



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4794/1
CMH:wlj

2015 SENATE BILL 789

March 10, 2016 – Introduced by Senators ERPENBACH and L. TAYLOR, cosponsored by Representatives C. TAYLOR, BARNES, SHANKLAND, JOHNSON, GENRICH, SARGENT, HEBL, KAHL, WACHS, SUBECK, OHNSTAD, BERCEAU and CONSIDINE. Referred to Committee on Health and Human Services.

1 **AN ACT** *to renumber* subchapter IV of chapter 50 [precedes 50.90]; *to renumber*
2 *and amend* 961.55 (8), 968.19 and 968.20 (1); *to amend* 20.435 (6) (jm), 50.56
3 (3), 59.54 (25) (a) (intro.), 59.54 (25m), 66.0107 (1) (bm), 66.0107 (1) (bp),
4 66.1201 (2m), 66.1213 (3), 66.1301 (2m), 66.1331 (2m), 66.1333 (3) (e) 2., 106.50
5 (1m) (h), 146.40 (1) (bo), 146.81 (1) (L), 146.997 (1) (d) 18., 173.12 (1m), 234.29,
6 289.33 (3) (d), 349.02 (2) (b) 4., 767.41 (5) (am) (intro.), 767.451 (5m) (a) (intro.),
7 961.555 (2) (a), 961.56 (1) and 968.20 (3) (a) and (b); and *to create* 20.435 (1)
8 (gq), 20.435 (1) (jm), subchapter V of chapter 50 [precedes 50.60], 59.54 (25) (c),
9 66.0408, 146.44, 767.41 (5) (d), 767.451 (5m) (d), 961.01 (3), 961.01 (5m), 961.01
10 (11v), 961.01 (12v), 961.01 (14c), 961.01 (14g), 961.01 (17k), 961.01 (19m),
11 961.01 (20hm), 961.01 (20ht), 961.01 (20t), 961.01 (21f), 961.01 (21t), 961.436,
12 961.55 (8) (b), 961.55 (8) (c), 961.55 (8) (d), 961.555 (2) (e), 961.555 (2m),
13 961.5755, 968.072, 968.12 (5), 968.19 (2), 968.20 (1d) and 968.20 (1j) of the
14 statutes; **relating to:** medical use of marijuana, the regulation of marijuana

SENATE BILL 789

1 distribution entities, requiring the exercise of rule-making authority, making
2 appropriations, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. This bill creates a medical use defense to marijuana-related prosecutions and forfeiture actions for, and prohibits the arrest or prosecution of, persons who are registered with the Department of Health Services (DHS) and have certain debilitating medical conditions or treatments. The defense and prohibition apply also to primary caregivers of such persons only if it is not practicable for the person to acquire, possess, cultivate, or transport marijuana independently or the person is under the age of 18. The defense and prohibition do not apply under certain circumstances, including the following: 1) if the person does not have a valid registry identification card or equivalent; 2) if the amount of marijuana involved in the offense is more than the maximum authorized amount of marijuana (12 marijuana plants and three ounces of marijuana leaves or flowers); 3) if, while under the influence of marijuana, the person drives or operates a motor vehicle or operates heavy machinery or engages in any other conduct that endangers the health or well being of another person; and 4) if the person smokes marijuana at certain places, including on a school bus or on public transit, at his or her place of employment, or on school premises.

The bill requires DHS to establish a registry for persons who use marijuana for medical use. Under the bill, a person may apply for a registry identification card by submitting to DHS a signed application, a written certification, and a registration fee of not more than \$150. DHS must verify the information and, unless in the previous ten years the person was serving a sentence or on probation for certain felony convictions, issue the person a registry identification card. A registry identification card is generally valid for two years and may be renewed. DHS may not disclose that it has issued to a person a registry identification card, or information from an application for one, except to the Department of Justice to determine if the applicant's criminal history makes him or her ineligible for a card or to a law enforcement agency for the purpose of verifying that a person possesses a valid registry identification card. This bill also requires DHS to promulgate a rule ensuring that certain out-of-state registry identification cards are valid in Wisconsin.

The bill requires DHS to license and regulate dispensaries to distribute or deliver marijuana or drug paraphernalia or to possess or manufacture marijuana or drug paraphernalia with the intent to deliver or distribute to facilitate the medical use of marijuana. This bill prohibits dispensaries from being located within 500 feet of a school, prohibits a dispensary from distributing to a person more than a

SENATE BILL 789

maximum authorized amount of marijuana, and prohibits a dispensary from possessing a quantity that exceeds, by an amount determined by DHS, the total maximum authorized amount of marijuana of all of the persons it serves. An applicant for a license must pay an initial application fee of \$250, and a dispensary must pay an annual fee of \$5,000.

This bill requires DHS to promulgate rules to allow entities to grow marijuana and distribute marijuana to dispensaries. This bill also requires DHS to register entities as tetrahydrocannabinols–testing laboratories. The laboratories must test marijuana for contaminants; research findings on the use of medical marijuana; and provide training on safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana, security and inventory accountability, and recent research on medical marijuana.

This bill also prohibits a village, town, city, or county from prohibiting a person who is allowed to cultivate marijuana under this bill from cultivating the marijuana outdoors.

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

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

1 **SECTION 1.** 20.435 (1) (gq) of the statutes is created to read:

2 20.435 (1) (gq) *Medical marijuana registry.* All moneys received as fees under
3 s. 146.44 (2) (a) 4., for the purposes of the Medical Marijuana Registry Program under
4 s. 146.44.

5 **SECTION 2.** 20.435 (1) (jm) of the statutes is created to read:

6 20.435 (1) (jm) *Licensing and support services for dispensaries.* All moneys
7 received under s. 50.64 to license and regulate dispensaries, and to register
8 laboratories, under subch. V of ch. 50.

9 **SECTION 3.** 20.435 (6) (jm) of the statutes is amended to read:

SENATE BILL 789**SECTION 3**

1 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
2 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a), (am), (b), and (bm),
3 and (5) (a), 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and
4 (5), 50.13, 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and
5 146.40 (4r) (b) and (er), and subch. IV VI of ch. 50 and to conduct health facilities plan
6 and rule development activities, for accrediting nursing homes, convalescent homes,
7 and homes for the aged, to conduct capital construction and remodeling plan reviews
8 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or
9 certifying, and approving facilities, issuing permits, and providing technical
10 assistance, that are not specified under any other paragraph in this subsection. All
11 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
12 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c), and
13 50.981, all moneys received from fees for the costs of inspecting, licensing or
14 certifying, and approving facilities, issuing permits, and providing technical
15 assistance, that are not specified under any other paragraph in this subsection, and
16 all moneys received under s. 50.135 (2) shall be credited to this appropriation
17 account.

18 **SECTION 4.** 50.56 (3) of the statutes is amended to read:

19 50.56 (3) Notwithstanding sub. (2), insofar as a conflict exists between this
20 subchapter, or the rules promulgated under this subchapter, and subch. I, II or IV
21 VI, or the rules promulgated under subch. I, II or IV VI, the provisions of this
22 subchapter and the rules promulgated under this subchapter control.

23 **SECTION 5.** Subchapter V of chapter 50 [precedes 50.60] of the statutes is
24 created to read:

25

CHAPTER 50

SENATE BILL 789

SUBCHAPTER V

DISTRIBUTION AND TESTING CENTERS

50.60 Definitions. In this subchapter:

(1) “Dispensary” means an entity licensed under s. 50.62 that cultivates, acquires, manufactures, possesses, delivers, transfers, transports, sells, or dispenses marijuana, paraphernalia, or related supplies and educational materials to treatment teams and other dispensaries.

(2) “Maximum authorized amount” has the meaning given in s. 961.01 (14c).

(3) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01 (14g).

(4) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

(5) “Registry identification card” has the meaning given in s. 146.44 (1) (g).

(6) “Treatment team” has the meaning given in s. 961.01 (20t).

(7) “Usable marijuana” has the meaning given in s. 961.01 (21f).

(8) “Written certification” has the meaning given in s. 961.01 (21t).

50.61 Departmental powers and duties. (1) The department shall provide licensing, regulation, record keeping, and security for dispensaries.

(2) The department shall promulgate rules allowing entities to grow marijuana and distribute marijuana to dispensaries, developing security guidelines for the entities, and regulating such entities. The rules may not include limits on the amount of marijuana the entities grow for, and sell to, dispensaries.

50.62 Licensing. The department shall issue licenses to operate as a dispensary and shall decide which and how many applicants for a license receive a license based on all of the following:

(1) Convenience to treatment teams and the preferences of treatment teams.

SENATE BILL 789**SECTION 5**

1 (2) The ability of an applicant to provide to treatment teams a sufficient
2 amount of medical marijuana for the medical use of tetrahydrocannabinols.

3 (3) The experience the applicant has running a nonprofit organization or a
4 business.

5 (4) The preferences of the governing bodies with jurisdiction over the area in
6 which the applicants are located.

7 (5) The ability of the applicant to keep records confidential and maintain a safe
8 and secure facility.

9 (6) The ability of the applicant to abide by the prohibitions under s. 50.63.

10 **50.63 Prohibitions.** The department may not issue a license to, and must
11 revoke a license of, any entity to which any of the following applies:

12 (1) The entity is located within 500 feet of a public or private elementary or
13 secondary school, including a charter school.

14 (2) The dispensary distributes to a treatment team a number of plants or an
15 amount of ounces of usable marijuana that, in the period of distribution, results in
16 the treatment team possessing more than the maximum authorized amount.

17 (3) The dispensary possesses a number of plants or an amount of ounces of
18 usable marijuana that exceeds the combined maximum authorized amount for all of
19 the treatment teams that use the dispensary by a number or an amount determined
20 by the department by rule to be unacceptable.

21 **50.64 Licensing procedure.** (1) An application for a license shall be in
22 writing on a form provided by the department and include the licensing application
23 fee under sub. (2) (a).

24 (2) (a) A licensing application fee is \$250.

25 (b) The annual fee for a dispensary is \$5,000.

SENATE BILL 789

1 **(3)** A dispensary license is valid unless revoked. Each license shall be issued
2 only for the applicant named in the application and may not be transferred or
3 assigned.

4 **50.65 Distribution of medical marijuana.** **(1)** A dispensary may deliver
5 or distribute tetrahydrocannabinols or drug paraphernalia to a member of a
6 treatment team if the dispensary receives a copy of the qualifying patient’s written
7 certification or registry identification card.

8 **(2)** A dispensary may possess or manufacture tetrahydrocannabinols or drug
9 paraphernalia with the intent to deliver or distribute under sub. (1).

10 **(2m)** An entity operating under rules promulgated under s. 50.61 (2) may
11 possess tetrahydrocannabinols, possess or manufacture tetrahydrocannabinols with
12 the intent to deliver or distribute to a dispensary, or deliver or distribute marijuana
13 to a dispensary.

14 **(3)** A dispensary may have 2 locations, one for cultivation and one for
15 distribution.

16 **(4)** A dispensary shall have all tetrahydrocannabinols tested for mold, fungus,
17 pesticides, and other contaminants and may not distribute tetrahydrocannabinols
18 that test positive for mold, fungus, pesticides, or other contaminants if the
19 contaminants, or level of contaminants, are identified by the testing laboratories
20 under s. 50.66 (2) to be potentially unsafe to a qualifying patient’s health.

21 **(5)** A dispensary or an entity operating under rules promulgated under s. 50.61
22 (2) may cultivate marijuana, including cultivating marijuana outdoors.

23 **50.66 Testing laboratories.** The department shall register entities as
24 tetrahydrocannabinols-testing laboratories. The laboratories may possess or

SENATE BILL 789**SECTION 5**

1 manufacture tetrahydrocannabinols or drug paraphernalia and shall perform the
2 following services:

3 (1) Test marijuana produced for the medical use of tetrahydrocannabinols for
4 potency and for mold, fungus, pesticides, and other contaminants.

5 (2) Research findings related to the medical use of tetrahydrocannabinols,
6 including research that identifies potentially unsafe levels of contaminants.

7 (3) Provide training to persons who hold registry identification cards,
8 treatment teams, persons employed by dispensaries, and entities that grow and
9 distribute marijuana, as provided by rules promulgated under s. 50.61 (2), on the
10 following:

11 (a) The safe and efficient cultivation, harvesting, packaging, labeling, and
12 distribution of marijuana for the medical use of tetrahydrocannabinols.

13 (b) Security and inventory accountability procedures.

14 (c) The most recent research on the medical use of tetrahydrocannabinols.

15 **SECTION 6.** Subchapter IV of chapter 50 [precedes 50.90] of the statutes is
16 renumbered subchapter VI of chapter 50.

17 **SECTION 7.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

18 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
19 the possession of marijuana, as defined in s. 961.01 (14), subject to par. (c) and the
20 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
21 ordinance; except that if. Any ordinance enacted under this paragraph shall provide
22 a person who is prosecuted under it with the defenses that the person has under s.
23 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint
24 is issued regarding an allegation of possession of more than 25 grams of marijuana,
25 or possession of any amount of marijuana following a conviction in this state for

SENATE BILL 789

1 possession of marijuana, the subject of the complaint may not be prosecuted under
2 this subsection for the same action that is the subject of the complaint unless all of
3 the following occur:

4 **SECTION 8.** 59.54 (25) (c) of the statutes is created to read:

5 59.54 (25) (c) A person may not be prosecuted under an ordinance enacted
6 under par. (a) if, under s. 968.072 (2) or (4) (b), the person would not be subject to
7 prosecution under s. 961.41 (3g) (e).

8 **SECTION 9.** 59.54 (25m) of the statutes is amended to read:

9 59.54 (25m) DRUG PARAPHERNALIA. The board may enact an ordinance to
10 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
11 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.
12 Any ordinance enacted under this subsection shall provide a person prosecuted
13 under it with the defenses that the person has under s. 961.5755 to prosecutions
14 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted
15 under an ordinance enacted under this subsection if, under s. 968.072 (3) or (4) (b),
16 the person would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or
17 961.575 (1). The board may enforce an ordinance enacted under this subsection in
18 any municipality within the county.

19 **SECTION 10.** 66.0107 (1) (bm) of the statutes is amended to read:

20 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
21 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)
22 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if.~~ Any
23 ordinance enacted under this paragraph shall provide a person who is prosecuted
24 under it with the defenses that the person has under s. 961.436 to prosecutions under
25 s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint is issued regarding an allegation

SENATE BILL 789**SECTION 10**

1 of possession of more than 25 grams of marijuana, or possession of any amount of
2 marijuana following a conviction in this state for possession of marijuana, the subject
3 of the complaint may not be prosecuted under this paragraph for the same action that
4 is the subject of the complaint unless the charges are dismissed or the district
5 attorney declines to prosecute the case.

6 **SECTION 11.** 66.0107 (1) (bp) of the statutes is amended to read:

7 66.0107 (1) (bp) Enact and enforce an ordinance to prohibit conduct that is the
8 same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or
9 (2) and provide a forfeiture for violation of the ordinance. Any ordinance enacted
10 under this paragraph shall provide a person prosecuted under it with the defenses
11 that the person has under s. 961.5755 to prosecutions under s. 961.573 (1), 961.574
12 (1), or 961.575 (1). A person may not be prosecuted under an ordinance enacted
13 under this paragraph if, under s. 968.072 (3) or (4) (b), the person would not be subject
14 to prosecution under s. 961.573 (1), 961.574 (1), or 961.575 (1).

15 **SECTION 12.** 66.0408 of the statutes is created to read:

16 **66.0408 Cultivation of tetrahydrocannabinols.** No village, town, city, or
17 county may enact or enforce an ordinance or a resolution that prohibits cultivating
18 tetrahydrocannabinols outdoors if the cultivation is by one of the following:

19 (1) A dispensary, as defined in s. 50.60 (1).

20 (2) A person who is cultivating tetrahydrocannabinols for the medical use of
21 tetrahydrocannabinols, as defined in s. 961.01 (14g), if the amount does not exceed
22 the maximum authorized amount, as defined in s. 961.01 (14c).

23 (3) An entity that is growing marijuana for distribution as permitted under
24 rules promulgated under s. 50.61 (2).

25 **SECTION 13.** 66.1201 (2m) of the statutes is amended to read:

SENATE BILL 789

1 66.1201 **(2m)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
2 facility, or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit,
3 facility, or privilege in any manner for any purpose nor be discriminated against
4 because of sex, race, color, creed, or sexual orientation; status as a victim of domestic
5 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
6 person holds, or has applied for, a registry identification card, as defined in s. 146.44
7 (1) (g), has been the subject of a written certification, as defined in s. 961.01 (21t), or
8 is or has been a member of a treatment team, as defined in s. 961.01 (20t); or national
9 origin.

10 **SECTION 14.** 66.1213 (3) of the statutes is amended to read:

11 66.1213 **(3)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
12 facility, or privilege under this section may not be denied the right, benefit, facility,
13 or privilege in any manner for any purpose nor be discriminated against because of
14 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
15 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
16 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
17 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or
18 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
19 origin.

20 **SECTION 15.** 66.1301 (2m) of the statutes is amended to read:

21 66.1301 **(2m)** DISCRIMINATION. Persons entitled to any right, benefit, facility,
22 or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility,
23 or privilege in any manner for any purpose nor be discriminated against because of
24 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
25 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person

SENATE BILL 789**SECTION 15**

1 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
2 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or
3 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
4 origin.

5 **SECTION 16.** 66.1331 (2m) of the statutes is amended to read:

6 66.1331 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
7 facility, or privilege under this section may not be denied the right, benefit, facility,
8 or privilege in any manner for any purpose nor be discriminated against because of
9 sex, race, color, creed, or sexual orientation;; status as a victim of domestic abuse,
10 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
11 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
12 has been the subject of a written certification, as defined in s. 961.01 (21t), or is or
13 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
14 origin.

15 **SECTION 17.** 66.1333 (3) (e) 2. of the statutes is amended to read:

16 66.1333 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility, or
17 privilege under this section may not be denied the right, benefit, facility, or privilege
18 in any manner for any purpose nor be discriminated against because of sex, race,
19 color, creed, or sexual orientation;; status as a victim of domestic abuse, sexual
20 assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person holds, or
21 has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been
22 the subject of a written certification, as defined in s. 961.01 (21t), or is or has been
23 a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

24 **SECTION 18.** 106.50 (1m) (h) of the statutes is amended to read:

SENATE BILL 789

1 106.50 (1m) (h) “Discriminate” means to segregate, separate, exclude, or treat
2 a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r)
3 because of sex, race, color, sexual orientation, disability, religion, national origin,
4 marital status, or family status; status as a victim of domestic abuse, sexual assault,
5 or stalking; whether the person holds, or has applied for, a registry identification
6 card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as
7 defined in s. 961.01 (21t), or is or has been a member of a treatment team, as defined
8 in s. 961.01 (20t); lawful source of income; age; or ancestry.

9 **SECTION 19.** 146.40 (1) (bo) of the statutes is amended to read:

10 146.40 (1) (bo) “Hospice” means a hospice that is licensed under subch. IV VI
11 of ch. 50.

12 **SECTION 20.** 146.44 of the statutes is created to read:

13 **146.44 Medical Marijuana Registry Program. (1) DEFINITIONS.** In this
14 section:

15 (a) “Applicant” means a person who is applying for a registry identification card
16 under sub. (2) (a).

17 (b) “Debilitating medical condition or treatment” has the meaning given in s.
18 961.01 (5m).

19 (c) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
20 (14g).

21 (cm) “Out-of-state registry identification card” means a document that is valid
22 under the rule promulgated under sub. (7) (f).

23 (d) “Primary caregiver” has the meaning given in s. 961.01 (19m).

24 (e) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

SENATE BILL 789**SECTION 20**

1 (f) “Registrant” means a person to whom a registry identification card is issued
2 under sub. (4).

3 (g) “Registry identification card” means a document issued by the department
4 under this section that identifies a person as a qualifying patient or primary
5 caregiver.

6 (h) “Written certification” has the meaning given in s. 961.01 (21t).

7 **(2) APPLICATION.** (a) An adult who is claiming to be a qualifying patient may
8 apply for a registry identification card by submitting to the department a signed
9 application form containing or accompanied by all of the following:

10 1. His or her name, address, and date of birth.

11 2. A written certification.

12 3. The name, address, and telephone number of the person’s current
13 practitioner, as listed in the written certification.

14 4. A registration fee in an amount determined by the department, but not to
15 exceed \$150.

16 5. Any information that the department determines is necessary for a
17 background check under par. (am).

18 (am) 1. In this paragraph:

19 a. “Background check” means a search of department of justice records to
20 determine whether an applicant for a registry identification card has been convicted
21 of a disqualifying offense.

22 b. “Disqualifying offense” means a violent crime under s. 165.84 (7) (ab) or a
23 violation of ch. 961, or a substantially similar violation of federal law, that is a felony.

SENATE BILL 789

1 2. The department shall convey the information provided by the applicant
2 under par. (a) to the department of justice, and the department of justice shall
3 perform a background check on the applicant.

4 3. If the department of justice determines that the applicant has been convicted
5 of a disqualifying offense, the department of health services shall deny the
6 application unless at least 10 years has passed since the completion of any sentence
7 imposed for any disqualifying offense, including any period of incarceration, parole,
8 and extended supervision, and any period of probation imposed for a disqualifying
9 offense.

10 (b) An adult registrant who is a qualifying patient or an applicant may jointly
11 apply with another adult to the department for a registry identification card for the
12 other adult, designating the other adult as a primary caregiver for the registrant or
13 applicant. Both persons who jointly apply for a registry identification card under this
14 paragraph shall sign the application form, which shall contain the name, address,
15 and date of birth of the individual applying to be registered as a primary caregiver.

16 (c) The department shall promulgate rules specifying how a parent, guardian,
17 or person having legal custody of a child may apply for a registry identification card
18 for himself or herself and for the child and the circumstances under which the
19 department may approve or deny the application.

20 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
21 contained in or accompanying an application submitted under sub. (2) and shall
22 approve or deny the application within 30 days after receiving it. The department
23 may deny an application submitted under sub. (2) only if one of the following applies:

24 (a) The required information has not been provided or if false information has
25 been provided.

SENATE BILL 789**SECTION 20**

1 (b) The department is required to deny the application under sub. (2) (am) 3.

2 (c) The department is required to deny the application under the rules
3 promulgated under sub. (2) (c).

4 (4) ISSUING A REGISTRY IDENTIFICATION CARD. The department shall issue to the
5 applicant a registry identification card within 5 days after approving an application
6 under sub. (3). Unless voided under sub. (5) (b) or (c) or revoked under rules
7 promulgated by the department under sub. (7) (d), a registry identification card shall
8 expire 2 years from the date of issuance. A registry identification card shall contain
9 all of the following:

10 (a) The name, address, and date of birth of all of the following:

- 11 1. The registrant.
12 2. Each primary caregiver, if the registrant is a qualifying patient.
13 3. The qualifying patient, if the registrant is a primary caregiver.

14 (b) The date of issuance and expiration date of the registry identification card.

15 (c) A photograph of the registrant.

16 (d) Other information the department may require by rule.

17 (5) ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
18 registrant shall notify the department of any change in the registrant's name and
19 address. An adult registrant who is a qualifying patient shall notify the department
20 of any change in his or her practitioner, of any significant improvement in his or her
21 health as it relates to his or her debilitating medical condition or treatment, and if
22 a registered primary caregiver no longer assists the registrant with the medical use
23 of tetrahydrocannabinols.

24 2. If a qualifying patient is a child, a primary caregiver for the child shall
25 provide the department with any information that the child, if he or she were an

SENATE BILL 789

1 adult, would have to provide under subd. 1. within 10 days after the date of the
2 change to which the information relates.

3 (b) If a registrant fails to notify the department within 10 days after any change
4 for which notification is required under par. (a) 1., his or her registry identification
5 card is void. If a registrant fails to comply with par. (a) 2., the registry identification
6 card for the qualifying patient to whom the information under par. (a) 2. relates is
7 void.

8 (c) If a qualifying patient's registry identification card becomes void under par.
9 (b), the registry identification card for each of the qualifying patient's primary
10 caregivers is void. The department shall send written notice of this fact to each such
11 primary caregiver.

12 **(6) RECORDS.** (a) The department shall maintain a list of all registrants.

13 (b) Notwithstanding s. 19.35 and except as provided in par. (c) and sub. (2) (am),
14 the department may not disclose information from an application submitted or a
15 registry identification card issued under this section.

16 (c) The department may disclose to state or local law enforcement agencies
17 information from an application submitted by, or from a registry identification card
18 issued to, a specific person under this section, for the purpose of verifying that the
19 person possesses a valid registry identification card.

20 **(7) RULES.** The department shall promulgate rules to implement this section,
21 including the rules required under sub. (2) (c) and rules doing all of the following:

22 (a) Creating forms for applications to be used under sub. (2).

23 (b) Specifying how the department will verify the truthfulness of information
24 submitted on an application under sub. (2).

SENATE BILL 789**SECTION 20**

1 (c) Specifying how and under what circumstances registry identification cards
2 may be renewed.

3 (d) Specifying how and under what changed circumstances a registry
4 identification card may be revoked.

5 (e) Specifying under what circumstances an applicant whose application is
6 denied may reapply.

7 (f) Ensuring that out-of-state registry identification cards are valid only if the
8 following apply:

9 1. The person holding the out-of-state registry identification card has been
10 diagnosed with a debilitating medical condition in the course of a bona fide
11 practitioner-patient relationship, as defined in s. 961.01 (3).

12 2. The out-of-state registry identification card allows for the medical use of
13 tetrahydrocannabinols by the person who holds it, is valid in the jurisdiction in which
14 it was provided, and the person who holds the card is a resident of that jurisdiction.

15 3. The person who holds the card has not been a resident of Wisconsin for a
16 period longer than a period the department determines would allow the person to
17 apply for a registry identification card in Wisconsin.

18 (g) Creating guidelines for issuing registry identification cards, and for
19 obtaining and distributing marijuana for the medical use of tetrahydrocannabinols,
20 to persons under the care of the department who have a debilitating medical
21 condition or treatment.

22 **SECTION 21.** 146.81 (1) (L) of the statutes is amended to read:

23 146.81 (1) (L) A hospice licensed under subch. IV VI of ch. 50.

24 **SECTION 22.** 146.997 (1) (d) 18. of the statutes is amended to read:

25 146.997 (1) (d) 18. A hospice licensed under subch. IV VI of ch. 50.

SENATE BILL 789

1 **SECTION 23.** 173.12 (1m) of the statutes is amended to read:

2 173.12 **(1m)** If an animal has been seized because it is alleged that the animal
3 has been used in or constitutes evidence of any crime specified in s. 951.08, the
4 animal may not be returned to the owner by an officer under s. 968.20 (2). In any
5 hearing under s. 968.20 ~~(1)~~ (1f), the court shall determine if the animal is needed as
6 evidence or there is reason to believe that the animal has participated in or been
7 trained for fighting. If the court makes such a finding, the animal shall be retained
8 in custody.

9 **SECTION 24.** 234.29 of the statutes is amended to read:

10 **234.29 Equality of occupancy and employment.** The authority shall
11 require that occupancy of housing projects assisted under this chapter be open to all
12 regardless of sex, race, religion, or sexual orientation,; status as a victim of domestic
13 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u);; whether the
14 person holds, or has applied for, a registry identification card, as defined in s. 146.44
15 (1) (g), has been the subject of a written certification, as defined in s. 961.01 (21t), or
16 is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,
17 and that contractors and subcontractors engaged in the construction of economic
18 development or housing projects, shall provide an equal opportunity for
19 employment, without discrimination as to sex, race, religion, sexual orientation, or
20 creed.

21 **SECTION 25.** 289.33 (3) (d) of the statutes is amended to read:

22 289.33 **(3)** (d) “Local approval” includes any requirement for a permit, license,
23 authorization, approval, variance or exception or any restriction, condition of
24 approval or other restriction, regulation, requirement or prohibition imposed by a
25 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by

SENATE BILL 789**SECTION 25**

1 a town, city, village, county or special purpose district, including without limitation
2 because of enumeration any ordinance, resolution or regulation adopted under s.
3 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2),
4 (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),
5 (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19),
6 (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10),
7 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3),
8 (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16),
9 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70
10 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8),
11 and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34,
12 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415,
13 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III
14 of ch. 91.

15 **SECTION 26.** 349.02 (2) (b) 4. of the statutes is amended to read:

16 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
17 66.0107 (1) (bm).

18 **SECTION 27.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

19 767.41 (5) (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining
20 legal custody and periods of physical placement, the court shall consider all facts
21 relevant to the best interest of the child. The court may not prefer one parent or
22 potential custodian over the other on the basis of the sex or race of the parent or
23 potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider
24 the following factors in making its determination:

25 **SECTION 28.** 767.41 (5) (d) of the statutes is created to read:

SENATE BILL 789

1 767.41 (5) (d) The court may not consider as a factor in determining the legal
2 custody of a child whether a parent or potential custodian holds, or has applied for,
3 a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject
4 of a written certification, as defined in s. 961.01 (21t), or is or has been a qualified
5 patient, as defined in s. 961.01 (20hm), or a primary caregiver, as defined in s. 961.01
6 (19m), unless the parent or potential custodian’s behavior creates an unreasonable
7 danger to the child that can be clearly articulated and substantiated.

8 **SECTION 29.** 767.451 (5m) (a) (intro.) of the statutes is amended to read:

9 767.451 (5m) (a) (intro.) Subject to pars. (b) ~~and~~, (c), and (d), in all actions to
10 modify legal custody or physical placement orders, the court shall consider the
11 factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its
12 determination in a manner consistent with s. 767.41.

13 **SECTION 30.** 767.451 (5m) (d) of the statutes is created to read:

14 767.451 (5m) (d) In an action to modify a legal custody order, the court may not
15 consider as a factor in making a determination whether a parent or potential
16 custodian holds, or has applied for, a registry identification card, as defined in s.
17 146.44 (1) (g), is or has been the subject of a written certification, as defined in s.
18 961.01 (21t), or is or has been a qualified patient, as defined in s. 961.01 (20hm), or
19 a primary caregiver, as defined in s. 961.01 (19m), unless the parent or potential
20 custodian’s behavior creates an unreasonable danger to the child that can be clearly
21 articulated and substantiated.

22 **SECTION 31.** 961.01 (3) of the statutes is created to read:

23 961.01 (3) “Bona fide practitioner–patient relationship” means a relationship
24 between the practitioner and the patient that includes all of the following:

SENATE BILL 789**SECTION 31**

1 (a) An assessment of the patient’s medical history and current medical
2 condition by the practitioner, including an in-person physical examination if
3 appropriate.

4 (b) A consultation between the practitioner and the patient with respect to the
5 patient’s debilitating medical condition or treatment.

6 (c) Availability by the practitioner to provide follow-up care and treatment to
7 the patient, including patient examinations.

8 **SECTION 32.** 961.01 (5m) of the statutes is created to read:

9 961.01 (5m) “Debilitating medical condition or treatment” means any of the
10 following:

11 (a) Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
12 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
13 Crohn’s disease, a hepatitis C virus infection, Alzheimer’s disease, amyotrophic
14 lateral sclerosis, nail patella syndrome, Ehlers–Danlos Syndrome, post-traumatic
15 stress disorder, or the treatment of these conditions.

16 (b) A chronic or debilitating disease or medical condition or the treatment of
17 such a disease or condition that causes cachexia, severe pain, severe nausea,
18 seizures, including those characteristic of epilepsy, or severe and persistent muscle
19 spasms, including those characteristic of multiple sclerosis.

20 (c) Any other medical condition or any other treatment for a medical condition
21 designated as a debilitating medical condition or treatment in rules promulgated by
22 the department of health services under s. 961.436 (5).

23 **SECTION 33.** 961.01 (11v) of the statutes is created to read:

24 961.01 (11v) “HIV” means any strain of human immunodeficiency virus, which
25 causes acquired immunodeficiency syndrome.

SENATE BILL 789

1 **SECTION 34.** 961.01 (12v) of the statutes is created to read:

2 961.01 (12v) “Lockable, enclosed facility” means an enclosed indoor or outdoor
3 area that is lockable, or may use a security device, to permit access only by a member
4 of a qualifying patient’s treatment team.

5 **SECTION 35.** 961.01 (14c) of the statutes is created to read:

6 961.01 (14c) “Maximum authorized amount” means 12 live marijuana plants
7 and 3 ounces of usable marijuana.

8 **SECTION 36.** 961.01 (14g) of the statutes is created to read:

9 961.01 (14g) “Medical use of tetrahydrocannabinols” means any of the
10 following:

11 (a) The use of tetrahydrocannabinols in any form by a qualifying patient to
12 alleviate the symptoms or effects of the qualifying patient’s debilitating medical
13 condition or treatment.

14 (b) The acquisition, possession, cultivation, or transportation of
15 tetrahydrocannabinols in any form by a qualifying patient if done to facilitate his or
16 her use of the tetrahydrocannabinols under par. (a).

17 (c) The acquisition, possession, cultivation, or transportation of
18 tetrahydrocannabinols in any form by a primary caregiver of a qualifying patient,
19 the transfer of tetrahydrocannabinols in any form between a qualifying patient and
20 his or her primary caregivers, or the transfer of tetrahydrocannabinols in any form
21 between persons who are primary caregivers for the same qualifying patient if all of
22 the following apply:

23 1. The acquisition, possession, cultivation, transportation, or transfer of the
24 tetrahydrocannabinols is done to facilitate the qualifying patient’s use of
25 tetrahydrocannabinols under par. (a) or (b).

SENATE BILL 789**SECTION 36**

1 2. It is not practicable for the qualifying patient to acquire, possess, cultivate,
2 or transport the tetrahydrocannabinols independently, or the qualifying patient is
3 under 18 years of age.

4 **SECTION 37.** 961.01 (17k) of the statutes is created to read:

5 961.01 (17k) “Out-of-state registry identification card” has the meaning given
6 in s. 146.44 (1) (cm).

7 **SECTION 38.** 961.01 (19m) of the statutes is created to read:

8 961.01 (19m) “Primary caregiver” means a person who is at least 21 years of
9 age, who would not be denied, under s. 146.44 (3), a registry identification card, and
10 who has agreed to help a qualifying patient in his or her medical use of
11 tetrahydrocannabinols.

12 **SECTION 39.** 961.01 (20hm) of the statutes is created to read:

13 961.01 (20hm) “Qualifying patient” means a person who has been diagnosed
14 in the course of a bona fide practitioner-patient relationship as having or undergoing
15 a debilitating medical condition or treatment but does not include a person under the
16 age of 18 years unless all of the following apply:

17 (a) The person’s practitioner has explained the potential risks and benefits of
18 the medical use of tetrahydrocannabinols to the person and to a parent, guardian,
19 or person having legal custody of the person.

20 (b) The parent, guardian, or person having legal custody provides the
21 practitioner a written statement consenting to do all of the following:

22 1. Allow the person’s medical use of tetrahydrocannabinols.

23 2. Serve as a primary caregiver for the person.

24 3. Manage the person’s medical use of tetrahydrocannabinols.

25 **SECTION 40.** 961.01 (20ht) of the statutes is created to read:

SENATE BILL 789

1 961.01 (20ht) “Registry identification card” has the meaning given in s. 146.44

2 (1) (g).

3 **SECTION 41.** 961.01 (20t) of the statutes is created to read:

4 961.01 (20t) “Treatment team” means a qualifying patient and his or her
5 primary caregivers.

6 **SECTION 42.** 961.01 (21f) of the statutes is created to read:

7 961.01 (21f) “Usable marijuana” means marijuana leaves or flowers but does
8 not include seeds, stalks, or roots or any ingredients combined with the leaves or
9 flowers.

10 **SECTION 43.** 961.01 (21t) of the statutes is created to read:

11 961.01 (21t) “Written certification” means a statement made by a person’s
12 practitioner if all of the following apply:

13 (a) The statement indicates that, in the practitioner’s professional opinion, the
14 person has or is undergoing a debilitating medical condition or treatment and the
15 potential benefits of the person’s use of tetrahydrocannabinols under sub. (14g) (a)
16 would likely outweigh the health risks for the person.

17 (b) The statement indicates that the opinion described in par. (a) was made in
18 the course of a bona fide practitioner–patient relationship.

19 (c) The statement is signed by the practitioner or is contained in the person’s
20 medical records.

21 **SECTION 44.** 961.436 of the statutes is created to read:

22 **961.436 Medical use defense in cases involving**
23 **tetrahydrocannabinols.** (1) A member of a qualifying patient’s treatment team
24 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or

SENATE BILL 789**SECTION 44**

1 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
2 apply:

3 (a) The manufacture or possession is a medical use of tetrahydrocannabinols
4 by the treatment team.

5 (b) The amount of tetrahydrocannabinols does not exceed the maximum
6 authorized amount.

7 (c) Any live marijuana plants are in a lockable, enclosed facility unless a
8 member of a qualifying patient's treatment team is accessing the plants or has the
9 plants in his or her possession.

10 (d) If the member is a primary caregiver, he or she is not a primary caregiver
11 to more than 5 qualifying patients.

12 (2) A member of a qualifying patient's treatment team has a defense to
13 prosecution under s. 961.41 (1) (h) or (1m) (h) for distributing or delivering, or
14 possessing with intent to distribute or deliver, tetrahydrocannabinols to another
15 member of the treatment team if all of the following apply:

16 (a) The distribution, delivery, or possession is a medical use of
17 tetrahydrocannabinols by the treatment team.

18 (b) The amount of tetrahydrocannabinols does not exceed the maximum
19 authorized amount.

20 (c) Any live marijuana plants are in a lockable, enclosed facility unless a
21 member of a qualifying patient's treatment team is accessing the plants or has the
22 plants in his or her possession.

23 (d) If the member is a primary caregiver, he or she is not a primary caregiver
24 to more than 5 qualifying patients.

SENATE BILL 789

1 **(3)** (a) Except as provided in par. (b), a member of a qualifying patient’s
2 treatment team has a defense to a prosecution under s. 961.41 (3g) (e) if all of the
3 following apply:

4 1. The possession or attempted possession is a medical use of
5 tetrahydrocannabinols by the treatment team.

6 2. The amount of tetrahydrocannabinols does not exceed the maximum
7 authorized amount.

8 3. Any live marijuana plants are in a lockable, enclosed facility unless a
9 member of a qualifying patient’s treatment team is accessing the plants or has the
10 plants in his or her possession.

11 4. If the member is a primary caregiver, he or she is not a primary caregiver
12 to more than 5 qualifying patients.

13 (b) A person may not assert the defense described in par. (a) if, while he or she
14 possesses or attempts to possess tetrahydrocannabinols, any of the following applies:

15 1. The person drives or operates a motor vehicle while under the influence of
16 tetrahydrocannabinols in violation of s. 346.63 (1) or a local ordinance in conformity
17 with s. 346.63 (1).

18 2. While under the influence of tetrahydrocannabinols, the person operates
19 heavy machinery or engages in any other conduct that endangers the health or
20 well-being of another person.

21 3. The person smokes marijuana in, on, or at any of the following places:

22 a. A school bus or a public transit vehicle.

23 b. The person’s place of employment.

24 c. Public or private school premises.

25 d. A juvenile correctional facility.

SENATE BILL 789**SECTION 44**

1 e. A jail or adult correctional facility.

2 f. A public park, beach, or recreation center.

3 g. A youth center.

4 (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
5 registry identification card, a valid out-of-state registry identification card, or a
6 written certification is presumptive evidence that the person identified on the card
7 as a qualifying patient or the subject of the written certification is a qualifying
8 patient and that, if the person uses tetrahydrocannabinols, he or she does so to
9 alleviate the symptoms or effects of his or her debilitating medical condition or
10 treatment.

11 (5) Notwithstanding s. 227.12 (1), any person may petition the department of
12 health services to promulgate a rule to designate a medical condition or treatment
13 as a debilitating medical condition or treatment. The department of health services
14 shall promulgate rules providing for public notice of and a public hearing regarding
15 any such petition, with the public hearing providing persons an opportunity to
16 comment upon the petition. After the hearing, but no later than 180 days after the
17 submission of the petition, the department of health services shall approve or deny
18 the petition. The department of health service's decision to approve or deny a
19 petition is subject to judicial review under s. 227.52.

20 **SECTION 45.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
21 amended to read:

22 961.55 (8) (intro.) The failure, upon demand by any officer or employee
23 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
24 premises upon which the species of plants are growing or being stored, to produce an
25 any of the following constitutes authority for the seizure and forfeiture of the plants:

SENATE BILL 789

1 (a) An appropriate federal registration, or proof that the person is the holder
2 thereof, ~~constitutes authority for the seizure and forfeiture of the plants.~~

3 **SECTION 46.** 961.55 (8) (b) of the statutes is created to read:

4 961.55 (8) (b) A valid registry identification card or a valid out-of-state
5 registry identification card.

6 **SECTION 47.** 961.55 (8) (c) of the statutes is created to read:

7 961.55 (8) (c) The person's written certification, if the person is a qualifying
8 patient.

9 **SECTION 48.** 961.55 (8) (d) of the statutes is created to read:

10 961.55 (8) (d) A written certification for a qualifying patient for whom the
11 person is a primary caregiver.

12 **SECTION 49.** 961.555 (2) (a) of the statutes is amended to read:

13 961.555 (2) (a) The Except as provided in par. (e), the district attorney of the
14 county within which the property was seized shall commence the forfeiture action
15 within 30 days after the seizure of the property, except that the defendant may
16 request that the forfeiture proceedings be adjourned until after adjudication of any
17 charge concerning a crime which was the basis for the seizure of the property. The
18 request shall be granted. The forfeiture action shall be commenced by filing a
19 summons, complaint and affidavit of the person who seized the property with the
20 clerk of circuit court, provided service of authenticated copies of those papers is made
21 in accordance with ch. 801 within 90 days after filing upon the person from whom
22 the property was seized and upon any person known to have a bona fide perfected
23 security interest in the property.

24 **SECTION 50.** 961.555 (2) (e) of the statutes is created to read:

SENATE BILL 789**SECTION 50**

1 961.555 (2) (e) The court shall adjourn forfeiture proceedings until after
2 adjudication of any charge concerning a crime that was the basis for the seizure of
3 the property if any of the following applies:

4 1. The defendant requests an adjournment.

5 2. The defendant invokes a defense to the crime under s. 961.436 or 961.5755.

6 **SECTION 51.** 961.555 (2m) of the statutes is created to read:

7 961.555 (2m) MEDICAL USE DEFENSE. (a) In an action to forfeit property seized
8 under s. 961.55, the person who was in possession of the property when it was seized
9 has a defense to the forfeiture of the property if any of the following applies:

10 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
11 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
12 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

13 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
14 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
15 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
16 (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 (b) The owner of property seized under s. 961.55 who is raising a defense under
18 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
19 (2) (b). If a property owner raises such a defense in his or her answer, the state must,
20 as part of the burden of proof specified in sub. (3), prove that the facts constituting
21 the defense do not exist.

22 **SECTION 52.** 961.56 (1) of the statutes is amended to read:

23 961.56 (1) It Except as provided in s. 961.555 (2m) (b) and except for any
24 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
25 state to negate any exemption or exception in this chapter in any complaint,

SENATE BILL 789

1 information, indictment or other pleading or in any trial, hearing or other proceeding
2 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
3 upon the person claiming it.

4 **SECTION 53.** 961.5755 of the statutes is created to read:

5 **961.5755 Medical use of marijuana defense in drug paraphernalia**
6 **cases.** (1) (a) Except as provided in par. (b), a member of a treatment team has a
7 defense to prosecution under s. 961.573 (1) if he or she uses, or possesses with the
8 primary intent to use, drug paraphernalia only for the medical use of
9 tetrahydrocannabinols by the treatment team.

10 (b) This subsection does not apply if while the person uses, or possesses with
11 the primary intent to use, drug paraphernalia s. 961.436 (3) (b) 1., 2., or 3. applies.

12 (2) A member of a treatment team has a defense to prosecution under s. 961.574
13 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
14 manufactures with intent to deliver to another member of his or her treatment team
15 drug paraphernalia, knowing that it will be primarily used for the medical use of
16 tetrahydrocannabinols by the treatment team.

17 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry
18 identification card, a valid out-of-state registry identification card, or a written
19 certification is presumptive evidence that the person identified on the valid registry
20 identification card or valid out-of-state registry identification card as a qualifying
21 patient or the subject of the written certification is a qualifying patient and that, if
22 the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms
23 or effects of his or her debilitating medical condition or treatment.

24 **SECTION 54.** 968.072 of the statutes is created to read:

SENATE BILL 789**SECTION 54****1 968.072 Medical use of marijuana; arrest and prosecution. (1)**

2 DEFINITIONS. In this section:

3 (a) “Lockable, enclosed facility” has the meaning given in s. 961.01 (12v).

4 (am) “Maximum authorized amount” has the meaning given in s. 961.01 (14c).

5 (b) “Medical use of tetrahydrocannabinols” has the meaning given in s. 961.01
6 (14g).

7 (bm) “Out-of-state registry identification card” has the meaning given in s.
8 146.44 (1) (cm).

9 (c) “Primary caregiver” has the meaning given in s. 961.01 (19m).

10 (d) “Qualifying patient” has the meaning given in s. 961.01 (20hm).

11 (e) “Registry identification card” has the meaning given in s. 146.44 (1) (g).

12 (f) “Treatment team” has the meaning given in s. 961.01 (20t).

13 (g) “Written certification” has the meaning given in s. 961.01 (21t).

14 **(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL USE OF MARIJUANA.** Unless
15 s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient’s treatment
16 team may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h),
17 or (3g) (e) if all of the following apply:

18 (a) The member manufactures, distributes, delivers, or possesses
19 tetrahydrocannabinols for the medical use of tetrahydrocannabinols by the
20 treatment team.

21 (b) The member possesses a valid registry identification card, a valid
22 out-of-state registry identification card, or a copy of the qualifying patient’s written
23 certification.

24 (c) The quantity of tetrahydrocannabinols does not exceed the maximum
25 authorized amount.

SENATE BILL 789

1 (d) Any live marijuana plants are in a lockable, enclosed facility unless the
2 member is accessing the plants or has the plants in his or her possession.

3 (e) If the member is a primary caregiver, he or she is not a primary caregiver
4 to more than 5 qualifying patients.

5 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
6 **USE OF MARIJUANA.** (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a
7 treatment team may not be arrested or prosecuted for a violation of s. 961.573 (1) if
8 all of the following apply:

9 1. The member uses, or possesses with the primary intent to use, drug
10 paraphernalia only for the medical use of tetrahydrocannabinols by the treatment
11 team.

12 2. The member possesses a valid registry identification card, a valid
13 out-of-state registry identification card, or a copy of the qualifying patient's written
14 certification.

15 3. The member does not possess more than the maximum authorized amount
16 of tetrahydrocannabinols.

17 4. Any live marijuana plants are in a lockable, enclosed facility unless the
18 member is accessing the plants or has the plants in his or her possession.

19 5. If the member is a primary caregiver, he or she is not a primary caregiver
20 to more than 5 qualifying patients.

21 (b) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a treatment team
22 may not be arrested or prosecuted for a violation of s. 961.574 (1) or 961.575 (1) if all
23 of the following apply:

24 1. The member delivers, possesses with intent to deliver, or manufactures with
25 intent to deliver to another member of his or her treatment team drug paraphernalia,

SENATE BILL 789**SECTION 54**

1 knowing that it will be primarily used for the medical use of tetrahydrocannabinols
2 by the treatment team.

3 2. The member possesses a valid registry identification card, a valid
4 out-of-state registry identification card, or a copy of the qualifying patient's written
5 certification.

6 3. The member does not possess more than the maximum authorized amount
7 of tetrahydrocannabinols.

8 4. Any live marijuana plants are in a lockable, enclosed facility unless the
9 member is accessing the plants or has the plants in his or her possession.

10 5. If the member is a primary caregiver, he or she is not a primary caregiver
11 to more than 5 qualifying patients.

12 (4) LIMITATIONS ON ARRESTS, PROSECUTION, AND OTHER SANCTIONS. (a) A
13 practitioner may not be arrested and a practitioner, hospital, or clinic may not be
14 subject to prosecution, denied any right or privilege, or penalized in any manner for
15 making or providing a written certification in good faith.

16 (b) An employee of a dispensary licensed under subch. V of ch. 50 or of an entity
17 operating under the rules promulgated under s. 50.61 (2) may not be arrested and
18 such employee may not be subject to prosecution, denied any right or privilege, or
19 penalized in any manner for any good faith action under subch. V of ch. 50.

20 (5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false
21 information to a law enforcement officer in an attempt to avoid arrest or prosecution
22 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
23 961.574 (1), or 961.575 (1) may be fined not more than \$500.

24 **SECTION 55.** 968.12 (5) of the statutes is created to read:

SENATE BILL 789

1 968.12 (5) **MEDICAL USE OF MARIJUANA.** A person’s possession, use, or submission
2 of or connection with an application for a registry identification card under s. 146.44
3 (2), the issuance of such a card under s. 146.44 (4), or a person’s possession of such
4 a card, a valid out-of-state registry identification card, as defined in s. 146.44 (1)
5 (cm), or an original or a copy of a written certification, as defined in s. 961.01 (21t),
6 may not, by itself, constitute probable cause under sub. (1) or otherwise subject any
7 person or the property of any person to inspection by any governmental agency.

8 **SECTION 56.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
9 read:

10 968.19 (1) **Property** Except as provided in sub. (2), property seized under a
11 search warrant or validly seized without a warrant shall be safely kept by the officer,
12 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
13 necessary for the purpose of being produced as evidence on any trial.

14 **SECTION 57.** 968.19 (2) of the statutes is created to read:

15 968.19 (2) A law enforcement agency that has seized a live marijuana plant is
16 not responsible for the plant’s care and maintenance.

17 **SECTION 58.** 968.20 (1) of the statutes is renumbered 968.20 (1f), and 968.20
18 (1f) (intro.), as renumbered, is amended to read:

19 968.20 (1f) (intro.) Any person claiming the right to possession of property
20 seized pursuant to a search warrant or seized without a search warrant may apply
21 for its return to the circuit court for the county in which the property was seized or
22 where the search warrant was returned. The court shall order such notice as it
23 deems adequate to be given the district attorney and all persons who have or may
24 have an interest in the property and shall hold a hearing to hear all claims to its true
25 ownership. If Except as provided in sub. (1j), if the right to possession is proved to

SENATE BILL 789**SECTION 58**

1 the court's satisfaction, it shall order the property, ~~other than contraband or property~~
2 ~~covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205~~, returned if:

3 **SECTION 59.** 968.20 (1d) of the statutes is created to read:

4 968.20 (1d) In this section:

5 (a) "Drug paraphernalia" has the meaning given in s. 961.571 (1) (a).

6 (b) "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

7 **SECTION 60.** 968.20 (1j) of the statutes is created to read:

8 968.20 (1j) (a) Except as provided in par. (b), sub. (1f) does not apply to
9 contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or
10 968.205.

11 (b) Under sub. (1f), the court may return drug paraphernalia or
12 tetrahydrocannabinols that have been seized to the person from whom they were
13 seized if any of the following applies:

14 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
15 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
16 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

17 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
19 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
20 (2), or (3) (a) or 961.5755 (1) (a) or (2).

21 **SECTION 61.** 968.20 (3) (a) and (b) of the statutes are amended to read:

22 968.20 (3) (a) First class cities shall dispose of dangerous weapons or
23 ammunition seized 12 months after taking possession of them if the owner,
24 authorized under sub. (1m), has not requested their return and if the dangerous
25 weapon or ammunition is not required for evidence or use in further investigation

SENATE BILL 789

1 and has not been disposed of pursuant to a court order at the completion of a criminal
2 action or proceeding. Disposition procedures shall be established by ordinance or
3 resolution and may include provisions authorizing an attempt to return to the
4 rightful owner any dangerous weapons or ammunition which appear to be stolen or
5 are reported stolen. If enacted, any such provision shall include a presumption that
6 if the dangerous weapons or ammunition appear to be or are reported stolen an
7 attempt will be made to return the dangerous weapons or ammunition to the
8 authorized rightful owner. If the return of a seized dangerous weapon other than a
9 firearm is not requested by its rightful owner under sub. (1) (1f) and is not returned
10 by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
11 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
12 vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement
13 agency to retain and use the motor vehicle. If the return of a seized firearm or
14 ammunition is not requested by its authorized rightful owner under sub. (1) (1f) and
15 is not returned by the officer under sub. (2), the seized firearm or ammunition shall
16 be shipped to and become property of the state crime laboratories. A person
17 designated by the department of justice may destroy any material for which the
18 laboratory has no use or arrange for the exchange of material with other public
19 agencies. In lieu of destruction, shoulder weapons for which the laboratories have
20 no use shall be turned over to the department of natural resources for sale and
21 distribution of proceeds under s. 29.934 or for use under s. 29.938.

22 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or
23 county or other custodian of a seized dangerous weapon or ammunition, if the
24 dangerous weapon or ammunition is not required for evidence or use in further
25 investigation and has not been disposed of pursuant to a court order at the

SENATE BILL 789**SECTION 61**

1 completion of a criminal action or proceeding, shall make reasonable efforts to notify
2 all persons who have or may have an authorized rightful interest in the dangerous
3 weapon or ammunition of the application requirements under sub. ~~(1)~~ (1f). If, within
4 30 days after the notice, an application under sub. ~~(1)~~ (1f) is not made and the seized
5 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
6 city, village, town or county or other custodian may retain the dangerous weapon or
7 ammunition and authorize its use by a law enforcement agency, except that a
8 dangerous weapon used in the commission of a homicide or a handgun, as defined
9 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
10 is not so retained, the city, village, town or county or other custodian shall safely
11 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
12 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
13 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or
14 county or other custodian shall ship it to the state crime laboratories and it is then
15 the property of the laboratories. A person designated by the department of justice
16 may destroy any material for which the laboratories have no use or arrange for the
17 exchange of material with other public agencies. In lieu of destruction, shoulder
18 weapons for which the laboratory has no use shall be turned over to the department
19 of natural resources for sale and distribution of proceeds under s. 29.934 or for use
20 under s. 29.938.

21 **SECTION 62. Effective dates.** This act takes effect on the day after publication,
22 except as follows:

23 (1) The treatment of section 146.44 and subchapter V of chapter 50 of the
24 statutes takes effect on the first day of the 6th month beginning after publication.

25 (END)