

Appendix A ... segment I

LEGISLATIVE REFERENCE BUREAU
DRAFTING HISTORY RESEARCH APPENDIX

☞ The drafting file for 2019 LRB-1400 (For: Senator Testin)
has been copied/transferred to the drafting file for
2019 LRB-2612 (For: Senator Testin)



☞ Are These “Companion Bills” ?? ... No

RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

☞ Request Made By: MCP

☞ Date: 04/01/2019

2019 DRAFTING REQUEST

Bill

For: Patrick Testin (608) 266-3123 Drafter: mpfotenh
 By: Leg Council Secondary Drafters:
 Date: 1/14/2019 May Contact:

Same as LRB:

Submit via email: YES
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Pre Topic:

No specific pre topic given

Topic:

Updates to hemp law

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|-----------------------|----------------------|-----------------|-----------------|
| /? | ewheeler 1/15/2019 | anienaja 1/16/2019 | | | |
| /P1 | mpfotenh 1/28/2019 | anienaja 1/29/2019 | mbarman 1/16/2019 | | State |
| /P2 | mpfotenh 3/1/2019 | anienaja 3/1/2019 | mbarman 1/29/2019 | | State |

LRB-1400

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|-----------------------|----------------------|-----------------|-----------------|
| /P3 | mpfotenh 3/4/2019 | anienaja 3/4/2019 | mbarman 3/4/2019 | | State |
| /P4 | mpfotenh 3/11/2019 | anienaja 3/11/2019 | lparisi 3/4/2019 | | State |
| /P5 | zwyatt 3/13/2019 | anienaja 3/15/2019 | lparisi 3/11/2019 | | State |
| /P6 | | | jmurphy 3/15/2019 | | State |

FE Sent For:

<END>

Drafting instructions for hemp legislation from Legislative Council, on behalf of Senator Testin

1. In the definition of "industrial hemp" under s. 94.55 (1), Stats.:
 - o Delete the text after "means" through "basis" and replace with the Farm Bill's definition of hemp under 297A (1).
 - o Keep the clause "or the maximum concentration allowed under federal law up to 1 percent, whichever is greater."
 - o Delete last sentence of the current law definition regarding the federal and state CSAs.
2. Change the defined term from "industrial hemp" to "hemp" in s. 94.55, and in ch. 961, as addressed below.
3. Direct DATCP under s. 94.55 (2) (b) to engage in activities required under Farm Bill's sec. 297B (a) (2)
4. Require DATCP to certify labs that may carry out any testing of hemp required by the department.
5. In s. 94.55 (2) (b) 3., remove rules on the safety of products from the list of permissive topics for rulemaking and create a requirement that DATCP promulgate such rules, and further specific that such rules must address the safety of CBD products.
6. In s. 94.55(2) (b) 4. – replace "plants, grows, cultivates" with "produces"
7. Remove "and processing locations" from s. 94.55 (2) (b) 5. a.
8. Allow any person to authorize DATCP to disclose his or her confidential information under s. 94.55 (2) (b) 5.
9. In s. 94.55 (2) (c), replace "growers and cultivators of industrial hemp" with "hemp producers"
10. Create a new paragraph under s. 94.55 (2) that requires a license to produce hemp.
11. Create a new subsection in 94.55 requiring DATCP to make determinations and enforce negligent violations as set forth under sec. 297B (e) (2) (A), (B), and (D) of the Farm Bill.
12. In s. 94.55, create a provision paralleling sec. 297B (e) (3) (C) of the Farm Bill.
13. Give DATCP authority to issue new emergency rule and extend deadline for permanent July 1, 2022.
14. Exclude from the definition of marijuana under s. 961.01 (14) "hemp as defined under s. 94.55 (1)". While we defer to LRB style, sec. 12619 of the Farm Bill uses subunits to list that which is not included in the definition.
15. Create a new exception under s. 961.14 (4) (t) for "Tetrahydrocannabinols in hemp as defined under s. 94.55 (1)."
16. In s. 961.32 (3) (a) definitions – replace "hemp" with "cannabis" as the defined term, and replace "industrial hemp" with "hemp" as the defined term.

17. Delete s. 961.32 (3) (b) 2.

18. In s. 961.32 (3) (d), replace the cross reference to par. (b) with a cross reference to s. 94.55 (2) (a)

19. In s. 961.32 (3) (b) 3., insert "seed" after the first occurrence of "hemp"

20. In s. 961.32 (3) (b) 4., remove "under s. 94.55 (2) (c)"

21. In ch. 961, add provisions paralleling Farm Bill's sec. 297B (e) (2) (A) (iii) and (e) (2) (C)

22. Add provisions paralleling Farm Bill's sec. 297B (e) (3) (A)



State of Wisconsin
2019 - 2020 LEGISLATURE

In 11/15
Out 11/16

1P1
LRB-1400?
MCP&EAW... amm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
Xref
Pwf

Gen

- 1 AN ACT ...; **relating to:** regulating hemp, providing an exemption from
- 2 emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill changes current law relating to industrial hemp so that it is consistent with the 2019 federal Farm Bill. The bill does all of the following:

1. Uses the term "hemp" instead of "industrial hemp" throughout current law and defines "hemp" as "Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater."
2. Prohibits any person from producing hemp in this state without a license from the Department of Agriculture, Trade and Consumer Protection.
3. Requires DATCP to establish, by rule, procedures for maintaining information relating to hemp production; testing for THC concentrations in hemp; disposing of hemp plants grown illegally; complying with enforcement provisions; conducting annual inspections of hemp producers; and submitting and certifying certain information to the USDA as required under the 2019 federal Farm Bill.
4. Requires DATCP to promulgate rules to ensure the safety of products produced from hemp, including the safety of cannabidiol (CBD) products.
5. Requires DATCP to certify laboratories to undertake any testing of hemp that DATCP requires by rule.

may not be criminally prosecuted; a hemp producer who violates those provisions

6. Allows a person, whose information relating to the hemp program is in DATCP's possession, to authorize the disclosure of that information.

7. Provides that a hemp producer who negligently violates the provisions of the hemp program or DATCP's rules relating to the hemp program must comply with a plan established by DATCP to correct the negligent violation. A compliance plan must include a reasonable date by which the hemp producer is required to correct the negligent violation and must require the hemp producer to report periodically, for not less than two years, to DATCP on the status of the producer's compliance with the plan. A hemp producer who negligently violates the provisions of the hemp program or DATCP's rules relating to the hemp program three times in a five-year period is ineligible to participate in the hemp program for five years. A hemp producer who negligently violates the provisions of the hemp program or DATCP's rules relating to the hemp program may not be criminally prosecuted.

8. Requires DATCP to immediately report a hemp producer who violates the provisions of the hemp program or DATCP's rules relating to the hemp program with a culpable mental state that is greater than negligence to the department of justice for prosecution.

9. Prohibits a person who materially falsifies any information contained in an application for the hemp program from participating in the hemp program.

10. Redefines "marijuana," for the purposes of the controlled substances act, to exclude hemp, as defined under the bill.

11. Excludes THC contained in hemp from the list of Schedule I controlled substances.

For further information see the *state* 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. 20.115 (7) (gc) of the statutes is amended to read:
2 20.115 (7) (gc) ~~Industrial hemp~~ Hemp. All moneys received under s. 94.55 for
3 regulation of activities relating to ~~industrial~~ hemp under s. 94.55.

Insert
2-3
4

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223; 2009 a. 28, 90, 145, 293, 401; 2011 a. 32, 278; 2013 a. 20 ss. 201, 202s, 203, 204, 207, 213m; 2013 a. 234, 312; 2015 a. 55, 186; 2017 a. 59, 100, 196, 225, 366; s. 13.92 (2) (d); s. 35.17 correction in (1) (gb).

4 SECTION 2. 94.55 (1) of the statutes is amended to read:
5 94.55 (1) DEFINITION. In this section, "industrial hemp" means the plant
6 Cannabis sativa, or L. and any part of the that plant, including the seeds, having
7 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of

1 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
 2 concentration of ~~no~~ not more than 0.3 percent on a dry weight basis or the maximum
 3 concentration allowed under federal law up to 1 percent, whichever is greater.
 4 ~~“Industrial hemp” includes a substance, material, or product only if it is designated~~
 5 ~~as a controlled substance under the federal Controlled Substances Act under 21 USC~~
 6 ~~801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both.~~

Insert
3-6

History: 2017 a. 100.

7 SECTION 3. 94.55 (2) (a) of the statutes is amended to read:

8 ~~94.55 (2) (a)~~ Subject to the provisions under this subsection, a person may
 9 plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take
 10 possession of, sell, import, and export ~~industrial~~ hemp in this state to the greatest
 11 extent allowed under federal law.

History: 2017 a. 100.

12 SECTION 4. 94.55 (2) (am) of the statutes is created to read:

13 ~~94.55 (2) (am)~~ No person may produce hemp without a license from the
 14 department.

15 SECTION 5. 94.55 (2) (b) 2m. of the statutes is created to read:

16 ~~94.55 (2) (b) 2m.~~ The department shall establish, by rule, all of the following:

17 a. A practice to maintain relevant information regarding land on which hemp
 18 is produced in this state, including a legal description of the land, for a period of not
 19 less than 3 years.

20 b. A procedure for testing, using post-decarboxylation or other similarly
 21 reliable methods, delta-9-[↑]tetrahydrocannabinol concentration levels of hemp
 22 produced in this state.

1 c. A procedure for the effective disposal of plants, whether growing or not, that
2 are produced in violation of this section, and products derived from those plants.

3 d. A procedure to comply with the enforcement provisions under subs. (2g) and
4 (2m).

5 e. A procedure for conducting annual inspection of, at a minimum, a random
6 sample of hemp producers to verify that hemp is not produced in violation of this
7 section.

8 f. A procedure for submitting any information required under federal law to be
9 submitted to the secretary of the U.S. Department of Agriculture.

10 g. A procedure for certifying, to the secretary of the U.S. Department of
11 Agriculture as required under federal law, that the state has the resources and
12 personnel to carry out the procedures and practices described in this subdivision.

13 **SECTION 6.** 94.55 (2) (b) 3. of the statutes is amended to read:

14 > 94.55 (2) (b) 3. The department shall promulgate rules, as necessary, to ensure
15 the quality of industrial hemp grown or processed in this state, and the security of
16 activities related to industrial hemp, and the safety of products produced from
17 industrial hemp, including any necessary testing; to verify adherence to laws and
18 rules governing activities related to industrial hemp; and to enforce violations of
19 those laws and rules.

History: 2017 a. 100.

20 **SECTION 7.** 94.55 (2) (b) 3m. of the statutes is created to read:

21 < 94.55 (2) (b) 3m. The department shall promulgate rules to ensure the safety
22 of products produced from hemp, including the safety of cannabidiol products.

23 **SECTION 8.** 94.55 (2) (b) 4. of the statutes is amended to read:

1 ~~94.55 (2) (b) 4.~~ The department shall require the payment of an initial fee from
2 any person who ~~plants, grows, or cultivates industrial produces~~ hemp in this state
3 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the
4 person will ~~plant, grow, or cultivate industrial produce~~ hemp, but not to exceed
5 \$1,000. The department may also impose an annual fee on any person whose
6 activities related to ~~industrial~~ hemp are regulated by the department under this
7 paragraph, in an amount not to exceed an amount sufficient to cover the costs to the
8 department of regulating those activities, as determined by the department by rule.

History: 2017 a. 100.

9 **SECTION 9.** 94.55 (2) (b) 4m. of the statutes is created to read:

10 ~~94.55 (2) (b) 4m.~~ The department shall certify laboratories to undertake any
11 testing required by the department by rule.

12 **SECTION 10.** 94.55 (2) (b) 5. of the statutes is amended to read:

13 ~~94.55 (2) (b) 5.~~ The department shall ensure that any of the following
14 information that is in the department's possession is confidential and not open to
15 public inspection or copying under s. 19.35 (1) unless the person about whom the
16 information relates authorizes the disclosure of the information, except that it shall
17 be made available to a law enforcement agency or law enforcement officer:

18 a. Information relating to the locations of ~~industrial hemp fields and processing~~
19 ~~locations~~.

20 b. Personally identifiable information relating to a person who is lawfully
21 engaging in activities related to ~~industrial~~ hemp.

22 c. Information obtained about an individual as a result of any criminal history
23 search performed in relation to authorizing the individual to engage in activities
24 related to ~~industrial~~ hemp.

- 1 d. Any other information about activities related to industrial hemp that could
2 create a security risk if disclosed.

History: 2017 a. 100.

3 **SECTION 11.** 94.55 (2) (c) of the statutes is amended to read:

4 ~~94.55 (2) (c)~~ The department shall establish and administer a certification
5 program, or shall designate a member of the Association of Official Seed Certifying
6 Agencies or a successor organization to administer a certification program, for
7 ~~industrial~~ hemp seed in this state. A certification program under this paragraph
8 shall include the testing and certification of delta-9-tetrahydrocannabinol
9 concentrations in hemp plants. Participation in the certification program shall be
10 voluntary for ~~growers and cultivators~~ producers of industrial hemp. The department
11 shall promulgate rules for the administration of any certification program
12 established and administered by the department under this paragraph.

History: 2017 a. 100.

13 **SECTION 12.** 94.55 (2) (e) of the statutes is amended to read:

14 ~~94.55 (2) (e)~~ The department may seek federal approval to serve as an importer
15 of ~~industrial~~ hemp seed.

History: 2017 a. 100.

16 **SECTION 13.** 94.55 (2g) of the statutes is created to read:

17 ~~94.55 (2g)~~ **NEGLIGENT VIOLATIONS.** (a) This subsection applies to a hemp
18 producer if the department determines that the hemp producer has negligently
19 violated this section or rules promulgated under this section, including by
20 negligently doing any of the following:

- 21 1. Failing to provide a legal description of land on which the producer produces
22 hemp.

1 2. Failing to obtain a license or other required authorization from the
2 department.

3 3. Producing Cannabis sativa L. with a delta-9[↓]-tetrahydrocannabinol
4 concentration of more than 0.3 percent on a dry weight basis.

5 (b) A hemp producer who negligently violates this section or rules promulgated
6 under this section shall comply with a plan established by the department to correct
7 the negligent violation, which shall include all of the following:

8 1. A reasonable date by which the hemp producer is required to correct the
9 negligent violation.

10 2. A requirement that the hemp producer periodically report to the department
11 on the compliance of the hemp producer with the department's plan for a period of
12 not less than the following 2 years.

13 (c) A hemp producer who negligently violates this section or rules promulgated
14 under this section 3 times in any 5-year period is ineligible to produce hemp for a
15 period of 5 years beginning on the date of the ^{3rd} ~~third~~ violation.

16 SECTION 14. 94.55 (2m) of the statutes is created to read:

17 ~~94.55 (2m)~~ NON-NEGLIGENT VIOLATIONS. If the department determines that a
18 hemp producer has violated this section or rules promulgated under this section with
19 a culpable mental state greater than negligence, the department shall immediately
20 report the hemp producer to the U.S. ~~Attorney General~~ and the department of
21 justice.

22 SECTION 15. 94.55 (2r) of the statutes is created to read:

23 ~~94.55 (2r)~~ FALSE STATEMENT. Any person who materially falsifies any
24 information contained in an application to participate in the hemp program
25 established under this section is ineligible to participate in the program.

1 **SECTION 16.** 94.55 (3) of the statutes is amended to read:

2 ~~×~~ **94.55 (3) PILOT PROGRAM.** The department shall create a pilot program to study
3 the growth, cultivation, and marketing of industrial hemp. The department shall
4 promulgate rules to implement the pilot program consistent with the authority
5 under sub. (2) (b). The department shall also do all of the following as part of the pilot
6 program:

7 (a) Issue licenses that authorize the planting, growing, cultivating, harvesting,
8 sampling, testing, processing, transporting, transferring, taking possession, selling,
9 importing, and exporting of industrial hemp. The department shall identify the
10 requirements for applying for a license, approving or denying a license, and
11 suspending or revoking a license, and shall identify the restrictions and obligations
12 that apply to operating under a license. As part of the application process, the
13 department shall require an applicant to provide the global positioning system
14 coordinates of the centers of all fields on which the industrial hemp will be planted,
15 grown, cultivated, or harvested. The department shall obtain a criminal history
16 search from the records maintained by the department of justice for each applicant
17 and may not issue a license if the applicant has ever been convicted of a criminal
18 violation of the federal Controlled Substances Act under 21 USC 801 to 971, the
19 Uniform Controlled Substances Act under ch. 961, or any controlled substances law
20 of another state, as indicated in the information obtained from the criminal history
21 search. A license issued under this paragraph does not expire unless the pilot
22 program under this subsection expires or the license is revoked.

23 (b) Create a registration system that authorizes the sampling, testing,
24 processing, transporting, transferring, taking possession, selling, importing, and
25 exporting of industrial hemp. The department shall obtain a criminal history search

1 from the records maintained by the department of justice for each person applying
2 for registration and may not register an applicant who has been convicted of a
3 criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971,
4 the Uniform Controlled Substances Act under ch. 961, or any controlled substances
5 law of another state, as indicated in the information obtained from the criminal
6 history search.

7 (c) Create a form to accompany any transfer of industrial hemp. The
8 department shall identify the information to be included in the form, which shall
9 include any test results showing the delta-9-tetrahydrocannabinol concentration of
10 the industrial hemp being transferred, the amount of industrial hemp being
11 transferred, and the full chain of custody of the industrial hemp being transferred
12 for all transfers of the industrial hemp until it is processed in such a way that it no
13 longer meets the definition under sub. (1), at which point the form shall be submitted
14 to the department.

History: 2017 a. 100.

15 SECTION 17. 94.67 (2) of the statutes is amended to read:

16 ~~94.67 (2)~~ "Agricultural commodity" means any plant or part of a plant, animal
17 or animal product produced by a person primarily for sale, consumption,
18 propagation, or other use by humans or animals. "Agricultural commodity" includes
19 industrial hemp.

History: 1975 c. 94 s. 91 (10); 1977 c. 106, 273; 1985 a. 135; 1987 a. 27; 1989 a. 279; 1993 a. 16, 112; 1995 a. 321; 2005 a. 441; 2015 a. 55; 2017 a. 100.

Cross-reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

20 SECTION 18. 94.67 (15r) of the statutes is amended to read:

21 ~~94.67 (15r)~~ ^{ec} "Industrial hemp" "Hemp" means the plant Cannabis sativa, or L.
22 and any part of the that plant, including the seeds, having with a
23 delta-9-tetrahydrocannabinol concentration of ~~no~~ not more than 0.3 percent on a

renumbered 94.67 (15c) and

20

1 dry weight basis or the maximum concentration allowed under federal law up to 1
2 percent, whichever is greater.

History: 1975 c. 94 s. 91 (10); 1977 c. 106, 273; 1985 a. 135; 1987 a. 27; 1989 a. 279; 1993 a. 16, 112; 1995 a. 321; 2005 a. 441; 2015 a. 55; 2017 a. 100.

Cross-reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

3 SECTION 19. 97.02 of the statutes is amended to read:

4 ~~97.02 Standards; adulterated food.~~ For the purposes of this chapter, a food
5 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
6 department may not consider a food to be adulterated solely because it contains
7 industrial hemp, as defined in s. 94.67 ~~(15)~~, or an ^(15c) industrial a hemp product.

History: 1971 c. 156; 1979 c. 89; 2005 a. 253; 2009 a. 177; 2013 a. 374; 2017 a. 100.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

8 SECTION 20. 348.27 (18) (a) 1. f. of the statutes is amended to read:

9 ~~348.27 (18) (a) 1. f. Industrial hemp Hemp,~~ as defined in s. 94.67 ~~(15)~~ ^(15c).

History: 1973 c. 157, 316; 1973 c. 333 s. 190m; 1973 c. 336; 1975 c. 25, 285; 1977 c. 29 ss. 1488m, 1654 (8) (a); 1977 c. 30 s. 5; 1977 c. 191, 197, 272, 273, 418; 1979 c. 34, 315, 326; 1981 c. 20, 69, 163, 215, 391; 1983 a. 78 ss. 32 to 35, 37; 1983 a. 529; 1985 a. 29 s. 3202 (3); 1985 a. 202, 212; 1987 a. 27; 1989 a. 31, 35, 130, 305; 1991 a. 258; 1993 a. 62, 439; 1995 a. 113, 163, 227, 347, 348; 1997 a. 27, 35, 237; 1999 a. 85; 2001 a. 16; 2003 a. 210, 241; 2005 a. 119, 167, 250; 2007 a. 11, 16, 171; 2009 a. 28, 222, 229; 2011 a. 20, 32, 53, 55, 56, 58, 59, 117, 243; 2013 a. 20, 34, 48; 2013 a. 165 ss. 76, 114; 2013 a. 216, 377; 2015 a. 15, 55, 232, 360; 2017 a. 21, 59, 100, 299.

Cross-reference: See also chs. Trans 230 and 250, Wis. adm. code.

10 SECTION 21. 961.01 (14) of the statutes is amended to read:

11 ~~961.01 (14) "Marijuana"~~ means all parts of the plants of the genus Cannabis,
12 whether growing or not; the seeds thereof; the resin extracted from any part of the
13 plant; and every compound, manufacture, salt, derivative, mixture or preparation of
14 the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does
15 include the mature stalks if mixed with other parts of the plant, but does not include
16 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
17 compound, manufacture, salt, derivative, mixture or preparation of the mature
18 stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed
19 of the plant which is incapable of germination. "Marijuana" does not include hemp,
20 as defined ⁱⁿ ~~under~~ s. 94.55 (1).

History: 1971 c. 219; 1979 c. 89; 1981 c. 200, 206; 1983 a. 500 s. 43; 1989 a. 31; 1993 a. 87, 129, 138, 184, 281, 482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143, 247, 248, 464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85; 2003 a. 33; 2005 a. 14, 52; 2011 a. 32; 2013 a. 151; 2017 a. 60; s. CSB 2.21, Wis. adm. code.

1 SECTION 22. 961.14 (4) (t) 3. of the statutes is created to read:

2 ~~×~~ 961.14 (4) (t) 3. Tetrahydrocannabinols contained in hemp, as defined ^{under} ~~under~~
3 s. 94.55 (1).

4 SECTION 23. 961.32 (3) (a) 1. and 2. of the statutes are amended to read:

5 ~~×~~ 961.32 (3) (a) 1. "~~Hemp~~" "Cannabis" means the plant Cannabis sativa, ~~or L. and~~
6 any part of the that plant including the seeds.

7 2. "~~Industrial hemp~~" "Hemp" has the meaning given in s. 94.55 (1).

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

8 SECTION 24. 961.32 (3) (b) 1. of the statutes is amended to read:

9 ~~×~~ 961.32 (3) (b) 1. Planting, growing, cultivating, harvesting, processing, or
10 transporting ~~hemp~~ cannabis that contains a delta-9-tetrahydrocannabinol
11 concentration of the crop of not more than 0.7 percent above the permissible limit for
12 industrial hemp on a dry weight basis or that is grown from industrial hemp seed
13 certified under s. 94.55 (2) (c).

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

14 SECTION 25. 961.32 (3) (b) 2. of the statutes is repealed.

15 SECTION 26. 961.32 (3) (b) 3. of the statutes is amended to read:

16 ~~×~~ 961.32 (3) (b) 3. Selling, transferring, importing, exporting, processing,
17 transporting, harvesting, or taking possession of hemp seed that has been certified
18 under s. 94.55 (2) (c), by a laboratory authorized by the department of agriculture,
19 trade and consumer protection to test the delta-9-tetrahydrocannabinol
20 concentration in ~~hemp~~ ^{Cannabis} as meeting the permissible delta-9-tetrahydrocannabinol
21 concentration limit for industrial hemp.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

22 SECTION 27. 961.32 (3) (b) 4. of the statutes is amended to read:

1 ~~961.32~~ (3) (b) 4. Possessing hemp cannabis with a
2 delta-9-tetrahydrocannabinol concentration above the permissible level for
3 ~~industrial hemp~~ if the hemp cannabis was certified under s. ~~94.55 (2) (c)~~ at the time
4 the possessor took possession as meeting the permissible concentration limit for
5 ~~industrial hemp~~ and the possessor had no reason to believe at that time that the
6 certification was incorrect.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

7 **SECTION 28.** 961.32 (3) (b) 5. of the statutes is amended to read:

8 ~~961.32~~ (3) (b) 5. Taking samples of hemp cannabis, transporting samples to a
9 testing facility, or testing samples for their delta-9-tetrahydrocannabinol
10 concentration.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

11 **SECTION 29.** 961.32 (3) (c) of the statutes is amended to read:

12 ~~961.32~~ (3) (c) A person who plants, grows, cultivates, harvests, samples, tests,
13 processes, transports, transfers, takes possession of, sells, imports, or exports
14 ~~industrial hemp~~ in violation of a rule promulgated under s. 94.55 (2) (b) may not be
15 prosecuted under s. 94.55 or this chapter unless the person is referred to the district
16 attorney for the county in which the violation occurred by the department of
17 agriculture, trade and consumer protection, and may not be prosecuted under a
18 municipal ordinance that prohibits the same conduct as is prohibited under this
19 chapter unless the person is referred to local law enforcement by the department of
20 agriculture, trade and consumer protection.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

21 **SECTION 30.** 961.32 (3) (cm) of the statutes is created to read:

22 ~~961.32~~ (3) (cm) A hemp producer that negligently violates s. 94.55 or a rule
23 promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be

1 prosecuted under s. 94.55 or this chapter and may not be prosecuted under a
2 municipal ordinance that prohibits the same conduct as is prohibited under this
3 chapter.

4 **SECTION 31.** 961.32 (3) (d) of the statutes is amended to read:

5 961.32 (3) (d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity
6 described under ~~par. (b)~~ s. 94.55 (2) (a) does not constitute prima facie evidence of a
7 prohibited representation under s. 961.41 (4) (am) 1. a. or b.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

8 **SECTION 32.** 961.442 (intro.) of the statutes is amended to read:

9 **961.442 Penalties; industrial hemp.** (intro.) If a person attempts to conceal
10 the commission of a crime under this chapter while representing that he or she is
11 engaging in the planting, growing, cultivating, harvesting, processing, transporting,
12 importing, exporting, selling, transferring, sampling, testing, or taking possession
13 of industrial hemp, the maximum term of imprisonment prescribed by law for that
14 crime may be increased as follows:

History: 2017 a. 100.

15 **SECTION 33.** 961.55 (9) of the statutes is amended to read:

16 ~~961.55 (9)~~ If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
17 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
18 delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 0.7 percent
19 above the permissible limit for industrial hemp, the entire crop on the field where
20 the plant was found shall be seized and destroyed. Before a crop is seized and
21 destroyed under this subsection, the agency whose officers or employees intend to
22 seize and destroy the crop shall provide, to the person licensed under s. 94.55 (3) to

1 grow the crop or to the person's agent or employee, written documentation verifying
2 the test results for the crop that is subject to seizure and destruction.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49; 2005 a. 91; 2015 a. 264; 2017 a. 100, 211.

3 **SECTION 34. Nonstatutory provisions.**

4 (1) EMERGENCY RULES. No later than the 90th day after the effective date of this
5 subsection, the department of agriculture, trade and consumer protection shall,
6 using the procedure under s. 227.24, promulgate rules under ss. 94.55 (2) to (3).
7 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not
8 required to provide evidence that promulgating a rule under this subsection as an
9 emergency rule is necessary for the preservation of the public peace, health, safety,
10 or welfare and is not required to provide a finding of emergency for a rule
11 promulgated under this subsection. Notwithstanding ss. 227.24 (1) (c) and (2),
12 emergency rules promulgated under this subsection remain in effect until July 1,
13 2022, or the date on which permanent rules take effect, whichever is sooner.
14 Notwithstanding ss. 227.24 (1) (e) 1d. and 1g., for emergency rules promulgated
15 under this subsection, the department is not required to prepare a statement of scope
16 of the rules or to submit the proposed rules in final draft form to the governor for
17 approval.

18

(END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1400/P1ins
MCP&EAW... (mm)

1
2
3
4
5
6
7

INSERT 2-3

SECTION 1. 94.55 (title) of the statutes is repealed and recreated to read:
94.55 (title) Hemp.

INSERT 3-6

SECTION 2. 94.55 (2) (title) of the statutes is amended to read:
94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.

History: 2017 a. 100.



1/18/19

-1400/PS

meeting @ Sen. Testin:

- ✓ p. 3, Sec. 8: THC concentration as tested using post-decarboxylation or other similarly reliable methods.
- ✓ p. 3, lns. 19-20: add "produce" to list; add "any other actions" after "hemp."
- ✓ p. 3, lns. 23-24: change to: DATCP shall issue licenses to producers if required under federal law.
- ✓ p. 4, ln. 1: "shall" → may; delete "by rule."
- ✓ p. 4, ln. 19: "grown or processed" → produced.
- ✓ Add: DATCP shall promulgate rules as necessary to administer this section and to obtain federal approval under the farm bill.
- ✓ p. 5, ln. 2: of "all types of" products; delete "incl. CBD products."
- ✓ p. 5, lns. 13-14: "laboratories" → entities; "sampling and" testing.
- ✓ p. 5, ln. 19: disclosure of the information "under subd. 5. b."
- ✓ Change "field" to "growing location."
- ✓ Add: May not grow unless the type of seed has been approved by DATCP; exception: certified seed.
- ✓ Add: Producer shall submit to DATCP for approval the type of seed the producer intends to grow.
- ✓ p. 6, Sec. 14: ~~delete~~ repeal s. 94.55 (2)(c).
- ✓ p. 7, lns. 1-2: or from the USDA; if required under federal law.
- ✓ p. 8, lns. 6-11: "may"; moves copy into rulemaking authority section
- ✓ p. 8, lns. 1-5, 11-25, p. 9 lns. 1-5, 10-13: repeal w/ delayed effective date to match farm bill.
- ✓ p. 9, ln. 6-9: "shall create a form that may accompany"; copy into rulemaking authority section.
- ✓ p. 9 SEC. 20: make identical to def. in Sec. 2.3
- ✓ p. 11, ln. 2: add producing
- ✓ p. 11, ln. 6: or tested: approved by DATCP by an approved entity
- ✓ p. 11 SEC. 28: that has been certified or tested to meet acceptable THC levels; "hemp seed" ⇒ Cannabis. ①



-1400/P1

✓ p. 11 SEC. 29: mirror SEC. 28 w/ changes. repeal.

✓ p. 11, ln. 25: testing for THC and contaminants, etc.

✓ Clarify: only producers are subject to the negligent violation provisions.

✓ p. 12, lns. 2-4: del. "plants... in violation of" and sub "violates s. 94.55 or"

? - Make sure SEC. 31 does not conflict w/ SEC. 16.

✓ p. 12, ln. 24: add producing.

✓ p. 13, ln. 6: mirror prev. language: elim. "whole dry plant," change to "on a dry weight basis."

✓ Add: If between .3 - 1.0 THC concentration, may recondition down to .3 and notify DATCP.

✓ p. 13, ln. 14: del. "90th day"

✓ p. 13, ln. 22: del. "July 1, 2022"

? - May continue to promulgate emergency rules w/out finding of emergency.

✓ Add: DATCP may establish lower license fee for non-commercial producers: research.

✓ Add: DATCP may not establish a cutoff date during the year for accepting license applications.

✓ Add: exemptions for seedlings (immature plants) from sampling/testing, subject to DATCP certification/approval of where they came from.



State of Wisconsin
2019 - 2020 LEGISLATURE

1P2
LRB-1400/P1
MCP&EAW:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
Xref
Pw

Reagan

1 AN ACT *to repeal* 961.32 (3) (b) 2.; *to renumber and amend* 94.67 (15r); *to*
2 *amend* 20.115 (7) (gc), 94.55 (1), 94.55 (2) (title), 94.55 (2) (a), 94.55 (2) (b) 3.,
3 94.55 (2) (b) 4., 94.55 (2) (b) 5., 94.55 (2) (c), 94.55 (2) (e), 94.55 (3), 94.67 (2),
4 97.02, 348.27 (18) (a) 1. f., 961.01 (14), 961.32 (3) (a) 1. and 2., 961.32 (3) (b) 1.,
5 961.32 (3) (b) 3., 961.32 (3) (b) 4., 961.32 (3) (b) 5., 961.32 (3) (c), 961.32 (3) (d),
6 961.442 (intro.) and 961.55 (9); *to repeal and recreate* 94.55 (title); and *to*
7 *create* 94.55 (2) (am), 94.55 (2) (b) 2m., 94.55 (2) (b) 3m., 94.55 (2) (b) 4m., 94.55
8 (2g), 94.55 (2m), 94.55 (2r), 961.14 (4) (t) 3. and 961.32 (3) (cm) of the statutes;
9 **relating to:** regulating hemp, providing an exemption from emergency rule
10 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

InsA

This bill changes current law relating to industrial hemp so that it is consistent with the 2019 federal Farm Bill. The bill does all of the following:

1. Uses the term "hemp" instead of "industrial hemp" throughout current law and defines "hemp" as "Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol

<sup>editor
ok?</sup>
[THC]
(THC) concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater.”

Allows → 2. Prohibits any person from producing hemp in this state without a license from the Department of Agriculture, Trade and Consumer Protection.

3. Requires DATCP to establish, by rule, procedures for maintaining information relating to hemp production; testing for THC concentrations in hemp; disposing of hemp plants grown illegally; complying with enforcement provisions; and conducting annual inspections of hemp producers; and submitting certain information to the USDA as required under the 2019 federal Farm Bill.

4. Requires DATCP to promulgate rules to ensure the safety of products produced from hemp, including the safety of cannabidiol (CBD) products.

5. Requires DATCP to certify laboratories to undertake any testing of hemp that DATCP requires by rule.

6. Allows a person, whose information relating to the hemp program is in DATCP's possession, to authorize the disclosure of that information.

4. 7. Provides that a hemp producer who negligently violates the provisions of the hemp program or DATCP's rules relating to the hemp program must comply with a plan established by DATCP to correct the negligent violation. A compliance plan must include a reasonable date by which the hemp producer is required to correct the negligent violation and must require the hemp producer to report periodically, for not less than two years, to DATCP on the status of the producer's compliance with the plan. A hemp producer who negligently violates the provisions of the hemp program or DATCP's rules relating to the hemp program may not be criminally prosecuted; a hemp producer who violates those provisions three times in a five-year period is ineligible to participate in the hemp program for five years.

negligently
5. 8. Requires DATCP to immediately report a hemp producer who violates the provisions of the hemp program or DATCP's rules relating to the hemp program with a culpable mental state that is greater than negligence to the Department of Justice for prosecution.

6. 9. Prohibits a person who materially falsifies any information contained in an application for the hemp program from participating in the hemp program.

7. 10. Redefines "marijuana," for the purposes of the controlled substances act, to exclude hemp, as defined under the bill.

8. 11. Excludes THC contained in hemp from the list of Schedule I controlled substances.

Jms
B

→ For further information see the *state* 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. 20.115 (7) (gc) of the statutes is amended to read:

1 20.115 (7) (gc) *Industrial hemp Hemp*. All moneys received under s. 94.55 for
2 regulation of activities relating to industrial hemp under s. 94.55.

3 SECTION 2. 94.55 (title) of the statutes is repealed and recreated to read:

4 94.55 (title) **Hemp**.

5 SECTION 3. 94.55 (1) of the statutes is amended to read:

6 94.55 (1) DEFINITION. In this section, "industrial hemp" means the plant
7 Cannabis sativa, ~~or L. and any part of the that plant, including the seeds, having~~
8 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
9 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
10 concentration of ~~no~~ not more than 0.3 percent on a dry weight basis or the maximum

11 concentration allowed under federal law up to 1 percent, whichever is greater.
12 "Industrial hemp" includes a substance, material, or product only if it is designated
13 as a controlled substance under the federal Controlled Substances Act under 21 USC

14 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both

15 SECTION 4. 94.55 (2) (title) of the statutes is amended to read:

16 94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.

17 SECTION 5. 94.55 (2) (a) of the statutes is amended to read:

18 94.55 (2) (a) Subject to the provisions under this subsection, a person may
19 plant, grow, cultivate, harvest, produce, sample, test, process, transport, transfer, take
20 possession of, sell, import, and export industrial hemp in this state to the greatest
21 extent allowed under federal law.

22 SECTION 6. 94.55 (2) (am) of the statutes is created to read:

23 94.55 (2) (am) No person Ins 3-23 may produce hemp without a license from the
24 department. Ins 3-24

25 SECTION 7. 94.55 (2) (b) 2m. of the statutes is created to read:

Insert
3-11
p. 11

Insert
3-25

1 94.55 (2) (b) 2m. The department ^{may} shall establish, by rule, all of the following:

2 a. A practice to maintain relevant information regarding land on which hemp
3 is produced in this state, including a legal description of the land, for a period of not
4 less than 3 years.

5 b. A procedure for testing, using post-decarboxylation or other similarly
6 reliable methods, delta-9-tetrahydrocannabinol concentration levels of hemp
7 produced in this state.

8 c. A procedure for the effective disposal of plants, whether growing or not, that
9 are produced in violation of this section, and products derived from those plants.

10 d. A procedure to comply with the enforcement provisions under subs. (2g) and
11 (2m).

12 e. A procedure for conducting annual inspection of, at a minimum, a random
13 sample of hemp producers to verify that hemp is not produced in violation of this
14 section.

15 f. A procedure for submitting any information required under federal law to be
16 submitted to the secretary of the U.S. department of agriculture.

17 SECTION 8. 94.55 (2) (b) 3. of the statutes is amended to read:

18 94.55 (2) (b) 3. The department shall promulgate rules, as necessary, to ensure
19 the quality of industrial hemp ~~grown or processed~~ ^{produced} in this state, and the security of
20 activities related to industrial hemp, and the safety of products produced from
21 industrial hemp, including any necessary testing, ^{Ins 4-21} to verify adherence to laws and
22 rules governing activities related to industrial hemp; and to enforce violations of
23 those laws and rules.

24 SECTION 9. 94.55 (2) (b) 3m. of the statutes is created to read:

1 94.55 (2) (b) 3m. The department shall promulgate rules to ensure the safety
2 of ^{all types of} products produced from hemp, including the safety of cannabidiol products.

3 SECTION 10. 94.55 (2) (b) 4. of the statutes is amended to read:

4 94.55 (2) (b) 4. The department shall require the payment of an initial fee from
5 any person who ~~plants, grows, or cultivates industrial produces~~ hemp in this state
6 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the
7 person will ~~plant, grow, or cultivate industrial produce~~ hemp, but not to exceed
8 \$1,000. The department may also impose an annual fee on any person whose
9 activities related to ~~industrial~~ hemp are regulated by the department under this
10 paragraph, in an amount not to exceed an amount sufficient to cover the costs to the
11 department of regulating those activities, as determined by the department by rule. Ins 5-11

12 SECTION 11. 94.55 (2) (b) 4m. of the statutes is created to read:

13 94.55 (2) (b) 4m. The department shall ^{approve} ~~certify~~ ^{entities} laboratories to undertake any
14 ^{sampling and} testing required by the department by rule. Ins 5-14

15 SECTION 12. 94.55 (2) (b) 5. of the statutes is amended to read:

16 94.55 (2) (b) 5. The department shall ensure that any of the following
17 information that is in the department's possession is confidential and not open to
18 public inspection or copying under s. 19.35 (1) unless the person about whom the
19 information relates authorizes the disclosure of the information, except that it shall
20 be made available to a law enforcement agency or law enforcement officer. Ins 5-20

21 a. Information relating to the locations of ~~industrial hemp fields and processing~~
22 ~~locations.~~ ^{growing locations}

23 b. Personally identifiable information relating to a person who is lawfully
24 engaging in activities related to ~~industrial~~ hemp.

1 c. Information obtained about an individual as a result of any criminal history
2 search performed in relation to authorizing the individual to engage in activities
3 related to industrial hemp.

4 d. Any other information about activities related to industrial hemp that could
5 create a security risk if disclosed.

Ins 6-5

6 SECTION 13. 94.55 (2) (c) of the statutes is amended to read:

7 94.55 (2) (c) The department shall establish and administer a certification
8 program, or shall designate a member of the Association of Official Seed Certifying
9 Agencies or a successor organization to administer a certification program, for
10 industrial hemp seed in this state. A certification program under this paragraph
11 shall include the testing and certification of delta-9-tetrahydrocannabinol
12 concentrations in hemp plants. Participation in the certification program shall be
13 voluntary for growers and cultivators producers of industrial hemp. The department
14 shall promulgate rules for the administration of any certification program
15 established and administered by the department under this paragraph.

16 SECTION 14. 94.55 (2) (e) of the statutes is amended to read: Ins 6-16

17 94.55 (2) (e) The department may seek federal approval to serve as an importer
18 of industrial hemp seed.

Ins 6-18

19 SECTION 15. 94.55 (2g) of the statutes is created to read:

20 94.55 (2g) NEGLIGENT VIOLATIONS. (a) This subsection applies to a hemp
21 producer if the department determines that the hemp producer has negligently
22 violated this section or rules promulgated under this section, including by
23 negligently doing any of the following:

24 1. Failing to provide a legal description of land on which the producer produces
25 hemp.

- 1 2. Failing to obtain a license or other required authorization from the
 2 department, *or from the U.S. Department of Agriculture if*
 3 *required under federal law,*
 4 3. Producing Cannabis sativa L. with a delta-9-tetrahydrocannabinol
 concentration of more than 0.3 percent on a dry weight basis.

5 (b) A hemp producer who negligently violates this section or rules promulgated
 6 under this section shall comply with a plan established by the department to correct
 7 the negligent violation, which shall include all of the following:

8 1. A reasonable date by which the hemp producer is required to correct the
 9 negligent violation.

10 2. A requirement that the hemp producer periodically report to the department
 11 on the compliance of the hemp producer with the department's plan for a period of
 12 not less than the following 2 years.

13 (c) A hemp producer who negligently violates this section or rules promulgated
 14 under this section 3 times in any 5-year period is ineligible to produce hemp for a
 15 period of 5 years beginning on the date of the 3rd violation.

16 **SECTION 16.** 94.55 (2m) of the statutes is created to read:

17 94.55 (2m) NONNEGLIGENT VIOLATIONS. If the department determines that a
 18 hemp producer has violated this section or rules promulgated under this section with
 19 a culpable mental state greater than negligence, the department shall immediately
 20 report the hemp producer to the U.S. attorney general and the department of justice.

21 **SECTION 17.** 94.55 (2r) of the statutes is created to read:

22 94.55 (2r) FALSE STATEMENT. Any person who materially falsifies any
 23 information contained in an application to participate in the hemp program
 24 established under this section is ineligible to participate in the program.

25 **SECTION 18.** 94.55 (3) of the statutes is amended to read:

1 94.55 (3) PILOT PROGRAM. The department shall create a pilot program to study
2 the growth, cultivation, and marketing of industrial hemp. The department shall
3 promulgate rules to implement the pilot program consistent with the authority
4 under sub. (2) (b). The department shall also do all of the following as part of the pilot
5 program:

6 (a) Issue licenses that authorize the planting, growing, cultivating, harvesting,
7 sampling, testing, processing, transporting, transferring, taking possession, selling,
8 importing, and exporting of industrial hemp. The department shall identify the
9 requirements for applying for a license, approving or denying a license, and
10 suspending or revoking a license, and shall identify the restrictions and obligations
11 that apply to operating under a license. As part of the application process, the
12 department shall require an applicant to provide the global positioning system
13 coordinates of the ~~centers of all fields on which~~ ^{growing locations where} the industrial hemp will be planted,
14 grown, cultivated, or harvested. The department shall obtain a criminal history
15 search from the records maintained by the department of justice for each applicant
16 and may not issue a license if the applicant has ever been convicted of a criminal
17 violation of the federal Controlled Substances Act under 21 USC 801 to 971, the
18 Uniform Controlled Substances Act under ch. 961, or any controlled substances law
19 of another state, as indicated in the information obtained from the criminal history
20 search. A license issued under this paragraph does not expire unless the pilot
21 program under this subsection expires or the license is revoked.

22 (b) Create a registration system that authorizes the sampling, testing,
23 processing, transporting, transferring, taking possession, selling, importing, and
24 exporting of industrial hemp. The department shall obtain a criminal history search
25 from the records maintained by the department of justice for each person applying

1 for registration and may not register an applicant who has been convicted of a
2 criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971,
3 the Uniform Controlled Substances Act under ch. 961, or any controlled substances
4 law of another state, as indicated in the information obtained from the criminal
5 history search.

6 (c) Create a form to accompany any transfer of industrial hemp. The
7 department shall identify the information to be included in the form, which shall
8 include any test results showing the delta-9-tetrahydrocannabinol concentration of
9 the industrial hemp being transferred, the amount of industrial hemp being
10 transferred, and the full chain of custody of the industrial hemp being transferred
11 for all transfers of the industrial hemp until it is processed in such a way that it no
12 longer meets the definition under sub. (1), at which point the form shall be submitted
13 to the department.

14 **SECTION 19.** 94.67 (2) of the statutes is amended to read:

15 94.67 (2) "Agricultural commodity" means any plant or part of a plant, animal
16 or animal product produced by a person primarily for sale, consumption,
17 propagation, or other use by humans or animals. "Agricultural commodity" includes
18 industrial hemp.

19 **SECTION 20.** 94.67 (15r) of the statutes is renumbered 94.67 (15c) and amended
20 to read:

21 94.67 (15c) "~~Industrial hemp~~" "Hemp" means the plant Cannabis sativa, ~~or L.~~
22 and any part of the that plant, including the seeds, having with a
23 delta-9-tetrahydrocannabinol concentration of ~~no~~ not more than 0.3 percent on a
24 dry weight basis or the maximum concentration allowed under federal law up to 1
25 percent, whichever is greater.

Ins 9-25 →

1 SECTION 21. 97.02 of the statutes is amended to read:

2 97.02 Standards; adulterated food. For the purposes of this chapter, a food
3 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
4 department may not consider a food to be adulterated solely because it contains
5 industrial hemp, as defined in s. 94.67 (15r) (15c), or an industrial a hemp product.

6 SECTION 22. 348.27 (18) (a) 1. f. of the statutes is amended to read:

7 348.27 (18) (a) 1. f. Industrial hemp Hemp, as defined in s. 94.67 (15r) (15c).

INS
EAW 10-8

8 SECTION 23. 961.01 (14) of the statutes is amended to read:

9 961.01 (14) "Marijuana" means all parts of the plants of the genus Cannabis,
10 whether growing or not; the seeds thereof; the resin extracted from any part of the
11 plant; and every compound, manufacture, salt, derivative, mixture or preparation of
12 the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does
13 include the mature stalks if mixed with other parts of the plant, but does not include
14 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
15 compound, manufacture, salt, derivative, mixture or preparation of the mature
16 stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed
17 of the plant which is incapable of germination. "Marijuana" does not include hemp,
18 as defined in s. 94.55 (1).

EAW
10-7

19 SECTION 24. 961.14 (4) (t) 3. of the statutes is created to read:

20 961.14 (4) (t) 3. Tetrahydrocannabinols contained in hemp, as defined in s.
21 94.55 (1).

EAW
10-22

22 SECTION 25. 961.32 (3) (a) 1. and 2. of the statutes are amended to read:

23 961.32 (3) (a) 1. "Hemp" "Cannabis" means the plant Cannabis sativa, ~~or L.~~ and
24 any part of the that plant including the seeds.

25
Ins 10-25

2. "Industrial hemp" "Hemp" has the meaning given in s. 94.55 (1).

1 SECTION 26. 961.32 (3) (b) 1. of the statutes is amended to read:

2 961.32 (3) (b) 1. Planting, growing, cultivating, harvesting, ^{producing,} processing, or
3 transporting hemp cannabis that contains a delta-9-tetrahydrocannabinol
4 concentration of the crop of not more than 0.7 percent above the permissible limit for
5 industrial hemp on a dry weight basis or that is grown from industrial hemp seed
6 certified under s. 94.55 (2) (c). Ins 11-6

7 SECTION 27. 961.32 (3) (b) 2. of the statutes is repealed.

8 SECTION 28. 961.32 (3) (b) 3. of the statutes is amended to read:

9 961.32 (3) (b) 3. Selling, transferring, importing, exporting, processing,
10 transporting, harvesting, or taking possession of hemp seed ^{cannabis} that has been certified,
11 ^{or that has been tested and certified,} under s. 94.55 (2) (c), ^{grown from} by a laboratory ^{hemp} authorized by the department of agriculture,
12 ^{an entity approved} trade and consumer protection ^{seed} to test the delta-9-tetrahydrocannabinol
13 ^{under s. 94.55 (b) 4m.} concentration ⁱⁿ hemp cannabis as meeting the permissible
14 delta-9-tetrahydrocannabinol concentration limit for industrial hemp. Ins 11-14

15 SECTION 29. 961.32 (3) (b) 4. of the statutes is amended to read:

16 961.32 (3) (b) 4. Possessing hemp cannabis ^{with} ^{that} a ^{contains}
17 delta-9-tetrahydrocannabinol concentration ^{of not more than 0.7 percent} above the permissible level ^{limit} for
18 industrial hemp ^{if the hemp cannabis was certified under s. 94.55 (2) (c) at the time}
19 ^{the possessor took possession as meeting the permissible concentration limit for}
20 ^{industrial hemp and the possessor had no reason to believe at that time that the}
21 ^{certification was incorrect.} Ins 11-21

22 SECTION 30. 961.32 (3) (b) 5. of the statutes is amended to read:

23 961.32 (3) (b) 5. Taking samples of hemp cannabis, transporting samples to a
24 testing facility, or testing samples for their delta-9-tetrahydrocannabinol
25 concentration or for the presence of other substances

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SECTION 31. 961.32 (3) (c) of the statutes is amended to read:

961.32 (3) (c) A person who ~~plants, grows, cultivates, harvests, samples, tests,~~
~~processes, transports, transfers, takes possession of, sells, imports, or exports~~
industrial hemp in violation of ^{violates s. 94.55 or} a rule promulgated under s. 94.55 ~~(2) (b)~~ may not be
prosecuted under s. 94.55 or this chapter unless the person is referred to the district
attorney for the county in which the violation occurred by the department of
agriculture, trade and consumer protection, and may not be prosecuted under a
municipal ordinance that prohibits the same conduct as is prohibited under this
chapter unless the person is referred to local law enforcement by the department of
agriculture, trade and consumer protection.

SECTION 32. 961.32 (3) (cm) of the statutes is created to read:

961.32 (3) (cm) A hemp producer that negligently violates s. 94.55 or a rule
promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be
prosecuted under s. 94.55 or this chapter and may not be prosecuted under a
municipal ordinance that prohibits the same conduct as is prohibited under this
chapter.

SECTION 33. 961.32 (3) (d) of the statutes is amended to read:

961.32 (3) (d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity
described under ~~par. (b) s. 94.55 (2) (a)~~ does not constitute prima facie evidence of a
prohibited representation under s. 961.41 (4) (am) 1. a. or b.

EXAM
12-20

SECTION 34. 961.442 (intro.) of the statutes is amended to read:

961.442 Penalties; industrial hemp. (intro.) If a person attempts to conceal
the commission of a crime under this chapter while representing that he or she is
engaging in the planting, growing, cultivating, harvesting, ^{producing,} processing, transporting,
importing, exporting, selling, transferring, sampling, testing, or taking possession

1 of industrial hemp, the maximum term of imprisonment prescribed by law for that
2 crime may be increased as follows:

3 SECTION 35. 961.55 (9) of the statutes is amended to read:

4 961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
5 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
6 delta-9-tetrahydrocannabinol [↓] in a whole dry plant [↓] is found to exceed 0.7 percent
7 above the permissible limit for industrial hemp, ^{Ins 13-7} the entire crop [↓] on the field [↓] where
8 the plant was found shall be seized and destroyed. ^{at the growing location} Before a crop is seized and
9 destroyed under this subsection, the agency whose officers or employees intend to
10 seize and destroy the crop shall provide, to the person licensed under s. 94.55 [↓] (3) to
11 grow the crop or to the person's agent or employee, written documentation verifying
12 the test results for the crop that is subject to seizure and destruction.

13 SECTION 36. Nonstatutory provisions.

14 (1) EMERGENCY RULES. No later than the 90th day after the effective date of this
15 subsection, the department of agriculture, trade and consumer protection shall,
16 using the procedure under s. 227.24, promulgate rules under s. 94.55 (2) to (3).
17 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
18 evidence that promulgating a rule under this subsection as an emergency rule is
19 necessary for the preservation of the public peace, health, safety, or welfare and is
20 not required to provide a finding of emergency for a rule promulgated under this
21 subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated
22 under this subsection remain in effect until July 1, 2022, or the date on which
23 permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (e)
24 1d. and 1g., for emergency rules promulgated under this subsection, the department

1 is not required to prepare a statement of scope of the rules or to submit the proposed
rules in final draft form to the governor for approval.

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Ins 14-2
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(END)

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INSERT 3-11

as tested using post-decarboxylation or other similarly reliable methods

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The department shall issue licenses to hemp producers if required under federal law. If the department issues such licenses, no

INSERT 3-24

A license may authorize the planting, growing, cultivating, harvesting, producing, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of hemp. The department shall identify the requirements for applying for a license, approving or denying a license, and suspending or revoking a license, and shall identify the restrictions and obligations that apply to operating under a license. The department shall accept license applications throughout the calendar year.

INSERT 4-21

to ensure that the state's hemp program complies with federal law and to obtain and maintain any required federal approval of the state's hemp program;

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The department may establish a lower fee for licenses issued for research purposes. *initial and annual fees*

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SECTION 1. 94.55 (2) (b) 4s. of the statutes is created to read:

~~94.55 (2) (b) 4s.~~ The department may not require the sampling and testing of immature plants that have been grown from hemp seed certified under par. (c) or from hemp seed that has been ^{approved} authorized for growing under par. (f).

INSERT 5-20

and except that a person may authorize the department to disclose information under subd. 5. b. that relates to the person

INSERT 6-5

SECTION 2. 94.55 (2) (b) 7. of the statutes is created to read:

~~94.55 (2) (b) 7.~~ The department shall create a form that may accompany any transfer of hemp. The department shall identify the information to be included in the form, which shall include any test results showing the delta-9-tetrahydrocannabinol concentration of the hemp being transferred and the amount of hemp being transferred.

INSERT 6-16

SECTION 3. 94.55 (2) (e) of the statutes is repealed.

INSERT 6-18

SECTION 4. 94.55 (2) (f) of the statutes is created to read:

1 ~~94.55 (2) (f)~~ Before growing hemp, a hemp producer shall notify the department
2 of the type of seed the producer intends to grow. A hemp producer may not grow hemp
3 unless the producer has notified the department of the type of hemp seed the
4 producer intends to grow and the department has approved the producer to grow that
5 type of hemp seed, except that a producer is not required to obtain approval to grow
6 hemp seed certified under par. (c).

7

8 INSERT 9-13

9 **SECTION 5.** 94.55 (3) of the statutes, as affected by 2019 Wisconsin Act ... (this
10 act), is repealed.

11

12 INSERT 9-25

13 **SECTION 6.** 94.67 (15c) of the statutes is created to read:

14 ~~94.67 (15c)~~ "Hemp" has the meaning given in s. 94.55 (1).

15 **SECTION 7.** 94.67 (15r) of the statutes is repealed.

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17 INSERT 10-25

18 **SECTION 8.** 961.32 (3) (b) (intro.) of the statutes is amended to read:

19 ~~961.32 (3) (b) (intro.)~~ A person who is otherwise acting in accordance with rules
20 promulgated by the department of agriculture, trade and consumer protection under
21 s. 94.55 (2) (b) may not be prosecuted for a criminal offense under this chapter, or
22 under any municipal ordinance that prohibits conduct that is the same as that
23 prohibited under this chapter, for any of the following:

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

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INSERT 11-6

or approved for growing by the department of agriculture, trade and consumer protection under s. 94.55 (2) (f)

INSERT 11-14

if the ^{person} possessor has no reason to believe that the certification is incorrect

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on a dry weight basis if the possessor reconditions the cannabis to a delta-9-tetrahydrocannabinol concentration at or below the permissible limit for hemp and notifies the department of agriculture, trade and consumer protection of those actions

INSERT 13-7

on a dry weight basis, as tested using post-decarboxylation or other similarly reliable methods,

INSERT 14-2

(0) The department shall notify the legislative reference bureau when the secretary of the U.S. Department of Agriculture establishes a plan under section 297C of the Agricultural Marketing Act of 1946. The legislative reference bureau shall publish a notice in the Wisconsin Administrative Register that specifies the date on which s. 94.55 (3) is repealed, as determined under SECTION 37??? (1) of this act.

Notification - (CS)

of agriculture, trade and consumer protection

CS autoref.

1 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
2 except as follows:

3 (1) The repeal of s. 94.55 (3) takes effect one year after the date on which the
4 secretary of the U.S. Department of Agriculture establishes a plan under section
5 297C of the Agricultural Marketing Act of 1946.

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EAWIN5

EAW 10-8

SECTION 1. 961.01 (3r) of the statutes is created to read:

~~X~~961.01 (3r) "Cannabidiol product" means a derivative or extract of the plant Cannabis sativa L. that contains cannabidiol and a delta-9-tetrahydrocannabinol concentration at a level without a psychoactive effect.

EAW 10-19

SECTION 2. 961.14 (4) (t) 1. of the statutes is amended to read:

~~X~~961.14 (4) (t) 1. ~~Cannabidiol in a form without a psychoactive effect~~
Tetrahydrocannabinols contained in a cannabidiol product that is dispensed as provided in s. 961.38 (1n) (a) or that is possessed as provided in s. 961.32 (2m) (b).

History: 1971 c. 219; 1981 c. 206; 1989 a. 121; 1993 a. 98, 118; 1995 a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995 s. 961.14; 1997 a. 220; 1999 a. 21; 2001 a. 16; 2005 a. 52; 2011 a. 31; 2013 a. 267, 351; 2017 a. 4, 60, 100; 2017 a. 364 s. 49; 2017 a. 365 s. 111; ss. CSB 2.15, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21, 2.22, 2.31, 2.32, 2.33, 2.34, 2.41, 2.42, 2.45, 2.46, 2.47, 2.49, 2.50, 2.51, 2.52, 2.53, 2.55, 2.56, 2.57, 2.59, 2.60, 2.61, 2.62, 2.63, 2.64Wis. adm. code.

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

EAW 10-22

~~SECTION 3.~~ 961.32 (2m) (b) of the statutes is amended to read:

~~X~~961.32 (2m) (b) An individual may possess a cannabidiol in a form without a psychoactive effect product if the individual has certification stating that the individual possesses a cannabidiol product to treat a medical condition, if the certification has an issue date that is no more than one year prior to the possession, and if any expiration date provided by the physician in the certification has not passed.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

EAW 12-21

SECTION 4. 961.34 (2) (a) of the statutes is amended to read:

~~X~~961.34 (2) (a) Upon the request of any physician, the controlled substances board shall aid the physician in applying for and processing an investigational drug

permit under 21 USC 355 (i) for cannabidiol as treatment for a ~~seizure disorder~~ medical condition. If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies and physicians may dispense cannabidiol products to patients.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34; 2013 a. 267.

SECTION 5. 961.34 (2) (b) of the statutes is amended to read:

~~961.34 (2) (b)~~ If cannabidiol is products are removed from the list of controlled substances, or if cannabidiol is products are determined not to be ~~a~~ controlled ~~substance~~ substances, under schedule I of 21 USC 812 (c), the controlled substances board shall approve which pharmacies and physicians may dispense cannabidiol products to patients as treatment for a ~~seizure disorder~~ medical condition.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34; 2013 a. 267.

SECTION 6. 961.38 (1n) (a) of the statutes is amended to read:

~~961.38 (1n) (a)~~ A pharmacy or physician approved under s. 961.34 (2) (a) or (b) may dispense cannabidiol ~~in a form without a psychoactive effect~~ products as a treatment for a medical condition.

History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159; 2013 a. 267; 2017 a. 4, 25.

SECTION 7. 961.38 (1n) (b) of the statutes is amended to read:

~~961.38 (1n) (b)~~ A physician licensed under s. 448.04 (1) (a) may issue an individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual possesses a cannabidiol product to treat a medical condition ~~if the cannabidiol is in a form without a psychoactive effect~~.

History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159; 2013 a. 267; 2017 a. 4, 25.

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LRB-1400/P1inMP2
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1 INSERT A

This bill makes several changes to current law relating to industrial hemp.
The bill changes current law in the following ways so that it is consistent with
the 2018 federal farm bill:

2

3 INSERT B

9. Changes the current hemp pilot program under DATCP to a permanent
program and sunsets the pilot program.

4

5 INSERT C

The bill also does the following relating to hemp:

- 1. (10) Requires DATCP to promulgate rules to ensure the safety of all types of products produced from hemp, including the safety of cannabidiol (CBD) products.
- 2. (11) Requires DATCP to certify entities to undertake any sampling and testing of hemp that DATCP requires by rule.
- 3. (12) Allows a person, whose personally identifying information relating to the hemp program is in DATCP's possession, to authorize the disclosure of that information.
- 4. (13) Allows DATCP to establish lower license fees for hemp licenses issued for research purposes.
- 5. (14) Requires all hemp producers to notify DATCP of the type of hemp seed the producer intends to grow, and prohibits a hemp producer from growing hemp seed unless the seed has been certified by DATCP or unless DATCP approves the producer to grow the proposed type of hemp seed.
- 6. (15) Prohibits DATCP from requiring the testing of immature plants grown from certified seed or seed that has been approved by DATCP.
- 7. (16) Clarifies that THC contained in a CBD product is not a Schedule I controlled substance if the THC and CBD concentration is at a level without a psychoactive effect.

6

7 INSERT 3-25

8 SECTION 1. 94.55 (2) (b) 2. of the statutes is amended to read:

9 ~~94.55 (2) (b) 2. Except as provided under subds. 3. to 6. and subs. (3) and (4)~~
10 this section, rules promulgated under this paragraph shall regulate the activities

1 described in par. (a) only to the extent required under federal law, and in a manner
2 that allows the people of this state to have the greatest possible opportunity to
3 engage in those activities.

History: 2017 a. 100.



-1400/P2

2/28/19 meeting @ Sen. Testin:

- ✓ • SEC. 12: DATCP shall establish protocols for approving sampling/testing entities, and shall approve entities that meet those requirements.
- ✓ • SEC. 13: DATCP may do random spot-testing pre-harvest. Regular inspections should be done post-harvest. Grower shall notify DATCP of intended harvest date ≥ 2 wks prior. DATCP may not test in field > 10 days before harvest date. Grower may harvest on date if DATCP hasn't tested yet. DATCP not req'd to test every field and every strain.
- ✓ • Truth in labeling:
May not: mislabel hemp or hemp products;
make an inaccurate claim about hemp or hemp product in the course of transfer or sale;
or knowingly sell at retail mislabeled hemp or hemp products.
Penalty: \$X civil forf.
May bring private claim for damages.
DATCP to enforce but may refer to DAs.
- ✓ • In contracts with growers, default contract term is that grower will be paid within 7 days, unless grower specifies otherwise
- ✓ • 182.001: add hemp.

(1)

MEP



2/28/19

-1400/P2

✓ Add'l safe harbor in 961 :

Temporarily possessing a hemp-derived substance during the normal course of processing hemp if the substance is reconditioned or processed into hemp within a reasonable amount of time.

✓ Background checks ≤ 10 years consistent with Farm Bill.

✓ 94.55 should not apply to Lydie's Law or FDA-approved ~~products~~ ^{products}

✓ Exempt FDA-approved products from def. of "hemp."

✓ Add in 94.55: Nothing in this section limits a person's access to a cann. prod. under s. 961.32 (2m) (b).

✓ 961.32 (2m) (b): Cert. not req'd to possess hemp or an FDA-approved product

②

MCP

Department of Agriculture, Trade and Consumer Protection

Review of hemp draft LRB-1400/P2

DATCP Comments and Revision Suggestions

✓ Section 1: changes "industrial hemp" to "hemp"

For consistency with the federal definition, the bill replaces the term "industrial hemp" with "hemp" and defines "hemp" as "*Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater." The bill removes designation as a controlled substance from the definition of hemp, reflecting the recent federal delisting of hemp as a controlled substance. No modification suggested.

✓ Section 2: changes "industrial hemp" in the title to "hemp"

No modification suggested.

✓ Section 3: changes the definition of "hemp" to be consistent with the 2018 federal farm bill, but clarifies that THC concentration is to be tested using post-decarboxylation or other similarly reliable methods

No modification suggested.

✓ Section 4: changes "industrial hemp" in the title to "hemp"

No modification suggested.

✓ Section 5: changes "industrial hemp" to "hemp"; adds "produce" to the list of verbs

Throughout, the bill adds a new category of permitted activity, the ability to "produce" hemp. "Produce" is not defined. This change is consistent with the 2018 federal farm bill, where the term is also undefined. No modification suggested.

✓ Section 6: makes permanent the licensing requirement under the current pilot program under Wis. Stat. § 94.55(3) (which sunsets under this bill)

This section does not include an effective start date, renewal date, registration expiration date, or discussion of permissible late fees related to licenses. The bill states that the "department shall issue licenses to hemp producers." While a producer is not a defined term, the current definition in statute is based on issuing a license to a person, a defined term in statute. Modification suggested.

- Include an effective start date.
- Include language granting the department authority to set a licensing term in rule; for example, the department may wish to set license and registration terms at 15 months, instead of a year, to cover any gaps caused by delays in issuing new licenses when hemp is still on the property.
- Give department authority to set a late fee in rule. Alternately, without a specified late fee, the permitted late fee is defined in Wis. Stat. § 93.21(5) as an additional fee equal to 20 percent of the license fee or \$5, whichever is greater.

yes (C) Consider adding "and may set licensing terms and late fees" to Section 6, line 17.

- Replace "hemp producers" with "a person" in Section 6, line 9. May want to review use of these terms throughout.

✓ Section 7: cross reference change

No modification suggested.

MCP

Department of Agriculture, Trade and Consumer Protection Review of hemp draft LRB-1400/P2

✓ Section 8: mirrors sec. 297B (a) (2) of the 2018 federal farm bill regarding provisions that must be included in a state hemp program

This section requires the department to maintain “a legal description of the land” on which hemp is produced. Although the federal farm bill uses the term “legal description,” a metes and bound description will not be practical for the department in administration of the program. Future guidance from USDA may provide additional perspective on their use of “legal description”, however the department prefers use of global positioning system coordinates to describe location of hemp production. Further, this section states that a testing procedure may be developed for hemp “produced in this state.” Other sections of the bill require the department to ensure the safety of all hemp, including hemp produced in other states and imported to Wisconsin. Modification suggested.

- Add “including a legal description of the land and global positioning system coordinates.” in Section 8, line 2

✓ Section 9: changes “industrial hemp” to “hemp”; changes “grown or processed” to “produced”; requires DATCP to promulgate rules, as necessary, to ensure that the hemp program complies with federal law

The bill states that the “department shall promulgate rules, as necessary, to ensure the quality of hemp produced in this state” and “the security of activities related to hemp.” Modification suggested.

- Change “shall” to “may” in Section 9, line 15 for permissive authority to promulgate rules as necessary.
- Clarify the department’s role in security related to hemp versus the role of law enforcement.

✓ Section 10: changes the requirement to promulgate rules “as necessary” under Wis. Stat. § 94.55(2)(b)3. to a requirement to promulgate rules to ensure the safety of hemp products

The bill requires the department to “promulgate rules to ensure the safety of all types of products produced from hemp, including the safety of Cannabidiol products.” This broad charge is potentially duplicative of federal law related to food and drug safety. Additionally metrics for determining the level of safety of hemp products do not exist, making it exceedingly difficult for the department to assess product safety. Modification suggested.

- yes ○
- Maintain the permissive authority to promulgate rules by changing the language to “may promulgate rules, as necessary,” in Section 10, line 1.
 - Cite and acknowledge federal laws controlling the use of Cannabidiol and regulatory authority of the Food and Drug Administration (FDA). The 2018 Agricultural Improvement Act “explicitly preserved the agency’s current authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act.” The FDA maintains “that it is unlawful under the FD&C Act to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC products as, or in, dietary supplements, regardless of whether the substances are hemp-derived... because both CBD and THC are active ingredients in FDA-approved drugs...” that are illegal to introduce into the food supply or to market as dietary supplements. Available:
<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm628988.htm>.

✓ Section 11: changes “industrial hemp” to “hemp”; changes “plants, grows, or cultivates” to “produces”; allows DATCP to establish lower license fees for research purposes

This section defines fees for any person’s license and annual fees. The department needs to be able to generate sufficient initial fee revenue to cover program costs. For example, based on the statutory definition of person, a person could include a cooperative. A cooperative could apply for a license to grow on much

Department of Agriculture, Trade and Consumer Protection

Review of hemp draft LRB-1400/P2

greater than 200 acres, pay one fee, and only undergo one background check for the applicant versus fees and background checks and for all the farmers who are in the cooperative. Modification suggested.

- Change Section 11, lines 5-8, to allow the department to increase the initial fee or create a tiered fee structure for entities that represent multiple producers, such as cooperatives.
- Alternately, if the intention is that all growers pay, the language should be modified to indicate that every individual hemp producer in Wisconsin must hold an individual license.
- yes Consider adding "and non-commercial purposes" to this language to allow the department to also establish lower fees for those uses, such as apiary plantings, etc. and allow the department authority to define research purposes and non-commercial uses.

✓ Section 12: requires DATCP to approve entities to do any sampling and testing required under rules

This section states that "the department shall approve entities to undertake any sampling and testing required by the department by rule." As the program matures, the department may likely chose to enable private entities to support this work; however, to ensure a credible hemp program exists in Wisconsin, it may not be advisable to require the department to cede its regulatory authority with respect to regulatory sampling and testing. Modification suggested.

- Change Section 12, line 16, from "shall" to "may," allowing the department permissive authority for such approval and rulemaking.

✓ Section 13: prohibits DATCP from requiring sampling or testing of immature plants grown from certified seed or from hemp seed approved by DATCP

This section states that "the department may not require the sampling and testing of immature plants that have been grown from hemp seed certified under par. (c) or from hemp seed approved for growing under par. (f). Such a prohibition would limit the department's ability to sample and test a field where immature plants are being harvested, or where approved seed has reverted to higher THC concentration, or where there is a fraud as to the type of seed that has been planted. While recognizing Konopacky comment 13, similar logic holds for plants derived from cuttings. The department may not wish to cede its regulatory authority to sample immature plants or plants grown from approved seed. Further, the department currently could not issue a fit for commerce certificate for untested plants regardless of whether they are grown from certified seed or cuttings, as the certificate is based on test results. As science related to hemp evolves, the department may determine that it is possible to exempt certain certified seeds, to use random sampling for grain/fiber varieties, and to test every field and variety of non-certified varieties. Modification suggested.

- In Section 13, line 19, remove the word "not," so that the department can tailor testing as needed and potentially implement a prioritization structure for testing requirements of plants from certified seed or cuttings.

✓ Section 14: changes "industrial hemp" to "hemp"; changes "fields" to "growing locations"; allows a person to authorize DATCP to release that person's personally identifying information

This section allows a person to authorize the department to disclose personally identifiable information relating to a person who is lawfully engaging in activities related to hemp. It is unclear if such authorization would be permanent, could be revoked, or could be restricted to only certain aspects of personally identifiable information. The department prefers permanent authorization until such time as a person rescinds their disclosure authorization. Further, this section allows disclosure of information to law enforcement. Allowing disclosure to additional types of entities would assist with financing and local zoning

Department of Agriculture, Trade and Consumer Protection Review of hemp draft LRB-1400/P2

issues related to hemp. Finally, this section removes the requirement to keep confidential information related to processing locations. This means that the department would be able to provide information that is currently withheld related to hemp processors. For sites where a growing and processing location exist on the same site, the growing site could be discovered. Modification suggested.

- yes
- In Section 14, lines 1-3, clarify whether opting in to the sharing of personal information is permanent and whether it is revocable.
 - In Section 14, line 1, add the ability for the department to confirm license information to banks, local governments and other service providers, in addition to law enforcement.
- yes
- In Section 14, lines 4-5, change "growing" to "production" for consistency and maintain the confidentiality and disclosure authorization option of processing locations by adding "and processing locations."

✓ Section 15: makes permanent the requirement to create a hemp transfer form under the current pilot program under Wis. Stat. § 94.55(3) (which sunsets under this bill), but makes its use optional

This section states that "the department shall create a form that may accompany any transfer of hemp." The department is required to create a form, but implies the use of the form is optional. It is not clear whether hemp sourced from outside Wisconsin would be able to provide test results showing the THC concentration of the hemp. This section seems inconsistent with Section 22 lines 4-11. Currently, not all products sourced from outside Wisconsin list their THC concentrations in this way. No modification suggested.

✓ Sections 16-17.

yes The department agrees with the assessment of intent identified in Konopacky comment #4. Consider a modification to identify the parent plant from which certified seed is derived shall be tested.

✓ Section 18: requires producers to notify DATCP of the type of seed that will be grown and to obtain DATCP approval before planting, unless the producer is growing from certified seed

This section requires hemp producers to notify the department prior to planting, and to obtain departmental approval for seed varieties. This section does not appear to cover clones. This approval process creates a concern about required staff time for processing notifications and approvals. Ultimately, it may be more efficient for the department to publish a list of disallowed varieties and a list of approved varieties that is periodically updated. Modification suggested.

- yes
- In Section 18, lines 6 to 12, allow the department greater flexibility to determine how it approves seed varieties. For example we may consider providing lists of approved and unapproved seed and plant varieties.

✓ Section 19: mirrors sec. 297B (e)(2)(A), (B), and (D) of the 2018 federal farm bill regarding negligent violations of the hemp program

This section addresses negligent violations. After observing the first year of the program in practice, it should be noted that it is possible for a producer who is ineligible to produce hemp to simply find another person to take responsibility for the license and to complete the background check, while remaining involved with the business. No modification suggested, because the language is consistent with the 2018 federal farm bill.

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✓ Section 20: mirrors sec. 297B (e)(3)(A) of the 2018 federal farm bill regarding nonnegligent violations of the hemp program

This section addresses nonnegligent violations. Again, after observing the first year of the program in practice, it should be noted that it is possible for a producer who is ineligible to produce hemp to simply find another person to take responsibility for the license and to complete the background check, while remaining involved with the business. No modification suggested, because the language is consistent with the 2018 federal farm bill and we generally align with Konopacky comment #5.

✓ Section 21: mirrors sec. 297B (e)(3)(C) of the 2018 federal farm bill regarding false statements

This section makes a person who materially falsifies information in application ineligible to participate in the program. The timeframe of this ineligibility is unclear. Are they permanently ineligible? Again, it should be noted that it is possible for a producer who is ineligible to produce hemp to simply find another person to take responsibility for the license and to complete the background check, while remaining involved with the business. No modification is suggested, because the language is consistent with the 2018 federal farm bill.

✓ Section 22: changes "industrial hemp" to "hemp"; changes "fields" to "growing locations"

Section 22, lines 3-8 on the second page of the section, require the department to issue licenses for the entire life cycle of hemp from seed to final end product. It appears that the wording charges the department with completing a criminal background check and issuing a license for every person who is taking possession of a hemp product.

Section 22, lines 11-13 on the second page of the section, require the department to obtain a criminal history search that is not time restricted, and do not allow issuing a license if the applicant has been convicted of a criminal violation of the federal Controlled Substances Act, Wis. Stat. ch. 961, or the controlled substances law of another state. This does not appear to be consistent with the 2018 federal farm bill, which creates an ineligibility period that expires 10 years after the date of conviction for a felony "relating to a controlled substance under State or Federal law." Additionally, Section 10112 of the 2018 federal farm bill excepts persons growing hemp lawfully under a pilot program prior to enactment of the 2018 federal farm bill.

Section 22, lines 20-25 on the second page of the section, require the department to create a registration system that authorizes the entire life cycle of hemp from seed to final product. It appears that the wording charges the department to complete a criminal background check and to register every person who wants to take possession of hemp.

Section 22, lines 4-11 on the third page of the section, require the department to create a form to accompany any transfer of hemp until it is "processed in such a way that it no longer meets the definition" of hemp, at which point "the form shall be submitted to the department." This language appears to be inconsistent with permissive use of such a form in Section 15. Also, what types of scenarios are contemplated where hemp is processed in such a way that it no longer meets the definition of hemp? If it is never processed in such a way, is there ever a requirement to turn in the form?

Modification suggested.

- In Section 22, lines 1-2 of the second page of the section, change "shall" to "may" to allow the department permissive authority to issue licenses as necessary.
- In Section 22, line 10, consider changing "growing" to "producing" for consistency with USDA language.

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- In Section 22, lines 11-17 of the second page of the section, harmonize the language with 2018 federal farm bill requirement to look back no more than 10 years after conviction, and except persons who were growing hemp lawfully under the pilot program prior to enactment of the 2018 federal farm bill.
- In Section 22, lines 9-11 of the third page of the section, clarify what it means for hemp to be “processed in such a way that it no longer meets the definition under sub. (1), at which point the form shall be submitted to the department.”

✓Sections 23- 28.

No modifications suggested.

✓Section 29: for the purposes of Lydia’s Law (see Section 31 of the bill), defines “cannabidiol product”

Instead of a quantitative level of THC, the section uses “without a psychoactive effect.” Cannabidiol products derived from hemp versus marijuana are not distinguished. Are cannabidiol products solely derived from marijuana? Potential modification.

- Would it be useful to distinguish between cannabidiol products derived from hemp versus marijuana? Or to utilize the 0.3% quantitative level of THC in place of “without a psychoactive effect”?

✓Section 30: mirrors sec. 12619(a) of the 2018 federal farm bill to exempt hemp from the definition of marijuana

No modification suggested.

✓Section 31: clarifies that the substance exempted from the list of Schedule I controlled substances under Lydia’s Law is the THC contained in a CBD product. The original language in Lydia’s Law exempted CBD from the definition of THC; CBD is a different compound from, and is not contained in, THC, making the original exemption confusing.

Cannabidiol products derived from hemp versus marijuana are not distinguished. Potential modification.

- Would it be useful to distinguish between cannabidiol products derived from hemp versus marijuana?

✓Section 32: mirrors sec. 12619(b) of the 2018 federal farm bill by exempting THC contained in hemp from the list of Schedule I controlled substances

No modification suggested.

✓Section 33: clarifies that the item that may be possessed under Lydia’s Law is a CBD product (as defined in Section 29 of the bill)

Cannabidiol products derived from hemp versus marijuana are not distinguished. Potential modification.

- Would it be useful to distinguish between cannabidiol products derived from hemp versus marijuana?

✓Section 34: changes “industrial hemp” to “hemp”; changes “hemp” to “cannabis”

No modification suggested.

✓Section 35: clarifies that the safe harbors under s. 961.32(3)(b) apply to someone who is otherwise in compliance with the hemp program

The bill is silent as to age restrictions related to vaping or smoking of hemp. Potential modification.

- If there is a concern about minors vaping or smoking hemp, an age limit could be introduced.

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✓Section 36: clarifies that the safe harbor for growing, producing, etc. "hot" hemp (up to 1.0 percent THC) applies to growing, producing, etc. hemp seed that was approved for growing by DATCP

No modification suggested.

✓Section 37: repeals the safe harbor under s. 961.32(3)(b)2., because those activities are now allowed (by exempting hemp from the list of Schedule I controlled substances)

An issue that arose in the first year of the pilot program was how to work with hemp product producers who are extracting or distilling CBD from hemp which generates a byproduct with THC levels exceeding 0.3% as part of the processing cycle. Such a safe harbor would also require consideration of requirements for recordkeeping and reporting. Suggested modification.

- Would it make sense to maintain a safe harbor for such producers, and to include requirements for recordkeeping and reporting to the department or law enforcement related to such situations?

✓Section 38: allows selling, processing, possession, etc. of cannabis of any THC level if it is grown from certified hemp seed, or if it has been tested and certified as meeting permissible THC limits for hemp and if there is no reason to believe the certification was incorrect

If the department is not required to cede its regulatory authority for regulatory sampling in Section 12, the "entity approved" language would need to be modified. Suggested modification.

- yes (x) In Section 38, line 8, add the department as one of the potential testers and certifiers.
yes (x) Additionally, take into consideration Konopacky comment #7.

✓Section 39: allows the possession of "hot" hemp (up to 1.0 percent THC) if the possessor reconditions the hemp down to permissible levels and notifies DATCP

This section allows reconditioning of "hot" hemp to obtain a permissible concentration of THC. This process of reconditioning is not defined. Allowing reconditioning could render meaningless the process of approving seed varieties and developing crops that are bred to be under the limit. Suggested modification.

- yes (x) In Section 39, lines 20-22, require the possessor not to give notice but to obtain department permission to recondition within a reasonable number of days from discovering the hemp is "hot," to obtain a new regulatory sample of the reconditioned hemp, and to obtain a fit for commerce certificate from the department after the reconditioned hemp is approved. Alternately, remove the permission for a possessor to recondition cannabis to hemp.

✓Section 40: clarifies that testing is also being done for the presence of other substances (not just for THC concentrations)

No modification suggested.

✓Section 41: replaces the list of verbs with "violates s. 94.55"

Section 41, lines 5 to 7, has a typo. Suggested modification.

- In Section 41, line 7, strike "industrial."

✓Section 42: provides that a person who negligently violates the hemp program may not be prosecuted criminally, by DATCP, or under a municipal ordinance

Related to the topic of municipal ordinances, another issue that would require changes in multiple sections of the bill would be the notion of zoning. It should be considered whether the bill should make any allowances or prohibitions related to local zoning/ordinances as it applies to hemp growing or processing.

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✓ Sections 43-51

These sections largely are outside of the department's domain, however comments from Konopacky may be relevant for consideration. No suggested modifications from the department.

Pfotenhauer, Mary

From: Larry Konopacki <LKonopacki@staffordlaw.com>
Sent: Sunday, February 03, 2019 6:03 PM
To: Schultz, Jeff; Queensland, Michael; Otis, Amber; Pfotenhauer, Mary; Rob Richard; Karen Gefvert; Kuhn, Brian D - DATCP; Stamm, Christine A - DATCP; Flynn, John; Kurtz, Tony; Testin, Patrick
Subject: RE: Tomorrow's meeting CANCELLED and RE-SCHEDULED for 2:30 P.M. on Wednesday, Feb. 6th

Follow Up Flag: Follow up
Flag Status: Flagged

Hello everyone, here are my comments on the P2 draft:

- ✓1. In Section 6, you may need to come up with a different word than "required" because federal law actually allows licensure directly by USDA. I recommend that the second sentence be removed or reworked. If reworked, it should take into account that there could be people allowed to produce hemp under federal law outside of this licensure system. Also, I recommend that the second sentence also be removed or revised. Many of those activities are not subject to licensing requirements under federal law, and this may create confusion under the state program.
- ✓2. In Section 11, I suggest ending the last sentence with "...issued for research purposes or for other purposes that do not involve the sale of hemp or hemp-derived products for commercial purposes." This would allow DATCP to include the people who want to use hemp for beekeeping purposes, and would also include people who grow for personal use.
- ✓3. In Section 13, add plants grown from plant cuttings.
- ✓4. In Section 16, I think that the intent is to include THC testing of plants from which certified seed is collected, instead of plants grown from certified seed.
- ✓5. In Section 20, it may be good to add a provision that specifies that the department may include in its rules under s. 94.55 (2) (am) restrictions on eligibility for a license for people to whom this Section is applicable.
- ✓6. Section 29, 31, and 33 – EXCELLENT job drafting these changes – now you see why we should all try to get out of Mary's way as much as possible.
- ✓7. In Section 38, I believe that you do not want this safe harbor to apply to hemp grown from certified seed – the purpose of this provision is to cover you if the THC test is wrong. If cannabis is grown from certified seed but tests above 0.3% THC, we do not want to allow a person to take these actions with the product.
- ✓8. In Sections 45, 46, and 47, I think it is very important that these provisions be clarified so that they only apply to cannabidiol products for which distribution may only legally occur through the pharmaceutical pathway, otherwise, this may be read to indicate that the legislature is only allowing these products to be dispensed by pharmacies. This may be a good reason to go back to the other Lydia's law provisions to redefine cannabidiol products to not include "hemp."

MCP

- ✓9. I recommend that Section 50 be clarified to allow for the use of multiple rounds of emergency rules. Also, it would be best if the department had ongoing emergency rule authority to respond quickly to changes in federal law or other changes in circumstances.
- ✓10. I think that now is the time to specify in statute that the Wisconsin hemp program producer testing methods do not require (or cannot require?) pre-harvest testing of hemp crops.
- ? 11. Lastly, it may be worth considering adding an appropriation for resources for DATCP, and it might be helpful to direct DATCP to apply to USDA (maybe by a specified date) for state primary regulatory authority over hemp producers.

Thanks!

Larry

| | |
|-----------|---|
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From: Schultz, Jeff <Jeff.Schultz@legis.wisconsin.gov>

Sent: Tuesday, January 29, 2019 5:21 PM

To: Larry Konopacki <LKonopacki@staffordlaw.com>; Queensland, Michael <Michael.Queensland@legis.wisconsin.gov>; Otis, Amber <Amber.Otis@legis.wisconsin.gov>; Pfothauer, Mary <Mary.Pfothauer@legis.wisconsin.gov>; Rob Richard <rrichard@wfbf.com>; Karen Gefvert <kgefvert@wfbf.com>; Kuhn, Brian D - DATCP <Brian.Kuhn@wisconsin.gov>; Stamm, Christine A - DATCP <Christine.Stamm@wisconsin.gov>; Flynn, John <John.Flynn@legis.wisconsin.gov>; Kurtz, Tony <Tony.Kurtz@legis.wisconsin.gov>; Testin, Patrick <Patrick.Testin@legis.wisconsin.gov>

Subject: Tomorrow's meeting CANCELLED and RE-SCHEDULED for 2:30 P.M. on Wednesday, Feb. 6th

Greetings all,

Due to the State of Emergency that has been declared, tomorrow's hemp meeting has been cancelled and rescheduled for 2:30 P.M. on Wednesday, February 6th. My apologies for the late notice. ☺ Once again, I've attached a preliminary draft of the hemp 2.0 legislation. If you have time, please review it and send any questions, comments, concerns, or ideas back to me by midday on Monday, February 4th, and we'll work through them. Thanks!

Sincerely,

Jeff Schultz
Communications Director
Office of Senator Patrick Testin
(608) 266-3123