



Appendix A ... segment IV

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 -
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 Request Made By: MCP

 Date: 04/01/2019



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1400/P6
MCP/EAW/ZDW:amn

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

1 961.14 (4) (t) 3., 961.32 (3) (b) 4m., 961.32 (3) (b) 4r. and 961.32 (3) (cm) of the
2 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 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, unless the person holds a valid license under any state's hemp pilot program on 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:

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. 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. 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 the detectable amount is the result of having lawfully ingested or used hemp or a hemp product or engaging in lawful activities relating to hemp.

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
3 20.115 Agriculture, trade and consumer			
4 protection, department of			
5 (7) AGRICULTURAL RESOURCE MANAGEMENT			
6 (f) Hemp	GPR	A	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.

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

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

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

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

6 23.33 (4c) (a) 5. b. 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 lawfully ingested or used
10 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
11 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
12 attributable to those activities.

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

14 23.33 (4c) (b) 4. c. In an action under subd. 2m. 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 lawfully ingested or used
18 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
19 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
20 attributable to those activities.

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

22 23.335 (12) (a) 6. In an action under subd. 2m. 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 lawfully ingested or used

1 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
2 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
3 attributable to those activities.

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

5 23.335 (12) (b) 6. 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 lawfully ingested or used
9 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
10 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
11 attributable to those activities.

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

13 **SECTION 10.** 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 lawfully ingested or used
18 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
19 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
20 attributable to those activities.

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

22 30.681 (2) (d) 1. c. In an action under par. (b) 1m. 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 lawfully ingested or used

1 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
2 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
3 attributable to those activities.

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

5 **94.55 (title) Hemp.**

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

7 94.55 (1) DEFINITION. In this section, "industrial hemp" means the plant
8 Cannabis sativa, ~~or L. and~~ any part of the ~~that~~ plant, including the seeds, having
9 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
10 isomers, whether growing or not, with a delta-9-tetrahydrocannabinol
11 concentration of ~~no~~ not more than 0.3 percent on a dry weight basis or the maximum
12 concentration allowed under federal law up to 1 percent, whichever is greater.
13 "Industrial hemp" includes a substance, material, or product only if it is designated
14 as a controlled substance under the federal Controlled Substances Act under 21 USC
15 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both, as tested
16 using post-decarboxylation or other similarly reliable methods. "Hemp" does not
17 include a prescription drug product that has been approved by the U.S. food and drug
18 administration.

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

20 94.55 (2) (title) REGULATION OF INDUSTRIAL HEMP.

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

22 94.55 (2) (a) Subject to the provisions under this subsection ~~section~~, a person
23 may plant, grow, cultivate, harvest, produce, sample, test, process, transport,
24 transfer, take possession of, sell, import, and export industrial hemp in this state to
25 the greatest extent allowed under federal law.

SECTION 16

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

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

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

17 94.55 (2) (b) 2. Except as provided under ~~subds. 3. to 6. and subs. (3) and (4)~~
18 this section, rules promulgated under this ~~paragraph~~ section shall regulate the
19 activities described in par. (a) only to the extent required under federal law, and in
20 a manner that allows the people of this state to have the greatest possible
21 opportunity to engage in those activities.

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

23 94.55 (2) (b) 2m. The department may establish all of the following:

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

4 b. A procedure for testing, using post-decarboxylation or other similarly
5 reliable methods, delta-9-tetrahydrocannabinol concentration levels of hemp.

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

8 d. A procedure to comply with the enforcement provisions under subs. (2g) and
9 (2m).

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

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

14 94.55 (2) (b) 3. The department shall promulgate rules, as the department
15 determines to be necessary, to ensure the quality of industrial hemp ~~grown or~~
16 ~~processed produced~~ in this state, the security of activities related to industrial hemp,
17 and the safety of products produced from industrial hemp, including any necessary
18 testing; to ensure that the state's hemp program complies with federal law and to
19 obtain and maintain any required federal approval of the state's hemp program; to
20 verify adherence to laws and rules governing activities related to industrial hemp;
21 and to enforce violations of those laws and rules.

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

23 94.55 (2) (b) 4. The department shall require the payment of an initial fee from
24 any person who ~~plants, grows, or cultivates industrial~~ produces hemp in this state
25 equal to the greater of \$150 or \$5 multiplied by the number of acres on which the

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

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

9 94.55 (2) (b) 4g. Within 6 months after the effective date of this subdivision
10 [LRB inserts date], the department shall set criteria for approving persons to
11 undertake any sampling and testing required by the department by rule. The
12 department shall approve persons that meet the criteria to the extent allowed under
13 federal law.

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

15 94.55 (2) (b) 4m. When sampling and testing a crop of hemp, the department
16 is not required to sample and test every growing location or every strain. The
17 department may not require the sampling and testing of hemp seedlings or clones
18 that are intended to be planted and that originated from hemp seed certified under
19 par. (c) or from hemp seed or clones approved for growing under par. (f).

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

21 94.55 (2) (b) 4s. Following any required sampling and testing, or if the
22 department determines that sampling and testing are not required, the department
23 shall issue a certificate that states that the hemp has been tested or is not required
24 to be tested for delta-9-tetrahydrocannabinol concentration and is in compliance
25 with this section and rules promulgated under this section.

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

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

7 a. Information relating to the locations of ~~industrial hemp fields and processing~~
8 locations production locations.

9 b. Personally identifiable information relating to a person who is lawfully
10 engaging in activities related to industrial hemp, unless the person elects, during the
11 application and licensing or renewal process, for the department to release any or all
12 of the person's personally identifiable information.

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

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

18 **SECTION 25.** 94.55 (2) (c) of the statutes is amended to read:

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

1 of industrial hemp. The department shall promulgate rules for the administration
2 of any certification program established and administered by the department under
3 this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 94.55 (2m) GREATER VIOLATIONS. If the department determines that a hemp
9 producer has violated this section or rules promulgated under this section with a
10 culpable mental state greater than negligence, the department shall immediately
11 report the hemp producer to the U.S. attorney general and the department of justice.

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

13 94.55 (2p) FELONY CONVICTIONS. No person may produce hemp in this state for
14 10 years following any felony conviction relating to a controlled substance under
15 state or federal law unless the person holds a valid license, registration, or other
16 authorization to produce hemp under a pilot program of any state authorized by
17 section 7606 of the federal agricultural act of 2014 on the effective date of this
18 subsection [LRB inserts date].

19 **SECTION 31.** 94.55 (2r) of the statutes is created to read:

20 94.55 (2r) FALSE STATEMENT. Any person who materially falsifies any
21 information contained in an application to participate in the hemp program
22 established under this section is ineligible to participate in the program.

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

1 **94.55 (2t) ACCESS TO CANNABIDIOL PRODUCTS.** Nothing in this section or rules
2 promulgated under this section shall be construed as limiting a person's access to
3 cannabidiol products under s. 961.32 (2m) (b).

4 **SECTION 33.** 94.55 (3) of the statutes, as affected by 2019 Wisconsin Act (this
5 act), is repealed.

6 **SECTION 34.** 94.55 (3) (c) of the statutes is repealed.

7 **SECTION 35.** 94.55 (3m) of the statutes is created to read:

8 **94.55 (3m) TRUTH IN LABELING.** (a) No person may do any of the following:

- 9 1. Mislabel hemp or a hemp product.
- 10 2. Knowingly make an inaccurate claim about the content,
11 delta-9-tetrahydrocannabinol concentration, quality, or origin of hemp or a hemp
12 product in the course of transferring or selling the hemp or hemp product.
- 13 3. Knowingly sell at retail mislabelled hemp or hemp products.

14 (b) The department shall investigate violations of par. (a). The department, or
15 any district attorney or the department of justice upon the request of the department,
16 may on behalf of the state do any of the following:

- 17 1. Bring an action for temporary or permanent injunctive relief in any court of
18 competent jurisdiction for any violation of par. (a).
- 19 2. Bring an action in any court of competent jurisdiction for the recovery of a
20 civil forfeiture against any person who violates par. (a) in an amount not more than
21 \$1,000 for each violation.

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

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

2 **94.55 (3r) PRIVATE CAUSE OF ACTION FOR GROWERS.** Any contract to purchase
3 hemp from a hemp grower in this state shall provide that payment will be made to
4 the grower within 7 days of taking possession of the hemp, unless the grower
5 voluntarily and knowingly agrees to a different method of payment. In addition to
6 any other remedies provided by law, any person suffering a pecuniary loss because
7 of a violation of this subsection may bring a civil action to recover damages together
8 with costs and disbursements, including reasonable attorney fees, and for equitable
9 relief as determined by the court.

10 **SECTION 37.** 94.67 (2) of the statutes is amended to read:

11 **94.67 (2) "Agricultural commodity"** means any plant or part of a plant, animal
12 or animal product produced by a person primarily for sale, consumption,
13 propagation, or other use by humans or animals. "Agricultural commodity" includes
14 industrial hemp.

15 **SECTION 38.** 94.67 (15c) of the statutes is created to read:

16 **94.67 (15c) "Hemp"** has the meaning given in s. 94.55 (1).

17 **SECTION 39.** 94.67 (15r) of the statutes is repealed.

18 **SECTION 40.** 97.02 of the statutes is amended to read:

19 **97.02 Standards; adulterated food.** For the purposes of this chapter, a food
20 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
21 department may not consider a food to be adulterated solely because it contains
22 industrial hemp, as defined in s. 94.67 (15r) (15c), or an industrial a hemp product.

23 **SECTION 41.** 182.001 (3) of the statutes is amended to read:

24 **182.001 (3) PROHIBITED ACTIVITIES.** Those farming operations prohibited under
25 this section are the production of dairy products not including the processing of such

1 dairy products; the production of cattle, hogs and sheep; and the production of wheat,
2 field corn, barley, oats, rye, hay, pasture, soybeans, millet and, sorghum, and hemp.

3 SECTION 42. 343.305 (8) (b) 2. h. of the statutes is created to read:

4 343.305 (8) (b) 2. h. Whether the person had lawfully ingested or used hemp,
5 as defined in s. 94.55 (1), or had previously been lawfully engaged in activities
6 relating to hemp, in a case in which subd. 4m. a. and b. apply, and the presence of
7 delta-9-tetrahydrocannabinol in his or her blood is attributable to those activities.

8 SECTION 43. 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 lawfully
13 ingested or used hemp, as defined in s. 94.55 (1), or had previously been lawfully
14 engaged in activities relating to hemp, and the presence of
15 delta-9-tetrahydrocannabinol in his or her blood is attributable to those activities:

16 SECTION 44. 343.305 (8) (b) 5. c. of the statutes is amended to read:

17 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
18 a valid prescription for methamphetamine or one of its metabolic precursors,
19 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol, or had lawfully
20 ingested or used hemp, as defined in s. 94.55 (1), or had previously been lawfully
21 engaged in activities relating to hemp, and the presence of
22 delta-9-tetrahydrocannabinol in his or her blood is attributable to those activities.

23 SECTION 45. 343.305 (8) (b) 6. c. of the statutes is amended to read:

24 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
25 not have a valid prescription for methamphetamine or one of its metabolic

1 precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol, and
2 had not lawfully ingested or used hemp, as defined in s. 94.55 (1), or previously been
3 lawfully engaged in activities relating to hemp, and the presence of
4 delta-9-tetrahydrocannabinol in his or her blood is attributable to those activities.

5 **SECTION 46.** 346.63 (1) (e) of the statutes is created to read:

6 346.63 (1) (e) In an action under par. (am) 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 lawfully ingested or used
10 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
11 to hemp and the presence of delta-9-tetrahydrocannabinol in his or her blood is
12 attributable to those activities.

13 **SECTION 47.** 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 lawfully ingested or used
18 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
19 to hemp and the presence of delta-9-tetrahydrocannabinol in his or her blood is
20 attributable to those activities.

21 **SECTION 48.** 348.27 (18) (a) 1. f. of the statutes is amended to read:

22 348.27 (18) (a) 1. f. ~~Industrial hemp~~ Hemp, as defined in s. 94.67 (15r) (15c).

23 **SECTION 49.** 350.101 (1) (e) of the statutes is renumbered 350.101 (1) (e) 1.

24 **SECTION 50.** 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 lawfully ingested or used
5 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
6 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
7 attributable to those activities.

8 **SECTION 51.** 350.101 (2) (d) 3. of the statutes is created to read:

9 350.101 (2) (d) 3. In an action under par. (bm) that is based on the defendant
10 allegedly having a detectable amount of delta-9-tetrahydrocannabinol in his or her
11 blood, the defendant has a defense if he or she proves by a preponderance of the
12 evidence that prior to the incident or occurrence he or she lawfully ingested or used
13 hemp, as defined in s. 94.55 (1), or had been lawfully engaged in activities relating
14 to hemp, and the presence of delta-9-tetrahydrocannabinol in his or her blood is
15 attributable to those activities.

16 **SECTION 52.** 940.09 (2) (c) of the statutes is created to read:

17 940.09 (2) (c) In an action under par. (b) that is based on the defendant allegedly
18 having a detectable amount of delta-9-tetrahydrocannabinol in his or her blood, the
19 defendant has a defense if he or she proves by a preponderance of the evidence that
20 prior to the incident or occurrence he or she lawfully ingested or used hemp, as
21 defined in s. 94.55 (1), or had been lawfully engaged in activities relating to hemp,
22 and the presence of delta-9-tetrahydrocannabinol in his or her blood is attributable
23 to those activities.

24 **SECTION 53.** 940.25 (2) (c) of the statutes is created to read:

1 940.25 (2) (c) In an action under par. (b) that is based on the defendant allegedly
2 having a detectable amount of delta-9-tetrahydrocannabinol in his or her blood, the
3 defendant has a defense if he or she proves by a preponderance of the evidence that
4 prior to the incident or occurrence he or she lawfully ingested or used hemp, as
5 defined in s. 94.55 (1), or had been lawfully engaged in activities relating to hemp,
6 and the presence of delta-9-tetrahydrocannabinol in his or her blood is attributable
7 to those activities.

8 **SECTION 54.** 961.01 (3r) of the statutes is created to read:

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

12 **SECTION 55.** 961.01 (14) of the statutes is amended to read:

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

23 **SECTION 56.** 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 57.** 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 58.** 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 59.** 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 60.** 961.32 (3) (b) (intro.) of the statutes is amended to read:

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

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

3 SECTION 61. 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 62. 961.32 (3) (b) 2. of the statutes is repealed.

11 SECTION 63. 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 64. 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) (e) 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 65.** 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 66.** 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 67.** 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 68.** 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

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

8 **SECTION 69.** 961.32 (3) (cm) of the statutes is created to read:

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

13 **SECTION 70.** 961.32 (3) (d) of the statutes is amended to read:

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

17 **SECTION 71.** 961.34 (2) (a) of the statutes is amended to read:

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

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

SECTION 72

1 961.34 (2) (b) If cannabidiol is products other than hemp are removed from the
2 list of controlled substances, or if cannabidiol is products are determined not to be
3 ~~a controlled substance~~ substances, under schedule I of 21 USC 812 (c), the controlled
4 substances board shall approve which pharmacies and physicians may dispense
5 cannabidiol products to patients as treatment for a ~~seizure disorder~~ medical
6 condition.

7 **SECTION 73.** 961.38 (1n) (a) of the statutes is amended to read:

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

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

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

16 **SECTION 75.** 961.442 (intro.) of the statutes is amended to read:

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

23 **SECTION 76.** 961.55 (9) of the statutes is amended to read:

24 961.55 (9) If a crop intended to be ~~industrial~~ hemp, as defined in s. 94.55 (1),
25 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of

1 delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 0.7 percent
2 above the permissible limit for industrial hemp on a dry weight basis, as tested using
3 post-decarboxylation or other similarly reliable methods, the entire crop on the field
4 at the growing location where the plant was found shall be seized and destroyed.
5 Before a crop is seized and destroyed under this subsection, the agency whose officers
6 or employees intend to seize and destroy the crop shall provide, to the person licensed
7 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written
8 documentation verifying the test results for the crop that is subject to seizure and
9 destruction.

10 **SECTION 77. Nonstatutory provisions.**

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

24 (2) NOTIFICATION. The department of agriculture, trade and consumer
25 protection shall notify the legislative reference bureau when the secretary of the U.S.

1 department of agriculture establishes a plan under section 297C of the Agricultural
2 Marketing Act of 1946. The legislative reference bureau shall publish a notice in the
3 Wisconsin Administrative Register that specifies the date on which s. 94.55 (3) is
4 repealed, as determined under SECTION 79 (1) of this act.

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

9 **SECTION 78. Fiscal changes.**

10 (1) PURCHASE OF MACHINERY. In the schedule under s. 20.005 (3) for the
11 appropriation to the department of agriculture, trade and consumer protection
12 under s. 20.115 (7) (a), the dollar amount for fiscal year 2018-19 is increased by
13 \$300,000 for the purchase or acquisition of machinery and other assets for the hemp
14 program under s. 94.55.

15 **SECTION 79. Effective dates.** This act takes effect on the day after publication,
16 except as follows:

17 (1) The repeal of s. 94.55 (3) (by SECTION 33) takes effect one year after the date
18 on which the secretary of the U.S. department of agriculture establishes a plan under
19 section 297C of the Agricultural Marketing Act of 1946.

20 (END)