

Appendix A ... segment III

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



State of Wisconsin
2019 - 2020 LEGISLATURE

In 3/11
Out Today

IPS
LRB-1400/P4
MCP&EAW:amn
6
1/2DW

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RWJ

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Reagan

1 **AN ACT to repeal** 94.55 (2) (e), 94.55 (3), 94.55 (3) (c), 94.67 (15r) and 961.32 (3)

2 (b) 2.; **to amend** 20.115 (7) (gc), 94.55 (1), 94.55 (2) (title), 94.55 (2) (a), 94.55

3 (2) (b) 2., 94.55 (2) (b) 3., 94.55 (2) (b) 4., 94.55 (2) (b) 5., 94.55 (2) (c), 94.55 (2p)

4 (b), 94.55 (3) (intro.), (a) and (b), 94.67 (2), 97.02, 182.001 (3), 348.27 (18) (a) 1.

5 f., 961.01 (14), 961.14 (4) (t) 1., 961.32 (2m) (b), 961.32 (3) (a) 1. and 2., 961.32

6 (3) (b) (intro.), 961.32 (3) (b) 1., 961.32 (3) (b) 3., 961.32 (3) (b) 4., 961.32 (3) (b)

7 5., 961.32 (3) (c), 961.32 (3) (d), 961.34 (2) (a), 961.34 (2) (b), 961.38 (1n) (a),

8 961.38 (1n) (b), 961.442 (intro.) and 961.55 (9); **to repeal and recreate** 94.55

9 (title); and **to create** 20.115 (7) (f), 94.55 (2) (am), 94.55 (2) (b) 2m., 94.55 (2) (b)

10 4g., 94.55 (2) (b) 4m., 94.55 (2) (b) 4s., 94.55 (2) (f), 94.55 (2g), 94.55 (2m), 94.55

11 (2p), 94.55 (2r), 94.55 (2t), 94.55 (3m), 94.55 (3r), 94.67 (15c), 961.01 (3r), 961.14

12 (4) (t) 3., 961.32 (3) (b) 4m. and 961.32 (3) (cm) of the statutes; **relating to:**

- 1 regulating hemp, providing an exemption from emergency rule procedures,
2 granting rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

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:

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." The bill also provides that "hemp" does not include a prescription drug product approved by the U.S. food and drug administration.

2. Prohibits any person from producing hemp in this state without a license from the Department of Agriculture, Trade and Consumer Protection or the U.S. Department of Agriculture if required under federal law.

3. Allows DATCP to establish procedures for all of the following: a) maintaining information relating to hemp production; b) testing for THC concentrations in hemp; c) disposing of hemp plants grown illegally; d) complying with enforcement provisions; and e) conducting annual inspections of hemp producers.

4. 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 violation. A compliance plan must include a reasonable date by which the hemp producer is required to correct the violation and must require the hemp producer to report to DATCP periodically, for not less than two years, 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 negligently violates those provisions three times in a five-year period is ineligible to participate in the hemp program for five years.

5. 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 and the U.S. attorney general.

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

7. Prohibits a person from producing hemp for ten years following a felony conviction relating to a controlled substance under state or federal law that was entered on or after the effective date of the bill, unless the person held a valid license or registration under the current hemp pilot program before the effective date of the bill.

8. Redefines "marijuana," for the purposes of the controlled substances act, to exclude hemp.

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

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

The bill also does the following relating to hemp:

This MCP-A

remember

at the growing location

1. Allows DATCP to establish lower license fees for hemp licenses issued for research or noncommercial purposes.

2. Requires DATCP to set criteria for approving ^{persons} entities to undertake any sampling and testing of hemp that DATCP requires by rule and to approve ^{persons} entities that meet the criteria.

3. Requires a grower to notify DATCP at least two weeks before the grower's intended harvest date; prohibits DATCP from testing ^{at the growing location} in the field more than ten days before the intended harvest date; allows a grower to harvest if DATCP has not tested ^{at the growing location} in the field before the intended harvest date; provides that DATCP should seek to test ^{at the growing location} hemp after harvest rather than before harvest, but may spot test ^{at the growing location} in the field prior to harvest; and prohibits DATCP from requiring sampling and testing of hemp seedlings or clones intended to be planted that originate from certified hemp seed or from hemp seed or clones approved for growing by DATCP.

This MCP-B

4. Requires DATCP to issue a fit for commerce certificate after hemp is tested, or if DATCP determines that hemp is not required to be tested.

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

6. Requires all hemp producers to notify DATCP of the variety of hemp the producer intends to grow, and prohibits a hemp producer from growing hemp unless DATCP has approved that variety of hemp for growing in this state or that variety of hemp has been certified by DATCP.

7. Prohibits a person from mislabeling hemp or a hemp product, knowingly making an inaccurate claim about ^{the content, quality, or origin of} hemp or a hemp product in the course of transferring or selling, or knowingly selling at retail mislabeled hemp or hemp products.

8. Requires contracts to purchase hemp from a hemp grower to provide for payment to the grower within seven days of taking possession of the hemp, unless the grower voluntarily and knowingly agrees otherwise.

9. Adds hemp to the list of agricultural products that may not be grown by, or grown on land owned by, a large corporation or trust.

10. 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.

11. Changes the provision under current law that exempts a person from prosecution for selling, transferring, processing, harvesting, or taking possession of cannabis that is over the permissible THC concentration for hemp, so that the exemption applies to cannabis that had been tested and certified, by DATCP or an

^{a person}
entity approved by DATCP, as meeting the permissible THC concentration for hemp, but that is in fact above the permissible limit, if the person has no reason to believe that the certification is incorrect.

13
cannabis

(12) Provides that a person may not be prosecuted for temporarily possessing a hemp-derived substance that is above the permissible THC concentration for hemp during the normal course of processing hemp if the substance is reconditioned or processed to meet the permissible THC concentration limit for hemp within a reasonable amount of time.

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

INS ZDW-A

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

1 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

2019-20 2020-21

3 20.115 Agriculture, trade and consumer
4 protection, department of

5 (7) AGRICULTURAL RESOURCE MANAGEMENT

6 (f) Hemp GPR A 462,400 216,500

216,500

7 SECTION 2. 20.115 (7) (f) of the statutes is created to read:

8 20.115 (7) (f) *Hemp*. The amounts in the schedule for regulation of activities
9 relating to hemp under s. 94.55.

10 SECTION 3. 20.115 (7) (gc) of the statutes is amended to read:

11 20.115 (7) (gc) *Industrial hemp Hemp; program fees*. All moneys received under
12 s. 94.55 for regulation of activities relating to industrial hemp under s. 94.55.

INS 4-13 ZDW

13 SECTION 4. 94.55 (title) of the statutes is repealed and recreated to read:

14 94.55 (title) **Hemp**.

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

1 94.55 (1) DEFINITION. In this section, "industrial hemp" means the plant
2 Cannabis sativa, ~~or L. and~~ any part of the ~~that~~ plant, including the seeds, ~~having~~
3 ~~thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of~~
4 ~~isomers, whether growing or not, with~~ a delta-9-tetrahydrocannabinol
5 concentration of ~~no~~ not more than 0.3 percent on a dry weight basis or the maximum
6 concentration allowed under federal law up to 1 percent, whichever is greater.
7 "Industrial hemp" includes a substance, material, or product only if it is designated
8 as a controlled substance under the federal Controlled Substances Act under 21 USC
9 801 to 971 ~~or the Uniform Controlled Substances Act under ch. 961 or both, as tested~~
10 ~~using post-decarboxylation or other similarly reliable methods.~~ "Hemp" does not
11 ~~include a prescription drug product that has been approved by the U.S. food and drug~~
12 ~~administration.~~

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

14 94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.

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

16 94.55 (2) (a) Subject to the provisions under this subsection ~~section~~, a person
17 may plant, grow, cultivate, harvest, produce, sample, test, process, transport,
18 transfer, take possession of, sell, import, and export industrial hemp in this state to
19 the greatest extent allowed under federal law.

20 **SECTION 8.** 94.55 (2) (am) of the statutes is created to read:

21 94.55 (2) (am) The department shall issue licenses to hemp producers if hemp
22 producers are required ^{to hold a license to produce hemp} under federal law ~~to hold a license~~. If the department issues
23 such licenses, no person may produce hemp without a license from the department
24 ~~or the U.S. department of agriculture.~~ ^{of Licenses} A license from the department may authorize
25 the planting, growing, cultivating, harvesting, producing, sampling, testing,

1 processing, transporting, transferring, taking possession, selling, importing, and
2 exporting of hemp. The department shall identify the requirements for applying for
3 a license, approving or denying a license, and suspending or revoking a license, and
4 shall identify the restrictions and obligations that apply to operating under a license.

5 The department may restrict license eligibility based on a nonnegligent violation
6 reported under sub. (2m). The department shall accept license applications
7 throughout the calendar year. The department may set license terms and may set
8 late fees for license renewals.

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

10 94.55 (2) (b) 2. Except as provided under ~~subds. 3. to 6. and subs. (3) and (4)~~
11 this section, rules promulgated under this ~~paragraph~~ section shall regulate the
12 activities described in par. (a) only to the extent required under federal law, and in
13 a manner that allows the people of this state to have the greatest possible
14 opportunity to engage in those activities.

15 **SECTION 10.** 94.55 (2) (b) 2m. of the statutes is created to read:

16 94.55 (2) (b) 2m. The department may establish 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, as defined by the
19 department, for a period of not 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 c. A procedure for the effective disposal of plants, whether growing or not, that
23 are produced in violation of this section, and products derived from those plants.

24 d. A procedure to comply with the enforcement provisions under subs. (2g) and
25 (2m).

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

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

5 94.55 (2) (b) 3. The department shall promulgate rules, as the department
6 determines to be necessary, to ensure the quality of industrial hemp grown or
7 processed produced in this state, the security of activities related to industrial hemp,
8 and the safety of products produced from industrial hemp, including any necessary
9 testing; to ensure that the state's hemp program complies with federal law and to
10 obtain and maintain any required federal approval of the state's hemp program; to
11 verify adherence to laws and rules governing activities related to industrial hemp;
12 and to enforce violations of those laws and rules.

13 SECTION 12. 94.55 (2) (b) 4. of the statutes is amended to read:

14 94.55 (2) (b) 4. The department shall require the payment of an initial fee from
15 any person who plants, grows, or cultivates industrial produces hemp in this state
16 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the
17 person will plant, grow, or cultivate industrial produce hemp, but not to exceed
18 \$1,000. The department may also impose an annual fee on any person whose
19 activities related to industrial hemp are regulated by the department under this
20 paragraph, in an amount not to exceed an amount sufficient to cover the costs to the
21 department of regulating those activities, as determined by the department by rule.
22 The department may establish lower initial and annual fees for licenses issued for
23 research or noncommercial purposes.

24 SECTION 13. 94.55 (2) (b) 4g. of the statutes is created to read:

1 94.55 (2) (b) 4g. The department shall set criteria for approving entities ^{persons} to
 2 undertake any sampling and testing required by the department by rule, and shall
 3 approve entities ^{persons} that meet the criteria.

4 SECTION 14. 94.55 (2) (b) 4m. of the statutes is created to read:

5 94.55 (2) (b) 4m. The department shall require a licensee who grows hemp to
 6 notify the department of the grower's intended harvest date at least 2 weeks before
 7 the intended harvest date. The department may not sample or test plants in the field ^{at the growing location}
 8 more than 10 days before the grower's intended harvest date. If the department does
 9 not sample and test in the field ^{at the growing location} before a grower's intended harvest date, the
 10 department may not prohibit the grower from harvesting. ^{Ins 8-10 MP} To the extent possible, the
 11 department shall seek to perform any regular testing on hemp grown in this state
 12 after harvest rather than before harvest. When sampling and testing a crop of hemp,
 13 the department is not required to sample and test every field ^{growing location} or every strain. The
 14 department may not require the sampling and testing of hemp seedlings or clones
 15 that are intended to be planted and that originated from hemp seed certified under
 16 par. (c) or from hemp seed or clones approved for growing under par. (f). Nothing in
 17 this subdivision shall be construed as prohibiting the random sampling and spot
 18 testing of hemp before harvest.

19 SECTION 15. 94.55 (2) (b) 4s. of the statutes is created to read:

20 94.55 (2) (b) 4s. Following any required sampling and testing, or if the
 21 department determines that sampling and testing are not required, the department
 22 shall issue a fit for commerce certificate. ^{Ins 8-22 MP}

23 SECTION 16. 94.55 (2) (b) 5. of the statutes is amended to read:

24 94.55 (2) (b) 5. The department shall ensure that any of the following
 25 information that is in the department's possession relating to a licensee or applicant

1 for a license under this section is confidential and not open to public inspection or
2 copying under s. 19.35 (1), except that it shall be made available to a law enforcement
3 agency or law enforcement officer:

4 a. Information relating to the locations of ~~industrial hemp fields and processing~~
5 locations production locations.

6 b. Personally identifiable information relating to a person who is lawfully
7 engaging in activities related to ~~industrial hemp~~, except that the department shall
8 allow the person to easily provide consent, and to revoke consent once given, for the
9 department to release any or all of the person's personally identifiable information.

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

13 d. Any other information about activities related to ~~industrial hemp~~ that could
14 create a security risk if disclosed.

15 **SECTION 17.** 94.55 (2) (c) of the statutes is amended to read:

16 94.55 (2) (c) The department shall establish and administer a certification
17 program, or shall designate a member of the Association of Official Seed Certifying
18 Agencies or a successor organization to administer a certification program, for
19 ~~industrial hemp seed~~ in this state. A certification program under this paragraph
20 shall include the testing and certification of delta-9-tetrahydrocannabinol
21 concentrations in hemp plants from which certified seed is collected. Participation
22 in the certification program shall be voluntary for ~~growers and cultivators~~ producers
23 of ~~industrial hemp~~. The department shall promulgate rules for the administration
24 of any certification program established and administered by the department under
25 this paragraph.

1 **SECTION 18.** 94.55 (2) (e) of the statutes is repealed.

2 **SECTION 19.** 94.55 (2) (f) of the statutes is created to read:

3 94.55 (2) (f) Before growing hemp, a hemp producer shall notify the department
4 of the variety of hemp the producer intends to grow. A hemp producer may not grow
5 hemp unless the department has approved the growth of that variety of hemp or the
6 variety of hemp is certified under par. (c).

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

8 94.55 (2g) **NEGLIGENT VIOLATIONS.** (a) This subsection applies only to hemp
9 producers, and only if the department determines that the hemp producer has
10 negligently violated this section or rules promulgated under this section, including
11 by negligently doing any of the following:

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

14 2. If required under federal law, failing to obtain a license or other required
15 authorization from the department or from the U.S. department of agriculture.

16 3. Producing *Cannabis sativa* L. with a delta-9-tetrahydrocannabinol
17 concentration of more than 0.3 percent on a dry weight basis.

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

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

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

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

4 SECTION 21. 94.55 (2m) of the statutes is created to read:

5 94.55 (2m) ~~NONNEGLIGENT~~ ^{& GREATER} VIOLATIONS. (intro.) If the department determines
6 that a hemp producer has violated this section or rules promulgated under this
7 section with a culpable mental state greater than negligence, the department shall
8 immediately report the hemp producer to the U.S. attorney general and the
9 department of justice.

10 SECTION 22. 94.55 (2p) of the statutes is created to read:

11 94.55 (2p) FELONY CONVICTIONS. (a) Except as provided under par. (b), no
12 person may produce hemp in this state for 10 years following any felony conviction
13 relating to a controlled substance under state or federal law that was entered on or
14 after the effective date of this paragraph [LRB inserts date].

15 (b) Paragraph (a) does not apply to any person lawfully producing hemp under
16 a license, registration, or other authorization under sub. (3) before the effective date
17 of this paragraph [LRB inserts date].

18 SECTION 23. 94.55 (2p) (b) of the statutes, as created by 2019 Wisconsin Act
19 (this act), is amended to read:

20 94.55 (2p) (b) Paragraph (a) does not apply to any person lawfully producing
21 hemp under a license, registration, or other authorization under sub. s. 94.55 (3),
22 2017 stats., before [LRB inserts the date inserted in SECTION 22 of this act].

23 SECTION 24. 94.55 (2r) of the statutes is created to read:

1 **94.55 (2r) FALSE STATEMENT.** Any person who materially falsifies any
2 information contained in an application to participate in the hemp program
3 established under this section is ineligible to participate in the program.

4 **SECTION 25.** 94.55 (2t) of the statutes is created to read:

5 **94.55 (2t) ACCESS TO CANNABIDIOL PRODUCTS.** Nothing in this section or rules
6 promulgated under this section shall be construed as limiting a person's access to
7 cannabidiol products under s. 961.32 (2m) (b).

8 **SECTION 26.** 94.55 (3) (intro.), (a) and (b) of the statutes are amended to read:

9 **94.55 (3) PILOT PROGRAM.** (intro.) The department shall create a pilot program
10 to study the growth, cultivation, and marketing of industrial hemp. The department
11 shall promulgate rules to implement the pilot program consistent with the authority
12 under sub. (2) (b). The department shall also do all of the following as part of the pilot
13 program:

14 (a) Issue licenses that authorize the planting, growing, cultivating, harvesting,
15 sampling, testing, processing, transporting, transferring, taking possession, selling,
16 importing, and exporting of industrial hemp. The department shall identify the
17 requirements for applying for a license, approving or denying a license, and
18 suspending or revoking a license, and shall identify the restrictions and obligations
19 that apply to operating under a license. As part of the application process, the
20 department shall require an applicant to provide the global positioning system
21 coordinates of the ~~centers of all fields on which~~ growing locations where the
22 industrial hemp will be planted, grown, cultivated, or harvested. The department
23 shall obtain a criminal history search from the records maintained by the
24 department of justice for each applicant and may not issue a license if the applicant
25 has ever been convicted of a criminal violation of the federal Controlled Substances

1 Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961,
2 or any controlled substances law of another state, as indicated in the information
3 obtained from the criminal history search. A license issued under this paragraph
4 does not expire unless the pilot program under this subsection expires or the license
5 is revoked.

6 (b) Create a registration system that authorizes the sampling, testing,
7 processing, transporting, transferring, taking possession, selling, importing, and
8 exporting of industrial hemp. The department shall obtain a criminal history search
9 from the records maintained by the department of justice for each person applying
10 for registration and may not register an applicant who has been convicted of a
11 criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971,
12 the Uniform Controlled Substances Act under ch. 961, or any controlled substances
13 law of another state, as indicated in the information obtained from the criminal
14 history search.

15 **SECTION 27.** 94.55 (3) of the statutes, as affected by 2019 Wisconsin Act (this
16 act), is repealed.

17 **SECTION 28.** 94.55 (3) (c) of the statutes is repealed.

18 **SECTION 29.** 94.55 (3m) of the statutes is created to read:

19 94.55 (3m) TRUTH IN LABELING. (a) No person may do any of the following:

20 1. Mislabel hemp or a hemp product.

21 2. Knowingly make an inaccurate claim about hemp or a hemp product in the
22 course of transferring or selling the hemp or hemp product.

23 3. Knowingly sell at retail mislabelled hemp or hemp products.

the content, delta-9-tetrahy-
drocannabinol concentration,
quality, or origin of

1 (b) The department shall investigate violations of par. (a). The department, or
2 any district attorney upon the request of the department, may on behalf of the state
3 do any of the following:

4 1. Bring an action for temporary or permanent injunctive relief in any court of
5 competent jurisdiction for any violation of par. (a).

6 2. Bring an action in any court of competent jurisdiction for the recovery of a
7 civil forfeiture against any person who violates par. (a) in an amount not more than
8 \$1,000 for each violation.

9 (c) In addition to any other remedies provided by law, any person suffering a
10 pecuniary loss because of a violation of par. (a) may bring a civil action to recover
11 damages together with costs and disbursements, including reasonable attorney fees,
12 and for equitable relief as determined by the court.

13 **SECTION 30.** 94.55 (3r) of the statutes is created to read:

14 94.55 (3r) CONTRACTS WITH GROWERS. Any contract to purchase hemp from a
15 hemp grower in this state shall provide that payment will be made to the grower
16 within 7 days of taking possession of the hemp, unless the grower voluntarily and
17 knowingly agrees to a different method of payment.

18 **SECTION 31.** 94.67 (2) of the statutes is amended to read:

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

23 **SECTION 32.** 94.67 (15c) of the statutes is created to read:

24 94.67 (15c) "Hemp" has the meaning given in s. 94.55 (1).

25 **SECTION 33.** 94.67 (15r) of the statutes is repealed.

1 SECTION 34. 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 35. 182.001 (3) of the statutes is amended to read:

7 182.001 (3) PROHIBITED ACTIVITIES. Those farming operations prohibited under
8 this section are the production of dairy products not including the processing of such
9 dairy products; the production of cattle, hogs and sheep; and the production of wheat,
10 field corn, barley, oats, rye, hay, pasture, soybeans, millet and, sorghum, and hemp.

INS 15-11 ZL

11 SECTION 36. 348.27 (18) (a) 1. f. of the statutes is amended to read:

12 348.27 (18) (a) 1. f. Industrial hemp Hemp, as defined in s. 94.67 (15r) (15c).

INS 15-13 ZL

13 SECTION 37. 961.01 (3r) of the statutes is created to read:

14 961.01 (3r) "Cannabidiol product" means a derivative or extract of the plant
15 Cannabis sativa L. that contains cannabidiol and a delta-9-tetrahydrocannabinol
16 concentration at a level without a psychoactive effect.

17 SECTION 38. 961.01 (14) of the statutes is amended to read:

18 961.01 (14) "Marijuana" means all parts of the plants of the genus Cannabis,
19 whether growing or not; the seeds thereof; the resin extracted from any part of the
20 plant; and every compound, manufacture, salt, derivative, mixture or preparation of
21 the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does
22 include the mature stalks if mixed with other parts of the plant, but does not include
23 fiber produced from the stalks, oil or cake made from the seeds of the plant, any other
24 compound, manufacture, salt, derivative, mixture or preparation of the mature
25 stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed

1 of the plant which is incapable of germination. "Marijuana" does not include hemp,
2 as defined in s. 94.55 (1).

3 SECTION 39. 961.14 (4) (t) 1. of the statutes is amended to read:

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

7 SECTION 40. 961.14 (4) (t) 3. of the statutes is created to read:

8 961.14 (4) (t) 3. Tetrahydrocannabinols contained in hemp, as defined in s.
9 94.55 (1).

10 SECTION 41. 961.32 (2m) (b) of the statutes is amended to read:

11 961.32 (2m) (b) An individual may possess a cannabidiol in a form without a
12 psychoactive effect product if the individual has certification stating that the
13 individual possesses a cannabidiol product to treat a medical condition, if the
14 certification has an issue date that is no more than one year prior to the possession,
15 and if any expiration date provided by the physician in the certification has not
16 passed. A certification is not required to possess hemp, as defined in s. 94.55 (1), or
17 a prescription drug product that has been approved by the U.S. food and drug
18 administration.

19 SECTION 42. 961.32 (3) (a) 1. and 2. of the statutes are amended to read:

20 961.32 (3) (a) 1. ~~"Hemp"~~ "Cannabis" means the plant Cannabis sativa, or L. and
21 any part of the that plant, including the seeds. *Ins 16-21 MP*

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

23 SECTION 43. 961.32 (3) (b) (intro.) of the statutes is amended to read:

24 961.32 (3) (b) (intro.) A person who is otherwise acting in accordance with rules
25 promulgated by the department of agriculture, trade and consumer protection under

1 s. 94.55 (2) (b) may not be prosecuted for a criminal offense under this chapter, or
2 under any ~~municipal/ordinance~~ ^{am} ~~that prohibits conduct that is the same as that~~ ^{enacted under s. 59.54 (25) or LCA. 0107 (1) (b)(m)}
3 ~~prohibited under this chapter~~, for any of the following:

4 SECTION 44. 961.32 (3) (b) 1. of the statutes is amended to read:

5 961.32 (3) (b) 1. Planting, growing, cultivating, harvesting, producing,
6 processing, or transporting hemp cannabis that contains a
7 delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent
8 above the permissible limit for industrial hemp on a dry weight basis or that is grown
9 from industrial hemp seed certified under s. 94.55 (2) (c) or approved for growing by
10 the department of agriculture, trade and consumer protection under s. 94.55 (2) (f).

11 SECTION 45. 961.32 (3) (b) 2. of the statutes is repealed.

12 SECTION 46. 961.32 (3) (b) 3. of the statutes is amended to read:

13 961.32 (3) (b) 3. Selling, transferring, importing, exporting, processing,
14 transporting, harvesting, or taking possession of hemp cannabis that has been
15 certified under s. 94.55 (2) (e) tested and certified, by ~~a laboratory authorized the~~
16 department of agriculture, trade and consumer protection or ^{a person} an entity approved by
17 the department of agriculture, trade and consumer protection ~~to test the~~
18 delta-9-tetrahydrocannabinol concentration in hemp under s. 94.55 (2) (b) 4g., as
19 meeting the permissible delta-9-tetrahydrocannabinol concentration limit for
20 industrial hemp if the person has no reason to believe that the test certification is
21 incorrect.

22 SECTION 47. 961.32 (3) (b) 4. of the statutes is amended to read:

23 961.32 (3) (b) 4. Possessing hemp with cannabis that contains a
24 delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent above the
25 permissible level limit for industrial hemp if the hemp was certified under s. 94.55

1 (2) (e) at the time the possessor took possession as meeting the permissible
2 concentration limit for industrial hemp and the possessor had no reason to believe
3 at that time that the certification was incorrect on a dry weight basis if the possessor
4 reconditions or processes the cannabis to a delta-9-tetrahydrocannabinol
5 concentration at or below the permissible limit for hemp with the approval of the
6 department of agriculture, trade and consumer protection of those actions.

7 SECTION 48. 961.32 (3) (b) 4m. of the statutes is created to read:

8 961.32 (3) (b) 4m. Temporarily possessing ^{a cannabis} a hemp-derived substance during
9 the normal course of processing hemp if the substance is reconditioned or processed
10 into hemp within a reasonable amount of time. *cc. Ins 18-9 MP*

Ins 18-10 MP

11 SECTION 49. 961.32 (3) (b) 5. of the statutes is amended to read:

12 961.32 (3) (b) 5. Taking samples of hemp cannabis, transporting samples to a
13 testing facility, or testing samples for their delta-9-tetrahydrocannabinol
14 concentration or for the presence of other substances.

15 SECTION 50. 961.32 (3) (c) of the statutes is amended to read:

16 961.32 (3) (c) A person who plants, grows, cultivates, harvests, samples, tests,
17 processes, transports, transfers, takes possession of, sells, imports, or exports
18 industrial hemp in violation of violates s. 94.55 or a rule promulgated under s. 94.55
19 (2) (b) may not be prosecuted under s. 94.55 or this chapter unless the person is
20 referred to the district attorney for the county in which the violation occurred by the
21 department of agriculture, trade and consumer protection, and may not be
22 prosecuted under ^{an} a municipal ordinance that prohibits the same conduct as is
23 prohibited under this chapter unless the person is referred to ^{the} local law enforcement
24 by the department of agriculture, enacted under s. 99.54 (25) or (c) 0107 (1)(b)mj.

25 SECTION 51. 961.32 (3) (cm) of the statutes is created to read:

prosecuting authority

1 961.32 (3) (cm) A hemp producer that negligently violates s. 94.55 or a rule
 2 promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be
 3 prosecuted under s. 94.55 or this chapter and may not be prosecuted under a
 4 municipal ordinance that prohibits the same conduct as is prohibited under this
 5 chapter or an
 6 enacted under s. 94.54(25) or (66.0107(1)(b))

6 **SECTION 52.** 961.32 (3) (d) of the statutes is amended to read:

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

10 **SECTION 53.** 961.34 (2) (a) of the statutes is amended to read:

11 961.34 (2) (a) Upon the request of any physician, the controlled substances
 12 board shall aid the physician in applying for and processing an investigational drug
 13 permit under 21 USC 355 (i) for cannabidiol as treatment for a ~~seizure disorder~~
 14 medical condition. If the federal food and drug administration issues an
 15 investigational drug permit, the controlled substances board shall approve which
 16 pharmacies and physicians may dispense cannabidiol products to patients.

17 **SECTION 54.** 961.34 (2) (b) of the statutes is amended to read:

18 961.34 (2) (b) If cannabidiol is products other than hemp are removed from the
 19 list of controlled substances, or if cannabidiol is products are determined not to be
 20 ~~a controlled substance~~ substances, under schedule I of 21 USC 812 (c), the controlled
 21 substances board shall approve which pharmacies and physicians may dispense
 22 cannabidiol products to patients as treatment for a ~~seizure disorder~~ medical
 23 condition.

24 **SECTION 55.** 961.38 (1n) (a) of the statutes is amended to read:

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

4 **SECTION 56.** 961.38 (1n) (b) of the statutes is amended to read:

5 961.38 (1n) (b) A physician licensed under s. 448.04 (1) (a) may issue an
6 individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual
7 possesses a cannabidiol product to treat a medical condition ~~if the cannabidiol is in~~
8 ~~a form without a psychoactive effect.~~

9 **SECTION 57.** 961.442 (intro.) of the statutes is amended to read:

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

16 **SECTION 58.** 961.55 (9) of the statutes is amended to read:

17 961.55 (9) If a crop intended to be ~~industrial hemp~~, as defined in s. 94.55 (1),
18 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
19 delta-9-tetrahydrocannabinol ~~in a whole dry plant~~ is found to exceed 0.7 percent
20 above the permissible limit for ~~industrial hemp~~ on a dry weight basis, as tested using
21 post-decarboxylation or other similarly reliable methods, the entire crop ~~on the field~~
22 at the growing location where the plant was found shall be seized and destroyed.
23 Before a crop is seized and destroyed under this subsection, the agency whose officers
24 or employees intend to seize and destroy the crop shall provide, to the person licensed
25 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written

1 documentation verifying the test results for the crop that is subject to seizure and
2 destruction.

3 **SECTION 59. Nonstatutory provisions.**

4 (1) EMERGENCY RULES. The department of agriculture, trade and consumer
5 protection shall, using the procedure under s. 227.24, promulgate rules under s.
6 94.55 (2) to (3). Notwithstanding s. 227.24 (1) (a) and (3), the department is not
7 required to provide evidence that promulgating a rule under this subsection as an
8 emergency rule is necessary for the preservation of the public peace, health, safety,
9 or welfare and is not required to provide a finding of emergency for a rule
10 promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2),
11 emergency rules promulgated under this subsection remain in effect until the date
12 on which permanent rules take effect. Notwithstanding s. 227.24 (1) (e) 1d. and 1g.,
13 for emergency rules promulgated under this subsection, the department is not
14 required to prepare a statement of scope of the rules or to submit the proposed rules
15 in final draft form to the governor for approval.

16 (2) NOTIFICATION. The department of agriculture, trade and consumer
17 protection shall notify the legislative reference bureau when the secretary of the U.S.
18 department of agriculture establishes a plan under section 297C of the Agricultural
19 Marketing Act of 1946. The legislative reference bureau shall publish a notice in the
20 Wisconsin Administrative Register that specifies the date on which s. 94.55 (3) is
21 repealed, as determined under SECTION 60 (1) of this act.

22 (3) HEMP POSITIONS. The authorized FTE positions for the department of
23 agriculture, trade and consumer protection are increased by 3.0 GPR positions on
24 July 1, 2019, to be funded from the appropriation under s. 20.115 (7) (f), for the
purpose of regulating activities relating to hemp under s. 94.55.

25

Ins 21-25 MP

1 **SECTION 60. Effective dates.** This act takes effect on the day after publication,

2 except as follows:

3 (1) The repeal of s. 94.55 (3) (by SECTION 27) and the amendment of s. 94.55 (2p)

4 (b) take effect one year after the date on which the secretary of the U.S. department

5 of agriculture establishes a plan under section 297C of the Agricultural Marketing

6 Act of 1946.

7

(END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1400/P5insZW
ZDW:...G.M.V.

1 **INS ZDW-A**

This bill also creates an affirmative defense to violations involving the intoxicated operation of an all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, motorboat, motor vehicle, or snowmobile that are based on the defendant allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her blood if he or she proves that prior to the incident he or she had been engaged in lawful activities relating to hemp.

2 **INS 4-13 (ZW)**

THC

3 **SECTION 1.** 23.33 (4c) (a) 5. of the statutes is renumbered 23.33 (4c) (a) 5. a.

4 **SECTION 2.** 23.33 (4c) (a) 5. b. of the statutes is created to read:

5 ~~23.33 (4c)~~ (a) 5. b. In an action under subd. 2m. that is based on the defendant
6 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
7 blood, the defendant has a defense if he or she proves by a preponderance of the
8 evidence that prior to the incident or occurrence he or she had been engaged in
9 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
10 conducting those activities in accordance with the requirements of s. 94.55.

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

12 ~~23.33 (4c)~~ (b) 4. c. In an action under subd. 2m. that is based on the defendant
13 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
14 blood, the defendant has a defense if he or she proves by a preponderance of the
15 evidence that prior to the incident or occurrence he or she had been engaged in
16 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
17 conducting those activities in accordance with the requirements of s. 94.55.

18 **SECTION 4.** 23.335 (12) (a) 6. of the statutes is created to read:

19 ~~23.335 (12)~~ (a) 6. In an action under subd. 2m. that is based on the defendant
20 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her

1 blood, the defendant has a defense if he or she proves by a preponderance of the
2 evidence that prior to the incident or occurrence he or she had been engaged in
3 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
4 conducting those activities in accordance with the requirements of s. 94.55.

5 **SECTION 5.** 23.335 (12) (b) 6. of the statutes is created to read:

6 23.335 (12) (b) 6. In an action under subd. 2m. that is based on the defendant
7 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
8 blood, the defendant has a defense if he or she proves by a preponderance of the
9 evidence that prior to the incident or occurrence he or she had been engaged in
10 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
11 conducting those activities in accordance with the requirements of s. 94.55.

12 **SECTION 6.** 30.681 (1) (d) of the statutes is renumbered 30.681 (1) (d) 1.

13 **SECTION 7.** 30.681 (1) (d) 2. of the statutes is created to read:

14 30.681 (1) (d) 2. In an action under par. (b) 1m. that is based on the defendant
15 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
16 blood, the defendant has a defense if he or she proves by a preponderance of the
17 evidence that prior to the incident or occurrence he or she had been engaged in
18 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
19 conducting those activities in accordance with the requirements of s. 94.55.

20 **SECTION 8.** 30.681 (2) (d) 1. c. of the statutes is created to read:

21 ×30.681 (2) (d) 1. c. In an action under par. (b) 1m. that is based on the defendant
22 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
23 blood, the defendant has a defense if he or she proves by a preponderance of the
24 evidence that prior to the incident or occurrence he or she had been engaged in

1 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she ~~was~~ ^{were}
2 conducting those activities in accordance with the requirements of s. 94.55.

3 **INS 15-11 (ZW)**

4 **SECTION 9.** 343.305 (8) (b) 2. h. of the statutes is created to read:

5 ~~343.305 (8) (b) 2. h.~~ Whether the person had previously been lawfully engaged
6 in activities relating to hemp that are regulated under s. 94.55 (2) (a) in a case in
7 which subd. 4m. a. and b. apply.

8 **SECTION 10.** 343.305 (8) (b) 4m. (intro.) of the statutes is amended to read:

9 343.305 (8) (b) 4m. (intro.) If, at the time the offense allegedly occurred, all of
10 the following apply, the hearing officer shall determine whether the person had a
11 valid prescription for methamphetamine or one of its metabolic precursors,
12 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol or had previously
13 been lawfully engaged in activities relating to hemp that are regulated under s. 94.55
14 (2) (a):

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136; 2009 a. 100, 103, 163; 2011 a. 120, 242; 2013 a. 36, 224; 2017 a. 331.

15 **SECTION 11.** 343.305 (8) (b) 5. c. of the statutes is amended to read:

16 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
17 a valid prescription for methamphetamine or one of its metabolic precursors,
18 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol or had previously
19 been lawfully engaged in activities relating to hemp that are regulated under s. 94.55
20 (2) (a).

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136; 2009 a. 100, 103, 163; 2011 a. 120, 242; 2013 a. 36, 224; 2017 a. 331.

21 **SECTION 12.** 343.305 (8) (b) 6. c. of the statutes is amended to read:

1 >343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
 2 not have a valid prescription for methamphetamine or one of its metabolic
 3 precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol and had
 4 not previously been lawfully engaged in activities relating to hemp that are
 5 regulated under s. 94.55 (2) (a).

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136; 2009 a. 100, 103, 163; 2011 a. 120, 242; 2013 a. 36, 224; 2017 a. 331.

6 **SECTION 13.** 346.63 (1) (e) of the statutes is created to read:

7 346.63 (1) (e) In an action under par. (am) that is based on the defendant
 8 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
 9 blood, the defendant has a defense if he or she proves by a preponderance of the
 10 evidence that prior to the incident or occurrence he or she had been engaged in
 11 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was^{ever}
 12 conducting those activities in accordance with the requirements of s. 94.55.

13 **SECTION 14.** 346.63 (2) (b) 3. of the statutes is created to read:

14 346.63 (2) (b) 3. In an action under par. (a) 3. that is based on the defendant
 15 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
 16 blood, the defendant has a defense if he or she proves by a preponderance of the
 17 evidence that prior to the incident or occurrence he or she had been engaged in
 18 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was^{were}
 19 conducting those activities in accordance with the requirements of s. 94.55.

20 **INS 15-13 (ZW)**

21 **SECTION 15.** 350.101 (1) (e) of the statutes is renumbered 350.101 (1) (e) 1.

22 **SECTION 16.** 350.101 (1) (e) 2. of the statutes is created to read:

1 350.101 (1) (e) 2. In an action under par. (bm) that is based on the defendant
2 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
3 blood, the defendant has a defense if he or she proves by a preponderance of the
4 evidence that prior to the incident or occurrence he or she had been engaged in
5 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
6 conducting those activities in accordance with the requirements of s. 94.55.

7 **SECTION 17.** 350.101 (2) (d) 3. of the statutes is created to read:

8 350.101 (2) (d) 3. In an action under par. (bm) that is based on the defendant
9 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
10 blood, the defendant has a defense if he or she proves by a preponderance of the
11 evidence that prior to the incident or occurrence he or she had been engaged in
12 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
13 conducting those activities in accordance with the requirements of s. 94.55.

14 **SECTION 18.** 940.09 (2) (c) of the statutes is created to read:

15 940.09 (2) (c) In an action under par. (bm) that is based on the defendant
16 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
17 blood, the defendant has a defense if he or she proves by a preponderance of the
18 evidence that prior to the incident or occurrence he or she had been engaged in
19 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *were*
20 conducting those activities in accordance with the requirements of s. 94.55.

21 **SECTION 19.** 940.25 (2) (c) of the statutes is created to read:

22 940.25 (2) (c) In an action under par. (bm) that is based on the defendant
23 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
24 blood, the defendant has a defense if he or she proves by a preponderance of the
25 evidence that prior to the incident or occurrence he or she had been engaged in

1
2

activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she was *well*
conducting those activities in accordance with the requirements of s. 94.55.

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1400/P5insMP
MCP&EAW:amn

1 INSERT MCP-A

1. Creates an appropriation from the general fund for the hemp program in the 2019-21 biennium, and increases funding to DATCP for the current 2018-19 fiscal year for the purchase of machinery and other assets for the hemp program.

2

3 INSERT MCP-B

, unless the grower notifies DATCP that testing after harvest will not be possible; requires a grower to re-test if the grower does not harvest within 24 days after DATCP tests at the growing location

4

5 INSERT MCP-C

140 (3). Provides that a person who purchases hemp or a hemp product may not be prosecuted if the product is no more than 7 percent over the permissible THC limit for hemp and if the person has no reason to believe that the product is over the permissible THC limit for hemp.

6

7 INSERT 8-10 (MP)

8 unless the grower has notified the department that sampling and testing after
9 harvest will not be possible. If the grower does not harvest within 24 days after the
10 department samples and tests at the growing location, the department shall perform
11 additional sampling and testing

12

13 INSERT 8-22 (MP)

14 that states that the hemp has been tested for delta-9-tetrahydrocannabinol
15 concentration and is in compliance with this section and rules promulgated under
16 this section

17

18 INSERT 16-21 (MP)

1 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and
2 salts of isomers, whether growing or not

3

4 INSERT 18-9 (MP)

5 possessor reconditions or processes the cannabis to a
6 delta-9-tetrahydrocannabinol concentration at or below the permissible limit for
7 hemp

8

9 INSERT 18-10 (MP)

10 **SECTION 1.** 961.32 (3) (b) 4r. of the statutes is created to read:

11 ~~961.32~~ **(3)** (b) 4r. Possessing cannabis purchased or obtained at retail that
12 contains a delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent
13 above the permissible limit for hemp if the possessor has no reason to believe that
14 the cannabis contains a delta-9-tetrahydrocannabinol concentration above the
15 permissible limit for hemp.

16

17 INSERT 21-25 (MP)

18 **SECTION 2. Fiscal changes.**

19 (1) PURCHASE OF MACHINERY. In the schedule under s. 20.005 (3) for the
20 appropriation to the department of agriculture, trade and consumer protection
21 under s. 20.115 (7) (a), the dollar amount for fiscal year 2018-19 is increased by
22 \$300,000 for the purchase or acquisition of machinery and other assets for the hemp
23 program under s. 94.55.



State of Wisconsin
2019 - 2020 LEGISLATURE

in 3/15/2019
out 3/15/2019

LRB-1400/P5/18
MCP/EAW/ZDW:amr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 94.55 (2) (e), 94.55 (3), 94.55 (3) (c), 94.67 (15r) and 961.32 (3)
2 (b) 2.; *to renumber* 23.33 (4c) (a) 5., 30.681 (1) (d) and 350.101 (1) (e); *to amend*
3 20.115 (7) (gc), 94.55 (1), 94.55 (2) (title), 94.55 (2) (a), 94.55 (2) (b) 2., 94.55 (2)
4 (b) 3., 94.55 (2) (b) 4., 94.55 (2) (b) 5., 94.55 (2) (c), 94.55 (3) (intro.), (a) and (b),
5 94.67 (2), 97.02, 182.001 (3), 343.305 (8) (b) 4m. (intro.), 343.305 (8) (b) 5. c.,
6 343.305 (8) (b) 6. c., 348.27 (18) (a) 1. f., 961.01 (14), 961.14 (4) (t) 1., 961.32 (2m)
7 (b), 961.32 (3) (a) 1. and 2., 961.32 (3) (b) (intro.), 961.32 (3) (b) 1., 961.32 (3) (b)
8 3., 961.32 (3) (b) 4., 961.32 (3) (b) 5., 961.32 (3) (c), 961.32 (3) (d), 961.34 (2) (a),
9 961.34 (2) (b), 961.38 (1n) (a), 961.38 (1n) (b), 961.442 (intro.) and 961.55 (9); *to*
10 *repeal and recreate* 94.55 (title); and *to create* 20.115 (7) (f), 23.33 (4c) (a) 5.
11 b., 23.33 (4c) (b) 4. c., 23.335 (12) (a) 6., 23.335 (12) (b) 6., 30.681 (1) (d) 2., 30.681
12 (2) (d) 1. c., 94.55 (2) (am), 94.55 (2) (b) 2m., 94.55 (2) (b) 4g., 94.55 (2) (b) 4m.,
13 94.55 (2) (b) 4s., 94.55 (2) (f), 94.55 (2g), 94.55 (2m), 94.55 (2p), 94.55 (2r), 94.55
14 (2t), 94.55 (3m), 94.55 (3r), 94.67 (15c), 343.305 (8) (b) 2. h., 346.63 (1) (e), 346.63
15 (2) (b) 3., 350.101 (1) (e) 2., 350.101 (2) (d) 3., 940.09 (2) (c), 940.25 (2) (c), 961.01

1 (3r), 961.14 (4) (t) 3., 961.32 (3) (b) 4m., 961.32 (3) (b) 4r. and 961.32 (3) (cm) of
2 the statutes; **relating to:** regulating hemp, providing an exemption from
3 emergency rule procedures, granting rule-making authority, and making an
4 appropriation.

Analysis by the Legislative Reference Bureau

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:

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." The bill also provides that "hemp" does not include a prescription drug product approved by the U.S. food and drug administration.

2. Prohibits any person from producing hemp in this state without a license from the Department of Agriculture, Trade and Consumer Protection or the U.S. Department of Agriculture if required under federal law.

3. Allows DATCP to establish procedures for all of the following: a) maintaining information relating to hemp production; b) testing for THC concentrations in hemp; c) disposing of hemp plants grown illegally; d) complying with enforcement provisions; and e) conducting annual inspections of hemp producers.

4. 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 violation. A compliance plan must include a reasonable date by which the hemp producer is required to correct the violation and must require the hemp producer to report to DATCP periodically, for not less than two years, 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 negligently violates those provisions three times in a five-year period is ineligible to participate in the hemp program for five years.

5. 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 and the U.S. attorney general.

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

, unless the person holds a valid license under any state's hemp pilot program on the effective date of the bill

7. Prohibits a person from producing hemp for ten years following a felony conviction relating to a controlled substance under state or federal law.
8. Redefines "marijuana," for the purposes of the controlled substances act, to exclude hemp.
9. Excludes THC contained in hemp from the list of Schedule I controlled substances.
10. Changes the current hemp pilot program under DATCP to a permanent program and sunsets the pilot program.

The bill also does the following relating to hemp:

1. Creates an appropriation from the general fund for the hemp program in the 2019-21 biennium, and increases funding to DATCP for the current 2018-19 fiscal year for the purchase of machinery and other assets for the hemp program.
2. Allows DATCP to establish lower license fees for hemp licenses issued for research or noncommercial purposes.
3. Requires DATCP to set criteria for approving persons to undertake any sampling and testing of hemp that DATCP requires by rule and to approve persons that meet the criteria.
4. Requires a grower to notify DATCP at least two weeks before the grower's intended harvest date; prohibits DATCP from testing at the growing location more than ten days before the intended harvest date; allows a grower to harvest if DATCP has not tested at the growing location before the intended harvest date, unless the grower notifies DATCP that testing after harvest will not be possible; requires a grower to re-test if the grower does not harvest within 24 days after DATCP tests at the growing location; provides that DATCP should seek to test hemp after harvest rather than before harvest, but may spot test at the growing location prior to harvest, and prohibits DATCP from requiring sampling and testing of hemp seedlings or clones intended to be planted that originate from certified hemp seed or from hemp seed or clones approved for growing by DATCP.
5. Requires DATCP to issue a fit for commerce certificate after hemp is tested, or if DATCP determines that hemp is not required to be tested.
6. Allows a person, whose personally identifying information relating to the hemp program is in DATCP's possession, to authorize the disclosure of that information.
7. Requires all hemp producers to notify DATCP of the variety of hemp the producer intends to grow, and prohibits a hemp producer from growing hemp unless DATCP has approved that variety of hemp for growing in this state or that variety of hemp has been certified by DATCP.
8. Prohibits a person from mislabeling hemp or a hemp product, knowingly making an inaccurate claim about the content, quality, or origin of hemp or a hemp product in the course of transferring or selling, or knowingly selling at retail mislabeled hemp or hemp products.
9. Requires contracts to purchase hemp from a hemp grower to provide for payment to the grower within seven days of taking possession of the hemp, unless the grower voluntarily and knowingly agrees otherwise.

10. Adds hemp to the list of agricultural products that may not be grown by, or grown on land owned by, a large corporation or trust.

11. 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.

12. Changes the provision under current law that exempts a person from prosecution for selling, transferring, processing, harvesting, or taking possession of cannabis that is over the permissible THC concentration for hemp, so that the exemption applies to cannabis that had been tested and certified, by DATCP or a person approved by DATCP, as meeting the permissible THC concentration for hemp, but that is in fact above the permissible limit, if the person has no reason to believe that the certification is incorrect.

13. Provides that a person may not be prosecuted for temporarily possessing cannabis that is above the permissible THC concentration for hemp during the normal course of processing hemp if the cannabis is reconditioned or processed to meet the permissible THC concentration limit for hemp within a reasonable amount of time.

14. Provides that a person who purchases hemp or a hemp product may not be prosecuted if the product is no more than 0.7 percent over the permissible THC limit for hemp and if the person has no reason to believe that the product is over the permissible THC limit for hemp.

15. This bill also creates an affirmative defense to violations involving the intoxicated operation of an all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, motorboat, motor vehicle, or snowmobile that are based on the defendant allegedly having a detectable amount of THC in his or her blood if he or she proves that prior to the incident he or she had been engaged in lawful activities relating to hemp. *to the detectable amount is the result of having lawfully ingested*

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.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

2019-20 2020-21

or used hemp or a hemp product or engaging

1 **20.115 Agriculture, trade and consumer**
2 **protection, department of**

3 (7) AGRICULTURAL RESOURCE MANAGEMENT

4 (f) Hemp GPR A 216,500 216,500

5 **SECTION 2.** 20.115 (7) (f) of the statutes is created to read:

6 20.115 (7) (f) *Hemp*. The amounts in the schedule for regulation of activities
7 relating to hemp under s. 94.55.

8 **SECTION 3.** 20.115 (7) (gc) of the statutes is amended to read:

9 20.115 (7) (gc) ~~Industrial hemp~~ *Hemp: program fees*. All moneys received under
10 s. 94.55 for regulation of activities relating to ~~industrial~~ hemp under s. 94.55.

11 **SECTION 4.** 23.33 (4c) (a) 5. of the statutes is renumbered 23.33 (4c) (a) 5. a.

12 **SECTION 5.** 23.33 (4c) (a) 5. b. of the statutes is created to read:

13 23.33 (4c) (a) 5. b. In an action under subd. 2m. that is based on the defendant
14 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
15 blood, the defendant has a defense if he or she proves by a preponderance of the
16 evidence that prior to the incident or occurrence he or she ^{lawfully ingested or used} ~~had been engaged in~~ ^{hemp as}
17 activities relating to hemp ^{lawfully} ~~that are regulated under s. 94.55 (2) (a) if he or she were~~ ^{defined}
18 conducting those activities in accordance with the requirements of s. 94.55. ^{in s. 94.55(1) or}

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

20 23.33 (4c) (b) 4. c. In an action under subd. 2m. that is based on the defendant
21 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
22 blood, the defendant has a defense if he or she proves by a preponderance of the
23 evidence that prior to the incident or occurrence he or she had been engaged in ^{and the presence} ~~of~~ ^{of delta-9-tetra-}
^{hydrocannabinol in} ~~his or~~ ^{her}
~~her~~ ^{blood is}
~~blood, the defendant has a defense if he or she proves by a preponderance of the~~ ^{attributable}
~~evidence that prior to the incident or occurrence he or she had been engaged in~~ ^{to those}
~~activities~~

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Ed: make some changes in SECS. 6, 7, 8, 10, 11, 47, 48,
51, 52, 53, 54

SECTION 6

1 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
2 conducting those activities in accordance with the requirements of s. 94.55.

3 **SECTION 7.** 23.335 (12) (a) 6. of the statutes is created to read:

~~4~~ 23.335 (12) (a) 6. In an action under subd. 2m. that is based on the defendant
5 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
6 blood, the defendant has a defense if he or she proves by a preponderance of the
7 evidence that prior to the incident or occurrence he or she had been engaged in
8 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
9 conducting those activities in accordance with the requirements of s. 94.55.

10 **SECTION 8.** 23.335 (12) (b) 6. of the statutes is created to read:

~~11~~ 23.335 (12) (b) 6. In an action under subd. 2m. that is based on the defendant
12 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
13 blood, the defendant has a defense if he or she proves by a preponderance of the
14 evidence that prior to the incident or occurrence he or she had been engaged in
15 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
16 conducting those activities in accordance with the requirements of s. 94.55.

17 **SECTION 9.** 30.681 (1) (d) of the statutes is renumbered 30.681 (1) (d) 1.

18 **SECTION 10.** 30.681 (1) (d) 2. of the statutes is created to read:

~~19~~
~~20~~ 30.681 (1) (d) 2. In an action under par. (b) 1m. that is based on the defendant
21 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
22 blood, the defendant has a defense if he or she proves by a preponderance of the
23 evidence that prior to the incident or occurrence he or she had been engaged in
24 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
conducting those activities in accordance with the requirements of s. 94.55.

25 **SECTION 11.** 30.681 (2) (d) 1. c. of the statutes is created to read:

1 30.681 (2) (d) 1. c. In an action under par. (b) 1m. that is based on the defendant
2 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
3 blood, the defendant has a defense if he or she proves by a preponderance of the
4 evidence that prior to the incident or occurrence he or she had been engaged in
5 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
6 conducting those activities in accordance with the requirements of s. 94.55.

7 **SECTION 12.** 94.55 (title) of the statutes is repealed and recreated to read:

8 **94.55 (title) Hemp.**

9 **SECTION 13.** 94.55 (1) of the statutes is amended to read:

10 94.55 (1) DEFINITION. In this section, "~~industrial~~ hemp" means the plant
11 Cannabis sativa, ~~or L. and any part of the that~~ plant, including the seeds, ~~having~~
12 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
13 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
14 concentration of ~~no~~ not more than 0.3 percent on a dry weight basis or the maximum
15 concentration allowed under federal law up to 1 percent, whichever is greater.
16 "~~Industrial hemp~~" includes a substance, material, or product only if it is designated
17 as a controlled substance under the federal Controlled Substances Act under 21 USC
18 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both, as tested
19 using post-decarboxylation or other similarly reliable methods. "Hemp" does not
20 include a prescription drug product that has been approved by the U.S. food and drug
21 administration.

22 **SECTION 14.** 94.55 (2) (title) of the statutes is amended to read:

23 **94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.**

24 **SECTION 15.** 94.55 (2) (a) of the statutes is amended to read:

1 94.55 (2) (a) Subject to the provisions under this ~~subsection~~ section, a person
2 may plant, grow, cultivate, harvest, produce, sample, test, process, transport,
3 transfer, take possession of, sell, import, and export industrial hemp in this state to
4 the greatest extent allowed under federal law.

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

6 94.55 (2) (am) The department shall issue licenses to hemp producers if hemp
7 producers are required to hold a license to produce hemp under federal law. If the
8 and if the secretary of the U.S. department of agriculture department issues such licenses, no person may produce hemp without a license from
9 the department. Licenses from the department may authorize the planting,
10 growing, cultivating, harvesting, producing, sampling, testing, processing,
11 transporting, transferring, taking possession, selling, importing, and exporting of
12 hemp. The department shall identify the requirements for applying for a license,
13 approving or denying a license, and suspending or revoking a license, and shall
14 identify the restrictions and obligations that apply to operating under a license. The
15 department may restrict license eligibility based on a violation reported under sub.
16 (2m). The department shall accept license applications throughout the calendar
17 year. The department may set license terms and may set late fees for license
18 renewals.

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

20 94.55 (2) (b) 2. Except as provided under ~~subds. 3. to 6. and subs. (3) and (4)~~
21 this section, rules promulgated under this ~~paragraph~~ section shall regulate the
22 activities described in par. (a) only to the extent required under federal law, and in
23 a manner that allows the people of this state to have the greatest possible
24 opportunity to engage in those activities.

25 **SECTION 18.** 94.55 (2) (b) 2m. of the statutes is created to read:

- 1 94.55 (2) (b) 2m. The department may establish 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, as defined by the
- 4 department, for a period of not 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 c. A procedure for the effective disposal of plants, whether growing or not, that
- 8 are produced in violation of this section, and products derived from those plants.
- 9 d. A procedure to comply with the enforcement provisions under subs. (2g) and
- 10 (2m).
- 11 e. A procedure for conducting annual inspection of, at a minimum, a random
- 12 sample of hemp producers to verify that hemp is not produced in violation of this
- 13 section.

14 **SECTION 19.** 94.55 (2) (b) 3. of the statutes is amended to read:

15 94.55 (2) (b) 3. The department shall promulgate rules, as the department

16 determines to be necessary, to ensure the quality of industrial hemp ~~grown or~~

17 ~~processed produced~~ in this state, the security of activities related to industrial hemp,

18 and the safety of products produced from industrial hemp, including any necessary

19 testing; to ensure that the state's hemp program complies with federal law and to

20 obtain and maintain any required federal approval of the state's hemp program; to

21 verify adherence to laws and rules governing activities related to industrial hemp;

22 and to enforce violations of those laws and rules.

23 **SECTION 20.** 94.55 (2) (b) 4. of the statutes is amended to read:

24 94.55 (2) (b) 4. The department shall require the payment of an initial fee from

25 any person who ~~plants, grows, or cultivates industrial produces~~ hemp in this state

1 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the
 2 person will ~~plant, grow, or cultivate industrial produce~~ hemp, but not to exceed
 3 \$1,000. The department may also impose an annual fee on any person whose
 4 activities related to industrial hemp are regulated by the department under this
 5 paragraph, in an amount not to exceed an amount sufficient to cover the costs to the
 6 department of regulating those activities, as determined by the department by rule.
 7 The department may establish lower initial and annual fees for licenses issued for
 8 research or noncommercial purposes.

9 SECTION 21. 94.55 (2) (b) 4g. of the statutes is created to read:

10 94.55 (2) (b) 4g. ^{ef. Within 6 months after the effective date of this} The department shall set criteria for approving persons to
 11 ^{subdivision ... [LRB inserts date], the} undertake any sampling and testing required by the department by rule, and shall
 12 ^{to the extent allowed under federal law} approve persons that meet the criteria. ^{e. The department}

13 SECTION 22. 94.55 (2) (b) 4m. of the statutes is created to read:

14 94.55 (2) (b) 4m. The department shall require a licensee who grows hemp to
 15 notify the department of the grower's intended harvest date at least 2 weeks before
 16 the intended harvest date. The department may not sample or test plants at the
 17 growing location more than 10 days before the grower's intended harvest date. If the
 18 department does not sample and test at the growing location before a grower's
 19 intended harvest date, the department may not prohibit the grower from harvesting
 20 unless the grower has notified the department that sampling and testing after
 21 harvest will not be possible. If the grower does not harvest within 24 days after the
 22 department samples and tests at the growing location, the department shall perform
 23 additional sampling and testing. To the extent possible, the department shall seek
 24 to perform any regular testing on hemp grown in this state after harvest rather than
 25 before harvest. When sampling and testing a crop of hemp, the department is not

1 required to sample and test every growing location or every strain. The department
2 may not require the sampling and testing of hemp seedlings or clones that are
3 intended to be planted and that originated from hemp seed certified under par. (c)
4 or from hemp seed or clones approved for growing under par. (f). Nothing in this
5 subdivision shall be construed as prohibiting the random sampling and spot testing
6 of hemp before harvest.

7 SECTION 23. 94.55 (2) (b) 4s. of the statutes is created to read:

8 94.55 (2) (b) 4s. Following any required sampling and testing, or if the
9 department determines that sampling and testing are not required, the department
10 shall issue a certificate that states that the hemp has been ^{or is not required to be tested} tested for
11 delta-9-tetrahydrocannabinol concentration and is in compliance with this section
12 and rules promulgated under this section.

13 SECTION 24. 94.55 (2) (b) 5. of the statutes is amended to read:

14 94.55 (2) (b) 5. The department shall ensure that any of the following
15 information that is in the department's possession relating to a licensee or applicant
16 for a license under this section is confidential and not open to public inspection or
17 copying under s. 19.35 (1), except that it shall be made available to a law enforcement
18 agency or law enforcement officer:

19 a. Information relating to the locations of industrial hemp fields and processing
20 locations production locations.

21 b. Personally identifiable information relating to a person who is lawfully
22 engaging in activities related to industrial hemp, except that the department shall
23 allow the person to easily provide consent, and to revoke consent once given, for the
24 department to release any or all of the person's personally identifiable information.

unless the person elects during the application and licensing or
renewal process

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.

6 **SECTION 25.** 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 from which certified seed is collected. Participation
13 in the certification program shall be voluntary for ~~growers and cultivators~~ producers
14 of industrial hemp. The department shall promulgate rules for the administration
15 of any certification program established and administered by the department under
16 this paragraph.

17 **SECTION 26.** 94.55 (2) (e) of the statutes is repealed.

18 **SECTION 27.** 94.55 (2) (f) of the statutes is created to read:

19 94.55 (2) (f) Before growing hemp, a hemp producer shall notify the department
20 of the variety of hemp the producer intends to grow. A hemp producer may not grow
21 hemp unless the department has approved the growth of that variety of hemp or the
22 variety of hemp is certified under par. (c).

23 **SECTION 28.** 94.55 (2g) of the statutes is created to read:

24 94.55 (2g) **NEGLIGENT VIOLATIONS.** (a) This subsection applies only to hemp
25 producers, and only if the department determines that the hemp producer has

1 negligently violated this section or rules promulgated under this section, including
2 by negligently doing any of the following:

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

5 2. If required under federal law, failing to obtain a license or other required
6 authorization from the department or from the U.S. department of agriculture.

7 3. Producing *Cannabis sativa* L. with a delta-9-tetrahydrocannabinol
8 concentration of more than 0.3 percent on a dry weight basis.

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

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

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

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

20 **SECTION 29.** 94.55 (2m) of the statutes is created to read:

21 94.55 (2m) GREATER VIOLATIONS. If the department determines that a hemp
22 producer has violated this section or rules promulgated under this section with a
23 culpable mental state greater than negligence, the department shall immediately
24 report the hemp producer to the U.S. attorney general and the department of justice.

25 **SECTION 30.** 94.55 (2p) of the statutes is created to read:

1 94.55 (2p) FELONY CONVICTIONS. No person may produce hemp in this state for
2 10 years following any felony conviction relating to a controlled substance under
3 state or federal law.

unless the person holds a valid license, registration, or other authorization to produce hemp under a pilot program of any state authorized by Section 94.06 of the Agricultural Act of

federal

4 SECTION 31. 94.55 (2r) of the statutes is created to read: 2014 on the effective date
5 of this subsection. [LFB inserts date]

6 94.55 (2r) FALSE STATEMENT. Any person who materially falsifies any
7 information contained in an application to participate in the hemp program
8 established under this section is ineligible to participate in the program.

9 SECTION 32. 94.55 (2t) of the statutes is created to read:

10 94.55 (2t) ACCESS TO CANNABIDIOL PRODUCTS. Nothing in this section or rules
11 promulgated under this section shall be construed as limiting a person's access to
12 cannabidiol products under s. 961.32 (2m) (b).

13 SECTION 33. 94.55 (3) (intro.), (a) and (b) of the statutes are amended to read:

14 94.55 (3) PILOT PROGRAM. (intro.) The department shall create a pilot program
15 to study the growth, cultivation, and marketing of industrial hemp. The department
16 shall promulgate rules to implement the pilot program consistent with the authority
17 under sub. (2) (b). The department shall also do all of the following as part of the pilot
18 program:

19 (a) Issue licenses that authorize the planting, growing, cultivating, harvesting,
20 sampling, testing, processing, transporting, transferring, taking possession, selling,
21 importing, and exporting of industrial hemp. The department shall identify the
22 requirements for applying for a license, approving or denying a license, and
23 suspending or revoking a license, and shall identify the restrictions and obligations
24 that apply to operating under a license. As part of the application process, the
25 department shall require an applicant to provide the global positioning system
coordinates of the centers of all fields on which growing locations where the

1 industrial hemp will be planted, grown, cultivated, or harvested. The department
2 shall obtain a criminal history search from the records maintained by the
3 department of justice for each applicant and may not issue a license if the applicant
4 has ever been convicted of a criminal violation of the federal Controlled Substances
5 Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961,
6 or any controlled substances law of another state, as indicated in the information
7 obtained from the criminal history search. A license issued under this paragraph
8 does not expire unless the pilot program under this subsection expires or the license
9 is revoked.

10 (b) Create a registration system that authorizes the sampling, testing,
11 processing, transporting, transferring, taking possession, selling, importing, and
12 exporting of industrial hemp. The department shall obtain a criminal history search
13 from the records maintained by the department of justice for each person applying
14 for registration and may not register an applicant who has been convicted of a
15 criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971,
16 the Uniform Controlled Substances Act under ch. 961, or any controlled substances
17 law of another state, as indicated in the information obtained from the criminal
18 history search.

19 **SECTION 34.** 94.55 (3) of the statutes, as affected by 2019 Wisconsin Act (this
20 act), is repealed.

21 **SECTION 35.** 94.55 (3) (c) of the statutes is repealed.

22 **SECTION 36.** 94.55 (3m) of the statutes is created to read:

23 94.55 (3m) TRUTH IN LABELING. (a) No person may do any of the following:

24 1. Mislabel hemp or a hemp product.

1 2. Knowingly make an inaccurate claim about the content,
2 delta-9-tetrahydrocannabinol concentration, quality, or origin of hemp or a hemp
3 product in the course of transferring or selling the hemp or hemp product.

4 3. Knowingly sell at retail mislabelled hemp or hemp products.

5 (b) The department shall investigate violations of par. (a). The department, or
6 any district attorney ^{or the department of justice} upon the request of the department, may on behalf of the state
7 do any of the following:

8 1. Bring an action for temporary or permanent injunctive relief in any court of
9 competent jurisdiction for any violation of par. (a).

10 2. Bring an action in any court of competent jurisdiction for the recovery of a
11 civil forfeiture against any person who violates par. (a) in an amount not more than
12 \$1,000 for each violation.

13 (c) In addition to any other remedies provided by law, any person suffering a ^{keep}
14 pecuniary loss because of a violation of par. (a) may bring a civil action to recover
15 damages together with costs and disbursements, including reasonable attorney fees, ^{see [in copied + pasted text +] this subsection}
16 and for equitable relief as determined by the court.

17 **SECTION 37.** 94.55 (3r) of the statutes is created to read:

18 94.55 (3r) ^{PRIVATE CAUSE OF ACTION FOR} CONTRACTS WITH GROWERS. Any contract to purchase hemp from a
19 hemp grower in this state shall provide that payment will be made to the grower
20 within 7 days of taking possession of the hemp, unless the grower voluntarily and
21 knowingly agrees to a different method of payment.

22 **SECTION 38.** 94.67 (2) of the statutes is amended to read:

23 94.67 (2) "Agricultural commodity" means any plant or part of a plant, animal
24 or animal product produced by a person primarily for sale, consumption,

1 propagation, or other use by humans or animals. "Agricultural commodity" includes
2 industrial hemp.

3 SECTION 39. 94.67 (15c) of the statutes is created to read:

4 94.67 (15c) "Hemp" has the meaning given in s. 94.55 (1).

5 SECTION 40. 94.67 (15r) of the statutes is repealed.

6 SECTION 41. 97.02 of the statutes is amended to read:

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

11 SECTION 42. 182.001 (3) of the statutes is amended to read:

12 182.001 (3) PROHIBITED ACTIVITIES. Those farming operations prohibited under
13 this section are the production of dairy products not including the processing of such
14 dairy products; the production of cattle, hogs and sheep; and the production of wheat,
15 field corn, barley, oats, rye, hay, pasture, soybeans, millet and, sorghum, and hemp.

16 SECTION 43. 343.305 (8) (b) 2. h. of the statutes is created to read:

17 343.305 (8) (b) 2. h. Whether the person had previously been lawfully engaged
18 in activities relating to hemp that are regulated under s. 94.55 (2) (a) in a case in
19 which subd. 4m. a. and b. apply

lawfully ingested or used hemp
as defined in s. 94.55(1), or had

20 SECTION 44. 343.305 (8) (b) 4m. (intro.) of the statutes is amended to read:

21 343.305 (8) (b) 4m. (intro.) If, at the time the offense allegedly occurred, all of
22 the following apply, the hearing officer shall determine whether the person had a
23 valid prescription for methamphetamine or one of its metabolic precursors,
24 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol, or had previously

> Ed.: make some changes in SECS. 44, 45, 46,
and the presence of delta-9-tetrahydrocannabinol in his
or her blood is attributable to those activities

1 been lawfully engaged in activities relating to hemp that are regulated under s. 94.55

2 (2) (a): and the presence of delta-9-tetrahydrocannabinol in his or her blood
3 is attributable to those activities

4 **SECTION 45.** 343.305 (8) (b) 5. c. of the statutes is amended to read:

5 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had ^{lawfully}
6 a valid prescription for methamphetamine or one of its metabolic precursors, ^{ingested or}
7 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol, ^{used hemp,} or had ^{as defined in} previously s. 94.55(1)
8 been lawfully engaged in activities relating to hemp that are regulated under s. 94.55 ^{or had}

9 (2) (a).

10 **SECTION 46.** 343.305 (8) (b) 6. c. of the statutes is amended to read:

11 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
12 not have a valid prescription for methamphetamine or one of its metabolic
13 precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol, ^{and had}
14 not previously been lawfully engaged in activities relating to hemp that are
15 regulated under s. 94.55 (2) (a).

16 **SECTION 47.** 346.63 (1) (e) of the statutes is created to read:

17 346.63 (1) (e) In an action under par. (am) that is based on the defendant
18 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
19 blood, the defendant has a defense if he or she proves by a preponderance of the
20 evidence that prior to the incident or occurrence he or she had been engaged in
21 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
22 conducting those activities in accordance with the requirements of s. 94.55.

23 **SECTION 48.** 346.63 (2) (b) 3. of the statutes is created to read:

24 346.63 (2) (b) 3. In an action under par. (a) 3. that is based on the defendant
25 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
blood, the defendant has a defense if he or she proves by a preponderance of the

1 evidence that prior to the incident or occurrence he or she had been engaged in
2 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
3 conducting those activities in accordance with the requirements of s. 94.55.

4 **SECTION 49.** 348.27 (18) (a) 1. f. of the statutes is amended to read:

5 348.27 (18) (a) 1. f. ~~Industrial hemp~~ Hemp, as defined in s. 94.67 ~~(15r)~~ (15c).

6 **SECTION 50.** 350.101 (1) (e) of the statutes is renumbered 350.101 (1) (e) 1.

7 **SECTION 51.** 350.101 (1) (e) 2. of the statutes is created to read:

8 350.101 (1) (e) 2. In an action under par. (bm) that is based on the defendant
9 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
10 blood, the defendant has a defense if he or she proves by a preponderance of the
11 evidence that prior to the incident or occurrence he or she had been engaged in
12 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
13 conducting those activities in accordance with the requirements of s. 94.55.

14 **SECTION 52.** 350.101 (2) (d) 3. of the statutes is created to read:

15 350.101 (2) (d) 3. In an action under par. (bm) that is based on the defendant
16 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
17 blood, the defendant has a defense if he or she proves by a preponderance of the
18 evidence that prior to the incident or occurrence he or she had been engaged in
19 activities relating to hemp that are regulated under s. 94.55 (2) (a) if he or she were
20 conducting those activities in accordance with the requirements of s. 94.55.

21 **SECTION 53.** 940.09 (2) (c) of the statutes is created to read:

22 940.09 (2) (c) In an action under par. (b) that is based on the defendant allegedly
23 having a detectable amount of delta-9-tetrahydrocannabinol in his or her blood, the
24 defendant has a defense if he or she proves by a preponderance of the evidence that
25 prior to the incident or occurrence he or she had been engaged in activities relating

1 to hemp that are regulated under s. 94.55 (2) (a) if he or she were conducting those
2 activities in accordance with the requirements of s. 94.55.

3 **SECTION 54.** 940.25 (2) (c) of the statutes is created to read:

4 940.25 (2) (c) In an action under par. (b) that is based on the defendant allegedly
5 having a detectable amount of delta-9-tetrahydrocannabinol in his or her blood, the
6 defendant has a defense if he or she proves by a preponderance of the evidence that
7 prior to the incident or occurrence he or she had been engaged in activities relating
8 to hemp that are regulated under s. 94.55 (2) (a) if he or she were conducting those
9 activities in accordance with the requirements of s. 94.55.

10 **SECTION 55.** 961.01 (3r) of the statutes is created to read:

11 961.01 (3r) "Cannabidiol product" means a derivative or extract of the plant
12 Cannabis sativa L. that contains cannabidiol and a delta-9-tetrahydrocannabinol
13 concentration at a level without a psychoactive effect.

14 **SECTION 56.** 961.01 (14) of the statutes is amended to read:

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

25 **SECTION 57.** 961.14 (4) (t) 1. of the statutes is amended to read:

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

4 **SECTION 58.** 961.14 (4) (t) 3. of the statutes is created to read:

5 961.14 (4) (t) 3. Tetrahydrocannabinols contained in hemp, as defined in s.
6 94.55 (1).

7 **SECTION 59.** 961.32 (2m) (b) of the statutes is amended to read:

8 961.32 (2m) (b) An individual may possess a cannabidiol in a form without a
9 ~~psychoactive effect product~~ if the individual has certification stating that the
10 individual possesses a cannabidiol product to treat a medical condition, if the
11 certification has an issue date that is no more than one year prior to the possession,
12 and if any expiration date provided by the physician in the certification has not
13 passed. A certification is not required to possess hemp, as defined in s. 94.55 (1), or
14 a prescription drug product that has been approved by the U.S. food and drug
15 administration.

16 **SECTION 60.** 961.32 (3) (a) 1. and 2. of the statutes are amended to read:

17 961.32 (3) (a) 1. "~~Hemp~~" "~~Cannabis~~" means the plant Cannabis sativa, or L. and
18 any part of the that plant, including the seeds thereof and all derivatives, extracts,
19 cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not.

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

21 **SECTION 61.** 961.32 (3) (b) (intro.) of the statutes is amended to read:

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

*Violating
S. 94.55
or*

not

SECTION 61

1 ~~prohibited under this chapter enacted under s. 59.54 (25) or 66.0107 (1) (bm), for any~~
2 of the following:

3 **SECTION 62.** 961.32 (3) (b) 1. of the statutes is amended to read:

4 961.32 (3) (b) 1. Planting, growing, cultivating, harvesting, producing,
5 processing, or transporting ~~hemp~~ cannabis that contains a
6 delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent
7 above the permissible limit for industrial hemp on a dry weight basis or that is grown
8 from industrial hemp seed certified under s. 94.55 (2) (c) or approved for growing by
9 the department of agriculture, trade and consumer protection under s. 94.55 (2) (f).

10 **SECTION 63.** 961.32 (3) (b) 2. of the statutes is repealed.

11 **SECTION 64.** 961.32 (3) (b) 3. of the statutes is amended to read:

12 961.32 (3) (b) 3. Selling, transferring, importing, exporting, processing,
13 transporting, harvesting, or taking possession of ~~hemp~~ cannabis that has been
14 ~~certified under s. 94.55 (2) (e) tested and certified, by a laboratory authorized the~~
15 department of agriculture, trade and consumer protection or a person approved by
16 the department of agriculture, trade and consumer protection ~~to test the~~
17 ~~delta-9-tetrahydrocannabinol concentration in hemp under s. 94.55 (2) (b) 4g., as~~
18 meeting the permissible delta-9-tetrahydrocannabinol concentration limit for
19 industrial hemp if the person has no reason to believe that the test certification is
20 incorrect.

21 **SECTION 65.** 961.32 (3) (b) 4. of the statutes is amended to read:

22 961.32 (3) (b) 4. Possessing ~~hemp with~~ cannabis that contains a
23 delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent above the
24 permissible level limit for industrial hemp ~~if the hemp was certified under s. 94.55~~
25 ~~(2) (c) at the time the possessor took possession as meeting the permissible~~

1 concentration limit for industrial hemp and the possessor had no reason to believe
2 at that time that the certification was incorrect on a dry weight basis if the possessor
3 reconditions or processes the cannabis to a delta-9-tetrahydrocannabinol
4 concentration at or below the permissible limit for hemp with the approval of the
5 department of agriculture, trade and consumer protection of those actions.

6 **SECTION 66.** 961.32 (3) (b) 4m. of the statutes is created to read:

7 961.32 (3) (b) 4m. Temporarily possessing cannabis during the normal course
8 of processing hemp if the possessor reconditions or processes the cannabis to a
9 delta-9-tetrahydrocannabinol concentration at or below the permissible limit for
10 hemp within a reasonable amount of time.

11 **SECTION 67.** 961.32 (3) (b) 4r. of the statutes is created to read:

12 961.32 (3) (b) 4r. Possessing cannabis purchased or obtained at retail that
13 contains a delta-9-tetrahydrocannabinol concentration of not more than 0.7 percent
14 above the permissible limit for hemp if the possessor has no reason to believe that
15 the cannabis contains a delta-9-tetrahydrocannabinol concentration above the
16 permissible limit for hemp.

17 **SECTION 68.** 961.32 (3) (b) 5. of the statutes is amended to read:

18 961.32 (3) (b) 5. Taking samples of ~~hemp~~ cannabis, transporting samples to a
19 testing facility, or testing samples for their delta-9-tetrahydrocannabinol
20 concentration or for the presence of other substances.

21 **SECTION 69.** 961.32 (3) (c) of the statutes is amended to read:

22 961.32 (3) (c) A person who ~~plants, grows, cultivates, harvests, samples, tests,~~
23 ~~processes, transports, transfers, takes possession of, sells, imports, or exports~~
24 ~~industrial hemp in violation of~~ violates s. 94.55 or a rule promulgated under s. 94.55
25 (2) (b) may not be prosecuted under s. 94.55 or this chapter unless the person is

SECTION 69

~~or to the department of justice~~

1 referred to the district attorney for the county in which the violation occurred by the
2 department of agriculture, trade and consumer protection, and may not be
3 prosecuted under ~~a municipal~~ an ordinance that prohibits the same conduct as is
4 prohibited under this chapter enacted under s. 59.54 (25) or 66.0107 (1) (bm), unless
5 the person is referred to the local law enforcement prosecuting authority by the
6 department of agriculture, trade and consumer protection.

7 **SECTION 70.** 961.32 (3) (cm) of the statutes is created to read:

8 961.32 (3) (cm) A hemp producer that negligently violates s. 94.55 or a rule
9 promulgated under s. 94.55, as described under s. 94.55 (2g) (a), may not be
10 prosecuted under s. 94.55 or this chapter or an ordinance enacted under s. 59.54 (25)
11 or 66.0107 (1) (bm).

12 **SECTION 71.** 961.32 (3) (d) of the statutes is amended to read:

13 961.32 (3) (d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity
14 described under ~~par. (b)~~ s. 94.55 (2) (a) does not constitute prima facie evidence of a
15 prohibited representation under s. 961.41 (4) (am) 1. a. or b.

16 **SECTION 72.** 961.34 (2) (a) of the statutes is amended to read:

17 961.34 (2) (a) Upon the request of any physician, the controlled substances
18 board shall aid the physician in applying for and processing an investigational drug
19 permit under 21 USC 355 (i) for cannabidiol as treatment for a ~~seizure disorder~~
20 medical condition. If the federal food and drug administration issues an
21 investigational drug permit, the controlled substances board shall approve which
22 pharmacies and physicians may dispense cannabidiol products to patients.

23 **SECTION 73.** 961.34 (2) (b) of the statutes is amended to read:

24 961.34 (2) (b) If cannabidiol is products other than hemp are removed from the
25 list of controlled substances, or if cannabidiol is products are determined not to be

1 ~~a controlled substance~~ substances, under schedule I of 21 USC 812 (c), the controlled
2 substances board shall approve which pharmacies and physicians may dispense
3 cannabidiol products to patients as treatment for a ~~seizure disorder~~ medical
4 condition.

5 **SECTION 74.** 961.38 (1n) (a) of the statutes is amended to read:

6 961.38 (1n) (a) A pharmacy or physician approved under s. 961.34 (2) (a) or (b)
7 may dispense cannabidiol ~~in a form without a psychoactive effect~~ products as a
8 treatment for a medical condition.

9 **SECTION 75.** 961.38 (1n) (b) of the statutes is amended to read:

10 961.38 (1n) (b) A physician licensed under s. 448.04 (1) (a) may issue an
11 individual a certification, as defined in s. 961.32 (2m) (a), stating that the individual
12 possesses a cannabidiol product to treat a medical condition if ~~the cannabidiol is in~~
13 ~~a form without a psychoactive effect~~.

14 **SECTION 76.** 961.442 (intro.) of the statutes is amended to read:

15 **961.442 Penalties; industrial hemp.** (intro.) If a person attempts to conceal
16 the commission of a crime under this chapter while representing that he or she is
17 engaging in the planting, growing, cultivating, harvesting, producing, processing,
18 transporting, importing, exporting, selling, transferring, sampling, testing, or
19 taking possession of industrial hemp, the maximum term of imprisonment
20 prescribed by law for that crime may be increased as follows:

21 **SECTION 77.** 961.55 (9) of the statutes is amended to read:

22 961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
23 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
24 delta-9-tetrahydrocannabinol ~~in a whole dry plant~~ is found to exceed 0.7 percent
25 above the permissible limit for industrial hemp on a dry weight basis, as tested using

1 post-decarboxylation or other similarly reliable methods, the entire crop ~~on the field~~
 2 at the growing location where the plant was found shall be seized and destroyed.
 3 Before a crop is seized and destroyed under this subsection, the agency whose officers
 4 or employees intend to seize and destroy the crop shall provide, to the person licensed
 5 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written
 6 documentation verifying the test results for the crop that is subject to seizure and
 7 destruction.

8 **SECTION 78. Nonstatutory provisions.**

9 (1) EMERGENCY RULES. ^{When promulgating rules under s. 94.55,} The department of agriculture, trade and consumer
 10 protection ^{may} shall, ^{as necessary, use} using the procedure under s. 227.24, ^{to} promulgate ^{emergency} rules ^{under s.}
 11 94.55 (2) to (3). Notwithstanding s. 227.24 (1) (a) and (3), ^{When promulgating} the department is not ^{emergency rules under}
 12 required to provide evidence that promulgating a rule under this subsection as an ^{this subsection,} emergency rule is necessary for the preservation of the public peace, health, safety,
 13 or welfare and is not required to provide a finding of emergency for a rule
 14 promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2),
 15 emergency rules promulgated under this subsection remain in effect ^{for 10 years or} until the date
 16 on which permanent rules take effect, ^{whichever is earlier} Notwithstanding s. 227.24 (1) (e) 1d. and 1g.,
 17 for emergency rules promulgated under this subsection, the department is not
 18 required to prepare a statement of scope of the rules or to submit the proposed rules
 19 in final draft form to the governor for approval.

21 (2) NOTIFICATION. The department of agriculture, trade and consumer
 22 protection shall notify the legislative reference bureau when the secretary of the U.S.
 23 department of agriculture establishes a plan under section 297C of the Agricultural
 24 Marketing Act of 1946. The legislative reference bureau shall publish a notice in the

1 Wisconsin Administrative Register that specifies the date on which s. 94.55 (3) is
2 repealed, as determined under SECTION 80 (1) of this act.

3 (3) HEMP POSITIONS. The authorized FTE positions for the department of
4 agriculture, trade and consumer protection are increased by 3.0 GPR positions on
5 July 1, 2019, to be funded from the appropriation under s. 20.115 (7) (f), for the
6 purpose of regulating activities relating to hemp under s. 94.55.

7 **SECTION 79. Fiscal changes.**

8 (1) PURCHASE OF MACHINERY. In the schedule under s. 20.005 (3) for the
9 appropriation to the department of agriculture, trade and consumer protection
10 under s. 20.115 (7) (a), the dollar amount for fiscal year 2018-19 is increased by
11 \$300,000 for the purchase or acquisition of machinery and other assets for the hemp
12 program under s. 94.55.

13 **SECTION 80. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) The repeal of s. 94.55 (3) (by SECTION 34) takes effect one year after the date
16 on which the secretary of the U.S. department of agriculture establishes a plan under
17 section 297C of the Agricultural Marketing Act of 1946.

18

(END)

Wyatt, Zachary

From: Pfothenauer, Mary
Sent: Tuesday, March 12, 2019 3:21 PM
To: Wyatt, Zachary
Subject: FW: Hemp...

From: Schultz, Jeff <Jeff.Schultz@legis.wisconsin.gov>
Sent: Tuesday, March 12, 2019 3:16 PM
To: Pfothenauer, Mary <Mary.Pfothenauer@legis.wisconsin.gov>
Subject: Hemp...

Mary,

Please give me a call when you get a chance. In P5 we added the affirmative defense related to OWI – Could we get a P6 that removes those provisions and establishes an allowable amount of THC in one's system? Amber and Mike are doing some research to see how it's done in other states. Please consult with them to determine an appropriate model.

Thanks!

Sincerely,

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

Department of Agriculture, Trade and Consumer Protection
Review of hemp draft LRB-1400/P4

✓ Section 8: Department issuance of licenses *Sec. 16 in /PS*

After the pilot program ends, this section requires the department to issue licenses if hemp producers are required under federal law to hold a license. After the pilot program ends, however, the state can only continue to run a hemp program and issue licenses if the federal government approves a state program. This section appears to imply federal approval of a state run hemp program. Also, it is unclear in what scenario the department would issue licenses if the USDA is issuing licenses. Modification suggestion:

- yes ✓ • Make department issuance of licenses contingent on federal approval of a state hemp program.
+ DATCP shall seek approval of the state hemp program

✗ Section 10: Post-decarboxylation

This section discusses "post-decarboxylation" as a preferred analytical technique. This language is directly from the 2018 Farm Bill language and is included to ensure all of the contributing chemicals are included when testing for the crop's THC level, however there is concern that the wording may be misrepresentative of the compounds that must be included in THC level testing of hemp. To ensure that THCA is included in the total delta-9 THC testing, our state testing lab, along with 75% of the other state hemp testing labs in the nation, utilizes a technique called HPLC to ensure it is capturing the main derivatives, acids and extracts of THC from the plant, including THCA. The bottom line is that THCA converts directly to THC when heated, so if THCA is not clearly included in the required analysis, we could be certifying marijuana. DATCP continues to have growers challenging us on this and although the definition of hemp in this bill now clearly includes the acids (the "A" in THCA), it is ambiguous when describing the analysis. DATCP will seek further clarification from USDA on delta-9 THC or total delta-9 THC through their guidance issuance process.

- ✗ • Recommend adding somewhere in the bill that THCA is a required component of the THC testing to clarify this ambiguity.

✓ Section 13: Testing by private labs *Sec. 21 in /PS*

Federal guidance will be released in 2019 that will further delineate the regulatory program components that must be included for the USDA to approve each state's hemp program. To ensure consistency with this forthcoming guidance and to give our Wisconsin constituents comfort that DATCP will allow private laboratory testing to the extent allowed under federal law, a timeline in which rulemaking needs to take place should be inserted into the language in this section. Section 13, line 1 modification suggestion:

- yes ✓ • "Within two years from the date which federal program guidance is issued, the department shall..."
↳ six months *↳ from effective date of bill*
- yes ✓ • To provide further assurance of DATCP's intention to develop a program for expanded sampling and testing, consider inserting a reference "to the extent permitted by federal rules or law."

✗ Section 14: Intended harvest date and sampling timeframes *Sec. 22 in /PS*

Although workable, the inclusion of specific timeframes in which notification of intended harvest, timing of plant sampling, and preference for post-harvest sampling could provide challenges for both the department and the grower. While some growers may prefer post-harvest sampling, DATCP's experience from year one is that many growers would rather testing occur before expending the resources on harvesting a crop that may not be compliant with the law. DATCP's regulatory obligation is

to confirm that the crop is "hemp" prior to its entrance into commerce, and is open to different approaches that will allow sampling to occur at a mutually beneficial time. DATCP requires reasonable notice to schedule a sampling, and the grower must be bound to harvest the crop within a reasonable time of that sampling to ensure that the results of the THC test reflect the crop that is actually harvested. The attached flow chart helps to illustrate the different scenarios that may occur. That said, here some points of clarification that could be made in this section:

eliminate sec. 14 except seedlings language and hold crop language

✗ Post-harvest crop plan: Situations in which a grower may need to harvest before the crop is sampled, but may not have sufficient storage to hold the crop until the department is able to sample (see flowchart attached). To help the department prioritize sampling, we would ask that the language be amended to require growers to notify us of their "harvest plan" at the time they provide notice of their intended harvest date. This will allow the department to prioritize sampling/testing for growers who do not have storage capability and give growers with the ability to store their crop greater flexibility in choosing their harvest date. This harvest plan is intended to be very simple, and provide the Department only with information necessary to prioritize sampling & testing. For example, growers with the ability to store or otherwise hold the crop following harvest would have more flexibility in determining a sampling time because they could seek compliance testing after harvest.

✗ Transfer of ownership before sampling and testing: clarify that regardless of when sampling/testing is performed, growers are prohibited from transferring ownership of their crop before a "fit for commerce" certificate has been issued. This could be the main purpose of this section – to clarify that the details of sampling and testing can be worked out by DATCP and the grower, but clarify that the purpose of sampling & testing is to verify that the harvested crop is, in fact, hemp.

✗ Consider adding language to encourage growers to harvest within a short timeframe from the date of sampling/testing since crops will tend to increase THC levels as they mature beyond the sampling date and before harvest. Section 14, Line 12 suggested addition: "To the extent possible, growers shall seek to harvest their crop within 10 days of the date of sampling".

✓ Section 16: Confidentiality and Consent *Sec. 24 of PS*

New language in subsection b. directs the Department to allow a person to both provide consent and then to revoke consent once given, for the release of any or all of the person's personally identifiable information. While the Department's role is clear on this matter, we have some concern about growers' expectations regarding their information. If consent is revoked, the Department cannot call back any information that had been disclosed during a time in which the grower had granted consent for the release of information (e.g., if a spreadsheet or email containing that information had been released, there is no telling where it could have been distributed once it left DATCP.) Would that be consistent with the intent of this section?

yes

✓ Recommend adding an "opt-in" option only, and make that decision annually with license renewal.

Section 29: Truth in Labeling *Sec. 34 in PS*

DATCP has very few "labeling" laws in our Trade and Consumer Protection Division, particularly related to food and drugs. DATCP's labeling laws deal with non-ingestible products- mattresses, plastics, etc. DATCP's labeling regulatory authority links back to FDA food labeling laws (21 CFR Part 101), therefore we do very little enforcement in this arena. Once the FDA has completed its study on CBD and set product standards, testing could be expanded to hemp based products and will depend on knowing what analytes would be tested for, what the matrix is (e.g. beer, gummy bears, muffins, cooking oil), whether official analytical methods are established, etc.

Terms "Mislabel hemp" or "Knowingly make an inaccurate claim about hemp" are broad and extremely challenging to enforce. If the scope of mislabeling and inaccuracy were restricted to a single compound, e.g. CBD, it would still be a challenge, but could possibly be enforceable.

DATCP does have a fraudulent drug advertising law that allows us to address deceptive conduct in drugs as defined by state law 450.01(10), and substances that claim to mirror the same, which refers to 21 USC 301-392.

yes ✓ If there are deceptive claims regarding the effectiveness of hemp/CBD Oil we would use ch. 100.182 as an enforcement tool. To the extent DATCP would enforce section 29, we would prefer the remedies portion to mirror ch. 100.20(6), and also include cost recovery found in 100.263, given the likely need for testing to make out a claim. *central items*

yes ✓ Sections 29 and 50: Truth in labeling, and changes in Wis. Stat. s. 961.32(3)(c)
These sections allow the department to refer cases to a district attorney. Other programs in the department allow referral to a DA or DOI. A policy consideration would be whether the department would also want to request the ability to refer cases to the department of justice.

yes ✓ Section 30, contracts with growers, SEC. 37 in /PS
This section deals with required time frames for payments to growers. This section seems to put the DATCP in the middle of contract payment disputes, where DATCP will have to assess if a grower "voluntarily and knowingly" agreed to a different method of payment. Is that the intention, or would another regulatory body be asked to enforce this? If DATCP, what is the anticipated remedy or enforcement pathway for DATCP to pursue in the event that an alleged violation has occurred. How would DATCP determine if this had been violated? If this is anticipated to be a private matter, it would be helpful to make that explicit since it is under DATCP's general authority in s. 94.55. *remediation court*

✓ Section 34: Standards; adulterated food SEC. 41 in /PS
DATCP's Food Safety Division sees possible conflicts in definitions. The bill defines hemp to include CBD but not to include a prescription drug product that has been approved by the FDA. Yet FDA is regarding all CBD products as drugs, albeit only Epidolex has been specifically approved so far.

This section perpetuates an enforcement problem that will exist as long as FDA regulates CBD differently than WI does. If we find a food processing plant importing CBD-containing ingredients or foods from another state, or if we find a food processing plant selling CBD-containing foods out of state, we have food/ingredients that are violating FDA standards for adulteration but not ours. The enforcement problem would be 1) State Inspectors having to take a different stance when doing an FDA contract food processing plant inspection (compared to a state inspection), and 2) having to determine whether a food processing plant, retail food establishment, or dairy plant is only selling their CBD-containing foods intra state - this is an additional level of recordkeeping for these entities as well as an additional level of record review for food safety inspection staff.

Intended Harvest Date Scenarios

