



2013 ASSEMBLY BILL 164

April 23, 2013 – Introduced by Representatives THIESFELDT, NASS, JACQUE, T. LARSON and HONADEL, cosponsored by Senators GUDEx and LEIBHAM. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to renumber and amend* 59.54 (25) and 59.54 (25g); *to amend* 66.0107
2 (1) (bm) and 66.0107 (1) (bn); and *to create* 59.54 (25) (a) 1. and 2. and 59.54
3 (25g) (a) 1. and 2. of the statutes; **relating to:** local ordinances regarding
4 possession of marijuana or a synthetic cannabinoid.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town (local governmental unit) or a county may enact and enforce an ordinance prohibiting the possession of 25 grams or less of marijuana or the possession of a synthetic cannabinoid. A person who is charged with possession of more than 25 grams of marijuana or who is charged with possession of any amount of marijuana or a synthetic cannabinoid following a conviction for the possession of a controlled substance generally may not be prosecuted under the ordinance.

This bill allows a local governmental unit or a county to enact and enforce an ordinance to prohibit the possession of any amount of marijuana and to prosecute a person for a second or subsequent offense of possessing marijuana or a synthetic cannabinoid. The local governmental unit, however, may enforce the prohibition against possessing marijuana in a case in which the person is alleged to possess more than 25 grams of marijuana or may prosecute a second or subsequent offense only if the state complaint against the person is dismissed or if the district attorney declines to prosecute the case. In turn, a county may enforce the prohibition against possessing marijuana in a case in which the person is alleged to possess more than 25 grams of marijuana or may prosecute a second or subsequent offense only if, after

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the state dismisses the complaint or declines to prosecute the case, the local governmental unit with jurisdiction also dismisses the complaint, declines to prosecute the case, or lacks an ordinance under which the complaint could be prosecuted.

For further information see the *local* 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.** 59.54 (25) of the statutes is renumbered 59.54 (25) (a) (intro.) and
2 amended to read:

3 59.54 **(25)** (a) POSSESSION OF MARIJUANA. (intro.) The board may enact and
4 enforce an ordinance to prohibit the possession of ~~25 grams or less of~~ marijuana, as
5 defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and
6 provide a forfeiture for a violation of the ordinance; except that ~~any person who is~~
7 ~~charged with~~ if a complaint is issued regarding an allegation of possession of more
8 than 25 grams of marijuana, or ~~who is charged with~~ possession of any amount of
9 marijuana following a conviction in this state for possession of marijuana, ~~in this~~
10 ~~state shall not~~ the subject of the complaint may not be prosecuted under this
11 subsection. for the same action that is the subject of the complaint unless all of the
12 following occur:

13 (b) Any ordinance enacted under ~~this subsection~~ par. (a) applies in every
14 municipality within the county.

15 **SECTION 2.** 59.54 (25) (a) 1. and 2. of the statutes are created to read:

16 59.54 **(25)** (a) 1. The charges for violating the state statute are dismissed or the
17 district attorney declines to prosecute the case.

18 2. Either the city, village, or town with jurisdiction over the action has no
19 ordinance enacted under s. 66.0107 (1) (bm) in effect or the city, village, or town with

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1 jurisdiction over the action has declined to prosecute or has dismissed the charges
2 for the violation of the ordinance enacted under s. 66.0107 (1) (bm).

3 **SECTION 3.** 59.54 (25g) of the statutes is renumbered 59.54 (25g) (a) (intro.) and
4 amended to read:

5 59.54 **(25g)** (a) POSSESSION OF A SYNTHETIC CANNABINOID. (intro.) The board may
6 enact and enforce an ordinance to prohibit the possession of any controlled substance
7 specified in s. 961.14 (4) (tb) to (ty), and provide a forfeiture for a violation of the
8 ordinance, except that ~~any person who is charged with~~ if a complaint is issued
9 regarding an allegation of possession of a controlled substance specified in s. 961.14
10 (4) (tb) to (ty) following a conviction in this state for possession of a controlled
11 substance ~~in this state shall not,~~ the subject of the complaint may not be prosecuted
12 under this subsection. for the same action that is the subject of the complaint unless
13 all of the following occur:

14 (b) Any ordinance enacted under ~~this subsection~~ par. (a) applies in every
15 municipality within the county.

16 **SECTION 4.** 59.54 (25g) (a) 1. and 2. of the statutes are created to read:

17 59.54 **(25g)** (a) 1. The charges for violating the state statute are dismissed or
18 the district attorney declines to prosecute the case.

19 2. Either the city, village, or town with jurisdiction over the action has no
20 ordinance enacted under s. 66.0107 (1) (bn) in effect or the city, village, or town with
21 jurisdiction over the action has declined to prosecute or has dismissed the charges
22 for the violation of the ordinance enacted under s. 66.0107 (1) (bn).

23 **SECTION 5.** 66.0107 (1) (bm) of the statutes is amended to read:

24 66.0107 **(1)** (bm) Enact and enforce an ordinance to prohibit the possession of
25 ~~25 grams or less of marijuana,~~ as defined in s. 961.01 (14), subject to the exceptions

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1 in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance;
2 except that ~~any person who is charged with~~ if a complaint is issued regarding an
3 allegation of possession of more than 25 grams of marijuana, or who is charged with
4 possession of any amount of marijuana following a conviction in this state for
5 possession of marijuana, in this state shall not the subject of the complaint may not
6 be prosecuted under this paragraph for the same action that is the subject of the
7 complaint unless the charges are dismissed or the district attorney declines to
8 prosecute the case.

9 **SECTION 6.** 66.0107 (1) (bn) of the statutes is amended to read:

10 66.0107 (1) (bn) Enact and enforce an ordinance to prohibit the possession of
11 a controlled substance specified in s. 961.14 (4) (tb) to (ty) and provide a forfeiture
12 for a violation of the ordinance, except that ~~any person who is charged with~~ if a
13 complaint is issued regarding an allegation of possession of a controlled substance
14 specified in s. 961.14 (4) (tb) to (ty) following a conviction in this state for possession
15 of a controlled substance in this state shall not, the subject of the complaint may not
16 be prosecuted under this paragraph for the same action that is the subject of the
17 complaint unless the charges are dismissed or the district attorney declines to
18 prosecute the case.

19

(END)