



## 2017 ASSEMBLY BILL 1005

March 7, 2018 - Introduced by Representatives BOWEN, SARGENT, SPREITZER, SINICKI, ANDERSON, BROSTOFF, SUBECK and YOUNG. Referred to Committee on Labor.

1     **AN ACT to create** 103.155 of the statutes; **relating to:** prohibiting employers  
2           from testing employees and prospective employees for the presence of  
3           tetrahydrocannabinols, synthetic cannabinoids, or controlled substance  
4           analogs of tetrahydrocannabinols or synthetic cannabinoids as a condition of  
5           employment.

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### *Analysis by the Legislative Reference Bureau*

This bill, subject to certain exceptions, prohibits an employer, including the state, from requiring an employee or prospective employee to submit to a test for the presence of any tetrahydrocannabinol (THC), which is the active ingredient in marijuana, synthetic cannabinoid, or controlled substance analog to THC or a synthetic cannabinoid in his or her system (drug testing) as a condition of employment. The bill, subject to certain exceptions, provides that any agreement between an employer and an employee or prospective employee offering employment or any pay or benefit to an employee or prospective employee in return for the employee or prospective employee submitting to drug testing is prohibited.

The bill, however, does not apply to the drug testing of an employee or prospective employee who is subject to drug testing under 1) any regulation promulgated by the federal Department of Transportation that requires drug testing of an employee or prospective employee or any rule promulgated by the Department of Transportation of this state adopting such a regulation for purposes of enforcing the requirements of that regulation with respect to intrastate commerce; 2) any

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contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of employees and prospective employees as a condition of receiving the contract or grant; 3) any federal statute, regulation, or order that requires drug testing of employees and prospective employees for purposes of safety or security; 4) any substance abuse prevention program under a collective bargaining agreement or under the current law that requires such programs for public works and public utility projects; or 5) rules promulgated by the Law Enforcement Standards Board requiring drug testing of prospective law enforcement officers, tribal law enforcement officers, jail officers, and secure detention officers.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 103.155 of the statutes is created to read:

2           **103.155 Testing for marijuana or synthetic cannabinoids prohibited.**

3           **(1) DEFINITIONS.** In this section:

4           (a) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

5           (b) “Employer” means any person engaging in any activity, enterprise, or  
6 business employing at least one individual. “Employer” includes the state, its  
7 political subdivisions, and any office, department, independent agency, authority,  
8 institution, association, society, or other body in state or local government created or  
9 authorized to be created by the constitution or any law, including the legislature and  
10 the courts.

11           (c) “Synthetic cannabinoid” means a substance included under s. 961.14 (4) (tb).

12           (d) “Tetrahydrocannabinol” means a substance included under s. 961.14 (4) (t).

13           **(2) TESTING PROHIBITED.** (a) Except as provided in sub. (3), no employer or agent  
14 of an employer may directly or indirectly solicit or require an employee or prospective  
15 employee to submit to testing for the presence of any tetrahydrocannabinol,

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1 synthetic cannabinoid, or controlled substance analog of a tetrahydrocannabinol or  
2 synthetic cannabinoid in his or her system as a condition of employment.

3 (b) Except as provided in sub. (3), any agreement between an employer or agent  
4 of an employer and an employee or prospective employee offering employment or any  
5 pay or benefit to an employee or prospective employee in return for the employee or  
6 prospective employee submitting to testing for the presence of any  
7 tetrahydrocannabinol, synthetic cannabinoid, or controlled substance analog of a  
8 tetrahydrocannabinol or synthetic cannabinoid in his or her system is prohibited.

9 **(3) EXCEPTIONS.** Subsection (2) does not apply to the testing for the presence  
10 of any tetrahydrocannabinol, synthetic cannabinoid, or controlled substance analog  
11 of a tetrahydrocannabinol or synthetic cannabinoid in the system of an employee or  
12 prospective employee who is subject to drug testing under any of the following:

13 (a) Any regulation promulgated by the federal department of transportation  
14 that requires testing of an employee or prospective employee in accordance with 49  
15 CFR 40 or any rule promulgated by the department of transportation of this state  
16 adopting such a regulation for purposes of enforcing the requirements of that  
17 regulation with respect to intrastate commerce.

18 (b) Any contract entered into between the federal government and an employer  
19 or any grant of financial assistance from the federal government to an employer that  
20 requires drug testing of employees and prospective employees as a condition of  
21 receiving the contract or grant.

22 (c) Any federal statute, regulation, or order that requires drug testing of  
23 employees and prospective employees for purposes of safety or security.

