

AG Schimel: Issues Guidance to Wisconsin Law Enforcement on CBD Oil and Industrial Hemp Production

Posted on Friday, May 4, 2018

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MADISON, Wis. – Last week, the Wisconsin Department of Justice (DOJ) and Wisconsin Statewide Intelligence Center (WSIC) released [an unclassified Analytical Note](#) to advise law enforcement of the legal status of CBD in Wisconsin since law enforcement agencies have received many inquiries about the legality of cannabidiol (CBD) products, including CBD which is derived from hemp. Nothing in this Analytical Note prohibits farmers from cultivating industrial hemp and using it for other lawful purposes.

“Law enforcement has encountered examples of products claiming to be CBD oil that resulted in people getting hurt and sick,” said Attorney General Brad Schimel. “We have an obligation to protect public health and safety, and need to provide frontline law enforcement with the knowledge to enforce the law as it is written by the Wisconsin State Legislature and United States Congress.”

As explained in the Analytical Note, the Wisconsin State Legislature has chosen to allow the possession and distribution of CBD in only very limited circumstances.

1. An individual may possess CBD only if he/she has a doctor’s certification under Section 961.32 of the Wisconsin Statutes;
2. Only a physician or pharmacy may sell CBD if they have an FDA investigational drug permit and approval from the Wisconsin Controlled Substances Board, under Sections 961.34 and 961.38 of the Wisconsin Statutes;
3. The Legislature has only chosen to allow this type of possession and distribution if the CBD does not have a psychoactive effect.

Any possession or distribution of CBD outside of these very limited exceptions is prohibited by law.

The authorization for the Wisconsin industrial hemp pilot program is defined under Wis. Stat. Sec 94.55(2)(a) as follows: “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.**”

Except under very limited circumstances, the production of cannabidiol is illegal under Federal Law. Under 21 USC Section 802 (16) cannabidiol is a “derivative” of the cannabis plant and is therefore a controlled substance. Because cannabidiol is a controlled substance under Federal law, Section 94.55(2) forbids the processing of it under Wisconsin state law.

While the industrial hemp law allows a licensee to plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import and export industrial hemp pursuant to the rules of the Wisconsin Department of Agriculture, Trade and Consumer Protection program, the Wisconsin State Legislature and Congress have not authorized the production and possession of CBD except as outlined above.

Farmers are not prohibited under state law for growing industrial hemp, even for the express purpose of producing CBD. The Wisconsin Legislature, however, has banned CBD possession, distribution, and production within the state, except in the limited circumstances outlined in the Analytical Note. Wisconsin law would not prevent farmers from shipping the hemp out of state.

The Wisconsin Attorney General is responsible for enforcing the laws as written by the Wisconsin State Legislature and signed into law by the Governor.