

# WILL: Warns DATCP against regulating new pool sharing start-up

Posted on Wednesday, Jul 14, 2021

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The News: The Wisconsin Institute for Law & Liberty (WILL) [issued a letter](#) to the Department of Agriculture, Trade and Consumer Protection (DATCP) warning the state agency that any attempt to enforce certain regulatory restrictions on the start-up [Swimply](#), a growing online platform that allows homeowners to make their underutilized residential swimming pools available for rent, would be a violation of state law. Swimply recently received communication from DATCP that their business effectively would be banned in Wisconsin due to the agency's interpretation of regulations that don't fit.

The Quotes: WILL Deputy Counsel Luke Berg said, "DATCP's rigid attempt to regulate a new and innovative business model out of existence is as disappointing as it is illegal. The state agency's interpretation of law is, quite simply, flawed and inconsistent."

Swimply Co-founder and COO, Asher Weinberger, said, "We have seen incredible demand for the service Swimply provides. It opens up a fun and safe recreational opportunity that wouldn't otherwise be available for many people. We hope Wisconsin regulators agree that existing regulations for large public pools don't apply to our business model, nor are they necessary."

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. DATCP's interpretation — if it is truly the department's official 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.

WILL's letter warns DATCP that this interpretation of state law is in error and inconsistent with existing regulations. WILL asks DATCP to confirm that the existing requirements for large public pools don't apply to pools rented on Swimply, and to make clear that DATCP will not pursue any enforcement actions based on this erroneous interpretation. The letter requests a response from DATCP within 30 days and warns that WILL and Swimply will be forced to file a lawsuit if DATCP persists with this interpretation.

Read More:

- [WILL's Demand Letter to DATCP](#), July 14, 2021