



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0840/4
MCP:klm

2017 ASSEMBLY BILL 147

March 15, 2017 - Introduced by Representatives CONSIDINE, POPE, C. TAYLOR, KOLSTE, SPREITZER, MILROY, SARGENT, CROWLEY, SUBECK, BERCEAU, SINICKI, HESSELBEIN, BROSTOFF, BOWEN, OHNSTAD, ZAMARRIPA, BARCA and QUINN, cosponsored by Senators L. TAYLOR, ERPENBACH, MILLER, RINGHAND and C. LARSON. Referred to Committee on Agriculture.

1 **AN ACT to renumber and amend** 961.55 (8); **to amend** 94.67 (2), 97.02 and
2 961.01 (14); and **to create** 20.115 (7) (gc), 94.55, 348.27 (18) (a) 1. e., 961.32 (3)
3 and 961.55 (8) (b) of the statutes; **relating to:** industrial hemp, granting
4 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law places various restrictions on the possession, manufacture, and delivery of controlled substances. One such controlled substance is tetrahydrocannabinol (THC), including THC contained in or obtained from marijuana. The controlled substances law defines marijuana as all parts of plants of the genus *Cannabis*, whether growing or not, and most derivatives or preparations of the plants (though it does not include, for instance, fiber produced from the stalks or oil made from the seeds of the plants). THC is currently placed in the most restricted category of controlled substances, which means it may not be prescribed for medical use and may be manufactured and possessed only for particular purposes (such as research) under special permits.

This bill requires the Department of Agriculture, Trade and Consumer Protection to issue licenses that authorize the growing and processing of industrial hemp. Industrial hemp is defined as the plant *Cannabis* with a concentration of THC of no more than 0.3 percent. The bill requires an applicant for a license to provide a legal description and the GPS coordinates of the land on which industrial hemp will be grown or processed and to pay a fee for the license. The bill provides that a person may possess, transport, sell, distribute, or buy industrial hemp without a license if

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the industrial hemp was planted, grown, cultivated, and processed by a person licensed by DATCP. The bill requires reporting by a person with an industrial hemp license who transfers the hemp to a licensed processor.

This bill also allows DATCP or an institution of higher education to establish an agricultural pilot program to study industrial hemp and to grow hemp for this purpose. In addition, the bill provides that a tribe may grow, possess, process, transport, or sell industrial hemp, but that a tribal member must have a license to grow or process industrial hemp, either from DATCP or from the member's tribe. This bill allows DATCP, the University of Wisconsin-Madison College of Agriculture and Life Sciences (UW-CALS), and the Wisconsin Crop Improvement Association to administer a voluntary seed certification program for industrial hemp and allows DATCP and UW-CALS to develop a Wisconsin heritage seed for industrial hemp.

Under the bill, any industrial hemp or industrial hemp product intended for human consumption must be tested by an independent testing laboratory. The bill sets out requirements related to the laboratory's accreditation, testing, and reporting.

This bill also creates an exemption from the controlled substances law for growing or processing industrial hemp in conformity with a license issued by DATCP. Additionally, the bill creates an exemption for possessing, transporting, delivering, selling, distributing, and buying industrial hemp if the industrial hemp was planted, grown, cultivated, and processed by a person licensed by DATCP. Under the bill, industrial hemp is also removed from the current definition of "marijuana."

Finally, this bill requires DATCP to promulgate rules for the administration of the licensing law and for certifying and testing industrial hemp, industrial hemp products, and industrial hemp seed.

This bill does not change federal law. Growing and possessing the plant *Cannabis* is generally prohibited by federal law. The 2014 federal farm bill, 7 USC 5940, authorizes a state agriculture department or an institution of higher education to grow industrial hemp for research purposes, if the state's laws allow the growing of industrial hemp by a state agricultural agency or institute of higher education.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 20.115 (7) (gc) of the statutes is created to read:
- 2 20.115 (7) (gc) *Industrial hemp.* All moneys received under s. 94.55 for
- 3 regulation of industrial hemp under s. 94.55.
- 4 **SECTION 2.** 94.55 of the statutes is created to read:

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1 **94.55 Industrial hemp. (1) DEFINITION.** In this section, “industrial hemp”
2 means the plant Cannabis or any part of the plant Cannabis, whether growing or not,
3 that has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent
4 on a dry weight basis.

5 **(2) LICENSING. (a)** The department shall issue licenses that authorize the
6 planting, growing, cultivating, harvesting, and processing of industrial hemp for
7 commercial purposes or research.

8 (b) A person applying for a license under this subsection shall provide all of the
9 following to the department, in a form and manner prescribed by the department:

- 10 1. The name and address of the applicant.
- 11 2. If the applicant is a business entity, the name and address of the chief
12 executive officer or, in the case of a partnership or limited liability company, the
13 names and addresses of the partners or members.
- 14 3. The legal description of the land on which the industrial hemp will be
15 planted, grown, cultivated, or processed.
- 16 4. The global positioning system coordinates of the land on which the industrial
17 hemp will be planted, grown, cultivated, or processed.
- 18 5. Any other information required by the department by rule.

19 (c) A person applying for a license or a renewed license under this subsection
20 shall pay to the department a fee of \$150 or, if the person will plant, grow, or cultivate
21 industrial hemp, the greater of \$150 or \$5 multiplied by the number of acres on which
22 the person will plant, grow, or cultivate industrial hemp, but not to exceed \$1,000.

23 (d) A license issued under this subsection is valid for one year. A person
24 licensed under this subsection may apply for a renewal of the license in a form and
25 manner prescribed by the department.

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1 **(3) RECORDS RETENTION.** (a) A person licensed under sub. (2) who grows or
2 cultivates industrial hemp and transfers the industrial hemp to a person licensed
3 under sub. (2) who processes industrial hemp shall maintain, for at least 3 years
4 following the transfer, records showing the following information:

5 1. The name and address of the processor that received the industrial hemp.

6 2. The amount of industrial hemp transferred.

7 3. Any test results received from an independent testing laboratory showing
8 the delta-9-tetrahydrocannabinol concentration of the industrial hemp.

9 (b) A person required to retain records under par. (a) shall, upon receiving at
10 least 3 days' notice, make the records available for inspection by the department
11 during normal business hours.

12 **(4) AUTHORITY OF LICENSE HOLDERS TO IMPORT AND SELL SEED.** In addition to
13 planting, growing, cultivating, and processing industrial hemp for commercial
14 purposes or research and the other activities allowed under this section, a person
15 licensed under sub. (2) may do any of the following:

16 (a) Use any method to produce industrial hemp, including planting seeds or
17 starts and using clones or cuttings.

18 (b) Plant, grow, and cultivate industrial hemp from uncertified industrial hemp
19 seed, starts, clones, or cuttings.

20 (c) Bring into this state and resell certified or uncertified industrial hemp seed.

21 (d) Retain certified or uncertified industrial hemp seed for the purpose of
22 planting, growing, or cultivating industrial hemp at a later date.

23 (e) Retain hemp that has a delta-9-tetrahydrocannabinol concentration of
24 more than 0.3 percent but not more than 1.0 percent on a dry weight basis for the
25 purpose of reconditioning the hemp into industrial hemp.

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1 **(5) AUTHORITY OF THE DEPARTMENT AND INSTITUTIONS OF HIGHER EDUCATION.** (a)

2 The department or an institution of higher education may do any of the following,
3 in addition to the other activities allowed under this section:

4 1. Create and administer an agricultural pilot program to study the growth,
5 cultivation, or marketing of industrial hemp.

6 2. Bring into this state and resell industrial hemp seed.

7 (b) The department or an institution of higher learning may plant, grow, or
8 cultivate industrial hemp only if the industrial hemp is planted, grown, or cultivated
9 for purposes of research conducted under an agricultural pilot program under par.
10 (a) or for other agricultural or academic research.

11 **(6) TRIBAL AUTHORITY; SPECIAL COMMITTEE STUDY.** (a) Notwithstanding sub. (2),
12 a tribe in this state may plant, grow, cultivate, process, possess, transport, sell,
13 distribute, or buy industrial hemp without a license or permit from any agency.

14 (b) A member of a tribe in this state may not plant, grow, cultivate, or process
15 industrial hemp without a license issued by the department under sub. (2) or a
16 license issued by the member's tribe.

17 (c) A tribe in this state may create and administer an agricultural pilot program
18 to study the growth, cultivation, or marketing of industrial hemp and may work with
19 the department or an institution of higher education in creating and administering
20 the program.

21 (d) The special committee on state-tribal relations created under s. 13.83 (3)
22 may study economic development ventures related to industrial hemp, including
23 compacts and manufacturing opportunities.

24 **(7) ACTIVITIES ALLOWED WITHOUT A LICENSE.** Notwithstanding any other
25 provision of law, a person may possess, transport, sell, distribute, or buy industrial

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1 hemp or industrial hemp products if the industrial hemp was planted, grown,
2 cultivated, harvested, and processed by a person licensed under sub. (2). A person
3 who engages in the activities under this subsection shall not be subject to any civil
4 or criminal penalty under state law.

5 **(8) SEED CERTIFICATION; WISCONSIN HERITAGE SEED.** (a) The Wisconsin Crop
6 Improvement Association, or any successor organization, in cooperation with the
7 University of Wisconsin–Madison College of Agricultural and Life Sciences and the
8 department, may establish and administer a certification program for industrial
9 hemp seed in this state. Participation in the certification program shall be voluntary
10 for growers and cultivators of industrial hemp.

11 (b) The University of Wisconsin–Madison College of Agricultural and Life
12 Sciences and the department may develop a Wisconsin heritage seed for industrial
13 hemp. In developing a Wisconsin heritage seed, the college and the department may
14 do any of the following:

- 15 1. Breed, plant, grow, cultivate, and harvest the plant Cannabis.
- 16 2. Use Cannabis seeds that have a delta-9-tetrahydrocannabinol
17 concentration of not more than 1.0 percent.
- 18 3. Collect seed from wild Cannabis plants.

19 **(9) TESTING OF INDUSTRIAL HEMP INTENDED FOR CONSUMPTION.** (a) All industrial
20 hemp and industrial hemp products intended for human consumption shall be tested
21 by an independent testing laboratory to confirm a delta-9-tetrahydrocannabinol
22 concentration of not more than 0.3 percent on a dry weight basis and to confirm safe
23 levels of potential contaminants. An independent testing laboratory shall have all
24 of the following:

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1 1. Accreditation by an impartial organization that provides accreditation
2 pursuant to the standard ISO/IEC 17025 of the International Organization for
3 Standardization and that is a signatory to the International Laboratory
4 Accreditation Corporation Mutual Recognition Arrangement, or other comparable
5 accreditation standard required by the department.

6 2. A demonstrated ability to accurately measure individual cannabinoids in
7 both their acidic and neutral forms down to 0.05 percent by weight, including
8 delta-9-tetrahydrocannabinol, delta-9-tetrahydrocannabinolic acid, cannabidiol,
9 and cannabidiolic acid.

10 (b) An independent testing laboratory may possess industrial hemp and
11 industrial hemp products grown, cultivated, harvested, or processed by a person
12 licensed under sub. (2), for the purpose of testing under this subsection. Any testing
13 performed by a laboratory under this subsection shall comply with the
14 methodologies, ranges, and parameters for testing described in the laboratory's
15 accreditation.

16 (c) The department may create a registration program to register persons to
17 sample an industrial hemp crop and transport the industrial hemp sample to an
18 independent testing laboratory. A person registered under this paragraph shall be
19 trained by the department in sampling and chain of custody protocols. The
20 department may charge a reasonable fee for registration and training.

21 (d) An independent testing laboratory that tests for an industrial hemp crop's
22 delta-9-tetrahydrocannabinol concentration shall provide the test results to the
23 department in a form and manner prescribed by the department. An independent
24 testing laboratory shall provide to the department, at the department's request, test

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1 results from testing on any industrial hemp or industrial hemp product intended for
2 human consumption.

3 **(10) RULES.** (a) The department shall promulgate rules for the administration
4 of this section, including rules concerning all of the following:

5 1. Certifying industrial hemp seeds.

6 2. Sampling and testing plants during growth for
7 delta-9-tetrahydrocannabinol levels.

8 3. Supervising the planting, growing, cultivating, harvesting, and processing
9 of industrial hemp.

10 4. Safe levels of potential contaminants in industrial hemp and industrial
11 hemp products intended for human consumption, including pesticides, heavy
12 metals, residual solvents, and microbiological contaminants, for purposes of sub. (9).

13 5. Sampling and testing industrial hemp and industrial hemp products,
14 including determining batch sizes, for purposes of sub. (9).

15 (b) The department may promulgate rules to require documentation relating
16 to possessing, transporting, selling, distributing, or buying industrial hemp or
17 industrial hemp products.

18 **(11) AGRICULTURAL PRODUCT OR COMMODITY.** Industrial hemp and industrial
19 hemp products shall be considered agricultural products or commodities under all
20 applicable provisions of the statutes.

21 **(12)** Each provision of this section applies only to the extent that it is not
22 contrary to or inconsistent with federal law. The secretary may seek a waiver from
23 the federal drug enforcement agency to implement this section.

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

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1 94.67 (2) “Agricultural commodity” means any plant or part of a plant, animal
2 or animal product produced by a person primarily for sale, consumption, propagation
3 or other use by humans or animals. “Agricultural commodity” includes industrial
4 hemp, as defined in s. 94.55 (1).

5 **SECTION 4.** 97.02 of the statutes is amended to read:

6 **97.02 Standards; adulterated food.** For the purposes of this chapter, a food
7 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
8 department may not consider a food to be adulterated solely because it contains
9 industrial hemp, as defined in s. 94.55 (1), or an industrial hemp product.

10 **SECTION 5.** 348.27 (18) (a) 1. e. of the statutes is created to read:

11 348.27 (18) (a) 1. e. Industrial hemp, as defined in s. 94.55 (1).

12 **SECTION 6.** 961.01 (14) of the statutes is amended to read:

13 961.01 (14) “Marijuana” means all parts of the plants of the genus Cannabis,
14 whether growing or not; the seeds thereof; the resin extracted from any part of the
15 plant; and every compound, manufacture, salt, derivative, mixture or preparation of
16 the plant, its seeds or resin, including tetrahydrocannabinols. “Marijuana” does
17 include the mature stalks if mixed with other parts of the plant, but does not include
18 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
19 compound, manufacture, salt, derivative, mixture or preparation of the mature
20 stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed
21 of the plant which is incapable of germination. “Marijuana” does not include
22 industrial hemp, as defined in s. 94.55 (1).

23 **SECTION 7.** 961.32 (3) of the statutes is created to read:

24 961.32 (3) (a) In this subsection, “industrial hemp” has the meaning given in
25 s. 94.55 (1).

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1 (b) A person licensed by the department of agriculture, trade and consumer
2 protection under s. 94.55 (2), or an agent or employee of the person acting in the usual
3 course of the agent's or employee's business or employment, may plant, grow,
4 cultivate, harvest, and process industrial hemp in this state to the extent permitted
5 under federal law, to the extent authorized by the person's license, and in conformity
6 with s. 94.55 and the rules promulgated under that section without being registered
7 under federal law. To the extent permitted under federal law, a person may possess,
8 transport, deliver, sell, distribute, or buy industrial hemp in this state without being
9 registered under federal law if the industrial hemp was planted, grown, cultivated,
10 harvested, and processed by a person licensed under s. 94.55 (2).

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

13 961.55 (8) (intro.) The failure, upon demand by any officer or employee
14 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
15 premises upon which the species of plants are growing or being stored, to produce an
16 one of the following constitutes authority for the seizure and forfeiture of the plants
17 described in sub. (7):

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

20 **SECTION 9.** 961.55 (8) (b) of the statutes is created to read:

21 961.55 (8) (b) Evidence of licensure under s. 94.55.

22 (END)