



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.

EMPLOYMENT

2. 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. The bill expressly allows an employer to have a policy regarding marijuana use by its employees.

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:

1 20.115 (7) (ge) *Licensing and support services for dispensaries.* All moneys
2 received under s. 94.57 (5) to license and regulate dispensaries, and to register
3 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.

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

5 20.435 (6) (gd) *Medical cannabis registry.* All moneys received as fees under
6 s. 146.44 (2) (a) 4. and (ac) 3. and (4m), for the purposes of the Medical Cannabis
7 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.

8 **SECTION 3.** 59.54 (25) (a) (intro.) of the statutes is amended to read:

9 59.54 (25) (a) (intro.) The board may enact and enforce an ordinance to prohibit
10 the possession of ^{more than 25 grams of} marijuana, as defined in s. 961.01 (14), subject to par. (c) and the
11 exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the
12 ordinance; except that if. Any ordinance enacted under this paragraph shall provide
13 a person who is prosecuted under it with the defenses that the person has under s.
14 961.436 to prosecutions under s. 961.41 (1) (h), (1m) (h), or (3g) (e). If a complaint
15 is issued [↓] ~~regarding an allegation of~~ ^{alleging} possession of more than 25 grams of marijuana, [↓]
16 ~~or possession of any amount of marijuana~~ following a conviction in this state for
17 possession of ^{more than 25 grams of} marijuana, the subject of the complaint may not be prosecuted under
18 this subsection for the same action that is the subject of the complaint unless all of
19 the following occur:

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

SECTION 4

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 5.** 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 6.** 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 (more than 25 grams of
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~~
~~marijuana following a conviction in this state for possession of marijuana, the subject~~
23 ~~of the complaint may not be prosecuted under this paragraph for the same action that~~
24 of possession of more than 25 grams of

1 is the subject of the complaint unless the charges are dismissed or the district
2 attorney declines to prosecute the case. ← IND 5-3

3 SECTION 7. 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 8. 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 if the cultivation is by one of the following:

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

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

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

22 SECTION 9. 66.1201 (2m) of the statutes is amended to read:

23 66.1201 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
24 facility, or privilege under ss. 66.1201 to 66.1211 may not be denied the right, benefit,
25 facility, or privilege in any manner for any purpose nor be discriminated against

SECTION 9

1 because of sex, race, color, creed, or sexual orientation; status as a victim of domestic
2 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the
3 person holds, or has applied for, a registry identification card, as defined in s. 146.44
4 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h),
5 or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or
6 national origin.

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

8 66.1213 (3) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
9 facility, or privilege under this section may not be denied the right, benefit, facility,
10 or privilege in any manner for any purpose nor be discriminated against because of
11 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
12 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
13 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
14 has been the subject of a written certification, as defined in s. 146.44 (1) (h), or is or
15 has been a member of a treatment team, as defined in s. 961.01 (20t); or national
16 origin.

17 **SECTION 11.** 66.1301 (2m) of the statutes is amended to read:

18 66.1301 (2m) DISCRIMINATION. Persons entitled to any right, benefit, facility,
19 or privilege under ss. 66.1301 to 66.1329 may not be denied the right, benefit, facility,
20 or privilege in any manner for any purpose nor be discriminated against because of
21 sex, race, color, creed, or sexual orientation; status as a victim of domestic abuse,
22 sexual assault, or stalking, as defined in s. 106.50 (1m) (u); whether the person
23 holds, or has applied for, a registry identification card, as defined in s. 146.44 (1) (g),
24 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 12.** 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 13.** 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 14.** 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 15.** 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.

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 15

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 16.** 103.145 of the statutes is created to read:

15 **103.145 Employer drug policies; medical use of**
16 **tetrahydrocannabinols.** (1) In this section:

17 (a) "Medication with tetrahydrocannabinols" has the meaning given in s.
18 961.01 (14g).

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

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

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

22 **(2)** An employer may refuse to accommodate the use, consumption, possession,
23 transfer, display, transportation, sale, or cultivation of medication with
24 tetrahydrocannabinols or usable cannabis at a place of employment by an employee
25 who holds, or has applied for, a registry identification card or who has been the

1 subject of a written certification. An employer may have a policy restricting the use
2 of marijuana by its employees.

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

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

12 **SECTION 18.** 111.34 (1) (b) of the statutes is amended to read:

13 111.34 (1) (b) Refusing Except as provided in s. 103.145, refusing to reasonably
14 accommodate an employee's or prospective employee's disability unless the employer
15 can demonstrate that the accommodation would pose a hardship on the employer's
16 program, enterprise or business.

17 **SECTION 19.** Subchapter IV of chapter 139 [precedes 139.97] of the statutes is
18 created to read:

19 **CHAPTER 139**

20 **SUBCHAPTER IV**

21 **DISPENSARY SURCHARGE**

22 **139.97 Definitions.** In this subchapter:

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

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

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

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

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

19 **139.972 Records, returns.** (1) Every dispensary shall keep accurate and
20 complete records, in the manner prescribed by the department, of all transactions
21 involving the sale or disposition of cannabis and tetrahydrocannabinols. A
22 dispensary shall preserve the records on the premises described in its business tax
23 registration certificate in such a manner as to ensure permanency and accessibility
24 for inspection at reasonable hours by authorized personnel of the department.

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

5 **(3)** The department shall prescribe reasonable and uniform methods of keeping
6 records and making reports and shall prescribe and furnish the necessary report
7 forms.

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

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

19 **(6)** Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating
20 to confidentiality of income and franchise tax returns, apply to any information
21 obtained from any person on a dispensary surcharge return, report, schedule,
22 exhibit, or other document or from an audit report pertaining to the return, report,
23 schedule, exhibit, or document, except that the department shall publish on its
24 Internet site, at least quarterly, a current list of business tax registration certificates
25 issued to dispensaries under s. 73.03 (50) and include on the list the name and

1 address of the certificate holder and the date on which the department issued the
2 certificate.

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

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

7 **139.973 Administration and enforcement.** (1) Sections 139.355, 139.365,
8 139.39, and 139.40, as they apply to the tax under subch. II, apply to the
9 administration and enforcement of this subchapter.

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

14 **139.974 Police powers.** The duly authorized employees of the department
15 have all necessary police powers to prevent violations of this subchapter.

16 **139.975 Timely filing.** The provisions on timely filing under s. 71.80 (18)
17 apply to the surcharge under this subchapter.

18 **139.976 Bonds.** Section 78.11, as it applies to suppliers of motor vehicle fuel,
19 applies to persons liable for the surcharge under this subchapter.

20 **139.977 Interest and penalties.** (1) The interest and penalties under s.
21 139.44 (2) to (7) and (9) to (12) apply to this subchapter. In addition, a person who
22 violates s. 139.972 (8) may be fined not more than \$10,000 or imprisoned for not more
23 than 9 months or both.

24 (2) If a person fails to file any return or report required under s. 139.972 by the
25 due date, unless the person shows that that failure was due to reasonable cause and

1 not due to neglect, the department shall add to the amount of surcharge required to
2 be shown on that return 5 percent of the amount of the surcharge if the failure is for
3 not more than one month, and an additional 5 percent of the surcharge for each
4 additional month or fraction of a month during which the failure continues, but not
5 more than 25 percent of the surcharge. For purposes of this subsection, the amount
6 of the surcharge required to be shown on the return shall be reduced by the amount
7 of surcharge that is paid on or before the due date and by the amount of any credit
8 against the surcharge that may be claimed on the return.

9 **139.978 Personal liability.** Any officer, employee, fiduciary, or agent who is
10 responsible for paying the surcharge, interest, penalties, or other charges under this
11 subchapter incurred by another person, as defined in s. 77.51 (10), is personally
12 liable for the surcharge, interest, penalties, or other charges. Sections 71.88 (1) (a)
13 and (2) (a), 71.89, and 71.90, as they apply to appeals of income or franchise tax
14 assessments, apply to appeals of assessments under this subchapter.

15 **139.9785 Prosecutions by attorney general.** Upon request by the secretary
16 of revenue, the attorney general may represent this state or assist a district attorney
17 in prosecuting any case arising under this subchapter.

18 **139.979 Rule-making authority. (1)** The department shall promulgate any
19 rules necessary for the administration of this subchapter.

20 **(2)** Using the procedure under s. 227.24, the department may promulgate the
21 rules required under sub. (1). Notwithstanding s. 227.24 (1) (c) and (2), emergency
22 rules promulgated under this subsection remain in effect until January 1, 2023, or
23 the date on which permanent rules take effect, whichever is sooner.
24 Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide
25 evidence that promulgating a rule under this subsection as an emergency rule is

1 necessary for the preservation of the public peace, health, safety, or welfare and is
2 not required to provide a finding of emergency for a rule promulgated under this
3 subsection.

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

5 **146.44 Medical Cannabis Registry Program. (1) DEFINITIONS.** In this
6 section:

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

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

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

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

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

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

18 1. Cancer, glaucoma, acquired immunodeficiency syndrome, a positive test for
19 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,
20 Crohn's disease, a hepatitis C virus infection, Alzheimer's disease, amyotrophic
21 lateral sclerosis, nail-patella syndrome, Ehlers-Danlos Syndrome, post-traumatic
22 stress disorder, or the treatment of these conditions.

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

24 3. A chronic or debilitating disease or medical condition or the treatment of
25 such a disease or condition that causes cachexia, severe pain, severe nausea,

1 seizures, including those characteristic of epilepsy, or severe and persistent muscle
2 spasms, including those characteristic of multiple sclerosis.

3 4. Any other medical condition or any other treatment for a medical condition
4 designated as a debilitating medical condition or treatment as determined by the
5 department.

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

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

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

13 3. The acquisition, possession, cultivation, or transportation of
14 tetrahydrocannabinols in any form by a primary caregiver of a qualifying patient,
15 the transfer of tetrahydrocannabinols in any form between a qualifying patient and
16 his or her primary caregivers, or the transfer of tetrahydrocannabinols in any form
17 between persons who are primary caregivers for the same qualifying patient if all of
18 the following apply:

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

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

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

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

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

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

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

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

20 a. Allow medication with tetrahydrocannabinols for the person.

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

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

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

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

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

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

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

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

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

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

16 2. A written certification.

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

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

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

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

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

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

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

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

9 (am) 1. In this paragraph:

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

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

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

18 3. If the department of justice determines that the applicant has been convicted
19 of a disqualifying offense, the department of health services shall deny the
20 application unless at least 10 years has passed since the completion of any sentence
21 imposed for any disqualifying offense, including any period of incarceration, parole,
22 and extended supervision, and any period of probation imposed for a disqualifying
23 offense.

24 (b) The department shall promulgate rules specifying how a parent, guardian,
25 or person having legal custody of a child may apply for a registry identification card

1 for the child and the circumstances under which the department may approve or
2 deny the application.

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

7 (a) The applicant did not provide the required information or provided false
8 information.

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

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

12 **(4) ISSUING A REGISTRY IDENTIFICATION CARD.** The department shall issue an
13 applicant a registry identification card within 5 days after approving the application
14 under sub. (3). Unless voided under sub. (5) (b) or (c), a registry identification card
15 expires 2 years from the date of issuance. A registry identification card shall contain
16 all of the following:

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

- 18 1. The registrant.
- 19 2. Each primary caregiver, if the registrant is a qualifying patient.
- 20 3. Each qualifying patient, if the registrant is a primary caregiver.

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

22 (c) A photograph of the registrant.

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

24 **(4m) ANNUAL FEE.** Primary caregivers shall pay an annual fee determined by
25 the department but not less than \$250.

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

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

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

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

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

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

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

7 **(7) RULES.** The department may promulgate rules to implement the Medical
8 Cannabis Registry Program.

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

18 **SECTION 21.** 227.01 (13) (zo) of the statutes is created to read:

19 227.01 **(13)** (zo) Determines policies relating to medical cannabis under s. 94.57
20 (2).

21 **SECTION 22.** 234.29 of the statutes is amended to read:

22 **234.29 Equality of occupancy and employment.** The authority shall
23 require that occupancy of housing projects assisted under this chapter be open to all
24 regardless of sex, race, religion, or sexual orientation,; status as a victim of domestic
25 abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u),; whether the

1 person holds, or has applied for, a registry identification card, as defined in s. 146.44
2 (1) (g), has been the subject of a written certification, as defined in s. 146.44 (1) (h),
3 or is or has been a member of a treatment team, as defined in s. 961.01 (20t); or creed,
4 and that contractors and subcontractors engaged in the construction of economic
5 development or housing projects, shall provide an equal opportunity for
6 employment, without discrimination as to sex, race, religion, sexual orientation, or
7 creed.

8 **SECTION 23.** 289.33 (3) (d) of the statutes is amended to read:

9 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
10 authorization, approval, variance or exception or any restriction, condition of
11 approval or other restriction, regulation, requirement or prohibition imposed by a
12 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by
13 a town, city, village, county or special purpose district, including without limitation
14 because of enumeration any ordinance, resolution or regulation adopted under s.
15 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2),
16 (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24),
17 (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19),
18 (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10),
19 (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) (a), and (26), 59.55 (3),
20 (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16),
21 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70
22 (1), (2), (3), (5), (7), (8), (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8),
23 and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34,
24 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415,

1 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III
2 of ch. 91.

3 **SECTION 24.** 349.02 (2) (b) 4. of the statutes is amended to read:

4 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25) (a) or (25m) or
5 66.0107 (1) (bm).

6 **SECTION 25.** 767.41 (5) (am) (intro.) of the statutes is amended to read:

7 767.41 (5) (am) (intro.) Subject to pars. (bm) and, (c), and (d), in determining
8 legal custody and periods of physical placement, the court shall consider all facts
9 relevant to the best interest of the child. The court may not prefer one parent or
10 potential custodian over the other on the basis of the sex or race of the parent or
11 potential custodian. Subject to pars. (bm) and, (c), and (d), the court shall consider
12 the following factors in making its determination:

13 **SECTION 26.** 767.41 (5) (d) of the statutes is created to read:

14 767.41 (5) (d) The court may not consider as a factor in determining the legal
15 custody of a child whether a parent or potential custodian holds, or has applied for,
16 a registry identification card, as defined in s. 146.44 (1) (g), is or has been the subject
17 of a written certification, as defined in s. 146.44 (1) (h), or is or has been a qualifying
18 patient, as defined in s. 146.44 (1) (e), or a primary caregiver, as defined in s. 146.44
19 (1) (d), unless the parent or potential custodian's behavior creates an unreasonable
20 danger to the child that can be clearly articulated and substantiated.

21 **SECTION 27.** 767.451 (5m) (a) of the statutes is amended to read:

22 767.451 (5m) (a) Subject to pars. (b) and, (c), and (d), in all actions to modify
23 legal custody or physical placement orders, the court shall consider the factors under
24 s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its determination in
25 a manner consistent with s. 767.41.

1 **SECTION 28.** 767.451 (5m) (d) of the statutes is created to read:

2 767.451 **(5m)** (d) In an action to modify a legal custody order, the court may not
3 consider as a factor in making a determination whether a parent or potential
4 custodian holds, or has applied for, a registry identification card, as defined in s.
5 146.44 (1) (g), is or has been the subject of a written certification, as defined in s.
6 146.44 (1) (h), or is or has been a qualifying patient, as defined in s. 146.44 (1) (e), or
7 a primary caregiver, as defined in s. 146.44 (1) (d), unless the parent or potential
8 custodian's behavior creates an unreasonable danger to the child that can be clearly
9 articulated and substantiated.

10 **SECTION 29.** 961.01 (5m) of the statutes is created to read:

11 961.01 **(5m)** "Debilitating medical condition or treatment" has the meaning
12 given in s. 146.44 (1) (b).

13 **SECTION 30.** 961.01 (12v) of the statutes is created to read:

14 961.01 **(12v)** "Lockable, enclosed facility" means an enclosed indoor or outdoor
15 area that is lockable, or requires a security device, to permit access only by a member
16 of a qualifying patient's treatment team.

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

18 961.01 **(14c)** "Maximum authorized amount" means 12 live cannabis plants or
19 3 ounces of usable cannabis.

20 **SECTION 32.** 961.01 (14g) of the statutes is created to read:

21 961.01 **(14g)** "Medication with tetrahydrocannabinols" has the meaning given
22 in s. 146.44 (1) (c).

23 **SECTION 33.** 961.01 (17k) of the statutes is created to read:

24 961.01 **(17k)** "Out-of-state registry identification card" has the meaning given
25 in s. 146.44 (1) (cm).

1 **SECTION 34.** 961.01 (19m) of the statutes is created to read:

2 961.01 (19m) "Primary caregiver" has the meaning given in s. 146.44 (1) (d).

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

4 961.01 (20hm) "Qualifying patient" has the meaning given in s. 146.44 (1) (e).

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

6 961.01 (20ht) "Registry identification card" has the meaning given in s. 146.44

7 (1) (g).

8 **SECTION 37.** 961.01 (20t) of the statutes is created to read:

9 961.01 (20t) "Treatment team" means a qualifying patient and his or her
10 primary caregivers.

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

12 961.01 (21f) "Usable cannabis" means cannabis leaves or flowers but does not
13 include seeds, stalks, or roots or any ingredients combined with the leaves or flowers.

14 **SECTION 39.** 961.01 (21t) of the statutes is created to read:

15 961.01 (21t) "Written certification" has the meaning given in s. 146.44 (1) (h).

16 **SECTION 40.** 961.14 (4) (t) 1. of the statutes is amended to read:

17 961.14 (4) (t) 1. Cannabidiol in a form without a psychoactive effect that is
18 dispensed as provided in s. 961.38 (1n) (a) or that is possessed as provided in s. 961.32

19 ~~(2m) (b).~~

20 **SECTION 41.** 961.32 (1m) of the statutes is renumbered 961.32.

21 **SECTION 42.** 961.32 (2m) of the statutes is repealed.

22 **SECTION 43.** 961.38 (1n) of the statutes is repealed.

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

24 **961.436 Medical use defense in cases involving**
25 **tetrahydrocannabinols.** (1) A member of a qualifying patient's treatment team

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1 has a defense to prosecution under s. 961.41 (1) (h) or (1m) (h) for manufacturing, or
2 possessing with intent to manufacture, tetrahydrocannabinols if all of the following
3 apply:

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

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

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

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

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

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

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

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

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

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

4 1. The possession or attempted possession is by the treatment team for
5 medication with tetrahydrocannabinols.

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

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

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

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

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

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

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

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

22 b. The person's place of employment.

23 c. Public or private school premises.

24 d. A juvenile correctional facility.

25 e. A jail or adult correctional facility.

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

2 g. A youth center.

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

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

18 **SECTION 45.** 961.52 (2) (a) 1. and 2. of the statutes are amended to read:

19 961.52 (2) (a) 1. Places where persons authorized under s. 961.32 (~~1m~~) to
20 possess controlled substances in this state are required by federal law to keep
21 records; and

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

1 **SECTION 46.** 961.55 (8) (c), (d) and (e) of the statutes are created to read:

2 961.55 (8) (c) A valid registry identification card or a valid out-of-state registry
3 identification card.

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

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

7 **SECTION 47.** 961.555 (2) (am) 6. of the statutes is amended to read:

8 961.555 (2) (am) 6. The property is contraband that is subject to forfeiture
9 under s. 961.55 (6), (6m), or, unless the defendant invokes a defense under s. 961.436
10 or 961.5755, under s. 961.55 (6) or (7).

11 **SECTION 48.** 961.555 (2r) of the statutes is created to read:

12 961.555 (2r) MEDICAL USE DEFENSE. (a) In an action to forfeit property seized
13 under s. 961.55, the person who was in possession of the property when it was seized
14 has a defense to the forfeiture of the property if any of the following applies:

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

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

22 (b) The owner of property seized under s. 961.55 who is raising a defense under
23 par. (a) shall do so in the answer to the complaint that he or she serves under sub.
24 (2) (b). If a property owner raises such a defense in his or her answer, the state must,

1 as part of the burden of proof specified in sub. (3), prove that the facts constituting
2 the defense do not exist.

3 **SECTION 49.** 961.56 (1) of the statutes is amended to read:

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

10 **SECTION 50.** 961.5755 of the statutes is created to read:

11 **961.5755 Medical tetrahydrocannabinols defense in drug**
12 **paraphernalia cases.** (1) (a) Except as provided in par. (b), a member of a
13 treatment team has a defense to prosecution under s. 961.573 (1) if he or she uses,
14 or possesses with the primary intent to use, drug paraphernalia for medication with
15 tetrahydrocannabinols.

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

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

23 (3) For the purposes of a defense raised under sub. (1) (a) or (2), a valid registry
24 identification card, a valid out-of-state registry identification card, or a written
25 certification is presumptive evidence that the person identified on the valid registry

1 identification card or valid out-of-state registry identification card as a qualifying
2 patient or the subject of the written certification is a qualifying patient and that, if
3 the person uses tetrahydrocannabinols, he or she does so to alleviate the symptoms
4 or effects of his or her debilitating medical condition or treatment.

5 **SECTION 51.** 968.072 of the statutes is created to read:

6 **968.072 Medical cannabis; arrest and prosecution.** (1) DEFINITIONS. In
7 this section:

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

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

10 (b) "Medication with tetrahydrocannabinols" has the meaning given in s.
11 961.01 (14g).

12 (bm) "Out-of-state registry identification card" has the meaning given in s.
13 146.44 (1) (cm).

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

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

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

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

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

19 **(2) LIMITATIONS ON ARRESTS AND PROSECUTION; MEDICAL CANNABIS.** Unless s.
20 961.436 (3) (b) 1., 2., or 3. applies, a member of a qualifying patient's treatment team
21 may not be arrested or prosecuted for a violation of s. 961.41 (1) (h), (1m) (h), or (3g)
22 (e) if all of the following apply:

23 (a) The member manufactures, distributes, delivers, or possesses
24 tetrahydrocannabinols for medication with tetrahydrocannabinols by the treatment
25 team.

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

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

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

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

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

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

18 3. The member does not possess more than the maximum authorized amount
19 of cannabis.

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

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

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

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

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

11 3. The member does not possess more than the maximum authorized amount
12 of cannabis.

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

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

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

21 (b) An employee of a dispensary licensed under s. 94.57, of an entity operating
22 under the policies determined under s. 94.57 (2) and rules promulgated under s.
23 94.57 (9), or of a testing laboratory registered under s. 94.57 (7) may not be arrested
24 and such employee may not be subject to prosecution, denied any right or privilege,
25 or penalized in any manner for any good faith action under s. 94.57.

SECTION 51

1 **(5) PENALTY FOR FALSE STATEMENTS.** Whoever intentionally provides false
2 information to a law enforcement officer in an attempt to avoid arrest or prosecution
3 under this section for a violation of s. 961.41 (1) (h), (1m) (h), or (3g) (e), 961.573 (1),
4 961.574 (1), or 961.575 (1) may be fined not more than \$500.

5 **SECTION 52.** 968.12 (6) of the statutes is created to read:

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

13 **SECTION 53.** 968.19 of the statutes is renumbered 968.19 (1) and amended to
14 read:

15 **968.19 (1)** Property Except as provided in sub. (2), property seized under a
16 search warrant or validly seized without a warrant shall be safely kept by the officer,
17 who may leave it in the custody of the sheriff and take a receipt therefor, so long as
18 necessary for the purpose of being produced as evidence on any trial.

19 **SECTION 54.** 968.19 (2) of the statutes is created to read:

20 **968.19 (2)** A law enforcement agency that has seized a live cannabis plant is
21 not responsible for the plant's care and maintenance.

22 **SECTION 55.** 968.20 (1g) (intro.) of the statutes is amended to read:

23 **968.20 (1g) (intro.)** The court shall order such notice as it deems adequate to
24 be given the district attorney and, unless notice was provided under s. 968.26 (7), to
25 all persons who have or may have an interest in the property. The court shall hold

1 a hearing to hear all claims to its true ownership. Except for a hearing commenced
2 by the court, the hearing shall occur no more than 30 days after a motion is filed
3 except that either party may, by agreement or for good cause, move the court for one
4 extension of no more than 10 days. Any motion may be supported by affidavits or
5 other submissions. If the right to possession is proved to the court's satisfaction, it
6 shall order the property, ~~other than contraband or property covered under sub. (1m)~~
7 ~~or (1r) or s. 173.21 (4) or 968.205~~, returned if the court finds any of the following:

8 **SECTION 56.** 968.20 (1j) of the statutes is created to read:

9 968.20 (1j) (a) In this subsection:

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

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

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

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

17 1. The person was prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
18 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property but had
19 a valid defense under s. 961.436 (1), (2), or (3) (a) or 961.5755 (1) (a) or (2).

20 2. The person was not prosecuted under s. 961.41 (1) (h), (1m) (h), or (3g) (e),
21 961.573 (1), 961.574 (1), or 961.575 (1) in connection with the seized property, but,
22 if the person had been, he or she would have had a valid defense under s. 961.436 (1),
23 (2), or (3) (a) or 961.5755 (1) (a) or (2).

24 (END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1539/P7ins
CH/JK/SB/MP/MM:wlj

1 Insert 3-20

****NOTE: This is reconciled s. 59.54 (25) (a) (intro.). This ~~section~~ SECTION has been affected by drafts with the following LRB numbers: -1996/p2 and -1539/p6.

2

3 Insert 5-3

****NOTE: This is reconciled s. 66.0107 (1) (bm). This SECTION has been affected by drafts with the following LRB numbers: -1996/p2 and -1539/p6.

No CS

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1539/P7dn
CH/JK/SB/MP/MM:wlj

Date

This draft reconciles LRB-1996/p2 and LRB-1539/p6. Both of these drafts should continue to appear in the compiled bill.

Cathlene M. Hanaman
Deputy Chief and Chief Operating Officer
(608) 504-5858
cathlene.hanaman@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1539/P7dn
CH/JK/SB/MP/MM:wlj

February 21, 2019

This draft reconciles LRB-1996/p2 and LRB-1539/p6. Both of these drafts should continue to appear in the compiled bill.

Cathlene M. Hanaman
Deputy Chief and Chief Operating Officer
(608) 504-5858
cathlene.hanaman@legis.wisconsin.gov

McGreevy, Mary Alice

From: Bollhorst, Nathan - DOA
Sent: Thursday, February 21, 2019 2:41 PM
To: Hanaman, Cathlene; McGreevy, Mary Alice
Cc: Dombrowski, Cynthia A - DOA
Subject: 1539/P7

Importance: High

Please amend draft 1539/P7 as follows.

Amend section 16. 103.145(2) to read exactly as follows, "Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or cultivating of medication with tetrahydrocannabinols or usable cannabis in the workplace or to affect the abilities of employers to have policies restricting the use of marijuana by employees."

Repeal the changes make to section 18.

Thank you,



Nathan Bollhorst | Executive Policy & Budget Analyst
Department of Administration
Division of Executive Budget and Finance
Nathan.Bollhorst@wisconsin.gov
Main: (608) 267-7980

McGreevy, Mary Alice

From: Dombrowski, Cynthia A - DOA
Sent: Thursday, February 21, 2019 5:00 PM
To: McGreevy, Mary Alice; Bollhorst, Nathan - DOA
Cc: Hanaman, Cathlene
Subject: RE: 1539/P7

Mary Alice –

Per our conversation, please proceed with the language as we discussed. "No employer is required to permit or accommodate the use consumption in the workplace and any employer may have a policy restricting the use of marijuana by its employees"

Thank you for all of your help with this.

Cindy

From: McGreevy, Mary Alice I - LEGIS <maryalice.mcgreevy@legis.wisconsin.gov>
Sent: Thursday, February 21, 2019 3:30 PM
To: Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>; Hanaman, Cathlene M - LEGIS <Cathlene.Hanaman@legis.wisconsin.gov>
Subject: RE: 1539/P7

We can, but the problem is that it says, "nothing in this section", but there's nothing in the section. Does that make sense? The section isn't directing anything. It is definitions (sub.1), and then sub 2.

From: Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Sent: Thursday, February 21, 2019 3:28 PM
To: McGreevy, Mary Alice <MaryAlice.McGreevy@legis.wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>; Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Subject: RE: 1539/P7

Mary Alice,

Please comply with the request as it is written.

From: McGreevy, Mary Alice I - LEGIS <maryalice.mcgreevy@legis.wisconsin.gov>
Sent: Thursday, February 21, 2019 3:11 PM
To: Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
Subject: RE: 1539/P7

Hi,

There's an issue with the request below that I need to resolve before updating this draft. Please give me a call ASAP.

Thank you,

Mary Alice I. McGreevy
Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 504-5866
MaryAlice.McGreevy@legis.wisconsin.gov

From: Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Sent: Thursday, February 21, 2019 2:41 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>; McGreevy, Mary Alice <MaryAlice.McGreevy@legis.wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>
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Thank you,



Nathan Bollhorst | Executive Policy & Budget Analyst
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