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Shauna's Law: Will it be the First of Its Kind?

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Senate Bill 83, also known as "Shauna's Law," was introduced to the Kentucky state Senate on January 11, 2019.^[2] The bill is named in honor of Shauna Staton, an EMT, who lost her job while using CBD oil for pain relief.^[3] Trace amounts of THC showed up in Shauna's drug test, which was mandated by her employer.^[4] Shauna appealed the firing and eventually received her job back, which is why the Senate Bill 83 is named in her honor.^[5]

Shauna's Law strives to protect public employees who are using hemp-based products, like CBD oil, by establishing an appeals process for those who have been fired as a result of their use of the product.^[6]

Shauna's Law wants public employers to be required to provide an appeals process to allow for the possibility of "set[ting] aside an employee's violation of [a drug free] policy" mandated by the employer.^[7] However, Shauna's Law will only make setting aside a violation a possibility if the employee is able to provide their public employer with a purchase receipt that matches the type of legal industrial hemp product the employee is using.^[8]

Like Shauna, many CBD users across the country use hemp products for relief from the symptoms of conditions like "arthritis, epilepsy, [and] Parkinson's Disease" just to name a few.^[9] While generally the small amount of THC present in CBD products is not detectable in a drug test, detection can still occur, which is what happened to Shauna.^[10] While this bill, if passed, will not protect those who use CBD oil with trace amounts of THC from being fired, it will allow them to appeal their firing and potentially get their job back.^[11]

Many advocates for Shauna's Law have stressed the importance of the bill because CBD oil is legal at the federal level.^[12] In Kentucky, hemp plants still remain a controlled substance.^[13] However, CBD products are legal in Kentucky as well.^[14] All throughout Kentucky CBD oil can be purchased from various retailers.^[15] Despite this, "fear of failing a drug test" is a rationale fear among many who would like to try the product.^[16]

Advocates for the bill argue that this fear of failing a drug test should no longer be a concern when CBD products are legal in the state.^[17] In addition, Kentucky's involvement in industrial hemp cultivation has continued to grow since the 2014 Federal Farm Bill allowed state departments of agriculture to have a hemp pilot program to conduct research and development.^[18]

While participating in the pilot program, Kentucky went from "having only 32 acres of hemp five years ago to having 6,700 acres planted in 2018."^[19] Although CBD use is growing in popularity, Shauna's Law is still early in the legislative process, so the bill's fate is still unclear.^[20] Advocates for the bill insist that if Shauna's Law is passed "it could be the first of its kind in the country."^[21]

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[2] *Kentucky Senate Bill 83*, LEGISCAN (hereinafter Bill 83), <https://legiscan.com/KY/text/SB83/id/1845890>, (last visited Jan. 26, 2019).

[3] Bridgett Howard, “Shauna’s Law” About CBD Use By State Employees To Be Part of Next Legislative Session, LEX18 (Jan. 22, 2019, 5:59 PM), <https://lex18.com/news/covering-kentucky/2019/01/22/shaunas-law-about-cbd-use-by-state-employees-to-be-part-of-next-legislative-session/>.

[4] Garrett Wymer, *Bill filed in Frankfort to protect hemp products users*, WKYT (Jan. 15, 2019, 10:49 PM), <https://www.wkyt.com/content/news/Bill-filed-in-Frankfort-to-protect-hemp-product-users-504409211.html>.

[5] Howard, *supra* note 3.

[6] Wymer, *supra* note 4.

[7] Howard, *supra* note 3.

[8] Bill 83, *supra* note 2.

[9] Bob Segall, *CBD oil poses risk for failed drug tests*, 13 WTHR (May 10, 2018, 5:01 PM), <https://www.wthr.com/article/cbd-oil-poses-risk-for-failed-drug-tests>

[10] Wymer, *supra* note 4.

[11] *Id.*

[12] Lisa L. Gill, *Farm Bill Sets the Stage for Legal CBD Across the Country*, CONSUMER REP., <https://www.consumerreports.org/marijuana/will-new-farm-bill-make-cbd-legal-everywhere/> (last updated Dec. 21, 2018).

[13] *Industrial Hemp Research Pilot Program Overview*, KY. DEP’T AGRIC., <http://www.kyagr.com/marketing/hemp-overview.html> (last visited Jan. 28, 2019); See KY. REV. STAT. ANN. § 218A.010(27).

[14] *Hemp and the Law*, KY. DEP’T AGRIC., <http://www.kyagr.com/marketing/hemp-law.html> (last visited Jan. 27, 2019).

[15] Carolyn Callahan, *Hemp-based CBD oil gaining popularity in Louisville*, WLKY, <https://www.wlky.com/article/hemp-based-cbd-oil-gaining-popularity-in-louisville/25646018> (last updated Dec. 21, 2018).

[16] Wymer, *supra* note 4.

[17] KY. DEP’T AGRIC., *supra* note 14.

[18] Wymer, *supra* note 4.

[19] Garrett Wymer, *Ky. Ag Commish to Facebook: Stop kicking hemp companies off your site*, WKYT (Jan. 04, 2019, 10:28 PM), <https://www.wkyt.com/content/news/Ky-Ag-Commissioner-urges-Facebook-to-stop-kicking-hemp-companies-503931581.html>

[20] Bill 83, *supra* note 2.

[21] Wymer, *supra* note 4.

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