



**City
of
Milwaukee**

MEMORANDUM

TO: Common Council Members

FROM: Brenda Wood, Senior Legislative Coordinator

DATE: March 15, 2019

RE: File #181701--Communication relating to recent changes to and the current status of laws and regulations governing hemp growing and distribution in the State of Wisconsin.

Sponsors: Ald. Coggs and Ald. Rainey

The information on the following pages will be presented to the Judiciary and Legislation Committee on Monday, March 18, 2019.

Hemp vs. Marijuana

There are many different varieties of cannabis. Industrial hemp and marijuana are from the same species of plant, *Cannabis sativa*, but from different varieties or cultivars. While marijuana generally refers to the cultivated plant used as a psychotropic drug (whether used for medicinal or recreational purposes), industrial hemp is cultivated for use in the production of a wide range of products, including foods and beverages, personal care products, nutritional supplements, fabrics and textiles, paper, construction materials, and other manufactured goods. Hemp is also characterized by higher levels of cannabidiol (CBD), the primary nonpsychotropic ingredient in *Cannabis sativa*.

“Marijuana” is a Schedule I controlled substance, and the unauthorized manufacture, distribution, dispensation, and possession of marijuana is strictly prohibited under federal law. Marijuana generally refers to the flowering tops and leaves of psychoactive cannabis plant varieties, which are often grown for their high concentration of delta-9 THC. THC is the primary psychoactive ingredient in cannabis.

Cannabidiol (CBD)

- Cannabinoids, such as cannabidiol (CBD), are a group of chemicals concentrated in the female flower of the cannabis plant. While they are chemically similar to THC, they do not have the psychoactive effects of THC.
- Under the 2018 Farm Bill, there will be more broadly available, legal, CBD products; however, this does not mean that all CBD products are legal moving forward.

2014 Farm Bill

- Authorized industrial hemp pilot programs in state department of agricultures and institutions of higher education.
- “Industrial hemp” is defined in statute as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”
- One of the goals of the 2014 Farm Bill was to generate and protect research into hemp

2018 Farm Bill

- On December 12, 2018, Congress passed the 2018 Farm Bill, which was signed into law by President Trump on December 20, 2018 and became effective January 1, 2019.
- Allows hemp cultivation broadly, not simply pilot programs.
- Removes hemp from the Controlled Substances Act, before that it was generally illegal at the federal level to cultivate, possess or distribute the hemp plant or CBD derived from the hemp plant,
- Delegates to states and Indian tribes the broad authority to regulate and limit the production and sale of hemp and hemp products within their borders. States and Indian tribes cannot, however, limit the transportation or shipment of hemp and hemp products through their respective jurisdictions.
- Bars an individual convicted of a drug-related felony (under state or federal law) before, on, or after the enacted date (December 20, 2018) from participating in the hemp production program established by the bill. That bar exists for ten years after the date of the felony conviction. There’s an exception for a felon who was already participating in a hemp pilot program under the 2014 Farm Bill.
- To comply with 2018 Farm Bill, State departments of agriculture must consult with the state’s governor and chief law enforcement officer to devise a plan that must be submitted to the Secretary of USDA. A state’s plan to license and regulate hemp can only commence once the Secretary of USDA approves that

state's plan. In states opting not to devise a hemp regulatory program, USDA will construct a regulatory program under which hemp cultivators in those states must apply for licenses and comply with a federally-run program.

Federal Agencies Oversight

US Department of Agriculture (USDA)

- Has primary responsibility for overseeing legal cultivation of industrial hemp
- Agency is still in the process of establishing a set of regulations covering areas such as land use, certification, product testing and disposal of hemp containing excess THC
- After rules in place, will begin reviewing proposed hemp plans submitted by state agriculture departments.
- Intention to issue regulations in the Fall of 2019 to accommodate the 2020 planting season

Food and Drug Administration (FDA)

- Congress preserved FDA's authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug, and Cosmetic Act (FD&C Act)
- Allows the FDA to continue enforcing the law while also providing regulatory pathways for products containing cannabis and cannabis-derived compounds.
- Under the FD&C Act, it's illegal to introduce drug ingredients like these into the food supply, or to market them as dietary supplements.
- Some manufacturers and marketers of CBD-infused products—including food, beverages, dietary supplements and creams—claim that the products are effective in the treatment and prevention of various diseases.
- Has taken the position that such claims subject the products to regulation as drugs, which typically requires prior approval from the FDA based upon clinical trials to establish product safety and efficacy.
- Has issued a number of warning letters over the past three years to halt the marketing of products for which such claims are made, although **no enforcement actions have followed.**
- Members of Congress have urged the FDA to update regulations governing the use of certain hemp-derived ingredients in food, beverages, and dietary supplements.
- FDA has acknowledged the possibility that promulgating CBD regulations could take longer than expected, and may require congressional guidance if the FDA determines that the pathway to CBD regulations could be a multi-year process.
- FDA is supposed to hold a public meeting soon to initiate a rulemaking procedure for CBD but the Commissioner's sudden resignation has created further uncertainty with regard to how the FDA will manage the regulatory pathway for CBD.

Drug Enforcement Agency (DEA)

- Farm Bill shifted regulatory responsibility for hemp from the Justice Department to the U.S. Department of Agriculture, the agency's law enforcement units like DEA are still charged with enforcing federal marijuana laws.

State of Wisconsin 2017 Act 100

- Requires DATCP to create a pilot program to study the growth, cultivation, and marketing of industrial hemp only within the State of Wisconsin and to issue licenses that authorize the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp.

DATCP Pilot Program

- Wisconsin's industrial hemp program launched in the 2018 growing season with about 250 licensed growers, many did not plant a crop
- License applications rose dramatically for the 2019 season with 1,461 grower applications and 711 processor applications, largely in response to the new farm bill's removal of hemp from the controlled substances list.

Growers License

- Industrial hemp should be grown in traditional agricultural fields or greenhouses and may not be grown in residences, including basements, garages, or any other indoor area within a residence.
- Must seek and receive approval for a location from the department prior to planting in a location that is not an agricultural field or greenhouse. The department will not otherwise restrict industrial hemp production locations, but you may be subject to city zoning rules prohibiting industrial hemp in certain locations, including backyards in residential neighborhoods.
- Can grow hemp on rented land as long as the landowner consents
- Department does not require a minimum acreage, but growers must have a minimum of 15 plants available for a pre-harvest regulatory sample at the end of the growing season.
- Many growers proactively notify local law enforcement about their hemp fields and processing locations. DATCP will share field locations and contact information with local law enforcement upon request.

Processors License

- Processing industrial hemp includes transporting, warehousing and converting the industrial hemp to a marketable form.
- Licensed processors in Wisconsin may accept unprocessed industrial hemp from licensed growers who are part of any state's industrial hemp pilot program
- A processor license is needed if you will be packaging and labeling raw industrial hemp for retail sale. If you will be processing only industrial hemp that you grow, and won't be accepting it from other licensed growers, you do not need a processor license.
- It is the licensed processor's responsibility to ensure that any CBD extraction or the production of CBD-containing substances complies with all laws and regulations

License Requirements

- Apply for a lifetime license and an annual registration.
- Pass a background check. License declined for 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.
- Provide field locations and GPS coordinates.
- Provide research summary.
- Submit signed research agreement, application, and fees.
- Sampling and testing fees will be invoiced

Retail Outlets

- No license is needed from DATCP's industrial hemp program to sell products made from industrial hemp. Licenses from other programs or departments may be required.
- All retailers will need a sellers permit from the Wisconsin Department of Revenue.