



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1539/P3
CMH/JK/SWB/MCP:wlj

DOA:.....Bolhorst, BB0218 - Medical marijuana

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

1. Medical marijuana

Current law prohibits a person from manufacturing, distributing, or delivering tetrahydrocannabinols; possessing THC with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess THC; using drug paraphernalia; or possessing drug paraphernalia. This bill creates a medical use defense to such THC-related prosecutions and forfeiture actions for a person who is registered with DHS as having a specified debilitating medical condition or undergoing a specified debilitating treatment. The bill also prohibits the arrest or prosecution of such a person for those offenses. The defense and prohibition do not apply under certain circumstances, such as 1) if the person does not have a valid registry identification card; 2) if the amount of cannabis involved is more than 12 plants or three ounces of leaves or flowers; 3) if, while under the influence of THC, the person drives a motor vehicle or engages in other conduct that endangers another person; or 4) if the person smokes cannabis on a school bus or public transit or on school premises.

Under the bill, DHS must establish a medical cannabis registry, and a person may apply to DHS for a registry identification card. The bill specifies that the following medical conditions or treatments qualify a person for the registry: cancer,

glaucoma, AIDS or HIV, Crohn's disease, a hepatitis C virus infection, Alzheimer's disease, amyotrophic lateral sclerosis, nail-patella syndrome, Ehlers-Danlos Syndrome, post-traumatic stress disorder, or the treatment of these conditions; opioid abatement or reduction or treatment for opioid addiction; a chronic or debilitating disease or medical condition or the treatment of such a disease or condition that causes cachexia, severe pain, severe nausea, seizures, or severe and persistent muscle spasms; and any other medical condition or treatment DHS designates as a debilitating medical condition or treatment. DHS must issue a qualified applicant a registry identification card unless, in the previous ten years, the applicant was serving a sentence or on probation for certain violent felony convictions. DHS must keep registry information and applications confidential except for verifying status for law enforcement purposes.

Under the bill, DATCP must license and regulate dispensaries to facilitate medical THC. The bill prohibits a dispensary from being located within 500 feet of a school, from distributing to one person more than 12 cannabis plants or three ounces of cannabis leaves or flowers, and from possessing an excessive quantity of cannabis. An applicant for a dispensary license must pay an initial application fee determined by DATCP, but a minimum of \$250, and a dispensary must pay an annual fee determined by DHS, but a minimum of \$5,000.

The bill requires DATCP to determine policies that allow entities to grow cannabis and distribute it to dispensaries. The bill also requires DATCP to register entities as THC-testing laboratories.

Finally, the bill imposes a surcharge on the sale of cannabis and tetrahydrocannabinols by a dispensary. The surcharge is equal to 10 percent of the sales price.

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.

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.** 20.115 (7) (ge) of the statutes is created to read:
2 20.115 (7) (ge) *Licensing and support services for dispensaries.* All moneys
3 received under s. 94.57 (5) to license and regulate dispensaries, and to register
4 laboratories, under s. 94.57.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

1 **SECTION 2.** 20.435 (6) (gd) of the statutes is created to read:

2 20.435 (6) (gd) *Medical cannabis registry*. All moneys received as fees under
3 s. 146.44 (2) (a) 4. and (ac) 3. and (4m), for the purposes of the Medical Cannabis
4 Registry Program under s. 146.44.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats. 9

5 **SECTION 3.** 20.566 (1) (bb) of the statutes is created to read:

6 20.566 (1) (bb) *Administration of the dispensary surcharge*. The amounts in
7 the schedule for the purposes of administering the dispensary surcharge imposed
8 under subch. IV of ch. 139.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

9 **SECTION 4.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

10 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
11 the possession of marijuana, as defined in s. 961.01 (14), subject to par. (c) and the
12 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
13 ordinance; except that if. Any ordinance enacted under this paragraph shall provide
14 a person who is prosecuted under it with the defenses that the person has under s.
15 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint
16 is issued regarding an allegation of possession of more than 25 grams of marijuana,
17 or possession of any amount of marijuana following a conviction in this state for
18 possession of marijuana, the subject of the complaint may not be prosecuted under
19 this subsection for the same action that is the subject of the complaint unless all of
20 the following occur:

21 **SECTION 5.** 59.54 (25) (c) of the statutes is created to read:

SECTION 5

1 59.54 (25) (c) A person may not be prosecuted under an ordinance enacted
2 under par. (a) if, under s. 968.072 (2) or (4) (b), the person would not be subject to
3 prosecution under s. 961.41 (3g) (e).

4 **SECTION 6.** 59.54 (25m) of the statutes is amended to read:

5 59.54 (25m) DRUG PARAPHERNALIA. The board may enact an ordinance to
6 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
7 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.
8 Any ordinance enacted under this subsection shall provide a person prosecuted
9 under it with the defenses that the person has under s. 961.5755 to prosecutions
10 under s. 961.573 (1), 961.574 (1), or 961.575 (1). A person may not be prosecuted
11 under an ordinance enacted under this subsection if, under s. 968.072 (3) or (4) (b),
12 the person would not be subject to prosecution under s. 961.573 (1), 961.574 (1), or
13 961.575 (1). The board may enforce an ordinance enacted under this subsection in
14 any municipality within the county.

15 **SECTION 7.** 66.0107 (1) (bm) of the statutes is amended to read:

16 66.0107 (1) (bm) Enact and enforce an ordinance to prohibit the possession of
17 marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g)
18 (intro.), and provide a forfeiture for a violation of the ordinance; ~~except that if.~~ Any
19 ordinance enacted under this paragraph shall provide a person who is prosecuted
20 under it with the defenses that the person has under s. 961.436 to prosecutions under
21 s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint is issued regarding an allegation
22 of possession of more than 25 grams of marijuana, or possession of any amount of
23 marijuana following a conviction in this state for possession of marijuana, the subject
24 of the complaint may not be prosecuted under this paragraph for the same action that

1 is the subject of the complaint unless the charges are dismissed or the district
2 attorney declines to prosecute the case.

3 **SECTION 8.** 66.0107 (1) (bp) of the statutes is amended to read:

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

12 **SECTION 9.** 66.0414 of the statutes is created to read:

13 **66.0414 Cultivation of tetrahydrocannabinols.** No village, town, city, or
14 county may enact or enforce an ordinance or a resolution that prohibits cultivating
15 tetrahydrocannabinols or cannabis ^o(outdoors) if the cultivation is by one of the
16 following:

17 (1) A dispensary, as defined in s. 94.57 (1) (a).

18 (2) A person who is cultivating tetrahydrocannabinols for medication with
19 tetrahydrocannabinols, as defined in s. 146.44 (1) (c), if the amount of cannabis does
20 not exceed the maximum authorized amount, as defined in s. 961.01 (14c).

21 (3) An entity that is cultivating cannabis for distribution as permitted under
22 policies determined under s. 94.57 (2) and rules promulgated under s. 94.57 (9).

23 **SECTION 10.** 66.1201 (2m) of the statutes is amended to read:

24 66.1201 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
25 facility, or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit,

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1 facility, or privilege in any manner for any purpose nor be discriminated against
2 because of sex, race, color, creed, or sexual orientation; status as a victim of domestic
3 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
4 person holds, or has applied for, a registry identification card, as defined in s. 146.44
5 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h),
6 or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or
7 national origin.

8 **SECTION 11.** 66.1213 (3) of the statutes is amended to read:

9 **66.1213 (3) DISCRIMINATION.** Persons otherwise entitled to any right, benefit,
10 facility, or privilege under this section may not be denied the right, benefit, facility,
11 or privilege in any manner for any purpose nor be discriminated against because of
12 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
13 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
14 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
15 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or
16 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
17 origin.

18 **SECTION 12.** 66.1301 (2m) of the statutes is amended to read:

19 **66.1301 (2m) DISCRIMINATION.** Persons entitled to any right, benefit, facility,
20 or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility,
21 or privilege in any manner for any purpose nor be discriminated against because of
22 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
23 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
24 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
25 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or

1 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
2 origin.

3 **SECTION 13.** 66.1331 (2m) of the statutes is amended to read:

4 66.1331 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
5 facility, or privilege under this section may not be denied the right, benefit, facility,
6 or privilege in any manner for any purpose nor be discriminated against because of
7 sex, race, color, creed, or sexual orientation;; status as a victim of domestic abuse,
8 sexual assault, or stalking, as defined in s. 106.50 (1m) (u);; whether the person
9 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
10 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or
11 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
12 origin.

13 **SECTION 14.** 66.1333 (3) (e) 2. of the statutes is amended to read:

14 66.1333 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility, or
15 privilege under this section may not be denied the right, benefit, facility, or privilege
16 in any manner for any purpose nor be discriminated against because of sex, race,
17 color, creed, or sexual orientation;; status as a victim of domestic abuse, sexual
18 assault, or stalking, as defined in s. 106.50 (1m) (u);; whether the person holds, or
19 has applied for, a registry identification card, as defined in s. 146.44 (1) (g), has been
20 the subject of a written certification, as defined in s. 146.44 (1) (h), or is or has been
21 a member of a treatment team, as defined in s. 961.01 (20t); or national origin.

22 **SECTION 15.** 77.54 (14) (intro.) of the statutes is amended to read:

23 77.54 (14) (intro.) The sales price from the sales of and the storage, use, or other
24 consumption in this state of drugs that are any of the following, not including

1 cannabis and tetrahydrocannabinols procured from dispensary, as defined in s. 94.57

2 (1) (a):

3 **SECTION 16.** 94.57 of the statutes is created to read:

4 **94.57 Medical cannabis. (1) DEFINITIONS.** In this section:

5 (a) "Dispensary" means an entity licensed under this section that cultivates,
6 acquires, manufactures, possesses, delivers, transfers, transports, sells, or dispenses
7 cannabis, tetrahydrocannabinols, paraphernalia, or related supplies and
8 educational materials to treatment teams and other dispensaries.

9 (b) "Maximum authorized amount" has the meaning given in s. 961.01 (14c).

10 (c) "Medication with tetrahydrocannabinols" has the meaning given in s.
11 146.44 (1) (c).

12 (d) "Qualifying patient" has the meaning given in s. 146.44 (1) (e).

13 (e) "Registry identification card" has the meaning given in s. 146.44 (1) (g).

14 (f) "Treatment team" has the meaning given in s. 961.01 (20t).

15 (g) "Usable cannabis" has the meaning given in s. 961.01 (21f).

16 (h) "Written certification" has the meaning given in s. 146.44 (1) (h).

17 **(2) DEPARTMENTAL POWERS AND DUTIES.** (a) The department shall provide
18 licensing, regulation, record keeping, and security for dispensaries.

19 (b) The department shall determine policies allowing entities to grow cannabis
20 and distribute cannabis and tetrahydrocannabinols to dispensaries, shall develop
21 security guidelines for the entities, and shall regulate such entities.

22 **(3) LICENSING.** The department shall issue licenses to operate as a dispensary
23 and shall decide which and how many applicants receive a license on the basis of all
24 of the following:

25 (a) Convenience to treatment teams and the preferences of treatment teams.

1 (b) The ability of an applicant to provide to treatment teams a sufficient amount
2 of tetrahydrocannabinols.

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

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

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

9 (f) The ability of the applicant to abide by the prohibitions under sub. (4).

10 (4) PROHIBITIONS. The department may issue a license under this section to an
11 applicant only if the applicant has been a resident of this state for at least the 2 years
12 immediately preceding the application. The department may not issue a license to,
13 and must revoke a license of, any entity to which any of the following applies:

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

16 (b) The dispensary distributes to a treatment team a number of cannabis plants
17 or an amount of usable cannabis that, in the period of distribution, results in the
18 treatment team possessing more than the maximum authorized amount.

19 (c) The dispensary possesses a number of cannabis plants or an amount of
20 usable cannabis that exceeds the combined maximum authorized amount for all of
21 the treatment teams that use the dispensary by a number or an amount determined
22 by the department by rule to be unacceptable.

23 (5) LICENSING PROCEDURE; FEES; LICENSE TERM. (a) An application for a license
24 under this section shall be in writing on a form provided by the department and
25 include the licensing application fee under par. (b) 1.

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1 (b) 1. A licensing application fee shall be an amount determined by the
2 department but not less than \$250.

3 2. The annual fee for a dispensary shall be an amount determined by the
4 department but not less than \$5,000.

5 (c) A dispensary license is valid unless revoked. Each license shall be issued
6 only for the applicant named in the application and may not be transferred or
7 assigned.

8 (d) The department shall approve or deny an application for a dispensary
9 license within 60 days after receiving it.

10 **(6) DISTRIBUTION OF MEDICAL TETRAHYDROCANNABINOLS.** (a) A dispensary may
11 deliver or distribute tetrahydrocannabinols and drug paraphernalia to a member of
12 a treatment team only if done in a face-to-face transaction, if the dispensary receives
13 a copy of the qualifying patient's written certification or registry identification card,
14 and if the tetrahydrocannabinols are contained in or derived from cannabis grown
15 in this state under par. (f).

16 (b) A dispensary may possess or manufacture tetrahydrocannabinols and drug
17 paraphernalia with the intent to deliver or distribute under par. (a).

18 (c) An entity operating under policies determined under sub. (2) and rules
19 promulgated under sub. (9) may possess tetrahydrocannabinols, possess or
20 manufacture tetrahydrocannabinols with the intent to deliver or distribute to a
21 dispensary, or deliver or distribute tetrahydrocannabinols to a dispensary.

22 (d) A dispensary may have 2 locations, one for cultivation or production and one
23 for distribution.

24 (e) A dispensary shall have all tetrahydrocannabinols and cannabis tested for
25 mold, fungus, pesticides, and other contaminants and may not distribute

1 tetrahydrocannabinols or cannabis that test positive for mold, fungus, pesticides, or
2 other contaminants if the contaminants, or level of contaminants, are identified by
3 the testing laboratories under sub. (7) to be potentially unsafe to a qualifying
4 patient's health.

5 (f) A dispensary or an entity operating under policies determined under sub.
6 (2) and rules promulgated under sub. (9) may cultivate cannabis, including
7 cultivating cannabis outdoors.

8 **(7) TESTING LABORATORIES.** The department shall register entities as
9 tetrahydrocannabinols-testing laboratories. The laboratories may possess or
10 manufacture tetrahydrocannabinols and drug paraphernalia and shall perform the
11 following services:

12 (a) Test cannabis and tetrahydrocannabinols produced for dispensaries for
13 potency and for mold, fungus, pesticides, and other contaminants.

14 (b) Research findings related to medication with tetrahydrocannabinols,
15 including findings that identify potentially unsafe levels of contaminants.

16 (c) Provide training to persons who hold registry identification cards,
17 treatment teams, persons employed by dispensaries, and entities that grow cannabis
18 and distribute to dispensaries cannabis and tetrahydrocannabinols, as provided by
19 policies determined under sub. (2) and rules promulgated under sub. (9), on the
20 following:

21 1. The safe and efficient cultivation, harvesting, packaging, labeling, and
22 distribution of cannabis and tetrahydrocannabinols.

23 2. Security and inventory accountability procedures.

24 3. The most recent research on medication with tetrahydrocannabinols.

SECTION 16

1 (8) **CONFIDENTIALITY.** The department may disclose to a law enforcement
2 agency only information necessary to verify that a dispensary has a license issued
3 under this section, an entity is complying with policies determined under sub. (2) and
4 rules promulgated under sub. (9), or an entity is registered under sub. (7).

5 (9) **RULES.** The department may promulgate rules to administer and enforce
6 this section. The department may use the procedure under s. 227.24 to promulgate
7 rules under this section. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules
8 promulgated under this subsection remain in effect until January 1, 2023, or the date
9 on which permanent rules take effect, whichever is sooner. Notwithstanding s.
10 227.24 (1) (a) and (3), the department is not required to provide evidence that
11 promulgating a rule under this subsection as an emergency rule is necessary for the
12 preservation of the public peace, health, safety, or welfare and is not required to
13 provide a finding of emergency for a rule promulgated under this subsection.

14 **SECTION 17.** 106.50 (1m) (h) of the statutes is amended to read:

15 106.50 (1m) (h) “Discriminate” means to segregate, separate, exclude, or treat
16 a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r)
17 because of sex, race, color, sexual orientation, disability, religion, national origin,
18 marital status, or family status;; status as a victim of domestic abuse, sexual assault,
19 or stalking; whether the person holds, or has applied for, a registry identification
20 card, as defined in s. 146.44 (1) (g), has been the subject of a written certification, as
21 defined in s. 146.44 (1) (h), or is or has been a member of a treatment team, as defined
22 in s. 961.01 (20t); lawful source of income; age; or ancestry.

23 **SECTION 18.** Subchapter IV of chapter 139 [precedes 139.97] of the statutes is
24 created to read:

25 **CHAPTER 139**

SUBCHAPTER IV

DISPENSARY SURCHARGE

139.97 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "Dispensary" has the meaning given in s. 94.57 (1) (a).

139.971 Imposition. (1) A surcharge is imposed on a dispensary at the rate of 10 percent of the total price of cannabis and tetrahydrocannabinols sold or otherwise dispensed to an unrelated person, including any charge by the dispensary that is necessary to complete the sale. For purposes of this subsection, the total price of cannabis and tetrahydrocannabinols shall not be reduced by costs or expenses incurred by the dispensary, such as fees, delivery, freight, transportation, packaging, handling, marketing, taxes, and import fees or duties, regardless of whether such costs or expenses are separately stated on the invoice. The total price also shall not be reduced by the value or cost of discounts or free promotional or sample products. For purposes of this subsection, a dispensary is considered related to another person if the 2 entities have significant common purposes and substantial common membership or, directly or indirectly, substantial common direction or control.

(2) A dispensary shall not separately state the surcharge on an invoice or other similar document given to the purchaser or recipient of the cannabis and tetrahydrocannabinols.

(3) No dispensary may sell or otherwise dispense cannabis and tetrahydrocannabinols without first obtaining a business tax registration certificate as prescribed under s. 73.03 (50).

139.972 Records, returns. (1) Every dispensary shall keep accurate and complete records, in the manner prescribed by the department, of all transactions

1 involving the sale or disposition of cannabis and tetrahydrocannabinols. A
2 dispensary shall preserve the records on the premises described in its business tax
3 registration certificate in such a manner as to ensure permanency and accessibility
4 for inspection at reasonable hours by authorized personnel of the department.

5 (2) Every dispensary shall render a true and correct invoice of every sale and
6 disposition of cannabis and tetrahydrocannabinols and shall on or before the 15th
7 day of each calendar month file electronically a verified report of all such sales and
8 dispositions during the preceding calendar month.

9 (3) The department shall prescribe reasonable and uniform methods of keeping
10 records and making reports and shall prescribe and furnish the necessary report
11 forms.

12 (4) If the department finds that the records of any dispensary are not kept in
13 the prescribed form or are in such condition that an unusual amount of time is
14 required to determine from them the amount of surcharge due, the department shall
15 give notice of such fact to that dispensary and require that the records be revised and
16 kept in the prescribed form. If the dispensary fails to comply within 30 days, the
17 dispensary shall pay the expenses reasonably attributable to a proper examination
18 and surcharge determination at the rate of \$30 per day for each auditor. The
19 department shall send a bill for expenses, and the dispensary shall pay the amount
20 of the bill within 10 days.

21 (5) If any dispensary fails to file a report when due, the dispensary shall be
22 required to pay a late filing fee of \$50.

23 (6) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating
24 to confidentiality of income and franchise tax returns, apply to any information
25 obtained from any person on a dispensary surcharge return, report, schedule,

1 exhibit, or other document or from an audit report pertaining to the return, report,
2 schedule, exhibit, or document, except that the department shall publish on its
3 Internet site, at least quarterly, a current list of business tax registration certificates
4 issued to dispensaries under s. 73.03 (50) and include on the list the name and
5 address of the certificate holder and the date on which the department issued the
6 certificate.

7 (7) The department may inspect the business records of any dispensary doing
8 business on a reservation or on an Indian tribe's trust land.

9 (8) Each dispensary shall collect and remit the surcharge imposed under this
10 subchapter with the reports required to be filed under this section.

11 **139.973 Administration and enforcement.** (1) Sections 139.355, 139.365,
12 139.39, and 139.40, as they apply to the tax under subch. II, apply to the
13 administration and enforcement of this subchapter.

14 (2) If a dispensary fails to pay the surcharge under this subchapter, authorized
15 personnel of the department, with the assistance of any law enforcement officer
16 within his or her jurisdiction, may search the premises of the dispensary to seize any
17 personal property or cash for payment of the unpaid surcharge.

18 **139.974 Police powers.** The duly authorized employees of the department
19 have all necessary police powers to prevent violations of this subchapter.

20 **139.975 Timely filing.** The provisions on timely filing under s. 71.80 (18)
21 apply to the surcharge under this subchapter.

22 **139.976 Bonds.** Section 78.11, as it applies to suppliers of motor vehicle fuel,
23 applies to persons liable for the surcharge under this subchapter.

24 **139.977 Interest and penalties.** (1) The interest and penalties under s.
25 139.44 (2) to (7) and (9) to (12) apply to this subchapter. In addition, a person who

1 violates s. 139.972 (8) may be fined not more than \$10,000 or imprisoned for not more
2 than 9 months or both.

3 (2) If a person fails to file any return or report required under s. 139.972 by the
4 due date, unless the person shows that that failure was due to reasonable cause and
5 not due to neglect, the department shall add to the amount of surcharge required to
6 be shown on that return 5 percent of the amount of the surcharge if the failure is for
7 not more than one month, and an additional 5 percent of the surcharge for each
8 additional month or fraction of a month during which the failure continues, but not
9 more than 25 percent of the surcharge. For purposes of this subsection, the amount
10 of the surcharge required to be shown on the return shall be reduced by the amount
11 of surcharge that is paid on or before the due date and by the amount of any credit
12 against the surcharge that may be claimed on the return.

13 **139.978 Personal liability.** Any officer, employee, fiduciary, or agent who is
14 responsible for paying the surcharge, interest, penalties, or other charges under this
15 subchapter incurred by another person, as defined in s. 77.51 (10), is personally
16 liable for the surcharge, interest, penalties, or other charges. Sections 71.88 (1) (a)
17 and (2) (a), 71.89, and 71.90, as they apply to appeals of income or franchise tax
18 assessments, apply to appeals of assessments under this subchapter.

19 **139.9785 Prosecutions by attorney general.** Upon request by the secretary
20 of revenue, the attorney general may represent this state or assist a district attorney
21 in prosecuting any case arising under this subchapter.

22 **139.979 Rule-making authority.** (1) The department shall promulgate any
23 rules necessary for the administration of this subchapter.

24 (2) Using the procedure under s. 227.24, the department may promulgate the
25 rules required under sub. (1). Notwithstanding s. 227.24 (1) (c) and (2), emergency

1 rules promulgated under this subsection remain in effect until January 1, 2023, or
2 the date on which permanent rules take effect, whichever is sooner.
3 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
4 evidence that promulgating a rule under this subsection as an emergency rule is
5 necessary for the preservation of the public peace, health, safety, or welfare and is
6 not required to provide a finding of emergency for a rule promulgated under this
7 subsection.

8 **SECTION 19.** 146.44 of the statutes is created to read:

9 **146.44 Medical Cannabis Registry Program. (1) DEFINITIONS.** In this
10 section:

11 (a) "Applicant" means a person who is applying for a registry identification card
12 under sub. (2) (a) or (ac).

13 (ag) "Bona fide practitioner-patient relationship" means a relationship
14 between the practitioner and the patient that includes all of the following:

15 1. An assessment of the patient's medical history and current medical condition
16 by the practitioner, including an in-person physical examination if appropriate.

17 2. A consultation between the practitioner and the patient with respect to the
18 patient's debilitating medical condition or treatment.

19 3. Availability by the practitioner to provide follow-up care and treatment to
20 the patient, including patient examinations.

21 (b) "Debilitating medical condition or treatment" means any of the following:

22 1. Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
23 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
24 Crohn's disease, a hepatitis C virus infection, Alzheimer's disease, amyotrophic

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1 lateral sclerosis, nail-patella syndrome, Ehlers-Danlos Syndrome, post-traumatic
2 stress disorder, or the treatment of these conditions.

3 2. Opioid abatement or reduction or treatment for opioid addiction.

4 3. A chronic or debilitating disease or medical condition or the treatment of
5 such a disease or condition that causes cachexia, severe pain, severe nausea,
6 seizures, including those characteristic of epilepsy, or severe and persistent muscle
7 spasms, including those characteristic of multiple sclerosis.

8 4. Any other medical condition or any other treatment for a medical condition
9 designated as a debilitating medical condition or treatment as determined by the
10 department.

11 (c) "Medication with tetrahydrocannabinols" means any of the following:

12 1. The use of tetrahydrocannabinols in any form by a qualifying patient to
13 alleviate the symptoms or effects of the qualifying patient's debilitating medical
14 condition or treatment.

15 2. The acquisition, possession, cultivation, or transportation of
16 tetrahydrocannabinols in any form by a qualifying patient if done to facilitate his or
17 her use of the tetrahydrocannabinols under subd. 1.

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

1 a. The acquisition, possession, cultivation, transportation, or transfer of the
2 tetrahydrocannabinols is done to facilitate the qualifying patient's use of
3 tetrahydrocannabinols under subd. 1. or 2.

4 b. It is not practicable for the qualifying patient to acquire, possess, cultivate,
5 or transport the tetrahydrocannabinols independently, or the qualifying patient is
6 under 18 years of age.

7 (cm) "Out-of-state registry identification card" means a document that is valid
8 as provided under sub. (7) (f).

9 (cr) "Practitioner" means a physician, advanced practice nurse, a physician
10 assistant, or other person licensed, registered, certified, or otherwise permitted to
11 distribute, dispense, conduct research with respect to, administer or use in teaching
12 or chemical analysis a controlled substance in the course of professional practice or
13 research in this state.

14 (d) "Primary caregiver" means a person who has agreed to help a qualifying
15 patient in his or her medication with tetrahydrocannabinols and who has a registry
16 identification card.

17 (e) "Qualifying patient" means a person who has been diagnosed in the course
18 of a bona fide practitioner-patient relationship as having or undergoing a
19 debilitating medical condition or treatment but does not include a person under the
20 age of 18 years unless all of the following apply:

21 1. The person's practitioner has explained the potential risks and benefits of
22 medication with tetrahydrocannabinols to the person and to a parent, guardian, or
23 person having legal custody of the person.

24 2. The parent, guardian, or person having legal custody provides the
25 practitioner a written statement consenting to do all of the following:

1 a. Allow medication with tetrahydrocannabinols for the person.

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

3 c. Manage the person's medication with tetrahydrocannabinols.

4 (f) "Registrant" means a person to whom a registry identification card is issued.

5 (g) "Registry identification card" means a document issued by the department
6 under sub. (4) that identifies a person as a qualifying patient or primary caregiver.

7 (h) "Written certification" means a statement written by a person's practitioner
8 if all of the following apply:

9 1. The statement indicates that, in the practitioner's professional opinion, the
10 person has or is undergoing a debilitating medical condition or treatment and the
11 potential benefits of medication with tetrahydrocannabinols would likely outweigh
12 the health risks for the person.

13 2. The statement indicates that the opinion described in subd. 1. was made in
14 the course of a bona fide practitioner-patient relationship.

15 3. The statement is signed by the practitioner or is contained in the person's
16 medical records.

17 **(2) APPLICATION.** (a) An adult who is claiming to be a qualifying patient may
18 apply for a registry identification card by submitting to the department all of the
19 following:

20 1. A signed application form that contains the applicant's name, address, and
21 date of birth.

22 2. A written certification.

23 3. The name, address, and telephone number of the applicant's current
24 practitioner, as listed in the written certification.

1 4. A registration fee shall be an amount determined by the department but not
2 less than \$100.

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

5 (ac) A person who is at least 21 years of age may apply for a registry
6 identification card as a primary caregiver by submitting to the department all of the
7 following:

8 1. A signed application form that contains the applicant's name, address, and
9 date of birth.

10 2. A copy of a written certification or copy of a registration identification card
11 for each qualifying patient for whom the applicant will be the primary caregiver.

12 3. A registration fee shall be an amount determined by the department, but not
13 less than \$100.

14 4. Any information that the department determines is necessary for a
15 background check under par. (am).

16 (am) 1. In this paragraph:

17 a. "Background check" means a search of department of justice records to
18 determine whether an applicant for a registry identification card has been convicted
19 of a disqualifying offense.

20 b. "Disqualifying offense" means a violent crime under s. 165.84 (7) (ab) or a
21 substantially similar violation of federal law that is a felony.

22 2. The department shall convey the information provided by an applicant
23 under par. (a) or (ac) to the department of justice, and the department of justice shall
24 perform a background check on the applicant.

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

7 (b) The department shall promulgate rules specifying how a parent, guardian,
8 or person having legal custody of a child may apply for a registry identification card
9 for the child and the circumstances under which the department may approve or
10 deny the application.

11 **(3) PROCESSING THE APPLICATION.** The department shall verify the information
12 the applicant submitted under sub. (2) (a) or (ac) and shall approve or deny the
13 application within 30 days after receiving it. The department may deny an
14 application submitted under sub. (2) (a) or (ac) only if one of the following applies:

15 (a) The applicant did not provide the required information or provided false
16 information.

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

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

20 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue an
21 applicant a registry identification card within 5 days after approving the application
22 under sub. (3). Unless voided under sub. (5) (b) or (c) or revoked under rules
23 promulgated under sub. (7) (d), a registry identification card expires 2 years from the
24 date of issuance. A registry identification card shall contain all of the following:

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

*determined
by the department
but not
less than*

- 1 1. The registrant.
- 2 2. Each primary caregiver, if the registrant is a qualifying patient.
- 3 3. Each qualifying patient, if the registrant is a primary caregiver.
- 4 (b) The date of issuance and expiration date of the registry identification card.
- 5 (c) A photograph of the registrant.
- 6 (d) Other information the department may require by rule.
- 7 **(4m)** ANNUAL FEE. Primary caregivers shall pay an annual fee of \$250.

8 **(5)** ADDITIONAL INFORMATION TO BE PROVIDED BY REGISTRANT. (a) 1. An adult
9 registrant shall notify the department of any change in the registrant's name and
10 address. An adult registrant who is a qualifying patient shall notify the department
11 of any change in his or her practitioner, of any significant improvement in his or her
12 health as it relates to his or her debilitating medical condition or treatment, and if
13 a primary caregiver stops helping the registrant in the registrant's medication with
14 tetrahydrocannabinols. A registrant who is a primary caregiver shall notify the
15 department if the registrant becomes a primary caregiver for an additional
16 qualifying patient and shall include with the notice a copy of a written certification
17 or copy of a registration identification card for each additional qualifying patient.

18 2. If a qualifying patient is a child, a primary caregiver for the child shall
19 provide the department with any information that the child, if he or she were an
20 adult qualifying patient, would have to provide under subd. 1. within 10 days after
21 the date of the change to which the information relates.

22 (b) If a registrant fails to notify the department within 10 days after any change
23 for which notification is required under par. (a) 1., his or her registry identification
24 card is void. If a registrant fails to comply with par. (a) 2., the registry identification

1 card for the qualifying patient to whom the information under par. (a) 2. relates is
2 void.

3 (c) If a qualifying patient's registry identification card becomes void under par.
4 (b), the registry identification card for each of the qualifying patient's primary
5 caregivers with regard to that qualifying patient is void. The department shall send
6 written notice of this fact to each such primary caregiver.

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

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

11 (c) The department may disclose to a law enforcement agency, upon the request
12 of the law enforcement agency, only information necessary to verify that a person
13 possesses a valid registry identification card.

14 **(7) RULES.** The department shall promulgate rules that do all of the following:

15 (a) Create a form for an application under sub. (2).

16 (b) Specify how the department will verify under sub. (3) the information
17 submitted under sub. (2).

18 (c) Specify how and under what circumstances registry identification cards
19 may be renewed.

20 (d) Specify how and under what changed circumstances a registry
21 identification card may be revoked.

22 (e) Specify under what circumstances an applicant whose application is denied
23 may reapply.

24 (f) Ensure that out-of-state registry identification cards are valid only if all of
25 the following apply:

1 1. The person holding the out-of-state registry identification card has been
2 diagnosed with a debilitating medical condition that has been approved by the
3 jurisdiction that issued the card.

4 2. The out-of-state registry identification card allows for medication with
5 tetrahydrocannabinols by the person who holds the card, the card is valid in the
6 jurisdiction in which it was provided, and the person who holds the card is a resident
7 of that jurisdiction.

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

11 (g) Create guidelines for issuing registry identification cards, and for obtaining
12 and distributing cannabis and tetrahydrocannabinols for medication with
13 tetrahydrocannabinols, to persons under the care of the department who have a
14 debilitating medical condition or treatment.

15 **(8) EMERGENCY RULES.** Using the procedure under s. 227.24, the department
16 may promulgate the rules required under s. 146.44. Notwithstanding s. 227.24 (1)
17 (c) and (2), emergency rules promulgated under this subsection remain in effect until
18 January 1, 2023, or the date on which permanent rules take effect, whichever is
19 sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to
20 provide evidence that promulgating a rule under this subsection as an emergency
21 rule is necessary for the preservation of the public peace, health, safety, or welfare
22 and is not required to provide a finding of emergency for a rule promulgated under
23 this subsection.

24 **SECTION 20.** 227.01 (13) (zo) of the statutes is created to read:

1 227.01 (13) (zo) Determines policies relating to medical cannabis under s. 94.57
2 (2).

3 **SECTION 21.** 234.29 of the statutes is amended to read:

4 **234.29 Equality of occupancy and employment.** The authority shall
5 require that occupancy of housing projects assisted under this chapter be open to all
6 regardless of sex, race, religion, or sexual orientation; status as a victim of domestic
7 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
8 person holds, or has applied for, a registry identification card, as defined in s. 146.44
9 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h),
10 or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,
11 and that contractors and subcontractors engaged in the construction of economic
12 development or housing projects, shall provide an equal opportunity for
13 employment, without discrimination as to sex, race, religion, sexual orientation, or
14 creed.

15 **SECTION 22.** 289.33 (3) (d) of the statutes is amended to read:

16 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
17 authorization, approval, variance or exception or any restriction, condition of
18 approval or other restriction, regulation, requirement or prohibition imposed by a
19 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
20 a town, city, village, county or special purpose district, including without limitation
21 because of enumeration any ordinance, resolution or regulation adopted under s.
22 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2),
23 (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),
24 (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19),
25 (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10),

1 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3),
2 (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16),
3 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70
4 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8),
5 and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34,
6 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415,
7 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III
8 of ch. 91.

9 **SECTION 23.** 349.02 (2) (b) 4. of the statutes is amended to read:

10 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
11 66.0107 (1) (bm).

12 **SECTION 24.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

13 767.41 (5) (am) (intro.) Subject to pars. (bm) ~~and~~, (c), and (d), in determining
14 legal custody and periods of physical placement, the court shall consider all facts
15 relevant to the best interest of the child. The court may not prefer one parent or
16 potential custodian over the other on the basis of the sex or race of the parent or
17 potential custodian. Subject to pars. (bm) ~~and~~, (c), and (d), the court shall consider
18 the following factors in making its determination:

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

20 767.41 (5) (d) The court may not consider as a factor in determining the legal
21 custody of a child whether a parent or potential custodian holds, or has applied for,
22 a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject
23 of a written certification, as defined in s. 146.44 (1) (h), or is or has been a qualifying
24 patient, as defined in s. 146.44 (1) (e), or a primary caregiver, as defined in s. 146.44

1 (1) (d), unless the parent or potential custodian's behavior creates an unreasonable
2 danger to the child that can be clearly articulated and substantiated.

3 **SECTION 26.** 767.451 (5m) (a) of the statutes is amended to read:

4 767.451 (5m) (a) Subject to pars. (b) and, (c), and (d), in all actions to modify
5 legal custody or physical placement orders, the court shall consider the factors under
6 s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its determination in
7 a manner consistent with s. 767.41.

8 **SECTION 27.** 767.451 (5m) (d) of the statutes is created to read:

9 767.451 (5m) (d) In an action to modify a legal custody order, the court may not
10 consider as a factor in making a determination whether a parent or potential
11 custodian holds, or has applied for, a registry identification card, as defined in s.
12 146.44 (1) (g), is or has been the subject of a written certification, as defined in s.
13 146.44 (1) (h), or is or has been a qualifying patient, as defined in s. 146.44 (1) (e), or
14 a primary caregiver, as defined in s. 146.44 (1) (d), unless the parent or potential
15 custodian's behavior creates an unreasonable danger to the child that can be clearly
16 articulated and substantiated.

17 **SECTION 28.** 961.01 (5m) of the statutes is created to read:

18 961.01 (5m) "Debilitating medical condition or treatment" has the meaning
19 given in s. 146.44 (1) (b).

20 **SECTION 29.** 961.01 (12v) of the statutes is created to read:

21 961.01 (12v) "Lockable, enclosed facility" means an enclosed indoor or outdoor
22 area that is lockable, or requires a security device, to permit access only by a member
23 of a qualifying patient's treatment team.

24 **SECTION 30.** 961.01 (14c) of the statutes is created to read:

1 961.01 (14c) “Maximum authorized amount” means 12 live cannabis plants or
2 3 ounces of usable cannabis.

3 **SECTION 31.** 961.01 (14g) of the statutes is created to read:

4 961.01 (14g) “Medication with tetrahydrocannabinols” has the meaning given
5 in s. 146.44 (1) (c).

6 **SECTION 32.** 961.01 (17k) of the statutes is created to read:

7 961.01 (17k) “Out-of-state registry identification card” has the meaning given
8 in s. 146.44 (1) (cm).

9 **SECTION 33.** 961.01 (19m) of the statutes is created to read:

10 961.01 (19m) “Primary caregiver” has the meaning given in s. 146.44 (1) (d).

11 **SECTION 34.** 961.01 (20hm) of the statutes is created to read:

12 961.01 (20hm) “Qualifying patient” has the meaning given in s. 146.44 (1) (e).

13 **SECTION 35.** 961.01 (20ht) of the statutes is created to read:

14 961.01 (20ht) “Registry identification card” has the meaning given in s. 146.44
15 (1) (g).

16 **SECTION 36.** 961.01 (20t) of the statutes is created to read:

17 961.01 (20t) “Treatment team” means a qualifying patient and his or her
18 primary caregivers.

19 **SECTION 37.** 961.01 (21f) of the statutes is created to read:

20 961.01 (21f) “Usable cannabis” means cannabis leaves or flowers but does not
21 include seeds, stalks, or roots or any ingredients combined with the leaves or flowers.

22 **SECTION 38.** 961.01 (21t) of the statutes is created to read:

23 961.01 (21t) “Written certification” has the meaning given in s. 146.44 (1) (h).

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

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

4 **SECTION 40.** 961.32 (1m) of the statutes is renumbered 961.32.

5 **SECTION 41.** 961.32 (2m) of the statutes is repealed.

6 **SECTION 42.** 961.38 (1n) of the statutes is repealed.

7 **SECTION 43.** 961.436 of the statutes is created to read:

8 **961.436 Medical use defense in cases involving**
9 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team
10 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
11 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
12 apply:

13 (a) The manufacture or possession is by the treatment team for medication with
14 tetrahydrocannabinols.

15 (b) The amount of cannabis does not exceed the maximum authorized amount.

16 (c) Any live cannabis plants are in a lockable, enclosed facility unless a member
17 of a qualifying patient's treatment team is accessing the plants or has the plants in
18 his or her possession.

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

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

1 (a) The distribution, delivery, or possession is by the treatment team for
2 medication with tetrahydrocannabinols.

3 (b) The amount of cannabis does not exceed the maximum authorized amount.

4 (c) Any live cannabis plants are in a lockable, enclosed facility unless a member
5 of a qualifying patient's treatment team is accessing the plants or has the plants in
6 his or her possession.

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

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

12 1. The possession or attempted possession is by the treatment team for
13 medication with tetrahydrocannabinols.

14 2. The amount of cannabis does not exceed the maximum authorized amount.

15 3. Any live cannabis plants are in a lockable, enclosed facility unless a member
16 of a qualifying patient's treatment team is accessing the plants or has the plants in
17 his or her possession.

18 4. If the member is a primary caregiver, he or she is not a primary caregiver
19 to more than 10 qualifying patients.

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

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

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

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

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

6 b. The person's place of employment.

7 c. Public or private school premises.

8 d. A juvenile correctional facility.

9 e. A jail or adult correctional facility.

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

11 g. A youth center.

12 (4) For the purposes of a defense raised under sub. (1), (2), or (3) (a), a valid
13 registry identification card, a valid out-of-state registry identification card, or a
14 written certification is presumptive evidence that the person identified on the card
15 as a qualifying patient or the subject of the written certification is a qualifying
16 patient and that, if the person uses tetrahydrocannabinols, he or she does so to
17 alleviate the symptoms or effects of a debilitating medical condition or treatment.

18 (5) Notwithstanding s. 227.12 (1), any person may petition the department of
19 health services to promulgate a rule to designate a medical condition or treatment
20 as a debilitating medical condition or treatment. The department of health services
21 shall promulgate rules providing for public notice of and a public hearing regarding
22 a petition, with the public hearing providing persons an opportunity to comment
23 upon the petition. After the hearing, but no later than 180 days after the submission
24 of the petition, the department of health services shall approve or deny the petition.

1 The department of health service's decision to approve or deny a petition is subject
2 to judicial review under s. 227.52.

3 **SECTION 44.** 961.52 (2) (a) 1. and 2. of the statutes are amended to read:

4 961.52 (2) (a) 1. Places where persons authorized under s. 961.32 (~~1m~~) to
5 possess controlled substances in this state are required by federal law to keep
6 records; and

7 2. Places including factories, warehouses, establishments and conveyances in
8 which persons authorized under s. 961.32 (~~1m~~) to possess controlled substances in
9 this state are permitted by federal law to hold, manufacture, compound, process, sell,
10 deliver or otherwise dispose of any controlled substance.

11 **SECTION 45.** 961.55 (8) (c), (d) and (e) of the statutes are created to read:

12 961.55 (8) (c) A valid registry identification card or a valid out-of-state registry
13 identification card.

14 (d) The person's written certification, if the person is a qualifying patient.

15 (e) A written certification for a qualifying patient for whom the person is a
16 primary caregiver.

17 **SECTION 46.** 961.555 (2) (am) 6. of the statutes is amended to read:

18 961.555 (2) (am) 6. The property is contraband that is subject to forfeiture
19 under s. 961.55 (6), (6m), or, unless the defendant invokes a defense under s. 961.436
20 or 961.5755, under s. 961.55 (6) or (7).

21 **SECTION 47.** 961.555 (2r) of the statutes is created to read:

22 961.555 (2r) MEDICAL USE DEFENSE. (a) In an action to forfeit property seized
23 under s. 961.55, the person who was in possession of the property when it was seized
24 has a defense to the forfeiture of the property if any of the following applies:

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

4 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
6 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
7 (2), or (3) (a) or 961.5755 (1) (a) or (2).

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

13 **SECTION 48.** 961.56 (1) of the statutes is amended to read:

14 961.56 (1) ~~It~~ Except as provided in s. 961.555 (2r) (b) and except for any
15 presumption arising under s. 961.436 (4) or 961.5755 (3), it is not necessary for the
16 state to negate any exemption or exception in this chapter in any complaint,
17 information, indictment or other pleading or in any trial, hearing or other proceeding
18 under this chapter. ~~The, and the~~ burden of proof of any exemption or exception is
19 upon the person claiming it.

20 **SECTION 49.** 961.5755 of the statutes is created to read:

21 **961.5755 Medical tetrahydrocannabinols defense in drug**
22 **paraphernalia cases.** (1) (a) Except as provided in par. (b), a member of a
23 treatment team has a defense to prosecution under s. 961.573 (1) if he or she uses,
24 or possesses with the primary intent to use, drug paraphernalia for medication with
25 tetrahydrocannabinols.

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

3 (2) A member of a treatment team has a defense to prosecution under s. 961.574
4 (1) or 961.575 (1) if he or she delivers, possesses with intent to deliver, or
5 manufactures with intent to deliver to another member of his or her treatment team
6 drug paraphernalia, knowing that it will be primarily used by the treatment team
7 for medication with tetrahydrocannabinols.

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

15 **SECTION 50.** 968.072 of the statutes is created to read:

16 **968.072 Medical cannabis; arrest and prosecution.** (1) DEFINITIONS. In
17 this section:

18 (a) "Lockable, enclosed facility" has the meaning given in s. 961.01 (12v).

19 (am) "Maximum authorized amount" has the meaning given in s. 961.01 (14c).

20 (b) "Medication with tetrahydrocannabinols" has the meaning given in s.
21 961.01 (14g).

22 (bm) "Out-of-state registry identification card" has the meaning given in s.
23 146.44 (1) (cm).

24 (c) "Primary caregiver" has the meaning given in s. 146.44 (1) (d).

25 (d) "Qualifying patient" has the meaning given in s. 146.44 (1) (e).

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

2 (f) "Treatment team" has the meaning given in s. 961.01 (20t).

3 (g) "Written certification" has the meaning given in s. 146.44 (1) (h).

4 **(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL CANNABIS.** Unless s.
5 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient's treatment team
6 may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g)
7 (e) if all of the following apply:

8 (a) The member manufactures, distributes, delivers, or possesses
9 tetrahydrocannabinols for medication with tetrahydrocannabinols by the treatment
10 team.

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

14 (c) The quantity of cannabis does not exceed the maximum authorized amount.

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

17 (e) If the member is a primary caregiver, he or she is not a primary caregiver
18 to more than 10 qualifying patients.

19 **(3) LIMITATIONS ON ARRESTS AND PROSECUTION; DRUG PARAPHERNALIA FOR MEDICAL**
20 **CANNABIS.** (a) Unless s. 961.436 (3) (b) 1., 2., or 3. applies, a member of a treatment
21 team may not be arrested or prosecuted for a violation of s. 961.573 (1) if all of the
22 following apply:

23 1. The member uses, or possesses with the primary intent to use, drug
24 paraphernalia only for medication with tetrahydrocannabinols.

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

4 3. The member does not possess more than the maximum authorized amount
5 of cannabis.

6 4. Any live cannabis plants are in a lockable, enclosed facility unless the
7 member is accessing the plants or has the plants in his or her possession.

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

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

13 1. The member delivers, possesses with intent to deliver, or manufactures with
14 intent to deliver to another member of his or her treatment team drug paraphernalia,
15 knowing that it will be primarily used by the treatment team for medication with
16 tetrahydrocannabinols.

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

20 3. The member does not possess more than the maximum authorized amount
21 of cannabis.

22 4. Any live cannabis plants are in a lockable, enclosed facility unless the
23 member is accessing the plants or has the plants in his or her possession.

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

SECTION 50

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

5 (b) An employee of a dispensary licensed under s. 94.57, of an entity operating
6 under the policies determined under s. 94.57 (2) and rules promulgated under s.
7 94.57 (9), or of a testing laboratory registered under s. 94.57 (7) may not be arrested
8 and such employee may not be subject to prosecution, denied any right or privilege,
9 or penalized in any manner for any good faith action under s. 94.57.

10 (5) PENALTY FOR FALSE STATEMENTS. Whoever intentionally provides false
11 information to a law enforcement officer in an attempt to avoid arrest or prosecution
12 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
13 961.574 (1), or 961.575 (1) may be fined not more than \$500.

14 **SECTION 51.** 968.12 (6) of the statutes is created to read:

15 968.12 (6) MEDICAL CANNABIS. A person's possession, use, or submission of or
16 connection with an application for a registry identification card under s. 146.44 (2),
17 the issuance of such a card under s. 146.44 (4), or a person's possession of such a card,
18 a valid out-of-state registry identification card, as defined in s. 146.44 (1) (cm), or
19 an original or a copy of a written certification, as defined in s. 146.44 (1) (h), may not,
20 by itself, constitute probable cause under sub. (1) or otherwise subject any person or
21 the property of any person to inspection by any governmental agency.

22 **SECTION 52.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
23 read:

24 968.19 (1) Property Except as provided in sub. (2), property seized under a
25 search warrant or validly seized without a warrant shall be safely kept by the officer,

1 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
2 necessary for the purpose of being produced as evidence on any trial.

3 **SECTION 53.** 968.19 (2) of the statutes is created to read:

4 968.19 (2) A law enforcement agency that has seized a live cannabis plant is
5 not responsible for the plant's care and maintenance.

6 **SECTION 54.** 968.20 (1g) (intro.) of the statutes is amended to read:

7 968.20 (1g) (intro.) The court shall order such notice as it deems adequate to
8 be given the district attorney and, unless notice was provided under s. 968.26 (7), to
9 all persons who have or may have an interest in the property. The court shall hold
10 a hearing to hear all claims to its true ownership. Except for a hearing commenced
11 by the court, the hearing shall occur no more than 30 days after a motion is filed
12 except that either party may, by agreement or for good cause, move the court for one
13 extension of no more than 10 days. Any motion may be supported by affidavits or
14 other submissions. If the right to possession is proved to the court's satisfaction, it
15 shall order the property, ~~other than contraband or property covered under sub. (1m)~~
16 ~~or (1r) or s. 173.21 (4) or 968.205,~~ returned if the court finds any of the following:

17 **SECTION 55.** 968.20 (1j) of the statutes is created to read:

18 968.20 (1j) (a) In this subsection:

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

20 2. "Tetrahydrocannabinols" means a substance included in s. 961.14 (4) (t).

21 (b) Except as provided in par. (c), sub. (1g) does not apply to contraband or
22 property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205.

23 (c) Under sub. (1g), the court may return drug paraphernalia or
24 tetrahydrocannabinols that have been seized to the person from whom they were
25 seized if any of the following applies:

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

4 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
5 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
6 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
7 (2), or (3) (a) or 961.5755 (1) (a) or (2).

8 **SECTION 9402. Effective dates; Agriculture, Trade and Consumer**

9 **Protection.**

10 (1) MEDICAL THC. The treatment of s. 94.57 except for s. 94.57 (9) takes effect
11 on the first day of the 13th month beginning after publication.

12 **SECTION 9419. Effective dates; Health Services.**

13 (1) MEDICAL THC. The treatment of s. 146.44 except for s. 146.44 (7) and (8)
14 takes effect on the first day of the 13th month beginning after publication.

15 **(END)**

1 **INSERT ANALYSIS**

EMPLOYMENT

~~#~~ ***Restriction by employer on use of medical marijuana***

This bill allows an employer to refuse to accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivation of medical marijuana at a place of employment by an employee who is otherwise entitled to use medical marijuana.

2 **INSERT 12-3**

3 **SECTION 1.** 103.145 of the statutes is created to read:

4 **103.145 Employer drug policies; medical use of**
5 **tetrahydrocannabinols.** (1) In this section:

6 (a) "Medication with tetrahydrocannabinols" has the meaning given in s.
7 961.01 (14g).

8 (b) "Registry identification card" has the meaning given in s. 146.44 (1) (g).

9 (c) "Usable cannabis" has the meaning given in s. 961.01 (21f).

10 (d) "Written certification" has the meaning given in s. 146.44 (1) (h).

11 **(2)** An employer may refuse to accommodate the use, consumption, possession,
12 transfer, display, transportation, sale, or cultivation of medication with
13 tetrahydrocannabinols or usable cannabis at a place of employment by an employee
14 who holds, or has applied for, a registry identification card or who has been the
15 subject of a written certification.

16 **INSERT 12-12**

17 **SECTION 2.** 111.32 (15) of the statutes is created to read:

18 111.32 (15) "Use of a lawful product" includes the use of medication with
19 tetrahydrocannabinols, as defined in s. 961.01 (14g) and usable cannabis, as defined
20 in s. 961.01 (21f).

1 **SECTION 3.** 111.34 (1) (b) of the statutes is amended to read:

2 111.34 (1) (b) Refusing Except as provided in s. 103.145, refusing to reasonably
3 accommodate an employee's or prospective employee's disability unless the employer
4 can demonstrate that the accommodation would pose a hardship on the employer's
5 program, enterprise or business.

History: 1981 c. 334; 1997 a. 112.

6 **SECTION 4.** 111.35 (2) (e) of the statutes is amended to read:

7 111.35 (2) (e) ~~Conflicts~~ Except with respect to an individual who holds a
8 registry identification card, as defined in s. 146.44 (1) (g), or an individual who has
9 been the subject of a written certification, as defined in s. 146.44 (1) (h), and who uses
10 a lawful product provided by the individual's treatment team, as defined in s. 961.01
11 (20t), conflicts with any federal or state statute, rule or regulation.

History: 1991 a. 310; 1995 a. 352; 1997 a. 173; 1999 a. 9.

1 **SECTION 3.** 111.34 (1) (b) of the statutes is amended to read:

2 111.34 (1) (b) ~~Refusing~~ Except as provided in s. 103.145, refusing to reasonably
3 accommodate an employee's or prospective employee's disability unless the employer
4 can demonstrate that the accommodation would pose a hardship on the employer's
5 program, enterprise or business.

History: 1981 c. 334; 1997 a. 112.

6 **SECTION 4.** 111.35 (2) (e) of the statutes is amended to read:

7 111.35 (2) (e) ~~Conflicts~~ Except with respect to an individual who holds a
8 registry identification card, as defined in s. 146.44 (1) (g), or an individual who has
9 been the subject of a written certification, as defined in s. 146.44 (1) (h), and who uses
10 a lawful product provided by the individual's treatment team, as defined in s. 961.01
11 (20t), conflicts with any federal or state statute, rule or regulation.

History: 1991 a. 310; 1995 a. 352; 1997 a. 173; 1999 a. 9.

Walkenhorst Barber, Sarah

From: Hanaman, Cathlene
Sent: Wednesday, February 20, 2019 8:46 AM
To: Walkenhorst Barber, Sarah
Subject: FW: 1539/P4

From: Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Sent: Tuesday, February 19, 2019 6:28 PM
To: McGreevy, Mary Alice <MaryAlice.McGreevy@legis.wisconsin.gov>; Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
Subject: 1539/P4

Cathlene and Mary Alice,

Please amend section 18. Based on the example below.

146.44(7) RULES. The department shall may promulgate rules to implement the Medical Cannabis Registry Program. that do all of the following:

- (a) Create a form for an application under sub. (2).
- (b) Specify how the department will verify under sub. (3) the information submitted under sub. (2).
- (c) Specify how and under what circumstances registry identification cards may be renewed.
- (d) Specify how and under what changed circumstances a registry identification card may be revoked.
- (e) Specify under what circumstances an applicant whose application is denied may reapply.
- (f) Ensure that out of state registry identification cards are valid only if all of the following apply:
 - 1. The person holding the out of state registry identification card has been diagnosed with a debilitating medical condition that has been approved by the jurisdiction that issued the card.
 - 2. The out of state registry identification card allows for medication with tetrahydrocannabinols by the person who holds the card, the card is valid in the jurisdiction in which it was provided, and the person who holds the card is a resident of that jurisdiction.
 - 3. The person who holds the card has not been a resident of Wisconsin for a period longer than a period the department determines would allow the person to apply for a registry identification card in Wisconsin.
- (g) Create guidelines for issuing registry identification cards, and for obtaining and distributing cannabis and tetrahydrocannabinols for medication with tetrahydrocannabinols, to persons under the care of the department who have a debilitating medical condition or treatment.

(8) EMERGENCY RULES. Using the procedure under s. 227.24, the department may promulgate the rules required under s. 146.44. Notwithstanding s. 227.24 (1)

(c) and (2), emergency rules promulgated under this subsection remain in effect until January 1, 2023, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Specifically for Mary Alice the intention of the example language below is to give workplaces/employers the freedom to establish policies prohibiting/restricting individuals from possessing/using/being under the influence of marijuana. Workplaces/employers would not be required to accommodate an individual's marijuana use.

“Nothing in this article is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivating of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees”. [C.R.S. 12-43.4-104(5)(a)].

Thank you,



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Division of Executive Budget and Finance
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