

2017 DRAFTING REQUEST**Senate Substitute Amendment (SSA-SB119)**

For: **Patrick Testin (608) 266-3123** Drafter: **mpfotenh**
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 Date: **10/19/2017** May Contact:
 Same as LRB:

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Pre Topic:

No specific pre topic given

Topic:

Industrial hemp

Instructions:

See attached.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|-----------------------|-----------------|-----------------|
| /? | mpfotenh 10/20/2017 | eweiss 10/24/2017 | | | |
| /P1 | mpfotenh 10/26/2017 | anienaja 10/26/2017 | mbarman 10/24/2017 | | |
| /P2 | mpfotenh 10/30/2017 | eweiss 10/30/2017 | lparisi 10/26/2017 | | |
| /P3 | mpfotenh 11/1/2017 | anienaja 11/1/2017 | mbarman 10/30/2017 | | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|----------------------|----------------------|----------------------|-----------------|
| /P4 | mpfotenh 11/2/2017 | kmochal 11/2/2017 | | | |
| /1 | | | mbarman 11/2/2017 | mbarman 11/2/2017 | |

FE Sent For:

<END>

Pfotenhauer, Mary

From: Konopacki, Larry
Sent: Wednesday, October 18, 2017 1:03 PM
To: Queensland, Michael; Pfotenhauer, Mary
Subject: SB 119 Amendment

"activities related to ind. hemp" = authorized list?

Mary, per instructions provided to us at a meeting with Senator Testin and Rep. Kremer yesterday, please prepare a substitute amendment to SB 119 that would accomplish the following:

NOTE: None of the "regulatory" functions should apply to something that falls under the definition of "industrial hemp" but is also NOT a controlled substance under state or federal law, but we struggled to figure out how to fit this into the bill. Thoughts?

Big Picture

→ can be done in statute?

- ✓ Require DATCP, by rule, to expand the definition of "industrial hemp" to the greatest extent provided under federal law, including under future federal enactments.
- ✓ Provide that the bill authorizes people in Wisconsin to plant, grow, cultivate, harvest, process, import, export, or sell industrial hemp and to import, export, or sell industrial hemp seeds to the maximum extent allowed under federal law.
- ✓ Require DATCP to regulate by rule the above activities ONLY 1) in the manner and to the extent required under federal law for people in this state to have maximum opportunity to engage in these activities, 2) in addition to any such federal requirements, additional regulation as is reasonably necessary to ensure the quality of industrial hemp grown or processed in this state, the security of activities related to industrial hemp, the safety of products produced from industrial hemp including any necessary testing, to verify adherence to laws governing activities relating to industrial hemp, and to penalize violations, and 3) only to the extent that substances regulated under such DATCP rules are also included as controlled substances under BOTH state and federal law.

not imported or sold?

State CSA:

o Replace section 6 of the bill with the following:

- Specify that any person who engages in any of the above activities and commits a violation for which DATCP has established a monetary penalty by rule is not subject to prosecution or penalization under the state controlled substances act or controlled substances restrictions imposed by local governments in this state. DATCP may not impose any monetary penalty (and thus the CSA would remain in effect) for activities related to hemp plants or plant parts with a THC concentration of more than 3% on a dry weight basis.
- In addition, provide that a person may not be prosecuted under the state controlled substances act for planting, growing, cultivating, or harvesting hemp, if done in conformance with any applicable requirements under DATCP rules, if the THC concentration of the crop is 1.0 percent or less OR the person planted seed certified under the program below to produce hemp plants with a THC concentration of no more than 0.3%. (Sale or other transfer of such a crop would still be illegal until the crop is reconditioned so that it meets the 0.3% requirement like provided under the bill on page 5, lines 10-13.)

for first violation

move?

based on

7.3% *94.55(2)(c)*

allow 7.3%

*Crop 1.0%
Seed 0.3%*

- Specify that it is not a violation of the state controlled substances law for a person authorized under DATCP rules to possess industrial hemp to possess hemp higher in THC concentration than 0.3% provided that it was planted, grown, cultivated, and harvested by another and the person who possesses the hemp was provided documentation from a laboratory authorized by DATCP rule to test THC concentrations in hemp when receiving the hemp that documents that the hemp contains 0.3% THC or less. *← seizure + destruction if > 1.0 % but still subject to*
- Specify that it is not a violation of the state controlled substances law for a person to take samples of hemp crops, transport such samples to a testing facility authorized under DATCP rules to possess industrial hemp, and to test hemp for its THC content.

✓ Provide that DATCP may require payment of an annual fee (not a licensing fee) by anyone whose activities related to industrial hemp are regulated by DATCP under its regulatory authority above, and not to exceed an amount sufficient to cover the costs to DATCP of administering its responsibilities above with respect to people similarly engaged in activities related to industrial hemp, as determined by DATCP by rule. (Include an initial fee for people who plant, grow, and/or cultivate industrial hemp that is the same as the fee in the bill on page 4, lines 4-7)

✓ *non-stat* Revise proposed s. 94.55 (10) as required by these changes to the bill and the changes below AND *require? deadline?* provide authority for DATCP to use emergency rulemaking authority, without a finding of emergency and notwithstanding the statutory termination date for emergency rules, for rulemaking related to the state's industrial hemp program. *how much time needed for permanent rules?*

✓ Require DOJ and the Courts to supply information to DATCP as identified by DATCP as necessary to administer the state industrial hemp program.

✓ Provide that all of the following are confidential and not subject to open records inspection (however, make clear that this information IS available to law enforcement):

- Information relating to the locations of industrial hemp fields processing locations.
- Personally identifiable information about a person engaged in lawful activities related to industrial hemp. *ok to disclose if violating license (e.g.)?*
- Information obtained about any individual as a result of a background check conducted on the person to determine eligibility of the person for approval to engage in activities related to industrial hemp.
- Other information about industrial hemp-related activities that could create a security risk if disclosed.

✓ Specify that DATCP MAY seek federal approval to serve as an importer of industrial hemp seed.

Pilot Program

✓ Eliminate page 3 lines 11-13 and replace with a provision that requires that DATCP create a **pilot program** to study the growth, cultivation, and marketing of industrial hemp, *subject to the scope of rulemaking authority under the third bullet point above.*

✓ Under this pilot program, require DATCP to issue **licenses** that authorize the planting, growing, cultivating, harvesting or importation of industrial hemp and importation or sale of industrial hemp seed, *subject to any federal law restrictions*, for purposes consistent with the objectives of the pilot program. (Note that the words "processing" and "commercial purpose" should be excluded from this provision related to licensure) Require that DATCP, by rule, create requirements for application and

approval or denial of a license and suspension and revocation of licensure, and restrictions and obligations (specify that DATCP require documentation of the chain of custody of industrial hemp) applicable to operations under a license. In addition to requirements imposed by DATCP rules, maintain the requirement that GPS coordinates of fields be provided to DATCP maintain page 4 lines 8-14 except add violations of local controlled substances laws and controlled substances laws of other states and federal laws. Also replace page 4 line 15 with a requirement that a license issued by DATCP does not expire unless the pilot program ends or the license is suspended or revoked as provided under DATCP rules. Eliminate the rest of page 3 line 14 to page 5 line 9 (see above fore lines 10-13).

- ✓ Require DATCP to create a system under this pilot program for **registration** of any person who intends to sample, transport, test, purchase, and/or process industrial hemp. Provide that DATCP require registrants to pay any fee imposed by DATCP under its general fee authority described above, to have not been convicted of a local/state/other state/federal controlled substances violation, and to adhere to any other applicable requirement imposed by DATCP by rule under its industrial hemp regulatory authority described above.
but not licensees?
- ✓ Require DATCP to create a form to accompany any transfers of industrial hemp under this pilot program. Require that DATCP identify the information to be included on the form, and that information shall include the results of any THC testing conducted on the industrial hemp, the amount of industrial hemp, and the full chain of custody of the industrial hemp from the producer or importer through all transfers until the industrial hemp is processed such that it no longer meets the definition of "industrial hemp."
- In the event that other opportunities arise under the "big picture" authority above for a person to engage in activities related to industrial hemp outside of this pilot program, it is important that these pilot program provisions only apply to activities under this specific program.

Other

- ✓ Eliminate proposed s. 94.55 (5), (6), (7), (9).
- ✓ Maintain proposed s. 94.55 (11) and sections 3, 4, 5, and 9 of the bill.
- ✓ Revise section ~~8~~⁸ so that a person need only show that they are growing the plants in accordance with requirements, if any, imposed by DATCP by rule (licensure may not end up being the only authority under which a person may grow hemp).
- ✓ Revise Section 10 par. (1) d. to remove the words "for more maladies than medical marijuana".
- ✓ Revise proposed s. 94.55 (8) (a) to require DATCP to administer the seed certification program, *in consultation with* the WI Crop Improvement Assoc and CALS. Eliminate par. (b)

State CSA:

- Create a new crime (or penalty enhancer) applicable to someone who intentionally tries to hide illegal activity by using industrial hemp in any way, including by providing an intentionally false statement related to industrial hemp to law enforcement or DATCP.

- Which one? - crime or penalty enhancer?

- What is the penalty / classification of the crime

↓
see 939.62, e.g.
163

if a person ~~commits~~
a crime and intentionally
attempts to hide commission
of a crime



- s. 94.55 (1) (b): allow DATCP to modify def. of ind. hemp by rule to greatest extent allowable under fed. law
- s. 94.55 (2): add in provision that says something like "the dept. shall create a pilot program for cultivating ind. hemp" (as allowed under fed. law?)
- add provision allowing DATCP to change the prog as fed. law changes to the greatest extent allowable under fed. law
- add provision granting DATCP emergency rule-making authority for all rules under the bill ("the pilot prog; and for when DATCP changes prog in response to fed. law changes")
- s. 94.55 (2)(a): use of "commercial purposes" - arguable that it could go beyond the "marketing" purpose allowed under fed. law
- s. 94.55 (2)(b)3. : split up GPS coord. for center of field & coord. for loc where ind. hemp. processed (require separately)
- also give DATCP auth. to req. other relevant info by promulgating rules
- s. 94.55 (2)(d): req. applicant to pay criminal history check cost & DATCP will promulgate rule based on cost of the check
- s. 94.55 (2)(c): Fees; grant DATCP authority to change the fee to cover the cost of the program, if necessary (similar to language for concealed carry prog fees)

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



- s. 94.55(2)(e): change term of lic. — lic. lasts indefinitely until it is revoked due to violating rule
But the fee is an annual fee
- s. 94.55(2)(d)3.: confidential under open records law
confidentiality should also cover info about production, like GPS coord, # acres, production processes, personally ident. info
But law enforcement can obtain the info
- s. 94.55(3): The information to be reported or retained =
Require DATCP to req. licensees to report or retain information required by rule to accomplish objectives of pilot program (rather than specifying in detail in the bill the information to report or maintain)
- s. 94.55(2)(d)2.: also prohibit granting lic. to person who is convicted for violating Fed CSA and controlled subst. law of another state
- s. 94.55(4): ~~Require DATCP to seek a license from DEA~~
 - Allow a person having any necessary Federal approvals to import seed without needing a lic. under the bill
 - ~~Require~~ DATCP to seek a license from DEA to
Allow
import seed
 - ~~that~~ remove "may retain ind. hemp. seed from one crop year to be planted in the following years"
 - remove "may bring ind. hemp. and ind. hemp products into this state"

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



- s. 94.55(5): remove ref. to "department" and "pilot program"
- "study cultivation to greatest extent allowable under fed law"
- s. 94.55(6):
 - move provision about tribes to sub. (5) about higher ed. and allow a tribal college to study ind. hemp if cooperate with institution of higher ed
- Remove sub. (5) and (6): higher ed. institutions already have auth. under fed. law to study ind. hemp
- s. 94.55(7): make a person who engages in activities under the sub. not subject to penalties under local law in add'n to state law
 - specify that ind. hemp. from a person in another state or country
 - "or hemp with an accompanying documentation of test results"
 - create a definition of "hemp"
- s. 94.55(8): ~~replace "cooperation" with "consultation"~~
~~for UW-Madison CAS~~
 - similar to potato seed bill: require DATCP to establish a certified seed program and allow DATCP to consult with WCIA and UW-Madison CAS
 - remove par. (b)

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



s. 94.55 (9): Testing - DATCP shall promulgate rules to establish, testing, transport, sampling standards

- people in chain of custody of ind. hemp. shall register

s. 94.55 (10): Rules

- add rulemaking auth. for licensing, documentation and reporting reqs, importing/selling seed, importing/selling ind. hemp,

s. 961.32 (3)(b): split par. (b) provisions into sep. pars

- in addition to licensee exemption:

- DATCP agents

- higher ed.

- testers, samplers, transporters

- other people contemplated as possessing ind. hemp

- address a criminal provision

- change the exemption so that cannot be prosecuted if crop is 1.0 percent delta-9-THC concentration

- Remove nonstat. about ind. hemp providing relief for more maladies than medical marijuana



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs01430PI
MCP:
REAW emw

Due 10/24 AM (H)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL 119

INSERT

SA ✓
KAC ✓
PWF ✓
V ✓

providing an exemption from
emergency rule procedures

1
2

AN ACT ^{extend} **relating to:** growing and processing industrial hemp, granting rule-making authority, ^{and} making an appropriation, ^{and providing a criminal penalty}

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

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SECTION 1. 20.115 (7) (gc) of the statutes is created to read:

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

SECTION 2. 94.55 of the statutes is created to read:

94.55 Industrial hemp. (1) **DEFINITION.** In this section, "industrial hemp" means the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law, whichever is greater.

1 (2) REGULATION OF INDUSTRIAL HEMP. (a) Subject to the provisions under this
2 subsection, a person may plant, grow, cultivate, harvest, process, transport, import,
3 export, and sell industrial hemp in this state to the greatest extent allowed under
4 federal law.

5 (b) The department shall promulgate rules regulating the activities described
6 in par. (a).

7 Except as provided under subds. 1. to 4., rules promulgated under this
8 paragraph shall regulate the activities described in par. (a) only to the extent
9 required under federal law, and in a manner that allows the people of this state to
10 have the greatest possible opportunity to engage in those activities.

11 2. The department shall promulgate rules, as necessary, to ensure the quality
12 of industrial hemp grown or processed in this state, the security of activities related
13 to industrial hemp, and the safety of products produced from industrial hemp,
14 including any necessary testing; to verify adherence to laws and rules governing
15 activities related to industrial hemp; and to penalize violations of those laws and
16 rules.

17 3. The department may not promulgate rules under this paragraph that relate
18 to substances or materials that are not governed by both the federal controlled
19 substances law and the uniform controlled substances law of this state.

20 4. The department may not impose any monetary penalty for activities related
21 to hemp plants or plant parts based on the delta-9-tetrahydrocannabinol
22 concentration of the plants or plant parts.

23 5. The department shall require the payment of a fee from any person who
24 plants, grows, or cultivates industrial hemp in this state equal to the greater of \$150
25 or \$5 multiplied by the number of acres on which the person will plant, grow, or

Handwritten notes:
- Above line 5: "1." with an arrow pointing to "(b)"
- Above line 7: "1 2" with arrows pointing to "1." and "2."
- Above line 7: "3 1" with arrows pointing to "3." and "1."
- Above line 11: "2 3" with an arrow pointing to "2."
- Above line 17: "act under 21 USC 801 to 971" with an arrow pointing to "3."
- Above line 19: "uniform" with an arrow pointing to "uniform controlled substances law"
- Above line 20: "act under ch. 91el." with an arrow pointing to "4."
- Above line 23: "an initial" with an arrow pointing to "a fee"

1 cultivate industrial hemp, but not to exceed \$1,000. The department may also
2 impose an annual fee on any person whose activities related to industrial hemp are
3 regulated by the department under this paragraph, in an amount not to exceed an
4 amount sufficient to cover the costs to the department of regulating those activities,
5 as determined by the department by rule.

6 (6) The department shall ensure that the following information ^{is} confidential and
7 not open to public inspection or copying under s. 19.35 (1), except that it shall be made
8 available to a law enforcement agency or law enforcement officer:

9 a. Information relating to the locations of industrial hemp fields and processing
10 locations.

11 b. Personally identifiable information relating to a person who is lawfully
12 engaging in activities related to industrial hemp.

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 (c) The department, in consultation with the University of Wisconsin-Madison
19 College of Agricultural and Life Sciences and the Wisconsin Crop Improvement
20 Association, shall establish and administer a certification program for industrial
21 hemp seed in this state. Participation in the certification program shall be voluntary
22 for growers and cultivators of industrial hemp. The department shall promulgate
23 rules for the administration of the certification program under this paragraph.

1 (d) The department of justice shall provide information to the department that
2 the department has identified, by rule, as necessary to administer the provisions
3 under this subsection.

4 (e) The department may seek federal approval to serve as an importer of
5 industrial hemp seed.

6 (3) PILOT PROGRAM. The department shall create a pilot program to study the
7 growth, cultivation, and marketing of industrial hemp. The department shall
8 promulgate rules to implement the pilot program consistent with the authority
9 under sub. (2) (b), except that, notwithstanding sub. (2) (b) ^{pc 2} 1., the department shall
10 also do all of the following as part of the pilot program:

11 (a) Issue licenses that authorize the planting, growing, cultivating, harvesting,
12 transporting, and importing of industrial hemp and the selling of industrial hemp
13 seeds. The department shall identify the requirements for applying for a license,
14 approving or denying a license, and suspending or revoking a license, and shall
15 identify the restrictions and obligations that apply to operating under a license. As
16 part of the application process, the department shall require an applicant to provide
17 the global positioning system coordinates of the centers of all fields on which the
18 industrial hemp will be planted, grown, cultivated, or harvested. The department
19 shall obtain a criminal history search from the records maintained by the
20 department of justice for each applicant and may not issue a license if the applicant
21 has ever been convicted of a violation of any federal controlled substances law or of
22 any controlled substances law of this state, a political subdivision of this state,
23 another state, or a political subdivision of another state, as indicated in the
24 information obtained from the criminal history search. The department shall
25 require, as a condition of any license under this paragraph, the licensee to provide

1 the department with documentation of the chain of custody of the industrial hemp
2 for all transfers of the industrial hemp. A license issued under this paragraph does
3 not expire unless the pilot program under this subsection expires or the license is
4 revoked.

5 (b) Create a registration system that authorizes the sampling, testing,
6 purchasing, transporting, importing, and processing of industrial hemp. The
7 department shall require each registrant under this paragraph to pay any annual
8 fee established under sub. (2) (b) ⁵. The department shall obtain a criminal history
9 search from the records maintained by the department of justice for each person
10 applying for registration and may not register an applicant who has been convicted
11 of a violation of any federal controlled substances law or of any controlled substances
12 law of this state, a political subdivision of this state, another state, or a political
13 subdivision of another state, as indicated in the information obtained from the
14 criminal history search. The department shall require, as a condition of registration
15 under this paragraph, the registrant to comply with any applicable rules
16 promulgated under sub. (2) (b).

17 (c) Create a form to accompany any transfer of industrial hemp. The
18 department shall identify the information to be included in the form, which shall
19 include any test results showing the delta-9-tetrahydrocannabinol concentration of
20 the industrial hemp being transported, the amount of industrial hemp being
21 transported, and the full chain of custody of the industrial hemp being transported
22 for all transfers of the industrial hemp until it is processed in such a way that it no
23 longer meets the definition under sub. (1).

24 **SECTION 3.** 94.67 (2) of the statutes is amended to read:

1 94.67 (2) "Agricultural commodity" means any plant or part of a plant, animal
2 or animal product produced by a person primarily for sale, consumption, propagation
3 or other use by humans or animals. "Agricultural commodity" includes industrial
4 hemp, as defined in s. 94.55 (1).

5 SECTION 4. 97.02 of the statutes is amended to read:

6 97.02 Standards; adulterated food. For the purposes of this chapter, a food
7 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
8 department may not consider a food to be adulterated solely because it contains
9 industrial hemp, as defined in s. 94.55 (1), or an industrial hemp product.

10 SECTION 5. 348.27 (18) (a) 1. ^{def} of the statutes is created to read:

11 348.27 (18) (a) 1. ^{def} Industrial hemp, as defined in s. 94.55 (1).

12 SECTION 6. 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
13 amended to read:

14 961.55 (8) (intro.) The failure, upon demand by any officer or employee
15 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
16 premises upon which the species of plants are growing or being stored, to produce an
17 one of the following constitutes authority for the seizure and forfeiture of the plants
18 described in sub. (7):

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

21 SECTION 7. 961.55 (8) (b) of the statutes is created to read:

22 961.55 (8) (b) Proof that the person is growing or storing the plants in
23 accordance with the requirements, if any, imposed by the department of agriculture,
24 trade and consumer protection under s. 94.55.

25 SECTION 8. Nonstatutory provisions.

INS
EAW
6-12

EAW
INS 6-25

1 (1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

2 (a) That the Cannabis sativa plant used for the production of industrial hemp
3 is separate and distinct from forms of Cannabis used to produce marijuana.

4 (b) That section 7606 of the federal farm bill of 2014, 7 USC 5940, allows states
5 to establish agricultural pilot programs to study the growth, cultivation, or
6 marketing of industrial hemp.

7 (c) That industrial hemp is used in products such as building materials,
8 textiles, cordage, fiber, food, floor coverings, fuel, paint, animal feed, paper, particle
9 board, plastics, seed meal, cosmetics, seed, oil, and yarn.

10 (d) That cannabidiol and hemp seed oil have the ability to provide relief for
11 maladies, without psychotropic effect.

12 (e) That the growth, cultivation, and processing of industrial hemp will provide
13 an alternate crop to vitalize the agricultural sector in this state and will provide
14 production and processing jobs.

15 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the
16 statutes, the department of agriculture, trade and consumer protection may
17 promulgate rules under section 94.55 (2) and (3) of the statutes for the period before
18 the effective date of the permanent rules promulgated under section 94.55 (2) and
19 (3) of the statutes but not to exceed the period authorized under section 227.24 (1)
20 (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
21 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
22 is not required to provide evidence that promulgating a rule under this subsection
23 as an emergency rule is necessary for the preservation of the public peace, health,

1 safety, or welfare and is not required to provide a finding of emergency for a rule
2 promulgated under this subsection.

3 (END)

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0143/P1ins

MCP...

✓
CAW

1 INS EAW 6-12

2 SECTION 1. 939.634 of the statutes is created to read:

3 **939.634 Penalties; industrial hemp.** If a person attempts to conceal the
4 commission of a crime while engaging in the planting, growing, cultivating,
5 harvesting, processing, transporting, importing, exporting, and selling of industrial
6 hemp ^{as defined in s. 94.55(1),} that is otherwise authorized under s. 92.55^{PH}, the maximum term of
7 imprisonment prescribed by law for that crime may be increased as follows:

8 (1) The maximum term of imprisonment for a misdemeanor may be increased
9 by not more than 6 months.

10 (2) If the maximum term of imprisonment for a felony is more than 5 years or
11 is a life term, the maximum term of imprisonment for the felony may be increased
12 by not more than 5 years.

13 (3) If the maximum term of imprisonment for a felony is more than 2 years, but
14 not more than 5 years, the maximum term of imprisonment for the felony may be
15 increased by not more than 4 years.

16 (4) The maximum term of imprisonment for a felony not specified in sub. (2) or
17 (3) may be increased by not more than 3 years.

****NOTE: This is the same penalty enhancer as provided for use of a dangerous
weapon. Please let me know if you would like to impose different penalty enhancements
for any of the levels of crimes listed in subs. (1) to (4). Also, as drafted, this penalty
enhancer applies to the commission of any crime. Please let me know if you would like
to narrow the scope of crimes that the penalty enhancer would apply to.

18 SECTION 2. 961.32 (3) of the statutes is created to read:

19 961.32 (3) (a) In this subsection:

20 1. "Hemp" means the plant Cannabis sativa, or any part of the plant including
21 the seeds.

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

2 (b) A person may not be prosecuted for a criminal offense under this chapter
3 for planting, growing, cultivating, or harvesting hemp in accordance with rules
4 promulgated by the department of agriculture, trade and consumer protection under
5 s. 92.55 (2) (b) if the delta-9-tetrahydrocannabinol concentration of the crop is one
6 percent or less on a dry weight basis, or if the person planted industrial hemp seed
7 that has been certified as having a delta-9-tetrahydrocannabinol concentration of
8 no more than 0.3 percent under s. 95.55 (2) (c).

9 (c) A person may not be prosecuted for a criminal offense under this chapter
10 for selling or transferring industrial hemp with a delta-9-tetrahydrocannabinol
11 concentration of no more than 0.3 percent in accordance with rules promulgated by
12 the department of agriculture, trade and consumer protection under s. 92.55 (2) (b).

13 (d) A person who has committed a violation of rules promulgated by the
14 department of agriculture, trade and consumer protection under s. 92.55 (2) (b) for
15 which the department of agriculture, trade and consumer protection has established
16 a monetary penalty may not be prosecuted for a criminal offense under this chapter
17 or under any municipal ordinance for that violation.

18 (e) Subject to s. 961.55 (9), a person who is authorized under rules promulgated
19 by the department of agriculture, trade and consumer protection under s. 92.55 (2)
20 (b) to possess industrial hemp with a delta-9-tetrahydrocannabinol concentration
21 that is greater than 0.3 percent may not be prosecuted for a criminal offense under
22 this chapter for a violation of s. 961.41 (3g) (e) if the industrial hemp was planted,
23 grown, cultivated, and harvested by another person and the person who possesses
24 the industrial hemp was provided with documentation from a laboratory authorized
25 by the department of agriculture, trade and consumer protection to test the

1 delta-9-tetrahydrocannabinol concentration in ^{the} industrial hemp showing that the
 2 ^{industrial} hemp contains 0.3 percent delta-9-tetrahydrocannabinol concentration ^{of} or less.

3 (f) A person may not be prosecuted for a criminal offense under this chapter for
 4 taking samples of industrial hemp crops, transporting the samples to a testing
 5 facility, and testing the industrial hemp samples for its
 6 delta-9-tetrahydrocannabinol concentration in accordance with rules promulgated
 7 by the department of agriculture, trade and consumer protection under s. ^{92.55} 92.55 (2)
 8 (b).

9 INS EAW 6-25

10 SECTION 3. 961.55 (9) of the statutes is created to read:

11 961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
 12 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
 13 delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 1.0 percent,
 14 the entire crop on the field where the plant was found shall be seized and destroyed.
 15 Before a crop is seized and destroyed under this subsection, the agency whose officers
 16 or employees intend to seize and destroy the crop shall provide, to the person licensed
 17 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written
 18 documentation verifying the test results for the crop that is subject to seizure and
 19 destruction.



State of Wisconsin
2017 - 2018 LEGISLATURE

10/26

By end of day if possible
or 10/27 AM

1P2
LRBs0143/P1
MCP&EAW:emw/am

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE SUBSTITUTE AMENDMENT ,
TO SENATE BILL 119

SA
XOF
PWF

Regen. ✓

1 **AN ACT to renumber and amend** 961.55 (8); **to amend** 94.67 (2) and 97.02; and
2 **to create** 20.115 (7) (gc), 94.55, 348.27 (18) (a) 1. f., 939.634, 961.32 (3), 961.55
3 (8) (b) and 961.55 (9) of the statutes; **relating to:** growing and processing
4 industrial hemp, providing an exemption from emergency rule procedures,
5 granting rule-making authority, making an appropriation, and providing a
6 criminal penalty.

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

7 **SECTION 1.** 20.115 (7) (gc) of the statutes is created to read:
8 20.115 (7) (gc) *Industrial hemp.* All moneys received under s. 94.55 for
9 regulation of activities relating to industrial hemp under s. 94.55.

10 **SECTION 2.** 94.55 of the statutes is created to read:

1 **94.55 Industrial hemp.** (1) DEFINITION. In this section, “industrial hemp”
 2 means the plant *Cannabis sativa*, or any part of the plant including the seeds, having
 3 a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry
 4 weight basis or the maximum concentration allowed under federal law, whichever
 5 is greater. *Ins 2-5*

6 (2) REGULATION OF INDUSTRIAL HEMP. (a) Subject to the provisions under this
 7 subsection, a person may plant, grow, cultivate, harvest, *sample, test,* process, transport, *transfer,* import, *take*
 8 *and* export, *possession* and sell industrial hemp in this state to the greatest extent allowed under
 9 federal law. *of, sell,*

10 (b) 1. The department shall promulgate rules regulating the activities
 11 described in par. (a).

12 2. Except as provided under subs. 3. to *5* rules promulgated under this
 13 paragraph shall regulate the activities described in par. (a) only to the extent
 14 required under federal law, and in a manner that allows the people of this state to
 15 have the greatest possible opportunity to engage in those activities.

16 3. The department shall promulgate rules, as necessary, to ensure the quality
 17 of industrial hemp grown or processed in this state, the security of activities related
 18 to industrial hemp, and the safety of products produced from industrial hemp,
 19 including any necessary testing; to verify adherence to laws and rules governing
 20 activities related to industrial hemp; and to *enforce* penalize violations of those laws and
 21 rules.

22 4. The department may not promulgate rules under this paragraph that relate
 23 to substances or materials that are not governed by both the federal Controlled
 24 Substances Act under 21 USC 801 to 971 and the Uniform Controlled Substances Act
 25 under ch. 961.

1 5. The department may not impose any monetary penalty for activities related
2 to hemp plants or plant parts based on the delta-9-tetrahydrocannabinol
3 concentration of the plants or plant parts.

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

12 7. The department shall ensure that ^{any of} the following information ^{that is in the department's possession} is confidential
13 and not open to public inspection or copying under s. 19.35 (1), except that it shall
14 be made available to a law enforcement agency or law enforcement officer:

15 a. Information relating to the locations of industrial hemp fields and processing
16 locations.

17 b. Personally identifiable information relating to a person who is lawfully
18 engaging in activities related to industrial hemp.

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

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

24 (c) The department, in consultation with the University of Wisconsin-Madison
25 College of Agricultural and Life Sciences and the Wisconsin Crop Improvement

Ins 4-2

Ins 4-1

1 Association, shall establish and administer a certification program for industrial
 2 hemp seed in this state. Participation in the certification program shall be voluntary
 3 for growers and cultivators of industrial hemp. The department shall promulgate
 4 rules for the administration of ^{any} the certification program ^{established and administered by the department} under this paragraph.

5 (d) The department of justice shall provide information to the department that
 6 the department has identified, by rule, as necessary to administer the provisions
 7 under this subsection.

8 (e) The department may seek federal approval to serve as an importer of
 9 industrial hemp seed.

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

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

Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961,

x2

1 any controlled substances law of this state, a political subdivision of this state,
2 another state, or a political subdivision of another state, as indicated in the
3 information obtained from the criminal history search. The department shall
4 require, as a condition of any license under this paragraph, the licensee to provide
5 the department with documentation of the chain of custody of the industrial hemp
6 for all transfers of the industrial hemp. A license issued under this paragraph does
7 not expire unless the pilot program under this subsection expires or the license is
8 revoked.

9 (b) Create a registration system that authorizes the sampling, testing,
10 purchasing, ^{processing,} transporting, ^{transferring, taking possession, selling,} and processing of industrial hemp. The
11 department shall require each registrant under this paragraph to pay any annual
12 fee established under sub. (2) (b) ^{6.4} 6. The department shall obtain a criminal history
13 search from the records maintained by the department of justice for each person
14 applying for registration and may not register an applicant who has been convicted
15 of a ^{criminal} violation of ^{the} any federal controlled substances law ^{or} of any controlled substances
16 law of this state, a political subdivision of this state, another state, or a political
17 subdivision of another state, as indicated in the information obtained from the
18 criminal history search. The department shall require, as a condition of registration
19 under this paragraph, the registrant to comply with any applicable rules
20 promulgated under sub. (2) (b).

21 (c) Create a form to accompany any transfer of industrial hemp. The
22 department shall identify the information to be included in the form, which shall
23 include any test results showing the delta-9-tetrahydrocannabinol concentration of
24 the industrial hemp being transported, ^{transferred x 3} the amount of industrial hemp being
25 transported, and the full chain of custody of the industrial hemp being transported

1 for all transfers of the industrial hemp until it is processed in such a way that it no
2 longer meets the definition under sub. (1). *Ins 6-2*

3 SECTION 3. 94.67 (2) of the statutes is amended to read:

4 94.67 (2) "Agricultural commodity" means any plant or part of a plant, animal
5 or animal product produced by a person primarily for sale, consumption,
6 propagation, or other use by humans or animals. "Agricultural commodity" includes
7 industrial hemp, as defined in s. 94.55 (1). *Ins 6-7*

8 SECTION 4. 97.02 of the statutes is amended to read:

9 97.02 Standards; adulterated food. For the purposes of this chapter, a food
10 is adulterated if it is adulterated within the meaning of 21 USC 342, except that the
11 department may not consider a food to be adulterated solely because it contains
12 industrial hemp, as defined in s. ^{94.67 (1Sr)} 94.55 (1), or an industrial hemp product.

13 SECTION 5. 348.27 (18) (a) 1. f. of the statutes is created to read:

14 348.27 (18) (a) 1. f. Industrial hemp, as defined in s. ^{94.67(1Sr)} 94.55 (1).

15 SECTION 6. 939.634 of the statutes is created to read:

16 939.634 Penalties; industrial hemp. If a person attempts to conceal the
17 commission of a crime while engaging in the planting, growing, cultivating,
18 harvesting, processing, transporting, importing, exporting, and selling of industrial
19 hemp, as defined in s. 94.55 (1), that is otherwise authorized under s. 94.55, the
20 maximum term of imprisonment prescribed by law for that crime may be increased
21 as follows:

22 (1) The maximum term of imprisonment for a misdemeanor may be increased
23 by not more than 6 months.

1 (2) If the maximum term of imprisonment for a felony is more than 5 years or
2 is a life term, the maximum term of imprisonment for the felony may be increased
3 by not more than 5 years.

4 (3) If the maximum term of imprisonment for a felony is more than 2 years, but
5 not more than 5 years, the maximum term of imprisonment for the felony may be
6 increased by not more than 4 years.

7 (4) The maximum term of imprisonment for a felony not specified in sub. (2)
8 or (3) may be increased by not more than 3 years.

****NOTE: This is the same penalty enhancer as provided for use of a dangerous
weapon. Please let me know if you would like to impose different penalty enhancements
for any of the levels of crimes listed in subs. (1) to (4). Also, as drafted, this penalty
enhancer applies to the commission of any crime. Please let me know if you would like
to narrow the scope of crimes that the penalty enhancer would apply to.

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

10 961.32 (3) (a) In this subsection:

11 1. "Hemp" means the plant Cannabis sativa, or any part of the plant including
12 the seeds.

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

14 (b) A person may not be prosecuted for a criminal offense under this chapter
15 for planting, growing, cultivating, or harvesting hemp in accordance with rules
16 promulgated by the department of agriculture, trade and consumer protection under
17 s. 94.55 (2) (b) if the delta-9-tetrahydrocannabinol concentration of the crop is 1
18 percent or less on a dry weight basis, or if the person planted industrial hemp seed
19 that has been certified as having a delta-9-tetrahydrocannabinol concentration of
20 no more than 0.3 percent under s. 94.55 (2) (c).

21 (c) A person may not be prosecuted for a criminal offense under this chapter
22 for selling or transferring industrial hemp with a delta-9-tetrahydrocannabinol

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EAW
7-14

1 concentration of no more than 0.3 percent in accordance with rules promulgated by
2 the department of agriculture, trade and consumer protection under s. 94.55 (2) (b).

3 (d) A person who has committed a violation of rules promulgated by the
4 department of agriculture, trade and consumer protection under s. 94.55 (2) (b) for
5 which the department of agriculture, trade and consumer protection has established
6 a monetary penalty may not be prosecuted for a criminal offense under this chapter
7 or under any municipal ordinance for that violation.

8 (e) Subject to s. 961.55 (9), a person who is authorized under rules promulgated
9 by the department of agriculture, trade and consumer protection under s. 94.55 (2)
10 (b) to possess industrial hemp with a delta-9-tetrahydrocannabinol concentration
11 that is greater than 0.3 percent may not be prosecuted for a criminal offense under
12 this chapter for a violation of s. 961.41 (3g) (e) if the industrial hemp was planted,
13 grown, cultivated, and harvested by another person and the person who possesses
14 the industrial hemp was provided with documentation from a laboratory authorized
15 by the department of agriculture, trade and consumer protection to test the
16 delta-9-tetrahydrocannabinol concentration in the industrial hemp showing that
17 the industrial hemp contains a delta-9-tetrahydrocannabinol concentration of 0.3
18 percent or less.

19 (f) A person may not be prosecuted for a criminal offense under this chapter for
20 taking samples of industrial hemp crops, transporting the samples to a testing
21 facility, and testing the industrial hemp samples for its
22 delta-9-tetrahydrocannabinol concentration in accordance with rules promulgated
23 by the department of agriculture, trade and consumer protection under s. 94.55 (2)
24 (b).

1 **SECTION 8.** 961.55 (8) of the statutes is renumbered 961.55 (8) (intro.) and
2 amended to read:

3 961.55 (8) (intro.) The failure, upon demand by any officer or employee
4 designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or
5 premises upon which the species of plants are growing or being stored, to produce an
6 any of the following constitutes authority for the seizure and forfeiture of the plants
7 described in sub. (7):

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

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

11 961.55 (8) (b) Proof that the person is growing or storing the plants in
12 accordance with the requirements, if any, imposed by the department of agriculture,
13 trade and consumer protection under s. 94.55.

14 **SECTION 10.** 961.55 (9) of the statutes is created to read:

15 961.55 (9) If a crop intended to be industrial hemp, as defined in s. 94.55 (1),
16 is tested for delta-9-tetrahydrocannabinol levels and the average concentration of
17 delta-9-tetrahydrocannabinol in a whole dry plant is found to exceed 1 percent, the
18 entire crop on the field where the plant was found shall be seized and destroyed.
19 Before a crop is seized and destroyed under this subsection, the agency whose officers
20 or employees intend to seize and destroy the crop shall provide, to the person licensed
21 under s. 94.55 (3) to grow the crop or to the person's agent or employee, written
22 documentation verifying the test results for the crop that is subject to seizure and
23 destruction.

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EAW
9-24

24 **SECTION 11. Nonstatutory provisions.**

25 (1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

1 (a) That the Cannabis sativa plant used for the production of industrial hemp
2 is separate and distinct from forms of Cannabis used to produce marijuana.

3 (b) That section 7606 of the federal farm bill of 2014, 7 USC 5940, allows states
4 to establish agricultural pilot programs to study the growth, cultivation, or
5 marketing of industrial hemp.

6 (c) That industrial hemp is used in products such as building materials,
7 textiles, cordage, fiber, food, floor coverings, fuel, paint, animal feed, paper, particle
8 board, plastics, seed meal, cosmetics, seed, oil, and yarn.

9 (d) That cannabidiol and hemp seed oil have the ability to provide relief for
10 maladies, without psychotropic effect.

11 (e) That the growth, cultivation, and processing of industrial hemp will provide
12 an alternate crop to vitalize the agricultural sector in this state and will provide
13 production and processing jobs.

No later than the 90th day after the effective date of this subsection,

14 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the
15 statutes, ^{move} the department of agriculture, trade and consumer protection ^{shall} may
16 promulgate rules under section 94.55 (2) and (3) of the statutes for the period before
17 the effective date of the permanent rules promulgated under section 94.55 (2) and
18 (3) of the statutes but not to exceed the period authorized under section 227.24 (1)
19 (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.

20 Notwithstanding section 227.24 (1) (a), ~~(2) (b)~~, and (3) of the statutes, the department
21 is not required to provide evidence that promulgating a rule under this subsection
22 as an emergency rule is necessary for the preservation of the public peace, health,
23 safety, or welfare and is not required to provide a finding of emergency for a rule
24 promulgated under this subsection. *Ins 10-24*

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0143/P1inMP2
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1 INSERT 6-7

2 SECTION 1. 94.67 (15r) of the statutes is created to read:

3 94.67 (15r) “Industrial hemp” means the plant *Cannabis sativa*, or any part
4 of the plant including the seeds, having a delta-9-tetrahydrocannabinol
5 concentration of no more than 0.3 percent on a dry weight basis or the maximum
6 concentration allowed under federal law up to 1 percent, whichever is greater.

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0143/PlinsMP
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1 INSERT 2-5

2 “Industrial hemp” does not include any substance, material, or product that is
3 not designated as a controlled substance under either the federal Controlled ✓
4 Substances Act under 21 USC 801 to 971 or the Uniform Controlled Substances Act
5 under ch. 961.

6
7 INSERT 4-1

8 , or shall designate a member of the Association of Official Seed Certifying
9 Agencies or a successor organization to administer a certification program, ✓

10
11 INSERT 4-2

12 A certification program under this paragraph shall include the testing and ✓
13 certification of delta-9-tetrahydrocannabinol concentrations in hemp plants.

14
15 INSERT 6-2

16 , at which point the form shall be submitted to the department ✓

17
18 INSERT 10-24

19 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules
20 promulgated under this subsection remain in effect until July 1, 2020, or the date on
21 which permanent rules take effect, whichever is sooner. Notwithstanding section
22 227.24 (1) (e) 1d. and 1g. of the statutes, for emergency rules promulgated under this

1

✓
3
subsection the department is not required to prepare a statement of scope of the rules
or to submit the proposed rules in final draft form to the governor for approval.

2

1 INS EAW 7-14

2 (b) A person who is acting in accordance with rules promulgated by the
3 department of agriculture, trade and consumer protection under s. 94.55 (2) (b) may
4 not be prosecuted for a criminal offense under this chapter or any municipal
5 ordinance for any of the following:

6 1. Planting, growing, cultivating, harvesting, processing, or transporting hemp
7 that contains a delta-9-tetrahydrocannabinol concentration of the crop of not more
8 than 0.7 percent above the permissible limit for industrial hemp on a dry weight
9 basis or that is grown from industrial hemp seed certified under s. 94.55 (2) (c).

10 2. Selling, transferring, importing, exporting, or taking possession of industrial
11 hemp.

12 3. Taking possession of hemp that has been certified, from a laboratory
13 authorized by the department of agriculture, trade and consumer protection to test
14 the delta-9-tetrahydrocannabinol concentration in hemp, as meeting the
15 permissible delta-9-tetrahydrocannabinol concentration limit for industrial hemp.

16 4. Taking samples of hemp crops, transporting the samples to a testing facility,
17 and testing the samples for the delta-9-tetrahydrocannabinol concentration of the
18 hemp.

19 (c) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity described
20 under par. (b) does not constitute prima facie evidence of a prohibited representation
21 under s. 961.41 (4) (am) 1. a. or b.

22

23

1 ~~X~~
2 **SECTION 1.** 961.442 of the statutes is created to read:

3 **961.442 Penalties; industrial hemp.** If a person attempts to conceal the
4 commission of a crime under this ~~X~~ chapter while representing that he or she is
5 engaging in the planting, growing, cultivating, harvesting, processing, transporting,
6 importing, exporting, selling, transferring, sampling, testing, or taking possession
7 of industrial hemp, the maximum term of imprisonment prescribed by law for that
8 crime may be increased as follows:

9 (1) The maximum term of imprisonment for a misdemeanor may be increased
10 by not more than 6 months.

11 (2) The maximum term of imprisonment for a felony may be increased by not
12 more than 3 years.

13 INS EAW 9-24

14 ~~X~~
15 **SECTION 2.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

16 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.635, 939.645, 946.42 (4),
 ~~✓~~
 961.442, 961.46, and 961.49.