State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3671/P2
CMH/JK/EVM:sac:rs

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

today
no changes

gln cat

AN ACT ***to repeal*** 23.33 (1) (jo) 5., 30.50 (10m) (e), 340.01 (50m) (e), 350.01 (10v) (e), 885.235 (1) (d) 5., 939.22 (33) (e), 961.14 (4) (t), 961.41 (1) (h), 961.41 (1m) (h), 961.41 (1q), 961.41 (3g) (e), 961.571 (1) (a) 7., 961.571 (1) (a) 11. e., 961.571 (1) (a) 11. k. and L. and 967.055 (1m) (b) 5.; ***to renumber*** 30.681 (1) (bn); ***to renumber and amend*** 961.01 (14) and 961.34; ***to amend*** 23.33 (1) (jo) 1., 23.33 (4c) (a) 4., 23.33 (4c) (a) 5., 23.33 (4c) (b) 3., 23.33 (4c) (b) 4. a., 23.33 (4c) (b) 4. b., 23.33 (4p) (d), 23.33 (13) (b) 1., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 23.33 (13) (e), 30.50 (10m) (a), 30.681 (1) (b) (title), 30.681 (1) (bn) (title), 30.681 (1) (c), 30.681 (1) (d), 30.681 (2) (b) (title), 30.681 (2) (c), 30.681 (2) (d) 1. a., 30.681 (2) (d) 1. b., 30.684 (4), 30.80 (6) (d), 59.54 (25), 66.0107 (1) (bm), 85.53 (1) (d), 139.87 (7), 340.01 (50m) (a), 343.10 (5) (a) 1., 343.10 (5) (a) 2., 343.12 (7) (a) 11., 343.16 (2) (b), 343.16 (5) (a), 343.30 (1p), 343.30 (1q) (h), 343.305 (2), 343.305 (3) (a), 343.305 (3) (am), 343.305 (3) (ar) 1., 343.305 (3) (b), 343.305 (5) (b), 343.305 (5) (d), 343.305 (7) (a), 343.305 (8) (b) 2. bm., 343.305 (8) (b) 2. d., 343.305 (8) (b) 4m. a., 343.305 (8) (b) 5. b., 343.305 (8) (b) 6. b., 343.305 (9) (a)

5. a., 343.305 (9) (am) 5. a., 343.305 (9) (am) 5. c., 343.305 (9) (d), 343.305 (10) (em), 343.307 (1) (d), 343.307 (2) (e), 343.31 (1) (am), 343.31 (2), 343.315 (2) (a) 2., 343.315 (2) (a) 5., 343.315 (2) (a) 6., 343.315 (2) (bm) 2., 343.32 (2) (bj), 344.576 (2) (b), 346.63 (1) (b), 346.63 (1) (d), 346.63 (2) (a) 2., 346.63 (2) (b) 1., 346.63 (2) (b) 2., 346.65 (2m) (a), 346.65 (2q), 349.03 (2m), 349.06 (1m), 350.01 (10v) (a), 350.101 (1) (d), 350.101 (1) (e), 350.101 (2) (c), 350.101 (2) (d) 1., 350.101 (2) (d) 2., 350.104 (4), 350.11 (3) (d), 885.235 (1) (d) 1., 885.235 (1g) (intro.), 885.235 (1m), 885.235 (4), 895.047 (3) (a), 905.04 (4) (f), 939.22 (33) (a), 940.09 (1m) (a), 940.09 (1m) (b), 940.09 (2) (a), 940.09 (2) (b), 940.25 (1m), 940.25 (2), 941.20 (1) (bm), 961.41 (1r), 961.41 (3g) (c), 961.41 (3g) (d), 961.41 (3g) (em), 961.47 (1), 961.48 (3), 961.48 (5), 961.49 (1m) (intro.), 961.571 (1) (a) 11. (intro.), 967.055 (1) (a), 967.055 (1) (b), 967.055 (1m) (b) 1., 967.055 (2) (a), 971.365 (1) (a), 971.365 (1) (b), 971.365 (1) (c) and 971.365 (2); and ***to create*** 20.566 (1) (v), 23.33 (1) (k), 23.33 (4c) (a) 2g., 23.33 (4c) (a) 3g., 23.33 (4c) (b) 2n., 25.56, 30.50 (13p), 30.681 (1) (b) 1g., 30.681 (1) (bn) 2., 30.681 (2) (b) 1g., subchapter V (title) of chapter 139 [precedes 139.97], 139.97, 139.971, 139.972, 139.973, 139.974, 139.975, 139.976, 139.977, 139.978, 340.01 (66m), 343.305 (5) (dm), 346.63 (2p), 350.01 (21g), 350.101 (1) (bg), 350.101 (1) (cg), 350.101 (2) (bg), 885.235 (1) (e), 885.235 (1g) (ag), 885.235 (1g) (cg), 885.235 (1L), 939.22 (39g), 940.09 (1) (bg), 940.09 (1) (dg), 940.09 (1g) (bg), 940.09 (1g) (dg), 940.25 (1) (bg), 940.25 (1) (dg), 941.20 (1) (bg) and subchapter VIII of chapter 961 [precedes 961.70] of the statutes; **relating to:** marijuana possession, regulation of marijuana distribution, operating a motor vehicle while under the

1 influence of marijuana, making an appropriation, requiring the exercise of
2 rule–making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. This bill changes state law so that state law permits a Wisconsin resident who is over the age of 21 to possess no more than one–half an ounce of marijuana, 8 ounces of marijuana–infused product in solid form, or 36 ounces of marijuana–infused product in liquid form and so that state law permits a nonresident of Wisconsin who is over the age of 21 to possess no more than a quarter ounce of marijuana, 4 ounces of marijuana–infused product in solid form, or 18 ounces of marijuana–infused product in liquid form. This bill also eliminates the prohibition on possessing or using drug paraphernalia that relates to marijuana consumption. A person who possesses more than the maximum amount but not more than 20 grams of marijuana is subject to a civil forfeiture not to exceed $1,000 or imprisonment not to exceed 90 days or both and a person who possesses more than 20 grams of marijuana is guilty of a Class I felony. In addition, under the bill, the cultivation of marijuana is a Class I felony and the use of marijuana in public is subject to a civil forfeiture of not more than $100.

This bill also creates a process by which a person may obtain a permit to sell marijuana. Under this bill, a person who does not have a permit to sell marijuana may not sell, distribute, or transfer marijuana, or possess marijuana with the intent to sell or distribute it. A person who violates the prohibition is guilty of a Class I felony except that the felony classification increases to a Class H felony if the person sells, distributes, or transfers the marijuana to a person who is under the age of 21 (minor) and the person is at least three years older than the minor.

This bill prohibits a permittee from selling, distributing, or transferring marijuana to a minor and from permitting a minor to be on premises for which a permit is issued. If a permittee violates one of those prohibitions, the permittee may be subject to a civil forfeiture of not more than $500 and the permit may be suspended for up to 30 days.

Under this bill, a minor who does any of the following is subject to a forfeiture of not less than $250 nor more than $500: procures or attempts to procure marijuana from a permittee; falsely represents his or her age to receive marijuana from a permittee; knowingly possesses marijuana; or knowingly enters any premises for which a permit has been issued.

This bill changes state law regarding marijuana. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

For further information see the ***state and 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.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

3 **20.566 Department of revenue**

4 (1) COLLECTION OF TAXES

5 (v) Administration and enforcement				
6 of marijuana tax and regulation	SEG	A	–0–	1,100,800

7 **SECTION 2.** 20.566 (1) (v) of the statutes is created to read:

8 20.566 **(1)** (v) *Administration and enforcement of marijuana tax and*
9 *regulation.* From the marijuana fund, the amounts in the schedule for the purposes
10 of administering the marijuana tax imposed under subch. V of ch. 139 and for the
11 costs incurred in enforcing the taxing and regulation of marijuana producers,
12 marijuana processors, and marijuana retailers under subch. V of ch. 139.

13 **SECTION 3.** 23.33 (1) (jo) 1. of the statutes is amended to read:

14 23.33 **(1)** (jo) 1. A controlled substance included in schedule I under ch. 961
15 ~~other than a tetrahydrocannabinol~~.

16 **SECTION 4.** 23.33 (1) (jo) 5. of the statutes is repealed.

17 **SECTION 5.** 23.33 (1) (k) of the statutes is created to read:

18 23.33 **(1)** (k) "Tetrahydrocannabinols concentration" means the number of
19 nanograms of tetrahydrocannabinols per milliliter of blood.

20 **SECTION 6.** 23.33 (4c) (a) 2g. of the statutes is created to read:

23.33 **(4c)** (a) 2g. 'Operating with a tetrahydrocannabinols concentration at or above specified levels.' No person may engage in the operation of an all–terrain vehicle or utility terrain vehicle while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 7. 23.33 (4c) (a) 3g. of the statutes is created to read:

23.33 **(4c)** (a) 3g. 'Operating with a tetrahydrocannabinols concentration at specified levels; below age 21.' If a person has not attained the age of 21, the person may not engage in the operation of an all–terrain vehicle or utility terrain vehicle while he or she has a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0.

SECTION 8. 23.33 (4c) (a) 4. of the statutes is amended to read:

23.33 **(4c)** (a) 4. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., 2g., or 2m., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., 2g., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., 2g., and 2m. each require proof of a fact for conviction which the others do not require.

SECTION 9. 23.33 (4c) (a) 5. of the statutes is amended to read:

23.33 **(4c)** (a) 5. 'Defenses.' In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood or in an action under subd. 2g. or 3g. that is based on the defendant allegedly having

1 a prohibited tetrahydrocannabinols concentration in his or her blood, the defendant
2 has a defense if he or she proves by a preponderance of the evidence that at the time
3 of the incident or occurrence he or she had a valid prescription for methamphetamine
4 or one of its metabolic precursors, gamma–hydroxybutyric acid, or
5 delta–9–tetrahydrocannabinol.

6 **SECTION 10.** 23.33 (4c) (b) 2n. of the statutes is created to read:

7 23.33 **(4c)** (b) 2n. 'Causing injury while operating with tetrahydrocannabinols
8 concentration at or above specified levels.' No person who has a
9 tetrahydrocannabinols concentration of 5.0 or more may cause injury to another
10 person by the operation of an all–terrain vehicle or utility terrain vehicle.

11 **SECTION 11.** 23.33 (4c) (b) 3. of the statutes is amended to read:

12 23.33 **(4c)** (b) 3. 'Related charges.' A person may be charged with and a
13 prosecutor may proceed upon a complaint based upon a violation of any combination
14 of subd. 1., 2., ~~or~~ 2m., or 2n. for acts arising out of the same incident or occurrence.
15 If the person is charged with violating any combination of subd. 1., 2., ~~or~~ 2m., or 2n.
16 in the complaint, the crimes shall be joined under s. 971.12. If the person is found
17 guilty of any combination of subd. 1., 2., ~~or~~ 2m., or 2n. for acts arising out of the same
18 incident or occurrence, there shall be a single conviction for purposes of sentencing
19 and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions
20 1., 2., ~~and~~ 2m., and 2n. each require proof of a fact for conviction which the others do
21 not require.

22 **SECTION 12.** 23.33 (4c) (b) 4. a. of the statutes is amended to read:

23 23.33 **(4c)** (b) 4. a. In an action under this paragraph, the defendant has a
24 defense if he or she proves by a preponderance of the evidence that the injury would
25 have occurred even if he or she had been exercising due care and he or she had not

been under the influence of an intoxicant, did not have an alcohol concentration of 0.08 or more, ~~or~~ did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 13. 23.33 (4c) (b) 4. b. of the statutes is amended to read:

23.33 **(4c)** (b) 4. b. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood or in an action under subd. 2n. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 14. 23.33 (4p) (d) of the statutes is amended to read:

23.33 **(4p)** (d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all–terrain vehicle or utility terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection

1 does not limit the right of a law enforcement officer to obtain evidence by any other
2 lawful means.

3 **SECTION 15.** 23.33 (13) (b) 1. of the statutes is amended to read:

4 23.33 **(13)** (b) 1. Except as provided under subds. 2. and 3., a person who
5 violates sub. (4c) (a) 1., 2., 2g., or 2m. or (4p) (e) shall forfeit not less than $150 nor
6 more than $300.

7 **SECTION 16.** 23.33 (13) (b) 2. of the statutes is amended to read:

8 23.33 **(13)** (b) 2. Except as provided under subd. 3., a person who violates sub.
9 (4c) (a) 1., 2., 2g., or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the
10 current violation, was convicted previously under the intoxicated operation of an
11 all–terrain vehicle or utility terrain vehicle law or the refusal law shall be fined not
12 less than $300 nor more than $1,100 and shall be imprisoned not less than 5 days
13 nor more than 6 months.

14 **SECTION 17.** 23.33 (13) (b) 3. of the statutes is amended to read:

15 23.33 **(13)** (b) 3. A person who violates sub. (4c) (a) 1., 2., 2g., or 2m. or (4p) (e)
16 and who, within 5 years prior to the arrest for the current violation, was convicted
17 2 or more times previously under the intoxicated operation of an all–terrain vehicle
18 or utility terrain vehicle law or refusal law shall be fined not less than $600 nor more
19 than $2,000 and shall be imprisoned not less than 30 days nor more than one year
20 in the county jail.

21 **SECTION 18.** 23.33 (13) (e) of the statutes is amended to read:

22 23.33 **(13)** (e) *Alcohol, controlled substances or controlled substance analogs,*
23 *tetrahydrocannabinols; assessment.* In addition to any other penalty or order, a
24 person who violates sub. (4c) (a) or (b) or (4p) (e) or who violates s. 940.09 or 940.25
25 if the violation involves the operation of an all–terrain vehicle or utility terrain

vehicle, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

SECTION 19. 25.56 of the statutes is created to read:

25.56 Marijuana fund. There is established a separate nonlapsible trust fund, designated as the marijuana fund, consisting of all revenue from the fees, taxes, interest, and penalties under subch. V of ch. 139.

SECTION 20. 30.50 (10m) (a) of the statutes is amended to read:

30.50 **(10m)** (a) A controlled substance included in schedule I under ch. 961 ~~other than a tetrahydrocannabinol~~.

SECTION 21. 30.50 (10m) (e) of the statutes is repealed.

SECTION 22. 30.50 (13p) of the statutes is created to read:

30.50 **(13p)** "Tetrahydrocannabinols concentration" means the number of nanograms of tetrahydrocannabinols per milliliter of blood.

SECTION 23. 30.681 (1) (b) (title) of the statutes is amended to read:

30.681 **(1)** (b) (title) *Operating after using a controlled substance ~~or~~, alcohol, or marijuana*.

SECTION 24. 30.681 (1) (b) 1g. of the statutes is created to read:

30.681 **(1)** (b) 1g. No person may engage in the operation of a motorboat while the person has a tetrahydrocannabinols concentration of 5.0 or more.

SECTION 25. 30.681 (1) (bn) (title) of the statutes is amended to read:

30.681 **(1)** (bn) (title) *Operating with alcohol or tetrahydrocannabinols concentrations at specified levels; below legal ~~drinking~~ age.*

SECTION 26. 30.681 (1) (bn) of the statutes is renumbered 30.681 (1) (bn) 1.

SECTION 27. 30.681 (1) (bn) 2. of the statutes is created to read:

30.681 **(1)** (bn) 2. A person who has not attained the legal age, as defined in s. 961.70 (1), may not engage in the operation of a motorboat while he or she has a tetrahydrocannabinols concentration of more than 0.0 but less than 5.0.

SECTION 28. 30.681 (1) (c) of the statutes is amended to read:

30.681 **(1)** (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1g., 1m., or 2., the offenses shall be joined. If the person is found guilty of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1g., 1m., and 2. each require proof of a fact for conviction which the others do not require.

SECTION 29. 30.681 (1) (d) of the statutes is amended to read:

30.681 **(1)** (d) *Defenses.* In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood or in an action under par. (b) 1g. or (bn) 2. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for

methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 30. 30.681 (2) (b) (title) of the statutes is amended to read:

30.681 **(2)** (b) (title) *Causing injury after using a controlled substance ~~or~~, alcohol, or marijuana.*

SECTION 31. 30.681 (2) (b) 1g. of the statutes is created to read:

30.681 **(2)** (b) 1g. No person who has a tetrahydrocannabinols concentration of 5.0 or more may cause injury to another person by the operation of a motorboat.

SECTION 32. 30.681 (2) (c) of the statutes is amended to read:

30.681 **(2)** (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1g., 1m., or 2. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a) or (b) 1., 1g., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1g., 1m., and 2. each require proof of a fact for conviction which the others do not require.

SECTION 33. 30.681 (2) (d) 1. a. of the statutes is amended to read:

30.681 **(2)** (d) 1. a. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an

intoxicant or did not have an alcohol concentration of 0.08 or more or a tetrahydrocannabinols concentration of 5.0 or more or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 34. 30.681 (2) (d) 1. b. of the statutes is amended to read:

30.681 **(2)** (d) 1. b. In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ in his or her blood or in an action under par. (b) 1g. that is based on the defendant allegedly having a prohibited tetrahydrocannabinols concentration in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

SECTION 35. 30.684 (4) of the statutes is amended to read:

30.684 **(4)** ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations or tetrahydrocannabinols concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

SECTION 36. 30.80 (6) (d) of the statutes is amended to read:

30.80 **(6)** (d) *Alcohol, controlled substances or controlled substance analogs, tetrahydrocannabinols; examination.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs, or tetrahydrocannabinols. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

SECTION 37. 59.54 (25) of the statutes is amended to read:

59.54 **(25)** ~~POSSESSION~~ REGULATION OF MARIJUANA. The board may enact and enforce an ordinance ~~to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state shall not be prosecuted under this subsection~~ that is consistent with s. 961.71 or 961.72. Any ordinance enacted under this subsection applies in every municipality within the county.

SECTION 38. 66.0107 (1) (bm) of the statutes is amended to read:

66.0107 **(1)** (bm) Enact and enforce an ordinance ~~to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following~~

~~a conviction for possession of marijuana, in this state shall not be prosecuted under this paragraph~~ that is consistent with s. 961.71 or 961.72.

SECTION 39. 85.53 (1) (d) of the statutes is amended to read:

85.53 **(1)** (d) "Operating while intoxicated" means a violation of s. 346.63 (1) ~~or~~, (2m), or (2p) or a local ordinance in conformity therewith or of s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 40. 139.87 (7) of the statutes is amended to read:

139.87 **(7)** "Tetrahydrocannabinols" means a substance ~~included in s. 961.14 (4) (t)~~ in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized.

SECTION 41. Subchapter V (title) of chapter 139 [precedes 139.97] of the statutes is created to read:

CHAPTER 139

SUBCHAPTER V

MARIJUANA TAX AND REGULATION

SECTION 42. 139.97 of the statutes is created to read:

139.97 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana–infused product identified by a lot number, every portion or package of which is consistent with the factors that appear in the labeling.

(3) "Lot number" means a number that specifies the person who holds a valid license under this subchapter and the harvesting or processing date for each lot.

(4) "Marijuana" has the meaning given in s. 961.70 (3).

1 **(5)** "Marijuana processor" means a person who processes marijuana into
2 useable marijuana or marijuana–infused products, packages and labels useable
3 marijuana or marijuana–infused products for sale in retail outlets, or sells useable
4 marijuana or marijuana–infused products at wholesale to marijuana retailers.
5 **(6)** "Marijuana producer" means a person who produces marijuana and sells
6 it at wholesale to marijuana processors or other marijuana producers.
7 **(7)** "Marijuana–infused product" means a product intended for human
8 consumption that contains marijuana or marijuana extracts, not including useable
9 marijuana.
10 **(8)** "Marijuana retailer" means a person who sells useable marijuana or
11 marijuana–infused products at a retail outlet.
12 **(9)** "Permittee" means a marijuana producer, marijuana processor, or
13 marijuana retailer who is issued a permit under s. 139.972.
14 **(10)** "Retail outlet" means a location for the retail sale of useable marijuana or
15 marijuana–infused products.
16 **(11)** "Sales price" has the meaning given in s. 77.51 (15b).
17 **(12)** "Useable marijuana" means dried marijuana flowers, not including dried
18 marijuana flowers that are part of any marijuana–infused product.
19 **SECTION 43.** 139.971 of the statutes is created to read:
20 **139.971 Marijuana tax. (1)** (a) An excise tax is imposed on a marijuana
21 producer at the rate of 25 percent of the sales price on each wholesale sale in this state
22 of marijuana to a marijuana processor or to another marijuana producer.
23 (b) An excise tax is imposed on a marijuana processor at the rate of 25 percent
24 of the sales price on each wholesale sale in this state of useable marijuana or
25 marijuana–infused product to a marijuana retailer.

1 (c) An excise tax is imposed on a marijuana retailer at the rate of 25 percent
2 of the sales price on each retail sale in this state of useable marijuana or
3 marijuana–infused product.

4 **(2)** Each person liable for the taxes imposed under sub. (1) shall pay the taxes
5 to the department no later than the 15th day of the month following the month in
6 which the person's tax liability is incurred and shall include with the payment a
7 return on a form prescribed by the department. The department shall deposit all
8 taxes collected under this section into the marijuana fund.

9 **SECTION 44.** 139.972 of the statutes is created to read:

10 **139.972 Permits required. (1)** (a) No person may operate in this state as a
11 marijuana producer, marijuana processor, or marijuana retailer without first filing
12 an application for and obtaining the proper permit from the department to perform
13 such operations.

14 (b) This section applies to all officers, directors, agents, and stockholders
15 holding 5 percent or more of the stock of any corporation applying for a permit under
16 this section.

17 (c) Subject to ss. 111.321, 111.322, and 111.335, no permit under this section
18 may be granted to any person to whom any of the following applies:

19 1. The person has been convicted of a misdemeanor, not involving chs. 340 to
20 349, at least 3 times.

21 2. The person has been convicted of a felony, unless pardoned.

22 3. The person is addicted to the use of a controlled substance or controlled
23 substance analog under ch. 961.

24 4. The person has income which comes principally from gambling or has been
25 convicted of 2 or more gambling offenses.

1 5. The person has been guilty of crimes relating to prostitution.

2 6. The person has been guilty of crimes relating to loaning money or anything
3 of value to persons holding licenses or permits pursuant to ch. 125.

4 7. The person is under the age of 21.

5 8. The person has not been a resident of this state continuously for at least 90
6 days prior to the application date.

7 (d) 1. Before the department issues a new or renewed permit under this section,
8 the department shall give notice of the permit application to the governing body of
9 the municipality where the the permit applicant intends to operate a retail outlet or
10 other premises of a marijuana producer, marijuana processor, or marijuana retailer.
11 No later than 30 days after the department submits the notice, the governing body
12 of the municipality may file with the department a written objection to granting or
13 renewing the permit. At the municipality's request, the department may extend the
14 period for filing objections.

15 2. A written objection filed under subd. 1. shall provide all the facts on which
16 the objection is based. In determining whether to grant or deny a permit for which
17 an objection has been filed under this paragraph, the department shall give
18 substantial weight to objections from a municipality based on chronic illegal activity
19 associated with the premises for which the applicant seeks a permit, the premises
20 of any other operation in this state for which the applicant holds or has held a valid
21 permit or license, or the conduct of the applicant's patrons inside or outside the
22 premises of any other operation in this state for which the applicant holds or has held
23 a valid permit or license. In this subdivision, "chronic illegal activity" means a
24 pervasive pattern of activity that threatens the public health, safety, and welfare of
25 the municipality, including any crime or ordinance violation, and is documented in

1 crime statistics, police reports, emergency medical response data, calls for service,
2 field data, or similar law enforcement agency records.

3 (e) After denying a permit, the department shall immediately notify the
4 applicant in writing of the denial and the reasons for the denial. After making a
5 decision to grant or deny a permit for which a municipality has filed an objection
6 under par. (d), the department shall immediately notify the governing body of the
7 municipality in writing of its decision and the reasons for the decision.

8 (f) 1. The department's denial of a permit under this section is subject to judicial
9 review under ch. 227.

10 2. The department's decision to grant a permit under this section regardless of
11 an objection filed under par. (d) is subject to judicial review under ch. 227.

12 (g) The department shall not issue a permit under this section to any person
13 who does not hold a valid certificate under s. 73.03 (50).

14 **(2)** Each person who applies for a permit under this section shall submit with
15 the application a $250 fee. Each person who is granted a permit under this section
16 shall annually pay to the department a $1,000 fee for as long as the person holds a
17 valid permit under this section. A permit issued under this section is valid for one
18 year and may be renewed, except that the department may revoke or suspend a
19 permit prior to it's expiration. A person is not entitled to a refund of the fees paid
20 under this subsection if the person's permit is denied, revoked, or suspended. The
21 department shall deposit the fees collected under this subsection into the marijuana
22 fund.

23 **(3)** The department may not issue a permit under this section to operate any
24 premises which are within 1,000 feet of the perimeter of the grounds of any

elementary or secondary school, playground, recreation facility, child care facility, public park, public transit facility, or library.

(4) Under this section, a separate permit is required for and issued to each class of permittee and the permit holder shall perform only the operations authorized by the permit. A permit issued under this section is not transferrable from one person to another or from one premises to another. A separate permit is required for each place in this state where the operations of a marijuana producer, marijuana processor, or marijuana retailer occur, including each retail outlet. No person who has been issued a permit to operate as a marijuana retailer, or who has any direct or indirect financial interest in the operation of a marijuana retailer, shall be issued a permit to operate as a marijuana producer or marijuana processor.

(5) Each person issued a permit under this section shall post the permit in a conspicuous place on the premises to which the permit relates.

SECTION 45. 139.973 of the statutes is created to read:

139.973 Regulation. (1) No person who is issued a permit under s. 139.972 may employ a person who is under the age of 21 to work in the business to which the permit relates.

(2) A retail outlet shall sell no products or services other than useable marijuana, marijuana–infused products, or paraphernalia intended for the storage or use of useable marijuana or marijuana–infused products.

(3) No marijuana retailer may allow a person who is under the age of 21 to enter or remain on the premises of a retail outlet.

(4) The maximum amount of useable marijuana or marijuana–infused product that a retail outlet may sell to an individual consumer in a single transaction may not exceed the permissible amount under s. 961.70 (3g).

1 **(5)** No marijuana retailer may display any signage in a window, on a door, or
2 on the outside of the premises of a retail outlet that is visible to the general public
3 from a public right–of–way, other than a single sign that is no larger than 1,600
4 square inches identifying the retail outlet by the permittee's business or trade name.
5 **(6)** No marijuana retailer may display useable marijuana or
6 marijuana–infused products in a manner that is visible to the general public from
7 a public right–of–way.
8 **(7)** No marijuana retailer or employee of a retail outlet may consume, or allow
9 to be consumed, any useable marijuana or marijuana–infused product on the
10 premises of the retail outlet.
11 **(8)** No marijuana producer, marijuana processor, or marijuana retailer may
12 place or maintain, or cause to be placed or maintained, an advertisement of useable
13 marijuana or a marijuana–infused product in any form or through any medium in
14 any of the following locations:
15 (a) Within 1,000 feet of the perimeter of the grounds of any elementary or
16 secondary school, playground, recreation facility, child care facility, public park,
17 public transit facility, or library.
18 (b) On or in a public transit vehicle or public transit shelter.
19 (c) On or in a publicly owned or publicly operated property.
20 **(9)** (a) On a schedule determined by the department, every marijuana producer
21 and marijuana processor shall submit representative samples of the marijuana,
22 useable marijuana, or marijuana–infused products produced or processed by the
23 marijuana producer or marijuana processor to an independent 3rd–party testing
24 laboratory that satisfies the accreditation criteria, prescribed by the department by
25 rule, for inspecting and testing marijuana, useable marijuana, and

1 marijuana–infused products in order to certify that the marijuana, useable
2 marijuana, and marijuana–infused products comply with standards prescribed by
3 the department by rule. The laboratory testing the sample shall destroy any part of
4 the sample that remains after the testing.

5 (b) Marijuana producers and marijuana processors shall submit the results of
6 the testing provided under par. (a) to the department in the manner prescribed by
7 the department by rule.

8 (c) If a representative sample inspected and tested under par. (a) does not meet
9 the standards prescribed by the department, the department shall take the
10 necessary action to ensure that the entire lot from which the sample was taken is
11 destroyed. The department shall promulgate rules to determine lots and lot
12 numbers for purposes of this subsection and for the reporting of lots and lot numbers
13 to the department.

14 **SECTION 46.** 139.974 of the statutes is created to read:

15 **139.974 Records and reports. (1)** Every person issued a permit under s.
16 139.972 shall keep accurate and complete records of the production and sales of
17 marijuana, useable marijuana, and marijuana–infused products in this state. The
18 records shall be kept on the premises described in the permit and in such manner as
19 to ensure permanency and accessibility for inspection at reasonable hours by the
20 department's authorized personnel. The department shall prescribe reasonable and
21 uniform methods of keeping records and making reports and shall provide the
22 necessary forms to permittees.

23 **(2)** If the department determines that any permittee's records are not kept in
24 the prescribed form or are in such condition that the department requires an unusual
25 amount of time to determine from the records the amount of the tax due, the

1 department shall give notice to the permittee that the permittee is required to revise
2 the permittee's records and keep them in the prescribed form. If the permittee fails
3 to comply within 30 days, the permittee shall pay the expenses reasonably
4 attributable to a proper examination and tax determination at the rate of $30 a day
5 for each auditor used to make the examination and determination. The department
6 shall send a bill for such expenses and the permittee shall pay the amount of such
7 bill within 10 days.

8 **(3)** If any permittee fails to file a report when due, the permittee shall be
9 required to pay a late filing fee of $10. A report that is mailed is filed on time if it is
10 mailed in a properly addressed envelope with postage prepaid, the envelope is
11 officially postmarked, or marked or recorded electronically as provided under section
12 7502 (f) (2) (c) of the Internal Revenue Code, on the date due, and the report is
13 actually received by the department or at the destination that the department
14 prescribes within 5 days of the due date. A report that is not mailed is timely if it
15 is received on or before the due date by the department or at the destination that the
16 department prescribes. For purposes of this subsection, "mailed" includes delivery
17 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

18 **(4)** Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating
19 to confidentiality of income, franchise, and gift tax returns, apply to any information
20 obtained from any permittee under this subchapter on a tax return, report, schedule,
21 exhibit, or other document or from an audit report relating to any of those documents,
22 except that the department of revenue shall publish production and sales statistics.

23 **SECTION 47.** 139.975 of the statutes is created to read:

1 **139.975 Administration and enforcement. (1)** The department shall
2 administer and enforce this subchapter and promulgate rules necessary to
3 administer and enforce this subchapter.

4 **(2)** The duly authorized employees of the department have all necessary police
5 powers to prevent violations of this subchapter.

6 **(3)** Authorized personnel of the department of justice and the department of
7 revenue, and any law enforcement officer, within their respective jurisdictions, may
8 at all reasonable hours enter the premises of any permittee and examine the books
9 and records to determine whether the tax imposed by this subchapter has been fully
10 paid and may enter and inspect any premises where marijuana, useable marijuana,
11 or marijuana–infused products are produced, processed, made, sold, or stored to
12 determine whether the permittee is complying with this subchapter.

13 **(4)** The department may suspend or revoke the permit of any permittee who
14 violates s. 100.30, any provision of this subchapter, or any rules promulgated under
15 sub. (1). The department shall revoke the permit of any permittee who violates s.
16 100.30 3 or more times within a 5–year period.

17 **(5)** No suit shall be maintained in any court to restrain or delay the collection
18 or payment of the tax levied in s. 139.971. The aggrieved taxpayer shall pay the tax
19 when due and, if paid under protest, may at any time within 90 days from the date
20 of payment sue the state to recover the tax paid. If it is finally determined that any
21 part of the tax was wrongfully collected, the secretary of administration shall pay the
22 amount wrongfully collected out of the marijuana fund. A separate suit need not be
23 filed for each separate payment made by any taxpayer, but a recovery may be had
24 in one suit for as many payments as may have been made.

1 **(6)** (a) Any person may be compelled to testify in regard to any violation of this
2 subchapter of which the person may have knowledge, even though such testimony
3 may tend to incriminate the person, upon being granted immunity from prosecution
4 in connection with the testimony, and upon the giving of such testimony, the person
5 shall not be prosecuted because of the violation relative to which the person has
6 testified.

7 (b) The immunity provided under par. (a) is subject to the restrictions under
8 s. 972.085.

9 **(7)** The provisions on timely filing under s. 71.80 (18) apply to the tax imposed
10 under this subchapter.

11 **(8)** Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.91 (1) (a) and (c) and (2)
12 to (7), 71.92, and 73.0301 as they apply to the taxes under ch. 71 apply to the taxes
13 under this subchapter. Section 71.74 (13) as it applies to the collection of the taxes
14 under ch. 71 applies to the collection of the taxes under this subchapter, except that
15 the period during which notice of an additional assessment shall be given begins on
16 the due date of the report under this subchapter.

17 **(9)** Any building or place of any kind where marijuana, useable marijuana, or
18 a marijuana–infused product is sold, possessed, stored, or manufactured without a
19 lawful permit or in violation of s. 139.972 or 139.973 is declared a public nuisance
20 and may be closed and abated as such.

21 **(10)** At the request of the secretary of revenue, the attorney general may
22 represent this state or assist a district attorney in prosecuting any case arising under
23 this subchapter.

24 **SECTION 48.** 139.976 of the statutes is created to read:

1 **139.976 Theft of tax moneys.** All marijuana tax moneys received by a
2 permittee for the sale of marijuana, useable marijuana, and marijuana–infused
3 products on which the tax under this subchapter has become due and has not been
4 paid are trust funds in the permittee's possession and are the property of this state.
5 Any permittee who fraudulently withholds, appropriates, or otherwise uses
6 marijuana tax moneys that are the property of this state is guilty of theft under s.
7 943.20 (1), whether or not the permittee has or claims to have an interest in those
8 moneys.

9 **SECTION 49.** 139.977 of the statutes is created to read:

10 **139.977 Seizure and confiscation. (1)** All marijuana, useable marijuana,
11 and marijuana–infused products produced, processed, made, kept, stored, sold,
12 distributed, or transported in violation of this subchapter, and all tangible personal
13 property used in connection with the marijuana, useable marijuana, or
14 marijuana–infused products, is unlawful property and subject to seizure by the
15 department or a law enforcement officer. Except as provided in sub. (2), all
16 marijuana, useable marijuana, and marijuana–infused products seized under this
17 subsection shall be destroyed.

18 **(2)** If marijuana, useable marijuana, or marijuana–infused products on which
19 the tax has not been paid are seized as provided under sub. (1), they may be given
20 to law enforcement officers to use in criminal investigations or sold to qualified
21 buyers by the department, without notice. If the marijuana, useable marijuana, or
22 marijuana–infused products are sold, after deducting the costs of selling and storing
23 the property, the department shall pay the sale proceeds into the marijuana fund.
24 If the department finds that the marijuana, useable marijuana, or
25 marijuana–infused products may deteriorate or become unfit for use in criminal

1 investigations or for sale, or that those uses would otherwise be impractical, the
2 department may order them destroyed.

3 **(3)** If marijuana, useable marijuana, or marijuana–infused products on which
4 the tax has been paid are seized as provided under sub. (1) they shall be returned to
5 the true owner if ownership can be ascertained and the owner or the owner's agent
6 is not involved in the violation resulting in the seizure. If the ownership cannot be
7 ascertained or if the owner or the owner's agent was guilty of the violation that
8 resulted in the seizure of the marijuana, useable marijuana, or marijuana–infused
9 products, they may be sold or otherwise disposed of as provided in sub. (2).

10 **(4)** If tangible personal property other than marijuana, useable marijuana, and
11 marijuana–infused products is seized as provided under sub. (1), the department
12 shall advertise the tangible personal property for sale by publication of a class 2
13 notice under ch. 985. If no person claiming a lien on, or ownership of, the property
14 has notified the department of the person's claim within 10 days after last insertion
15 of the notice, the department shall sell the property. If a sale is not practical the
16 department may destroy the property. If a person claiming a lien on, or ownership
17 of, the property notifies the department within the time prescribed in this
18 subsection, the department may apply to the circuit court in the county where the
19 property was seized for an order directing disposition of the property or the proceeds
20 from the sale of the property. If the court orders the property to be sold, all liens, if
21 any, may be transferred from the property to the sale proceeds. Neither the property
22 seized nor the proceeds from the sale shall be turned over to any claimant of lien or
23 ownership unless the claimant first establishes that the property was not used in
24 connection with any violation under this subchapter or that, if so used, it was done
25 without the claimant's knowledge or consent and without the claimant's knowledge

of facts that should have given the claimant reason to believe it would be put to such use. If no claim of lien or ownership is established as provided under this subsection the property may be ordered destroyed. In case of a sale, the net proceeds after deducting costs, expenses, and established claims shall be paid into the marijuana fund.

SECTION 50. 139.978 of the statutes is created to read:

139.978 Interest and penalties. (1) Any person who makes or signs any false or fraudulent report under this subchapter or who attempts to evade the tax imposed by s. 139.971, or who aids in or abets the evasion or attempted evasion of that tax, may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any permittee who fails to keep the records required by s. 139.974 (1) and (2) shall be fined not less than $100 nor more than $500 or imprisoned not more than 6 months or both.

(3) Any person who refuses to permit the examination or inspection authorized under s. 139.975 (3) may be fined not more than $500 or imprisoned not more than 6 months or both. The department shall immediately suspend or revoke the permit of any person who refuses to permit the examination or inspection authorized under s. 139.975 (3).

(4) Any person who violates any of the provisions of this subchapter for which no other penalty is prescribed shall be fined not less than $100 nor more than $1,000 or imprisoned not less than 10 days nor more than 90 days or both.

(5) Any person who violates any of the rules promulgated in accordance with this subchapter shall be fined not less than $100 nor more than $500 or be imprisoned not more than 6 months or both.

1 **(6)** In addition to the penalties imposed for violating the provisions of this
2 subchapter or any of the department's rules, the department shall automatically
3 revoke the permit of any person convicted of such a violation and not issue another
4 permit to that person for a period of 2 years following the revocation.

5 **(7)** Unpaid taxes bear interest at the rate of 12 percent per year from the due
6 date of the return until paid or deposited with the department, and all refunded taxes
7 bear interest at the rate of 3 percent per year from the due date of the return to the
8 date on which the refund is certified on the refund rolls.

9 **(8)** All nondelinquent payments of additional amounts owed shall be applied
10 in the following order: penalties, interest, tax principal.

11 **(9)** Delinquent marijuana taxes bear interest at the rate of 1.5 percent per
12 month until paid. The taxes imposed by this subchapter shall become delinquent if
13 not paid:

14 (a) In the case of a timely filed return, no return filed or a late return, on or
15 before the due date of the return.

16 (b) In the case of a deficiency determination of taxes, within 2 months after the
17 date of demand.

18 **(10)** If due to neglect an incorrect return is filed, the entire tax finally
19 determined is subject to a penalty of 25 percent of the tax exclusive of interest or
20 other penalty. A person filing an incorrect return has the burden of proving that the
21 error or errors were due to good cause and not due to neglect.

22 **SECTION 51.** 340.01 (50m) (a) of the statutes is amended to read:

23 340.01 **(50m)** (a) A controlled substance included in schedule I under ch. 961
24 ~~other than a tetrahydrocannabinol~~.

25 **SECTION 52.** 340.01 (50m) (e) of the statutes is repealed.

1 **SECTION 53.** 340.01 (66m) of the statutes is created to read:

2 340.01 **(66m)** "Tetrahydrocannabinols concentration" has the meaning given
3 in s. 23.33 (1) (k).

4 **SECTION 54.** 343.10 (5) (a) 1. of the statutes is amended to read:

5 343.10 **(5)** (a) 1. In addition to any restrictions appearing on the former
6 operator's license of the applicant, the occupational license shall contain definite
7 restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60,
8 type of occupation and areas or routes of travel which are permitted under the
9 license. The occupational license may permit travel to and from church during
10 specified hours if the travel does not exceed the restrictions as to hours of the day and
11 hours per week in this subdivision. The occupational license may permit travel
12 necessary to comply with a driver safety plan ordered under s. 343.30 (1q) or 343.305
13 if the travel does not exceed the restrictions as to hours of the day and hours per week
14 in this subdivision. The occupational license may contain restrictions on the use of
15 alcohol, of tetracannabinols, and of controlled substances and controlled substance
16 analogs in violation of s. 961.41.

17 **SECTION 55.** 343.10 (5) (a) 2. of the statutes is amended to read:

18 343.10 **(5)** (a) 2. If the applicant has 2 or more convictions, suspensions or
19 revocations, as counted under s. 343.307 (1), the occupational license shall prohibit
20 the applicant from driving or operating a motor vehicle while he or she has an alcohol
21 concentration of more than 0.0 or a tetrahydrocannabinols concentration of more
22 than 0.0.

23 **SECTION 56.** 343.12 (7) (a) 11. of the statutes is amended to read:

343.12 **(7)** (a) 11. Operating a motor vehicle while under the legal drinking age with a prohibited alcohol concentration under s. 346.63 (2m) <u>or while under the legal age with a prohibited tetrahydrocannabinols concentration under s. 346.63 (2p)</u>.

SECTION 57. 343.16 (2) (b) of the statutes is amended to read:

343.16 **(2)** (b) *Specific requirements.* The standards developed by the department under par. (c) shall provide that the examination for persons making their first application for an operator's license shall include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning and directing traffic, knowledge of the traffic laws, including ss. 346.072 and 346.26, understanding of fuel–efficient driving habits and the relative costs and availability of other modes of transportation, knowledge of the need for anatomical gifts and the ability to make an anatomical gift through the use of a donor card issued under s. 343.175 (2), and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The test of knowledge of the traffic laws shall include questions on the provisions of ss. 343.30 (1q), 343.303 to 343.31 and 346.63 to 346.655, relating to the operation of a motor vehicle and the consumption of alcohol beverages <u>and tetrahydrocannabinols</u>. The test of knowledge may also include questions on the social, medical and economic effects of alcohol and other drug abuse. The examination of applicants for authorization to operate 'Class M' vehicles shall test an applicant's knowledge of Type 1 motorcycle safety, including proper eye protection to be worn during hours of darkness. The department may require persons changing their residence to this state from another jurisdiction and persons applying for a reinstated license after termination of a revocation period to take all or parts of the examination required of persons making their first application for an operator's license. Any applicant who is required to give an actual

demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall furnish a representative vehicle in safe operating condition for use in testing ability.

SECTION 58. 343.16 (5) (a) of the statutes is amended to read:

343.16 **(5)** (a) The secretary may require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the secretary may direct to determine incompetency, physical or mental disability, disease, or any other condition that might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. If the department requires the applicant to submit to an examination, the applicant shall pay for the examination. If the department receives an application for a renewal or duplicate license after voluntary surrender under s. 343.265 or receives a report from a physician, physician assistant, as defined in s. 448.01 (6), advanced practice nurse prescriber certified under s. 441.16 (2), or optometrist under s. 146.82 (3), or if the department has a report of 2 or more arrests within a one–year period for any combination of violations of s. 346.63 (1) or (5) or a local ordinance in conformity with s. 346.63 (1) or (5) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the department shall determine, by interview or otherwise, whether the operator should submit to an examination under this section. The examination may consist of an assessment. If the examination indicates that education or treatment for a disability, disease, or condition concerning the use of alcohol, a controlled substance or a controlled substance analog, or tetrahydrocannabinols is appropriate, the department may order a driver safety plan in accordance with s. 343.30 (1q). If

there is noncompliance with assessment or the driver safety plan, the department shall revoke the person's operating privilege in the manner specified in s. 343.30 (1q) (d).

SECTION 59. 343.30 (1p) of the statutes is amended to read:

343.30 **(1p)** Notwithstanding sub. (1), a court shall suspend the operating privilege of a person for 3 months upon the person's conviction by the court for violation of s. 346.63 (2m) <u>or (2p)</u> or a local ordinance in conformity with s. 346.63 (2m) <u>or (2p)</u>. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2m) <u>or (2p)</u> or a local ordinance in conformity with s. 346.63 (2m) <u>or (2p)</u>, the court shall suspend the operating privilege of the person for 6 months.

SECTION 60. 343.30 (1q) (h) of the statutes is amended to read:

343.30 **(1q)** (h) The court or department shall provide that the period of suspension or revocation imposed under this subsection shall be reduced by any period of suspension or revocation previously served under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) ~~or~~, (2m)<u>, or (2p)</u> or a local ordinance in conformity therewith arise out of the same incident or occurrence. The court or department shall order that the period of suspension or revocation imposed under this subsection run concurrently with any period of time remaining on a suspension or revocation imposed under s. 343.305 arising out of the same incident or occurrence. The court may modify an occupational license authorized under s. 343.305 (8) (d) in accordance with this subsection.

SECTION 61. 343.305 (2) of the statutes is amended to read:

343.305 **(2)** IMPLIED CONSENT. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public

highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a), (am), or (ar), and may designate which of the tests shall be administered first.

SECTION 62. 343.305 (3) (a) of the statutes is amended to read:

343.305 **(3)** (a) Upon arrest of a person for violation of s. 346.63 (1), (2m), (2p), or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest subsequent to a refusal under par. (ar), a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

SECTION 63. 343.305 (3) (am) of the statutes is amended to read:

343.305 **(3)** (am) Prior to arrest, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2) whenever a law enforcement officer detects any presence of alcohol, tetrahydrocannabinols, a controlled substance, a controlled

substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person is violating or has violated s. 346.63 (7). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. For the purposes of this paragraph, "law enforcement officer" includes inspectors in the performance of duties under s. 110.07 (3).

SECTION 64. 343.305 (3) (ar) 1. of the statutes is amended to read:

343.305 **(3)** (ar) 1. If a person is the operator of a vehicle that is involved in an accident that causes substantial bodily harm, as defined in s. 939.22 (38), to any person, and a law enforcement officer detects any presence of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subdivision and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this subdivision, he or she may be arrested under par. (a).

SECTION 65. 343.305 (3) (b) of the statutes is amended to read:

343.305 **(3)** (b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1), (2m), (2p), or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the

use of a vehicle, or detects any presence of alcohol, tetrahydrocannabinols, controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) may be administered to the person.

SECTION 66. 343.305 (5) (b) of the statutes is amended to read:

343.305 **(5)** (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (2p), (5) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), (2p), or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog or any other drug, or any combination of alcohol, controlled substance, controlled substance analog and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician.

SECTION 67. 343.305 (5) (d) of the statutes is amended to read:

343.305 **(5)** (d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any other drug, or under the influence of any combination of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a prohibited alcohol or tetrahydrocannabinols concentration, or alleged to have been

driving or operating or on duty time with respect to a commercial motor vehicle while having an alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant, a controlled substance, a controlled substance analog or any other drug, or under the influence of any combination of alcohol, tetrahydrocannabinols, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

SECTION 68. 343.305 (5) (dm) of the statutes is created to read:

343.305 **(5)** (dm) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while having a tetrahydrocannabinols concentration at or above specified levels, the results of a blood test administered in accordance with this section are admissible on any issue relating to the tetrahydrocannabinols concentration. Test results shall be given the effect required under s. 885.235.

SECTION 69. 343.305 (7) (a) of the statutes is amended to read:

343.305 **(7)** (a) If a person submits to chemical testing administered in accordance with this section and any test results indicate the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited

alcohol or tetrahydrocannabinols concentration, the law enforcement officer shall report the results to the department. The person's operating privilege is administratively suspended for 6 months.

SECTION 70. 343.305 (8) (b) 2. bm. of the statutes is amended to read:

343.305 **(8)** (b) 2. bm. Whether the person had a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 71. 343.305 (8) (b) 2. d. of the statutes is amended to read:

343.305 **(8)** (b) 2. d. If one or more tests were administered in accordance with this section, whether each of the test results for those tests indicate the person had a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood.

SECTION 72. 343.305 (8) (b) 4m. a. of the statutes is amended to read:

343.305 **(8)** (b) 4m. a. A blood test administered in accordance with this section indicated that the person had a detectable amount of methamphetamine~~,~~ or gamma–hydroxybutyric acid~~, or delta–9–tetrahydrocannabinol~~ or a prohibited tetrahydrocannabinols concentration but did not have a detectable amount of any other restricted controlled substance in his or her blood.

SECTION 73. 343.305 (8) (b) 5. b. of the statutes is amended to read:

343.305 **(8)** (b) 5. b. The person did not have a prohibited alcohol or tetrahydrocannabinols concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 74. 343.305 (8) (b) 6. b. of the statutes is amended to read:

343.305 **(8)** (b) 6. b. The person had a prohibited alcohol <u>or tetrahydrocannabinols</u> concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

SECTION 75. 343.305 (9) (a) 5. a. of the statutes is amended to read:

343.305 **(9)** (a) 5. a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, <u>tetrahydrocannabinols,</u> a controlled substance or a controlled substance analog or any combination of alcohol, <u>tetrahydrocannabinols,</u> a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving, having a restricted controlled substance in his or her blood, or having a prohibited alcohol <u>or tetrahydrocannabinols</u> concentration or, if the person was driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 76. 343.305 (9) (am) 5. a. of the statutes is amended to read:

343.305 **(9)** (am) 5. a. Whether the officer detected any presence of alcohol, <u>tetrahydrocannabinols,</u> controlled substance, controlled substance analog or other drug, or a combination thereof, on the person or had reason to believe that the person was violating or had violated s. 346.63 (7).

SECTION 77. 343.305 (9) (am) 5. c. of the statutes is amended to read:

343.305 **(9)** (am) 5. c. Whether the person refused to permit the test. The person shall not be considered to have refused the test if it is shown by a preponderance of

evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, tetrahydrocannabinols, controlled substances, controlled substance analogs or other drugs.

SECTION 78. 343.305 (9) (d) of the statutes is amended to read:

343.305 **(9)** (d) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined adversely to the person, the court shall proceed under sub. (10). If one or more of the issues is determined favorably to the person, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This section does not preclude the prosecution of the person for violation of s. 346.63 (1), (2m), (2p), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

SECTION 79. 343.305 (10) (em) of the statutes is amended to read:

343.305 **(10)** (em) One penalty for improperly refusing to submit to a test for intoxication regarding a person arrested for a violation of s. 346.63 (2m), (2p), or (7) or a local ordinance in conformity therewith is revocation of the person's operating privilege for 6 months. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the revocation period is 12 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10. Any such improper refusal or revocation for the refusal does not count as a prior refusal or a prior revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit to and comply with any assessment or driver safety plan under pars. (c) and (d).

1 **SECTION 80.** 343.307 (1) (d) of the statutes is amended to read:

2 343.307 **(1)** (d) Convictions under the law of another jurisdiction that prohibits
3 a person from refusing chemical testing or using a motor vehicle while intoxicated
4 or under the influence of a controlled substance or controlled substance analog, or
5 a combination thereof; with an excess or specified range of alcohol <u>or</u>
6 <u>tetrahydrocannabinols</u> concentration; while under the influence of any drug to a
7 degree that renders the person incapable of safely driving; or while having a
8 detectable amount of a restricted controlled substance in his or her blood, as those
9 or substantially similar terms are used in that jurisdiction's laws.

10 **SECTION 81.** 343.307 (2) (e) of the statutes is amended to read:

11 343.307 **(2)** (e) Convictions under the law of another jurisdiction that prohibits
12 a person from refusing chemical testing or using a motor vehicle while intoxicated
13 or under the influence of a controlled substance or controlled substance analog, or
14 a combination thereof; with an excess or specified range of alcohol <u>or</u>
15 <u>tetrahydrocannabinols</u> concentration; while under the influence of any drug to a
16 degree that renders the person incapable of safely driving; or while having a
17 detectable amount of a restricted controlled substance in his or her blood, as those
18 or substantially similar terms are used in that jurisdiction's laws.

19 **SECTION 82.** 343.31 (1) (am) of the statutes is amended to read:

20 343.31 **(1)** (am) Injury by the operation of a vehicle while under the influence
21 of an intoxicant, <u>tetrahydrocannabinols,</u> a controlled substance or a controlled
22 substance analog, or any combination of an intoxicant, <u>tetrahydrocannabinols,</u> a
23 controlled substance and a controlled substance analog, under the influence of any
24 other drug to a degree which renders him or her incapable of safely driving, or under
25 the combined influence of an intoxicant and any other drug to a degree which renders