

WILL: State confirms pool-sharing start-up not subject to restrictive regulations

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WILL warned DATCP that flawed interpretation would outlaw innovative business The News: The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) [clarified](#) that the state agency will not regulate the start-up [Swimply](#), a growing online platform that allows homeowners to make their underutilized residential swimming pools available for rent, with certain regulatory restrictions required of public pools. The Wisconsin Institute for Law & Liberty (WILL) issued a [letter to DATCP](#) in July asking for clarification after Swimply received communication from DATCP that their business would effectively be banned in Wisconsin based on the state agency's interpretation of regulations.

The Quote: WILL Deputy Counsel, Luke Berg, said, "Red tape and regulations can so often stifle new and innovative business models. We are grateful that DATCP took a reasonable approach in their review of their regulations and confirmed that Swimply can legally operate in Wisconsin." Swimply Co-founder and COO, Asher Weinberger, said, "More and more people are discovering fun and safe recreational opportunities through Swimply's platform. We are thrilled that Wisconsinites can continue to benefit from Swimply."

Background: Swimply is a new and rapidly growing online platform that allows homeowners to make their underutilized residential swimming pools available to members of their local community for birthdays, work events, or just a private space for friends and family to relax on a hot summer day. But in April, Swimply received an unsolicited communication from a DATCP employee that any pool rented on Swimply is a "public pool," subject to DATCP's licensing and regulatory regime for large public pools. This interpretation, if enforced, would effectively shut Swimply down in Wisconsin, due to certain construction requirements that don't ordinarily apply to residential pools.

WILL issued a [letter](#) in July that challenged DATCP's interpretation. WILL highlighted how the interpretation conflicts with the text of its own regulation, exceeds DATCP's authority under Wisconsin law, violates the Wisconsin Administrative Procedures Act, is internally inconsistent, and, just as importantly, is bad policy. A pool rented on Swimply is no different from a home rented on Airbnb or Vrbo with a pool attached — which state law gives homeowners a right to do.

DATCP issued [a response](#) to WILL on August 27 that said, "On further review of the administrative code, the Department wishes to clarify that, generally, Swimply's model of pool owners offering their pools for public use on the Swimply website would not fall under public pool licensing requirements in Wis. Admin. Code ch. ATCP 76, regulating safety, maintenance, and operation of public pools and water attractions. However, whether any particular pool would be subject to public pool licensing requirements would depend on the facts of the situation for each individual pool."

Read More:

- [DATCP Response to WILL](#), August 27, 2021
- [WILL Letter to DATCP](#), July 14, 2021