - (c) He or she knowingly and unlawfully traffics in any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.
- (2)
 - (a) Except as provided in paragraph (b) of this subsection, any person who violates the provisions of subsection (1) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.
 - (b) Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:
 - (1) A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and
 - (2) A Class D felony for a second offense or subsequent offense.

Kentucky Department of Agriculture

On April 19, 2021 Commissioner Ryan F. Quarles from the Kentucky Department of Agriculture issued the below letter.

Dear Kentucky Hemp License Holder:

In recent weeks the Kentucky Department of Agriculture (KDA) received inquiries from members of the public, including licensees within KDA's Hemp Licensing Program, about the legal status of products containing Delta-8 THC under federal law and state law. In response to these inquiries, I am writing this letter to advise you that Delta-8 THC is a Schedule I controlled substance under federal law and Kentucky law: that distributing products containing this substance is illegal: and distributing such products could lead to your expulsion from the Hemp Licensing Program as well as potential exposure to criminal prosecution.

Let's begin with federal law. As you know, in 2018 Congress created a narrow exemption from the Controlled Substances Act's definition of "marijuana" (DEA numbers 7350 and 7360) for hemp that contains not more than 0.3% total delta-9 THC. Cannabis with total Delta-9 THC in excess of that threshold remains a Schedule I substance.

There is no equivalent exemption for Delta-8 THC. That being the case, the manufacture and marketing of products containing Delta-8 THC, in any quantity or concentration level, remains prohibited by law.

And indeed, the federal Drug Enforcement Administration's Controlled Substances List states that Delta-8 THC and other forms of THC are Schedule I controlled substances. (They are identified with DEA Number 7370.) You can find this specific Schedule I listing on page 17.

That brings us to state law. Because Delta-8 THC is a Schedule I controlled substance under federal law, it remains a Schedule I controlled substance under state law as well. See 902 KAR 55.015, Section 1(1) (stating that each substance that is scheduled or designated as a Schedule I controlled substance under federal law "shall be scheduled or designated at the state level as a Schedule I controlled substance").

To date, the Kentucky General Assembly has not enacted any law to create an exemption from the Kentucky Controlled Substances Act, KRS Chapter 218A, for products containing Delta-8 THC. Of course, the General Assembly could choose to create such an exemption in the future, as it did in recent years by revising the definition of "marijuana" to create exemptions for four specific categories of products containing cannabidiol (CBD). See KRS 218A.010(28)(c-f).

Because there are no such exemptions for Delta-8 THC in the Kentucky Controlled Substances Act, those substances remain prohibited by law. For that reason, you should not manufacture, market, or distribute products containing Delta-8 THC. Failure to heed this guidance could result in the revocation of your hemp license and expose you to the risks of prosecution by federal, state and local law enforcement agencies.