AN ACT to create 103.157 of the statutes; relating to: employer liability for not drug testing employees and prospective employees.

Analysis by the Legislative Reference Bureau

This bill, subject to certain exceptions, limits the liability of an employer that does not require an employee or prospective employee to submit to a test for the presence of any tetrahydrocannabinol (THC), which is the active ingredient in marijuana, synthetic cannabinoid, or a controlled substance analog to THC or a synthetic cannabinoid in his or her system (drug testing) as a condition of employment.

The bill does not apply to the drug testing of an employee or prospective employee who is subject to drug testing under 1) any regulation promulgated by the federal Department of Transportation that requires drug testing of an employee or prospective employee or any rule promulgated by the Department of Transportation of this state adopting such a regulation for purposes of enforcing the requirements of that regulation with respect to intrastate commerce; 2) any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of employees and prospective employees as a condition of receiving the contract or grant; 3) any federal statute, regulation, order, or other requirement or condition that requires drug testing of employees and prospective employees for purposes of safety or security; 4) any substance abuse prevention program under a collective bargaining agreement or under the current law that requires such programs for public works and public utility projects; 5) rules promulgated by the Law Enforcement Standards...
Board requiring drug testing of prospective law enforcement officers, tribal law enforcement officers, jail officers, and secure detention officers; or 6) any employer requirement that an employee be a licensed private security person and carry a firearm in the course of employment.

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:

SECTION 1. 103.157 of the statutes is created to read:

103.157 Employer nonliability for not testing for marijuana or synthetic cannabinoids; exceptions. (1) DEFINITIONS. In this section:

(a) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

(b) “Employer” means any person engaging in any activity, enterprise, or business employing at least one individual. “Employer” includes the state, its political subdivisions, and any office, department, independent agency, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(c) “Synthetic cannabinoid” means a substance included under s. 961.14 (4) (tb).

(d) “Tetrahydrocannabinol” means a substance included under s. 961.14 (4) (t).

(2) EMPLOYER LIABILITY. Except as provided in sub. (3), no employer may be held liable for not requiring an employee or prospective employee to submit to testing for the presence of any tetrahydrocannabinol, synthetic cannabinoid, or controlled substance analog of a tetrahydrocannabinol or synthetic cannabinoid in his or her system as a condition of employment.

(3) EXCEPTIONS. Subsection (2) does not apply to an employer who fails to test for the presence of any tetrahydrocannabinol, synthetic cannabinoid, or controlled
substance analog of a tetrahydrocannabinol or synthetic cannabinoid in the system
of an employee or prospective employee if the employee or prospective employee is
required to subject to drug testing under any of the following:

   (a) Any regulation promulgated by the federal department of transportation
       that requires testing of an employee or prospective employee in accordance with 49
       CFR 40 or any rule promulgated by the department of transportation of this state
       adopting such a regulation for purposes of enforcing the requirements of that
       regulation with respect to intrastate commerce.

   (b) Any contract entered into between the federal government and an employer
       or any grant of financial assistance from the federal government to an employer that
       requires drug testing of employees and prospective employees as a condition of
       receiving the contract or grant.

   (c) Any federal statute, regulation, order, or other requirement or condition
       that requires drug testing of employees and prospective employees for purposes of
       safety or security.

   (d) A substance abuse prevention program under s. 103.503 or under a
       collective bargaining agreement between an employer and a labor organization
       representing employees and prospective employees of the employer.

   (e) Rules promulgated by the law enforcement standards board requiring drug
       testing of prospective law enforcement officers, tribal law enforcement officers, jail
       officers, and secure detention officers.

   (f) Any employer requirement that an employee be a licensed private security
       person under s. 440.26 (1m) and that the employee carry a firearm in the course of
       his or her employment.