



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 100
[2017 Senate Bill 119]

Industrial Hemp

2017 Wisconsin Act 100 (“the Act”) creates a state “industrial hemp” program to be administered by the Department of Agriculture, Trade, and Consumer Protection (DATCP). A general description of the key provisions in the Act is provided below.

DEFINITION OF “INDUSTRIAL HEMP”

The Act defines “industrial hemp” as the plant *Cannabis sativa*, or any part of the plant including seeds, having a delta-9-tetrahydrocannabinol (THC) concentration of 0.3% or less, although this allowable percentage may be raised up to a maximum concentration of 1% THC if in the future federal law allows a higher percentage. The Act excludes from the definition a substance, material, or product that is not designated as a controlled substance under the state Uniform Controlled Substances Act, or the federal Controlled Substances Act, or both.

STATE INDUSTRIAL HEMP PROGRAM

The Act requires DATCP to promulgate rules establishing a state industrial hemp program. The state industrial hemp program must generally maximize opportunity for a person to plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp to the greatest extent authorized under federal law.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

DATCP Requirements

As it pertains to the state industrial hemp program, the Act requires DATCP to do the following:

- Ensure the quality of industrial hemp grown or processed in this state, the security of activities related to industrial hemp, and the safety of products produced from industrial hemp, including any necessary testing.
- Verify adherence to laws and rules governing activities related to industrial hemp.
- Enforce violations of laws and rules.
- Require an initial fee from any person who plants, grows, or cultivates industrial hemp equal to the greater of \$150 or \$5 multiplied by the number of acres used to plant, grow, or cultivate industrial hemp, but not to exceed \$1,000. DATCP may also impose an annual fee on any person whose activities it regulates that may not exceed an amount sufficient to cover its costs to regulate those activities.
- Ensure that certain information in its possession is confidential, except that this information must be made available to a law enforcement agency or law enforcement officer.

Industrial Hemp Seed

The Act requires DATCP to establish and administer an industrial hemp seed certification program, or designate a member of the Association of Official Seed Certifying Agencies or a successor organization to administer a seed certification program. This seed certification program must include the testing and certification of THC concentrations in hemp plants. Participation in the certification program must be voluntary for growers and cultivators of industrial hemp.

The Act also authorizes DATCP to seek federal approval to serve as an importer of industrial hemp seed.

Department of Justice

Under the Act, the Department of Justice (DOJ) must provide information to DATCP necessary to administer the state industrial hemp program.

INDUSTRIAL HEMP PILOT PROGRAM

The Act requires DATCP to create a pilot program to study the growth, cultivation, and marketing of industrial hemp.

Pilot Program Licenses

The Act requires DATCP to issue licenses that authorize the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. Such licenses do not expire

unless the pilot program expires or the license is revoked. As a part of its role in administering the pilot program, DATCP must do the following:

- Identify the requirements for applying for a license, approving or denying a license, and suspending or revoking a license.
- Identify the restrictions and obligations that apply to operating under a license.
- Require a license applicant to provide the global positioning system coordinates of the centers of all fields on which the industrial hemp will be planted, grown, cultivated, or harvested.
- Obtain a criminal history search from the records maintained by DOJ for each applicant.
- Decline to issue a license to an applicant that has ever been convicted of a criminal violation of the federal Controlled Substances Act or the state Uniform Controlled Substances Act, or any controlled substances law of another state.

Pilot Program Registration System

The Act requires DATCP to create a registration system that authorizes the sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. DATCP must obtain a criminal history search from the records maintained by DOJ for each applicant and may not register an applicant that has ever been convicted of a criminal violation of the federal Controlled Substances Act or the state Uniform Controlled Substances Act, or any controlled substances law of another state.

Industrial Hemp Transfers

The Act requires DATCP to create a form to accompany any transfer of industrial hemp until it is processed in such a way that it no longer meets the definition of “industrial hemp,” at which point in time the form must be submitted to DATCP. The form must include any test results showing the THC concentration of the industrial hemp being transferred, the amount of industrial hemp being transferred, and the full chain of custody of the industrial hemp being transferred.

VEHICLE WEIGHT LIMITS

The Act adds industrial hemp to the list of agricultural products for which a permit is available for transporting them at vehicle weights that exceed generally applicable restrictions.

PENALTIES

Violations of Industrial Hemp Program Statutes or Rules

The Act specifies that the penalty for violations of the statutes or rules governing the industrial hemp program is a forfeiture of \$200 to \$5,000 for a first offense and a forfeiture of \$400 to \$10,000 for a second or subsequent offense within five years.

Exemptions From Prosecution Under the State Uniform Controlled Substances Act

The Act creates safe harbor protections for a person acting in accordance with DATCP rules pertaining to the industrial hemp program. Such persons are exempt from criminal prosecution under the state Uniform Controlled Substances Act and exempt from municipal prosecution for any of the following activity:

- Planting, growing, cultivating, harvesting, processing, or transporting hemp that either: (1) contains a THC concentration of the crop of not more than 0.7% above the permissible limit for industrial hemp; or (2) is grown from certified industrial hemp seed.
- Selling, transferring, importing, exporting, or taking possession of industrial hemp.
- Selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of hemp grown from seed certified by a DATCP authorized laboratory as meeting the permissible THC concentration limit for industrial hemp.
- Possessing hemp with a THC concentration above the permissible level for industrial hemp if the hemp was certified to meet the permissible concentration limit for industrial hemp and the possessor had no reason to believe that the certification was incorrect.
- Taking samples of hemp, transporting samples to a testing facility, or testing samples for their THC concentration.

DATCP Referral Required for Select Prosecutions

The Act provides that a person who engages in certain activities related to industrial hemp in violation of a DATCP rule may not be prosecuted for violations of the statutes or rules governing the industrial hemp program or violations of the state's Uniform Controlled Substances Act unless DATCP refers the person to the appropriate district attorney. The Act specifies that similar prosecutions under a municipal ordinance may not be commenced until DATCP refers the person to local law enforcement. DATCP is required by the Act to promulgate rules setting forth the factors to be considered when determining whether to refer a person for prosecution.

Definition of "Tetrahydrocannabinols" (THC)

For purposes of the state's Uniform Controlled Substances Act, the Act modifies the definition of THC to clarify that parts of Cannabis plants that are specifically excluded from the definition of "marijuana" under current law are legal to possess.

Imitation of Controlled Substances

Generally, current law prohibits knowingly distributing or delivering a noncontrolled substance and representing that the substance is a controlled substance. Proof of certain factors is prima facie evidence of such a representation (e.g., the physical appearance of the finished product is substantially the same as that of a specific controlled substance).

The Act provides that engaging in certain activities relating to industrial hemp does not constitute prima facie evidence of a prohibited representation described above.

Penalty Enhancer

The Act creates a penalty enhancer for a person who attempts to conceal the commission of a crime under the state's Uniform Controlled Substances Act while representing that he or she is engaging in certain activities related to industrial hemp. This penalty enhancer increases the maximum term of imprisonment for a misdemeanor by up to six months and increases the maximum term of imprisonment for a felony by up to three years.

Seizure and Destruction

The Act requires law enforcement, or certain officers or employees of the Pharmacy Examining Board, to seize and destroy a crop intended to be industrial hemp if the average THC concentration in a whole dry plant is found to exceed 0.7% above the permissible THC limit for industrial hemp. In such cases the entire crop on the field where the plant was found must be seized and destroyed, after notice is provided to the grower.

ADMINISTRATIVE RULES

The Act requires DATCP to promulgate emergency rules within 90 days of the Act's effective date to implement a state industrial hemp program. Under the Act, DATCP is not required to provide a finding of an emergency. In addition, DATCP is not required to prepare a statement of scope of the rules or submit the proposed rules in final draft form to the Governor for approval. DATCP's emergency rules may remain in effect until July 1, 2020, or the date on which permanent rules take effect, whichever is sooner.

Effective date: December 2, 2017

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