



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1117/1
MCP:amn/klm/wlj/emw

2017 BILL

1 **AN ACT to renumber and amend** 961.55 (8); **to amend** 94.67 (2) and 97.02; and
2 **to create** 20.115 (7) (gc), 94.55, 348.27 (18) (a) 1. e., 961.32 (3), 961.55 (8) (b) and
3 961.55 (9) of the statutes; **relating to:** growing and processing industrial hemp,
4 granting 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 restrictive 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 sativa* with no more than 0.3 percent THC on a dry weight basis. The bill requires an applicant for a license to provide the GPS coordinates of the land on which industrial hemp will be grown or processed and to pay a fee for the license. It also requires DATCP to obtain a criminal history search from the state Department of Justice for each applicant and

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prohibits DATCP from issuing a license to a person if the criminal history search shows the person has been convicted of violating the controlled substances law. The bill provides that a person may possess, transport, sell, distribute, or buy industrial hemp without a license if the industrial hemp was planted, grown, cultivated, and processed by a person licensed by DATCP or by a person in another state or country who planted, grew, cultivated, or processed the industrial hemp in accordance with the laws of that state or country. The bill requires reporting by a person with an industrial hemp license, including reporting all sales of industrial hemp.

This bill also provides that DATCP or an institution of higher education may establish an agricultural pilot program to study industrial hemp and to grow hemp for this purpose. In addition, the bill requires a tribe or an individual tribal member to have a license from DATCP to grow or process industrial hemp. The bill also provides that a tribe may establish, with the assistance of DATCP or an institution of higher education other than a tribal college or university, an agricultural pilot program to study industrial hemp. The bill also allows the committee on state-tribal relations to study economic development ventures related to industrial hemp.

This bill requires 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. In addition, the bill requires any industrial hemp or industrial hemp product intended for human consumption to be tested, in its final consumer-ready state, 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, processing, or possessing industrial hemp in conformity with a license issued by DATCP. Under the bill, if a plant being grown for industrial hemp tests at a higher concentration of tetrahydrocannabinol than 1.0 percent, the entire crop is to be seized and destroyed. The bill also provides that a licensed grower of industrial hemp is not subject to criminal penalties if a crop is found to have a tetrahydrocannabinol concentration of 1.5 percent or less or if the grower planted certified seed. 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 or by a person in another state or country in accordance with the laws of that state or country.

Finally, the bill requires DATCP to promulgate rules for the administration of the licensing law, as well as for certifying industrial hemp and for developing programs for researching industrial hemp genetics.

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.

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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 growing and processing industrial hemp under s. 94.55.

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

5 **94.55 Industrial hemp. (1) DEFINITIONS.** In this section:

6 (a) “Human consumption” means ingestion by a person or topical application
7 to the skin or hair of a person.

8 (b) “Industrial hemp” means the plant *Cannabis sativa*, or any part of the plant,
9 having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent
10 on a dry weight basis.

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

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

16 1. The name and address of the applicant.

17 2. If the applicant is a business entity, the name and address of the chief
18 executive officer or, in the case of a partnership or limited liability company, the
19 names and addresses of the partners or members.

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1 3. The global positioning system coordinates of the centers of all fields on which
2 the industrial hemp will be planted, grown, or cultivated, or of the location where the
3 industrial hemp will be processed.

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

8 (d) 1. The department shall obtain a criminal history search from the records
9 maintained by the department of justice for each person applying for initial licensure
10 under this subsection.

11 2. The department may not issue a license if the person has ever been convicted
12 of a violation of ch. 961 as indicated in the information obtained under subd. 1.

13 3. Information obtained by the department under subd. 1. is confidential and
14 may be used only to determine eligibility for licensure.

15 (e) A license issued under this subsection is valid for 3 years.

16 **(3) DOCUMENTATION AND REPORTING REQUIREMENTS.** (a) A person licensed under
17 sub. (2) who plants, grows, or cultivates industrial hemp shall provide to the
18 department a copy of any contract under which the licensee plants, grows, or
19 cultivates industrial hemp.

20 (b) A person licensed under sub. (2) shall report to the department the name
21 and address of each person to whom the licensee sells, distributes, or transfers
22 industrial hemp, the amount of industrial hemp sold, distributed, or transferred to
23 each person, and, if the licensee plants, grows, or cultivates industrial hemp, the
24 approximate global positioning system coordinates of the centers of all fields on
25 which the industrial hemp will be grown and any test results received from an

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1 independent testing laboratory showing the delta-9-tetrahydrocannabinol
2 concentration of the industrial hemp.

3 (c) A person required to provide information under par. (a) or (b) shall, upon
4 receiving at least 3 days' notice, make the records showing that information available
5 for inspection by the department during normal business hours.

6 **(4) AUTHORITY TO IMPORT AND SELL SEED, RETAIN SEED, AND IMPORT INDUSTRIAL**
7 **HEMP.** A person licensed under sub. (2) may bring into this state and resell industrial
8 hemp seed, may retain industrial hemp seed from one crop year to be planted in the
9 following years, may bring industrial hemp and industrial hemp products into this
10 state, and may retain hemp and hemp products that have a
11 delta-9-tetrahydrocannabinol concentration on a dry weight basis of more than 0.3
12 percent but not more than 1.0 percent for the purpose of reconditioning the hemp into
13 industrial hemp or industrial hemp products.

14 **(5) AUTHORITY OF THE DEPARTMENT AND INSTITUTIONS OF HIGHER EDUCATION.**
15 Notwithstanding sub. (2), the department or an institution of higher education may
16 create and administer an agricultural pilot program to study the growth, cultivation,
17 or marketing of industrial hemp, and may plant, grow, or cultivate industrial hemp
18 without a license or permit, for purposes of research conducted under an agricultural
19 pilot program or for other agricultural or academic research.

20 **(6) TRIBAL AUTHORITY; SPECIAL COMMITTEE STUDY.** (a) A tribe in this state or a
21 member of a tribe in this state may not plant, grow, cultivate, or process industrial
22 hemp without a license issued by the department under sub. (2).

23 (b) A tribe in this state may create and administer an agricultural pilot
24 program to study the growth, cultivation, or marketing of industrial hemp and shall

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1 work with the department or an institution of higher education, not including tribal
2 colleges or universities in this state, in creating and administering the program.

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

6 **(7) ACTIVITIES ALLOWED WITHOUT A LICENSE.** Notwithstanding any other
7 provision of law, a person may possess, transport, sell, distribute, or buy industrial
8 hemp or industrial hemp products if the industrial hemp was planted, grown,
9 cultivated, harvested, and processed by a person licensed under sub. (2) or by a
10 person in another state or country in accordance with the laws of that state or
11 country. A person who engages in the activities under this subsection shall not be
12 subject to any civil or criminal penalty under state law.

13 **(8) SEED CERTIFICATION; WISCONSIN HERITAGE SEED.** (a) The Wisconsin Crop
14 Improvement Association, or any successor organization, in cooperation with the
15 University of Wisconsin-Madison College of Agricultural and Life Sciences and the
16 department, shall establish and administer a certification program for industrial
17 hemp seed in this state. Participation in the certification program shall be voluntary
18 for growers and cultivators of industrial hemp.

19 (b) The University of Wisconsin-Madison College of Agricultural and Life
20 Sciences and the department may develop a Wisconsin heritage seed for industrial
21 hemp. In developing a Wisconsin heritage seed, the college and the department may
22 do any of the following:

- 23 1. Breed, plant, grow, cultivate, and harvest the plant Cannabis.
- 24 2. Use Cannabis seeds from plants that have a delta-9-tetrahydrocannabinol
25 concentration of not more than 1.0 percent.

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1 3. Collect seeds from wild Cannabis plants.

2 **(9) TESTING OF INDUSTRIAL HEMP INTENDED FOR CONSUMPTION.** (a) All industrial
3 hemp and each industrial hemp product intended for human consumption shall be
4 tested, in its final consumer-ready state, by an independent testing laboratory to
5 confirm that it is nonpsychoactive and contains safe levels of potential contaminants.
6 An independent testing laboratory shall have all of the following:

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

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

16 (b) For the purpose of testing under this subsection, an independent testing
17 laboratory may possess industrial hemp and industrial hemp products grown,
18 cultivated, harvested, or processed by a person licensed under sub. (2) or by a person
19 in another state or country in accordance with the laws of that state or country. Any
20 testing performed by a laboratory under this subsection shall comply with the
21 methodologies, ranges, and parameters for testing described in the laboratory's
22 accreditation.

23 (c) The department may create a registration program to register persons to
24 sample an industrial hemp crop and transport the industrial hemp sample to an
25 independent testing laboratory. A person registered under this paragraph shall be

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1 trained by the department in sampling and chain of custody protocols. The
2 department may charge a reasonable fee for registration and training.

3 (d) An independent testing laboratory that tests for an industrial hemp crop's
4 delta-9-tetrahydrocannabinol concentration shall provide the test results to the
5 department in a form and manner prescribed by the department. An independent
6 testing laboratory shall provide to the department, at the department's request, test
7 results from testing on any industrial hemp or industrial hemp product intended for
8 human consumption.

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

11 (a) Administering a program for certifying industrial hemp seed.

12 (b) Sampling and testing plants during growth for
13 delta-9-tetrahydrocannabinol levels.

14 (c) Developing programs for researching industrial hemp genetics.

15 (d) Supervising the growing, harvesting, and processing of industrial hemp.

16 (e) Safe levels of potential contaminants in industrial hemp and industrial
17 hemp products intended for human consumption, including pesticides, heavy
18 metals, residual solvents, and microbiological contaminants, for purposes of sub. (9).

19 (f) Sampling and testing industrial hemp and industrial hemp products in their
20 final consumer-ready state, including determining batch sizes and nonpsychoactive
21 levels of delta-9-tetrahydrocannabinol, for purposes of sub. (9).

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

25 **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.** 961.32 (3) of the statutes is created to read:

13 961.32 (3) (a) In this subsection, “industrial hemp” has the meaning given in
14 s. 94.55 (1).

15 (b) A person licensed by the department of agriculture, trade and consumer
16 protection under s. 94.55 (2), and an agent or employee of the person acting in the
17 usual course of the agent’s or employee’s business or employment, may plant, grow,
18 cultivate, harvest, process, possess, transport, sell, deliver, distribute, or buy
19 industrial hemp in this state to the extent authorized by the person’s license and in
20 conformity with s. 94.55 and the rules promulgated under that section. A person
21 licensed under s. 94.55 (2), and an agent or employee of the person acting in the usual
22 course of the agent’s or employee’s business or employment, who plants, grows, or
23 cultivates industrial hemp, may not be prosecuted for a criminal offense if the
24 delta-9-tetrahydrocannabinol concentration of the crop grown or cultivated is 1.5
25 percent or less on a dry weight basis, or if the person planted seed that has been

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1 certified as having a delta-9-tetrahydrocannabinol concentration of no more than
2 0.3 percent. A person may not be prosecuted for a criminal offense for possessing,
3 transporting, selling, delivering, distributing, or buying industrial hemp in this
4 state if the industrial hemp was planted, grown, cultivated, harvested, and
5 processed by a person licensed under s. 94.55 (2) or by a person in another state or
6 country in accordance with the laws of that state or country.

7 **SECTION 7.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
8 amended to read:

9 961.55 (8) (intro.) The failure, upon demand by any officer or employee
10 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
11 premises upon which the species of plants are growing or being stored, to produce an
12 one of the following constitutes authority for the seizure and forfeiture of the plants
13 described in sub. (7):

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

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

17 961.55 (8) (b) Evidence of licensure under s. 94.55 (2).

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

19 961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
20 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
21 delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 1.0 percent,
22 the entire crop on the field where the plant was found shall be seized and destroyed.
23 Before a crop is seized and destroyed under this subsection, the agency whose officers
24 or employees intend to seize and destroy the crop shall provide, to the person licensed
25 under s. 94.55 (2) to grow the crop or to the person's agent or employee, written

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1 documentation verifying the test results for the crop that is subject to seizure and
2 destruction.

3 **SECTION 10. Nonstatutory provisions.**

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

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

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

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

13 (d) That cannabidiol and hemp seed oil have the ability to provide relief for
14 more maladies than medical marijuana, without psychotropic effect.

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

18 (END)