

State of Wisconsin



2017 Senate Bill 119

Date of enactment: **November 30, 2017**

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2017 WISCONSIN ACT 100

AN ACT *to renumber and amend* 961.14 (4) (t) and 961.55 (8); *to amend* 94.67 (2), 97.02 and 973.01 (2) (c) 2. a.; and *to create* 20.115 (7) (gc), 94.55, 94.67 (15r), 348.27 (18) (a) 1. f., 961.14 (4) (t) 2., 961.32 (3), 961.442, 961.55 (8) (b) and 961.55 (9) of the statutes; **relating to:** growing and processing industrial hemp, providing an exemption from emergency rule procedures, granting rule-making authority, making an appropriation, and providing a criminal penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.115 (7) (gc) of the statutes is created to read:

20.115 (7) (gc) *Industrial hemp.* All moneys received under s. 94.55 for regulation of activities relating to industrial hemp under s. 94.55.

SECTION 2. 94.55 of the statutes is created to read:

94.55 Industrial hemp. (1) DEFINITION. In this section, "industrial hemp" means the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater. "Industrial hemp" includes a substance, material, or product only if it is designated as a controlled substance under the federal Controlled Substances Act under 21 USC 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both.

(2) REGULATION OF INDUSTRIAL HEMP. (a) Subject to the provisions under this subsection, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export

industrial hemp in this state to the greatest extent allowed under federal law.

(b) 1. The department shall promulgate rules regulating the activities described in par. (a).

2. Except as provided under subs. 3. to 6. and subs. (3) and (4), rules promulgated under this paragraph shall regulate the activities described in par. (a) only to the extent required under federal law, and in a manner that allows the people of this state to have the greatest possible opportunity to engage in those activities.

3. The department shall promulgate rules, as necessary, to 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; to verify adherence to laws and rules governing activities related to industrial hemp; and to enforce violations of those laws and rules.

4. The department shall require the payment of an initial fee from any person who plants, grows, or cultivates industrial hemp in this state equal to the greater of \$150 or \$5 multiplied by the number of acres on which the person will plant, grow, or cultivate industrial hemp, but not to exceed \$1,000. The department may also impose an

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

annual fee on any person whose activities related to industrial hemp are regulated by the department under this paragraph, in an amount not to exceed an amount sufficient to cover the costs to the department of regulating those activities, as determined by the department by rule.

5. The department shall ensure that any of the following information that is in the department's possession is confidential and not open to public inspection or copying under s. 19.35 (1), except that it shall be made available to a law enforcement agency or law enforcement officer:

a. Information relating to the locations of industrial hemp fields and processing locations.

b. Personally identifiable information relating to a person who is lawfully engaging in activities related to industrial hemp.

c. Information obtained about an individual as a result of any criminal history search performed in relation to authorizing the individual to engage in activities related to industrial hemp.

d. Any other information about activities related to industrial hemp that could create a security risk if disclosed.

6. The department shall promulgate rules setting forth the factors to be considered when determining whether to refer a person for prosecution under s. 961.32 (3) (c).

(c) The department shall establish and administer a certification program, or shall designate a member of the Association of Official Seed Certifying Agencies or a successor organization to administer a certification program, for industrial hemp seed in this state. A certification program under this paragraph shall include the testing and certification of delta-9-tetrahydrocannabinol concentrations in hemp plants. Participation in the certification program shall be voluntary for growers and cultivators of industrial hemp. The department shall promulgate rules for the administration of any certification program established and administered by the department under this paragraph.

(d) The department of justice shall provide information to the department that the department has identified, by rule, as necessary to administer the provisions under this subsection.

(e) The department may seek federal approval to serve as an importer of industrial hemp seed.

(3) PILOT PROGRAM. The department shall create a pilot program to study the growth, cultivation, and marketing of industrial hemp. The department shall promulgate rules to implement the pilot program consistent with the authority under sub. (2) (b). The department shall also do all of the following as part of the pilot program:

(a) Issue licenses that authorize the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. The department shall identify the requirements for applying for a

license, approving or denying a license, and suspending or revoking a license, and shall identify the restrictions and obligations that apply to operating under a license. As part of the application process, the department shall require an 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. The department shall obtain a criminal history search from the records maintained by the department of justice for each applicant and may not issue a license if the applicant has ever been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, or any controlled substances law of another state, as indicated in the information obtained from the criminal history search. A license issued under this paragraph does not expire unless the pilot program under this subsection expires or the license is revoked.

(b) Create a registration system that authorizes the sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. The department shall obtain a criminal history search from the records maintained by the department of justice for each person applying for registration and may not register an applicant who has been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, or any controlled substances law of another state, as indicated in the information obtained from the criminal history search.

(c) Create a form to accompany any transfer of industrial hemp. The department shall identify the information to be included in the form, which shall include any test results showing the delta-9-tetrahydrocannabinol 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 for all transfers of the industrial hemp until it is processed in such a way that it no longer meets the definition under sub. (1), at which point the form shall be submitted to the department.

(4) PENALTIES. A person who violates any provision of this section, or an order issued or rule promulgated under this section, may be required to forfeit not less than \$200 nor more than \$5,000 or, for an offense committed within 5 years of an offense for which a penalty has been assessed under this section, may be required to forfeit not less than \$400 nor more than \$10,000.

SECTION 3. 94.67 (2) of the statutes is amended to read:

94.67 (2) "Agricultural commodity" means any plant or part of a plant, animal or animal product produced by a person primarily for sale, consumption, propagation, or other use by humans or animals. "Agricultural commodity" includes industrial hemp.

SECTION 4. 94.67 (15r) of the statutes is created to read:

94.67 (15r) “Industrial hemp” means the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater.

SECTION 5. 97.02 of the statutes is amended to read:

97.02 Standards; adulterated food. For the purposes of this chapter, a food is adulterated if it is adulterated within the meaning of 21 USC 342, except that the department may not consider a food to be adulterated solely because it contains industrial hemp, as defined in s. 94.67 (15r), or an industrial hemp product.

SECTION 6. 348.27 (18) (a) 1. f. of the statutes is created to read:

348.27 (18) (a) 1. f. Industrial hemp, as defined in s. 94.67 (15r).

SECTION 7. 961.14 (4) (t) of the statutes, as affected by 2017 Wisconsin Act 4, is renumbered 961.14 (4) (t) (intro.) and amended to read:

961.14 (4) (t) (intro.) Tetrahydrocannabinols, commonly known as “THC”, in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana, or chemically synthesized, except that tetrahydrocannabinols do not include ~~cannabidiol~~ any of the following:

1. Cannabidiol in a form without a psychoactive effect that is dispensed as provided in s. 961.38 (1n) (a) or that is possessed as provided in s. 961.32 (2m) (b);

SECTION 8. 961.14 (4) (t) 2. of the statutes is created to read:

961.14 (4) (t) 2. Tetrahydrocannabinols contained in fiber produced from the stalks, oil or cake made from the seeds of a *Cannabis* 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 a *Cannabis* plant which is incapable of germination.

SECTION 9. 961.32 (3) of the statutes is created to read:

961.32 (3) (a) In this subsection:

1. “Hemp” means the plant *Cannabis sativa*, or any part of the plant including the seeds.

2. “Industrial hemp” has the meaning given in s. 94.55 (1).

(b) A person who is acting in accordance with rules promulgated by the department of agriculture, trade and consumer protection under s. 94.55 (2) (b) may not be prosecuted for a criminal offense under this chapter, or under any municipal ordinance that prohibits conduct that is the same as that prohibited under this chapter, for any of the following:

1. Planting, growing, cultivating, harvesting, processing, or transporting hemp that contains a

delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent above the permissible limit for industrial hemp on a dry weight basis or that is grown from industrial hemp seed certified under s. 94.55 (2) (c).

2. Selling, transferring, importing, exporting, or taking possession of industrial hemp.

3. Selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of hemp that has been certified under s. 94.55 (2) (c), by a laboratory authorized by the department of agriculture, trade and consumer protection to test the delta-9-tetrahydrocannabinol concentration in hemp, as meeting the permissible delta-9-tetrahydrocannabinol concentration limit for industrial hemp.

4. Possessing hemp with a delta-9-tetrahydrocannabinol concentration above the permissible level for industrial hemp if the hemp was certified under s. 94.55 (2) (c) at the time the possessor took possession as meeting the permissible concentration limit for industrial hemp and the possessor had no reason to believe at that time that the certification was incorrect.

5. Taking samples of hemp, transporting samples to a testing facility, or testing samples for their delta-9-tetrahydrocannabinol concentration.

(c) A person who plants, grows, cultivates, harvests, samples, tests, processes, transports, transfers, takes possession of, sells, imports, or exports industrial hemp in violation of a rule promulgated under s. 94.55 (2) (b) may not be prosecuted under s. 94.55 or this chapter unless the person is referred to the district attorney for the county in which the violation occurred by the department of agriculture, trade and consumer protection, and may not be prosecuted under a municipal ordinance that prohibits the same conduct as is prohibited under this chapter unless the person is referred to local law enforcement by the department of agriculture, trade and consumer protection.

(d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity described under par. (b) does not constitute prima facie evidence of a prohibited representation under s. 961.41 (4) (am) 1. a. or b.

SECTION 10. 961.442 of the statutes is created to read:

961.442 Penalties; industrial hemp. If a person attempts to conceal the commission of a crime under this chapter while representing that he or she is engaging in the planting, growing, cultivating, harvesting, processing, transporting, importing, exporting, selling, transferring, sampling, testing, or taking possession of industrial hemp, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(1) The maximum term of imprisonment for a misdemeanor may be increased by not more than 6 months.

(2) The maximum term of imprisonment for a felony may be increased by not more than 3 years.

SECTION 11. 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and amended to read:

961.55 (8) (intro.) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an any of the following constitutes authority for the seizure and forfeiture of the plants described in sub. (7):

(a) ~~An appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.~~

SECTION 12. 961.55 (8) (b) of the statutes is created to read:

961.55 (8) (b) Proof that the person is growing or storing the plants in accordance with the requirements, if any, imposed by the department of agriculture, trade and consumer protection under s. 94.55.

SECTION 13. 961.55 (9) of the statutes is created to read:

961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1), is tested for delta-9-tetrahydrocannabinol levels and the average concentration of delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 0.7 percent above the permissible limit for industrial hemp, the entire crop on the field where the plant was found shall be seized and destroyed. Before a crop is seized and destroyed under this subsection, the agency whose officers or employees intend to seize and destroy the crop shall provide, to the person licensed under s. 94.55 (3) to grow the crop or to the person's agent or employee, written documentation verifying the test results for the crop that is subject to seizure and destruction.

SECTION 14. 973.01 (2) (c) 2. a. of the statutes is amended to read:

973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.635, 939.645, 946.42 (4), 961.442, 961.46, and 961.49.

SECTION 15. Nonstatutory provisions.

(1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

(a) That the Cannabis sativa plant used for the production of industrial hemp is separate and distinct from forms of Cannabis used to produce marijuana.

(b) That section 7606 of the federal farm bill of 2014, 7 USC 5940, allows states to establish agricultural pilot programs to study the growth, cultivation, or marketing of industrial hemp.

(c) That industrial hemp is used in products such as building materials, textiles, cordage, fiber, food, floor coverings, fuel, paint, animal feed, paper, particle board, plastics, seed meal, cosmetics, seed, oil, and yarn.

(d) That cannabidiol and hemp seed oil have the ability to provide relief for maladies, without psychotropic effect.

(e) That the growth, cultivation, and processing of industrial hemp will provide an alternate crop to vitalize the agricultural sector in this state and will provide production and processing jobs.

(2) EMERGENCY RULES. No later than the 90th day after the effective date of this subsection, the department of agriculture, trade and consumer protection shall, using the procedure under section 227.24 of the statutes, promulgate rules under section 94.55 (2) and (3) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until July 1, 2020, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, for emergency rules promulgated under this subsection, the department is not required to prepare a statement of scope of the rules or to submit the proposed rules in final draft form to the governor for approval.
